

**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
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 200
Rockville, Maryland 20850
(240) 777-6660**

IN THE MATTER OF:
CHELSEA RESIDENTIAL ASSOCIATES
Applicant

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Zoning Application No. G-892

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Report and Recommendation by: Lynn A. Robeson, Hearing Examiner

HEARING EXAMINER’S REPORT AND RECOMMENDATION

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APPENDIX A, SUMMARY OF TESTIMONY

I. EXECUTIVE SUMMARY

Applicant:	Chelsea Residential Associates
LMA No. & Date of Filing:	G-892, filed January 4, 2011
Current Zone and Use:	The property consists of a single lot totaling 5.25 acres +/- which is currently occupied by the Chelsea School, a private school operating under a special exception, and the Riggs-Thompson House, designated an historic resource in the North and West Silver Spring Master Plan.
Zoning and Use Sought:	LMA G-892 proposes to rezone the subject property from the R-60 Zone to the RT-15 Zone in order to develop 76 townhouses and convert the Riggs-Thompson House to a single-family detached residential use.
Location:	On the block surrounded by Springvale Road on the north, Pershing Drive on the east, Cedar Street on the south, and Ellsworth Avenue to the west.
Area to be Rezoned:	4.85 acres (net); 5.25 acres (gross)
Density Permitted in R-T Zone:	15 dwelling units per acre; 18.3 dwelling unit per acre if development includes more than 12.5% MPDUs;
Density Planned:	14.6 dwelling units per acre, including 10 MPDUs
Public Use Space:	Proposed: 40% (Binding 40%)
Active & Passive Recreation Space:	Proposed: 30.2% (Binding 25%)
Parking Required/Planned:	135 spaces (Required); 168 planned.
Height Planned:	35 feet, maximum;
Traffic & Environmental Issues:	No Local Area Transportation Review (LATR) traffic improvements required; issues relating to whether alternative alignments of access road will allow cut-through traffic; existing Category II Forest Conservation Easement will need to be updated for the use.
Zoning Issues:	Whether the Application meets the purpose clauses of the R-T Zone, and whether proposed development is compatible with uses in the surrounding area.
Consistency with Master Plan:	Whether rezoning at the density proposed is consistent with the 2000 North and West Silver Spring Master Plan; whether scope of environmental setting of the historic resource is consistent with the Master Plan.
Neighborhood Response:	Supported by 23 individuals, the Washington Sustainable Growth Alliance and the Coalition for Smarter Growth; opposed by the Seven Oaks Evanswood Citizen's Association, the South Four

Corners Civic Association, the East Silver Spring Citizens Association, the Park Hills Civic Association, the Woodside Park Civic Association, the Montgomery County Civic Federation, Montgomery Preservation Inc., and 68 individuals;

Planning Board Recommends: Approval;

Technical Staff Recommends: Approval;

Hearing Examiner Recommends: Remand for consideration of a revised Schematic Development Plan at a lesser density and less massing; resolution of issues relating to the environmental setting of the Riggs-Thompson House and access to the site.

II. STATEMENT OF THE CASE

Filed on January 4, 2011, the Applicant seeks to rezone property located at 630 Ellsworth Drive, Silver Spring, Maryland (Lot 58, Evanswood Section 1) from the R-60 to the R-T 15 Zone.¹ Exhibit 1. The application included binding elements relating to land use and density, as it was filed under the Optional Method authorized by §59-H-2.5 of the Zoning Ordinance.

Technical Staff issued its report, dated May 9, 2011, recommending approval of the application. Exhibit 45. The Planning Board also recommended approval on May 25, 2011, subject to nine binding elements proposed by the Applicant at the Planning Board hearing. Exhibit 103. Because the subject property encompasses the site of the historic Riggs-Thompson House, the Planning Board included a memorandum from Staff of the Historic Preservation Commission indicating that Staff would not support the alignment of a private access road shown on the schematic development plan because of its impact on the environmental setting surrounding the historic home. Exhibit 107.

Public hearings were held on May 26, 2011, June 6, 2011, June 27, 2011, June 30, 2011, and July 18, 2011. Thirteen citizens testified in support of the application, including a representative of the Washington Sustainable Growth Alliance, and 25 individuals appeared in opposition, including those representing the Seven Oaks-Evanswood Citizens Association (SOECA), Montgomery Preservation Inc. and the Montgomery County Civic Federation.

At the public hearing, Montgomery Preservation Inc. presented testimony opposing the application because a private road bisected the environmental setting of the historic Riggs-Thompson House, and issue also raised by Staff to the Historic Preservation Commission. Exhibits 107, 120. The Applicant on rebuttal presented six alternative alignments for the private road. Exhibit 210;

¹ Some documents in the record name the property address as “711 Pershing Drive” rather than on Ellsworth Drive. The Applicant clarified that the Ellsworth Drive address is the premise address listed on the records of the Maryland State Department of Assessments and Taxation while the mailing address is the Pershing Drive address. As the notices in the case used the premise address, that address shall be used throughout this Report.

7/18/11 T. 185-197. The Hearing Examiner referred these six alignments to Technical Staff for their review in order to determine which, if any, were potentially viable. 7/18/11 T. 11-12. Technical Staff provided its review on July 22, 2011. Exhibit 232. The record was left open until August 5, 2011, to permit the parties the opportunity to request an additional hearing to present or cross-examine witnesses based on Technical Staff's review of the road alignments and to submit written closing arguments in the case. 7/18/11 T. 236. The Hearing Examiner did not receive a request for additional cross-examination on the six possible road alignments, but did receive numerous letters opposing certain configurations of the alignments, opposing the application in general, and closing arguments from the parties. Exhibits 234, 235-237, 241-256.

III. FACTUAL BACKGROUND

A. Subject Property

The subject property consists of 5.25 acres zoned R-60 located on south side of Springvale Road between Ellsworth Drive and Pershing Drive. Exhibit 253(a). Technical Staff advises that the property slopes at a 6% grade from the eastern boundary along Pershing Drive to the western boundary fronting Ellsworth Drive. Exhibit 45, p. 3. Adjoining the southern property line are a row of single-family detached homes which are recommended to be special exceptions for non-resident professional offices in the master plan, but some of which are still owner-occupied. Exhibit 45, p. 3. The rear yards of these homes are adjacent to the subject property; the houses front on the north side of Cedar Street. Exhibit 45, p. 3.

The Silver Spring Central Business District begins immediately south of Cedar Street. Exhibit 45, p. 5. A multi-family building at a density of 112 units per acre is being constructed on the southern side of Cedar Street. 5/26/11 T. 59. Further to the south are a number of retail, commercial offices, multi-family residential and civic uses that comprise the Silver Spring Central Business District. 5/26/11 T. 59.

The subject property lies within the boundaries of the SOECA. 6/30/11 T. 284-286. The general location of the property and the immediately surrounding uses is shown on an aerial photograph of uses (Exhibit 151) surrounding the site submitted by Anne Spielberg, head of the SOECA task force established to review the application, shown below. This also depicts the arrangement of the existing school buildings, the Riggs-Thompson House, and an existing asphalt parking lot on the property.



Currently, the property is used by the Chelsea School, a private school for individuals with learning disabilities, under a special exception approved in 2000. Exhibit 45, p. 4. The school's

buildings total approximately 40,000 square feet with a 70-space asphalt parking lot along Springvale Road and Ellsworth Drive. Springvale Road, bordering the northern property line, is described as narrow, with no curb or gutter installed. There are sidewalks bordering the school on its frontage along Pershing Drive, but the sidewalk ends along Springvale Lane. 5/26/11 T. 48-49.

The property contains many mature trees, especially in the southern portion bordering the rear yards of the homes fronting Cedar Street, as well as open areas. The land planner representing SOECA and other individuals opposing the application, Mr. Kenneth Doggett, submitted photographs of the mature trees on the subject property bordering Ellsworth Drive (Exhibit 186(b), below):



Both the Applicant and individuals opposing the application submitted numerous photographs of the subject property. A selected few of these photographs are shown below and on the next page:



**Applicant's Photograph of Chelsea School
(Exhibit 112)**



**Opposition Photograph of Chelsea School
From Directly Confronting Property on
North Side of Springvale Road (Exhibit 176)**



**Applicant's Photograph of Existing
Conditions (Exhibit 112)**



**Opposition Photograph of Existing
Conditions (Exhibit 158)**



**Applicant's Exhibit Showing Existing
Asphalt Parking Area (Exhibit 112)**



**Opposition Photograph from Pershing Drive
Showing Riggs-Thompson House (Opposition
Exhibit 176)**



**Applicant's Photograph of Subject Property
Along Ellsworth Drive (Exhibit 112)**



**Opposition's Photograph of Subject
Property Along Ellsworth Drive (Exhibit
186)**

Chelsea School



**Opposition's View from Pershing Drive
Approaching Springvale Road
(Exhibit 176)**

Subject Property



**Opposition Photograph of Springvale Lane
(Exhibit 176)**

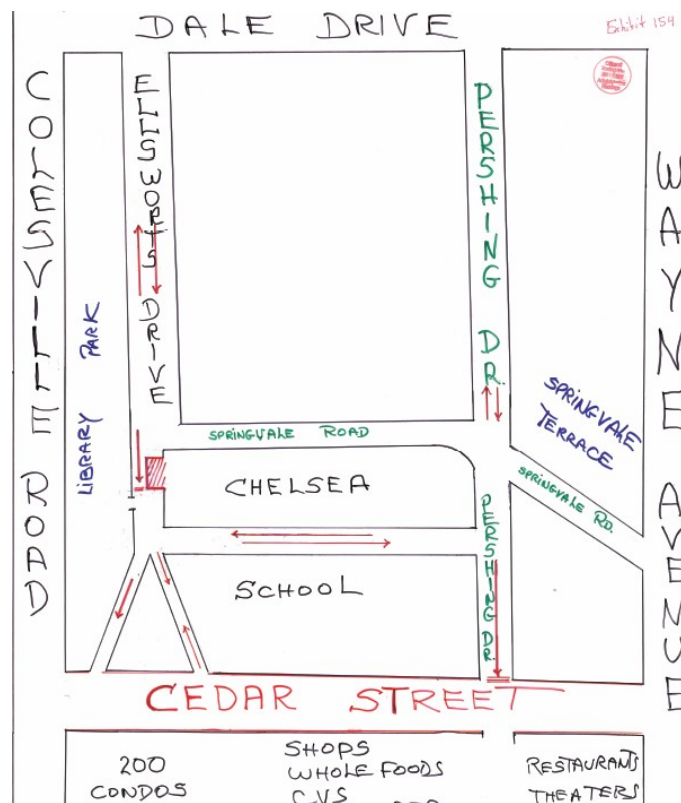


**Applicant's View of Chelsea School
(Exhibit 112)**

There are number of existing turn and access restrictions on the streets surrounding the subject property in order to limit cut-through traffic to and from the Central Business District. 6/6/11 T. 197; 6/27/11 T. 14-16; Exhibit 154. Mr. Martin Wells, the Applicant's traffic expert, testified that

southbound traffic on Pershing Drive is blocked by a “do not enter” sign just north of Cedar Street. Turn restrictions at Springvale Road and Pershing Drive also prevent cut-through traffic. Eastbound traffic along Springvale Road must turn left at Pershing; southbound traffic on Pershing must turn right onto Springvale Road. 6/27/11 T. 12-15.

Mr. John Millson, a resident of Springvale Road confronting the subject property, participated with Montgomery County in the design of these restrictions. 6/6/11 T. 196-201. He submitted a diagram of the existing restrictions (Exhibit 154), shown below:



B. Surrounding Area and Adjacent Development

As this is an application for a “floating zone”, the surrounding area must be identified in order to determine the impact, and therefore the compatibility, of the proposed development with neighboring uses. The “surrounding area” in a floating zone case is defined less rigidly than in an application for a Euclidean zone.

All parties agree that Colesville Road and Wayne Avenue form the east and west boundaries, respectively, of the “surrounding area” of the subject property and the Hearing Examiner so finds. 5/26/11 T. 203-204; 6/30/11 T. 19-23.

Each side hotly debates the southern boundary because of its effect on the scope and character of the transitional area between the Silver Spring Central Business District (CBD) and the single-family detached homes that dominate the land uses north of Cedar Street to the Beltway. 5/26/11 T. 203-205; 6/30/11 T. 19-23; 7/18/11 T. 32-38.

In addition to disagreement over the exact boundaries of the surrounding area, the parties disagree on what factors are considered when delineating those boundaries. Mr. Iraola, the Applicant’s expert land planner, testified that he applied several factors, such as a “standard planning principle” that the surrounding area includes all property within 5-minute walk radius (or approximately ¼ mile radius) surrounding the subject property. 7/18/11 T. 35-36. He also testified that the Applicant’s delineation was appropriate because it “centrally located” the property in the transition area between the more intense land uses in the CBD and the single-family homes to the north. 5/26/11 T. 205-206. Referring to a comparison made by Planning Board Chairperson Francoise Carrier at the Planning Board’s public hearing, he also opined the development’s impact should be measured like a “pebble dropped into a pool of calm water”. The biggest ripples occur closest to the point of impact and dissipate as they proceed outward. 5/26/11 T. 203.

Initially, the Applicant proposed delineating the northern and southern boundaries of the surrounding area as Dale Drive and Georgia Avenue, respectively. 5/26/11 T. 206. Technical Staff adopted that boundary (shown on the next page), partly because it centered the subject property evenly between the CBD core and the single-family detached neighborhoods to the north, thus capturing the entire transition in density from the CBD core (i.e., 430 dwelling units per acre) to the predominantly R-60 zoning (i.e., 6 dwelling units per acre) to the north. Exhibit 45, p. 4. Staff’s

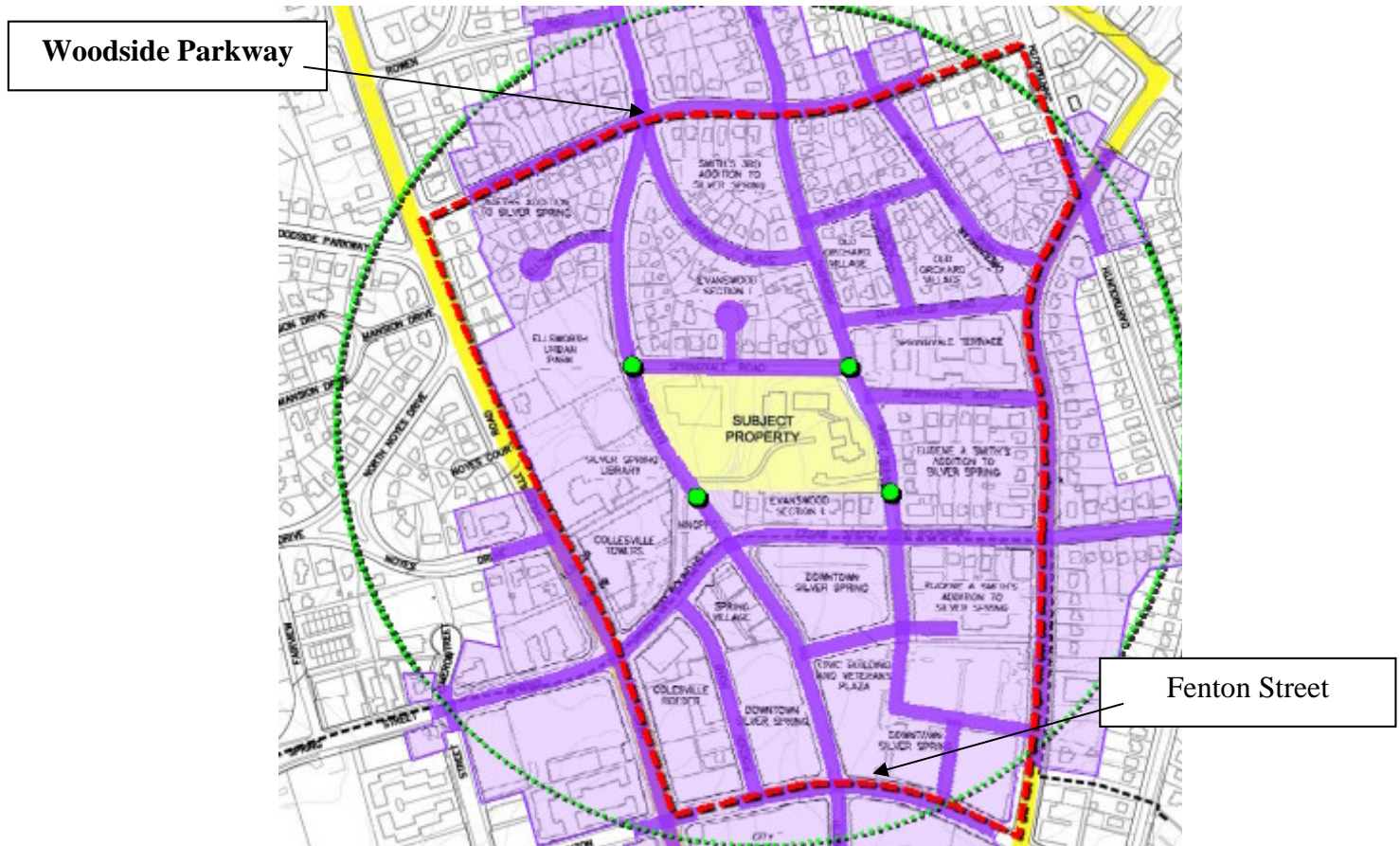
delineation (Exhibit 45) is shown below:



**Technical Staff's Delineation of the Neighborhood
(Exhibit 45)**

The Planning Board recommended narrowing the northern and southern boundaries because it believed that the impacts of the development were too attenuated along the boundaries identified by Staff. Exhibit 103. While still reiterating his position that the original boundary was correct, Mr. Iraola presented a revised delineation of the surrounding area using Fenton Street as the southern boundary and Woodside Parkway connecting either to Dale Drive or to Dartmouth for the northern boundary. 5/26/11 T. 203; Exhibit 123. He based his revised delineation on the premise that it “still centrally locates the subject property” within the revised neighborhood boundary and a “highly regarded standard” that proposed developments will directly impact properties within a five-minute

walking radius or a ¼ mile radius. 5/26/11 T. 205; 7/18/11 T. 35-36. When asked what direct impacts the development would have on the area within the Central Business District, Mr. Iraola replied that, “I see benefits. I don’t really see adverse impacts”. 7/18/11 T. 95. The Applicant’s revised delineation of the neighborhood boundary (Exhibit 123) is shown below:



SOECA's expert land planner, Mr. Kenneth Doggett, opined that the southern boundary of the neighborhood should be Cedar Street and the northern boundary, which he called a "soft" boundary, should be three blocks north of the subject property. 6/30/11 T. 23. In his opinion, defining the surrounding area in terms of *any* impact was inappropriate because each area has different planning characteristics of the area and physical barriers. 6/30/11 T. 24. Cedar Street was the appropriate southern boundary because the row of single-family homes on the north side formed a physical barrier to the CBD and single-family detached homes dominated the land use on the north side of the

street. The Cedar Street homes sit high on a 20-foot berm with mature trees in the front and rear yards of those houses, thus buffering the residential community from the CBD and creating the primary transition from the Central Business District to the single-family detached residential uses to the north, as shown on Exhibit 186(d), shown below:



Traditionally, the Council has approved definitions of surrounding areas in floating zone local map amendments that take into account those areas that would be most directly affected by the proposed developments. No party has cited any authority for varying from that practice, and the Hearing Examiner will therefore adhere to it in this case. Under this standard, the Hearing Examiner finds it inappropriate to define the surrounding area to ensure a particular relationship with other land uses or to limit the area based on common characteristics of individual neighborhoods. Rather, one must first review the direct impacts of the development (usually analyzed in terms of visual, traffic, or environmental impacts, etc., depending upon the facts of the case).

With regard to the southern boundary, there is little evidence of the specific impacts the Chelsea Court development will have on CBD properties. On rebuttal, the Applicant applied a generalized principle that the development will have a direct impact on properties within a ¼-mile

radius. When directly questioned about specific impacts, he replied that Chelsea Court would have no adverse impact, only “benefits”. 7/18/11 T. 35-36, 95. SOECA, on the other hand, acknowledges that both sides of Cedar Street, (i.e., the 112-unit multi-family residential building on the south side and the single-family detached structures on the north side) together form the “edge” or transition from the CBD to the residential communities to the north. Exhibit 255, p. 46.

Given the proximity of the site to the CBD, the Hearing Examiner believes it is reasonable to infer that the proposed development will have some impacts on the Central Business District, although the extent to which they become too attenuated to be distinguished from the impacts of other Central Business District development and the general population is not clear from the evidence. Certainly, traffic from the development will impact Cedar Street to the intersection of Cedar (Spring) Street and Colesville Road and points south. Because the standard planning principle of ¼ mile radius articulated by Mr. Iraola is the only evidence of the extent of impact to the south of Cedar Street, and the area encompasses those specific intersections included in the LATR review (Exhibit 170), the Hearing Examiner finds there is sufficient evidence to support the Applicant’s delineation of Fenton Street as the southern border of the “surrounding area”.

The Hearing Examiner finds that the northern boundary of the “surrounding area” is Dale Drive. There was extensive evidence, both from the neighborhood and from the Applicant’s traffic expert, that northbound traffic leaving the site will likely take either Ellsworth Drive or Pershing Drive to Dale Drive to connect to Colesville Road, and in fact, the intersection of Colesville Road and Dale Drive was one of the intersections required to be studied in the LATR review. Exhibit 170; 6/30/11 T. 349; 5/26/11 T. 142; 6/6/11 T. 202, 204; 6/27/11 T. 20-22, 179, 247-250. Thus, the Hearing Examiner finds that the surrounding area of the subject property is Dale Drive to the north, Wayne Avenue to the east, Fenton Street to the south, and Colesville Road to the west. This surrounding area is appropriate for determining whether the proposed R-T 15 Zone will be

compatible with surrounding uses, as this area captures virtually all nearby properties that may be affected by the rezoning and demonstrates its predominant land use pattern.

Turning then to the character of the surrounding area, Mr. Iraola testified that the area consists of a wide diversity of uses, which transition from the Silver Spring Central Business District to the lower density residential uses to the north. 5/26/11 T. 210. The “neighborhood context” of the property, according to the Applicant, is shown below (Exhibit 112(g)):



Mr. Iraola also characterized the uses north of Cedar Street as widely diverse. In support of this, he cited to the 275-unit Colesville Towers high-rise residential building (zoned C-O). He also opined that Springvale Terrace, a senior living facility located on the northeast quadrant of the intersection of Springvale Road and Pershing Drive and civic uses such as the Silver Spring Library, contributed to the area’s diversity. 5/26/11 T. 214, 221-222. Photographs submitted by Mr. Iraola depicting these uses are shown below:

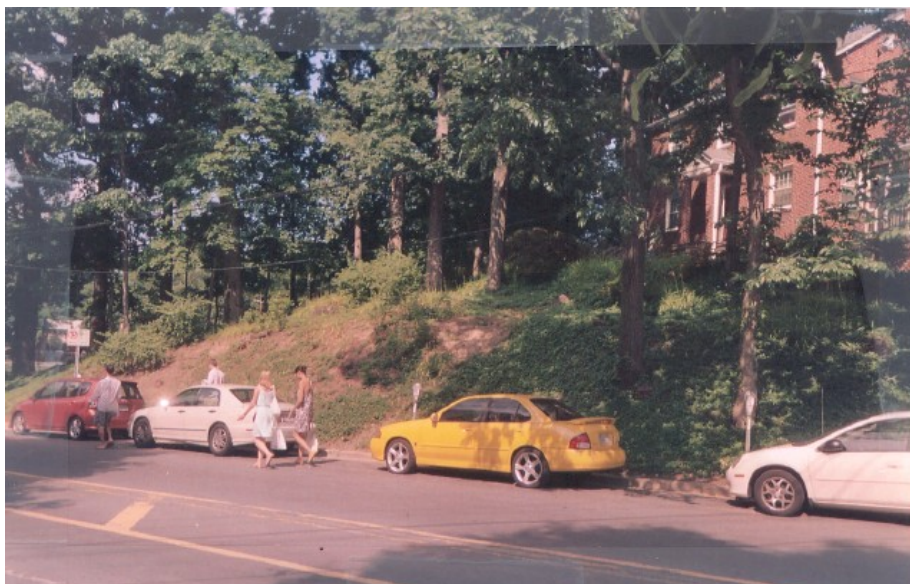


**Colesville Towers
(Exhibit 125)**



**Springvale Terrace
(Exhibit 126)**

As already noted, Mr. Doggett testified that the character of the area changes quickly at Cedar Street from high-density multi-family and commercial uses to single-family detached structures beginning on the north side of Cedar Street (Exhibit 186(d), shown on the next page. The high berm, mature trees, and single-family detached houses serve as the transition in the character of the neighborhood. 6/30/11 T. 26-28. In his opinion, Colesville Towers, a high-rise multi-family office building had little impact on the area immediately surrounding the neighborhood because mature trees in the area adequately screen the building from the neighboring uses. 6/30/11 T. 27-28. The evidence in the record also reveals that Colesville Tower, the high-rise residential building, was building in the 1960's or 1970's, before the 1978 North Silver Spring Sector Plan. 6/6/11 T. 121; 6/27/11 T. 120. The opposition presented evidence that the existing mature trees in the area effectively screened Colesville Towers and the Central Business District. 6/27/11 T. 184; 6/30/11 T. 26, 345.



**Single-family Detached Houses On
North Side of Cedar Street
(Exhibit 186(d))**

Mr. Doggett also characterized Springvale Terrace, a retirement community, as a “very quiet” use that had little impact on the neighborhood. 6/30/11 T. 27-28. Several other residents of the surrounding area testified to that effect as well. *See, e.g.*, 6/30/11 T. 393, 399. Mr. Doggett submitted the two photographs of Colesville Towers (Exhibit 186(c)), shown below and on the next pages, in support of this position:

Colesville Towers



**View of Colesville Towers
(Exhibit 186(e))**



**Springvale Terrace
Exhibit 186(d)**

Many residents also testified to the abruptness of the transition between the Central Business District and the residential neighborhood to the north. Ms. Kathleen Samiy described the dramatic difference as crossing from the “gray” zone of the CBD to the “green” zone of the SOECA neighborhood. 6/30/11 T. 298-299. Mr. Michael Gurwitz submitted photographs of his daily walk from the Silver Spring Metro (Exhibit 176), shown below and on the following pages) to illustrate the nature of the transition. Excerpts of these photographs are shown below and on the following pages:

Cedar Street



**View from Georgia Avenue Looking
North to Cedar Street**



**View Heading North on Ellsworth
Drive Approaching Fenton Street
(Opposition Exhibit 1760)**



**View from Whole Foods Parking Lot
Looking North
(Opposition Exhibit 176)**



**View Approaching the Intersection of
Pershing Drive and Cedar Street
(Opposition Exhibit 176)**



**Cedar Street Intersection with Pershing Drive
(Opposition Exhibit 176)**



**Looking West Along Cedar Street and Houses
Recommended for Special Exceptions
(Opposition Exhibit 176)**



**Approaching Intersection of Pershing
Drive and Springvale Road
(Opposition Exhibit 176)**



**Turning Left from Pershing Drive onto
Springvale Road
(Opposition Exhibit 176)**

Both the Applicant and those opposing the application submitted numerous photographs of the streets immediately surrounding the subject property. Representative examples are shown below:



**Springvale Road
(Applicant's Exhibit 125)**



**View East from Intersection of Springvale Road and
Springvale Lane
(Opposition Exhibit 158)**



**Looking West from Springvale Road
Toward Intersection with Springvale
Lane
(Opposition Exhibit 176)**



**View of Springvale Lane
(Opposition's Exhibit 176)**



Applicant's Exhibit 112(d)



Applicant's Exhibit 112(d)

The Hearing Examiner agrees with Mr. Doggett that the transition from the more intense uses in the Central Business District and the single-family structures north of Cedar Street is a significant change in the character of land uses immediately surrounding the subject property. The Hearing Examiner disagrees with the Applicant's land planner that the land uses north of Cedar Street are "very diverse". With the exception of certain uses located along on the perimeter of the surrounding area, the area north of Cedar Street is characterized almost entirely by smaller, single-family detached homes. Some of the homes along Cedar Street have been converted to non-resident professional offices, but the structures appear primarily residential in character. Those uses relied upon by the Applicant to justify the "diversity" of the area north of Cedar Street include Colesville Towers, a multi-family residential development built in the 1960's or 1970's, and Springvale Terrace senior living facility, which is permitted by special exception in the R-60 zone. Testimony relating to the specific impact of the latter indicated that the impact on the community was relatively minor, with little in the way of traffic.

Based on this evidence, the Hearing Examiner agrees generally with the Applicant that the surrounding area is characterized by wide variety of multi-family residential, civic, commercial, and low-density residential uses which transition gradually from Fenton Street to Cedar Street. The Hearing Examiner would add, however, that the transition of land uses is highly segregated by Cedar Street. North of Cedar Street, the area is characterized almost entirely by single-family detached homes. Because of this dichotomy, the best generalization for the entire area is one of much lower density of single-family detached homes transitioning abruptly to much higher density of the Central Business District.

The single-family detached homes north of Cedar Street, built primarily in the 1930's, are typically two to three stories tall. The homes average approximately 1,600 square feet and are generally of traditional architecture. The roads are narrow and many are not improved with curb and gutter. 5/26/11 T. 212. Long-established access and turn restrictions are designed to minimize cut-through traffic in the neighborhood. 5/26/11 T. 211; 6/6/11 T. 196-202. Many members of the community, as well as Mr. Doggett and Mr. Iraola, also characterized the area by the number of mature trees in the yards of homes in the neighborhood, including those along Cedar Street and on the school property as well. 5/26/11 T. 212; 6/27/11 T. 138, 183, 185; 6/30/11 T. 25-26, 216, 400.

Multi-family residential densities begin immediately on the south side of Cedar Street and increase toward the CBD core. This area also includes commercial uses, including retail, entertainment and civic uses. 5/26/11 T. 232; 6/30/11 T. 208. The subject property is within walking distance of retail and civic uses, including the Whole Foods grocery store, entertainment uses, and Veterans Plaza. 5/26/11 T. 98, 120. There is a 112-unit per acre multi-family residential project under construction located on the south side of Cedar Street directly across from the single-family structures recommended by the Master Plan for non-resident professional offices. 5/26/11 T. 239.

C. Zoning History

The subject property was classified in the R-60 Zone in the 1958 Countywide Comprehensive Zoning. Technical Staff reports that the R-60 zoning has been continuous since that time, although the property was used for a parochial school without a special exception since the 1930's. Exhibit 45. According to Mr. Youngentob, the Chelsea School began leasing the property somewhere around 1989. The School decided to purchase the property in 1997 or 1998 in order to expand its existing facilities. 5/26/11 T. 39. The Board of Appeals (BOA) approved the Chelsea School's special exception petition (BOA Case No. S-2405) on March 5, 2000, the same year the District Council adopted the North and West Silver Spring Master Plan. The Board's approval set the School's maximum enrollment at 200 students and imposed 11 conditions to mitigate the impact of the use. Exhibit 109. In a letter submitted to the Board of Appeals, SOECA and several members of the community opposed the special exception, in part because the site was "a very sensitive one for the community as it is the buffer area between the intense development of the Silver Spring CBD and the single-family residential community." Exhibit 113. They expressed concerns regarding the massing of the size and scale of the existing buildings which, they believed, would be exacerbated by the Chelsea School's plan for expansion. Exhibit 113. The record reflects that the School never implemented its plans for expansion and its current enrollment is now approximately 86 students. 6/27/11 T. 18. Technical Staff reports that most of the school's students no longer live in Montgomery County and the school desires to locate closer to its student population. Exhibit 45, p. 4.

D. Proposed Development

1. Development Concept

Mr. Robert Youngentob, President of EYA, the developers of the project, testified that EYA specializes in high quality urban infill development. 5/26/11 T. 29-30. He submitted a brochure (Exhibit 111) depicting other EYA developments, which states that EYA is a "recognized expert" in

this field. EYA has developed several other properties containing historic resources, including National Park Seminary in Montgomery County. 5/26/11 T. 32-33.

Mr. Youngentob testified that the demographics of urban housing are changing. According to Mr. Youngentob, the population is younger, wants shorter commutes, and amenities such as restaurants. 5/26/11 T. 37. EYA did not choose to develop the subject property under the R-60 cluster option because townhouses in such close proximity to transit may be developed at much higher densities and still be compatible with the surrounding area. In addition, the higher density promotes “smart growth”, which is a hallmark of EYA projects and fully utilizes nearby mass transit. 5/26/11 T. 35-36, 73-74; Exhibit 111. This project has a “walk score” of 89 out of 100 and has been recognized by the Washington Sustainable Growth Alliance and the Coalition for Smart Growth. 5/26/11 T. 118-121. He believes that if the County does not take advantage of the density where available, it will not achieve the goal of 75,000 new dwelling units expressed in the Housing Element of the General Plan. 5/26/11 T. 36-37. The Applicant believes this location is appropriate for the proposed development because it did not require assemblage, there is no specific Master Plan recommendation for the property, and the development addressed a policy initiative expressed by the Planning Board, Planning Staff and the Council to site residential development close to metro stations. 5/26/11 T. 29. He submitted photographs of other EYA developments in the Washington Metropolitan Area (Exhibit 111), samples of which are shown below:



**Capitol Quarter
Washington, D.C.**



**Harrison Square
U Street Metro, D.C.**



**Bryan Square
Washington, D.C.**

The Applicant proposes to construct 76 townhomes on the subject property and to convert the historic Riggs-Thompson House into a single-family detached dwelling. The Applicant proposes to remove non-contributing additions to the Riggs-Thompson House and renovate the structure for private use. 5/26/11 T. 61-62, 68-69. The historic property, the Riggs-Thompson House, and its environmental setting occupy the eastern portion of the property. The proposed density of the development is 14.6 dwelling units per acre. Exhibit 253(a). The R-T 15 Zone allows a base density of 15 dwelling units per acre, but that density may be increased when the number of MPDUs provided exceed the minimum of 12.5% required by Montgomery County Code. The Applicant is providing 10 MPDUs, the minimum required, so the bonus density does not apply to this Application. Exhibit 253(a).

The Applicant proposes to place public access easements on the eastern and western edges of the property and along Springvale Lane. 5/26/11 T. 66; Exhibit 255(a). Subject to site plan review, the Applicant also proposes to place a double row of street trees, in order to create a “linear park” along Springvale Lane. 5/26/11 T. 102. A rendered version of the schematic development plan (Exhibit 253(a)), architectural renderings of the proposed development, included in the Technical Staff Report (Exhibit 45), and the approximate location of the public access areas (Exhibit 134) are shown on the following pages.

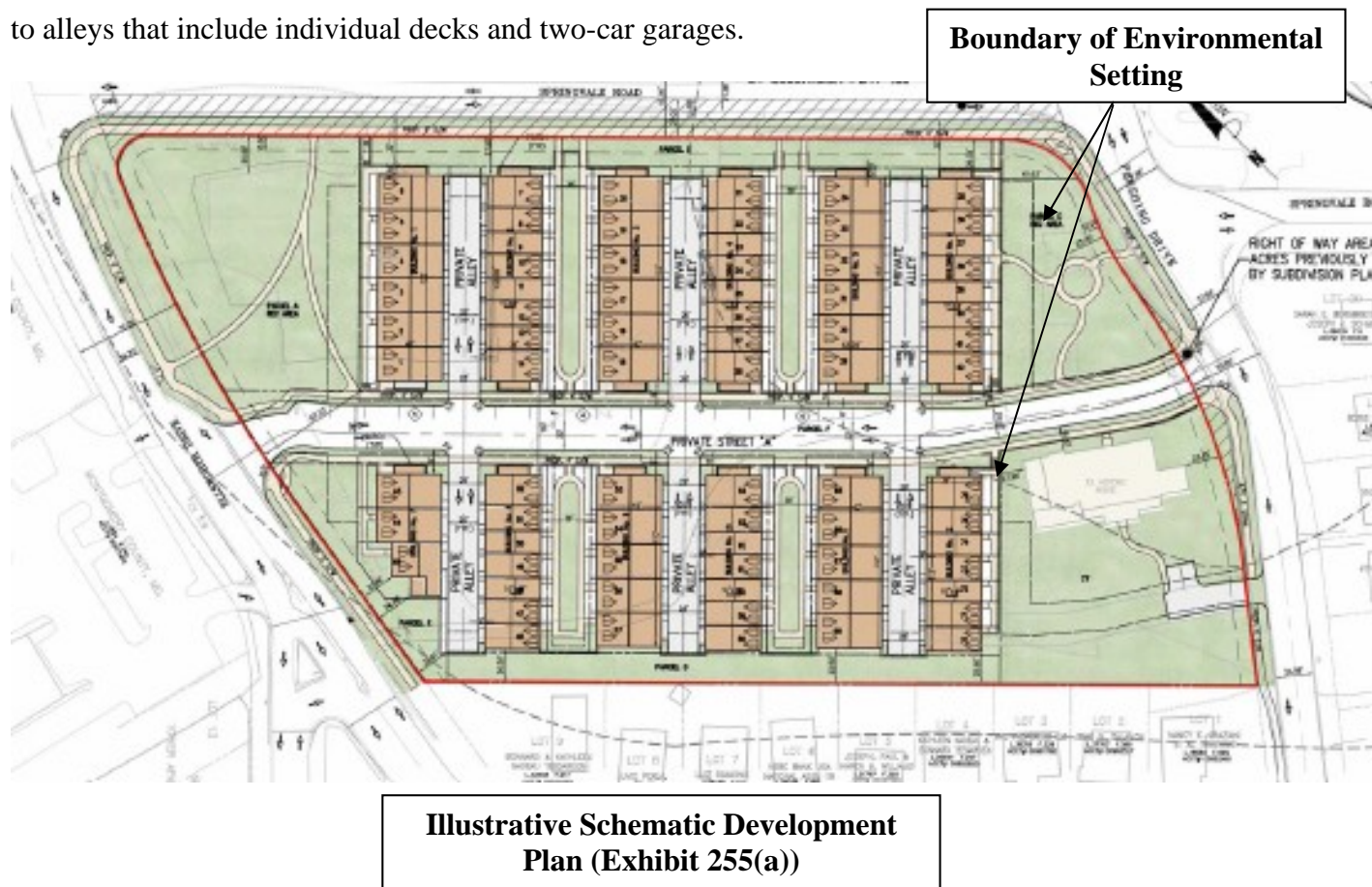
As noted, the Riggs-Thompson House and its environmental setting occupy the eastern portion of the site. The size of the environmental setting designated by the Master Plan and the development’s compatibility with the historic resource were the subject of notable controversy in this case. The relationship between the townhomes and the environmental setting is shown in the next section.



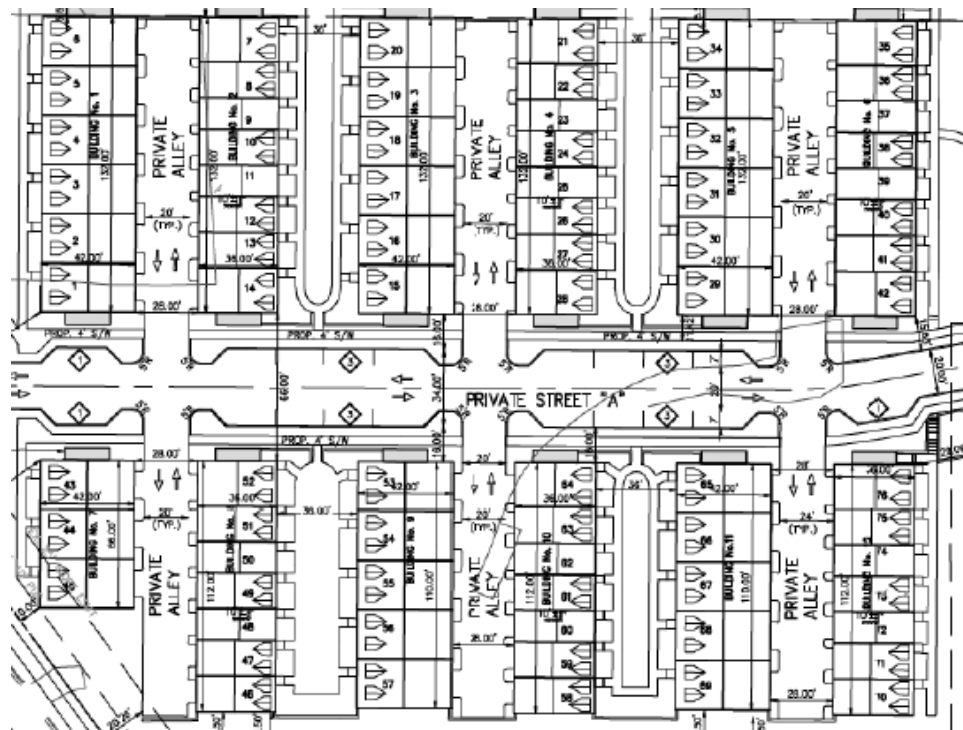
2. Schematic Development Plan & Binding Elements

Pursuant to Code §59-H-2.52, the Applicant in this case has chosen to follow the “optional method” of application. This method requires submission of a schematic development plan (SDP) that specifies which elements of the plan are illustrative and which are binding, i.e., elements that remain binding during subsequent zoning and subdivision plan reviews. These binding elements must be set forth in a Declaration of Covenants to be filed in the county land records if rezoning is approved. The Applicant has filed the required Declaration of Covenants in the record (Exhibit 253(s)). Illustrative elements of the SDP may be changed during site plan review, but the binding elements may not be changed with applying to the District Council for an amendment to the SDP.

The Applicant proposes to align the townhouse strings so that the fronts are facing each other separated by a landscaped area, perpendicular to Springvale Road. The rear of the townhomes back to alleys that include individual decks and two-car garages.



The Applicant proposes 168 off-street parking spaces; 135 spaces are required. Exhibit 253(a). All of the units have two-car garages, although some of the parking will be in tandem spaces. 5/26/11 T. 84. Twelve spaces for visitor parking are located along Private Street A and two spaces will be provided for the historic home. Exhibit 253(a). Illustrative details of the landscaped areas between the units and the rear alleys, and an architectural perspective from the intersection of Springvale Road and Pershing Drive are shown below (Exhibits 11, 45)”



Illustrative Details of Alleys and Courtyards (Exhibit 11)



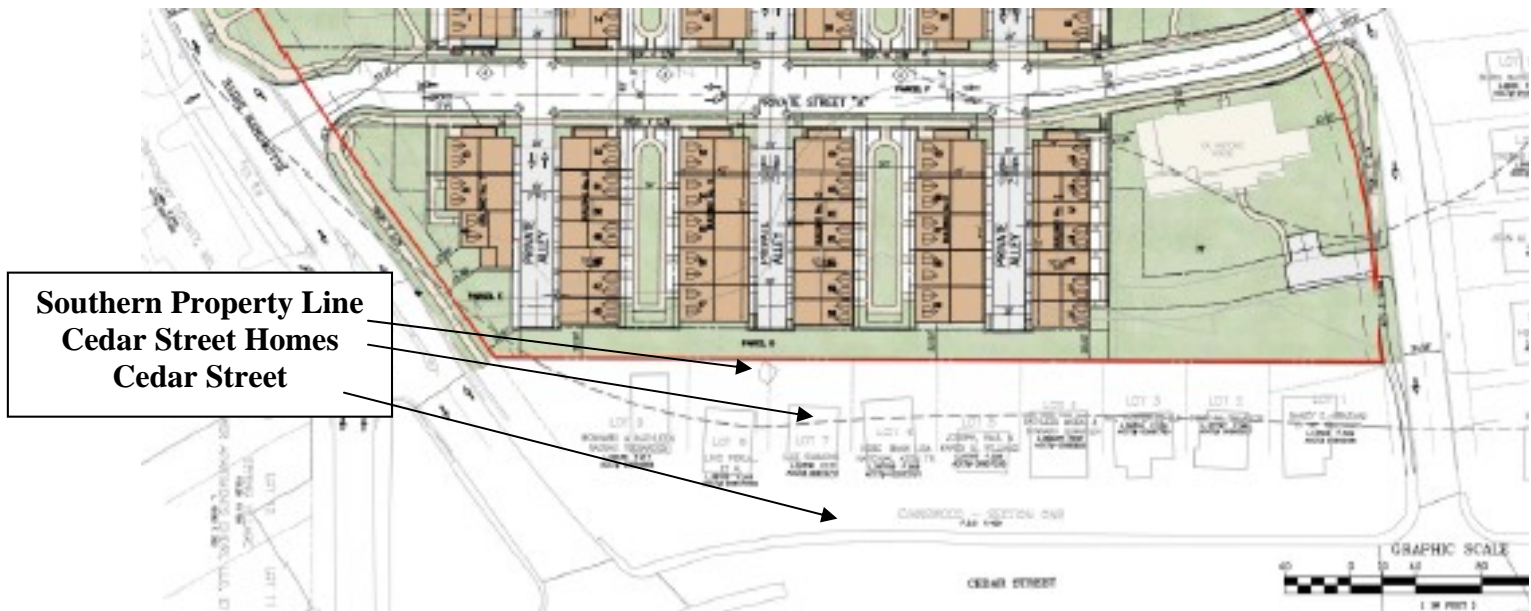
Exhibit 45, p. 7

BINDING ELEMENTS

1. THE MAXIMUM NUMBER OF UNITS WILL BE 77 (76 TOWNHOMES AND 1 SINGLE FAMILY DETACHED).
2. THE APPLICANT, ITS SUCCESSORS AND ASSIGNS WILL RECORD A PUBLIC ACCESS EASEMENT ALLOWING PUBLIC USE OF THE DESIGNATED PUBLIC GREEN SPACE ALONG ELLSWORTH DRIVE, SPRINGVALE ROAD AND PERSHING DRIVE, WITH THE SPECIFIC SIZE, CONFIGURATION AND LOCATION OF THIS EASEMENT SUBJECT TO FINAL SITE PLAN APPROVAL.
3. THE TOWNHOUSE UNITS CONFRONTING SPRINGVALE ROAD WILL BE DESIGNED TO HAVE THEIR FRONTS FACING SPRINGVALE ROAD.
4. THE PROJECT WILL PROVIDE GREEN AREA OF AT LEAST 40% OF THE NET TRACT. THE TOWNHOUSES WILL BE LOCATED IN A MANNER THAT WILL PROVIDE GREEN AREAS ALONG PERSHING DRIVE AND ELLSWORTH DRIVE AND A LINEAR GREEN AREA ALONG SPRINGVALE ROAD, ALL GENERALLY CONSISTENT WITH THE SCHEMATIC DEVELOPMENT PLAN WITH THE SPECIFIC SIZE, CONFIGURATION AND LOCATION SUBJECT TO FINAL SITE PLAN APPROVAL.
5. THE APPLICANT, ITS SUCCESSORS OR ASSIGNS, WILL PRESERVE THE RIGGS--THOMPSON HOUSE.
6. THE APPLICANT, ITS SUCCESSORS AND ASSIGNS SHALL ABIDE BY THE EXISTING TRAFFIC RESTRICTIONS ON SPRINGVALE ROAD, ELLSWORTH DRIVE AND PERSHING DRIVE SO LONG AS THOSE RESTRICTIONS REMAIN IN EFFECT.
7. THE MAXIMUM BUILDING HEIGHT WILL BE 35 FEET.
8. THE PROJECT WILL PROVIDE A MINIMUM OF 2 PARKING SPACES PER UNIT PLUS ADDITIONAL SPACES FOR GUEST PARKING.
9. THE HISTORIC SETTING FOR THE RIGGS--THOMPSON HOUSE WILL REMAIN AT A MINIMUM OF 37,056 SQUARE FEET, SUBJECT TO HPC APPROVAL OF A POSSIBLE ACCESS ROAD TO PERSHING DRIVE.
10. THE SET-BACK ALONG SPRINGVALE ROAD SHALL BE A MINIMUM OF 25 FEET, AND, SUBJECT TO SITE PLAN APPROVAL, WILL INCLUDE A DOUBLE ROW OF TREES.

Binding Elements (Exhibit 255(a))

The above binding elements commit the applicant to providing a 25-foot setback along Springvale Road and, subject to site development plan review, a double-row of landscaping along that road. In order to achieve the 25-foot setback on the northern boundary of the subject property, the Applicant seeks a 10-foot waiver of the 30-foot setback on the southern property line bordering the rear yards of the houses on the north side of Cedar Street. Exhibit 45, p. 12. The Planning Board may waive the minimum setback if “a more desirable form of development can be demonstrated.” §59-C-7.1732(a) (1). Technical Staff recommended approval of the waiver because it permits the additional setback, along with the potential for a double row of street trees, along Springvale Road. Exhibit 45, p. 12. The detail of the schematic development plan (Exhibit 253(a), on the next page) demonstrates the relationship between the townhomes and the Cedar Street houses south of the property.



The binding elements also commit the Applicant to designing the end units confronting Springvale Road to have fronts facing the road. The Applicant prepared an illustration of the Springvale Road frontage to demonstrate the effect of this binding element (Exhibit 211), shown below:



The Applicant also proposes other binding elements designed to enhance the compatibility of the development with the surrounding area. Specifically, the Applicant will provide a green area of at least 40% (a minimum of 30% is required by the R-T 15 Zone), located along Pershing, Springvale and Ellsworth Drive and will limit building height to 35 feet. Exhibit 253(a).

Other binding elements relating to traffic and historic resources are described in detail elsewhere in this Report.

E. Development Standards for the Zone

Technical Staff advises that the proposed development meets all the requirements of the underlying zone, with the exception of the waiver of building setbacks required along the southern property line, described above. A summary of the development standards is set forth in a table (on the next page) included in the Staff Report (Exhibit 45), shown below:

Development Standard	Required	Proposed	Applicable Zoning Provision
Minimum Tract Area	40,000 sq ft (0.92 acres)	5.25 acres	§59-C-1.731(a)
Maximum Density	15 dwelling units per acre	14.67 dwelling units per acre	§59-C-1.731(b)
Building Setback from Land Classified in One-family Detached Zone	30 ft	20 ft	§59-C-1.732(a)
Building Setback from Public Street	20 ft	22 ft	§59-C-1.732(b)
Building Setback from an Adjoining Side Lot	8 ft	8 ft	§59-C-1.732(c)(1)
Building Setback from an Adjoining Rear Lot	20 ft	20 ft	§59-C-1.732(c)(2)
Max Building Height	35 ft	35 ft	§59-C-1.733(a)
Minimum Percentage of Green Area	30 percent (1.58 acres)	46 percent (2.4 acres)	§59-C-1.34(b)
Parking	2 spaces per townhouse = 156 spaces	168 spaces	§59-C-1.735 and §59-E-3.7

The Hearing Examiner notes that there is one additional development standard applicable to the R-T Zone not listed above. Section 59-C-1.722 of the Zoning Ordinance mandates that a maximum of three townhouses have the same frontage; the building frontages must be staggered by at least two feet between the groups of three units. Section 59-C-1.74(d) (2) permits a waiver of this requirement, but only “If necessary in order to accommodate the increased density” resulting from MPDUs. Since

density is not being increased in this case by the addition of MPDUs, the waiver requirements would not apply and must be followed.








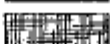

F. Consistency with the Master Plan

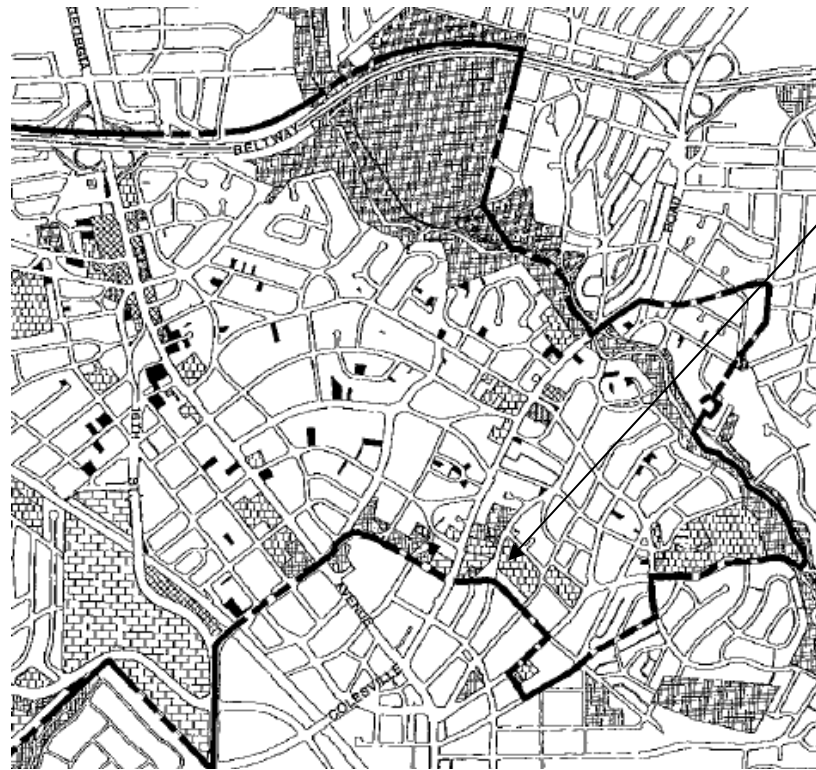
1. 2000 North and West Silver Spring Master Plan

Regardless of one's interpretation the North and West Silver Spring Master Plan and its application to the Chelsea School property, this record reveals that the Plan accurately identified the central planning challenge for the area. According to the Master Plan, that challenge is one of stabilizing the edges of the North Silver Spring neighborhood while, at the same time, preserving the residential character of the interior. Exhibit 139, p. 20. With even more prescience, the Plan characterized this challenge as a "long-standing problem with no easy answer." The Plan calls for a "sensitive" land use policy that "balances the needs of properties along major roads and commercial areas, and at the same time, protects the interior." Exhibit 139, p. 10. The struggle to achieve this balance continues in this case, ten years after adoption of the Plan.

The one point about which both parties agree is that the Master Plan did not specifically recommend the subject property for development under the R-T Zone. 5/26/11 T. 292; 6/27/11 T. 165; 6/30/11 T. 37-38. The Hearing Examiner so finds.

The proposed land use and zoning maps, along with the key, contained in the Master Plan (Exhibit 139) are set forth below:

	Single Family Residential		Public/ Institutional
	Multi-Family Residential		Parking
	Retail		Open Space
	Office		Parkland
	Industrial/Warehouse		

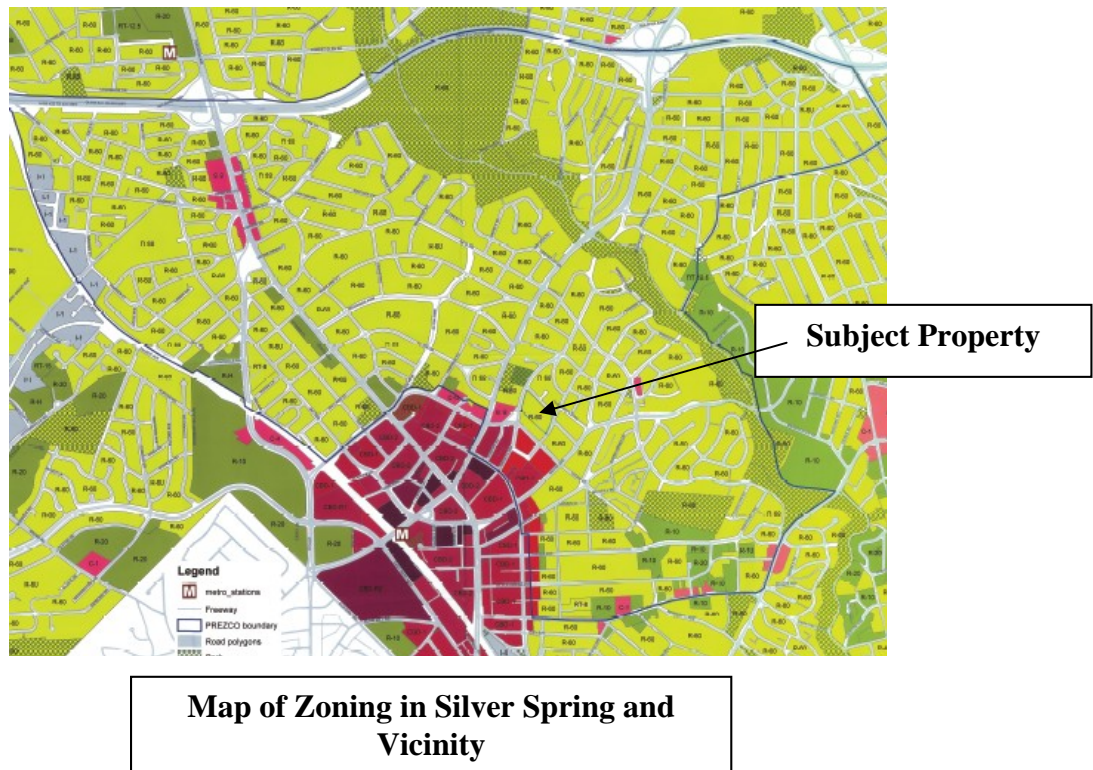


**Existing Land Use
(Exhibit 139, Map 8)**



**Proposed Land Use
Exhibit 139, Map 9**

Those opposing the application introduced the following map of the existing zoning in area covered by the Plan (Exhibit 193):



Because approval of the R-T 15 Zone does not require an explicit designation in a master plan, the parties' harmony on the issue of the Master Plan's designation forms the basis of their widely divergent views of the Plan's intent for the subject property. Very simply put, the Applicant interprets the Plan's relative silence on the subject property as an invitation for R-T Zoning while those opposing the application read the Plan's silence (as well as other factors) as a prohibition of townhomes on the property.

At least two of those who testified participated in the development of the Plan and testified as to their interpretation regarding the subject property.² 5/26/11 T. 253; 5/26/11 T. 144-145. The primary issues addressed were (1) the size of the "transitional area" intended by the Plan to buffer the residential neighborhood north of Cedar Street from the more intense development of the CBD, (2)

²Mr. Iraola, the Applicant's expert land planner, worked on the Plan as Technical Staff for M-NCPPC. He testified that he came in at the "tail end" of the master plan process. 6/6/11 T. 27. Ms. Lisa Wilson participated in development of the Plan as a member of the Citizens Advisory Committee. 5/26/11 T. 141.

the land planning techniques recommended to accomplish this transition, and (3) the size of the “environmental setting” of the Riggs-Thompson House (addressed in II.G of this Report). 5/26/11 T. 44, 144-145, 252, 256; 6/6/11 T. 116-117; 179-180; 6/30/11 T. 57-58; 7/18/11 T. 16.

Mr. Iraola testified that the proposed townhomes were in “general conformance” with the basic themes of the Plan. 5/26/11 T. 229. He believed the proposal accomplished the Plan’s goals because it replaced the existing institutional use on the property, thus “reconfirming” residential use as designated in the Master Plan. 5/26/11 T. 254. Mr. Iraola identified several themes set forth in each chapter of the Master Plan to demonstrate how the proposed development conformed to the Plan’s goals. He outlined the Plan’s themes and how the development fulfilled these themes by following the order of the chapters in the Plan. 5/26/11 T. 253-260.

In Mr. Iraola’s opinion, the theme of the first chapter is preservation of the existing residential character of the neighborhood. The Master Plan recommends five means of achieving this goal. These include (1) improvements or additions to streetscape, landscaping, lighting, sidewalks, and gathering spaces, (2) providing sidewalks with curb and gutter, (3) providing landscaping and public access areas, (4) limiting the impact of traffic in the neighborhood, (5) limiting commercial uses, and (6) preserving historic resources. 5/26/11 T. 253-258.

According to Mr. Iraola, the proposed development meets these goals because it will add sidewalks along Springvale Lane where none currently exist, it includes public access space, and it generates fewer peak-hour trips that would be generated by the existing special exception approval (with the 200 student enrollment). 5/26/11 T. 254. He also believes that the proposal will stabilize the neighborhood by reconfirming a residential use in place of the existing commercial use. 5/26/11 T. 254. He testified that replacing the existing school with townhomes would reduce the commercial-type characteristics (such as large buildings and truck deliveries) of the existing school. He also opined that approval of the development would place the historic Riggs-Thompson House back into a “residential context” which will “enhance a sense of place and community stability”. 5/26/11 T. 254-

256. The Master Plan's recommendations regarding the Riggs-Thompson House are discussed in detail in Section II.G. of this Report.

Mr. Iraola further testified that second chapter of the Plan defines the appropriate transition between the CBD and the area north of Cedar Street. In his opinion, the transitional area defined by the Plan includes the entire block encompassing the Cedar Street single-family detached homes and the Chelsea School property. 5/26/11 T. 254, 258; 7/18/11 T. 252. In his opinion, the Plan retained R-60 zoning for the property because people assumed that the Chelsea School would stay. 5/26/11 T. 256. He believes that the Master Plan intended the *entire block* (as opposed to just the Cedar Street houses) to form the transitional area, relying on language from p. 44 of the Plan that the Cedar Street transitional houses were "somewhat isolated from the other single-family homes in the neighborhood by the Chelsea School." 5/26/11 T. 258. Mr. Iraola interpreted this language to imply that the school, a non-residential use, in conjunction with the non-residential professional houses, was considered a buffer or transitional area. 5/26/11 T. 258. Mr. Iraola urged that the Plan's silence on the subject property should not be interpreted to bar any transitional use for the site other than single-family detached structures because the Plan recognized that both the Cedar Street houses and the Chelsea School were non-residential uses and intended to treat this as a transitional area. 5/26/11 T. 258. Thus, the proposed residential development, combined with the non-residential Cedar Street houses, will act as a stable "buffer" between the single-family homes to the north and the CBD to the south. 5/26/11 T. 258-259. Because the Master Plan intended the entire block to act as the buffer from the Central Business District and included the use of townhouses as a transitional technique, the proposed development is consistent with master plan. 7/18/11 T. 64.

SOECA and individuals opposing the application interpret the Plan's silence on the subject property, in conjunction with other recommendations of the Plan, as a prohibition of

R-T zoning at this site. They also argue that the Plan intended the Cedar Street transition to be limited to the single row of houses recommended for nonresident special exceptions. 5/26/11 T. 141-142; 6/6/11 T. 171; 6/27/11 T. 177-178.

In support of this, the opposition points to the different techniques created by the Plan for transitions between major highways and commercial centers and the interior single-family detached neighborhood. These included R-T Zoning, the R-60 Cluster Option (which permits lower density single-family attached units) and the special exception for “nonresident professional office”. In their view, while the Plan explicitly recommended R-T Zoning for an area along Georgia Avenue, it recommended that the transition along Cedar Street be accomplished using the special exception for non-resident professional offices. 6/6/11 T. 217, 261-262; 6/27/11 T. 177-178. In further support of their position, they highlight the fact that the recommendation for R-T Zoning along Georgia Avenue was made by an amendment to the plan by the District Council for a specific property. 6/30/11 T. 38. They also argue that the extensive discussion of the Cedar Street houses as the transition from the Central Business District combined with reconfirmation of the R-60 Zoning indicate the Plan intended to limit the transitional area to the single row of houses on Cedar Street. 6/6/11 T. 217, 261-262; 6/27/11 T. 177-178.

Those in opposition to the application also assert that the R-T 15 Zone is inconsistent with the Master Plan’s recommendation regarding the character and density of the transition from the Central Business District. This is because the Plan reconfirmed the recommendations of the 1978 North Silver Spring Sector Plan, which also recommended R-60 zoning on the subject property and the transition by special exception office uses. 6/27/11 T. 177-178. They cite to the following quote (Exhibit 139, p. 43) regarding the Cedar Street transition (6/27/11 T. 178):

[T]he purpose of this recommendation was to provide a transition (by use, not by structure type) from properties at the edge of the neighborhoods to those on the interior.

The Opposition's expert land planner, Mr. Kenneth Doggett, testified that:

[T]he recommendations in the master plan, which are supported by the ...traditional development of the area, is for single-family or detached family or attached in a very small amount, but mainly single-family detached housing. That's not the character of several rows of townhouses. So I thought that any advantages that you might get by proximity to the commercial or the Metro which incidentally, this would have with the townhouses, is reduced by the fact that it's being compared with the comparability of the houses around it which are not townhouse densities. 6/30/11 T. 39.

Technical Staff found the Plan compatible with the master plan, noting that where a master plan makes a specific recommendation for townhouse zoning, this recommendation should be given great weight, but "if no specific guidance is given for a property's potential for townhouse zones, then the plan's general guidance will be looked to..." Exhibit 45, p. 13. Staff acknowledged the language in the Plan recommending *against* encroachment into the interior residential neighborhoods (Exhibit 45, p. 13), stating that, "when read on its surface", the Plan may appear to be an absolute prohibition on townhouse development anywhere in the planning area except along Georgia Avenue. Staff concluded that the language did *not* prohibit townhouses elsewhere in North Silver Spring. Despite having found that the designation of R-T zoning was non-exclusive to Georgia Avenue, Staff then concluded the language limiting townhouses intruding into the interior of the neighborhood *was* exclusive to the Georgia Avenue site:

To read the language in the alternative [as a prohibition of townhouses in other areas] would lead to the conclusion that the drafters of the Plan analyzed each of the hundreds of properties in North Silver Spring for its suitability for townhouses and only this one area along Georgia Avenue was deemed appropriate. This is an unreasonable interpretation. Therefore, the Plan does not provide specific recommendations on the subject property's suitability for townhomes. Exhibit 45, p. 13.

Technical Staff agreed with the Applicant that the phrase characterizing the Chelsea School as "somewhat isolated" from the single-family homes meant that the Master Plan "envisioned the entire block" as a transitional block that buffers the North Silver Spring neighborhood from the

Central Business District. Because “townhomes are inherently one-family residential homes, just like detached houses, and the zoning ordinance intends the townhouse zones for transitional areas...it is likely that a townhouse development at this location will serve as a more appropriate transition, with better compatibility, than the existing school use on the property.” Exhibit 45, p. 14.

Many residents, as well as the opposition’s land planner, Mr. Kenneth Doggett, testified that townhouse development on the subject property was inconsistent with the Master Plan because it would destabilize rather than stabilize the neighborhood by creating a domino effect on other areas, such as the block surrounded by Wayne Avenue, Pershing Drive, Cedar Street, and Springvale Lane and the block occupied by Springvale Terrace. 6/6/11 T. 121-125; 6/27/11 T. 180; 6/30/11 T. 43, 174, 374. Because the block bounded on the east and west by Wayne Avenue and Pershing Drive is located immediately south of the Springvale senior living facility, they also were concerned that the Chelsea Court development would isolate the block from other single-family homes. 6/30/11 T. 374. Rather than acting as buffer from the Central Business District, they felt it would be an “incursion” into the interior neighborhood, contrary to the recommendations relating to townhouses in the Plan. 6/6/11 T. 125. They interpreted the Master Plan as requiring a 1.4-acre environmental setting, based on language in an Appendix to the Master Plan and the legislative history of the Plan. This issue is discussed in Section III.G. of this Report.

Four members of the Planning Board agreed with Technical Staff, finding it persuasive that the staff member who was the primary author of the Master Plan, “disagreed with the opposition argument that the language in the Plan regarding potential townhouse development along a particular segment of Georgia Avenue was intended to prohibit town houses any where else in the Master Plan area.” Exhibit 103, p. 3.

2. The Housing Element of the General Plan

The Applicant states that the density proposed is necessary to further the goals set forth in the Housing Element of the General Plan. 5/26/11 T. 36, 37, 260, 265. This plan identifies a need for

approximately 75,000 dwelling units in the developed part of the County, preferably at locations that utilize transit. 5/26/11 T. 265; 6/6/11 T. 58-59. SOECA and those opposing the application contend that any residential development at this location would further those plans and that the Housing Element specifically states that the additional units needed focus on “protecting existing neighborhoods.” 7/18/11 T. 88.

3. The Silver Spring Central Business District Sector Plan

The Applicant and the Planning Board also looked at the proposed development in terms of achieving the goals of the Silver Spring Central Business District Sector Plan. Exhibit 103, p. 3; 7/18/11 T. 58-59. Mr. Iraola testified that the Silver Spring Central Business District Sector articulated a goal of retaining a “green”, pedestrian-oriented downtown (i.e., with numerous public access areas) devoted primarily to residential use. 7/18/11 T. 58-59. The proposed development, a residential use extremely close to downtown, will serve the Sector Plan’s goal of revitalizing the Silver Spring downtown. 7/18/11 T. 58.

4. The Purple Line Functional Master Plan

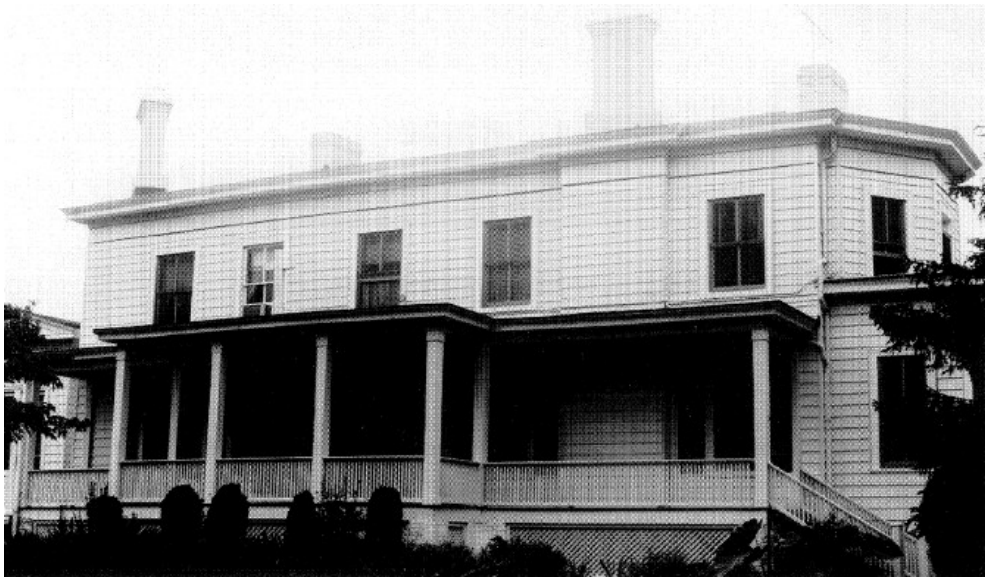
Mr. Iraola initially testified that he based his recommendation for higher density at the site in part due to the proximity of the proposed Purple Line. 6/6/11 T. 35. On rebuttal, he clarified that the Applicant was not basing the rezoning request on future construction of the Purple Line, but on the proximity of the site to the Silver Spring CBD, its function as a buffer from the CBD, its current institutional use, and general conformance with the North and West Silver Spring Master Plan. 7/18/11 T. 48.

G. Impacts on Historic Resources (Environmental Setting, Private Road Alignment, Compatibility)

The Riggs-Thompson House and its environmental setting occupy the eastern portion of the subject property bordering Pershing Drive. Exhibit 253(a). That is as far as the parties agree. They

disagree as to the size of the environmental setting, the appropriate alignment of the private road bisecting the site, and the compatibility of the proposed development with the historic house and its environmental setting.

Appendix D of the Master Plan, as well as several of the parties, testified regarding the history of the Riggs-Thompson House. Exhibit 120; 6/30/11 T. 212-213, 240-248. The house was originally constructed in 1859 by George Washington Ridge and expanded with frame construction in 1866 by William H. Thompson. George Washington Riggs, founder of Riggs National Bank, was one of Washington's most influential citizens. Ex. 139, App. D. William H. Thompson was a prominent businessman and social leader. According to the Master Plan, it is a "rare surviving example of a Silver Spring country estate built c1858 on a 140 acre estate, [it] represents a period when upper class Washington residents established country estates in lower Montgomery County." Exhibit 139, App. D. A photograph of the house, included in the Master Plan, is shown below:



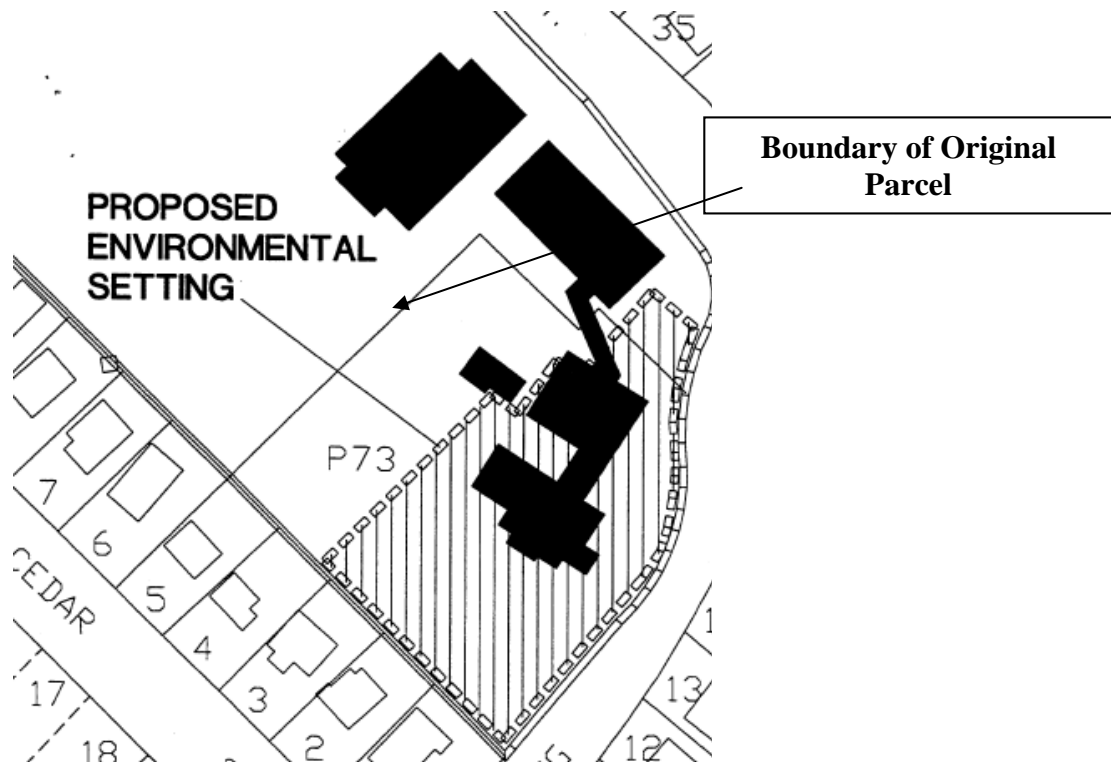
**Riggs-Thompson House
Master Plan (Exhibit 139, Appendix
D)**

1. Environmental Setting

Seemingly conflicting or ambiguous language in the Master Plan generates the crux of the controversy surrounding the size of the environmental setting. Appendix D to the Master Plan describes the environmental setting as follows:

The environmental setting is 37,056 square feet as shown in the shaded area below, pending approval of the Chelsea School special exception by the Board of Appeals. *In the event that the Chelsea School plan is not approved, the designated environmental setting is the entire 1.4-acre parcel (P73) on which the house is located.* An important goal of the Chelsea School plan is the integration of the Riggs-Thompson House into the campus. Appropriate access to the house should be provided. Ex. 139. [Emphasis added.]

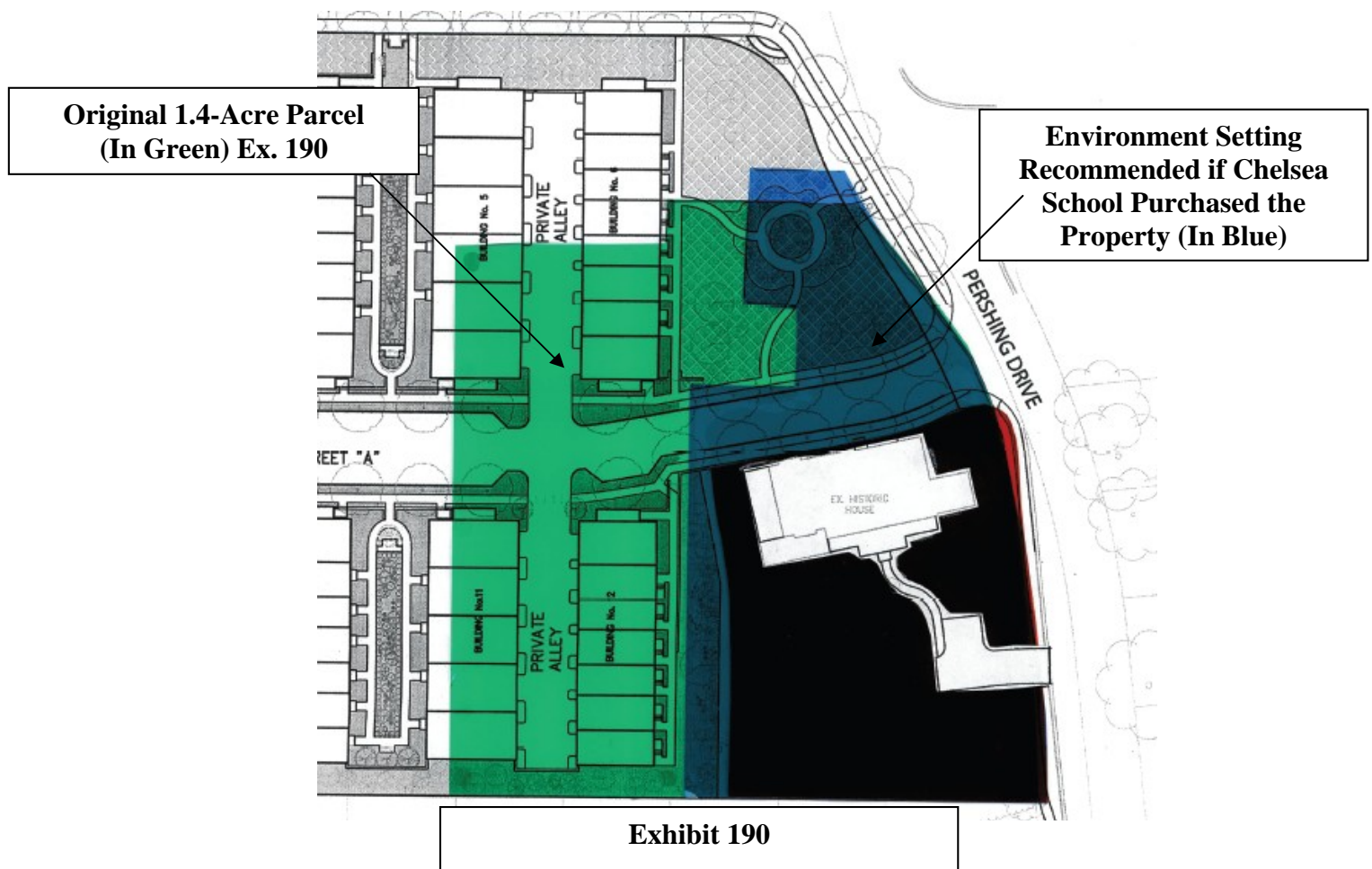
The Appendix to the Plan included an illustration of the environmental setting (Exhibit 139, Appendix D), shown below:



The conflict arises because the body of the Master Plan did not explicitly incorporate the alternative environmental setting mentioned in the Appendix. The body of the Plan only states:

The Riggs-Thompson House is located on a 1.4-acre parcel. The environmental setting is 37,056 square feet. A brick garage constructed in the 1930's is non-contributing. This resource meets criteria 1a, 1b, 1c, 1d, and 2a.

The only exhibit in the record showing both environmental settings superimposed on the schematic development plan is one prepared by Ms. Vicki Warren (Exhibit 190), shown below. The exhibit accurately depicts the difference between the 37,056 square-foot environmental setting (in blue) and the original 1.4-acre parcel (in green), although it *does not* accurately depict the Applicant's proposed environmental setting as being the area shown in red. The Applicant's proposed environmental setting is shown in blue, and comprises the entire 37,056 square foot environmental setting referred to in the Master Plan.



The Applicant argues that the failure to incorporate the alternative 1.4-acre environmental setting in the body of the master plan means that the plan intended to permanently delineate the

environmental setting at 37,056 square feet. 5/26/11 T. 259-260. In further support of its position, the Applicant submitted excerpts from the preliminary plan and subdivision plat establishing the environmental setting. Exhibits 140-143. Note 10 on the record plat relates to the environmental setting:

The Environmental Setting Easement, shown hereon and referenced in the Owner's Certificate hereon, shall be established to fulfill the terms and conditions of the Board of Appeals for Montgomery County Opinion dated October 5, 2000 (Case No. S-2405), Item 3(d), i.e., to "renovate and preserve a historic structure at the property known as the 'Riggs-Thompson House' to house administrative offices of the school, and preserve approximately one acre around the House in its historical and environmental setting. Exhibit 141.

According to Mr. Iraola, technical appendices may be compared with a "slice in time". 5/26/11 T. 259-260. They typically contain market studies or traffic reports that are now no longer valid but which formed the basis for the recommendations in the Plan. Originally a separate 1.4-acre parcel owned by the Sister of the Holy Names, the Chelsea School leased the adjoining parcel (also owned by the religious order) and then entered into a contract with the religious order to purchase the entire site. In his opinion, the language included in the Plan itself is what should be addressed. 5/26/11 T. 259-260.

SOECA and the individual's opposing the application argue that the Master Plan should be interpreted to accomplish its intent, which was to designate the original 1.4-acre parcel as the environmental setting unless the Chelsea School purchased the property. 6/30/11 T. 232-234, 239-247. In support of this position, Ms. Vicki Warren provided some of the background on the Master Plan's language. According to Ms. Warren, at one point the house was surrounded by approximately 140 acres of land reaching from Georgia Avenue to Colesville Road; the Thompson family retained ownership until 1924. When the Chelsea School purchased the property, all that remained of the 140-acre estate was a 1.4 acre parcel. 6/30/11 T. 239-247.

Ms. Warren testified that the Chelsea School wished to purchase both parcels to implement their future plans for the school. Ms. Warren testified that the Chelsea School made it clear that they

needed a portion of the 1.4-acre property for development of the school. 6/30/11 T. 242-245. The Historic Preservation Commission recommended that the environmental setting include the entire 1.4-acre parcel. Ms. Warren submitted the minutes of the March 25, 1998, Planning Board meeting (Exhibit 191), which contained the following language, “Staff had identified the entire parcel as an appropriate environmental setting. If the property is sold, and the special exception granted, staff recommends a smaller environmental setting”. She quoted from a letter dated November 19, 1998, from the Chelsea School’s attorney, “When the Chelsea School began the purchase and redevelopment of its school site, the school seriously considered seeking permission to demolish the house...Virtually any configuration of an environmental setting for the house would absorb large portions of the flat portion of the property that otherwise could and should be used by the school to help fulfill its educational function.” 6/30/11 T. 244.

At the same time the Chelsea School asserted it needed all of the environmental setting, the Sisters of the Holy Names, through their attorney, threatened litigation against the County in the event the contract fell through. 6/30/11 T. 245. Ms. Warren quoted from records of the Planning Board’s public hearing on the preliminary draft of the Plan, “the setting may need to be modified if the property is redeveloped with a use other than the Chelsea School.” 6/30/11 T. 246. According to Ms. Warren, the Chelsea School’s expansion plans never went forward because public school systems began paying for education for disabled individuals. Ms. Warren testified that, as late as 2001, Staff of the Development Review Division wrote that two configurations of the environmental setting were shown on the Chelsea School’s special exception plan, “The environmental designation in the master plan and on the locational atlas is shown in two boundary areas surrounding the historical house, the larger 1.4 acre parcel designation having been shown to apply if the Chelsea special exception does not go forward.” 6/30/11 T. 246.

Ms. Judith Christensen testified on behalf of Montgomery Preservation Inc. That organization also supported the establishment a 1.4-acre environmental setting. 6/30/11 T. 214-215. When

questioned about the Chelsea School, Ms. Christensen stated that the smaller environmental setting may have been more appropriate in a campus-like setting. 6/30/11 T. 214. She stated that the normal review process begins with the entire parcel and typically, the entire parcel is designated. Reducing the area is a process that follows designation. She believed the Plan's language dealt with a specific use occupying the property, a campus-like setting that would have large areas of green space, which may be more appropriate for a smaller environmental setting. 6/30/11 T. 212-219.

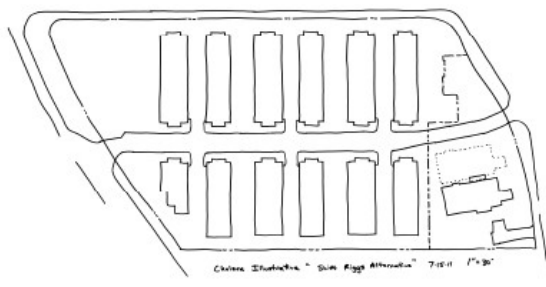
2. Alignment of the Private Road -- Traffic Impacts, Compatibility, and Consistency with the Master Plan

Initially, the Applicant's proposed to limit access from the site onto Springvale Road, as shown on the current schematic development plan. 5/26/11 T. 45, 64; Exhibit 253(a). Mr. Iraola testified that the traffic impact of the development on surrounding streets would be compatible with the surrounding neighborhood partially due to the binding element promising to retain the existing turn and access restrictions on the neighborhood streets. 5/26/11 T. 89-90' 7/18/11 T. 75. The road would require a historic work permit. In his opinion, the Historic Preservation Commission would approve a permit through the environmental setting. 6/6/11 T. 72. Technical Staff to the Historic Preservation Commission, as well as Montgomery Preservation Inc., opposed the alignment of the private road shown on the schematic development plan. Exhibits 107, 120. Staff recommended consideration of alternative alignments which were "more consistent with Chapter 24A." Exhibit 107. Staff also stressed the importance of preserving the core of the site, particularly the rear "ell."³

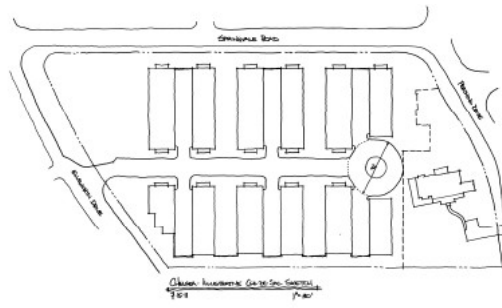
Montgomery Preservation Inc. concluded that the "already truncated 0.85 acre environmental setting is bisected by a large road that disconnects the Riggs-Thompson House from its own back yard, and turns this space into yet another front yard for the townhouses." Exhibit 120. They found that the road left the environmental setting with a "postage stamp of land with its back yard facing a road and its side yard edged with a row of townhouses." Exhibit 120.

³ An "ell" is an extension at the end and at right angles to the main building.

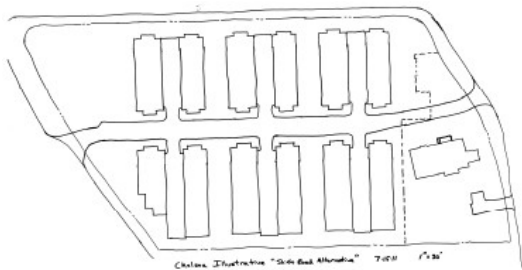
On rebuttal, the Applicant submitted six potential alignments of the private road, including the road shown on the schematic development plan. Exhibit 210; 7/18/11 T. 49-53. One alignment designed the private road as a cul-de-sac so that both access and egress to and from the site would be from Ellsworth Avenue. Another alternative called for moving the historic house further to the south. A third alternative would move the private road further north (i.e., further away) from the Riggs-Thompson House. An additional alignment moved the private road close to the southern property line, in front of the Riggs-Thompson House. The final option would shift the access point from Pershing Drive onto Springvale Road. These alignments are shown below (Exhibits 223-227).



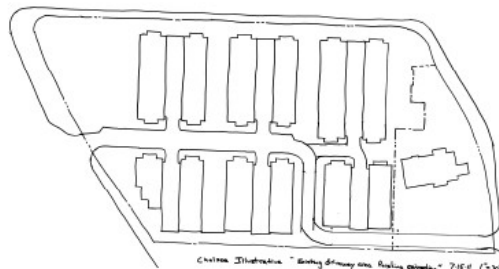
Scenario 2
“Shift Riggs Alternative”



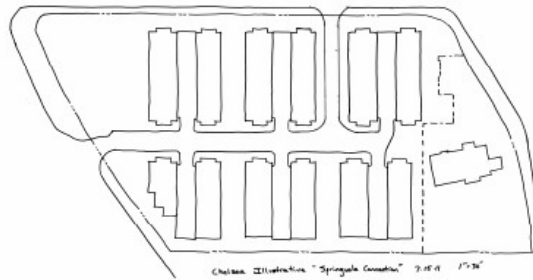
Scenario 3
“Cul-De-Sac Option”



Scenario 4
“Shift the Road Option”



Scenario 5
Existing Driveway Area Pershing
Connection Option”



Scenario 6 Springvale Connection

The Applicant's traffic expert, Mr. Marty Wells, testified that the proposed development would be compatible from a traffic standpoint. Mr. Wells' firm performed a "queuing analysis" indicated that all access alternatives would have little impact on the neighborhood. 7/18/11 T. 111-118. He stated that he "couldn't overemphasize" how low the existing traffic volumes are along Springvale Road, Pershing Drive, and Ellsworth Drive. 7/18/11 T. 114. He found that Pershing Drive and Springvale Road have particularly low volumes of 30 peak hour trips; along Ellsworth Drive north of Springvale Road, traffic volumes are 60 peak hour trips in the morning and 36 in the afternoon. Based on these counts, Mr. Wells testified that the counts showed that there was one trip every one to two minutes on Springvale Road and one per minute on Ellsworth north of Springvale Road. 7/18/11 T. 114. The highest traffic volume is on Spring Street, which experiences 650 peak hour trips in the morning and 830 in the afternoon. According to Mr. Wells, existing traffic volumes are low on surrounding streets because of the turn and access restrictions on the surrounding streets. 7/18/11 T. 114. He stated that under all scenarios, traffic volumes and delays would remain low. 7/18/11 T. 111-117. He submitted an analysis of traffic volumes under R-60 zoning which permitted 14 driveways along Springvale Road. Under this scenario, the traffic impact on neighborhood streets would be greater, although it would still be very low. 7/18/11 T. 111-117.

When questioned whether the alignment of Scenario 6 (access to Springvale Road) would permit traffic to avoid the existing traffic restrictions and result in cut-through traffic, Mr. Wells testified:

As a resident of Arlington, I could tell you I would never take Colesville Road from the Beltway to get here, to the Park and Planning headquarters or downtown Silver Spring. I would take Georgia Avenue, and I think the best way to do that is to go across Spring Street, cross Colesville and Spring Street and turn right onto Georgia Avenue to get to the Beltway. 7/18/11 T. 124.

He also acknowledged earlier in the hearing that the alignment connecting to Springvale Road would result in more cut-through traffic on surrounding streets. 6/27/11 T. 23.

Mr. Youngentob justified the various alignments as follows:

We originally thought that we could live without having access to Springvale because we thought we could go through the historic easement, and I think this is, you know, a perfect situation of how we have numerous competing interests pushing in different directions and eventually, the bubble bursts. And so I am happy...to say to Mr. Millson that this would be our last choice. We would love not to have to put this road through here but if the opposition, you know, makes their case that they would fight tooth and nail to Historic Preservation that they don't want this road through here and Park and Planning Staff says well, we don't really want to have a cul-de-sac because we want connectivity, we'd rather see the road go somewhere, I think we have to have the flexibility to come out to Springvale. 7/18/11 T. 196-197.

Mr. Youngentob explained that he thought the impact would be low because the volumes from the proposed development equate to less than 15 single-family detached homes. He did not address the impact of potential cut-through traffic. He testified that he included the possibility of access to Springvale Road to show that there were a number of alternatives for alignment of the road that don't impact the scale and density of the development. 7/18/11 T. 197.

The Hearing Examiner requested Technical Staff to review the alternative alignments to determine whether any were viable and could be supported by Staff. Staff responded to the Hearing Examiner's request on July 22, 2011, concluding that it could not support the alignment shown on the schematic development plan, but could support three of the six alignments. These alignments included Scenario 4, the "Shift Road Alternative", Scenario 5, the "Existing Driveway Area Pershing

Connection”, and Scenario 6, the “Springvale Connection”. Staff outlined the different impacts of each scenario, noting that the plans were conceptual and the guidance should be considered preliminary. Exhibit 232, p. 1. Staff concluded that the alignment shown on Scenario 4 is “not ideal”, but stated that it could support a similar proposal with the road shifted further north (away from the house). Staff found that this alignment continued to prohibit access to Springvale Road, which would continue to meet the “objectives of many of the community”, but the size of the park area would be reduced. Exhibit 232.

Staff advised that Scenario 5, “Existing Driveway Area Pershing Connection”, was potentially supportable but there were a number of issues that would need to be resolved. This alternative would also avoid access onto Springvale Road and retain the current size of the proposed park. There were negative effects as well, including requiring a new visitor parking area which may further disturb the environmental setting and possibly reduce the number of visitor spaces which are already limited. Staff found that the “urban design and circulation patterns of as proposed above [Scenario 5] are not ideal.” Technical Staff reported that the alignment also raised conservation issues due to the existing trees along the southern property line. Exhibit 232, p. 6.

Scenario 6 would provide access directly to Springvale Road, thus avoiding any impact on the environmental setting and preserving the current size of the park. Staff found that “site circulation may improve with a full turning movement on Springvale.” Visitor parking may need to be shifted, but the alignment had the potential to provide more spaces. Exhibit 232, p. 7. Staff acknowledged that the alignment would permit cut-through traffic to occur, but stated “transportation staff states that this is unlikely.”

Individuals opposing the application submitted a sketch to demonstrate how, under Scenario 6 (i.e., access onto Springvale Road), one could avoid the existing traffic restrictions, thereby permitting cut-through traffic (Exhibit 250), shown on the next page.

Mr. Doggett also reviewed the six alternative access points proposed by EYA on rebuttal and found that for each one, too many forest remnants will be destroyed (and in some scenarios even more removed) and the setbacks to the Cedar Street houses are too close and will be experienced by Springvale Road residents as inward facing, regimented rows with concrete alleyways. Of the three scenarios which Staff could conceptually support, he submitted the following comments (summarized below, Exhibit 251):

1. Shift the Road Alternative (Ex. 225): This scenario still truncates environmental setting and raises questions from a land planning standpoint about having the private road access at Pershing that close to Springvale Road (creating an “odd five-way intersection”).
2. Existing driveway south of Riggs-Thompson House: This would result in the reduction of even more mature trees along the southern border which both define the site and act as a visual screen for the views from the historic house’s higher elevation.
3. Springvale connection (Ex. 227): The environmental setting remains severely compressed. The cars will be channeled on to Springvale Road, which is a narrow street that may also receive overflow parking and traffic.

3. Compatibility of the Proposed Development with the Environmental Setting and the Riggs-Thompson House

Mr. Youngentob testified that that the Chelsea Court development would be compatible with the Riggs-Thompson House and its environmental setting because the Applicant would remove the non-contributing additions added by the religious school. 5/26/11 T. 63. The Applicant believes that the best method of preserving the house is to put it in private ownership to ensure it is maintained. 5/26/11 T. 76. Mr. Iraola testified that preservation of the home enhances the development’s compatibility with the surrounding area because “the historic home will remain as an iconic building of the past and certainly reinforce the sense of place to the residential neighborhood.” 5/26/11 T. 242. Mr. Iraola testified that the townhome development places the historic house “back into a residential context and it also restores it as a residential use. 5/26/11 T. 255. According to Mr. Iraola, preservation, restoration and complete integration of the historic Riggs-Thompson House with

the proposed community will further enhance the sense of place and community stability.” 5/26/11 T. 255.

With regard to the Riggs-Thompson House, Mr. Doggett submitted the following evidence:

The placement of townhouses at the proposed density severely interferes with the interpretation of this rare gem of a pre-Civil War property. It is not compatible to have this protected cultural resource as the front yard of a townhouse development with the windows of the townhouse residents virtually looking into those of the historic house. The public will lose the ability to experience the house in any way close to how it existed in the 1850s, which is one of the critical components of having a historic setting. The placement ignores that prior to its purchase by the Chelsea School, the Riggs-Thompson House sat on a 1.4-acre parcel of land and the setting was only reduced because of the Chelsea School special exception, which will be extinguished upon the sale of the property to EYA. Even if the size of the environmental setting were to remain at 0.85 acres, this placement still is not compatible with the use of the land as a historic property. If two rows of townhouses were eliminated from the development, as would be possible with development under the R-60 Cluster with MPDUs, the viability of this important historic resource could be saved. Exhibit 251.

The schematic development plan indicates that the closest point of the Riggs-Thompson House will be 29.6 feet from the closest townhouse structure. Exhibit 255(a). By scaling the plan, the Hearing Examiner concluded that the front yard of the closest townhouse will be less than 20 feet from the Riggs-Thompson House. The Hearing Examiner agrees with Mr. Doggett’s testimony that the proximity of the townhomes shown on the schematic development plan has an adverse impact on the environmental setting of the Riggs-Thompson and the structure itself.

While normally the compatibility of uses within a particular property is a matter for site plan review, the Hearing Examiner believes it worthy of Council consideration at this stage because it illustrates the central role that the size of the environmental setting has on the compatibility of the project to the surrounding area and existing uses such as the historic house. The Hearing Examiner finds the Master Plan to be ambiguous and recommends that the environmental setting be clarified legislatively before resolution of this case because of its central role. However, as stated above, in the absence of such clarification, the Hearing Examiner would conclude from this record that the intent of the Master Plan framers was to have a 1.4-acre environmental setting if the Chelsea School

was not part of the site. Since the Chelsea School would not be part of this site if a rezoning is approved, the currently proposed schematic development plan calls for townhouses which would encroach into the environmental setting of this historic site.

H. Public Facilities (Transportation, School Capacity and Water & Sewer Service)

Under the County's Adequate Public Facilities Ordinance ("APFO", Code §50-35(k)) an assessment must be made as to whether the transportation infrastructure, area schools, water and sewage facilities, and other public serves will be adequate to support the proposed development. The Planning Board reviews the adequacy of public facilities at subdivision under parameters set by the County Council in the Growth Policy and biennially in the two-year, Growth Policy Element. While the final APFO test is performed at the time of subdivision, the District Council must make its own evaluation of adequacy at the rezoning stage. This is because the Council has the primary responsibility to determine whether the reclassification would be compatible with the surrounding area and would serve the public interest.

1. Transportation (Local Area Transportation Review (LATR) and Policy Area Transportation Review (PAMR))

The Applicant's traffic expert, Mr. Marty Wells, prepared a traffic report dated March 18, 2011. Exhibit 170. In his evaluation under the LATR and PAMR guidelines, he counted the existing school trips and 7 pipeline developments in the background traffic. T. 19-20. All but one of the 8 intersections studied operate within acceptable levels of service during the morning and evening peak hours. A capital project to construct a third westbound lane at the Colesville Road/Dale Drive intersection, planned for completion in FY 2012, will cause that intersection to operate within the LATR congestion standards. 6/27/11 T. 17-20. He also stated that transit is available on Dale Drive, Wayne Avenue, Cedar Street, and Colesville Road. The metro station and MARC station are about

one-half mile (or 2,600 feet) away. The development receives an 89 out of 100 “walkscore”. 6/27/11 T. 18.

Mr. Wells testified that the Chelsea Court development would also meet PAMR guidelines. 6/27/11 T. 24-27. The property is within the Silver Spring/Takoma Park policy area and must mitigate 10% of the 36 new peak hour trips, or 4 trips. The number of trips to be mitigated was based on the school’s existing enrollment rather than its permitted enrollment. The four trips are valued at \$11,300 each which requires the developer to pay \$45,200 to the County or to make \$45,200 in transportation improvements in the immediate neighborhood. The Montgomery County Department of Transportation has approved the mitigation proposed by the Applicant. 6/27/11 T. 24-28.

Mr. Wells stated that the trip generation rates for townhouses mandated by the Transportation Division of Park and Planning were based on actual counts from townhouses taken in the 1990’s. These rates do not take into account variables such as income and transit availability. If Private Street A were realigned to access onto Springvale Road, traffic along Springvale Road would increase by approximately 5% or 5 peak hour trips. Because the trip generation rates are higher for single-family detached homes, the traffic impact would increase if there were more than 5 homes accessing Springvale Road. 6/27/11 T. 42-68.

Dr. Cinzia Cirillo (6/30/11, T. 169-212), qualified as a traffic expert and testified on behalf of the opposition. She testified that the traffic generation rates used in the Applicant’s traffic study were flawed. She participated in a 2007 study prepared by the Baltimore Metropolitan Council which conducted a large study in which every household had to report everything they did every hour of the day. The variables included mode and time of travel and how many trips were made. The survey also collected information about social demographic variables. 6/30/11 T. 161.

Based on this data, Dr. Cirillo testified that travel behaviors have changed over time. In the 1960’s and 1970’s, people would travel to and from work at regular times. Today, travel times are much more complex due to flexible schedules, telework, and other changing circumstances. 6/30/11

T. 161-164. Major factors in the number of trips include household income and the number of cars per household. The larger the income and number of cars, the more trips made per day. Because of the more flexible work week, these trips are also being distributed more throughout the day rather than concentrated in peak hours. The survey also indicated that 70% of the households chose automobiles for the mode of travel. Approximately 10% of the households use transit as their preferred mode choice, and 15% choose slow mode options. She also testified that there was little difference between traffic generated by single-family detached versus single-family attached homes. 6/30/11 T. 164-166.

In order to determine the number of trips generated by the proposed development, Dr. Cirillo took the number of peak hour trips reported in the Applicant's traffic study and applied the 70% automobile modal split. She then applied a vehicle occupancy rate of 1.15 (based on census data). Using this formula, her rates were 50% higher in the morning peak hour but lower in the evening peak hour. According to Dr. Cirillo, the reason for the lower number in the evening peak is that the Montgomery County model fails to take into account the trips distributed throughout the day. T. 168.

Dr. Cirillo opined that analyzing traffic impact only by considering the peak hour fails to account for the traffic impact of the use and that the proposed use could have an impact throughout the day rather than only peak hours. Based on her analysis, traffic from the Chelsea Court development would generate as much as 217 trips throughout the day. 6/30/11 T. 170.

2. School Capacity

Included in the Technical Staff Report is a letter from Mr. Bruce Crispell of the Montgomery County Public Schools (MCPS) stating that MCPS "finds capacity adequate in the Northwood Cluster at the middle school and high school levels. However, at the elementary school level, capacity is inadequate and a school facility payment is required for subdivision approval." Exhibit 45, Attachment 3.

3. Water and Sewer Capacity

Technical Staff concluded that water and sewer capacity is adequate to serve the proposed development. Exhibit 45, p. 8, Attachment 3. While at least one individual questioned whether capacity is available, she did not provide specifics as to the basis of her query. Therefore, the Hearing Examiner finds that testimony speculative.

4. Environmental Issues

a. Forest Conservation: Technical Staff advises that a National Resources Inventory/Forest Stand Delineation (NRI/FSD) was approved in 1998 during the Chelsea School's special exception approval. The NRI/FSD identifies a number of significant and specimen trees on the property. There are no forest areas, wetlands, streams or associated buffers on or near the property. A final Forest Conservation Plan was submitted and approved for the school's expansion plans. The forest conservation requirements were met through a combination of credited tree preservations, supplemental plantings, and a Category II Forest Conservation Easement established over the entire property. Technical Staff advises that the easement is no longer appropriate for the proposed development and required the applicant to submit a revised forest conservation plan for the proposed development. While, according to Staff, a FFCP is not required at the rezoning stage, Technical Staff requested the Applicant to submit a forest conservation plan for the proposed development to demonstrate that compliance with the regulations is possible. Technical Staff advises that the forest conservation requirements may be met on-site with credit for canopy trees that will be planted, credit for the area south of the Riggs-Thompson House, and other supplemental plantings. Exhibit 45.

b. Stormwater Management and Sediment Control: According to the Applicant's expert in civil engineering, Mr. Mark Stires, the stormwater management plan proposes to treat stormwater volumes with different practices, including dry wells, landscape infiltration areas and submerged gravel wetlands. The subject property currently either has no stormwater management facilities to his knowledge or those that are in place are inadequate or nonexistent. The proposed improvements will

provide for safe and adequate stormwater management in accordance with State regulations. 5/26/11 T. 142-144.

I. Community Reaction to the Project

Generally, those individuals in opposition to the plan raised concerns that the proposed development was inconsistent with the Master Plan and incompatible with the surrounding area. 6/6/11 T. 113, 217-218, 220. Some felt that rezoning to anything other than the R-60 zone would be a “betrayal of trust”. 6/30/11 T. 271, 275; *see also*, 6/6/11, T. 240-247, 260, 267. They also raised concerns that the development would have a detrimental traffic impact on the surrounding streets, and would adversely affect the Riggs-Thompson House. 6/6/11 T. 185-214, 6/27/11, T. 231, 232-236, 243, 279, 6/30/11 T. 288, 341. These concerns, where relevant, are detailed above and included in detail in Appendix A, the summary of testimony.

Those in support of the project believed that the project was compatible with the neighborhood, would bolster the revitalization of Silver Spring, and promoted “smart growth” principles. Ms. Cheryl Cort, Chair of the Washington Sustainable Growth Alliance Jury testified they had awarded the project preliminary recognition. She testified that the Alliance’s recognition program awards development projects which exemplify smart growth principles. 5/26/11 T. 119. Others testified that the development would be an appropriate and desirable transition and buffer from the Silver Spring Central Business District. 5/26/11 T. 150-152. It would improve the existing conditions surrounding the site, was an attractive mixture of “old and new” because of the renovation of the Riggs-Thompson House, and would provide others with the opportunity to experience old Silver Spring. 5/26/11 T. 157, 168-169; 6/6/11 T. 95. Others supported the project because they had seen EYA’s other developments and believed they developed high-quality project in terms of integration and compatibility with the community. 5/26/11 T. 159-161, 164-165, 169. Several individuals believed that it would support new business in the Central Business District, the land was

too valuable to develop under the R-60 zoning, and the development would promote pedestrian access to the CBD. 5/26/11 T. 165, 177-178.

Mr. Mark Posner, a member of the SOECA joint task force assigned to study the application testified that he supported the project because it would bring new housing to Silver Spring. He was impressed with EYA's willingness to adapt the schematic development plan to meet the concerns of the community. EYA agreed to design a "linear park" along Springvale Road to address the concerns of the community regarding the development's impact on that street. 6/6/11 T. 100. He believed that traffic impacts would be controlled because of the Applicant's pledge to observe the traffic restrictions in the community. 6/6/11 T. 101. He believes that the project will bring new residents to the area, and that the size and design mitigates any impact from the project's density. 6/6/11 T. 100-103.

Mr. Jim Teller testified that he supported the project because he found the area a diverse, pedestrian-friendly community surrounded much development at much higher densities at the edge of the Central Business District. He believed that the neighbors opposed the application because they could not visualize the plan, which he believed was well designed. He did not think the development would isolate the block bounded by Wayne, Pershing, Cedar and Springvale because of the open space along Pershing and the Riggs-Thompson House. 6/27/11 T. 104-105. He believed that it is unrealistic to assume that traffic is going to travel through neighborhood streets to get to the Beltway. 6/27/11 T. 78-92. He felt that the park along Pershing Drive would prevent the homes on the Wayne Avenue block from being isolated from the rest of the community. 6/27/11 T. 105.

J. Zoning Issues

1. Compatibility with the Surrounding Area

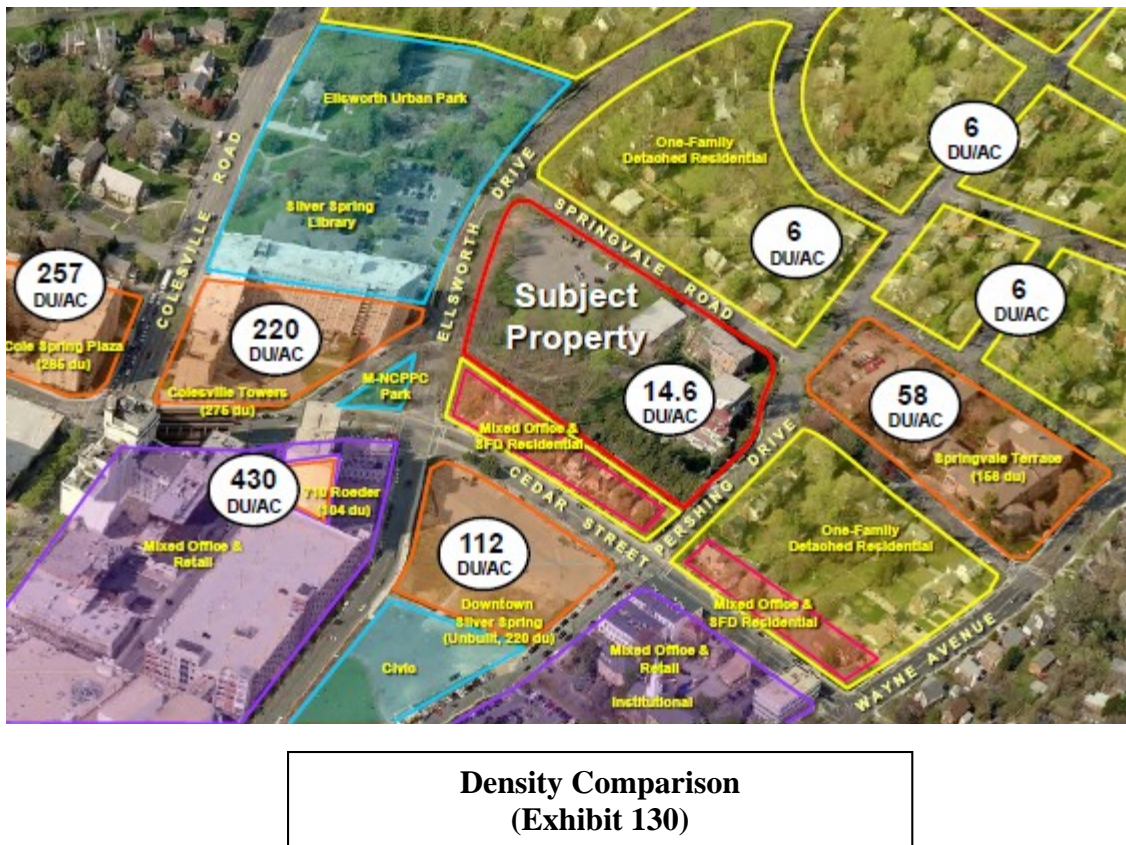
Technical Staff found that the schematic development plan was compatible with the surrounding area. TSF, Ex. 45, p. 2. Staff based its conclusion, in part, on a "*de facto*" presumption that townhomes and single-family detached dwellings are compatible because both are owner-

occupied, single-family residential dwellings. Staff also cited the transitional nature of the area, the “parkland buffers on three sides”, and increased setbacks to the north, building height, and an architectural design which complements the homes along Springvale. Based on these factors, Staff found that “any intrusiveness that could threaten the integrity of adjacent uses is minimized.” Exhibit 45, p. 2.

Technical Staff also found the density of the project compatible by applying the “tent effect” articulated earlier in this Report to points north of Cedar Street. Beginning from the density of the CBD core (i.e., 430 dwelling units/acre), land use planning principal that higher densities (i.e., 430 dwelling units per acre of the CBD), should “slowly” transition to the single-family homes to the north (i.e., the “tent effect” articulated in the Silver Spring CBD Sector Plan). Beginning from the intense density of the CBD core (i.e., 430 dwelling units/acre), and relying on Colesville Towers (a multi-family building built in the late 1960’s), a 112-unit per acre multi-family building fronting the southern side of Cedar Street, and the senior housing special exception (58 dwelling units per acre), Staff found the proposed density compatible with the surrounding area

The Applicant relied on the same premise as Technical Staff (Technical Staff adopted the Applicant’s original definition of the surrounding area) to justify the density proposed. According to the Applicant, the density proposed is relatively low given the transition in density from the Central Business District Core (at 430 dwelling units per acre) to the subject property. 5/26/11 T. 170, 210, 238-239. Applying a linear descending density beginning with the CBD core (i.e., the “tent effect” principle), Mr. Iraola opined that the 14.6 dwelling units per acre is relatively low in comparison with the density of the core and other residential buildings within the CBD. 5/26/11 T. 210. The perpendicular transition extends beyond the Central Business District and into the residential neighborhood. The multi-family residential building on the south side of Cedar Street will be 112 dwelling units per acre. Colesville Towers (a multi-family high-rise building located at the corner of Colesville Road and Spring Street) is 220 units per acre and the Springvale Terrace, residential senior

facility, which is 58 dwelling units per acre. He submitted an exhibit (Exhibit 130, shown on the next page) showing densities proximate to the site.



Mr. Iraola testified that there was also a “lateral” transition going in an east-west direction from Colesville Towers to Springvale Terrace, a senior living facility which is 58 dwelling units per acre. The Chelsea Court townhomes would act as a transition between these uses as well. Exhibit 130 demonstrates that the 14.67 dwelling units per acre proposed for the property is really very moderate; it is only 6% of the density of Colesville Towers, 13% of the density of the multi-family project on the south side of Cedar Street, and 25% of the density of Springvale Terrace. 5/26/11 T. 239.

Mr. Youngentob testified that the density proposed for the Chelsea School property is much lower than its other projects in the metropolitan Washington area and therefore, was “very sensitive” to the single-family homes surrounding the property. 5/26/11 T. 62. Given its proximity to the Central Business District and the metro station, the land is too valuable to develop with single-family

detached homes. 5/26/11 T. 175. The Applicant's other justification for the proposed density is its proximity to the Silver Spring Metro Station. 5/26/11 T. 230.

To support its argument that the proposed development is compatible with the neighborhood, the Applicant presented extensive evidence that the proposed use is *more* compatible than either the existing school use or potential development under the R-60 Zone.

With regard to the existing school, Mr. Iraola testified that townhouse development is more compatible than the existing school because it is residential rather than institutional, in a location convenient to the Silver Spring Central Business District. The Applicant submitted photographs of the undesirable impacts of the existing use, represented by bus traffic and circulation on neighboring streets, shown in Section III.A. of this Report. The Applicant's traffic expert, Mr. Wells, also concluded that the school, either at its existing enrollment or its maximum permitted enrollment (i.e., 200 students), would generate more trips during both the morning peak hour than the proposed development. In the evening peak hour, the proposed development would generate 36 more trips than the existing school and two fewer trips if the school were at its maximum permitted enrollment. 6/27/11 T. 20-23.

The Applicant also argued that the proposed development was compatible with the surrounding area because it was *more* compatible than development under the R-60 Zone. Mr. Iraola submitted Exhibit 212, on the following page, to compare the two types of development. 7/18/11 T. 22. According to Mr. Iraola, the cosmetic fronts of the townhomes will create the impression of 6 single-family detached homes confronting the nine single-family homes on the north side of Springvale Road. Because the R-60 Zone permits a reduced side setback and a 40-foot building height, Mr. Iraola opined that development under the R-60 Zone could result in an "imposing street wall" using "monotonous" single-family detached homes along Springvale Road. 7/18/11 T. 72-73.



Exhibit 212

On rebuttal, Mr. Iraola supplemented his earlier testimony regarding compatibility of the proposed development, testifying that compatibility consisted of eight “metrics”. These eight metrics are defined as (1) compatibility of land uses, (2) massing and scale, (3) building height, (4) architectural style, (5) building orientation, (6) setbacks, (7) buffers, and (8) traffic. 7/18/11 T. 69.

The proposed development meets the first metric because townhomes and single-family detached houses are inherently compatible because both are single-family, fee simple residential uses. 7/18/11 T. 69-70. Townhouses are permitted in all single-family detached residential zones through the MPDU option and are sited with single-family detached homes throughout the County. 7/18/11 T. 70.

According to Mr. Iraola, the development is consistent with the massing and scale of the neighborhood because of the orientation of the townhouse strings perpendicular with Springvale Road, resulting in approximately the same frontage as the single-family detached homes on the north side of Springvale. He submitted Exhibit 211 (on the next page) to demonstrate this:



Architectural Comparison (Exhibit 211)

The proposed development meets the third metric, building height, because the Applicant has agreed through binding elements to limit building height to 35 feet. 7/18/11 T. The proposed development will satisfy the fourth metric, architectural character, because the development will have traditional architecture and preserves the existing Riggs-Thompson House. The fifth metric, building orientation, will be met because cosmetic fronts will be placed on the end units facing Springvale Road and Private Street A and the townhouse strings will face onto open space. 7/18/11 T. 74. The project also provides additional setbacks from the surrounding streets, including a 25-foot setback along Springvale Road, which creates a “linear park”. The minimum setback in the R-60 Zone is 20 feet. With regard to the sixth metric, setbacks, the open space (consisting of the environmental setting of the historic house) provides a setback of 61 feet from Pershing Lane and 234 feet from the closest residence on Pershing Drive. 7/18/11 T. 74-75. Mr. Iraola testified that distance of the setbacks may change depending on the ultimate alignment of Private Street A. 7/18/11 T. 79. The development also conforms with the seventh metric, buffers and landscaping, because of the public access areas and 25-foot setback along Springvale Road. No room is available on the site to place additional public amenities. 7/18/11 T. 75. The proposed development is compatible under the last

metric, traffic, because it preserves the existing access and turn restrictions on surrounding streets.
7/18/11 T. 75.

Mr. Youngentob submitted photographs of other EYA developments, all from Exhibit 218, to demonstrate that landscaping, and building orientation can create compatibility between the townhouses and single-family detached homes:





Exhibit 218

The opposition's expert land planner, Mr. Kenneth Doggett, testified that density is an element of compatibility. Based on the net acreage of the site, he pointed out that the "effective density" of the site (if one subtracts the 37,056 square foot environmental setting of the Riggs-Thompson House) is 19 dwelling units per acre. If one utilizes the alternative environmental setting of 1.4 acres, the development is approximately 22 dwelling units per acre. He compared that to EYA's Cameron Hills development, located within the CBD, which is 23 dwelling units per acre.⁴ 6/30/11 T. 32-36. According to Mr. Doggett, the density combined with the need to preserve the environmental setting results in massing and scale of the townhomes which have little relation to the single-family detached homes surrounding the subject property and further to the north. 6/30/11 T. 43. He also testified that the setback reduction on the southern edge of the property reduced the number of existing mature trees that currently act as a buffer to the Central Business District, yielding the result that residents along Springvale Road will see "regimented" long rows of townhomes and alleys. 6/30/11 T. 43. He did not believe that the cosmetic facades along Springvale Road would

⁴ Based on the gross acreage (i.e., 5.25 acres), the density without the 37,056 square foot environmental setting is approximately 17.5 dwelling units per acre; without the 1.4-acre environmental setting, the density would be 20 dwelling units per acre.

adequately ameliorate the massing of the townhouse strings because views of the townhouse rows were not always experienced directly opposite from the development; rather the massing would be visible from the side as one traversed the block. 6/30/11 T. 78-79. He submitted photographs of Colesville Towers and Springvale Terrace to demonstrate their relatively attenuated impact on the community, noting that the mature trees on the Chelsea School property effectively screened Colesville Towers from the neighborhood. 6/30/11 T. 26. These photographs are shown below:

**Colesville Towers
Exhibit 186(c)**



According to Mr. Doggett, the Springvale Terrace senior living facility was a very quiet use. 6/30/11 T. 28-29. He felt that the development did not create a compatible transition from the Central Business District to the single-family neighborhood because it intruded into the interior of the community. Colesville Towers and Springvale Terrace were located on the edges of the community. 6/30/11 T. 42.

Those opposing the application testified that the density and massing of the property was incompatible with the neighborhood and the historic house. Individuals opposing the application submitted photographs (Exhibit 153, shown on the next page) of the typical homes in the community, which are generally varied in size and are located on small lots.

**Typical Homes
(Exhibit 153)**





**Typical Homes
(Exhibit 153)**

Those opposing the application further testified that the density of the proposed zoning was incompatible with the area immediately surrounding the subject property and that the density of the Central Business District should not be used to “push” density into the interior of the neighborhood. 6/6/11 T. 119. They believed that Colesville Towers was not an appropriate analogy for their development because it was built in the 1960’s prior to the 1978 master plan and directly abutted commercial uses. Neither is the Springvale Terrace retirement community an appropriate comparison because it is two-stories and a “low-impact” quiet use. 6/30/11 T. 120. Ms. Spielberg argued that these uses should not be used to “bootstrap” higher densities in the interior of the neighborhood. 6/30/11 T. 120. She also believed that the density proposed “packed the site in every way it can.” 6/30/11 T. 120. Other residents opposing the petition argued that only development under the R-60 zoning would be compatible with the neighborhood. 6/27/11 T. 178-179.

2. Purposes of the R-T Zone

In order to approve a floating zone, Mr. Iraola testified that the District Council must find that the application meets one of three purposes of the zone: either it must (1) be designated in the Master

Plan for R-T zoning, or (2) be “appropriate” for R-T zoning, or (3) be located in an area where a transition from higher density residential to single-family homes is needed. 5/26/11 T. 229-230.

As set forth in Section III.F. of this Report, all parties agree that the subject property is not recommended for R-T zoning by the Master Plan.

1. Appropriateness of R-T Zone

Mr. Iraola testified that the proposed use is appropriate for R-T zoning for several reasons. 7/18/11 T. 71-72. According to Mr. Iraola, the site meets this purpose because of its proximity to Metro, it enables residents to walk to the neighborhood-serving retail and employment opportunities in the Central Business District. R-T zoning is also appropriate at this site because of its flexibility in design and layout—it is able to provide more open space and amenities than development under the R-60 Zone. In addition, the property is currently used as an institutional use and these sites are frequently found appropriate for R-T zoning. 5/26/11 T. 230-232. Mr. Iraola referenced three zoning cases in which an R-T Zone replaced an institutional use on particular properties; these included Local Map Amendments G-798 (Good Counsel), G-739 (Christian Life Academy), and G-822 (Oxbridge). He also stated that the R-T 15 Zone is appropriate here because it takes advantage of the public’s investment in transit. 5/26/11 T. 231-232.

Mr. Doggett testified that R-T 15 zoning was not appropriate for the site primarily because it wasn’t sufficiently compatible with the surrounding single-family detached homes. 6/30/11 T. 41-42. He also testified that another R-T Zone may be appropriate, because “if you reduce the R-15 to a smaller R volume, then it can be less of a detrimental than R-15 which is very high...But my own feeling is still, nevertheless, single-family detached or duplex houses beyond the transitional zone of the houses on Cedar Street with the special exceptions and the wide road in which topography is a better solution.” 6/30/11 T. 41.

2. Need for Transition

The Applicant asserts that a transition is needed at this location because the entire block, including the Cedar Street houses and the Chelsea School, serves as a “transitional block containing the nonresident offices along Cedar and the current Chelsea School site.” 5/26/11 T. 233. In support of this, Mr. Iraola testified that the use of the front building facades along Springvale Lane will permit a transition between the Central Business District, non-resident special exceptions along Cedar Street, and the single-family detached neighborhood. The townhouses, according to Mr. Iraola, will constitute a transitional building type from the Central Business District and reaffirm the residential use of the property. 5/26/11 T. 233-234.

Those opposing the proposed development argue that a transition is not needed nor would the development be an appropriate transitional use because it extends into the community. 6/6/11 T. 119; 6/30/11 T. Many felt that the existing school was an effective buffer and compatible with the community. 6/6/11 T. 39; 6/27/11 T. 171. In their opinion, the single-family detached buildings were a sufficient buffer from the Central Business District. 6/6/11 T. 171, 264; 6/30/11 T. 247-248. Some noted that the “transition” would be single-family detached homes, then increase to R-T 15 townhouses, then decrease again to single-family detached homes. 6/30/11 T. 247-248. Mr. Doggett testified that the R-T 15 zoning was not a transitional use. In his opinion, a transition use is one which carries forward another use, which this schematic development plan does not. 6/30/11 T. 42-43. He introduced a plan developed under the R-60 Zone (Exhibit 187) which he believed provided a better transition, utilizing single-family homes on the exterior and duplexes on the interior of the site. 6/30/11 T. 47-50.

Some individuals testified that the Colesville Towers and the Central Business District was screened from view by mature trees on the subject property and the Cedar Street houses. 6/30/11 T. 26; 6/27/11 T. 184. They supported this with the photographs and exhibits already set forth

depicting the trees, the existing transition, the height of the berm on Cedar Street, and the lower density beginning Cedar Street.

With regard to the existing use, some residents opposing the application testified that the school had failed to comply with many of the conditions of its special exception approval. In general, they believed that schools were compatible with the neighborhood and had co-existed with the existing school for many years. 6/27/11 T. 124, 197; 6/30/11 T. 368.

IV. SUMMARY OF THE HEARING

A detailed summary of the public hearing is set forth in Appendix A to this Report which is incorporated herein.

V. FINDINGS AND CONCLUSIONS

A. Zoning Issues

Generally, there are two basic types of zones, Euclidean zones and floating zones. Euclidean zoning divides the territory of a local jurisdiction into zoning districts with set boundaries and specific regulations governing development, such as permitted uses, lot sizes, setbacks and building height.

A floating zone is a more flexible device that allows a legislative body to establish a district for a particular category of land use, with regulations specific to that use, without attaching that district to a particular property. Individual property owners may seek to reclassify their property to a floating zone by demonstrating that the proposed development will be consistent with the purpose and regulations of the proposed zone and compatible with the surrounding development, *Aubinoe v. Lewis*, 250 Md. 645 (1967), and that it will be consistent with a coordinated and systematic development of the regional district and is in the public interest. *Md. Code Article 28, §7-110*.

Montgomery County has many floating zones, including the R-T Zones. The R-T 15 Zone contains development standards and a post-zoning review process that generally delegates to the

Planning Board the details of site specific issues such as building location, stormwater control, vehicular and pedestrian routes, landscaping and screening. The Council has a broader and more discretionary role in determining whether to approve a rezoning.

1. Purposes of the R-T Zone

Section 59-C-1.721 sets forth the purposes of the R-T Zone:

§59-C-1.721. Intent and purpose. The purpose of the R-T Zone is to provide suitable sites for townhouses:

(a) In sections of the County that are designated or appropriate for residential development at densities allowed in the R-T Zones; or

(b) In locations in the County where there is a need for buffer or transitional uses between commercial, industrial, or high-density apartment uses and low-density one-family uses.

The intent of the Zone is further explained in the ordinance as follows:

It is the intent of the R-T Zones to provide the maximum amount of freedom possible in the design of townhouses and their grouping and layout within the areas classified in that zone, to provide in such developments the amenities normally associated with less dense zoning categories, to permit the greatest possible amount of freedom in types of ownership of townhouses and townhouse developments, to prevent detrimental effects to the use or development of adjacent properties or the neighborhood and to promote the health, safety, morals and welfare of the present and future inhabitants of the district and the County as a whole. The fact that an application for R-T zoning complies with all specific requirements and purposes set forth herein shall not be deemed to create a presumption that the resulting development would be compatible with surrounding land uses and, in itself shall not be sufficient to require the granting of the application.

The parties agree that the subject property is not designated by the Master Plan for R-T zoning, thus, this criteria is inapplicable to this case. There are two other methods of satisfying the Purpose Clause, and an Applicant is required to satisfy only one of them. The application may be approved if the subject property is “appropriate for residential densities allowed in the R-T Zones” or located in areas “where there is a need for buffer or transitional uses between commercial, industrial or high-density apartment uses and low-density one-family uses.

2. Appropriateness For R-T Zoning

The respective positions of the parties are set forth earlier in this Report. The Hearing Examiner agrees with the Applicant that the subject property is appropriate for R-T zoning, although not at the density proposed. Were the density and massing more compatible with the immediately surrounding structures and more consistent with the Master Plan, townhouse development on the site could enhance the existing, narrower transition of the Cedar Street houses and, as stated by the Applicant, confirm the residential use of the property. In addition, because of its flexibility in design and layout, R-T Zoning at the subject property would further some of the goals of the North and West Silver Spring Master Plan, such as improvement of pedestrian access to the Central Business District, provision of public open space, and additional landscaping. R-T zoning would also contribute to the goals of other public policy documents, including the Silver Spring Central Business District Master Plan and the Housing Element of the General Plan. The Hearing Examiner also agrees with the Applicant that this particular location so near the neighborhood retail, civic uses, transit, would serve as an appropriate location for some additional density to more fully utilize these amenities.

3. Need for Transition

The Hearing Examiner does not find that a need exists for a transition at this location. The evidence in this case, particularly the photographs showing the transition between the existing uses and the Chelsea School, demonstrate that the existing transition of the single-family houses on Cedar Street sufficiently buffers the interior neighborhoods. Several residents testified that the mature trees and the rear yards of the Cedar Street houses isolate the area to the north from the Central Business District and mitigate the impact even of Colesville Towers within the neighborhood. While the Hearing Examiner understands the Applicant's argument that the proposed schematic development plan will stabilize a residential use on the property, she found the testimony relating the potential of other institutional uses at the subject property somewhat speculative. The best that can be said based on the evidence here is that The Avalon School may consider purchasing the property. Any future

school use, however, would be required to obtain a special exception to ensure compatibility with the area, unless it is a parochial institution. Those in opposition to the application submitted evidence that The Avalon School in particular was *not* a religious institution. Regardless of whether it is or is not, the Hearing Examiner finds the potential use of the property too speculative to find that the existing Cedar Street buffer, explicitly recommended in the Master Plan, is insufficient to buffer the residences on the north side of Cedar Street from the Central Business District.

4. Compatibility

a. Density, Massing and Scale

An application for a floating zone reclassification must be evaluated for compatibility with the land uses in the surrounding area. The Hearing Examiner concludes that the Applicant has not met its burden of proof that the proposed schematic development plan is compatible with the uses in the surrounding neighborhood.

The Hearing Examiner agrees with Mr. Doggett that density is an inherent component of compatibility. *See, O.F. Smith Brothers Development Corporation, et. al. v. Montgomery County Council*, 246 Md. 1, 4 (1966)(denial of RT zoning is justified when townhouse density proposed was three times as great as permitted by existing zoning). It is unquestionable that, compared with the densities of the Central Business District, the density proposed here is on the lower end of the scale. The anomaly in this case, however, is the abruptness of the transition between the Central Business District and the residential neighborhoods north of Cedar Street. The evidence submitted by Mr. Doggett and individuals opposing the application is persuasive that the area changes quickly from the “gray”, or the more urban Central Business District, to the “green” of a suburban neighborhood. Moreover, the 2000 North and West Silver Spring Master Plan endorsed this transition. This transitional character of the surrounding area, except with some outlying anomalies such as Colesville Towers, is reflected in what exists north of Cedar Street today. There are civic uses and the senior living facility in the immediate area, but the Hearing Examiner finds from the evidence that

these uses are not intense or incompatible as inferred by the Applicant and should not be used to support the density proposed.

Because of the character of the Cedar Street transition, the Hearing Examiner does not agree that a straight linear application of the tent effect should determine the appropriate density for the subject property. The schematic development plan proposed at this site consists of relatively long strings of townhouses, massed in close proximity in the center of the site, with a reduced setback on the southern portion of the property. The major deference to the single-family detached nature of the immediately surrounding streets is the orientation of townhouse rows perpendicular to Springvale Road and cosmetic facades on the endcap units on the northern portion of the site. While the Applicant has also attempted to address the massing and scale by providing additional setbacks and landscaping along Springvale Lane, and the open space along the environmental setting of the Riggs-Thompson House, the Hearing Examiner is not convinced that this will sufficiently ameliorate the impact of the proposed development on the surrounding uses that may view the site either from Springvale Road or from other, lateral perspectives. The Hearing Examiner agrees with the Applicant that townhouse development is, in a generic sense, compatible with single-family detached homes, but disagrees that the massing and scale of this particular development plan is compatible with the existing transitional which characterizes the surrounding area.

A significant portion of the Applicant's evidence on compatibility focused on demonstrating the *incompatibility* of the existing use, the potentially potential undesirable development under the R-60 Zone, and the potential that a parochial school (possibly unrestricted by zoning) may purchase the site. The Hearing Examiner finds that evidence of potentially *incompatible* land uses too speculative to be a decisive factor as to the compatibility of this project, even if relevant to the issue. While the Applicant presented evidence of incompatible development under the R-60 Zone, it also suggested that the density requested is necessary because development under the R-60 Zone is economically infeasible. Similarly, it presented an undated letter from The Avalon School indicating their interest

in exploring the purchase the property in the event EYA did not develop the site. The opposition then submitted evidence from the Avalon School's website indicating that it was not owned by the Catholic Church and therefore *would* be subject to the special exception process. The Hearing Examiner finds that evidence relating to potential development too speculative to form the basis for a determination of compatibility in this case.

Further, the Hearing Examiner hesitates to rely on the *incompatibility* of development under the existing zoning as a basis for demonstrating the *compatibility* of a proposed rezoning. Permitted R-60 uses have already been legislatively pre-deemed compatible, or are special exception uses that are deemed compatible if certain general and special conditions are met. Were the Hearing Examiner to rely on the incompatibility of development at densities recommended by the master plan and zoned in conformance therewith, it would only undermine rather than reinforce the intent of the master plan. As the Applicant's attorney noted, there is no mandate to submit alternate plans for the development.

By the same token, the Hearing Examiner disagrees with the opposition's frequent testimony that any development *other* than that under the R-60 Zone is *de facto* incompatible. The Applicant has applied for a floating zone, which by its very nature necessitates a change in existing zoning if the application is granted. It has long been established that floating zones may be "fixed" at a particular location provided the applicant demonstrates that the particular plan will further the purposes of the zone and is compatible with the surrounding area.

As a result, the Hearing Examiner does not find that denial of the application is justified. As noted, the densities set forth in the Central Business District are within the surrounding area of the property. In addition, the Hearing Examiner is persuaded by the evidence that the techniques used here by the Applicant to enhance compatibility may be effective provided the basic mass of the development is reduced. Some additional breaks in massing and more deference to the detached single-family detached homes surrounding the site, along with the flexibility in design provided by the R-T Zone could result in compatible development on the site.

b. Compatibility of Traffic from the Proposed Development

In addition to the development's massing and scale, questions still remain about the potential impact of any of the possible alternative site layouts of the development on the surrounding community. Because of this, the Hearing Examiner finds that the Applicant has not met its burden of proof that the application is compatible with the surrounding neighborhood or consistent with the Master Plan. Mr. Wells' based his opinion that traffic volumes on surrounding streets would continue to remain low with the new development because of the existing traffic restrictions. His opinion did not take into account the possibility of cut-through traffic from the neighborhood. Other than a short statement in the Technical Staff Report Addendum that cut-through traffic is unlikely to occur, there is little evidence that the cut-through traffic will have only a minor impact on the surrounding area and therefore be compatible with the surrounding area or consistent with the goals of the Master Plan. Mr. Millson testified that before the traffic restrictions were in place, there was a significant amount of traffic volume through the neighborhood streets. Even though the Applicant has characterized the Springvale connection as the last option to be utilized, the Addendum to the Staff Report indicates that the two other alignments that are supportable by Staff both have negative impacts, including the impact on the environmental setting of the Riggs-Thompson House, environmental impacts, and potential parking and traffic impacts.

The Hearing Examiner recognizes that, generally, the exact alignment of access to a site is a matter for site plan review. In this case, however, the Hearing Examiner has been presented with not one, but six potential access points with divergent and competing impacts on the surrounding area, which are not mere "adjustments" to the schematic development plan as presented to the Planning Board. Exhibit 103. In order to evaluate compatibility, both the Hearing Examiner and the Council must assume that any one of the proposed alternatives, not prohibited by a binding element, may be utilized. Since a number of those alternatives which have not been prohibited by binding elements will have detrimental effects on the surrounding area, it is difficult to properly assess compatibility on

the current state of this record. A remand is necessary so that Applicant can clarify its plans and demonstrate that the proposed development will be compatible with the surrounding area.

C. The Public Interest

The Applicant must show that the proposed reclassification bears sufficient relationship to the public interest to justify its approval. The State Zoning Enabling Act applicable to Montgomery County requires that all zoning power must be exercised:

“...with the purposes of guiding and accomplishing a coordinated, comprehensive, adjusted, and systematic development of the regional district, and [for] the protection and promotion of the health, safety, morals and comfort, and welfare of the inhabitants of the regional district.” *[Regional District Act, Maryland-National Capital Commission Article (Art. 28), Md. Code Ann., §7-110.]*

When evaluating the public interest, the District Council normally considers Master Plan conformity, the recommendations of the Planning Board and Technical Staff, any adverse impact on public facilities or the environment, and factors such as the inclusion of MPDUs and location near public transportation, especially a Metro station.

1. Consistency with the 2000 North and West Silver Spring Master Plan

a. Land Use

After a review of the entire North Silver Spring Master Plan, the Hearing Examiner agrees with the Applicant, Technical Staff and the Planning Board that the Plan does not prohibit R-T zoning on the subject property, but finds that the proposed schematic development plan, at least at the density proposed, is inconsistent with the Plan’s recommendations regarding the appropriate transition at this location. Because the schematic development plan does fulfill many goals of the Plan, may be altered to be more consistent with the plan, and achieves many other important county policies, the Hearing Examiner does not believe that denial of this rezoning application is warranted.

Rather, the Hearing Examiner recommends that the schematic development be remanded for revision to be more consistent with the Master Plan and more compatible with the surrounding area as described.

Any analysis of a Master Plan must begin with the proposition that, legally, it is guide rather than a “straightjacket”; in other words, except in circumstances not present here, its recommendations are not binding. *Trail, et al. v. Terrapin Run, LLC, et al.*, 403 Md. 523 (2008).⁵ While the Hearing Examiner recognizes that many of those individuals in the neighborhood viewed the R-60 zoning recommended in the Master Plan as a binding “commitment” made to the neighborhood, Maryland law mandates otherwise unless the Zoning Ordinance requires consistency with the Master Plan for the particular zone being sought. *Terrapin Run, supra; Attman/Glazer P.B. Co. v. Mayor and City Alderman of Annapolis*, 314 Md. 645, 676 (1989)(Government may not “contract away” the exercise of its zoning power.)

In this case, Applicant seeks reclassification to the RT-15 Zone, and the RT zones do not require consistency with the applicable master plans (although master plan consistency is always a factor considered as part of our analysis of the public interest). A master plan is intended to be flexible enough to adjust to specific situations and changing circumstances; master plans guide compatibility of land uses through adherence to its basic goals and recommendations for implementing those goals. Therefore, to determine consistency with the Plan, one must ascertain its goals and its recommendations on how to achieve those goals, in addition to considering its specific recommendations for the site. The primary goal of construing master plans is to ascertain what the Council intended to accomplish in the Master Plan. In doing this, the Hearing Examiner should not

⁵ Precisely what is meant by the term “consistent with” a master plan has been the subject of both litigation and legislation. In *Trail v. Terrapin Run*, 403 Md. 523, 548, 569 and 573-574 (2008), the Court of Appeals held that legislative words such as “conform to” or “consistent with” were intended to convey the concept of being generally “in harmony with” a master plan unless legislation specifies otherwise. Subsequently, the Maryland legislature enacted the *Smart, Green, and Growing—Smart and Sustainable Growth Act of 2009*. The Act amended State law in an attempt to define the term “consistent with”. By its terms, the statute does not apply to rezoning applications because they do not constitute an “action” under the legislation.

rely solely on isolated portions of the plan, but interpret it *in para materia*, so that all portions are read together in order to achieve a coherent result and to prevent unintended results. *Office of the Public Defender v. State*, 413 Md. 411, 464 (2010).

The Master Plan describes the relationship between the north and west Silver Spring neighborhoods to the Silver Spring Central Business District as follows:

The Silver Spring Central Business District, which is undergoing revitalization, will serve as a community oriented downtown for these residential neighborhoods. Exhibit 139, p. 2.

The express intent of the Plan is to protect the integrity of the residential, single-family neighborhoods north and west of the Central Business District. A review of the proposed land use and zoning maps, however, does not reveal that the 2000 North and West Silver Spring Master Plan retained the “tent effect” explicitly implemented in the Silver Spring Central Business District Sector Plan. The densities in the Central Business District do transition downward in a lineal fashion, but that transition ends abruptly at Cedar Street, where the lower density R-60 is reconfirmed from Cedar Street north to the Beltway.

According to the Plan, the intent to preserve the integrity of the residential neighborhoods north of Cedar Street is achieved by reaffirming the basic concepts of the 1978 North Silver Spring Sector Plan. In so doing, the drafters reviewed those concepts again, changing them and in some instances, developing new concepts. Exhibit 139, p. 2. The Plan also acknowledged the sensitivity of the transitional areas and the difficulty of preserving the interior residential neighborhood while meeting the needs of those properties “on the edge of major highways and the Central Business District”.

The Hearing Examiner agrees with the Applicant that the schematic development plan does further the goals expressed in Chapter 1 of the Plan. The Plan viewed the Central Business District as the community’s downtown. The proposed development provides improvements in sidewalks, pedestrian circulation, access to the Central Business District (thus reinforcing the Plan’s

“community downtown” concept), public access space, and landscaping above what exists today. Specifically, it will include a public access area, additional sidewalks, and landscaping, particularly along Springvale Road. The binding elements include a commitment to a 25-foot setback from Springvale Road and, subject to site plan review, a double row of street trees along Springvale Road. The Hearing Examiner also agrees with the Applicant that an R-T Zone may better accomplish these goals because of its flexibility in design standards. The Hearing Examiner finds reasonable the Applicant’s argument replacing the existing school use with residential uses may further the Plan’s goal to limit commercial activities in the area.

The Hearing Examiner agrees in part with the Applicant and in part with those opposing the application regarding the Plan’s recommendations for the transition between the Central Business District and the interior residential neighborhoods. She finds that the Plan does not prohibit townhouses on the subject property, but also finds that the proposed schematic development plan, at the density proposed, is inconsistent with the Plan’s recommendations for this transitional area.

Both SOECA and the Applicant point to different excerpts from this section to support their respective arguments. Taken together, the Hearing Examiner finds the following guidance relevant:

- The 1978 *North Silver Spring Sector Plan* recommended that certain properties were suitable to apply for a special exception that allows a non-resident professional office in the R-60 Zone. According to the 1978 *North Silver Spring Sector Plan*, the purpose of this recommendation was to provide a transition (by use, not by structure type) from properties at the edge of the neighborhoods to those in the interior. Exhibit 139, p. 43.

* * *

- Retain the designation that properties on Cedar Street between Ellsworth Drive and Pershing Drive are suitable to apply for the non-resident professional office special exception.

These homes are suitable for continued residential use or permitted special exceptions for continued residential use or permitted special exceptions, including applications for use as a professional office by a non-resident. These properties are located on the border between North Silver Spring and the Silver Spring Central Business District. They are somewhat isolated from the other single-family homes in the neighborhood by the Chelsea School, a private school located to the rear of these homes. Other surrounding uses include a public parking lot across the street in the CBD that has

been approved for a 160-unit residential development with two levels of parking and an existing high-rise residential building to the west.

This Plan *strongly* recommends that the existing residential structures be retained by that continued designation as suitable for non-resident professional offices is appropriate given the surrounding uses. Paving of front yards for parking is inconsistent with this Plan's overall goal of maintaining residential character and sustaining stable neighborhoods. The parking required for any approved special exception should be met through the Parking Lot District to minimize the number of spaces on the property and help retain a residential appearance along Cedar Street.

The Plan also contains guidance on criteria for special exception approvals for the single-family structures on the northern side of Cedar Street abutting the subject property, in order to preserve their appearance as single-family detached homes.

Reading these excerpts together, along with the proposed land use and zoning maps, the Hearing Examiner finds that the specific language relating to the Cedar Street homes is consistent with Plan's earlier statement that the transition for this area is by use rather than structure type. It is also consistent with the Plan's general adherence to concepts of the 1978 North Silver Spring Sector Plan, and its explicit acknowledgement that it reconfirms the recommendations from the 1978 Plan at this location. In broader terms, the Hearing Examiner interprets that Master Plan as general guidance the transition from the Central Business District at this particular location should be compatible or at the least deferential to the existing R-60 single-family detached character of the surrounding neighborhood structures (although this does not preclude townhouses). The care with which the Master Plan imposed guidelines on both the R-T zoning and special exception transitional techniques reinforces this conclusion.

Regarding the Plan's specific reference to the Chelsea School, the Hearing Examiner finds that the Plan acknowledged that the Chelsea School at least *functioned* as a transition at the time the Plan was adopted, although not explicitly designating the subject property for a transitional use in the future. The Hearing Examiner does not find sufficient evidence from the single quotation cited by the Applicant to support the Applicant's interpretation that the Plan "envisioned" R-T 15 zoning

(three times the density of the immediately surrounding land use) for the site. Technical Staff cited the proposition that, if particular guidance for a specific property is given in the Master Plan, that guidance should be given great weight. If, as the Applicant asserts, the Master Plan “envisioned” the entire block to be transitional, the schematic development plan gives insufficient weight to the Master Plan’s relatively explicit guidance for the transition at this location.

While the Applicant argues that the landscaping, setbacks, cosmetic fronts, and open space render the schematic development plan compatible with the surrounding single-family homes, the Hearing Examiner finds that these techniques are insufficient to be consistent with the Master Plan. The Applicant has agreed to place cosmetic fronts on the six townhomes facing Springvale, but SOECA’s land planner testified that these will not appropriately screen the long alleys from the single-family homes and there is little to address the massing of the rows of townhouses from portions of Pershing Drive or from the historic house. Although the details of the site layout must be addressed by the Planning Board at site plan review if the rezoning is approved, the Council must still consider whether the overall proposal will create density and massing that is incompatible with the surrounding area. The Hearing Examiner finds that there should be some additional breaks in massing, and additional setbacks from the historic house, in order to conform better with the Master Plan’s recommendations for the transition to the Central Business District and to ensure compatibility. In addition, the Hearing Examiner notes that due to the requested waiver of the setbacks along the southern boundary, the schematic development plan will remove many mature trees along the southern property lines, which currently screen the neighborhood from the Central Business District.

As mentioned earlier, the Applicant justifies the compatibility of the density proposed by reference to the “tent effect”, a principal explicitly applied in the Silver Spring Central Business District Sector Plan, to demonstrate that the density proposed is comparatively low. The extension of the Silver Spring Sector Plan’s “tent effect” north of Cedar Street, however, may undermine the

recommendations of the North and West Silver Spring Master Plan unless more sensitivity is given to the immediately surrounding land use, single-family detached homes. From the evidence before her, the Hearing Examiner concludes that the Applicant has not met its burden of proof that the schematic development plan, at the density proposed, is in conformance with the guidance and principals applied for this transitional area in the Master Plan.

The Hearing Examiner, however, disagrees with the opposition's argument that only R-60 zoning, including the R-60 Cluster option, is consistent with the Master Plan. Because the Master Plan is a guide, the Hearing Examiner does not believe strict compliance with the recommendation for transition by structure type or single-family detached zoning is necessary—only that more deference should be given to the Plan's recommended transition. The proposed development does significantly further some of the Master Plan's goals, including improving pedestrian connections to the Central Business District, providing public access areas, and street and landscaping improvements. The Hearing Examiner agrees with the Applicant that the R-T Zone is intended to provide flexibility in design, and may have capability of achieving the goals of the Plan, particularly with regard to public open space. Density at levels significantly higher than the R-60 Cluster option may be achievable on the site, with less massing and more setbacks. For this reason, the Hearing Examiner recommends that the schematic development plan be remanded to the Hearing Examiner for revision with a reduced number of units to ensure compatibility with the surrounding neighborhood, and consideration of whether a lower density R-T zone would be more appropriate.

b. Environmental Setting of the Riggs-Thompson House

The Hearing Examiner also finds that the proposed development is inconsistent with the Master Plan's designation of the environmental setting for the Riggs-Thompson House. In order to properly interpret the Master Plan, we once again must apply general principles of statutory construction. The primary goal of statutory construction, "is to ascertain and implement the

legislative intent . . .” *Trembow v. Schonfeld*, 393 Md. 327, 336-337, 901 A.2d 825, 831 (2006). As stated in that decision,

Our goal is to ascertain and implement the legislative intent, and, if that intent is clear from the language of the statute, giving that language its plain and ordinary meaning, we need go no further. We do not stretch the language used by the Legislature in order to create an ambiguity where none would otherwise exist. If there is some ambiguity in the language of the statute, either inherently or in a particular application, we may then resort to other indicia to determine the likely legislative intent.” *Id.*

But this standard must be considered in light of the following language from *Maryland-National Capital Park and Planning Commission v. Anderson*, 164 Md. App. 540, 569-570, 884 A.2d 157, 174 (2005), *aff’d* on appeal, 395 Md. 172 (2006):

Even under the plain meaning rule, however, we do not ignore the Legislature's purpose if it is readily known. *State v. Pagano*, 341 Md. 129, 133, 669 A.2d 1339 (1996). In this regard, “we may ... consider the particular problem or problems the legislature was addressing, and the objectives it sought to attain.” *Sinai Hosp. of Baltimore, Inc. v. Department of Employment & Training*, 309 Md. 28, 40, 522 A.2d 382 (1987); see also *Romm v. Flax*, 340 Md. 690, 693, 668 A.2d 1 (1995).

The Hearing Examiner believes that both sides have salient arguments regarding the interpretation of the Master Plan’s designation of the environmental setting of the Riggs-Thompson House. The Applicant’s argument that technical appendices only identify the basis of the recommendation at the time a master plan is adopted, but are not “binding” in nature, is reasonable. However, Ms. Warren submitted cogent evidence that an alternative delineation of the environmental setting was intended in the event Chelsea School failed to purchase the property. Further, the evidence before the Hearing Examiner indicates that even after the adoption of the Master Plan, Technical Staff still interpreted the Plan as requiring alternative settings, dependent solely on whether the Chelsea School purchased the property. The language of the preliminary plan submitted by the Applicant reinforces this conclusion, as it is specific to implementation of the School’s special exception which will be abandoned if this rezoning application is approved. This is also consistent

with Montgomery Preservation's testimony that the smaller environmental setting may have been more appropriate in the context of a campus-like setting rather than the schematic development here.

In this record, Staff treated the environmental setting as being 37,056 square feet and the Historic Preservation Commission has not reviewed this rezoning request at all. It is not clear from this record whether they had the opportunity consider the legislative background regarding the alternative designations of the environmental setting. Because the size of the environmental setting is central to the compatibility of the project with the surrounding area and its consistency with the Master Plan, including its density, road alignments, and compatibility with the Riggs-Thompson House, the Hearing Examiner recommends that approval for the R-T zone be deferred to permit the Council or the Planning Board to review the meaning of the Master Plan or to amend the Master Plan to clarify its meaning.⁶

In the absence of such clarification, the Hearing Examiner would conclude from this record that the intent of the Master Plan framers was to have a 1.4-acre environmental setting if the Chelsea School was not part of the site. That intent is made clear in the Master Plan's own Appendix, and it is buttressed by the other evidence produced by the opposition.

3. 2000 Silver Spring Central Business District Sector Plan

While the opposition argues that this master plan is not applicable to the subject property because the subject property is outside of the area covered by the Plan, the Hearing Examiner agrees with the Applicant that it should be given some weight when determining the public interest. Mr. Iraola articulated several of the goals of the Sector Plan that would be furthered by the proposed plan. These included providing a pedestrian friendly downtown with public access space, and the revitalization of Silver Spring's downtown. The Hearing Examiner agrees with the Applicant that R-

⁶ The Council recently did so in another case, DPA 11-1, where questions were raised about whether the intent of the Clarksburg Master Plan was well served by some of the language regarding the staging of commercial development in that plan. Council Resolution 17-69 of March 1, 2011.

T Zoning may further these goals, but at a lesser density so that it integrates better the recommendations of both plans.

4. Housing Element of the General Plan

The Hearing Examiner agrees that the proposed schematic development plan fulfills the goal of the Housing Element of the General Plan to provide additional housing units within the urban areas of the County. She notes that the plan also recommends that existing neighborhoods be protected from the impact of infill development. For the reasons above, the Hearing Examiner recommends that this application be remanded in order to integrate these two goals.

C. Adequacy of Public Facilities

The Hearing finds that the Applicant has met its burden of proof to show that public facilities are adequate to support the use. While Dr. Cirillo and Mr. Millson testified that the LATR guidelines inaccurately assessed the true impact of traffic from the development, the Applicant is mandated to use the techniques and assumptions in the existing LATR guidelines.⁷ Applying the LATR guidelines, there is more than sufficient evidence to demonstrate that the application meets these guidelines. Other undisputed evidence supports a finding that schools and water and sewer facilities will be adequate.

D. The Environment

Technical Staff advises that the development is able to meet both forest conservation and stormwater management requirements, as does the Applicant's civil engineer, Mr. Stires. The Hearing Examiner agrees that the proposed development will meet these requirements, and finds that these may be met during later stages of the development process.

⁷ The Hearing Examiner does not take a position on whether or not the LATR guidelines are flawed.

VI. RECOMMENDATION

I, therefore, recommend that Zoning Application No. G-892, requesting reclassification from the R-60 Zone to the R-T Zone of approximately 5.25 acres of land at 611 Ellsworth Drive, Silver Spring, Maryland (Lot 58, Evanswood, Section 1), be **remanded** to the Hearing Examiner for revision of the Schematic Development Plan (SDP) and consideration by the Planning Board of the intended size of the environmental setting of the Riggs-Thompson House historic resource, given the language in Appendix D of the North Silver Spring Master Plan. The SDP should be reconfigured to propose a development with less density and less massing so that it will be more compatible with the character of the transition from the Central Business District to the residential community north of Cedar Street and more consistent with the 2000 North and West Silver Spring Master Plan. The revised SDP should also resolve issues relating to the alignment of the private road to comply with the environmental setting of the historic site as set forth in the Master Plan and its Appendix D.

Dated: September 22, 2011

Respectfully submitted

A handwritten signature in black ink, consisting of a stylized 'L' and 'R' followed by a long horizontal line.

Lynn A. Robeson
Hearing Examiner

APPENDIX A
SUMMARY OF TESTIMONY

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Public Hearing, May 26, 2011

1. Robert Yougentob:

Mr. Yougentob testified that he is the President of EYA, which specializes in urban fee simple residential development. T. 29. He is qualified as an expert in urban land planning design and real estate finance. T. 30. He testified that EYA has developed other properties with historic preservation elements, such as National Park Seminary in Montgomery County, Bryant School in the District of Columbia, and the renovation of the Lustine showroom in Hyattsville. T. 34-35. EYA focuses on Smart Growth development which provides elements of walkability close to transit. T. 35. The development conforms to the Housing Element of the General Plan, which calls for an additional 75,000 new dwelling units to accommodate 155,000 new residents within the County. T. 37

Mr. Yougentob stated that new demographics are changing the design of urban housing developments. According to Mr. Yougentob, the population is younger, and wants shorter commutes and amenities such as restaurants. T. 37. In his opinion, Montgomery County has decided to preserve the Agricultural Reserve and implement the Wedges and Corridors General Plan; the focus on new development must be in urban locations. T. 38.

According to Mr. Youngentob, the subject property has been a school site since the 1930's. Originally, it was the "Academies of the Holy Names." Except for the Riggs-Thompson House, the existing buildings are from the 1950's. Chelsea School became a tenant in 1989. In about 1997-1998, Chelsea School decided to purchase the property and then underwent obtaining a special exception. T. 39.

Mr. Youngentob testified that Chelsea School served special needs children who came primarily from Montgomery County. After Montgomery County began funding its own educational programs for special needs children, Chelsea School began focusing more on students from Prince

George's County and the District of Columbia. He stated that the school could not continue with its present enrollment of 90 children and began looking at other locations. T. 40-41.

Mr. Youngentob testified that the Board of Appeals' opinion in Chelsea School's special exception references Chelsea School as a sensitive site because it's a transitional area between the Central Business District and single-family detached homes. T. 44. Mr. Youngentob stated that there are aspects of the existing use which are not compatible with the surrounding neighborhood. T. 44-45. The main educational building is 3 stories high and "dominates" Springvale Road, a small side road with confronting modest homes. T. 44-45. The second building confronting Springvale is a private gymnasium and adds to the noncompatibility with the homes along Springvale. T. 45. The Petitioner's plan does not show access onto Springvale as the existing use permits. The bus area for the school is only a staging area. It is EYA's understanding that the community does not like this arrangement because the surrounding streets are substandard and don't have sidewalks, except near the Riggs-Thompson House. T. 46-48. The Petitioner's plan would provide a sidewalk all along Springvale, eliminate some existing paving on the property, and create more pedestrian access. T. 49-50.

Mr. Youngentob testified that EYA did meet several times with the community. Although it was aware that some citizens opposed the application, other citizens felt the use was an improvement over the school, which could have up to 200 students under its special exception approval. T. 56.

Mr. Youngentob stated that EYA had submitted the concept design to the Smart Growth Coalition and Coalition for Smarter Growth, which are two organizations comprised of the Urban Land Institute, Chesapeake Bay Foundation, and other environmental groups. The Coalitions awarded the project with smart growth recognition. Their only concern was there was not more density. T. 56-57.

EYA was approached by the Chelsea School to develop the property. T. 46. They evaluated whether residential units could be developed in an appropriate and compatible manner. T. 58.

Elements they saw included: (1) the proximity to Ellsworth Park and the library, (2) the location of Colesville Towers (with 220 dwelling units), (3) single-family homes on Cedar Street which had been converted to special exception uses, (4) Springvale Terrace, a senior housing project consisting of 28 dwelling units per acre, and (5) directly across Springvale and Cedar Street is a new residential development of 112 dwelling units per acre. In addition, there is a new civic building, Whole Foods, the Silver Spring Metrorail station, and the proposed location for the Purple Line within walking distance. T. 58-59. EYA felt it was a good location for development because it did not require assemblage, there is no specific Master Plan designation, and the development addressed a policy initiative they heard from the Planning Board, Planning Staff, and the County Council to site residential development close to Metro. T. 59.

Mr. Youngentob testified that the revised development plan contains 77 units, 10 of which will be MPDUs: 76 townhouses and the Riggs-Thompson historic house, which will be marketed as a private single-family home. T. 59. The project has a density of 14.67 dwelling units per acre, which is well under the density at Colesville Towers and Springvale Terrace. T. 62. EYA on average develops residential property at 25 dwelling units per acre, and feels that 14 dwelling units per acre is very sensitive to the surrounding neighborhood. In his opinion, it is not “massive density” as it has been described. T. 62.

Mr. Youngentob believes that the existing school buildings have more of an adverse impact on the Riggs-Thompson House than would the residential development proposed. T. 63-64. The historic feel of the property will be enhanced once the non-contributing school buildings are removed. T. 63-64. They have not resolved the issue of the location of the private road shown with the Historic Commission. The private road was added because the community did not want any access onto Springvale and EYA needed two access points for the property. T. 63-64.

According to Mr. Youngentob, the Schematic Development Plan is sensitive to adjacent homes because they have designed the rows of townhouses so that six end units will confront Springvale Road, rather than having a line of townhouses fronting Springvale Road. T. 64.

The plan also provides two open space areas which improve pedestrian connectivity. T. 66. A public access easement will be placed on those areas, which will be maintained by the homeowner's association. T. 66. The addition of sidewalks along Ellsworth and Springvale will also help alleviate safety concerns expressed by the citizens, because the residences will create "eyes on the street" 24 hours, rather than school hours. T. 66-67.

The units will meet the 35-foot maximum height limit and will be 2 ½ to 3 stories. The surrounding area has 1 – 2½ story homes. T. 67. The architecture is an eclectic mixture of brick and wood siding in various colors based on input from the community. T. 68.

EYA did not opt to do an R-60 cluster development because the townhouse communities which EYA has developed this close to Metro are developed at much higher densities and are still compatible with surrounding residential homes. T. 73. In addition, the higher density fulfills "Smart Growth" concerns—a lower density is an underutilization of the site because there are very few opportunities in Montgomery County to bring people in close proximity to public transportation. T. 73-74. He believes that if the County does not take advantage of the density where available, they will not achieve the goal of 75,000 new dwelling units expressed in the Housing Element of the General Plan. T. 73-74. Nor will the County recoup its investment in Metro.

On cross-examination, Mr. Youngentob acknowledged that there is no master plan requirement that developments comply with "smart growth". T. 79. He believed that if developed with half the number of units, it would be less compatible with the neighborhood because the neighborhood includes the Silver Spring CBD. T. 81. He believes that it's better to have a variety of housing in urban areas and he considers this adjacent to an urban area. T. 81.

He also acknowledged that smart growth takes into account the character of individual neighborhoods and that it should strengthen the neighborhood. T. 88. Smart growth should not significantly increase traffic in a neighborhood. T. 90. He heard testimony from neighboring community members that the streets in this area are frequently used to jog and take their children on a stroll. T. 92. He was not aware of the 10 principles of smart growth listed on the EPA website. T. 93.

2. Ms. Cheryl Cort:

Ms. Cort testified that she is the Policy Director for the Coalition for Smarter Growth, a nonprofit group working in the Washington Metropolitan Area to have land use decisions accommodate growth in ways which enhance existing communities and protect our natural and historic resources. T. 118. She is also Chairperson of the Washington Sustainable Growth Alliance. T. 118. She is providing testimony on behalf of the Washington Sustainable Growth Alliance, which is a coalition of businesses, civic organizations and environmental groups that work on smart growth. T. 119.

Their smart and sustainable growth recognition program recognizes development proposals that exemplify smart growth principles to encourage those types of developments. T. 119. They have chosen the Chelsea School redevelopment proposal for preliminary recognition in 2010 as meeting the qualities necessary for smart growth. T. 120. This is because it represents an increase in density within walking distance of a community, community center, retail uses, transit, and government services, such as civic centers, libraries and parks. T. 120. The proximity to these uses will reduce automobile dependency. T. 120. The project will also utilize environmentally sensitive site design measures and building efficiency designs. T. 120.

On cross-examination, Ms. Cort testified that the plan the Coalition had examined was different than the current plan. T. 123. She also testified that smart growth should not cause traffic to increase in the neighborhood and should promote walkability. T. 126. It also should promote

connection with neighbors, encourage walking and creating distinctive neighborhoods with a strong sense of place. T. 126. She had objected to the two-car garage design before the Planning Board. T. 127. She recommended a transportation management plan and was told that would be dealt with at the site plan level. T. 127.

She did not think that the change in the alignment of the roadway would have an impact on the Coalition's preliminary recognition of the project. T. 136.

3. Ms. Lisa Wilson:

Ms. Wilson testified in opposition to the petition. She stated that, in 1999, she was invited by the Planning Board to become a member of the Citizen's Advisory Committee working on the Northwest Silver Spring Master Plan. She was invited because she lived in the community bounded by Cedar Street, Dale Drive and Ellsworth Drive. T. 140-141. She testified that the Committee discussed specifically the possibility of placing townhouses on the Watt property. That property did, in her opinion, appropriately get increased density without sacrificing the nature of the community. She also stated that the Committee addressed the importance of maintaining Cedar Street as a protection because the community was so small.

On cross-examination, she stated that the discussion on Cedar Street focused on whether those existing single-family homes could be used for commercial purposes and that street was really defined as the buffer from the central business district. T. 142.

Ms. Wilson further testified that her name is listed on page vi of the North Silver Spring Master Plan as being part of the 12-person North Silver Spring Master Plan Advisory Group. T. 144. She does not agree with the interpretation of the Master Plan from Nancy Sturgeon stating that it did not intend to prohibit townhouses anywhere else in the master plan area. T. 145.

4. Ms. Meg Klabatt:

Ms. Klabatt testified in favor of the petition. She is not in the SOECA area, but is a neighbor of the area. She believes that the townhome option provides the ability to live close to work without a long commute without having a million dollar home. T. 148.

5. Ms. Tina Slater:

Ms. Slater testified in support of the application. She lives approximately one-half mile from the Chelsea School just on the other side Wayne Avenue. T. 150. She feels that the project is a logical bridge between single-family homes, a public library, an 11-story apartment building and a multi-story senior residence plus a row of single-family homes converted to professional offices. T. 151. She is pleased that 10 of the homes will be moderately priced units in proximity to the Metro. She doesn't believe that residents of the development will contribute to rush hour traffic because of the proximity to the Metro. T. 150-151.

6. Elizabeth Natsios:

Ms. Natsios testified in support of the petition. She believes that it offers attractive, practical housing at a good location. T. 155. She stated that she likes the mix of old and new, the preservation of the Riggs-Thompson House in conjunction with the newer homes. T. 156. This adds to the sense of "place" that is often missing in this area. T. 157.

7. Mr. Kenneth Fuller:

Mr. Fuller testified in support of the project. He has lived in the Silver Spring area for the last 11 years and loves Silver Spring. T. 159-160. He also loves its diversity and feel that there is a lack of new housing in Silver Spring. Townhouse communities attract different types of people, including younger families and those seeking to be near transit. This adds to the diversity of Silver Spring. T. 160. They have also seen several EYA projects around the area and believe that they are of excellent quality and integrate well with the area. T. 160.

8. Mr. Lew Winarsky:

Mr. Winarsky testified in support of the petition. He has lived in Woodside Park for the last 26 years. He supports the project because he believes that it will add to the diversity of Silver Spring and the ability to walk to the public, commercial and transit amenities in Silver Spring while reducing peak rush hour traffic. T. 164. He believes that EYA does quality developments that maintain a park-like setting while incorporating historically significant buildings. T. 165.

9. Mr. Jonathan Bernstein:

He is a member of SOECA and supports the petition. T. 160. He believes that the new development will improve safety at night along that block of Ellsworth because other SOECA neighbors avoid the area near the Chelsea School. T. 169. He also believes that EYA provides developments that are of high quality and sensitive to community concerns. He does not feel there is any fear that the project will lower housing values. T. 169. He is impressed with how much EYA has listened to Springvale neighbors who are most concerned about the project. T. 159. He believes that any new Master Plan would recommend an increase in density for the Chelsea School property because of its proximity to downtown Silver Spring. T. 170. He has heard that EYA needs a certain density of development to proceed with the development. T. 172.

10. Liz Brent:

She lives in the immediate neighborhood of Chelsea School and supports the petition. T. 174. She feels that the block along the parking area for the school is not well maintained and at night a “dark, unneighborly stretch”. She would like new people on the block and feels that the property’s proximity to downtown Silver Spring is too valuable to become single-family homes. T. 175. She does not want to see a typical suburban development in the neighborhood. She believes that EYA produces quality projects. T. 175-176.

11. Mr. Miguel Iraola:

Mr. Iraola qualified as an expert in land use planning and testified in support of the petition. T. 194. The Applicant is applying for a local map amendment to rezone approximately 4.85 acres from the R-60 to the RT-15 Zone. T. 197. He described the property as being rectangular with public street frontages on three sides, Ellsworth Drive to the east, Springvale Road to the north, and Pershing Drive to the east. There are some special exceptions for non-resident professional office along Cedar Street. The only sidewalk currently existing for the full length of part of the perimeter of the site is along Pershing Drive.

Mr. Iraola testified that, in his opinion, the surrounding area for the subject property is defined by four public streets: Dale Drive to the north, Wayne Avenue to the east, Georgia Avenue to the south, and Colesville Road to the west. T. 203-204. This encompasses approximately half of the Seven Oaks-Evanswood neighborhood and a portion of the Silver Spring CBD. T. 204. At the Planning Board public hearing, the Chairperson of the Planning Board believed that the neighborhood was drawn too far to the south and to the north. T. 205. The border of the Central Business District is located on Cedar Street; he believes that a logical place to set the boundary would be Fenton Street. T. 205. To the north, Mr. Iraola believed that Woodside Parkway. This still centrally locates the subject property within the context of the revised boundary. T. 205.

The neighborhood is a diverse cross section of land uses which transition from the Silver Spring urban core near Metro to the lower density residential neighborhoods to the north. The subject property is located within a transitional area where the residential neighborhood meets the CBD. T. 207. The CBD has a diverse mix of uses including high-rise residential, institutional, retail, entertainment and civic uses. T. 208. Generally, the CBD is organized with the most intense uses in the core near Metro. Density and height then transition from the core to the edges. Properties located within the CBD but along the edges are typically zoned CBD 0.5. This creates a “tent effect” where the highest density uses near the core taper down as development approaches the edges. T. 210.

The Seven Oaks-Evanswood neighborhood is predominantly single-family detached homes two to three stories in height, primarily built in the 1930s. Within the Seven Oaks portion of the neighborhood, the land uses are very diverse and include high-rise apartments within the planning area, such as Colesville Towers. T. 210. There is also Springvale Terrace senior housing located at Springvale Road and Wayne Avenue, and a small office component that is located on the corner of Colesville Road and Cedar. T. 211. The neighborhood includes civic uses such as a library and Ellsworth Park. T. 211. The street pattern within the neighborhood is a modified grid network, with long-established access restrictions to reduce cut-through through the neighborhood. T. 211-212. Many of the streets have no sidewalks. The existing single-family homes average approximately 1600 square feet in floor area and are generally of traditional architecture. Most of the neighborhood is zoned R-60. T. 212. The master plan area includes some townhomes, including those in the Woodside neighborhood and Woodside Courts along Georgia Avenue. T. 213.

Mr. Iraola described those properties immediately surrounding the subject property. Confronting the property on the north is Springvale Road and Springvale Lane. There are approximately 13 single-family detached homes, 9 of which are on Springvale Road. All are zoned R-60 many with walkout basements. There are no sidewalks on this street. To the northeast, along Springvale Road at Pershing, are the 156-unit Springvale Terrace senior apartments. T. 216. It is zoned R-60 and operates under a special exception. Confronting the project to the east across Pershing are five one-family detached homes. The home closest to Cedar Street operates as a special exception. T. 216.

Adjacent to the property to the south are nine single-family detached homes zoned R-60. Approximately seven of those properties operate as non-resident professional offices. T. 217. Confronting the subject property to the left is a small park zoned R-60 at the intersection of Cedar and Ellsworth. Just beyond the park is a 275-unit multifamily structure, Colesville Towers. The

Silver Spring library is zoned R-60 and just north of that is Ellsworth Park, which is split-zoned R-T 12.5 and R-60. T. 219.

The Schematic Development shows 77 dwelling units: 76 townhomes and one single-family home which is the Riggs-Thompson House. The proposed density is 14.67 dwelling units per acre and includes 12.5% (10) moderately priced dwelling units. T. 222.

A new private street bisects the projects and provides access to rear alleys and garages. The townhouses are oriented perpendicular to and set back from Springvale Road. The Applicant proposes to include sidewalks along the new private street as well as sidewalks, curbs and gutters along the perimeter. T. 222. If the alignment of the private street was changed, this would not affect the access to the rear alleys and garages. T. 223.

Each “end” of a townhouse row along Springvale Road will be designed architecturally with a front façade to complement the existing homes across the street. T. 223. Townhomes are appropriate as a building type, because they absorb the grade on a sloping site and can provide additional open space. T. 223.

All of the new building fronts will orient either to streets or to open space. The internal townhouse rows confront each other with a court yard in between rows. T. 223. The two primary open space amenities are located at each end of the site, one on the corner of Ellsworth Drive and one on the corner of Pershing. T. 224. These serve as pocket parks and will include landscaping, seating, and pathways. There is a linear area of open space along Springvale that links the two open space areas. T. 224. These open spaces will be freely accessible to the public. T. 224.

Mr. Iraola testified that the remainder of the green area is “semi-private” in nature. This includes the area along the southern edge of the property and the courtyard spaces between the rows of townhomes. T. 224. The total amount of green area is approximately 2.4 acres or 45% of the gross tract area.

The setbacks from the public street right-of-way range from 22 feet along Ellsworth and 25 feet along Springvale Road, approximately 20 feet along the southern border, and approximately 62 feet in the area of open space. T. 224.

Mr. Iraola also testified regarding the relationship between the Riggs-Thompson House and the private through street. Staff of the Historic Preservation Commission has recommended a realignment of the road shown on the Schematic Development Plan to provide an additional buffer between the historic house and the street. T. 226. The historic setting for the Riggs-Thompson House is along Pershing Drive, going west along Springvale Road, to the row of townhomes that orient directly onto Pershing southbound to the other row of townhomes that face onto the Riggs-Thompson home. T. 227. The special exception plan for the Chelsea School showed a driveway at approximately the same location.

Mr. Iraola testified that the Schematic Development Plan conformed to the standards of the R-T 15 Zone. T. 228. The purpose clause of the R-T Zones provide that R-T zoning should be used where (1) it is recommended for a specific piece of property in the master plan, (2) it is appropriate, and (3) it would serve as a transition between commercial development and single family zoning. T. 229-253.

Mr. Iraola stated that there is no site-specific recommendation for R-T zoning in the relevant Master Plan. T. 228-229. In his opinion, the appropriateness of a site for a specific zoning is addressed by location, density, and compatibility of the project with the surrounding community. T. 229. He testified that townhouses are appropriate in this case because they will preserve a residential use on the site and provide housing diversity. He testified that the density of the site is appropriate given the site's proximity to Metro, which is approximately 2,600 feet away. T. 230. The site is also near commercial services in the Central Business District and reduces automobile trips. This particular proposal also provides open spaces which will be accessible by the public. This is achievable because of the flexibility of design permissible under the R-T Zone. T. 231.

The location of the property also contributes to the appropriateness of the R-T Zoning category. The property is surrounded by a mix of uses, including the Central Business District, multi-family uses, senior housing, public parks, nonresidential professional office and moderate density residential. T. 231. The site's proximity to Metrorail also makes placement of residential townhomes on this site appropriate. T. 231.

Mr. Iraola testified that the existing use is an institutional use. Institutional sites are frequently found appropriate for R-T zoning, as evidenced by the Council's decisions in G-798, G-739, and G-822.

There is also a substantial public investment in Metro which will be utilized by the townhomes. The "walkscore" for the proposed development is 80. T. 231.

According to Mr. Iraola, development of townhomes in the R-T 15 Zone also fulfills the transitional purpose of the R-T Zone. T. 232. The proposed townhomes will provide a transition from the commercial, industrial and high-density residential land uses in the Central Business District and the single-family detached homes in the immediate neighborhood. T. 232. The block bordered by Cedar Street, Ellsworth, Springvale and Pershing includes non-residential professional offices along Cedar Street. The use of the "end cap" units along Springvale will also serve as a transitional aspect of the development. T. 232. A residential townhome development will reinforce the existing residential use of the area and buffer the single-family detached homes from the high rise residential. T. 234.

In Mr. Iraola's opinion, the proposed townhomes are also compatible with the surrounding area because they provide an attractive streetscape and add pedestrian access to the Central Business District. T. 234. There are currently four multi-family developments within four blocks of the subject property. T. 238. The density in the surrounding neighborhood ranges from 6 dwelling units per acre on the interior to 430 units per acre in the Central Business District. The proposed development would provide a transition going from south to north from an approved 112 dwelling

units per acre development in the Central Business District, to 6 dwelling units per acre along Cedar Street, then to 14.6 dwelling units per acre at the subject property. It also provides an east/west transition between Colesville Towers at 220 dwelling units per acre to Springvale Terrace at 58 dwelling units per acre. In Mr. Iraola's opinion, 14.6 dwelling units per acre is a moderate transitional density. T. 238-239. The townhome development is compatible with the current neighborhood because both the townhouses and the single-family detached are fee simple uses. T. 240.

Mr. Iraola stated that the neighborhood opposed the existing special exception for the Chelsea School because the property served as a buffer between the single-family detached homes and the Central Business District. The community was also concerned about traffic generated by the school, including delivery trucks, inadequate landscaping, excessive grading, and non-school evening activities. T. 239-241. The proposed townhouse community would resolve these concerns.

In Mr. Iraola's opinion, the compatibility of the R-T Zone is enhanced by providing additional building setbacks on three sides of the property, the building orientation, massing of the structures and working with the existing grade on the site. T. 241. The ends of the six units along Springvale will be designed to look like six homes fronting the street as opposed to 13 townhouse units facing the street. T. 241. The architectural style proposed is traditional and complements the existing homes in the neighborhood. T. 242. The historic Riggs-Thompson House will also be enhanced because non-contributing elements will be removed and the house will be refurbished. T. 242. Nor will traffic generated by the townhomes disturb the existing traffic patterns in the area because the existing traffic restrictions will be met. In summary, the proposed development reinstates residential use, provides additional setbacks and open space buffers, orients buildings to the street or to open space, complements the architectural style of the neighborhood and maintains and improves existing traffic patterns. T. 243.

Mr. Iraola also testified that the proposed development meets the development standards of the R-T Zone. The minimum tract area is 40,000 square feet and 5.25 acres are provided. The maximum density is 15 dwelling units per acre and 14.67 are proposed. In addition, 12.5% of the units (or 10 units) will be moderately priced dwelling units. T. 243-244.

Mr. Iraola testified that a waiver of the setbacks from single-family zones is required along the southern border of the site. T. 245. The developer shifted the townhouse units to the south (adjoining the rear of the homes along Cedar Street) in order to provide more open space along Springvale Road. This serves to trade more valuable open space along Springvale for less valuable open space along the rear yards of the homes confronting Cedar Street. T. 245. He testified that the proposed development meets the minimum 20-foot setback from a public street; the setback from Ellsworth is 22 feet, the setback from Pershing is 61.6 feet, and the setback from Springvale is 25.5 feet. T. 245-246. The maximum building height permitted is 35 feet and the units are proposed to be 35 feet. The green area required is 30% and the green area proposed is 45.7%. Two parking spaces per units (or 156 parking spaces) are required and 168 are provided. T. 246-247.

Mr. Iraola testified regarding compliance with the relevant master plan. He stated that the proposal is in “general conformance” with the master plan. T. 253. Master plans are typically organized by themes or areas. The master plan covering the area of the subject property has several major themes. T. 253-254.

The chapter of the master plan is entitled “Community Preservation, Stability and Character.” T. 254. The goal of the plan is to preserve the existing residential character of the neighborhood. The plan recommends enhancing factors such as streetscape, landscaping, lighting, sidewalks, and gathering spaces which enhance the residential character of the neighborhood. Mr. Iraola testified that the proposed townhouse development would fulfill that goal by providing sidewalks with curbs and gutters, landscaping, and public access areas. T. 254.

Mr. Iraola stated that the plan recommends stabilizing the area by limiting the impact of traffic on the surrounding neighborhood. The proposed development meets this goal by reducing the number of trips permitted by the current special exception approval. The master plan also recommends preserving the residential character of the neighborhood by limiting commercial use. In this regard, Mr. Iraola testified that the existing school has some aspects of a commercial use, such as truck deliveries and buildings with large footprints, which would be eliminated. T. 255.

If approved, Mr. Iraola testified that the development would put the historic Riggs-Thompson House back into a residential context which will enhance a sense of place and community stability. T. 255.

From a land use perspective, the plan recommends reconfirming the existing R-60 zoning. The Chelsea School was not discussed in the plan based on the assumption that it would stay at its current location. T. 256. R-T zoning, however, has been placed on property without a master plan designation in several other cases, including G-798 (the Good Counsel property), G-839 (the Christian Life Property), and G-858 (the Katz property). The plan does offer some guidance on the design of townhomes along Georgia Avenue. Another zoning case, G-817 (Court's of Woodside) was approved using the guidelines for townhouse development from the master plan. T. 257.

The second chapter of the master plan is entitled "Commercial Centers—Character and Vitality". The main recommendation here is to preserve the north and west Silver Spring neighborhoods by using Cedar Street as a buffer with non-resident professional offices as a transition between the Central Business District and the single-family homes to the north. In his opinion, the master plan viewed the Chelsea School as a transitional property—the plan notes that the Cedar Street non-resident offices were isolated from the community by the Chelsea School, thus characterizing the combination of both as a buffer area. T. 258. Mr. Iraola also stated that he believed that homeownership of the proposed development (which will be in fee simple ownership) will also promote neighborhood stability. T. 258-259.

The master plan's third chapter is entitled, "Neighborhood Friendly Circulation Systems". T. 259. The chapter recommends protecting the residential character of the community by limiting commercial and through traffic. T. 259. The schematic development conforms with this recommendation because it does not disturb existing traffic restrictions designed to curb cut-through traffic through the neighborhood. T. 259. The plan's second recommendation is to improve pedestrian access to shopping areas and community facilities by providing wide tree-lined sidewalks and safe pedestrian crossings. The proposed development fulfills this recommendation by providing sidewalks along Pershing Drive, which provides direct access to the Metro, Whole Foods, civic buildings, and Veteran's Plaza. T. 259-260.

Approval of the townhouse development on this site is also in conformance with the Housing Element of the General Plan, which finds that Montgomery County will need an additional 75,000 dwelling units over the next 20 years. The County has already developed 91% of its zoning capacity and should make the most of locations proximate to Metro. T. 260.

Public facilities will be adequate to support the development, according to Mr. Iraola. T. 263. He stated that the property is proximate to fire and rescue Station #1 at the intersection of Georgia Avenue and the CSX tracks. T. 263. He also testified that there is adequate capacity in the public school system, provided that the developer pays a fee to the Montgomery County School System. T. 263.

Finally, Mr. Iraola testified that the project is in the public interest because it furthers smart growth principles, including utilization of the public investment in transit. It also addresses the long-term policies outlined in the Housing Element of the General Plan and will add to the stock of MPDUs in the County. T. 265-266.

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1. Mr. Miguel Iraola:

On cross-examination, Mr. Iraola testified that the Board of Appeals concluded that the school would not be a nuisance provided that it complied with a transportation plan mitigating the impact of the traffic and parking conditions at the school. T. 9. The Board's approval required that all bus access and bus parking be at the Ellsworth Drive side of the site. T. 9. According to photographs in the record, buses are parking on Springvale Road and Pershing Drive. T. 10. The special exception also required the school to install sidewalks on Springvale Road. T. 16.

Mr. Iraola also testified that the property would have to proceed through the subdivision because it was no longer a school. T. 17. There is a condition on the record plat requiring recordation of an environmental easement, but he has never seen the recorded easement. T. 18.

Mr. Iraola testified that the schematic development plan delineated the environmental setting as the southern property line closest to Pershing Drive, most of the Pershing Drive frontage up to the intersection with Springvale Road to the east, curving to the west around Springvale Road on the north, and at some point off the face of the townhomes as the western boundary. The private roadway runs through the environmental setting. T. 20. Appendix D of the Master Plan recommends that the environmental setting for the property be 1.4 acres in the event the Chelsea School is not approved. T. 21. EYA is not proposing an environmental setting of 1.4 acres. T. 23. Even though the Chelsea School will no longer be occupying the property, the language in the Master Plan states that the environmental setting will be 37,056 square feet. It does not recommend reverting back to the 1.4 acres in the event the school leaves the property. T. 20-23. The exact acreage of the environmental setting has not been delineated yet. T. 23. He believes the area shown on the schematic development plan is closer to 37,056 square feet. T. 23. He did not know whether the public road, shown on the special exception plan bisecting the environmental setting, had ever been

approved by the Historic District Commission and didn't think it had actually been constructed. T. 26.

Mr. Iraola agreed that Colesville Towers was built before both the 1978 and the 2000 Master Plans. He was not aware that the 1978 Master Plan intended to address dense development like Colesville Towers which pre-existed the Plan. He came in on the "tail end" of the 2000 Master Plan. T. 26-27.

All of the properties surrounding the subject property are zoned R-60 rather than the Central Business District. T. 28-32. Both the triangular park and the library near the subject property are zoned R-60. It is not unusual to have a library in a residential zone. T. 29. The homes along Cedar Street are also zoned R-60 and are improved with single-family detached homes. T. 29. Only four have approved special exceptions. T. 29-30. Single-family detached homes, zoned R-60, front the property along Pershing Drive. T. 31. Single-family homes also border the same block along Wayne Avenue. T. 30. The Springvale Terrace Retirement Home, located to the northeast of the property, is also zoned R-60. T. 31. The property does not have frontage on a major street. T. 32.

While Mr. Iraola stated that he did not consider the subject property to be located on an interior block of the neighborhood, the property could only be accessed from interior neighborhood streets. T. 32. There is no other property located in North Silver Spring zoned for townhouses at a density of R-T 15. T. 33. He also agreed that the Silver Spring CBD master plan was adopted concurrently with the North Silver Spring Master Plan and therefore, both were adopted with the understanding that Metro would be located in Silver Spring. T. 34. The Silver Spring Master Plan recommended CBD 0.5 zoning to provide a transition to the residential neighborhoods beyond the CBD. T. 34

Mr. Iraola stated he based his recommendation for higher density at the site in part due to the proximity of the proposed Purple Line. T. 35. He did not recall whether the functional master plan for the Purple Line referenced the area. T. 35.

Mr. Iraola agreed that he had used 3 approved rezoning cases to support his argument that institutional uses were often replaced with the R-T Zone. In the first, G-798, Good Counsel, he agreed that there had been a settlement agreement with the neighborhood and the application was unopposed at the public hearing. T. 38. He also agreed that the approved schematic development plan included 6 single-family homes across the street from the single-family homes on Amherst Avenue. T. 38-39. There was a buffer on the north side between the townhomes and the property line to the single-family homes to the north. T. 39. He agreed that the density proposed of 13.7 units per acre was less than the density proposed here and is closer to the density of the R-T 12.5 zone with MPDUs. T. 39. He noted that the Hearing Examiner's Report found that the development was compatible because the mixture of single-family homes, townhomes, attached single-family dwellings and significant open space created an area of low to medium density in keeping with the mixed character of the surrounding land use. T. 40. The Report also noted that the development would have a greater density than the homes in the R-60 and R-90 properties, but would have a density lower than in the adjacent multi-family uses in the R-30 and R-20 Zones. T. 40. He also agreed that the binding elements required that the Rafferty Center (identified as a gym/multi-purpose recreational facility) be maintained as a public facility if a public entity assumes responsibility. T. 40-41.

The second zoning approval upon which Mr. Iraola's direct testimony was based is G-822, Oxbridge. T. 41. That approval was for 30 townhomes at 5.3 units per acre under the R-T 8 Zone. T. 42.

The third rezoning case on which Mr. Iraola had used to support his direct testimony was G-858, Katz, which approved 27 townhomes at 10.7 units per acre under the RT-12.5 Zone. Ten of the units fronted directly onto Georgia Avenue and 7 directly confronted or abutted single-family residences. T. 43-44. He could not conclude that there were only three single-family residences impacted by the project. T. 44.

The last rezoning case Mr. Iraola mentioned in his direct testimony was G-817, the Woodside project. This rezoning approved 23 single-family townhomes and three existing single-family homes at a density of 9.7 units per acre. T. 45. He agreed with a statement from the opinion stating that, “Georgia Avenue conveys major commuter traffic volumes past the site and separates the residential neighborhoods of Woodside and Woodside Park which are stable and mature neighborhoods.” He stated that the rezoning approval indicated that two homes would be directly confronting or abutting single-family homes. T. 46.

Mr. Iraola stated that even though meeting all of the R-T Zone standards didn’t create a presumption that the resulting development would be compatible with surrounding communities, he argued that R-T is a floating zone, but “for all intents and purposes” is a Euclidean Zone. T. 48. He did not feel it necessary to compare the proposed development with what is permissible under the R-60 Zone because when he reviewed the case, it seemed very appropriate given the property’s location and his familiarity with the CBD Zoning. He felt that R-60 was not appropriate given the proximity of this property to the Metro, even though R-60 is the existing zoning. T. 49.

Mr. Iraola further agreed that the maximum density permissible under the R-60 cluster option was 39 units with a minimum size of 1500 square feet unless the Planning Board approves a smaller size. T. 51. He didn’t believe it would be a problem to get the maximum density under the R-60 cluster for the subject property. T. 52.

According to Mr. Iraola, 76 units are more appropriate than 39 units because it’s a better transition from a density standpoint when confronting the CBD within a transitional block. T. 58. In his opinion, the density also affords additional people living within the proximity of the CBD to take advantage of the revitalization efforts that occur with the CBD. He believes that the RT-15 Zone was developed in order to assemble and redevelop land near transit stations. By adding additional density, it meets that goal and the goal of the housing element of the General Plan. T. 59. Lower density would not meet those goals as well. T. 59.

Mr. Iraola testified that many of the benefits of the development he cited in his earlier testimony could possibly be met with less density, including single-family homes, additional setbacks along three frontages, a walkscore of 89.0, sufficient parking, more open space, more school capacity, and diversity of housing stock in Silver Spring. T. 63.

On redirect examination, Mr. Iraola argued that the subject property is located on a transitional block between a 112-unit per acre development proposed in the CBD and the moderate density of the Seven Oaks-Evanswood neighborhood. The block bounded by Pershing, Cedar, Springvale and Wayne has similar characteristics with the difference that the Springvale Terrace is located on the north side across Springvale Road. T. 69. It has multi-family on one side, institutional opposite Pershing, single-family detached along Wayne and a mixture of office and retail along the CBD. He believes that the townhomes will be much more compatible with this block because it will reestablish a residential rather than an institutional use. T. 69.

With regard to the setback from the property line along the rear yards of the homes fronting Cedar Street, he stated that the required setback is 30 feet and they are providing 22 feet. T. 69. The reduced setback was necessary to accommodate the additional setback dimension along Springvale, so the plan was "compressed". T. 70. Nor did the plan have any front treatment along Private Street A and in order to provide that, the southern setback was reduced. T. 70. The added dimension along Springvale Street allows for a double row of street trees which adds to a promenade dimension. T. 71. He feels confident that the Planning Board will approve a waiver of the setback. T. 71. A re-subdivision and a new environmental setting would have to be approved as well. T. 72. The forest conservation easement would have to be approved during site and preliminary plan approvals. T. 72. He believes that the roadway through the environmental setting is also approvable. T. 73. There is an existing access point to the south that could be explored that was approved by the Board of Appeals. T. 73. The access point can slide anywhere along Pershing. T. 73. Access to the site could also be along Springvale. T. 73. Strathmore Hall is an example of a historic home where the parking

area and access drive are located on the east side of the building, between the historic building and the concert hall. T. 74.

Two sticks of 10-12 townhomes are located in Silver Spring along Fairview Road, which is within the North and West Silver Spring Master Plan area. There are also townhome developments in Montgomery Hills. T. 75.

According to Mr. Iraola, the neighborhood surrounding the “Good Counsel” property approved for R-T zoning in G-698 is different than the area surrounding the subject property. It is several blocks from the Wheaton CBD and is not really within walking distance of Metro. This property is much more suited for pedestrians to travel to the CBD. T. 75. He believes that RT-15 is a much better use of the property *mainly because of its proximity to the CBD*. T. 76. In addition, that property was an “edge” adjacent to Georgia Avenue. T. 76. Mr. Iraola also believes that the Rafferty Center has been demolished and replaced with townhomes. T. 76.

The Katz site is different from the subject property, in Mr. Iraola’s opinion, because it is nowhere near major Metro access and is much further from the CBD. T. 76. He believes that RT-15 is much more appropriate for the subject property because it was created to be able to add density to properties located near Metro.

The Woodside townhomes at Noyes and Georgia Avenue is further away from the Metro than this site. T. 77. This property is far superior to the subject property because Ellsworth Drive is almost a direct link to Metro. During the revitalization of Silver Spring, Ellsworth Drive was changed from a “front street” to a “rear street”. T. 78. It has attractive storefronts, the streetscape has improved, and it leads directly to downtown Silver Spring. T. 78. Between Georgia and Wayne Avenues there is a pedestrian signal added so that people could cross the street and the Discovery building also permitted direct access to lead to the Metro. T. 78. He is not aware of any requirement that a proposed development plan be compared with development under existing zoning. T. 78-79.

If developed under the R-60 cluster option with MPDUs, Mr. Iraola believes that McMansions could be developed here. T. 80. The Watts property is an example of this type of development, with homes which are on average 3,400 square feet. T. 80. Surrounding the larger homes are very modest homes of 1,400 square feet. The homes are very large and use up the entire lot coverage permitted under the R-60 Zone. T. 80. Development under the R-60 Zone could result in filling homes and lining them along the perimeter of the property with a number of driveways accessing Springvale. T. 80. This would result in a lot more vehicles using Springvale than that proposed under the schematic development plan. T. 81. He also believed that development in the R-60 Zone would yield less green space than development under the schematic development plan. T. 82. That space could be internal to the site as opposed to along the edges. T. 82.

In his opinion, the proposed rezoning meets the first prong of the purpose clause of the RT-Zone because it substantially conforms to the master plan, it is appropriate because it is compatible, and it provides a transition or buffer from the Silver Spring CBD. T. 83. He believes the application is in the public interest because it provides more and better quality open space than traditional R-60 zoning, the Planning Board (which acts in the public interest) has endorsed the plan, and it meets the criteria of the housing element of the General Plan which, in his opinion, recognizes that if appropriate density is not placed near transit, it puts additional pressures on the rural areas of the County to develop. T. 84.

On re-cross, Mr. Iraola agreed that the open space could be combined on the property under a less dense R-T Zone or R-60 cluster. T. 86. He agreed that the real purpose of the RT-15 Zone is to produce more units at appropriate locations. T. 86. He also agreed that if he removed one unit on each townhouse row on the north side of the property, there would be no need for a waiver of the setbacks. T. 86.

2. Mr. Tom Slagle:

Mr. Slagle testified that he has lived at Springvale Lane for approximately 34 years. The school is not in good condition, so he has been looking for a change. Based on his knowledge of EYA's project at Seminary Place, he believes the application is a good plan. T. 95. He lives on the corner of Springvale Lane and Springvale Road. They are satisfied with the layout of the private road from Ellsworth to Pershing.

On cross-examination, he testified that he couldn't say whether or not less density would be appropriate because he wasn't sure that the units would sell. T. 96.

3. Mr. Mark Posner:

Mr. Posner supported EYA's zoning application. He has lived on Woodside Parkway for 24 years. He believes that his neighborhood is special because it is a blend of urban and suburban amenities. T. 98. He walks to the Metro station to commute to his job in D.C. T. 98. Despite this urban character, the neighborhood is quiet and he is able to enjoy a peaceful summer evening. T. 98. He participates in a number of community organizations and served as a member of the SOECA task force studying this zoning request. T. 99. He organized a meeting with neighbors and EYA, which resulted in a reconfiguration of the townhomes further from Springvale to create a linear park. T. 100.

He believes that the project will be beneficial to the neighborhood because it is located on the edge of the community adjacent to the Central Business District. Because of this location and because EYA has promised to honor the existing traffic restrictions, most of the traffic from the townhouses will flow almost directly in and out of Cedar Street rather than intruding on the neighborhood. T. 100. The project is also within easy walking distance to downtown Silver Spring and the Metro station as well as the purple line. T. 101. He thinks that location is also important in evaluating the density. Because of the proximity of the CBD as well as the Springvale Assisted

Living Facility, he believes that the townhouse project will provide an appropriate, compatible density. T. 101.

According to Mr. Posner, traffic will have only a modest impact on the proposed development. T. 101. When 33 new houses will be built around Ellsworth Street and Woodside Parkway, his observation is that the houses produced barely a ripple in the neighborhood traffic. While this project is two times larger, it will replace an existing use that is a traffic generator, which was not the case with the single-family homes. T. 102.

In his opinion, he believes that the townhouses will integrate well into the existing community because they will be of similar height and design as the existing houses and be surrounded by ample green space. He foresees that the project will have a positive effect on the social life of the neighborhood. Having a development across from the park on Ellsworth will make that stretch of road less prone to crime and the green space near the assisted living facility will give those residents a place to enjoy the outdoors. T. 103.

Finally, he believes that it is important to consider whether the project will benefit the County as a whole. The project furthers smart growth objectives, because it is located next to downtown and within walking distance of the Metro.

On cross-examination, Mr. Posner could not answer whether development in the R-60 would be more compatible because he hadn't seen an actual plan. T. 104.

4. Mr. Wardell Townsend:

Mr. Townsend testified in support of the project. He and his wife are members of SOECA and have lived in the neighborhood for 20 years. He is pleased that the Silver Spring CBD has become more enlivened with development. T. 106.

He has served as a former housing development manager and community development director at the County level. In his opinion, the most critical aspect of land use is determining the best use of a limited resource, i.e., land. T. 106. He feels that the school has exhausted its practical

use because of its location and proximity to other development. T. 106. He believes that the proposed 76 townhomes can easily be accommodated by the community in every regard and feels that EYA's proposal reflects high standards of design, environmental balance and human appeal. T. 107.

On cross-examination, Mr. Townsend testified that his house does not directly confront or abut the subject property.

5. Ms. Anne Spielberg:

Ms. Spielberg testified in opposition to the rezoning request. She has lived a couple of blocks from the site of the proposed development for 18 years. She has been a member of SOECA for that time and headed the SOECA Task Force on redevelopment of the Chelsea School Property.

Ms. Spielberg presented the process by which SOECA decided its position on the rezoning request. EYA first presented its proposal to the community in April and May, 2010. During the course of those meetings, the community spent more than five hours considering the proposal and asking questions. T. 110. At the May meeting, those attending passed a resolution expressing their concern about changing the zoning on the site from R-60 to RT-15 because of the density that was being proposed, because of the elimination of Cedar Street as a buffer, and because of the precedential effect that it might mean to other properties in the neighborhood. T. 110. They formed a task force to study the proposal and to learn about the approval process in order to make recommendations to the membership and the Executive Committee. T. 110. She was appointed Chair of the committee by the association's then president. T. 110.

The committee conducted a poll of nearby neighbors who live on the streets most directly affected, Springvale Road and Lane and Pershing and Ellsworth Drive. Of the 66 houses polled, they received response from 36 homes or 55%. Based on their review, the task force recommended that the existing zoning be preserved because the zone requested was the highest density townhouse zoning. T. 111. Their recommendation was endorsed by the Executive Committee and adopted by

the members in fall. T. 112. The vote was 41 to 14, which for the association is a large meeting. T. 112.

Ms. Spielberg testified that the community was concerned because the RT-15 zoning is (1) not consistent with the master plan, (2) not appropriate given the density of the zoning that surrounds the property and (3) not a buffer given that it will sit immediately behind an existing low-density buffer of single-family homes along Cedar Street. T. 113.

The master plan, in Ms. Spielberg's opinion, is very clear that R-60 is the appropriate zoning for the area and its goal was to protect the integrity of the community, maintain and preserve the existing neighborhoods as well as stabilize the edges of the neighborhoods. This goal is inconsistent with RT-15 density which does not provide a transition between the lower density R-60 Zone and the more intense development of the CBD. T. 114.

Rather, Ms. Spielberg believes that the master plan unambiguously reconfirms the existing zoning within North Silver Spring unless otherwise specifically recommended and the residents have relied on this. T. 114.

The master plan recommends R-60 zoning for the Chelsea School (a density of 6 units per acre) and the only recommendation for townhouse redevelopment is along Georgia Avenue. Even along Georgia Avenue, which is categorized as a major highway in the master plan, the plan directs that townhouse development should be limited "to the blocks along Georgia Avenue and not encroach into the interior blocks." T. 114. This development is not located along a major road, arterial road or primary residential street and would be built on an interior block. T. 115. The plan would not make sense if it were intended to mean that the interior blocks along Georgia Avenue should be protected but no other interior blocks are to be protected. T. 115.

She believes that the master plan is clear about its concern to protect the interior neighborhoods. Under the plan, townhouse zoning was chosen as one method of creating a transition or buffer between those properties in North Silver Spring fronting on major streets or the CBD. T.

115. The 1978 master plan recommended professional offices along Georgia Avenue as the transition for that location. The 2000 master plan changed the transition to recommended townhomes. T. 115. On Cedar Street, the current master plan keeps the R-60 special exception for nonresidential offices as the best method of protecting that edge of the neighborhood and protecting the interior lots. T. 115.

The master plan continued the strategy of the 1978 Silver Spring Master Plan to use permit special exceptions in single-family detached homes along Cedar Street between Ellsworth and Pershing Drive as the buffer for their neighborhood. T. 116. The master plan does not reflect a need or intent to provide a “double buffer” behind the homes along Cedar Street. T. 116. She feels that this does not protect the neighborhood; rather, it attacks it because the buffer is now further away from the central business district at a higher density than the initial established buffer. T. 117.

The task force did look at the physical development of the surrounding area which reveals that on 3 sides the site is bounded by R-60 single-family homes at a density of 6 units per acre. There are along the north side of Springvale Road, to the east along Pershing, and the houses along Cedar Street directly abutting the subject property. T. 118. Only four of those houses are currently used as special exceptions for nonresidential offices. Five are still used as homes. T. 118. She has reviewed the record for all of the special exceptions and each opinion reflects the importance of maintaining the existing residential structures with few, if any, changes to the exterior. The opinions also emphasize that parking would be provided in the central business district in order to retain the landscaping and residential driveways. T. 118.

According to Ms. Spielberg, the western side of the property borders Ellsworth Drive and faces the current Silver Spring Library. The library is zoned R-60 and therefore is in keeping with the residential neighborhood. T. 118. She believes it is clear that the property is an interior lot.

Because the subject property is not considered part of the central business district, the density of the central business district across Cedar Street cannot be used to push the level of density into the

interior of the neighborhood when it was supposed to be contained within the CBD. According to Ms. Spielberg, it is not necessary to place this intense density and massing of 76 townhomes adjacent to a low-density buffer of nine homes that are required to retain their residential structures. T. 119.

Ms. Spielberg also testified that if the rezoning were approved, it would isolate the single-family homes on the block bordered by Pershing, Springvale, Wayne and Cedar. Instead of R-60 zoning, the block would be bounded by RT-15, the corner of the block fronts on the CBD and therefore needs protection. T. 119. While Mr. Iraola testified that there was a special exception on that block, it was an accessory apartment that was revoked in 1988. T. 120.

The only other neighboring special exception use is the Springvale Retirement Center. T. 120. That is a low-impact, quiet use with little traffic, cars or noise. She feels that it is inappropriate to boot-strap additional density from that use because its permitted as a special exception in the R-60 Zone. T. 120. Other recent development in the neighborhood has been within the R-60 zone, including the Watts property and the Ellsworth Court property. T. 120.

The only other nearby property that is not R-60 is Colesville Towers which is located on the corner of Colesville and Springvale Roads to the west of the subject property. T. 121. Colesville Towers was built in the 1960's well before the existing and previous master plan. On one side, it faces commercial development and lines up with the buffer houses that exist on Cedar Street. According to Ms. Spielberg, only a tiny point can be said to be opposite the Chelsea School property. Even this point is buffered by a little triangle of land zoned R-60. T. 121. The access for Colesville Towers is off of Colesville Road, not on the neighborhood streets. Nor is there an access from Ellsworth Drive as Mr. Iraola testified. T. 121. She believes that one must look at both diagonals and in front of the property, all of which are in the R-60 Zone. T. 122. Colesville Towers should not be used to justify the density on the Chelsea School site. T. 122.

Ms. Spielberg expressed concern regarding the density of the development. T. 122. She stated that the development "packs" the site in any way it can. It cuts into the environmental setting

of the historic property and comes very close to the historic house. She is concerned that the applicant hasn't made any binding element that protects the environmental setting of the Riggs-Thompson House. T. 122. The home was originally on 1.4 acres; this cuts into the environmental setting even further. T. 122. Nor does it meet the setbacks along Cedar Street. T. 123. The required green area is not 50 percent as would be required for a lower density R-T Zone. T. 123. If developed, this property would be the only townhouse development zoned RT-15 in North Silver Spring, even including the townhomes along Georgia Avenue. T. 123. The Fairview townhomes referenced by Mr. Iraola directly abuts property in the C-O commercial zone. T. 123. The three townhouse communities in Woodside Park, combined, do not have the number of units proposed here. They actually function as a buffer and are not "dumping" into interior streets. T. 123. The townhouse community on Georgia Avenue and Noyes has a density of 9.7 units per acre.

Almost half of the units here (36) are only 14 feet to 16 feet wide, so that 2-car garages will be difficult. The usual two-car garage is 20 feet and if the garages are not large enough, they will be spilling over onto the neighborhood streets. T. 123. The Department of Housing and Community Affairs said that the MPDUs would have to be four stories rather than three stories in order to meet current regulations. T. 124. The massing is very large, well beyond the surrounding R-60 zoned properties. T. 124.

In her opinion, the rezoning request is not compatible with the neighborhood. The community is under sustained development pressure from the Central Business District. Both master plans, for the Silver Spring Central Business District and the North Silver Spring area, clearly indicate that Cedar Street is the dividing line between the two neighborhoods. Rezoning this area to RT-15 would overturn decades of planning that continued to reconfirm the R-60 zoning on the north side of Cedar Street. T. 124. This rezoning would push development that was supposed to occur within the CBD into their neighborhood and fails to protect the edges or stabilize the neighborhood as intended. Rather the rezoning would place an incursion that is inappropriate and incompatible

because of massing and density. T. 125. If allowed here, it opens the possibility that numerous parcels within the neighborhood, such as the Springvale Terrace retirement community, the block of homes along Cedar Street, and the block bordered by Wayne, Springvale, Pershing and Cedar Street will also succumb to development pressure. T. 125.

Ms. Spielberg stated that the community is under pressure from many edges. She believes that the “edge” that needs to be protected in this case is the line dividing the community from the Central Business District. T. 127. She is also concerned that the purple line will place pressure on the eastern edge of the neighborhood along Wayne Avenue. T. 127. She does not feel that townhouses are the issue; in her opinion, maintaining the existing R-60 Zoning is the issue. T. 127.

On cross-examination, Ms. Spielberg agreed that the Board of Appeal’s opinion approving the special exception for the Chelsea School mentioned that the use serves as a transition to the Central Business District. She does not believe that the school is a problem in the neighborhood. T. 139. She believes the buffer is the homes along Cedar Street. T. 139. She also agreed that townhouses could be a transitional use. T. 140. She agreed that certain of the demographics of the homeowners might be similar to those of the neighborhood and that all would be welcome to join SOECA. T. 143. She could not say whether a row of seven houses along Springvale developed under the R-60 Zone would be compatible. She stated that she had nothing to contradict the population forecast contained in the Housing Element of the General Plan. T. 148. She also stated that SOECA opposed an above-ground plan for the Purple Line, but supported the Purple Line if built underground. T. 148. She was not involved in the special exception for the Chelsea School. T. 153.

Ms. Spielberg also stated that she could not say whether potential trips generated by full enrollment of the school would adversely impact the neighborhood because a traffic management plan was approved by the Board of Appeals and all school traffic had to enter and exit from Ellsworth. Because of the traffic restrictions, traffic did not pass through the neighborhood. T. 155.

She was aware that the subject property could be occupied by a parochial school without restrictions. She did not know that the parochial school which formerly occupied the site had more students than the Chelsea School, and was not aware of the basis of a 1999 letter from SOECA's attorney opposing the special exception. She did not find that the Chelsea School created a traffic problem. T. 158. She acknowledged that the Planning Board and Technical Staff disagreed with her that the property was not an appropriate buffer. T. 162.

On redirect, Ms. Spielberg stated that the parochial school, which did not have a special exception, was operating at the time of SOECA's 1999 letter stating that the Chelsea School would have an adverse impact on the neighborhood. T. 166. She purchased her home in 1993 because it was close to the central business district, but was protected by the division between the central business district and her neighborhood along Cedar Street.

On re-direct, she testified that the Chelsea School was leasing the property at the time of the 1999 letter from the SOECA's attorney to the school. T. 168.

6. Mr. Jim Eisenman:

Mr. Eisenman testified that he lives on Springvale Road directly across the street from the subject property and moved to his home in 1997. T. 170. Facing toward the school, to the left are the school facilities and to the right is the parking lot for the school. His house is surrounded on all sides except one by detached single-family homes. He and his neighbor's views are of backyards, front yards, and side yards. T. 170. There is very little traffic, and in his opinion, very little "rush hour" traffic like other neighborhoods. T. 170.

He stated that his view and the neighborhood would change for the worse if the school property were rezoned to permit 76 townhomes. Instead of looking out at mature trees, grass and mostly front yards, he will look at rows of townhouses and rows of balconies on the backs of townhouses. He stated that the neighborhood will be busy with many more people if the school remained or if single-family detached houses were built. T. 170. It's his understanding that the

townhouses will face each other and be closed off from the neighborhood, even with the side walk. Instead of looking out at peaceful, low-level activity, he will be witness to dense, packed in living just as a series of small apartment buildings. T. 171.

He testified that he doesn't believe that there's any need for an additional transition or buffer at this site. In his opinion, the single-family detached homes along Cedar Street are a sufficient buffer. T. 171.

Nor did Mr. Eisenman feel that the density proposed is appropriate because the property is surrounded on all sides by single-family detached homes. T. 171. If the school were to remain, then students and teachers would be much more appropriate to the density of the neighborhood because they are present during only part of the day and not at all during the summer. T. 171. To him, building rows of townhouses is not compatible with the single-family detached homes with mature trees and yards on all sides. It will be as if the townhomes were "air-dropped" into the community. T. 172.

Mr. Eisenman disagreed with the staff report that townhomes were "de facto" compatible with the neighborhood. He believes that that position turns the Zoning Ordinance on its head and there would be no reason to have all of these zoning rules. T. 172.

Mr. Eisenman stated that he and his wife moved into the neighborhood in part because of its proximity to the central business district and because they thought that it was good to have a school directly across the street. With some minor annoyances, he believes that the school has been a good neighbor and is better than having 76 townhomes and potentially 150 more cars across the street. T. 173-174. Had he been looking at his house today knowing that 76 townhomes would be located across the street, he would not buy the home. T. 174. His recollection was that the community supported the school. T. 175. Mr. Eisenman stated that when he bought his house, he invested in a community with a specific character of detached single-family homes. In 2004, they reinvested in the community through an extensive renovation in order to accommodate their children and chose to

renovate rather than move. T. 175. He disagrees with the Planning Board Chairman when she stated that in five years, he would decide that the development was okay. T. 176.

On cross-examination, Mr. Eisenman stated that he did attend several meetings on the special exception expansion of the Chelsea School and did not oppose it. T. 177. He had never seen the 1999 SOECA letter opposing the special exception. T. 178.

7. Mr. John Millson:

Mr. Millson testified that he had a bachelor's degree in mathematics from MIT, and a PSA from Berkeley. T. 185. He has worked at the Institute for Advanced Study in Princeton, Yale University, and the University of Toronto. T. 185. He moved to this area in 1989 and has taught statistics many times at the University of Maryland.

Mr. Millson testified that the statistics underlying the Applicant's traffic report were flawed. T. 186. He stated that the formula used to predict the number of trips generated by townhouse development does not take into account several relevant variables. T. 192. One of the relevant variables here is income—it's obvious that a five-car garage townhouse is not going to produce the same number of trips as a zero-car garage townhouse, yet the formula used does just that. T. 192. If the proposed development had townhouse units whose garages varied from 0-5 car garages, the formula might work, but it does not. T. 192-193. A study done by the Baltimore Washington Metropolitan Council, which included 260 properties from the Silver Spring/Wheaton area, broke down trip generation rates into important variables including income and car ownership. T. 193. If you have two cars, the rates become essentially the same as for single-family homes. T. 193.

Mr. Millson introduced a study he prepared. He surveyed people on his street and Springvale. He found that 24 out of 33 people drove to work. In statistics, this is known as a sample. He then estimated that there would be two people in each townhouse for a total of 152 people. He applied the percentage of people who drove to work in his sampling to the number of people in the townhouses

and it totals 100 trips in the morning alone. Both he and Dr. Cirillo, a professional traffic engineer from the University of Maryland, found the site would generate approximately 100 trips. T. 193-194.

Mr. Millson also submitted a traffic plan showing the traffic restrictions in the neighborhood. He and a neighbor designed the traffic plan in the early 1990's. Their main goal was to prevent cut through traffic on Ellsworth to the Beltway because Colesville Road is so congested. They were also concerned that people would cut through from the Beltway going south into the Central Business District using Ellsworth and Pershing. T. 197. Some of the restrictions worked, although some were ignored. T. 197. They requested traffic calming bumps, which the County refused, but they did permit a restriction prohibiting northbound traffic on Ellsworth. T. 198.

Mr. Millson testified that if traffic from the development exits onto Ellsworth, they may not turn right. In his opinion, most traffic exiting the site in the morning will be headed toward the Beltway. He believes that they will not exit from Ellsworth because of the congestion on northbound Colesville Road during the morning rush hour. T. 199. Because of this, he thinks that traffic will exit onto Pershing. They could turn right onto Pershing, then left on Cedar, and then access Wayne, but Wayne is another congested street. T. 198-199. As a result, he believes that traffic exiting onto Pershing will turn left (northbound) onto Pershing and use Pershing to get to Dale and then Colesville Road. T. 199. He submitted an exhibit showing what he thinks will be the results—there will be four streams of people trying to get to Ellsworth. Some would access Ellsworth via Springvale. Before the traffic restrictions were in place, there would be a huge stream of cars going this way from East Silver Spring to the Beltway, and the same situation at 5:00pm going in the opposite direction. T. 200-201. The other possibility is that they will proceed further north on Pershing and then cut over to Ellsworth. T. 201.

On cross-examination, Mr. Millson testified that the Applicant complied with all of the County standards when he performed the traffic study. He also stated that there is a very strong correlation between the number of cars and the number of people in a household. T. 203. He felt that

the best indicator of trips to be generated would be to use his sampling. T. 207. Even though people enjoy walking to Silver Spring on the weekends, they do not necessarily work within walking distance. T. 208. In his neighborhood, while people walk to Whole Foods and nearby CBD restaurants, they work along the I-270 corridor or in Virginia which requires them to drive. T. 208.

Mr. Millson stated that it would be better if those exiting the school property would be able to turn left rather than right because that would prevent traffic entering the neighborhood from any direction. T. 213.

On redirect, Mr. Millson testified that the diagram prepared by Mr. Brown would be better than that suggested by Mr. Harris because all of the traffic would be blocked from entering the neighborhood. T. 214.

8. Mr. Tom Armstrong:

Mr. Armstrong testified in opposition to the proposed development. He has lived two and one-half blocks from the Chelsea School for 18 years. During that time, there have been two attempts to put higher density development in the neighborhood. T. 216-217. These included the Watts property and Ellsworth Court. In both cases, the developer initially proposed higher density but the County found that the higher density was not appropriate for the neighborhood. He believes that putting higher density at this location is directly counter to the plain language of the master plan because it expands the buffer to create a transition behind a transition. T. 217. He submitted a petition which, according to him, had been signed by 266 residents opposing the application. T. 221.

9. Ivaylo Gachev:

Mr. Gachev presented a series of photographs which he believed more accurately depicted the neighborhood and the school than those submitted by the Applicant. His pictures demonstrated the diversity of the houses on the surrounding street and the heavy green vegetation in the community. T. 227-228. They also demonstrated the open areas and mature trees on the Chelsea School property. T. 229-230. He believes that the buffer from the Central Business District is Cedar Street. His

photographs show that immediately after Cedar Street (looking south toward the Central Business District), the area changes from gray to green. T. 232.

Mr. Gachev testified that the houses in the community were architecturally diverse. T. 233. He compared these with the Cameron Hills townhomes located within the Central Business District. He did not feel that these mirrored the diverse architecture of the houses north of Cedar Street and believed the two were incompatible with each other. T. 235. He testified that the rear yards of the Cameron Hills development were narrow alleys with garages which are much different than the single-family detached homes in the SOECA community. T. 236-237. He did not believe that townhomes like Cameron Hills would attract a diverse group of people to the area because they were too difficult for elderly people to navigate; they have steep steps with several floors. T. 239.

He moved to the neighborhood in 2008 and feels odd that he must now defend what he believed he was purchasing when he read the Master Plan. T. 240.

10. Mr. Jim Humphrey

Mr. Humphrey stated that he is a “volunteer advisor” to individuals and neighborhood associations in Montgomery County on land use issues. T. 259. He opposed the application because he feels the rezoning is inconsistent with the master plan. According to Mr. Humphrey, Master plans must have a degree of predictability and reliability for both citizens and developers as well. T. 260.

He disagrees with the Planning Board and Planning Staff that the application fulfills the purposes of the R-T 15 Zone. It is not designated on the Master Plan for this zone; the Master Plan pointedly reconfirmed the existing R-60 zoning for the area north of Cedar Street. T. 250. Nor does he believe the site is appropriate for the density permitted in the R-T 15 Zone. He believes that it may be appropriate for the R-T 6 Zone, but not any of the R-T Zones with higher densities than R-T 6. T. 262. He did not feel that the proximity of the Silver Spring Metro Station justified the higher density because the property was not within a “Metro Station Policy Area.” T. 263. He is not aware

of any County policy which encourages development in stable, well maintained existing residential neighborhoods surrounding transit station policy areas. T. 264.

Nor did Mr. Humphrey believe there was a need for a transition from the Central Business District. In his opinion, the transition of the Cedar Street houses is sufficient. T. 264.

In terms of compatibility, Mr. Humphrey testified that the mass of the proposed development is incompatible with the single-family residential neighborhood surrounding it. T. 265. He believes that density should be limited to the density permitted in the surrounding zoning. T. 266. If approved, this rezoning would constitute the first change in the North Silver Spring community that was not anticipated in the 2000 master plan. T. 267.

11. Mr. Jonathan Jay:

Mr. Jay stated that he has lived four blocks from the Chelsea School for 19 years. He is concerned that the Applicant's focus on smart growth has blurred the distinction between the Central Business District and single-family detached housing in the neighborhoods surrounding it. T. 281. The Applicant's approach implies that they consider the anywhere in the area surrounding the CBD as "fair ground" for denser development. T. 281. He does not agree because there is a clear distinction between the Central Business District and the residential areas to the north. T. 281.

Mr. Jay served as an officer of SOECA and a delegate to the President's Council of Silver Spring Civic Association (PREZCO) during the late 1990's. He recently returned to those again. He has spent countless hours on the redevelopment of the Central Business District and it has always been understood that there would be a plethora of higher density housing in the Central Business District. T. 282. According to Mr. Humphrey, there were both explicit and implicit assurances to the residential community surrounding Silver Spring that they would be protected against incursion of higher density within the neighborhoods. T. 282. Higher density residential development was never the understanding of those participating in the last dozen years of redevelopment in the CBD. Planning officials and developers went out of their way to point out that Cedar Street would be the

demarcation of higher density housing and civic uses within the Central Business District. In his opinion, this approach was recently reconfirmed in the Purple Line Functional Master Plan, which contains the following language: “There is no intent or desire to change the zoning in the single-family residential neighborhoods in and around the Dale Drive/Wayne Avenue intersection if a station is established at this location in the future.” T. 284. He believes there is no way to read the Silver Spring CBD or Plan other than as a commitment of the fact that downtown Silver Spring would be the center for promoting smart growth and transit. Implicit in the notion of high density housing in downtown is the fact that there would be no need for housing in the surrounding established neighborhoods. T. 286. He believes that there already is a large number of housing projects within the CBD which further the goals of the Housing Element to the General Plan. T. 288-290.

June 27, 2011 Public Hearing

1. Mr. Marty Wells:

Mr. Wells qualified as an expert in transportation planning and engineering. T. 12.

Mr. Wells testified that he was familiar with the traffic restrictions and circulation in the neighborhood. T. 13. The development would be organized along a new east-west internal street which would have access to Ellsworth Drive on the west end and Pershing Drive on the east end. T. 14. According to Mr. Wells, this access would respect the existing neighborhood transportation or neighborhood traffic restrictions. Ellsworth Drive is a two-way street north of Springvale. South of Springvale and north of the library driveway, it becomes one-way southbound. Just south of the proposed private road, southbound traffic on Ellsworth is forced to turn right onto Spring Street and cannot continue to the south along Ellsworth Drive. T. 14-15. This is intended to prevent traffic cutting through the neighborhood from the north on its way to the CBD. T. 15.

Southbound traffic on Pershing Drive is blocked by a “do not enter” sign just north of Cedar Street. This prevents northbound traffic from the CBD from using Pershing to travel north. T. 15. Turn restrictions at Springvale Road and Pershing Drive also prevent cut-through traffic. Eastbound traffic along Springvale Road must turn left at Pershing; southbound traffic on Pershing must turn right onto Springvale Road. T. 15.

Mr. Wells stated that traffic entering the site may turn either right or left from Ellsworth. Traffic exiting left onto Ellsworth must turn right onto Spring Street to go to Colesville Road. T. 15.

Traffic entering the site from Pershing Drive on the east must approach from Wayne Avenue to westbound Springvale Road, turn left at Pershing and then turn right into the property. T. 16. Traffic exiting the property on the east side could turn either right or left. Traffic exiting southbound could proceed down Pershing Drive to the CBD. Traffic exiting northbound on Pershing could turn either right or left onto Springvale or proceed north on Pershing Drive. T. 16. If access were limited to a right out, the path through the residential neighborhood would not be possible. If the east-west road were not feasible under the Historic Preservation regulations, the sole access and egress would be from the entrance at Ellsworth. T. 16. According to Mr. Wells, traffic volumes generated by the development would be modest and well within the standards of Local Area Transportation Review guidelines. T. 16. Mr. Wells had not done a queuing analysis for the property if the only access was from Ellsworth Drive. T. 17.

Mr. Wells testified that bus service is available along Colesville Road, Wayne Avenue, Cedar Street and Dale Drive. The Metro station and MARC stations are located 2,600 feet or approximately ½ mile away to the south. Their analysis did not consider the Purple Line, but stations are proposed at the intersections of Wayne and Dale and Wayne and Fenton. T. 17. Their field observations indicated that neighborhood residents do walk from the neighborhood to the CBD. T. 18. The walkscore for the project is 89 out of 100. T. 17.

Mr. Wells' firm evaluated traffic under the LATR and PAMR guidelines, taking into account 86 trips from the existing school and trips generated from 7 pipeline projects. T. 18. All but one of the 8 study intersections operate within acceptable levels of service during the morning and evening peak hour. T. 18. A capital project to construct a third westbound lane at the Colesville/Dale intersection, planned to be completed in FY 2012, will cause that intersection to operate within the congestion standards. T. 19

Traffic counts for the existing school use (with 86 students) showed that the use generated 58 trips during the a.m. peak hour and 28 trips during the p.m. peak hour. T. 20. If the number of students permitted under the special exception were enrolled (200 students), the school would potentially generate 134 a.m. peak hour trips and 66 p.m. peak hour trips. T. 20.

Mr. Wells stated that the traffic study concluded that the proposed development would generate 37 a.m. peak hour trips and 64 p.m. peak hour trips. T. 22. This is 21 fewer a.m. peak hour trips and 36 more peak hour trips than the school with its existing enrollment. T. 23. Compared to the potential enrollment of 200 students, Chelsea Court will generate 97 fewer a.m. peak hour trips and 2 fewer p.m. peak hour trips. The study has assigned trip distribution based on LATR guidelines. T. 23.

Mr. Wells testified that the proposed development also met PAMR guidelines. The property is within the Silver Spring Takoma Park policy area and must mitigate 10% of the 36 trips or 4 trips. T. 24. The number of trips to be mitigated was based on the schools existing and not potential enrollment. T. 25. The four trips are valued at \$11,300 each which requires the developer to pay \$45,200 payment to the County or to make \$45,200 in transportation improvements in the immediate neighborhood. T. 25. Mr. Wells stated that the Montgomery County Department of Transportation has approved the mitigation proposed by the applicant. T. 28.

On cross-examination, Mr. Wells testified that the traffic study did not analyze the number of trips possible under the prior special exception based on the restrictive conditions placed on the

special exception approval. T. 31. He did not have the opportunity to observe queuing along Cedar Street of cars trying to get onto Colesville Road. T. 32. He was aware that queues form and dissipate as the signals go through the cycle. T. 32. He felt that the modest trip generation from the proposed development would not significantly impact the neighborhood. T. 33.

Mr. Wells also stated that the trip generation rates utilized by Park and Planning were based on actual counts from townhouses taken in the 1990's. These do not take into account such variables as income, transit availability. T. 42. He does not believe there is a direct relationship between automobile ownership and actual peak hour trips. T. 44. He also testified that the County-wide trip generation rates were higher, and therefore, more conservative than the rates in the 8th Edition of the ITE manual. T. 62-63.

If the private driveway were realigned to access onto Springvale, the number of trips along Springvale would increase by approximately 5% or 5 peak hour trips. Because the trip generation rate for single-family detached homes is .95 per unit, the number of trips generated onto Springvale would increase if there were more than 5 homes accessing Springvale. T. 68.

Mr. Wells testified that he was not aware that the Planning Board's recommendation to add a binding element restricting access onto Springvale Road had not been included with the applicant's position nor had the applicant consulted him about that. T. 70.

2. Mr. Jim Teller:

Mr. Teller testified that he lives very close to the intersection of Colesville Road and Dale Drive. He has lived in the community for 10 years and moved in anticipating the revitalization of downtown Silver Spring. While he is currently the marketing director for an apartment company, he is trained as a landscape architect and has a background in site planning, landscape design and construction in the multi-family industry. T. 79.

Mr. Teller supports the proposed development and would support even greater density on the site because of its proximity to the central business district and its amenities. T. 80. The sites

surrounding the subject property are higher density than that proposed for Chelsea Court. A high-rise multi-family development is located immediately across Ellsworth and a new multi-family development is under construction across Cedar Street. Less than a block away is Springvale Manor, a retirement home which he believed is three or four stories with a surface parking lot. T. 80-81.

Having the experience of being able to read plans and envisioning the project, he believes that the community's fears are unfounded. T. 82-83. The first fear is that the proposed development is high-density and therefore inappropriate. The second is that the townhomes will devour the neighborhood and destroy its character. T. 83. The third fear is that traffic from the neighborhood will overwhelm its peacefulness. T. 84. Finally, those opposing believe that 25 single-family detached homes permitted under the existing zone are more compatible with the neighborhood.

The density of the project depends on what you're comparing it with. It is far less than Colesville Towers and the Foulger-Pratt development south of Cedar Street. T. 84-85. The density of this proposed development is much lower than these projects although more than the surrounding single-family homes. T. 85.

Nor does Mr. Teller believe that the project will destroy the character of the neighborhood because the property is in a corner of the neighborhood next to the central business district. He would feel different were the property a vacant lot in the center of the neighborhood. T. 86. He does not feel that there is any division of the neighborhood. T. 86. He stated that he has seen several of EYA's developments and believe that they do a very nice job with traditional architecture, architectural details and materials. Mr. Teller stated that, in his opinion, building oversized single-family homes in a neighborhood of smaller single-family homes is more incompatible with the neighborhood than townhouse developments. T. 87.

He does not believe this is a massive development which will destroy the character of the neighborhood. In his opinion, the development will bring benefits to the area because people with

disposable income will support the retail uses in the central business district, which is a serious problem with Silver Spring. T. 88.

Mr. Teller stated that he did not think traffic generated from the development will adversely impact the neighborhood. T. 89. According to Mr. Teller, the development will not generate 152 trips simply because there are that many parking spaces. T. 89. He does not believe that anyone will drive all the way on Ellsworth to get to the Beltway. Instead, people are going to turn left onto Ellsworth and right onto Cedar at the intersection of Colesville and Cedar. T. 91.

Mr. Teller testified that the property could be developed with 25 “McMansions”, i.e., very large homes on small lots. There would be a great deal of additional paving due to the number of driveways required and would be closer to the road. T. 94-96.

On cross-examination, Mr. Teller stated that his property was not within the neighborhood as defined by Technical Staff. T. 106. He was unfamiliar with a floating zone and he did not know how the density of this project compared with the densities permitted in the other R-T Zones. T. 110. He did not know of anywhere the developer compromised the density in order to make concessions on the plan. T. 110.

Mr. Teller also testified that he believed the defining edge of the neighborhood is Cedar Street. T. 114. He did not know if the block between Pershing and Wayne Avenue was an “edge” of the neighborhood. T. 115. He stated that he was not aware that special exceptions had to meet certain legal criteria. T. 117. He had heard at a SOECA meeting that R-T 15.0 is the highest density achievable for townhouses and he knew that Colesville Towers was built in the 1960’s. T. 119. It should be used for compatibility only for the purpose that it is a fact on the ground. T. 121.

3. Mr. Robert Bacon:

Mr. Bacon testified in support of the proposed development. He was raised in the Springbrook School District and is familiar with the evolution of the Silver Spring Central Business District. T. 128. He is not afraid of changes. He believes that the addition of residents, as opposed

to students who come from other areas, will be beneficial. T. 129. He believes in the evolution of downtown Silver Spring in its entirety and including his neighborhood. He is an associate broker and realtor, and lives in the neighborhood. T. 129. He believed, based on the testimony that the subject property was in the Silver Spring CBD. T. 135. Even were it not in the CBD, he believes that the proposal is an improvement from earlier visions of downtown Silver Spring, which included an amusement park. T. 136.

4. Ms. Leslie Hanley:

Ms. Hanley testified in support of the application. T. 138. She has lived on Ellsworth Drive approximately 6 homes down from the Chelsea School for 20 years. T. 138. She is active in SOECA and was part of the steering committee to redevelop downtown Silver Spring. She loves the convenience of the area, the mix of the old, new and older homes, mature trees and diversity of residents. T. 138.

She strongly supports the development because she is impressed with the architecture and EYA's ability to develop townhomes in an urban area. T. 138. She is also impressed with EYA's ability to listen to the citizens concerns and incorporate them into their proposal. T. 139.

She thinks that the neighbor's perception is that these townhomes are starter homes and will bring down property values in the area. T. 139. She stated that the homes will cost more than a lot of the single-family detached homes in the neighborhood and will be occupied by young professionals who wish to live in a larger home, but not have the maintenance of a house. T. 139. She also thinks empty-nesters will be attracted to these homes. She believes that the townhomes will blend harmoniously into our existing neighborhood.

5. Mark Stanley Stires:

Mr. Stires qualified as an expert in civil engineering. T. 141. The proposed site shall limit access to only two streets, Pershing Drive and Ellsworth Drive with no access onto Springvale Road. T. 143. Improvements along Springvale are anticipated to be based on DPW&T requirements and

include curbing and storm drainage. T. 142. These will also include necessary utility improvements for water, sanitary sewer, storm drainage, and stormwater management as needed. T. 142.

Under the current plan, the proposed development will have 56% impervious area or 2.71 acres. The stormwater management plan proposes to treat stormwater volumes with different practices, including dry wells, landscape infiltration areas and submerged gravel wetlands. T. 143. The subject property currently has no stormwater management facilities to his knowledge. T. 143. Those that are in place are inadequate or nonexistent. T. 144. The proposed improvements will provide for safe and adequate stormwater management in accordance with State regulations. T. 144. Water, sewer, gas and other utilities are also available and have capacity to serve the property. T. 144.

He also prepared a preliminary forest conservation plan which has been reviewed by Staff of the Maryland-National Park and Planning Commission. T. 145. He believes that the plan is approvable at the appropriate time. T. 145.

On cross-examination, Mr. Stires testified that he could not explain the discrepancy between the amount of open space shown on Exhibit 23A (2.09 ac.) and the amount of green space shown on Exhibit 171 (2.4 ac.).

He also testified regarding Plat No. 22270, used to prepare the site plan. When the property was subdivided, the plat contained a note providing that one acre around the historic Riggs-Thompson House would be preserved as its environmental setting. T. 154. In his plan, he preserved approximately 37,000 square feet. T. 154. The Plat also required recordation of an environmental easement after approval. T. 154. Mr. Stires did not know whether they had found the environmental easement. T. 155.

6. Michael Gurwitz:

Mr. Gurwitz testified in opposition to the application. He has lived directly across Springvale Road from the subject property for 12 years. T. 163. He has been active in the SOECA Citizens Association for 10 years and he is also a Community Emergency Response Team member. T. 163.

He does not believe that the majority of the Planning Board correctly interpreted the Master Plan, nor does he believe that the development meets the requirements of the Zoning Ordinance. T. 165. He believes that the development is too dense to be compatible with the neighborhood. In his opinion, EYA is attempting to pack in as many townhouses as possible on the land. T. 166. Most of the surrounding blocks have fewer houses along the roadway across from the subject property. There are 6 houses along Springvale Road, five single-family houses along Pershing Avenue, to the west are a playground and library, and to the south there are 9 single family homes along Cedar Street. This proposal will permit 76 townhomes in the middle of 20 single-family homes. T. 167.

The neighborhood in which the property is located is very close and people put down roots. He considers the attempt to force 76 townhomes on the property as “jarring”. T. 167-168. He does not feel that there is a need for a buffer or transitional use between the neighborhood and the CBD because there is one already in place. T. 168-169. He does not have a problem with another school occupying the site. T. 171. He also disagrees with Mr. Teller that neighbors were “fear mongering”. T. 172. There is another development along Woodside Parkway with “McMansions” and he feels that they are compatible with the community. T. 173.

Mr. Gurwitz stated that the traffic from the school is not currently an issue. Buses do line up on Springvale Road by Pershing Drive, but this is a minor nuisance at most. T. 173. Even were this a parochial school (not governed by a special exception), the buses are gone by the time people return from work in the evenings and the school is closed on the weekends and holidays. T. 173.

Mr. Gurwitz testified that the removal of the binding element prohibiting access onto Springvale Road because it will have an impact on the cut-through traffic along Springvale Road and the rest of the neighborhood. Part of EYA’s commitment to the neighborhood included that binding

element as presented to the Planning Board and upon which the Planning Board relied. T. 174. He feels that access from the development onto Springvale Road would be disastrous for his street. Springvale would be used to go to Whole Foods for the week's groceries, even though it's within walking distance. T. 175. Springvale Road would also be used to go down to Wayne Avenue to Takoma Park and other areas. To go west (to get on the Beltway), people would use Springvale Road, make a right turn on Ellsworth Drive, and use that to get to Dale Drive. This would not be possible if access to Springvale is prohibited. T. 175-176. He does not know anyone who travels to Colesville Road by making a left on Ellsworth and a right onto Cedar because of the queue. T. 176.

Mr. Gurwitz also testified that he does not believe that EYA has satisfied the third prong of the R-T Zone purpose clause. T. 177. There is no need for a transition at this location because of the single-family homes on the north side of Cedar Street. T. 177. The Master Plan specifically recommended the row of single-family homes for use as non-resident professional offices to serve as the transition between the CBD and his neighborhood. He does not oppose townhouses, but this density, and would support townhouses in the R-60 Zone. T. 179. He is concerned that development of this block would destabilize the neighborhood and have an impact on the block immediately to the east of the subject property. T. 181.

Mr. Gurwitz presented a slide show with pictures showing the transition between the Silver Spring Metro and the Central Business District. The buildings on the interior are very dense and scale down as one approaches the neighborhood. He stated that the pictures demonstrate the difference between the green, mature trees and open space in his neighborhood and the CBD. T. 181-182.

In Mr. Gurwitz' opinion, the neighborhood is characterized by quiet streets and low traffic, green trees, wildlife and open spaces. T. 185. He believes the density of this development will permanently harm that character. T. 185.

On cross-examination, Mr. Gurwitz stated that he would accept various possible types of development under the R-60 Zone. T. 204-218.

7. Ms. Krista Lutz:

Ms. Lutz stated that she lives on the corner of Woodside Parkway and Ellsworth, which is a couple of blocks from the Chelsea School. She opposes the development because she believes that it will dramatically impact traffic on her street. T. 231. Currently, people use Ellsworth to get from Dale Drive to their homes in the neighborhood, but it's not intended to be used for through traffic. She is in her yard a lot and sees a lot of people ignoring the traffic restrictions. T. 232.

She does not think the townhouses fit in with the quaintness of the neighborhood. She does not have a problem with large "monster" houses because the recent development of large homes looks very nice because each of them is slightly different. T. 233-234.

On cross examination, she stated that she was not sure that the traffic through the neighborhood was primarily going toward the CBD. T. 235.

8. Victoria Pierce:

Ms. Pierce testified in opposition to the application. She does not believe that the development is compatible because of its "densely compressed design". She chose the neighborhood because it was single-family homes with opportunities for private, outdoor relaxation, peaceful days, and quiet evenings. T. 238.

Ms. Pierce stated that she believed the purpose of the rezoning request is to urbanize the Chelsea School property. EYA's emphasis has focused on proximity to the Metro and the CBD. She sees the Chelsea School as simply a larger Cameron Hill in a prettier setting. She researched the level of homeownership in the Cameron Hill development. According to the Maryland Department of Assessments, 16 of the 56 homes are not occupied as a principal residence. T. 239. She compared

this to the level of owner-occupancy in her neighborhood, which was 92%. She believes that higher owner-occupancy levels lead to better maintenance of homes in the neighborhood. T. 241. She envisions this as an isolated residential island in the community. T. 242.

She also disagrees with the definition of the neighborhood adopted by the Planning Board. T. 243. Currently, traffic in the area is light. The neighborhood uses the streets for walking. T. 243.

Ms. Pierce testified that she believes that the addition of 152 new automobiles will adversely impact the community. T. 243. She does not believe that the only traffic issue is the volume of traffic at intersections; she thinks that flow along the streets is also an issue. T. 244. Because the left turn from Pershing onto Dale is dangerous, drivers would prefer to exit left onto Pershing, left on to Springvale or one of the blocks further north, and then right onto Ellsworth to Dale or Woodside Parkway. Another option would be to go down Ellsworth, making a left on Rowen to go to Springvale Road, or going part of the way on Rowen, taking a right onto Kingsbury to get to Dale. T. 245-246. This would spread traffic from the development throughout the neighborhood. T. 246.

Ms. Pierce disagrees that the Chelsea School serves as an additional transition between the CBD and the neighborhood. T. 247. She believes that an effective transition benefits both communities. T. 247. An effective transition from the neighborhood's perspective would be to shield the neighborhood from the CBD both visually and audibly. T. 246-247. She has visited a property along Springvale from which she could see the rear yard of homes facing Cedar Street. She heard no automobile traffic and the buildings were barely visible. T. 247. If the Chelsea School property is rezoned, the transition would be from R-60 to R-T 15 and back to R-60. T. 248.

Ms. Pierce presented pictures of apartment buildings in the CBD which are being offered for rent. According to Ms. Pierce, apartment house vacancies in the CBD are "common". T. 249. She also stated that much of the newer office space is vacant as well. T. 249.

On cross-examination, Ms. Pierce testified that having an HOA would assure the community that the grounds would be maintained. T. 262. It was possible that Cameron Hill townhomes were

purchased as an investment and were not able to be sold when home prices declined in the County. T. 256-257. She felt that potential traffic from the school should not be compared to traffic generated by this development because the school is not in session during evenings, weekends, holidays, and in summer. T. 261. She agreed that if the development had an HOA, the HOA would assure maintenance regardless of whether the units were occupied by owners or renters. T. 263.

June 30, 2011 Public Hearing

1. Kenneth Charles Doggett:

Mr. Doggett qualified as an expert in urban design and planning. T. 19. In his opinion, the neighborhoods defined by Technical Staff and the Applicant's land planner were too large. He stated that the northern boundary should be approximately 3 blocks north of Springvale, Colesville Road to the west, Wayne Avenue to the east and Cedar Street to the south. He did not believe that defining a neighborhood solely by the area of any impact was appropriate. T. 21-23. Rather, the neighborhood should also be defined in common characteristics. If the latter is incorporated into the definition, in his opinion, the southern boundary line should stop at Cedar Street. T. 23.

Mr. Doggett introduced photographs he had taken of the site to illustrate the characteristics of the north Silver Spring neighborhood and the transitional area. In his opinion, the neighborhood was characterized by a number of mature trees. These screen the impact of denser buildings, such as Colesville Towers. T. 26. He observed that Cedar Street was a very busy, wide street bordering the central business district. There is a row of single-family houses, which are recommended in the master plan to be special exceptions along the northern edge, which are set on top of a relatively large berm approximately 20 feet high. Trees are located in the front yards with the houses behind and then more trees to the rear of the houses. T. 27. In his opinion, this served as the essential transition between the neighborhood and the central business district, rather than the entire block of the Chelsea School property. T. 27.

In his survey of the neighborhood, Mr. Doggett also had occasion to observe Springvale Terrace, an assisted living home. T. 27. From the road, the building is three stories high. He has visited the property four times in both the morning, evening and on weekends. He has seen a total of two persons walking there and found that the use is very quiet and did not have a negative impact on the neighborhood. T. 28.

According to Mr. Doggett, it is useful to compare development of a property in accordance with the existing R-60 Zoning and compare it with development under a more intense zone to determine whether other development is compatible and necessary. T. 29. He prepared a plan showing the layout of a development under the R-60 Zone cluster option. T. 29. The plan shown with the R-60 development had several advantages, including more green space, especially surrounding the historic home on the property. It also permitted setbacks not just from Springvale, but also from the backs of the transitional homes bordering Cedar Street. T. 29.

Mr. Doggett also testified that the R-60 plan had many of the same benefits provided by the proposed development. T. 30. Homes facing Springvale could also have a front façade at the ends of townhouse rows, as well as other advantages of the proposed development. T. 30-31.

In terms of the project's density, Mr. Doggett testified that including the environmental setting of the historic house in the density calculations distorted the impact of the proposed use. T. 32. If density were calculated without the environmental setting, the density of the project would be approximately 19 units per acre. T. 33. EYA's Cameron Hills development is 23 units per acre. If an environmental setting of 1.4 acres were subtracted, then the density of the development would equal 22 units per acre. T. 35. He also believed that the tandem parking arrangement for some of the homes would result in on-street spill-over parking. T. 36. If there were 39 units (as permitted in the R-60 Zone), the impact would be reduced by 50 percent. T. 36.

As to the purposes of the R-T Zone, Mr. Doggett stated that the subject property was not designated for the R-T Zone in the North and West Silver Spring Master Plan. T. 38. The Master

Plan does not recommend any properties for the R-T Zone in North Silver Spring. T. 27-28. He disagreed with the Planning Board's conclusion that the plan did not give any specific recommendation for the subject property. T. 38. He feels that subsequent action by the District Council actually changed the language to make it more difficult for someone to find that the R-T Zone is appropriate. T. 38. He did not feel there was any justification for interpreting the Master Plan as endorsing the possibility of R-T Zoning. T. 38.

Nor, in his opinion, is the subject property "appropriate" for R-T zoning. T. 39. The Master Plan reconfirmed the traditional R-60 zoning for the property. T. 39. This zoning, which is primarily single-family detached homes, is consistent with the character of the community. T. 39. According to Mr. Doggett, any advantages due to the proximity to the Metro are reduced by the fact that it's being compared with single-family detached homes which are not of comparable density. T. 39.

With regard to the environmental setting for the historic house, Mr. Doggett testified that, in his opinion, the Master Plan recommended that the setting should revert to 1.4 acres if it were not to be used as the Chelsea School. T. 39. He does not feel the schematic development plan adequately preserves the environmental setting because the private road and the new townhouses are too close to the historic house. T. 40

He does not feel that the R-T 15 (as opposed to other R-T Zones) is appropriate for the property. T. 41. Any reduction in density would have less of an impact on the neighborhood, but his preference would be a design incorporating duplexes and single-family homes beyond the transitional row of the homes on Cedar Street. T. 41.

Mr. Doggett further testified that a transitional buffer between the CBD and the single-family R-60 Zone was not needed at this location. T. 42. He believes that the transition between those two uses is accomplished via the properties, with the berm and mature trees, along Cedar Street. T. 42. Extending the transition to the subject property penetrates the surrounding R-60 homes because it is surrounded by these units on three sides and is not compatible with those units. T. 42. He believes

that the additional density will have impacts such as parking along the streets and more traffic into the community. T. 43. He believes that the development will cause a lot of discomfort with people that have single-family houses because they face about eight or ten rows of eight regimented townhouses coming into Cedar and Springvale. T. 43. This is not in keeping with the character of any of the buildings surrounding the property. T. 43.

Mr. Doggett stated that the townhomes will create development pressure, or a “domino effect” on the block bordered by Wayne and Pershing on the east and west and Cedar and Springvale on the south and north. T. 43. In his opinion, it is very precarious putting townhomes right next to a block like this because it makes it much easier to justify higher density on that block. T. 45.

Mr. Doggett submitted his own schematic development plan for the property utilizing the cluster option in the R-60 Zone. It showed the Cedar Street homes, 2/3 of which have a considerable berm and tree-scape, and appropriate for special exceptions. T. 47. Then, the sketch shows significant tree barriers behind the homes which would be lost under the townhouse development. The plan calls for duplexes just north of the tree barrier because he thought it was a good transition to the clustered single-family homes along Springvale. T. 48. His plan calls for 16 duplexes and 14 single-family homes for a total of 30 units. The planning principle under his plan is that the people on Springvale, although they would have a heavier density of units, are not out of scale with the homes themselves. Therefore, they would find it more acceptable to see the same kind of frontage, i.e., an entry, a garage, and a house surrounded by a base of trees, rather than a townhouse development which abuts Springvale. T. 48. He doesn’t feel that use of front facades along the sides of the townhomes facing Springvale Road is sufficient to mitigate the impact of the townhouse rows because the rows are visible when you walk or drive down the block. T. 48-49. He felt that the use of duplexes close to the Cedar Street homes adds to the sense of going from more to less intense, proceeding south to north in the block. T. 49.

Nor did Mr. Doggett consider his plan an “underutilization” of the property. T. 49. The open space comes close to achieving the 1.4 acres mentioned in the plan, which permits open space around the entire building and avoids having a street run in front of the building. T. 50. In his opinion, the historic house demands some isolation so that it may be viewed from afar. That is why he believes that 1.4 acres is a more appropriate environmental setting. T. 50.

The setback from Springvale in his schematic plan is also 25 feet. Mr. Doggett stated that his plan would also permit homes to be as high as 40 feet. T. 51. While his plan shows significantly less open space along Ellsworth Drive, he does not feel that much open space is necessary on the west side of the property because there is a park directly across the street. T. 51. His plan preserves more of the trees on the property. T. 52. Mr. Doggett testified that he did not see a significant drawback with having multiple driveways along Springvale Road, because the single-family homes were more consistent with the values of the community and not totally different. This preserves coherence in the community. T. 53.

On cross-examination, Mr. Doggett testified that he was not involved in drafting the North and West Silver Spring Master Plan. T. 54. Nor was he involved in any of the public hearings on the plan. T. 54. He did not agree that those who wrote the plan know more about its intent because ideas change about development. T. 55. He agreed that Master Plans are only a guide which is normally followed. T. 56. He did not know the details of other townhouse communities adjacent to single-family homes, so could not render an opinion as to whether they were compatible. T. 61-63. He did not know whether the school had been a problem in the community or not. T. 64. He did agree that removal of the school buildings from the area surrounding the historic house have a better environmental setting. T. 66. He also agreed that the Housing Element of the General Plan identified a substantial need for housing and called for meeting that need in part by utilizing infill housing. T. 66. In his opinion, the proposed development would replace an institutional use with infill housing. T. 66-67. He stated that smart growth is intelligent growth, which includes avoiding sprawl and

preserving farmland and forest, and which is located near public facilities. T. 68. Mr. Doggett also testified, however, that smart growth does not necessarily sacrifice compatibility. T. 69.

He acknowledged that townhouses are a permissible use in the R-60 cluster option, which permits development without a compatibility option. In his opinion, the Master Plan contemplated that the institutional use, if abandoned, would be supplanted with a use permitted under the R-60 Zoning. T. 74. He acknowledged that development standards for townhouses under the R-60 option could be built without some of the protections provided by the schematic development plan, i.e., 25-foot buffer along Springvale Road and a height limit of 35 feet. T. 76. Mr. Doggett believed that infill legislation adopted by the Council could regulate the possibility of McMansions on the property. T. 78.

He further testified that the “neighborhood” for zoning purposes could include properties within multiple zones, but he disagreed with the Planning Board’s recommendation regarding the neighborhood. T. 82-83.

Mr. Doggett also stated that he believed that the possibility of the expansion of a school use on the property, and its impact on trees, was irrelevant in determining whether the proposed use is compatible. T. 85. The plan his office prepared had enough flexibility to preserve the same number of trees as the schematic development plan proposed, although a plan showing 14 driveways may have more difficulty providing the same number of trees along Springvale Road. T. 87-90. He subsequently stated that it may be possible to plan the same number of smaller trees. T. 91. He also testified that the schematic development plan would permit more trees along Ellsworth Drive, but didn’t think that was significant because of the existing park immediately across the street with a large number of mature trees. T. 94. Even though his plan did not preserve as many trees along Springvale as did the schematic development plan, Mr. Doggett felt that looking at single-family homes was more compatible with the neighborhood than viewing cosmetic ends of townhouses. T. 95. He also believed that he could preserve more trees along the southern boundary of the property

(adjacent to the rear yards of the Cedar Street homes) than the schematic development plan. T. 97-98.

With regard to the historic house, Mr. Doggett testified that the addition in the rear of the house is not historically consistent with the house, and its removal would have a positive effect. T. 103. He also believed that it was difficult to compare road layouts between his plan and the schematic development plan without reference to whether the surrounding uses were townhouses or single-family homes. T. 107. He interpreted the Master Plan to mean that in the event the Chelsea School no longer utilized the property, the environmental setting would revert to 1.4 acres. T. 113. Mr. Doggett's plan permits an environmental setting of 1.4 acres. Mr. Doggett also testified that the existing school building was even closer to the historic house, although he did not believe that was a good thing. T. 124-125.

With regard to parking, his plan shows a small amount of on-street overflow parking along the cul-de-sac road. T. 109. He stated that he had not done sufficient analysis of parking to know whether his plan would result in parking along Springvale Road. T. 110-112.

Mr. Doggett acknowledged that a project could be higher density than his plan and still be compatible with the surrounding neighborhood. T. 118. With regard to the block bordered by Wayne Avenue, Cedar Street, Pershing and Springvale, he also stated that the master plan recommended single-family zoning, but still felt that rezoning this property could make it a candidate for single-family zoning. T. 119-120. He stated he could not opine on whether the Chelsea School would be compatible if it were to expand to 423 students because he hadn't done the analysis of transportation and other factors. T. 125. He agreed that schools were difficult neighbors. T. 125.

Upon questioning from the Hearing Examiner, Mr. Doggett testified that he believed that even though the schematic development plan provided some benefits, it was not compatible because it doesn't have a similar sense of community that similar townhouses have.

2. Dr. Cinzia Cirillo:

Dr. Cinzia Cirillo (6/30/11, T. 169-212), qualified as a traffic expert and testified on behalf of the opposition. She testified that the traffic generation rates used in the Applicant's traffic study were flawed. She participated in a 2007 study prepared by the Baltimore Metropolitan Council which conducted a large study in which every household had to report everything they did every hour of the day. The variables included mode and time of travel and how many trips were made. The survey also collected information about social demographic variables

Based on this data, Dr. Cirillo testified that travel behaviors have changed over time. In the 1960's and 1970's, people would travel to and from work at regular times. Today, travel times are much more complex due to flexible schedules, telework, and other changing circumstances. Major determinants in the number of trips include household income and the number of cars per household. The larger the income and number of cars, the more trips made per day. Because of the more flexible work week, these trips are also being distributed more throughout the day rather than concentrated in peak hours. The survey also indicated that 70% of the households chose automobiles for the mode of travel. Approximately 10% of the households use transit as their preferred mode choice, and 15% choose slow mode options. She also testified that there was little difference between traffic generated by single-family detached versus single-family attached homes.

In order to determine the number of trips generated by the proposed development, Dr. Cirillo took the number of peak hour trips reported in the Applicant's traffic study and applied the 70% automobile modal split. She then applied a vehicle occupancy rate of 1.15 (based on census data). Using this formula, her rates were 50% higher in the morning peak hour but lower in the evening peak hour. According to Dr. Cirillo, the reason for the lower number in the evening peak is that the Montgomery County model fails to take into account the trips distributed throughout the day. T. 168.

Dr. Cirillo opined that analyzing traffic impact only by considering the peak hour fails to account for the traffic impact of the use.

3. Judith Christensen:

Ms. Christensen, Executive Director of Montgomery Preservation Inc., testified in opposition on behalf of that organization. T. 212. She testified that there are several elements of the Plan which require approval from the Historic Preservation Commission, such as removing the inappropriate additions to the Riggs-Thompson House and the private road bisecting the environmental setting. The private road effectively reduces the environmental setting from 0.8 acres to 0.5 acres.

According to Ms. Christensen, the Riggs-Thompson House was constructed around the time of the Civil War. It was part of a large farm estate; putting a road immediately behind the dwelling is not faithful to the context of the original building. Montgomery Preservation is concerned because of the reduction in the size of the environmental setting for the Chelsea School. While this may have been appropriate for the school's campus-like setting, it is not appropriate for the proposed use.

Montgomery Preservation also believes that the proposed development is incompatible with the surrounding neighborhood. The property is surrounded by single-family homes that are detached, of varying sizes, with front porches facing the road. The schematic development plan is a main stem with rear alleys; it is essentially four to five blocks of buildings which are all inward facing. T. 212-214.

Montgomery Preservation has urged the Planning Board to restore the original 1.4 acre environmental setting to restore the original context of the home or at least redesign the site to put the road in another location. T. 215. Normally, when a property is designated by the Master Plan, the entire lot is the original historic environmental setting. During the Master Plan process, the setting is reviewed to determine whether it will portray the original context of the structure. Therefore, if it is a farm, they generally attempt to keep the context by putting in berms, tree standards and other items. T. 223-226. She felt that the Master Plan recommended the smaller environmental setting because of the campus-like setting of the Chelsea School. T. 233-234.

4. Ms. Vicki Warren:

Ms. Warren presented testimony on the history of the Riggs-Thompson House. At one point the house was surrounded by approximately 140 acres of land reaching from Georgia Avenue to Colesville Road; the Thompson family retained ownership until 1924. When the Chelsea School purchased the property all that remained of the 140-acre estate was a 1.4 acre parcel.

Ms. Warren testified that the Chelsea School wished to purchase both parcels to implement their future plans for the school. The Historic Preservation Commission recommended that the environmental setting include the entire 1.4 acre parcel. Ms. Warren submitted the minutes of the March 25, 1998, Planning Board meeting (Exhibit 191), which contained the following language, "Staff had identified the entire parcel as an appropriate environmental setting". Ms. Warren testified that the Chelsea School had made it clear that they needed a portion of the 1.4-acre property for development of the school. 6/30/11 T. 242-245. She submitted a letter dated November 19, 1998, from the Chelsea School's attorney from which she quoted, "When the Chelsea School began the purchase and redevelopment of its school site, the school seriously considered seeking permission to demolish the house...Virtually any configuration of an environmental setting for the house would absorb large portions of the flat portion of the property that otherwise could and should be used by the school to help fulfill its educational function." At the same time the Chelsea School asserted it needed all of the environmental setting, the Sisters of the Holy Names, through their attorney, threatened litigation against the County in the event the contract fell through. 6/30/11 T. 245. Ms. Warren testified that, as late as 2001, Staff of the Development Review Division wrote that two configurations of the environmental setting were shown on the Chelsea School's special exception plan, "The environmental designation in the master plan and on the locational atlas is shown in two boundary areas surrounding the historical house, the larger 1.4 acre parcel designation having been shown to apply if the Chelsea special exception does not go forward." 6/30/11 T. 246. Records from the public hearing on the Plan state: "the setting may need to be modified if the property is redeveloped with a use other than the Chelsea School." 6/30/11 T. 246. According to Ms. Warren,

the Chelsea School's expansion plans never went forward because public school systems began paying for education for disabled individuals.

5. Mr. Bill Kaupert:

Mr. Kaupert testified in opposition to the application. He moved into his home in the area in 1968. Around that time, he was president of his homeowner's association and participated in the development of the 1978 North Silver Spring Sector Plan. During that process, the Planning Board was amenable to the idea that the integrity of the R-60 zoning should be maintained and his groups had the feeling that this was not going to be changed. If this application is approved, he is going to feel that there has been a betrayal of trust. T. 271. He believes that the development will be only the beginning and there will be further attempts to destroy the integrity of the R-60 Zone.

On cross-examination, Mr. Kaupert testified that he lives outside the zoning "surrounding area" defined for the purpose of determining compatibility. T. 273.

6. Ms. Kathleen Samiy:

Ms. Samiy opposed the application on behalf of SOECA. She is the president of SOECA. Her family has lived in the Seven Oaks community since 1935 and her daughter is the fourth generation to live in the community. The rezoning application is within the boundaries of SOECA.

Ms. Samiy testified that SOECA members view their community as an "edge" community because the houses on Cedar Street abut the Silver Spring Central Business District. Some of these houses were built as early as 1924-1926, some were built in the 1930's. Most of the early homes are built in the Tudor style. T. 278.

The former president of SOECA arranged for EYA to present its concept for the development in May, 2010. The association was asked by EYA to give them feedback on their feasibility study, which had a July 28, 2010 deadline. This was the meeting at which she officially became president of the association. They established a 10-member task force to study EYA's proposal. At the May meeting, EYA requested an answer as to whether or not the community would support them because

they did not want to move forward without the community's support. T. 280. After that, the association did not meet until September, 2010. T. 278-280.

SOECA solicited input from its members through newsletters which are delivered to all of the 750 homes within its boundaries. SOECA's positions on different issues are determined by adoption of a resolution by a majority of members who attend the meeting. T. 283-284. SOECA's boundaries are Colesville Road to the west, Franklin Avenue to the north, Cedar and Fenton to the south, and Wayne and Bonifant to the east. T. 285. Colesville Towers is outside of the boundaries. It is zoned C-O, not R-60.

Ultimately, SOECA adopted a position on the application at its meeting in September, 2010. SOECA resolved to preserve the existing R-60 zoning of the Chelsea School property and oppose any rezoning to R-T 15, to stay abreast of developments surrounding the application, and to authorize SOECA's Executive Committee to take "all appropriate" actions to further the intent of the resolution. T. 287. Fifty-five members of the association were present at this meeting; 41 voted for the resolution and 14 voted against the resolution. T. 287.

SOECA's primary position in the case is that the R-60 Zoning should be upheld at this location. T. 281-282. This view is expressed in a letter submitted into the record of the case as follows, "This determination is not against EYA communities but against the density and re-zoning changes that this development proposal requires to be realized....In sum, the consensus remains to uphold the existing zoning as R-60 without change, exception or amendment." SOECA maintains that the Cedar Street transition is all the transition necessary to the property. They also want the entire 1.4-acre parcel originally associated with the Riggs-Thompson House to remain intact, and the current traffic patterns to be preserved, including no access to the development along Springvale Road. SOECA also wishes to keep the almost 100 years of R-60 zoning in place. The proximity of the Central Business District should not influence or over flow into their much smaller neighborhood, which reinforces their position regarding the edges of the CBD. T. 288-289. The schematic

development plan will result in removal of many of the specimen trees on the site, and the massing of seventy-six 14 to 16-foot wide townhomes on very small lots with no backyards is quite out of character with the neighborhood. T. 289. The association is not acting against EYA as a developer, only the particular schematic development plan and its proposed density. T. 290. She submitted a zoning map of the Silver Spring and vicinity area, which was provided by Park and Planning, to demonstrate the comparative density of the R-T 15 Zone in relation to the balance of the area. T. 291-292. She found only one property designated for R-T 15 zoning in the Master Plan, and it is located in the West Silver Spring area abutting a commercial and industrial zone. T. 294. The conditions at the Chelsea site are very different—it is surrounded by stable historic neighborhoods, and is zoned R-60 on all sides.

Ms. Samiy testified that it seems “completely inappropriate to put townhouse zoning anywhere inside the CBD and vice versa. The best comparison to the Chelsea School proposal is the 57 townhomes in Cameron Hill which are inside the CBD. SOECA believes that it is inappropriate to put that “style of density” in their R-60 neighborhood. T. 296. According to Ms. Samiy, her neighborhood lies in the “verdant and green” hills of the Sligo Creek watershed. There is a really dramatic and visible difference between the “gray and the green” zones. The “gray zone” is cement and concrete and full of urban noise; the other side of Cedar Street is “trees and grass and birds chirping.” T. 298-299.

The residents of the community are extremely concerned that the density proposed at this location is too “tight” for the site.

7. Ms. Susan Janney:

Ms. Janney testified in opposition to the application. She is a realtor by profession and has lived on Woodside Parkway for 33 years. She lives directly across from the “mega-mansions”. She described some of the newer development that had been proposed for the area surrounding her house. At the time, the “mega-mansion” property was a farm—before she bought the house, she checked the

zoning and purchased because it was R-60. Even though she misses the farm, she knew of the possibility of the farm leaving because the area was zoned R-60. She has seen two other developments built since she owned the property which were developed consistent with the R-60 zoning. At one point in 1999 or 2000, there was a proposal for an assisted living community on a parcel in her neighborhood. Even though the use was still residential, the Planning Board did not recommend approval of the use because it was incompatible with the neighborhood. In its stead, the “mega-mansions” were constructed. Had the assisted living proposal not been opposed by the Planning Board, there would have been a five-story assisted living community and a parking lot, her little row of eight houses sandwiched between inappropriate buildings.

As a realtor, she believes that people should be able to rely on the zoning when they purchase a home. The standard form sales agreement published by the Maryland Association of Realtors contains an addendum specific to Montgomery County giving the purchaser the right to examine, prior to purchase, the Master Plan for the area where the property is location. T. 322-326. Even though one can’t call this a promise by Montgomery County, it is an understanding that buyers are depending on the County to uphold the Plan for at least 10 years. T. 325. Her income depends on buyers having this security. T. 326.

8. Mr. Robert McGaughy:

Mr. McGaughy testified that he has lived in the area for 32 years. He retired from the Environmental Protection Agency after working for 35 years evaluating health risks to populations exposed to environmental pollutants. He has graduate degrees in physics and biophysics. T. 340.

He believes the proposed development will have several adverse environmental consequences. It will replace a three-acre open field with 150 residents living there for 24 hours a day who bring their cars, personal property, noise, additional visitors and congestion. He believes that the local streets will be burdened with overflow parking.

Mr. McGaughy also felt the development would have a detrimental traffic impact on the neighborhood. In order to determine the development's traffic impact, he used the existing traffic count data from the Applicant's traffic study. He added the townhouse-generated traffic and tried to calculate how much of an increase in the local traffic this development would generate. He assumed that the traffic flow into the development would come along both Ellsworth and Pershing rather than Cedar Street because Cedar Street is very congested. He also assumed that traffic flow outward from the development would go towards Dale and Colesville by turning left at Pershing. He believes that, based on Dr. Cirillo's testimony, these are better assumptions of the distribution of traffic flow; also the new 220-unit apartment across from the Cedar Street homes will generate more incentive to avoid Cedar and use the neighborhood streets. T. 342-343.

Based on these assumptions, he concluded that in the morning rush hour, the traffic on Pershing and Ellsworth will increase from 94 vehicles now to 131 vehicles when the townhouses are fully occupied, a 40% increase. In the evening rush hour, the traffic will increase from 72 vehicles now to 136 vehicles with the Chelsea development. These increases will be much larger on Colesville Road and Dale Drive because there is a huge amount of traffic that is already there and is of great concern to the community. He believes that the possibility of access onto Springvale Road would have an even greater impact. T. 343-345. He also believes that the development would destroy the existing separation between the community and the Central Business District. He does not think a buffer is needed.

Another adverse consequence, according to Mr. McGaughy, is the removal of many old, large shade trees throughout the property and replacing them with rooftops, concrete driveways and a street. He believes that removal of the trees will increase the visibility of Colesville Towers, which is currently screened by those trees.

He submitted a series of photographs to demonstrate the impact of removal of the mature trees. He believed that removal of the trees will probably have a severe impact because the forest

conservation plan states that there is insufficient space on the property to plant the additional trees required to compensate for the loss of the large trees. The destruction of the shade canopy not only deprives the neighborhood of one of its primary assets; it will also increase stormwater runoff into the Sligo Creek Watershed, create erosion, and would allow solar radiation to heat the rows of concrete and roofs. The heat island effect of concrete in the midst of trees is dramatic in the summer time. When he walks from the Central Business District, he notices a difference of 10 degrees in the summertime. T. 345-349.

He stated that the plan calls for the removal of over 60% of the 132 trees of all sizes that are indicated on the tree inventory. Fourteen specimen trees would also be removed, as would 6 trees along Springvale, 8 trees along the southern boundary line, and 7 trees on the interior. In Mr. McGaughy's opinion, these numbers demonstrate the massive scale of destruction that will be allowed to take place if the rezoning application is approved. T. 347-348.

In addition, the density of the project is incompatible with the neighborhood. The character of the long rows of attached buildings separated by narrow alleyways and tiny front yards are incompatible with single-family detached homes. The cosmetic fronts do not mask the overcrowding on the site.

Finally, the creation of 76 dwelling units each with its own heating and cooling system also adversely impacts the surrounding area. This will guarantee that for the next 40 or 50 years, there will be about 2 and ½ times the demand for energy generated by 25 single-family homes. This is because there are three times more dwelling units than permitted with single-family detached houses, which would generate three times the amount of energy because townhouses generate approximately 83% of the energy demands of a single-family detached house. While this may not normally be discussed in zoning issues, we need to be reminded that growth of any kind increases the carbon footprint of our neighborhood and therefore has global consequences. T. 348-352.

9. Ms. Maria Schmit:

Ms. Schmit has lived directly across the street from the subject property for 12 years. She believes that 76 townhomes are incompatible with the neighborhood. The neighborhood is very quiet, filled with tree-lined streets and little traffic. If the development were to be approved, there will be six single-family detached homes and directly across a narrow street, you will have 76 townhomes crammed together. This will change the character of their neighborhood. The level of density proposed is far too high compared to the rest of the neighborhood. She believes that the zoning should remain R-60.

In Ms. Schmit's opinion, the school is a very compatible use with the neighborhood. It has been there since the 1930's. It was in place when her home was built in 1939. The neighborhood, the school and her home have existed in harmony for more than 75 years. T. 368. She would not have an objection to a school remaining on the property. She describes her relationship with the school as being pleasant. It is quiet on evenings and weekends, holidays, and during the summer. With the Chelsea School development, she will "dialogue" with long rows of balconies and driveways below them. Noise and traffic will increase on evenings, weekends, holidays, and in the summer. When you "dialogue" with a person, you look at them—they don't stand sideways. The townhouses will be a dense, closed community. T. 370.

She is also concerned about the increase in traffic. She believes that residents of the developments will mostly have two cars per home and will take multiple vehicle trips per day. She believes that EYA is now retracting their binding commitment to the community to permit access onto Springvale Road, which will significantly increase traffic on her street. Traffic from the school has rarely been a problem. Many of the students use the Metro to commute to the school. T. 372-373.

Ms. Schmit testified that she believes the community will be using significant greenspace if the Chelsea development is approved. She also believes that the increased density into the interior neighborhood, rather than enhancing the buffer, creates more impacts on the neighborhood. She

believes that the rezoning will open the door to more rezoning requests, thus beginning a domino effect in the neighborhood. T. 375-376.

10. Ms. Song Volk:

Ms. Volk submitted photographs to demonstrate there were adequate housing opportunities within the Central Business District. T. 390-392. She and her husband purchased a home in the community three years ago because they wanted to become first-time homeowners and raise a family. They found the neighborhood quiet, friendly, and ideal for raising young children and invested in this future. They felt that the Springvale senior living facility was a benefit to their area because it was so quiet. She purchased a single-family home in the neighborhood because she and her husband believed that a townhouse would become too cramped after they had children. They also found out that townhouse association rules could prevent one from constructing an addition, if necessary. T. 394.

She and her husband are not against change—she and her husband are change. Younger people reinvigorate neighborhoods. When she lived in an apartment complex, she did not feel as connected with the community. She lives on Springvale between Wayne Avenue and Pershing Drive. While she has met some of the neighbors just down the street at Wayne Avenue, she has not been able to just casually visit because of the intimidating traffic on Wayne. She and her neighbors chat while gardening and talk over backyard fences. She described the nature of the community as having well-established trees, rabbits and squirrels, birds, strawberry patches and even bats, quiet streets where people jog and elderly residents of the nursing home enjoy. T. 398. In her opinion, the retirement community is a low-impact neighbor. While the building is large, the residents have very little impact on the neighborhood in terms of traffic. They cruise the streets on motorized

wheelchairs with impunity. There is also a feeling of closeness and interconnectedness with the neighbors. T. 399.

In her opinion, the proposed development is incompatible because it proposes urban rows of houses which are uniform and cramped. The quiet streets will be destroyed; she is disappointed that the Applicant removed the binding element limiting access to Springvale Road. She believes that this will allow cut-through traffic on the portion of Springvale on which her home is located.

She thought that the master plan protected and encouraged the existing neighborhoods like hers.

11. Ms. Joan Bissel:

Ms. Vissel testified that her experiences building an R-60 house demonstrated some of the questions and concerns about the Applicant's proposal. Under the R-60 Zone, the lot coverage requirement is 35% of the total lot and minimum lot areas are 6,000 square feet. She raised a question whether the Applicant will deed sufficient land to the owner of the Riggs-Thompson House to add a two-car garage and still meet the R-60 lot coverage requirements. She also questioned whether people realize that the 35-foot height limit is sometimes measured from a higher elevation than street level. The Applicant could add dirt to the bottom of the property to raise the elevation for the townhouse rows. The slope of her property is similar to that of the subject property draining to a low area at the bottom of the slope behind her house so water may be channeled down towards the street and then Sligo Creek. She is concerned that the bioengineering and rain gardens will result in pooling of water creating mosquitoes.

She and her husband built a 19-foot wide garage under their house. That width is so tight that people in the passenger side have to get out before the car can be driven into the garage. She also believes that "neighborhood happens at the street" in the community. Residents meet and talk while taking out garbage cans, grilling, and picking up newspapers. T. 430-431. She questions where

“neighborhood” will happen in the new development. Will there be somewhere for the residents to grill, to watch their children play, to invite their friends for a picnic?T. 431.

She also questions whether PEPCO can handle the power needed to heat and cool 76 townhouses. She is also concerned that this type of development will lock first-time homeowners into uncontrollable condo fees, they will not learn the skills necessary to upgrade their property, and will not be able to live there long time because the homes are not suitable for children. T. 431-432.

July 18, 2011 Public Hearing

1. Ms. Christine Morgan:

Ms. Morgan testified regarding her experience working on the North Silver Spring Master Plan. She was the representative from the Woodside Park Citizen’s Association on the Citizens Advisory Group for the Plan. She remembered working hard to have the designations for special exception offices removed (they had been retained from the 1978 Plan). At one point, the designations were removed, but the designation for the nine properties along Cedar Street reappeared later in the process. According to Ms. Morgan, because the designations were removed, the Planning Staff had the time and opportunity to think about the issue, choosing nonresident offices rather than townhouses as the appropriate transitional use. At no point in the process, Ms Morgan testified, did the Planning Staff or Planning Board look at the entire block as transitional. She stated that not only does the development not serve as a transition, it increases density in an area where the transition should be downward.

She surveyed the comparative characteristics between the proposed development and the three townhouse developments in the Woodside neighborhood. All of the existing developments are R-T 12.5 rather than R-T 15. All have a greater amount of green space, between 50-60%, than the Chelsea School development. The units have private yards. The mass in the existing developments is broken by varying the number of units in each row and by angling the rows rather than having all the units in a straight line. Finally, the locations of the projects are different. The existing

developments are all located along major highways or commercial districts between that use and an R-60 neighborhood. She presented photographs of the three townhouse developments bordering Georgia Avenue and Spring Street and some on the west side of Georgia Avenue to illustrate her points.

2. Miguel Iraola (T. 30-104):

Mr. Iraola testified that the Applicant must satisfy four main elements for approval of the rezoning to the R-T Zone. One is that the application meets at least one of the three purposes set forth in the R-T Zone. The second is consistency with the Master plan. The third is the concern relating to future encroachment or a “domino effect”, and the fourth element is compatibility and the impact of the development on adjacent residential neighborhoods.

With regard to “general compatibility”, Mr. Iraola stated that townhomes are the same fee-simple one-family residential use as the existing single-family detached homes in the neighborhood. They are a permitted use in all of the one-family zones, include the R-60 zone under the MPDU cluster option. They are existing in harmony within single-family detached neighborhoods throughout the County and within the North and West Silver Spring area. As an illustration, Mr. Iraola submitted a photograph of “Chestnut Avenue-Rosedale Park G-797”. In his opinion, the photograph showed the compatible relationship that may exist with townhomes directly across the street from R-60 single-family homes. The Chestnut Avenue project is a mixed-use development within the Bethesda CBD and is zoned CBD.

With regard to the delineation of the surrounding area, Mr. Iraola stated that it is less rigidly defined than in a piecemeal rezoning. In a floating zone case, the surrounding area takes into account those areas most directly affected by the proposed development. The area should radiate from the subject property to include all potentially affected properties and is not limited to single-family neighborhoods. Mr. Iraola stated that the Planning Board, in its recommendation, suggested that Staff’s delineation of the neighborhood could be reduced in scope along the northern and southern

edges. He did not agree with Mr. Doggett that the northern boundary be three blocks north of Springvale Road and the southern boundary should be at Cedar Street. He stated that the “block” is adjacent to the CBD and the development “affects” and “is affected” by the Central Business District. In his opinion, the entire block was recommended in the Master plan for transitional and institutional uses. Because the surrounding area is defined by the impact of the development on surrounding properties, it need not be defined by zoning boundaries.

Mr. Iraola testified that the Chelsea Courts site is superior in terms of its location near the CBD and accessibility to Metro. Other R-T rezonings, such as the Good Counsel rezoning, were further from the Metro station in terms of walking distance. T. 39.

The project is also consistent with the Housing Element of the General Plan. According to Mr. Iraola, the Housing Element does not mandate any particular R-T density for specific sites. Because of the Chelsea School’s proximity to Metro, it is the most appropriate site for R-T 15 zoning he has ever seen.

With regard to Mr. Doggett’s plan for the property under the R-60 cluster option, Mr. Iraola testified that the maximum number of units would be 32 instead of the 39 claimed by Mr. Doggett. Development under the R-60 zone would be a gross underutilization of this land resource. Development under the R-T 15 Zone better complies with the Housing Element of the General Plan’s goal to achieve as much transit-oriented residential as possible. T. 43. This project is under the maximum permitted density of 18.3 dwelling units per acre (or 96 units).

Development under the R-60 cluster option could result in a large “wall” of one-family detached homes potentially twice as large as the homes confronting them. T. 44. The Springvale Road frontage could be lined with either townhouses for its entire length or it could be lined with large one-family detached units fronting on Springvale Road. Setbacks from residential streets would be a minimum of 20 feet rather than the 25.5 feet as proposed with a maximum building height of 40 rather than 35 feet.. T. 45 The Chelsea Court schematic development plan also provides 28% more

open space than the R-60 Zone would yield based on the growth tract area. T. 44. The minimum width of only 25 feet could result in a “relentless imposing street wall” along Springvale. The Chelsea Court green area of 2.4 acres is nearly doubled that which could be achieved under the R-60 Zone, none of which would be required to be open to the public. T. 44-45.

This is more appropriate for R-T zoning than other cases already approved by the Council. This is different as well, because those cases did not involve prior complaints about the existing use of the property, as exists here. T. 46.

To create a transition or edge, this property does not have to have frontage on a major road or commercial area. T. 47. Examples of developments where townhomes are not so located include Fairview road north of Spring Street, the 27 townhomes on 2nd Avenue and Leighton Wood Lane in Woodside, and the 18 townhouses on Laytonsville Road in north Woodside. T. 46.

He clarified that the Applicant is not basing the rezoning request on future construction of the Purple Line, but on the proximity of the site to the Silver Spring CBD, its function as a buffer from the CBD, its current institutional use and general conformance with the North and West Silver Spring Master Plan. T. 48.

In his opinion, the Master Plan designated a environmental setting for the Historic House of 37, 056 square feet. T. 48. Historic Preservation Staff’s position requires the Applicant to preserve the house, but did not preclude a road through the historic setting if it interfered with preserving the historic portions of the house. There are precedents for roads going through historic environmental settings in other areas of the County. He submitted into the record drawings of several options for placement of the private road. These include designing the road with a cul-de-sac on the interior of the site, a private road as currently shown on the development plan, a private road bisecting the site (as currently designed), but aligned further to the north of the historic house, a private road running to the south of the historic house, an option with access from Ellsworth, turning north with a second

access on Springvale, and an option where the house could be physically shifted and moved further south on the site.. T. 52-53. He believes that any of these options are approvable. T. 54.

The proposed development also furthers the goals of the Silver Spring CBD Sector Plan, Mr. Iraola stated. T. 57. Because the Council recognized the interrelationship of the CBD and the surrounding residential neighborhoods, the plans were prepared simultaneously. The Sector Plan outlines basic themes, including that the downtown should (1) be residential, (2) be a “green downtown” through the use of public spaces, and (3) be pedestrian friendly. T. 58-59. Chelsea court would add to the vitality and success of the revitalization efforts. T. 58.

The R-T Zone may be approved under any one of three criteria contained in the purpose clause. He believes that Chelsea Court satisfies two of the stated purposes of the zone. The Master Plan does not explicitly recommend R-T Zoning for the site and therefore does not meet this purpose clause. T. 60. It does meet the statutory purpose of providing a buffer or transition between commercial, industrial or high-density apartment uses and one-family uses. T. 60. Townhouses are more compatible with the surrounding SOECA neighborhood than the existing institutional school use. It will enhance the predominantly residential character while at the same time provide for housing diversity at a location near a CBD and transit, and maximizes the County’s massive investment in transit. T. 61. Institutional uses are frequently found appropriate, approved and used for R-T zoning.

The proposed development meets the purpose of the R-T zone because it provides a “buffer” or transitional use. The master plan defines townhomes and special exceptions as appropriate tools to transition near existing residential neighborhoods. Here, higher densities are located to the west and south of the site. The townhomes will buffer the neighborhood from the commercial businesses along Cedar Street and in the CBD. The area of transition, in his opinion, applies to the entire block because the existing nonresident professional offices and the Chelsea School “define” the block as a predominantly residential land use. This is reinforced by language in the Master Plan which states

that the nonresident professional offices are somewhat isolated from the one-family homes by the Chelsea School. T. 64. The Plan recognized that the institutional use differentiated and separated this block from the surrounding neighborhood. T. 64. As the Master Plan utilized both townhouses and nonresident special exceptions as transitional tools, townhouses are appropriate on the block. T. 64. SOECA recognized the buffer function performed by the property when it voiced concerns about the school's special exception in 1999.

Nor did Mr. Iraola feel that approval of the R-T rezoning would cause a "domino effect" triggering redevelopment of the Wayne Avenue block. There is no precedent that approved R-T rezonings have had this effect. Because the block is currently occupied with single-family homes which are owner-occupied, assemblage has proven difficult. In addition, the block already exists as an "island" of existing one-family detached homes surrounding on three sides by Cedar Street, the Chelsea School, an institutional use to the west, and the Springvale Terrace senior housing to the north. The proposed development further stabilizes this block because it replaces an institutional use with residential and restores the Riggs-Thompson House to its former residential use as well. T. 68.

Compatibility with the neighborhood may be achieved in several ways. Mr. Iraola testified that the master plan implies that compatibility is important in community preservation, stability and character, although there is no defined metrics to test for compatibility in the master plan or the Zoning Ordinance. T. 69. In his opinion, compatibility may be achieved through eight metrics: (1) complimentary land uses, (2) massing and scale, (3) building height, (4) architectural style, (5) building orientation, (6) setbacks, (7) buffers and landscaping, and (8) traffic. T. 69. Townhouses are complimentary land uses with single-family detached homes and allowed by right in all residential single-family zones through the MPDU optional method. Mr. Iraola submitted an exhibit comparing the Springvale Road frontage of the proposed development with development under the R-60 Cluster option. The Chelsea School plan will have six fronts of townhomes confronting the 9 existing single family homes along Springvale Road and the proposed development T. 71. The

cumulative length of the facades along Springvale Court total 234 linear feet. The existing homes across Springvale Road total 295 feet, approximately 20 percent more than that across from the site. He submitted a second exhibit showing development under the R-60 Zone. T. 72. The houses are very narrow and create an imposing street wall using a monotonous building height. T. 72-73. The total façade length of the proposed development along Springvale Road (234 feet), is still less than the 280-foot façade length under the R-60 cluster option. Thus, the massing and scale of the proposed development is more compatible than what could occur under the R-60 Cluster option. T. 72-73.

The third metric is building height. The maximum building height proposed for the Chelsea Courts is 35 feet. The maximum building height for the R-60 Cluster MPDU is 40 feet. He believes that the building height is more compatible with the streets that confront the property than potential development under the R-60 Zone.

Mr. Iraola testified that the fourth element of compatibility is architectural style. The architecture of these units will be traditional and contextual. T. 73. The fifth element is building orientation – the buildings will be oriented along Springvale Road and the private street will be designed as fronts adding to visual compatibility. The garages load in rear alleys which screen visibility of automobiles. T. 74. The townhouse buildings also work with the existing grade because they are terraced along and parallel to the grade. Setbacks, the sixth metric, will also be compatible. The required setback along Springvale Road was expanded to implement a “linear park” with a 25-foot setback. T. 74. Setbacks from Pershing Drive will accommodate a green space within the environmental setting of the Riggs-Thompson House. This leaves a 61-foot setback along Pershing Drive, although this could change based on the alignment of the private road. T. 70. The distance from the nearest single-family home along Pershing Drive is 230 feet. Compatibility is also enhanced through the use of buffers and landscaping. There will be significant buffers containing open space amenities along three frontages, with a double row of street trees along Springvale Road.

Finally, the eighth metric of compatibility is traffic. The existing traffic patterns will be maintained and has a favorable impact over the school use. T. 75.

Mr. Iraola also corrected an error in his prior testimony regarding the Riggs-Thompson House. T. 77. The environmental setting is established by the Master Plan and cannot subsequently be changed by the Historic Preservation Commission. In his opinion, the 37,056 square-foot environmental setting should be retained even though the Chelsea School is no longer occupying the property because the alternative 1.4 acres is in a technical appendix to the plan. If the private road were to access Springvale Lane, it would impact the building distance but not encroach into the environmental setting. T. 78-79. Comments from the Historic Preservation Commission imply that there is no barrier to the road passing through the environmental setting.

On cross-examination, Mr. Iraola testified that the first seven metrics of compatibility could be met with a schematic development plan consisting of 32 units. He was not able to opine on the eighth element, which is traffic, because it is outside his expertise. T. 86. He also stated that the term “gross-underutilization” of land is not mentioned in the Zoning Ordinance. He believes, however, that this is a goal stated in the Housing Element of the General Plan in attachment to Resolution No. 17-78, which states, “maintaining an overall balance of housing and jobs in the County is important to meeting new affordable housing goals providing opportunities for people to work in the County, to live in the County encouraging transit use.” T. 87. The plan also notes that, in 2006, the County achieved only 10% of new market rate housing units in areas served by Metro Stations. Under the stated goals of the Housing Element, it calls for establishing higher density housing in mixed-use transit oriented centers as a means of meeting objectives such as reducing the per capita carbon footprint, diversifying housing stock and creating vibrant pedestrian-oriented communities. T. 88.

Mr. Iraola also stated that density is one element to look at when determining the compatibility of a particular project with the surrounding neighborhood. T. 92. Of the 9 townhouse developments he submitted in support of the petition, none had been rezoned to R-T 15, and some

were adjoining major roads. T. 93-94. He did not see any adverse effect from the proposed development on the area between Cedar Street and Fenton Street.

2. Mr. Marty Wells:

Mr. Wells testified on rebuttal that the trip generation rates contained in the LATR guidelines were developed by Park and Planning Commission staff based on actual traffic counts conducted in Montgomery County. The M-NCPPC database includes counts of more than 900 townhouses, which is larger than the 216-household survey relied upon by Dr. Cirillo. T. 107. These are mandated standards which rezoning applicants are compelled to use. The CBD rates are lower than the county-wide rates because of higher transit usage, walking and other forms of alternative transportation. Therefore, the LATR rates used in the traffic study are conservative. T. 106. The distribution of trips from the subject property is also based on Park and Planning data which are part of the LATR guidelines and therefore, mandatory. T. 106.

Dr. Cirillo developed her own trip generation rates for townhouses and single-family detached homes based on household travel diaries. The purpose of the study was to design a regional transportation demand model in Metropolitan Baltimore. She concluded that the LATR rates are too low in the morning and too high in the afternoon. He disagrees that Dr. Cirillo's rates should be used because the LATR rates are based on actual traffic counts rather than surveys. T. 106-108. In his opinion, the LATR rates are more accurate because they were based on actual observations rather than surveys.

He also stated that the geographical scope of Dr. Cirillo's study was unclear. Silver Spring includes numerous zip codes and areas which have very different characteristics than the subject neighborhood. T. 109-110. Finally, the LATR rates are mandated and the rates have been proven to be reliable and acceptable for over 20 years. T. 110. Even using Dr. Cirillo's rates, in his opinion,

would yield the conclusion that traffic from Chelsea Court would have insignificant neighborhood traffic and queuing impacts and would pass the test for adequate public facilities. T. 110.

Because of the questions raised regarding queuing at adjacent and nearby intersections, Mr. Wells observed the queues on westbound Spring Street at Colesville Road during the morning and evening peak hours. He observed that all of the vehicles on westbound Spring Street cleared the Colesville Road intersection during each signal cycle.

He also calculated the queues based on his firm's traffic counts, intersection geometry and County Department of Transportation's signal timings. Based on these factors, he concluded that the longest queues at the westbound approach to the Spring Street and Colesville intersection occur in the through and left turn lanes in the morning and in the right turn lane in the afternoon. T. 111. These queues extend approximately five car lengths in the morning peak hour and about nine car lengths in the evening peak hour. The queues do not back up to Ellsworth Drive, which is located approximately 420 east of Colesville. T. 109-111.

These queues are expected to increase across because of pipeline projects. In the morning peak hour, he expects the queues to lengthen by one car length (6 cars) in the a.m. peak hour and to 10 car lengths in the p.m. peak hours. He believed that traffic from the proposed development would increase the queues by approximately 9 feet in the morning and 11 feet in the afternoon, which, in his opinion, is insignificant. T. 109-112.

He also introduced counts of traffic volumes at certain intersections surrounding the subject property. The existing neighborhood traffic volumes are very low. T. 114. He submitted three plans to demonstrate the impact of traffic on the neighborhood which included the schematic development plan, the single access from Ellsworth Drive, access from both Ellsworth Drive and Springvale Road, and the R-60 plan prepared by Mr. Doggett. The volumes shown accounted for the existing volumes combined with the trips generated by the Chelsea Court development. The volumes did not remove the trips from the existing school. In Mr. Wells' opinion, the volumes resulting from all scenarios are

very low. T. 114-118. In his opinion, the access shown on the alternative plans for Chelsea Court are all safe, adequate and efficient. T. 118.

On cross-examination, he testified that the Doggett plan would also meet the test for adequate public facilities and that the counts appearing on the plans were forecasts. T. 119. When asked about cut-through traffic, he stated that he would take a different route than through the neighborhood to get to the Beltway. The LATR guidelines do not take into account the variables to which Dr. Cirillo testified, but in his experience, none of the adequate public facilities ordinance do so. The LATR model does not address off-peak trips. T. 134.

3. Robert Yougentob:

Mr. Yougentob stated that when they looked at the site for possible purchase, EYA had to balance competing issues, including meeting Chelsea School's financial requirements in order to be able to move. EYA tried to create a plan that was as compatible as possible and still meet the Chelsea School's economic needs. T. 138. He submitted photographs of EYA communities in the Metropolitan Washington area. The photographs depict other EYA communities where townhouses are located adjacent to single-family homes. EYA pays close attention to the details of design in order to create compatibility. T. 142. The residents do interact and socialize with each other. T. 142. They have used the technique of designing the strings of townhouses perpendicular to single-family homes with confronting facades to create a compatible relationship. In the developments shown in the photographs, the alleys actually connect to the street, unlike the 25-foot setback for this property. T. 146. Townhouse development now generally provides a consolidated open space rather than individual back yards to accommodate the newer, more urban style of townhomes. The homes confronting along Pershing are approximately 200 feet from the townhouse rows. In his opinion, although a row is confronting these single-family dwellings, the open space and architectural style have worked well in other EYA developments to create compatibility. T. 149. EYA has "incredible

sensitivity” to try to create architecture that reflects the architectural style of the community. T. 150.
The pictures show how landscaping can enhance the compatibility of the project. T. 151.

Mr. Youngentob also addressed the opposition’s concerns regarding the nature of townhouse communities. T. 156. He prepared a survey which he sent to approximately 700 homeowners. T. 157. They received 142 counted responses, or 20 percent. Sixty-two percent described themselves as married or in a partnership with no children. Some were single and approximately 17% of the respondents were families with school-age children. Those with families generally had one or two children. T. 158. Approximately 80% of the respondents planned to live in their homes more than 5 years and 60% expected to live there 8 or more years. Fannie Mae measures the average length people live in a single-family home as 7 years.

According to Mr. Youngentob, 52% of the respondents had only one car, 42% had two cars, and only four out of the 142 respondents had more than one car. Almost a third of the people with two-car garages owned only one car. T. 159.

Regarding modal transportation split, the EYA survey showed that close to least one occupant in 47% of the homes took transit to work, 43% indicated that a partner used transit, and an additional 13% and 11% (individual and partner) walk to work. Only 42% drove a car. T. 160.

Unlike Dr. Cirillo’s assumption that every townhouse would generate 10 or 11 trips, the survey indicated that the majority of EYA residents make two trips per day and 90% are making fewer than four trips per day. T. 161. Non-automobile trips were as high as 11 per day, but were made by biking or walking. T. 162.

Of the daily trips made, the EYA survey indicated that 90% of the trips were to restaurants, 60% were to local retail uses, 67% of the trips were to outdoor park spaces, which demonstrates why the open areas are so important, in his opinion. T. 162. Fifty-six percent of those responding rated proximity to Metro as an extremely important reason they purchased the townhouse. Sixty-six percent said that their lifestyle had improved. Over 17% said they were very connected, and

indicated they interacted with the broader community by shopping at local businesses. He believes this is important to Silver Spring retail. T. 164.

Based on the survey, Mr. Youngentob testified that he thinks the proposed development can bring neighbors to the community that are going to engage and invest in the community. T. 166.

In Mr. Youngentob's opinion, he believes that both the R-60 Zone and the R-T 15 Zone are compatible with the community. It doesn't create any significant amount of traffic impact on the neighborhood, it has significant amounts of open space and buffers, and it is in scale with the character of the surroundings. In his opinion, density is not necessarily a measure of compatibility. He believes that Mr. Doggett's plan with the 14 single-family homes that may be 40-feet tall is less compatible relative to the six facades along Springvale proposed for the subject property. This is exacerbated by all of the curb cuts required for the driveways. In addition, he wasn't sure whether street trees could be provided along the length of Springvale Road. T. 168. He also felt that traffic would be worse because of the 14 driveways directly accessing Springvale Road.

He believed that removal of the non-historic elements of the Riggs-Thompson House along with the planned open space for the environmental setting is much more compatible with the single-family homes across Pershing Drive than the existing use.

While he cannot assure that the Wayne Avenue block will not be assembled, that should be balanced by the alternative uses of the Chelsea School. Selling to another school will create a much higher value than single-family homes. He believes that the school felt it was serving the community by contracting for residential use of the property because it would be more compatible. T. 182. Given that the cost per acre for land is approximately \$2.5 to \$3 million an acre, redevelopment at 14 units per acre is not a viable alternative for the property. T. 182. This means that, currently, it is unlikely that the Wayne Avenue block will be assembled and redeveloped. T. 182.

Mr. Yougentob presented a series of alternatives for the alignment of the private road through the site. T. 186-198. He also submitted some revised binding elements, including an element

providing that, “the townhouses will be located in a manner that will provide significant green areas along Pershing Drive and Ellsworth Drive and a linear area along Springvale Road.” He believes that the proposed development creates a better long-term protection for the community than if the site became another school. T. 203.

On cross-examination, Mr. Youngentob testified that EYA could reduce the density by a unit or two, but the plan was not economically viable with the 32 units permitted under the R-60 zone. He also stated that 11% of respondents to EYA’s survey lived in Maryland developments, all of which were adjacent to a Metro station.

**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
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 200
Rockville, Maryland 20850
(240) 777-6660**

**IN THE MATTER OF:
CHELSEA RESIDENTIAL ASSOCIATES**

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Citizens Association (SOECA)

Report and Recommendation by: Lynn A. Robeson, Hearing Examiner

Local Map Amendment
Application No. G-892
(Remand)

HEARING EXAMINER'S REPORT AND RECOMMENDATION

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APPENDIX

I. EXECUTIVE SUMMARY

Applicant:	Chelsea Residential Associates
LMA No. & Date of Filing:	G-892, filed January 4, 2011, remanded pursuant to Montgomery County Council Resolution No. 17-286, amended application filed November 26, 2011;
Current Zone and Use:	The property consists of a single lot totaling 5.25 acres +/- which is currently occupied by the Chelsea School, a private school operating under a special exception, which includes the Riggs-Thompson house, designated an historic resource on the North and West Silver Spring Master Plan;
Zoning and Use Sought:	LMA G-892 (as amended) proposes to rezone the subject property from the R-60 Zone to the R-T 12.5 Zone in order to develop 63 townhouses and convert the Riggs-Thompson house to a single-family detached residential use;
Location:	On the block surrounded by Springvale Road on the north, Pershing Drive on the east, Cedar Street on the south, and Ellsworth Drive to the west;
Area to be Rezoned:	4.85 acres (net); 5.25 acres (gross);
Density Permitted in R-T 12.5 Zone:	15.25 dwelling units per acre, with 22% MPDUs;
Density Planned:	12.19 dwelling units per acre, including 12.5% (or 8) MPDUs;
Green Area:	Proposed: 51% (Required 50%);
Parking Required/Planned:	128 spaces (Required)/140 proposed;
Height Planned:	35 feet, maximum;
Traffic & Environmental Issues:	No LATR traffic improvements required; issues relating whether alignment of access road will allow cut-through traffic;
Zoning Issues:	Whether the Application (1) meets the purpose clauses of the R-T Zone, and (2) is compatible with the surrounding area;
Consistency with Master Plan:	Whether rezoning at the density proposed is inconsistent with the North and West Silver Spring Master Plan;
Neighborhood Response:	Opposed by six civic associations and seventeen individuals; supported by five individuals;
Planning Board Recommends:	Approval;
Technical Staff Recommends:	Approval;
Hearing Examiner Recommends:	Approval.

II. STATEMENT OF THE CASE

Originally filed on January 4, 2011, the Applicant sought to rezone property located at 630 Ellsworth Drive, Silver Spring, Maryland (Lot 58, Evanswood Section 1) from the R-60 to the R-T 15 Zone. Exhibit 1. The application included binding elements relating to land use and density, as it was filed under the Optional Method authorized by §59-H-2.5 of the Zoning Ordinance.

On September 22, 2011, the Hearing Examiner issued her Report, recommending that R-T zoning was appropriate for the property, but that the case be remanded to address issues relating to compliance with the 2000 North and West Silver Spring Master Plan (Master Plan or Plan), the alignment of a private street shown on the Schematic Development Plan (SDP), and the size of the environmental setting intended by the Master Plan. Exhibit 258, p. 93.

On October 18, 2011, by Resolution 17-286 (Exhibit 267), the District Council remanded the case back to the Hearing Examiner for:

...[R]evision of the Schematic Development Plan (SDP) and consideration by the Planning Board of the intended size of the environmental setting of the Riggs-Thompson House historic resource, given the language in Appendix D of the North Silver Spring Master Plan. The SDP should be reconfigured to propose residential townhouse (RT) development with less density and less massing so that it will be more compatible with the character of the transition from the Central Business District to the residential community north of Cedar Street and more consistent with the 2000 North and West Silver Spring Master Plan. The revised SDP should also resolve issues relating to the alignment of the private road to comply with the environmental setting of the historic site as set forth in the Master Plan and its Appendix D.

Pursuant to the Council's directive, the Hearing Examiner issued an Order on November 8, 2011 (Exhibit 274) remanding the case to the Planning Board. The Hearing Examiner limited their scope of review to the following:

1. The submission of a revised schematic development plan for development in an RT Zone with less density and massing to be more consistent with the character of the transition from the Central Business District to the existing R-60 Zone north of Cedar Street and the recommendations of the 2000 North and West Silver

Spring Master Plan. Because it will be a revised plan, this may require review of whether the development meets the required zoning and environmental regulations normally reviewed to the extent the revised plan differs from the plan originally submitted.

2. Reconsideration by the Planning Board of the environmental setting intended by the Master Plan for the Riggs-Thompson House.
3. Resolution of the issues surrounding the alignment of the private road providing access to the property. The issues regarding the road alignments include, without limitation, the relationship between the private road and the environmental setting, the compatibility of alignment (and the resulting traffic patterns) with the surrounding area, and consistency of the alignment with the Master Plan.

The Hearing Examiner also *excluded* the following matters from review on remand (Exhibit 274):

1. Whether the application fulfills the purposes of the R-T Zone. The District Council has already found that the location is “appropriate” for R-T zoning; and
2. Whether public facilities are available to serve the development (including Local Area Transportation Review and Policy Area Mobility Reviews).

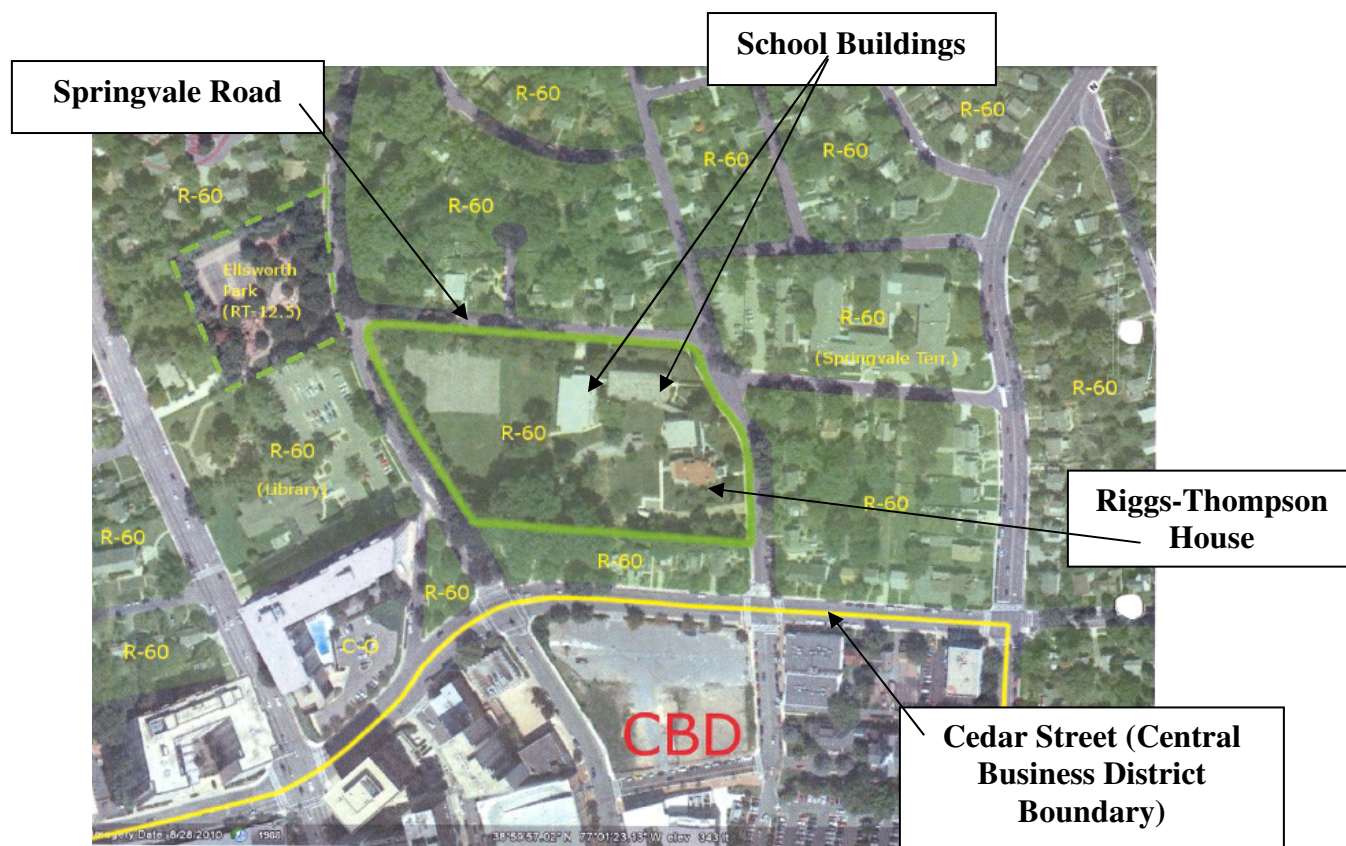
On November 21, 2012, the Applicant submitted a revised SDP and amended its application to request rezoning from the R-60 to the R-T 12.5 Zone. Exhibit 276. The parties also agreed to exchange hearing exhibits by set dates prior to the public hearing. The Hearing Examiner issued a Notice of Public Hearing and Scheduling Order for setting the public hearing for March 23, 2012, and memorializing the agreed upon to exchange exhibits. Exhibit 278. Technical Staff recommended approval of the application in a report dated January 17, 2012. Exhibit 282. The Planning Board held its public hearing on January 28, 2012, and on March 6, 2012, issued its recommendation to approve the application. Exhibit 304. The parties complied with the terms of the scheduling order with some modifications, and the public hearing proceeded as scheduled on March 23, 2012. The public hearing was continued to March 26 and 30, 2012, to accommodate testimony from the parties. The record remained open until April 3, 2012, to permit the Applicant to submit a revised SDP containing additional binding elements

proposed at the public hearing. 3/30/12 T. 199. These were submitted (Exhibits 346(a) and (b) and the record closed on April 3, 2012.

III. FACTUAL BACKGROUND

A. Subject Property

The subject property has already been described in the Hearing Examiner's Report and Recommendation prior to remand (Exhibit 258, pp. 2-3). To aid the Council in its decision on remand, an aerial photograph of the subject property (outlined in green) submitted by Ms. Anne Spielberg in the original case (Exhibit 151) is shown below:



Key physical characteristics of the property pertinent to the remand include (1) there is a 6% grade climbing from the western boundary along Ellsworth Drive to the eastern boundary along Pershing Drive (a rise of approximately 40 feet), (2) there are existing mature trees on the property, clustered primarily in the southwestern corner, but also located along Springvale Road,

and (3) adjoining the southern property line are a row of single-family detached homes which are recommended to be special exceptions for non-resident professional offices in the master plan, but some of which are still owner-occupied. Exhibit 45, p. 3; Exhibit 314(k); 3/23/12 T. 153, 277. The rear yards of the homes are adjacent to the Chelsea School Property; the houses front on the north side of Cedar Street. Exhibit 45. Ellsworth Park is located immediately to the west of the property and is split-zoned R-60 and RT 12.5. 3/26/12 T. 341.

B. Surrounding Area and Adjacent Development

The surrounding area was previously defined in the original application as being Fenton Street in the Central Business District to the south, Dale Drive to the north, and Colesville Road and Wayne Avenue to the east and west respectively, and is shown on an aerial photograph submitted by the Applicant (Exhibit 291(d) on the next page). Exhibit 258, p. 27; Exhibit 267, p. 4. Both the Council and the Hearing Examiner concluded the surrounding area is characterized by a wide variety of multi-family residential, civic, commercial, and low-density residential uses which transition gradually from Fenton Street to Cedar Street with an abrupt transition at Cedar Street to smaller single-family detached homes in the R-60 Zone, which characterize the neighborhood north to Dale Drive. Exhibit 257, p. 27. Exhibit 267, p. 4.

C. Zoning History

The zoning of the property was set forth in the prior Hearing Examiner's Report and Recommendation, but will be briefly summarized here where relevant to issues upon remand. The subject property was classified in the R-60 Zone in the 1958 Countywide Comprehensive Zoning. Technical Staff reported that the R-60 zoning has been continuous since that time, although the property was owned by the Sisters of the Holy Names and used for a parochial



**Surrounding Area
Exhibit 291(d)**

school without a special exception since the 1930's. The current school decided to purchase the Property in 1997 or 1998 in order to expand its existing facilities. 5/26/11 T. 39. The Board of Appeals approved the Chelsea School's special exception petition (BOA Case No. S-2405) on August 1, 2000, the same year the North and West Silver Spring Master Plan was adopted. Exhibit 282, p. 9. A detailed history of the Chelsea School's role in the Master Plan is set forth in Section IV.B relating to the intended size of the environmental setting for the Riggs-Thompson House.

IV. ISSUES ON REMAND

A. Reduction in Massing and Density (Compliance with the Master Plan and Compatibility With the Surrounding Area)

The District Council found that, “The SDP should be reconfigured to propose residential townhouse (RT) development with less density and less massing so that it will be more compatible with the character of the transition from the Central Business District to the residential community north of Cedar Street and more consistent with the 2000 North and West Silver Spring Master Plan.” Exhibit 267, p. 15.

The basis for the decision to remand the case was two-fold. The District Council and the Hearing Examiner found that R-T zoning for the subject property was appropriate because it accomplished several goals of the Master Plan. In particular, the SDP provided for additional sidewalks, public space, and established a residential, rather than institutional, use for the property. Exhibit 267, p. 8; Exhibit 258, pp. 85-86. The decision to remand was also based on a finding that density and massing proposed did not sufficiently comply with the Master Plan’s recommendation for the Cedar Street transition from the Central Business District and because it was not compatible with the uses immediately surrounding the property. Exhibits 267, 258.

On remand, the parties remain far apart on whether the amended R-T 12.5 SDP complies the Master Plan and is compatible with the neighborhood. The issue that appears to generate the biggest divide is the massing and layout of the townhouse units. As described below, those in opposition desire smaller clusters of units separated by green space interspersed throughout the site with traditional backyards in order to avoid a “barracks-like” appearance. They point out that, exclusive of the green area surrounding the historic house, the “density” of the site is 16.36 dwelling units per acre, and that the combined length of the townhouse strings (i.e., both north and south of the private street) have only been reduced by 2 feet. They dismiss the changes as

“small tweaks” that are insignificant because it does not, from their perspective, significantly reduce the mass of the development. They also find incompatible the close proximity of the rear of the townhouse units, separated only by alleys, decks and parking.

Rather than the development envisioned by the community, the Applicant proposes units that “live to the front”, with green space that is aggregated on the perimeter of the site to create more of a park-like setting. Thus, massing is addressed by techniques reducing the scale of the development around the perimeter of the property rather than actual breaks in the townhouse strings. According to Mr. Youngentob, green space interspersed between the units will not yield great benefit; rather it is “wasted” space that will not receive sun and will be underutilized. Reductions in massing are accomplished by architectural elements and variations, the orientation of the townhouse rows, increased space between the front courtyards and significant setbacks from the street and the rear property line. Technical Staff and the Planning Board both found this approach sufficient to make the development compatible with the single-family detached community surrounding the property. Technical Staff concluded:

On the northern portion of the site, orientation of the townhouse rows places end units, designed to appear as one-family detached homes, directly across from the one-family detached homes across Springvale Road. Therefore, no continuous wall of townhomes front one-family detached homes. To the east, a public gathering area and the Riggs-Thompson House, a one-family detached home, face the one-family detached homes across Pershing Drive. To the west of the site near Ellsworth Drive, the only contiguous row of townhomes fronting a public street, comprised of five and three townhomes, respectively, faces a public library and park, not one-family detached homes. All sides of the site are buffered by generous green area. Lastly, variations in each row’s building line will run throughout the site, with no uninterrupted building line enduring for more than three contiguous townhomes. This standard will be addressed if the project progresses through site plan review.

1. The Applicant’s Vision

The Applicant proposes a site design configuration it characterizes as more “relaxed” than the prior plan. 3/23/12 T. 158. The Applicant’s strategy to address the concerns raised was

to create buffers from the single-family houses through significant green area, but also to relate to them through site layout, building orientation, architectural detail and other elements. 3/23/12 T. 60. The Applicant made several changes to the density and massing of the project to address the Council's directive on remand, summarized by Mr. Thakkar, vice president of EYA, as follows. The Applicant also provided textual and graphic comparisons of the two plans (Exhibit 327(e), shown on pages 12 and 13):

1. The total number of units has been reduced from 77 to 64 dwelling units; the prior SDP showed 10 MPDUs, this SDP shows 8 MPDUs. The total density per acre is approximately 12.19 units/acre, a 17% reduction in the density from the original SDP. 3/23/12 T. 56.
2. The strings of town house units have been reduced from rows of 8 and 6 units to 7 and 5 units in this SDP. The strings north of the private street were 132 feet long in the prior application; they now total 120 feet in length.
3. The courtyards (or landscaped areas) between the townhouse strings have been widened from 36 feet (in SDP prior to remand) to 40 feet.
4. One townhouse row has been removed from the southeast corner of the original SDP. There are now five rather than six rows of townhouses south of the private street, increasing the setback from the Riggs Thompson House from 28 feet (before remand) to 92 feet.
5. The current SDP shows 54% open space and they are binding themselves to 50%, compared to the 47 or 48% green space in the prior plan.
6. The private road intersects with Springvale (as opposed to Pershing Drive as shown in the initial SDP) and avoids the environmental setting. 5/23/12 T. 59.

	Initial Plan	Revised Plan
1 Zoning	RT-15	RT-12.5
2 Unit Count	67 Market, 10 MPDUs (14.67 / Acre)	56 Market, 8 MPDUs (12.19 / Acre, 17% Reduction)
3 Springvale Setback	20 ft	25 ft
4 String Length (Townhouse Groupings)	8 / 6 Units (12 Strings)	7 / 5 Units (11 Strings)
5 String Length North of Springvale	132	120
6 Minimum Green Area	40%	50%
7 Actual Green Area	2.53 Acres (48%)	2.84 Acres (54%)
8 Wider Courtyards	36	40
9 Historic Setting	37,056 sf Protected	37,056 sf Protected
10 Add. Green Space Surrounding Historic Setting		± 25,000 sf (1.4 acre total)
11 Setbacks (SW Property Line)	Waiver Requested	30 ft (no waiver requested)
12 Access	Ellsworth and Pershing	Ellsworth and Springvale (avoiding historic setting)
13 Traffic Calming Techniques		Specialty paving at driveway aprons and on street parking
14 Cut Through Prevention		Residents only and turn restriction signage
15 Closest Distance From Townhouse to Historic House	28 ft	92 ft



Exhibit 327(e)

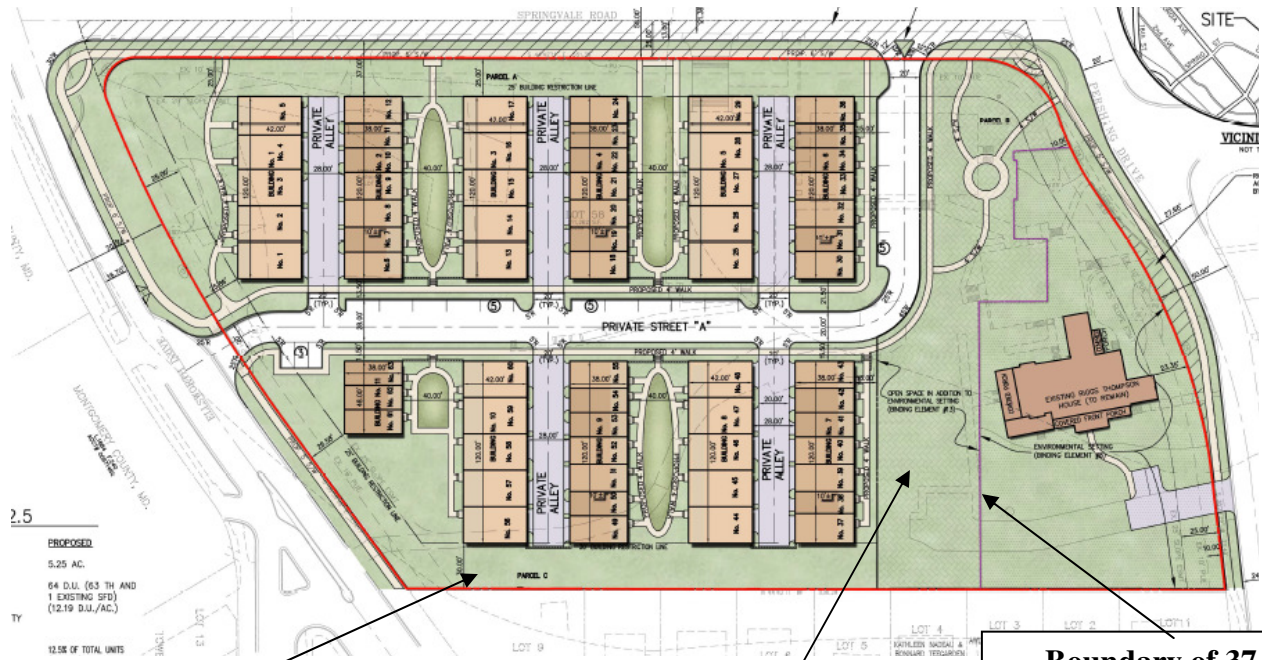
EYA also submitted a side-by-side comparison of the initial (i.e., R-T 15) SDP with the current proposed SDP (Exhibit 327(e)), shown on the next page.

According to the Applicant's expert land planner, Mr. Miguel Iraola, the development has been "shifted" to the western side of the site to provide a larger open area around the historic house. This shift, in his opinion, combined with the removal of the southern row of townhomes closest to the historic house, increases green area and opens the site towards Springvale Road and Pershing Drive. 3/23/12 T. 153-154. The Applicant proposes to record a restrictive covenant permitting public access to the green area immediately east of the 37,056 square-foot environmental setting. The restrictive covenant will also prohibit development within the area. 3/23/12 T. 258.

According to Mr. Iraola, setbacks from Pershing Drive have increased from 67 to 127 feet. The distance from the nearest home on Pershing Drive has increased from 230 feet to 296 feet and the setback from the Riggs-Thompson House has been increased from 28 feet to 92 feet. The Applicant also provides the required 30-foot setback on the southern property line. 3/23/12

**Comparison Between Existing and
Proposed SDP (Exhibit 327(e))**

T. 119-120. In Mr. Iraola's opinion, the relaxed density affords the opportunity to create a really outstanding setting for the historic house because it sits at a high plateau on the property and is very prominent. 3/23/12 T. 153-158. The environmental setting and its relationship to the public access area are shown on a rendered version of the SDP, Exhibit 346(b), shown on the following page.



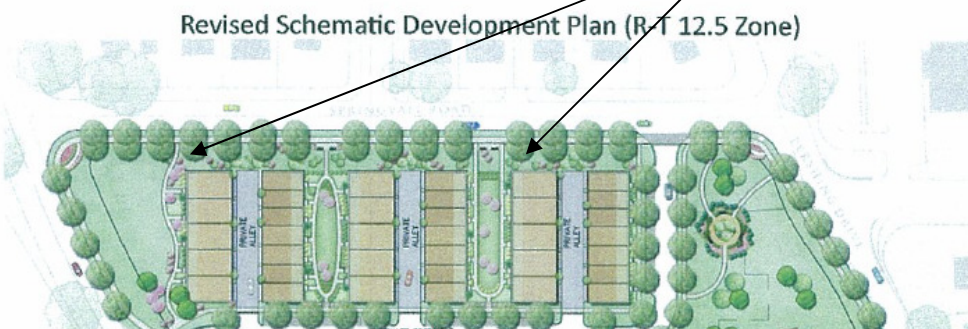
Full 30-Foot Setback

Public Access Area

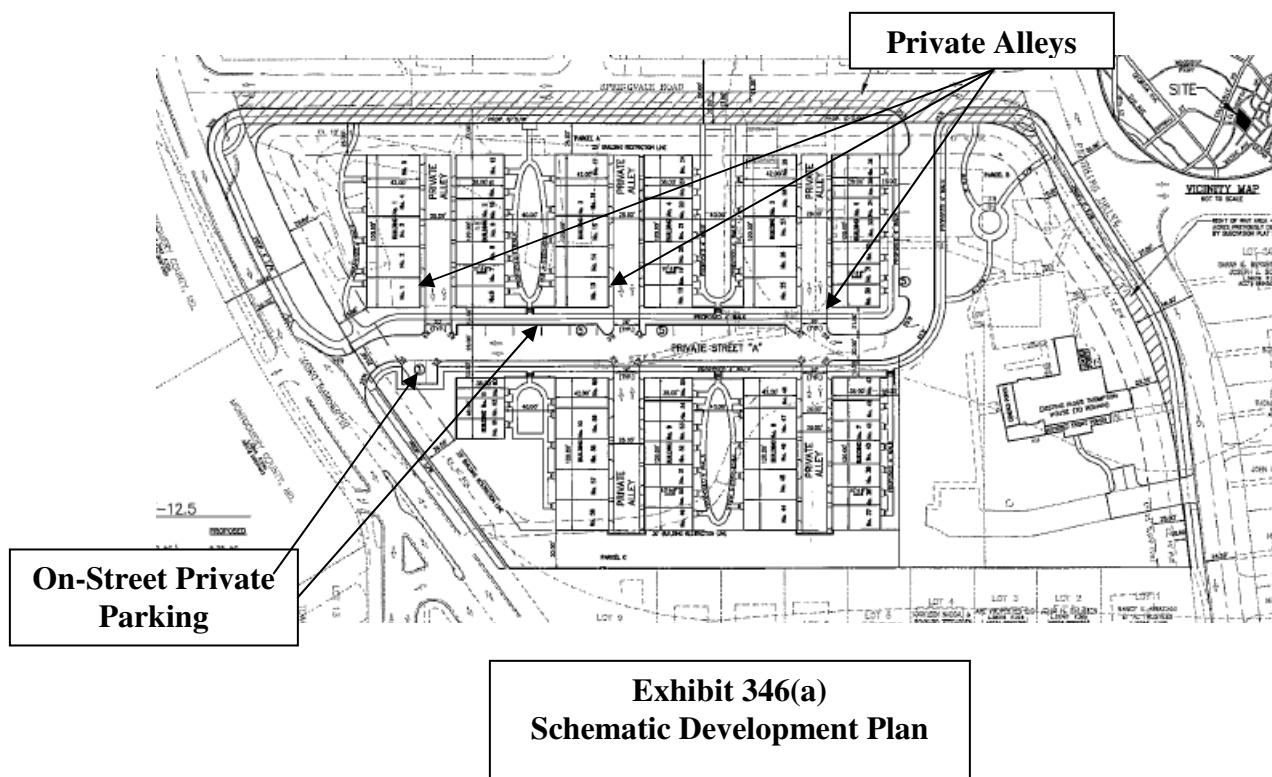
**Boundary of 37,056
Square Foot
Environmental Setting**

Certain elements continue from the prior plan. According to Mr. Iraola, these townhouses are designed to “live to the front”, and therefore, the site layout aggregates large areas of green space efficiently throughout the site. 3/23/12 T. 149. Mr. Thakkar and Mr. Iraola testified that the Applicant remains committed to designing functional fronts on the units facing Springvale Road and a double row of street trees in the setback from that road (subject to site plan review), and has included a binding element to this effect. 3/23/12 T. 60, 126-127; Exhibit 346(a). This proposed landscaping is shown on the Exhibit 327(e), on the following page.

Double Row of Street Trees



As in the prior plan, the individual units have rear decks opening onto alleys and garages. Mr. Iraola testified that decorative walls and landscaping will screen the alleyways from Springvale Road and eliminate any adverse impacts from headlight glare into the homes to the north across Springvale Road. 3/23/12 T. 148-150. Three units will have no garages; the balance of the units will have two-car tandem garages. Exhibit 346(a). Fifteen additional parking spaces are provided on the private street, for a total of 140 spaces (above the minimum 128 spaces required). Exhibit 346(a). The configuration of alleys and garages to the north and south of the private street are most clearly depicted on the amended SDP (Exhibit 346(a)) shown below:



Mr. Iraola testified that the revised SDP complies with the Master Plan, is compatible with the surrounding neighborhood, and complies with the Council's direction on remand for several reasons. In his opinion, these changes listed above in combination with other techniques visually reduce the scale of the development. He opined that compatibility does not

mean identical building types; rather, different techniques may be used to permit different building types to be harmonious. The orientation of the townhouse strings remains perpendicular to Springvale Road, thus reducing the mass of the strings from that perspective. The units adjacent to Springvale Road will have functional fronts, and decorative walls and landscaping will screen the alleys from the residents on the northern side of the road. In addition, Mr. Iraola testified that the Applicant will use a variety of architectural elements to simulate single-family detached homes. These elements will include variable roof lines and differing entrance treatments, such as porches and recessed entrances. In his opinion, despite the alignment of units straight strings of five and seven units, and the varied techniques described above create compatibility with the single-family homes surrounding the property and are consistent with the Master Plan. 3/23/12 T. 158-164. Mr. Youngentob testified that green space created by breaking up the strings into smaller clusters would have little benefit because of the property's grade. He stated that the smaller strips of green space would not receive sunlight and would not be visible from the road; it would simply reduce the density of the development. He testified that the development's proximity to the Central Business District, as well as its high walk score, did not justify reducing the density simply to provide strips of green area. 3/23/12 T. 260.

Mr. Thakkar introduced photographs of other EYA developments as well as a model of EYA's Clarendon Park project, to demonstrate how architectural elements and landscaping, and building orientation may be used to create compatibility with single-family homes. 3/23/12 T. 62-69. Selected photographs of these exhibits, as well as a photograph of the model of Clarendon Park, are shown below and on the following pages.



**Photograph of Clarendon Park
Exhibit 291(d)**



**Photograph of Model of
Clarendon Park
Exhibit 327(c)**



**Chancellor's Row
Exhibit 291(d)**



**National Park Seminary
Exhibit 291(d)**

Mr. Iraola testified and submitted evidence of several comparable townhouse developments, zoned R-T 12.5 or R-T 15, which are near Central Business Districts (Exhibit 291(f)(a)-(l); 3/23/12 T. 130-134. These include:

1. Woodside Station, located at Spring and Cedar Streets, zoned R-T 12.5;
2. Rosedale Park, zoned R-T 12.5, located between Chestnut Street and Rosedale Avenue near the Bethesda CBD;
3. Good Counsel, zoned R-T 15, located between Arcola Avenue and Georgia Avenue near the Wheaton CBD.
4. Fairview Court located on Fairview Road on the edge of the Silver Spring CBD, developed at 12.26 dwelling units per acre;
5. Courts of Woodside, located on Georgia Avenue and Noyes Drive, zoned R-T 12.5;
6. Winchester/Plyers Mill, zoned R-T 15, located approximately 2,300 feet from the Wheaton CBD;
7. Ottawa Place located on Georgia Avenue and Highland Drive, zoned R-T 12.5;
8. Bonaire Court, located at Sligo Avenue and Bonaire Court, zoned R-T 12.5;
9. Ritchie Avenue, located on Ritchie Avenue south of Sligo Avenue, zoned R-T 12.5;
10. Belvedere Glen, (zoned 12.5) adjoining the Forest Glen Metro Station;
11. Glenbrook Village, zoned R-60/TDR 12.5, adjoining the Bethesda CBD; and
12. Kaz Development, zoned R-T 12.5, located outside the Wheaton CBD at Georgia Avenue and Evans Drive.

He believes that the density proposed for the Chelsea School site is compatible with the surrounding area.

In Mr. Iraola's opinion, the revised SDP conforms to the recommendations of the Master Plan. While this site is not located on a major road, there are several examples of the ones he described which also do not front on a major road. He also stated that the development complies with the first chapter of the Master Plan which, in his opinion, is the most important because it

addresses preserving the existing neighborhood and the character of the north and west Silver Spring neighborhoods. Having a residential use adjacent to the non-resident professional offices adjacent to Cedar Street stabilizes the residential character of the area to the north. He opined that the open space provided in the revised SDP strengthens the delineation between the CBD, with cement plazas, and the area to the north and provides the opportunity for a park-like area, which is unusual in the R-60 Zone. The SDP will also further pedestrian connectivity through sidewalks along the perimeter and through the public access area. He believed that the Hearing Examiner's findings of Master Plan compliance, listed on pp. 83-89 of her Report and Recommendation (Exhibit 258) apply to the revised SDP as well. He also believed that preservation of the Riggs-Thompson House as a single-family home preserves the character of the neighborhood because it provides a focal point and identity for the community. In his opinion, the revised SDP complied with the Master Plan for the same reasons previously submitted (i.e., prior to the remand). In addition, the reduced density addresses the massing concerns expressed by the Council. 3/23/12 T. 130-138.

In addition to revising the site layout, the Applicant submitted revised textual binding elements, some of which are responsive to citizens concerns expressed at the public hearing. These textual binding elements (contained on the revised SDP, Exhibit 346(a)) are shown on the following page.

2. The Planning Board and Technical Staff Recommendations

Both the Planning Board and Technical Staff recommended approval of the application, as they did of the R-T 15 schematic development plan. Exhibits 282, 304. Technical Staff characterized the 17% reduction in density as "substantial", but described the massing as "somewhat reduced". Exhibit 282, p. 7. Staff found that potential concerns regarding massing

BINDING ELEMENTS

1. THE MAXIMUM NUMBER OF UNITS WILL BE 64 (63 TOWNHOMES AND ONE (1) SINGLE-FAMILY DETACHED).
2. THE APPLICANT, ITS SUCCESSORS AND ASSIGNS WILL RECORD A PUBLIC ACCESS EASEMENT ALLOWING PUBLIC USE OF THE DESIGNATED PUBLIC GREEN SPACE ALONG ELLSWORTH DRIVE, SPRINGVALE ROAD AND PERSHING DRIVE, WITH THE SPECIFIC SIZE, CONFIGURATION AND LOCATION OF THIS EASEMENT SUBJECT TO FINAL SITE PLAN APPROVAL.
3. THE PROJECT WILL PROVIDE GREEN AREA OF AT LEAST 50% OF THE TRACT AREA. THE TOWNHOUSES WILL BE LOCATED IN A MANNER THAT WILL PROVIDE GREEN AREAS ALONG PERSHING DRIVE AND ELLSWORTH DRIVE AND A LINEAR GREEN AREA ALONG SPRINGVALE ROAD, ALL GENERALLY CONSISTENT WITH THE SCHEMATIC DEVELOPMENT PLAN WITH THE SPECIFIC SIZE, CONFIGURATION AND LOCATION SUBJECT TO FINAL SITE PLAN APPROVAL.
4. THE APPLICANT, ITS SUCCESSORS AND ASSIGNS WILL PRESERVE THE RIGGS-THOMPSON HOUSE.
5. THE APPLICANT, ITS SUCCESSOR AND ASSIGNS SHALL ABIDE BY THE EXISTING TRAFFIC RESTRICTIONS ON SPRINGVALE ROAD, ELLSWORTH DRIVE AND PERSHING DRIVE SO LONG AS THOSE RESTRICTIONS REMAIN IN EFFECT.
6. THE MAXIMUM BUILDING HEIGHT WILL BE 35 FEET.
7. THE PROJECT WILL PROVIDE A MINIMUM OF TWO PARKING SPACES PER UNIT PLUS ADDITIONAL SPACES FOR GUEST PARKING.
8. THE ENVIRONMENTAL SETTING FOR THE RIGGS-THOMPSON HOUSE WILL REMAIN AT 37,056 SQUARE FEET (0.850 Ac.).
9. THE SETBACK ALONG SPRINGVALE ROAD SHALL BE A MINIMUM OF 25 FEET AND, SUBJECT TO SITE PLAN APPROVAL, WILL INCLUDE A DOUBLE ROW OF TREES.
10. THE INTERNAL PRIVATE ROAD WILL BE RESTRICTED TO USE BY RESIDENTS AND VISITORS OF CHELSEA COURT AND WILL INCLUDE DESIGN FEATURES TO AVOID CUT THROUGH TRAFFIC SUCH AS LIMITED ROADWAY WIDTH, ON-STREET PARKING, SPECIAL PAVING AT EACH OF THE TWO (2) INGRESS/EGRESS POINTS, SIGNAGE PROHIBITING CUT THROUGH TRAFFIC, AND OTHER CONTROL MEASURES, TO BE FINALIZED AT THE TIME OF SITE PLAN APPROVAL.
11. THE TOWNHOUSE UNITS CONFRONTING SPRINGVALE ROAD WILL BE DESIGNED TO HAVE THEIR FRONTS FACING SPRINGVALE ROAD.
12. THE INTERNAL PRIVATE ROAD SHALL INCLUDE SIGNAGE AND CHANNELIZATION MEASURES TO PROHIBIT LEFT TURNING MOVEMENTS FROM THE PRIVATE STREET ONTO SPRINGVALE ROAD, SUBJECT TO APPROVAL BY MCDOT, AS PART OF THE SITE PLAN APPROVAL PROCESS.
13. AT THE TIME OF RECORD PLAT, THE APPLICANT WILL RECORD A RESTRICTIVE COVENANT FOR THE OPEN SPACE AREA AROUND THE 37,056 SQUARE FOOT ENVIRONMENTAL SETTING FOR THE RIGGS THOMPSON HOUSE, GENERALLY CONSISTENT WITH THE AREA SHOWN ON THE SCHEMATIC DEVELOPMENT PLAN. THE COVENANT WILL ENSURE THAT THE AREA AROUND THE ENVIRONMENTAL SETTING WILL REMAIN AS OPEN SPACE IN PERPETUITY BUT WILL ENABLE APPLICANT TO COMPLETE ALL WORK APPROVED BY THE PLANNING BOARD AS PART OF THE SITE PLAN APPROVAL. FOLLOWING COMPLETION OF THOSE IMPROVEMENTS, THE COVENANT WILL REQUIRE ADVICE FROM THE HISTORIC PRESERVATION COMMISSION TO THE PLANNING BOARD FOR ANY SITE PLAN AMENDMENT TO THE AREA SUBJECT TO THE COVENANT.
14. THE HOMEOWNERS ASSOCIATION DOCUMENTS FOR THE PROJECT WILL PROVIDE AUTHORIZATION FOR POLICE ENFORCEMENT OF ALL TRAFFIC RESTRICTIONS AND RELATED SIGNAGE REGARDING ENTRY TO AND EXIT FROM THE SITE AND, UPON SITE PLAN APPROVAL, APPLICANT WILL REQUEST AN EXECUTIVE ORDER (FORMAL TRAFFIC ORDER) FOR COUNTY POLICE ENFORCEMENT OF ENTRY AND EXIT RESTRICTIONS.
15. AT THE TIME OF SITE PLAN, THE APPLICANT WILL PROPOSE FOR PLANNING BOARD APPROVAL, A DOUBLE ROW OF TREES ALONG SPRINGVALE ROAD AND LANDSCAPING COMBINED WITH DECORATIVE WALLS AT THE ENDS OF THE ALLEYS FACING SPRINGVALE ROAD TO SCREEN THE VIEW DOWN THOSE ALLEYS.

were alleviated by the site design, which orients the rows of townhouses perpendicular to Springvale Road, locates green areas to complement Ellsworth Park to the east, and prominently

displays the Riggs-Thompson House (the one single-family home on the site) to the west. Exhibit 282, p. 7-8. Staff noted that the strings along Ellsworth Road (the one location where the strings would directly face the public street) were clustered in smaller groups of three and five units and would face the park rather than single-family homes. Staff also advises that variations in each row's building line will run throughout the site, with no uninterrupted building line enduring for more than three contiguous townhomes and that this standard will be addressed at site plan. Exhibit 282, pp. 7-8.

The Planning Board agreed with Technical Staff and recommended approval of the revised SDP for the reasons set forth by Technical Staff. They noted that the townhouse strings were within the standard set in the Zoning Ordinance (limiting strings to a maximum of eight units to reduce the massing of townhouse developments), the removal of one string south of the private street to create more green area around the historic house, and the significant additional green area on all sides of the property. Exhibit 304.

3. The Opposition's View

Those opposing the application believe that more should be done physically to break up the length of the townhouse strings and their proximity to each other. They expressed disappointment with the revised SDP and would prefer much shorter "clusters" of units. 3/26/12 T. 173, 206, 339-340. Some testified that the amended plan reduces the density slightly, but makes little change in the massing. Several individuals compared the site layout to World War II barracks which, in their opinion, is demonstrated in an exhibit submitted by Mr. Michael Gurwitz (Exhibit 314(b), shown on the following page.

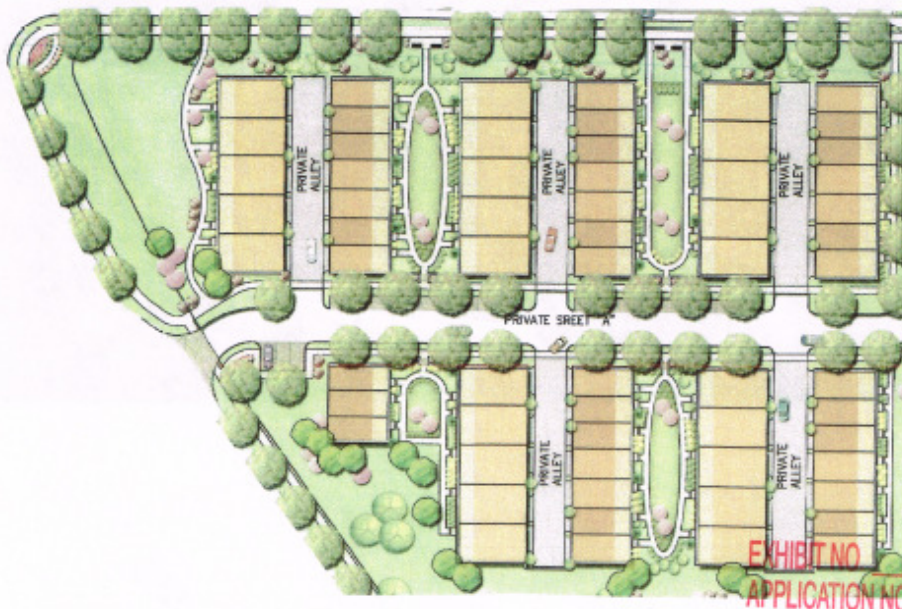
Many individuals expressed a desire to preserve as many of the existing mature trees on the site as possible and believe that this is required for the development to be compatible with the surrounding community. Mr. Don Grove, who qualified as an expert arborist, opined that the

most important trees to save were the slow-growing, mature White Oaks clustered in the southwest corner of the property and that density should be reduced in order to preserve these trees. 3/26/12 T. 283. He opined that the Preliminary Forest Conservation Plan filed for the R-T 15 SDP (filed at the request of Technical Staff) did not preserve any trees on the property except

View of WWII barracks at Lucinda and Garden Row, DeKalb, IL, circa 1950's



EYA's Revised Schematic Development Plan depicting barracks-style layout



for a few around the historic house. 3/26/12 T. 277. In his opinion, the trees that will be planted to replace those trees will never grow to the same size because they are overcrowded on the site—they are located too close to each other or to buildings to permit an expansive root system. 3/26/12 T. 279. As a result, in his opinion, the tree canopy will not be as large as projected because the trees are too crowded to grow to their expected canopy. 3/26/12 T. 281. According to Mr. Grove, even though the preliminary forest conservation plan may meet the technical requirements of Montgomery County’s forest conservation law, it does not meet the law’s intent. 3/26/12 T. 282.

Ms. Samiy stated that compatibility requires that there should be “no net loss of tree canopy”. 3/26/12 T. 300-301. She recalled her testimony from the first public hearing differentiating the “green” and “gray” zones in the surrounding area, the “green” zone being north of Cedar Street and the “gray” comprising the Central Business District. For her, the green zone included the mature trees that tower over the houses adjacent to the CBD; without these trees, she believes that the green zone will go gray. In her opinion, the existing urban forest is essential to the compatibility because it collectively defines the “environmental buffer line” between two vastly different zones. 3/26/12 T. 298-301. Ms. Jean Cavanaugh submitted photographs of several mature trees on the property (Exhibit 314(k), shown as labeled by Ms. Cavanaugh on the following pages), and submitted a proposed binding element (Ex. 340) to require that specific existing trees be saved. Individuals opposing the application also submitted a view of the trees in the southwestern quadrant of the site (Exhibit 314(k)) to demonstrate their belief that compatibility requires preservation of the existing mature trees to screen the view of the Central Business District and Colesville Towers from the residential community, shown on page 25.

Ms. Spielberg testified that the revised SDP is not compatible with the neighborhood because it simply reduces the density, but not the massing and design of the development. In her



**Honey Locust, Black Walnut
and "Tree of Heaven"**



**Significant specimen of red maple,
in good condition, over 30" in
diameter**



**Specimen White Oak in good condition
more than 36" in diameter**



**Significant White Oak more
than 34" in diameter**



**Black Gum Specimen
Tree**



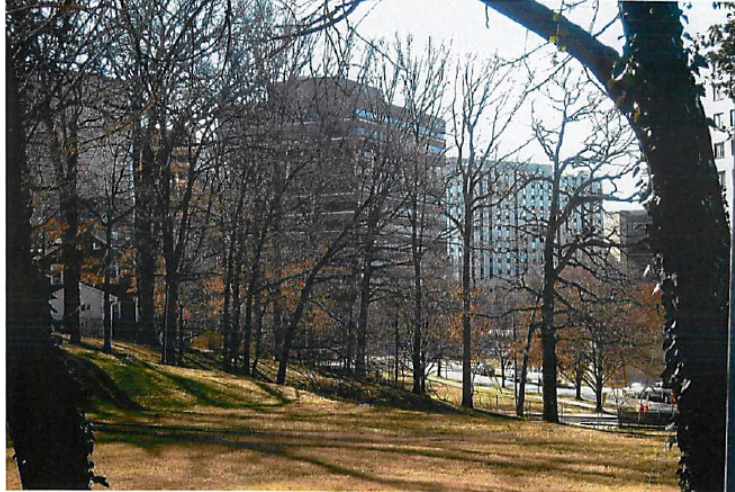
**Specimen Tulip Poplar 32''+ diameter and
additional Tulip Poplar and White Oak**



**Specimen Tulip Poplar 38''
diameter and Specimen White
Oak**



**Specimen Black Cherry
48'' Diameter**



**View of Central Business
District from Chelsea School
(Exhibit 314(k))**

opinion, the design should be achieved by considering the location, the surrounding uses, and the planning principles set forth in the Master Plan.

According to Ms. Spielberg, the Master Plan articulated the following planning principles:

1. The transition at this location should be by use and not by type of structure; thus the Plan recommended special exceptions in single-family detached structures for the transition in this area;
2. Where the Master Plan did recommend R-T zoning, it recommended protecting the interior blocks; and
3. The Plan mentions that townhouse zoning is appropriate for locations on arterial roads or commercial areas. 3/26/12 T. 339-340.

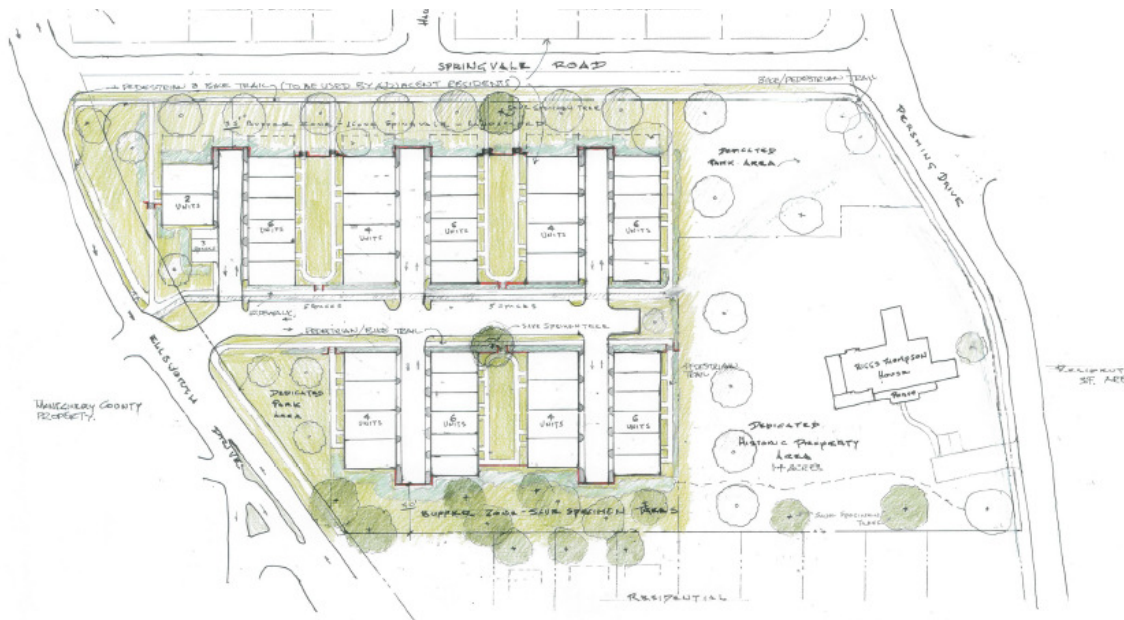
She does not believe the revised SDP implements these planning principles because the density is significantly out of proportion to the surrounding R-60 community and is higher than any of the townhouse developments within the master plan area. In her opinion, the massing is incompatible with the surrounding neighborhood because it is concentrated on the western portion of the site—if one eliminates the combined environmental setting and public access space, the density equals 16.36 acres or two and one-half times the density of the surrounding homes. She believes a more compatible density would be that of Woodside Way on 16th Street.

It is zoned R-T 8 and is just under 6 dwelling units/acre. Even some of the denser townhouse projects along Georgia Avenue are still lower than the proposed development at 9 units per acre. 3/26/12 T. 340-344.

Mr. Armstrong believes that the revisions to the SDP are nominal. He testified that, while the townhouse strings north of the private street are reduced by 12 feet, the length of the strings south of the private street had been lengthened by 10 feet. According to Mr. Armstrong, the reduction in length of the combined strings was only 2 feet (i.e., from 242 feet in the R-T 15 SDP to 240 feet in the R-T 12.5 SDP).

Similarly, he testified that while the landscaped areas separating the fronts had been widened by four feet, the unit width in three of the strings increased from 36 to 38 feet. Therefore, the mass of the units facing Springvale have increased from 234 feet to 240 feet. 3/26/12 T. 152. According to Mr. Armstrong, under the prior proposal the residents along Springvale would have faced a 390-foot wide development from the end of one string to the other with mews and private alleys in between. Of those 390 feet, he calculated that 234 of it (or 60%) would consist of the townhouse facades. In the current version, Springvale Road residents will face a 404-foot wide development, 240 feet of which (or 59.4%) would be the townhouse facades. 3/26/12 T. 153.

Those opposing the application, through Mr. Kenneth Doggett, SOECA's expert land planner, submitted an alternative plan with townhouse strings between 4 and 6 units long and density at 9.1 dwelling units per acre (Exhibit 314(y), shown on the following page) which, in his opinion, is the maximum number of units achievable without surrendering compatibility. 3/23/12 T. 278.



**Opposition Plan
Exhibit 314(y)**

Mr. Doggett testified that this plan is an improved design because it (1) preserves more of the mature trees on the site, (2) retains the configuration of the environmental setting surrounding the historic house, and (3) adds more varied trees to the frontage along Springvale. His plan accomplishes this by eliminating one house in each townhouse string to create greater setbacks from the backyards of the Cedar Street homes and from Springvale Road. He opined that the double-row of street trees shown in the revised plan is out of character with the surrounding neighborhood; he uses the additional depth to create more informal tree plantings, more similar to those in the surrounding single-family homes, rather than in regimented rows. 3/30/12 T. 255.

Mr. Doggett did not believe that EYA's model of its Clarendon project really depicts what people would see once the Chelsea School project is constructed. This is because there are no cross-angled units, only straight rows from Springvale Road to the southern property line. In his opinion, breaking up the strings into four units each is preferable to the existing plan.

3/26/12 T. 256-260. The Clarendon project also differs because it is adjacent to retail/industrial. 3/26/12 T. 294.

Those opposing the application also presented evidence refuting the relevance of the comparables submitted by the Applicant. Mr. Armstrong testified that eight of the comparables were outside the North and West Silver Spring Master Plan area and most were located either directly on major highways or adjacent to nonresidential properties. 3/26/12 T. 154. He then testified specifically as to why the other townhouse developments differed from the location of the proposed Chelsea Court:

1. Rosedale Park is less than half a block from Wisconsin Avenue directly behind a multi-story CBD-1 zoned building and is 10.6 units per acre.
2. The Kaz development is located on Georgia Avenue and adjacent to another R-T 12.5 development. It had a proposed density of 10.7 units per acre, but has abandoned its development plans.
3. Bonaire Court is located on Sligo Avenue, which is an arterial road, and adjacent to a five-story apartment building. It has a density of 11.9 units per acre.
4. Good Counsel is located on Georgia Avenue, a major highway, at the corner of Arcola Avenue, with a density of 13.7 units per acre and shares a lot with commercial developments. It directly abuts the Wheaton CBD.
5. Winchester Plyers Mill is also on Georgia Avenue. At 16.0 units per acre, it is the highest density which EYA claims is comparable to the neighborhood and was explicitly recommended for R-T zoning in the Master Plan. 3/26/12 T. 154-157.

In his opinion, comparables from within the geographic area of the Master Plan should be used to determine compatibility of the proposed project. He cited to several townhouse developments as comparable to the Chelsea Court development, all of which, according to him, have developed densities below 12 dwelling units per acre:

1. Woodside Way, at the intersection of 16th Street and Second Avenue, has a density of 5.9 dwelling units per acre;
2. Leighton's Addition Woodside, also located on Georgia Avenue and Grace Church Road, with a density of 8.5 units per acre. 3/26/12 T. 159.

3. Courts of Woodside, located on Georgia Avenue at Noyes Drive, is developed at 9.7 units per acre.
4. Fairview Court is on Fairview Avenue, which is not a major road, but abuts a CBD and has 8.7 units per acre.
5. National Park Seminary abuts the Army's Forest Glen Annex and has a density of 8.7 units per acre.
6. Woodside Mews on Third Avenue abuts the MARC tracks and has 9.8 units per acre.
7. Woodside Station, at Georgia Avenue and Spring Street, is developed at 11.4 units per acre and the townhouse strings are shorter.
8. Woodside townhouses located at Georgia Avenue and Ottawa Place are developed at 11.6 units per acre; and
9. The Locust Grove townhouses, at Georgia Avenue and Locust Grove Road, is right at the exit ramp of the inner loop of the Beltway and abuts a commercial area. It's developed at 11.8 units per acre. 3/26/12 T. 158-160.

Six of the comparables located within the Master Plan area are located on a major highway and the rest abut nonresidential uses. All of them, according to Mr. Armstrong, are lower in density than the proposed development. 3/26/12 T. 158-160. Nor does he believe that MPDUs should be a contributing factor to the density proposed because they do not relate to compatibility and the developer has not taken advantage of the MPDU density bonus. 3/26/12 T. 161.

Ms. Maria Schmit distinguished the comparables of EYA's other developments because they were developed as part of planned mixed-use communities and were not incorporated into an existing R-60 neighborhood. According to Ms. Schmit, EYA's project at Potomac Park (located at I-270 and Montrose Road) consists of around 150 townhouses, two high-rise condominium towers, office buildings and retail stores. 3/26/12 T. 168. Clarendon Market Commons in Virginia is also part of a master planned, mixed use community. The townhouses are aligned "barracks-style" with street-facing end units. Some of the strings back into the retail

center. The townhouses back to alley are not screened from the road and are not compatible with the SOECA neighborhood. The National Park Seminary project consists of apartments, townhouses and single-family homes. It was not part of an existing development and the tree canopy is 7.5%. EYA's Cameron Hill project has similar alleyways with garages below and balconies above, which she understands is what they are proposing at the Chelsea School site. 3/26/12 T. 168-169.

When asked by the Hearing Examiner to view the model of Clarendon Place with the assumption that the full length of the alleys would not be seen, Ms. Schmit stated that the development would "definitely be more acceptable, absolutely." 3/26/12 T. 184.

4. The Applicant's Response

In response to the views of the community, Mr. Thakkar testified that EYA estimates that approximately 60-65% of the existing trees are in good condition. The remaining trees are in fair to poor condition. The revised SDP offers additional open areas which may possibly permit more trees to be save or planted and a revised preliminary forest conservation plan has not yet been prepared. According to Mr. Thakkar, the tree canopy at 20-year growth under the revised SDP would be 1.25 to 1.3 acres which is approximately the same area as the healthy trees on the site. Mr. Thakkar testified that the binding element offered by the community would require trees along Springvale Road to be saved, which is very difficult because of the improvements, grading and utilities that would be required along that road. This is one reason that they have proposed the double row of street trees along Springvale Road. It is too early for EYA to determine whether trees in the southwest corner may be saved because they still have engineering for grading and utilities to perform at the time of site plan approval. The revised SDP, however, does give the Applicant more opportunity to save trees on-site or replace the

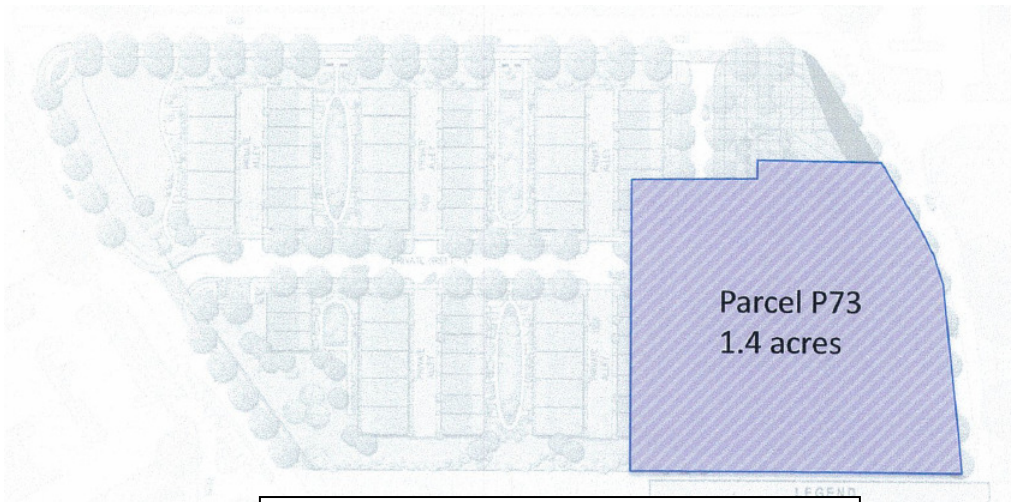
existing trees with on-site trees. The additional open space also provides more opportunity to provide a park-like, green setting with trees. 3/30/12 T. 83-86.

Finally, Mr. Thakkar testified that EYA had reviewed the actual site plans for the townhouse projects located in Silver Spring cited by those in opposition and disagreed with the calculation of the densities cited. They calculated the Woodside Station development at Georgia Avenue and Spring Street to be 12.26 dwelling units per acre rather than the 11.4 dwelling units per acre described by Mr. Armstrong. Fairview Court, which Mr. Armstrong testified was 8.7 units per acre, they determined was 12.38 units per acre. Finally, they calculated the Grace Church development at Georgia Avenue and Grace Church at 11.95 acres rather than the 8.5 acres quoted by Mr. Armstrong. 3/30/12 T. 86-87. He felt that the density proposed was a better location than some of the higher densities in other projects because of the high walk score of the site. There are a number of townhouse communities developed under R-T 12.5 zoning that much lower walk scores for the property. 3/30/12 T. 89.

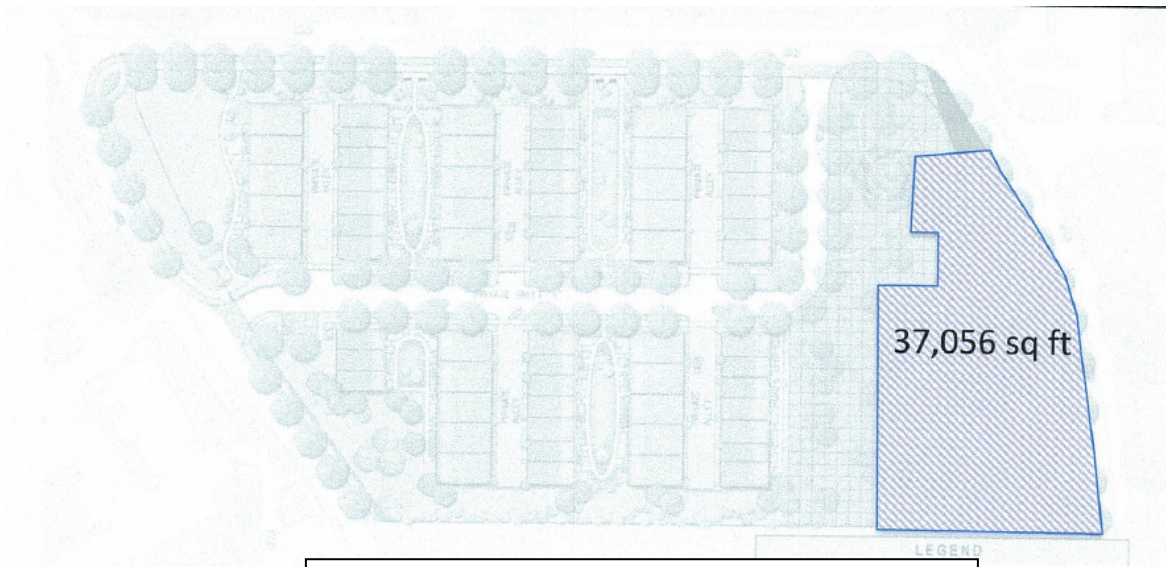
B. The Environmental Setting of the Riggs-Thompson House

Technical Staff advises that the most notable changes in the revised Plan include the increased green area and the treatment of the Riggs-Thompson House. The Plan still retains a 37,056 square foot environmental setting for the house, but combines it with additional adjacent green area designated for public access. Mr. Thakkar testified that, the reduced density permitted the Applicant to eliminate an entire row of townhouses south of the private street closest to the house, thereby increasing the green area to between 1.3 to 1.5 acres. 3/30/12 T. 40. Setbacks from the street as well as from the closest houses confronting the property on Pershing Avenue are increased significantly. Technical Staff presented several exhibits to the Planning Board comparing the configuration of the original 1.4-acre parcel (P73) (recommended in the Appendix of the Master Plan if the School's special exception was not approved), the 37,056

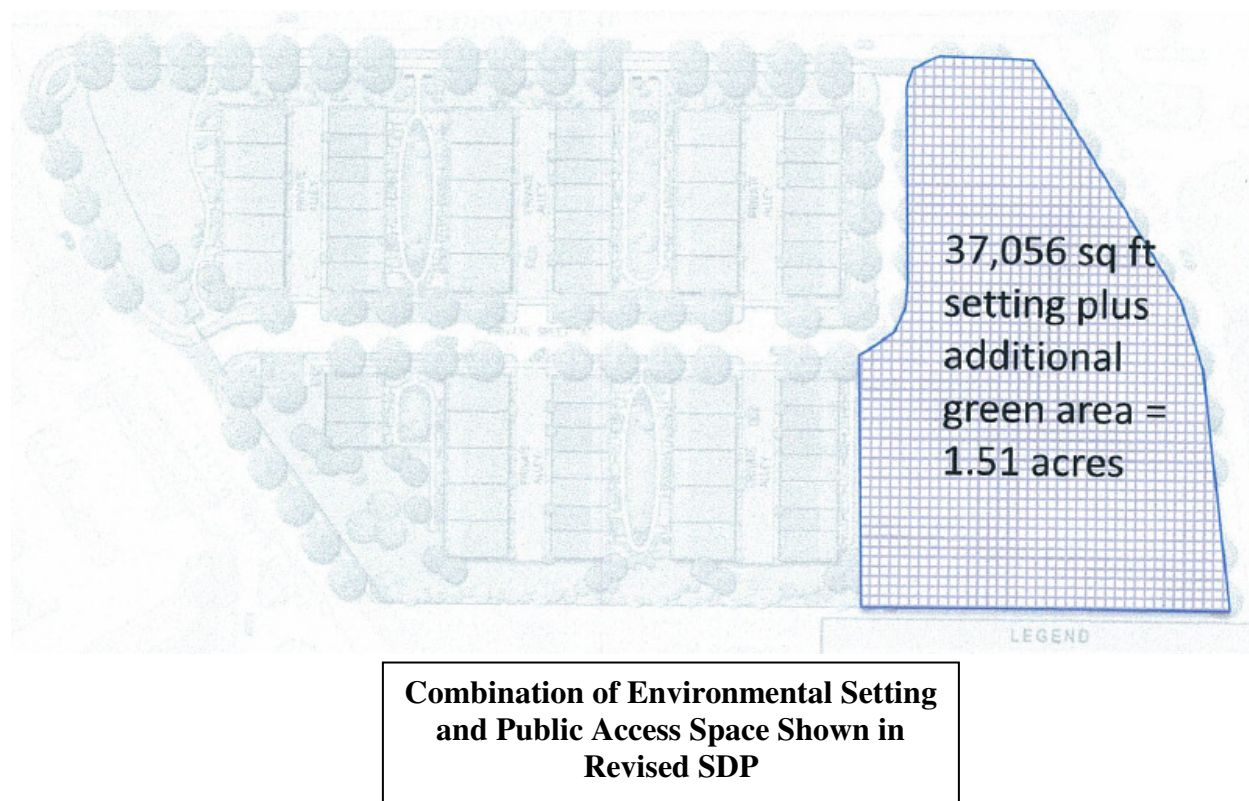
square foot environmental setting called for in the body of the Master Plan, and the combination of open space and environmental setting now included in the revised SDP. Exhibit 291(e).



**Configuration of Parcel Containing
House Prior to Resubdivision by the
Chelsea School**

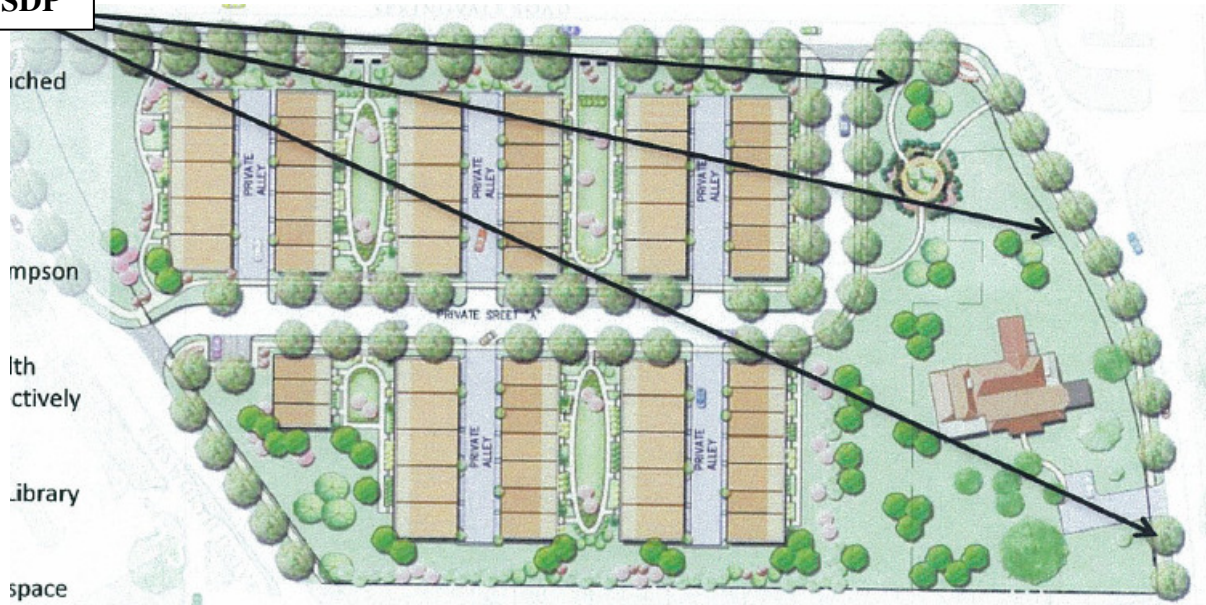


**Environmental Setting Approved for the
Chelsea School**



The Applicant maintains that the current configuration combining the environmental setting with open space better frames the historic house for several reasons. According to Mr. Iraola, He stated that the relaxed density affords the opportunity to create an outstanding setting for the historic house because it sits at a high plateau on the property and is very prominent. 3/23/12 T. 158. The Applicant will remove the non-contributing structure and will “open” the site up to the corner of Pershing Drive and Springvale Road. Opening up the corner and increasing the open space surrounding the house enhances this prominence. 3/23/12 T. 173. Technical Staff advises that the revised SDP offers a “larger, more notable viewshed” of the historic structure from the surrounding streets. Exhibit 291(e). A graphic included in the PowerPoint presentation prepared by Technical Staff for the Planning Board (Exhibit 291(e), is shown on the following page.

**Viewshed In
Revised SDP**



When the Hearing Examiner queried Ms. Warren and Ms. Christensen why the combined open space/environmental setting shown in the plan is inferior to the parcel on which the property was located prior to the Chelsea School, both responded that HOA control over the public access area would not be sufficient to protect the historic resource. 3/26/12 T. 115-123; 3/23/12 T. 142-150. Ms. Warren expressed concern that the environmental setting of the house could legally be separated from the public access space and that continuing the original designation was a much simpler method of enforcing historic restrictions. 3/23/12 T. 342-346. She also stated that the original configuration provided more front and side yards for the house. 3/23/12 T. 342.

Ms. Christensen expressed similar concerns regarding HOA ownership. When asked about the configuration of open (public access) space and environmental setting, Ms. Christensen stated that she could “live with” the open space shown on the SDP if the Historic Preservation had “total oversight over it” and development within the area were “subject to an HPC work permit.” 3/30/12 T. 115, 144. In her experience, the HOA may want tot lots, bike racks,

sandboxes, and other items which, because they are not structural, are usually allowed by right. T. 116. While she thinks those uses should be accommodated, she does not believe that the HOA has the same understanding and experience to be able to locate these types of items on the site without adversely affecting the historic property. She believes the best mechanism to define the competing needs is to develop a master plan for the site, approved by the HPC, so that all of the competing needs could be addressed at one time. She testified that retention of the 1.4-acre parcel on which the house was previously sited is the simplest, easiest and most definable way to protect the historic resource. 3/23/12 T. 122-123.

Mr. Doggett also testified that the configuration of the original Parcel 73 better protected the front and side yards of the house, particularly important views from the southwest. Mr. Doggett dismissed the corner viewshed from Springvale and Pershing as “insignificant” because it looked upon the rear of the house. In his opinion, the most significant view of the house is from the southwest because it provides the most side and front yard for the house. He opined that once the area is reduced by road improvements and setbacks, there won’t be much of the yard left. 3/30/12 T. 252-253. He also testified that the only protection for the house is to have all of the setting under the jurisdiction of the Historic Preservation Commission. 3/30/12 T. 257-262.

On rebuttal, the Applicant submitted an additional binding element designed to address the opposition’s concerns regarding HOA ownership and management of the public access area. This is set forth below (Exhibit 346(a)):

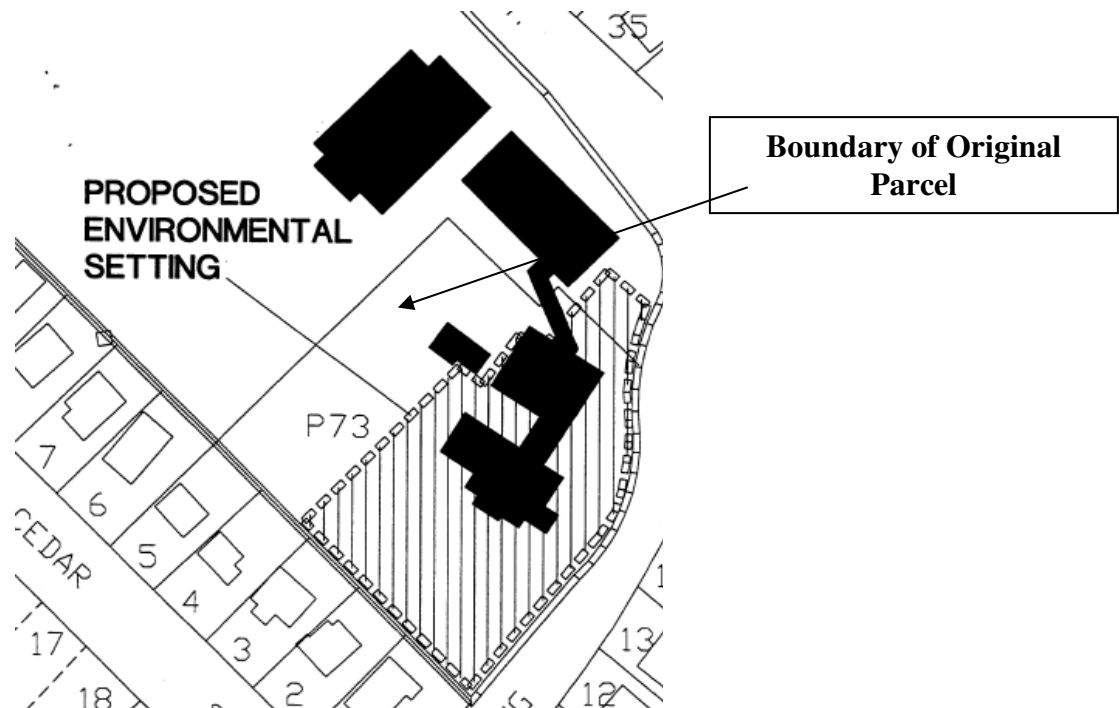
13. AT THE TIME OF RECORD PLAT, THE APPLICANT WILL RECORD A RESTRICTIVE COVENANT FOR THE OPEN SPACE AREA AROUND THE 37,056 SQUARE FOOT ENVIRONMENTAL SETTING FOR THE RIGGS THOMPSON HOUSE, GENERALLY CONSISTENT WITH THE AREA SHOWN ON THE SCHEMATIC DEVELOPMENT PLAN. THE COVENANT WILL ENSURE THAT THE AREA AROUND THE ENVIRONMENTAL SETTING WILL REMAIN AS OPEN SPACE IN PERPETUITY BUT WILL ENABLE APPLICANT TO COMPLETE ALL WORK APPROVED BY THE PLANNING BOARD AS PART OF THE SITE PLAN APPROVAL. FOLLOWING COMPLETION OF THOSE IMPROVEMENTS, THE COVENANT WILL REQUIRE ADVICE FROM THE HISTORIC PRESERVATION COMMISSION TO THE PLANNING BOARD FOR ANY SITE PLAN AMENDMENT TO THE AREA SUBJECT TO THE COVENANT.

Unable to agree on the proper setting for the house, both sides submitted evidence and testimony regarding the legislative intent underlying the Council's designation of the setting in the Master Plan. As noted in the Hearing Examiner's original report, the parties' disagreement over the size and configuration of the environmental setting continues to originate in seemingly conflicting or ambiguous language in the Master Plan concerning the environmental setting.

Appendix D to the Master Plan (Exhibit 139) describes the environmental setting as follows:

The environmental setting is 37,056 square feet as shown in the shaded area below, pending approval of the Chelsea School special exception by the Board of Appeals. *In the event that the Chelsea School plan is not approved, the designated environmental setting is the entire 1.4-acre parcel (P73) on which the house is located.* An important goal of the Chelsea School plan is the integration of the Riggs-Thompson House into the campus. Appropriate access to the house should be provided. Ex. 139. [Emphasis added.]

The Appendix to the Plan included an illustration of the environmental setting (Exhibit 139, Appendix D), shown below:



The conflict arises because the body of the Master Plan did not explicitly incorporate the alternative environmental setting mentioned in the Appendix. The body of the Plan states only:

The Riggs-Thompson House is located on a 1.4-acre parcel. The environmental setting is 37,056 square feet. A brick garage constructed in the 1930's is non-contributing. This resource meets criteria 1a, 1b, 1c, 1d, and 2a.

Based on the record before remand, the Hearing Examiner found that the Applicant failed to meet its burden of proof that the Master Plan intended the 37,056 square foot environmental setting to remain if not integrated with the Chelsea School's campus. Because the size of the environmental setting was central to many issues in the case, however, including density, the road alignment, and compatibility with the surrounding area, she recommended remanding the case for additional evidence. Exhibit 258, pp. 90-91. The District Council did so remand the case, and instructed the Planning Board to consider the Master Plan in light of the evidence presented at the public hearing. Exhibit 267, p. 15.

Both the Applicant and those in opposition presented additional testimony and evidence on the Council's intent regarding the size of the environmental setting of the house. Ms. Vicki Warren presented extensive research on the legislative history underlying the Plan's recommendation. Exhibit 324. A timeline of the various changes to the Master Plan in relation to the approval of the special exception (compiled from testimony and evidence supplied by Ms. Warren, Ms. Christensen and Technical Staff) is set forth below:

Historic Preservation Commission (HPC)

6/24/98: According to Ms. Christensen, the transcript of the hearing indicates that those attending HPC public hearing indicated that the house was sited facing Georgia Avenue so that it was a significant feature to those travelling on that road; the location advertised their wealth, prosperity, and their ability to build a fine country estate. Some of those at the HPC public hearing felt that the setting should be the 1.4-acre residue of the land originally belonging to the owners. There was a desire that the recommendation accommodate both the possibility of the school occupying the property and the opposite outcome. The M-NCPPC zoning analyst assigned to the Chelsea School special exception requested they make their

recommendation on the environmental setting “very precise and specific” because of its significant impact on the special exception. Ultimately, the HPC voted to have a dual recommendation dependent on whether the Chelsea School special exception proceeded. 3/26/12 T. 103-104.

Planning Board

1998: A draft appendix to the Master Plan contained two different recommendations. Portions of the draft were taped over, leaving the sentence, “[t]he recommended setting is shown on the plan below. The setting is...” Ms. Warren removed the tape to discover the following additional language: “...the 1.4 acre parcel (P73) on which the house is located.” Directly behind that page was another page which stated, “[t]he environmental setting shown in the shaded area below is recommended only if a Special Exception Application by the Chelsea School goes forward. In the event that the Chelsea School Plan does not go forward, the designated environmental setting is the entire 1.4 acre parcel (P73) on which the house is located.” Exhibit 324(b); 3/23/12 T. 325.

10/98 The Public Hearing (Preliminary) Draft Master Plan contains a dual recommendation in the body of the Plan: “[T]he Riggs-Thompson House is located on a 1.4-acre parcel. The recommended environmental setting is 37,056 square feet where the house is located, *but the setting may be modified if the property redevelops.* (Emphasis added)”. Exhibit 324, p. 3; 3/26/12 T. 44-45.

11/5/98: A representative of the HPC testified before the Planning Board that it was cognizant of the Chelsea School’s special exception application. It articulated the following position, “[a]fter extensive discussion, the HPC supported a somewhat unique delineation of an environmental setting for the historic site: the setting would be approximately one acre, essentially the area immediately surrounding the house if the Chelsea School goes forward. If the Chelsea proposal does not proceed, then the designated environmental setting should be the parcel on which the house is located which is 1.4 acres.” Exhibit 324(c).

3/25/99: At a Planning Board worksession on the draft Master Plan, Technical Staff summarizes the HPC’s recommendation as “two-fold”: (1) if the Chelsea School purchases the property and is granted approval of a special exception the setting is the 37,056 square foot area immediately surrounding the house; (2) if the Chelsea School is not granted approval of a special exception, the environmental setting is the entire 1.4 acre parcel upon which the house is located.” Exhibit 324(f), pp. 7-8.

Technical Staff advises the Planning Board of the HPC’s dual recommendation for the environmental setting, characterizing the HPC’s position as unusual because the environmental setting is typically the lot

or parcel on which the property is located at the time of designation. Staff further advised that the Chelsea School was seeking “additional assurances that their project would not be hampered by the historic designation” and sought approval of a smaller environmental setting.

When asked to explain the atypical treatment for the Chelsea School, Staff explained the basis for the dual recommendation: “...[I]f the Chelsea School doesn’t go forward, if this property remains in its current ownership, its current use *or some other use*, then the setting should be our normal process, the 1.4 acre parcel on which it’s [the house] is located.” Exhibit 324(f), p. 15.

Planning Board members expressed concern that the smaller environmental setting would be “cast adrift” from the school and not maintained. The Planning Board directed staff to draft language for the Board to review and add a sentence providing that integration of the historic house into the campus of the school was an important goal. Exhibit 324(f), p. 15.

4/27/99: Historic Preservation Staff provides proposed language for the environmental setting to the lead planner for the Master Plan, Nancy Sturgeon: “The environmental setting shown in the shaded area below is recommended only if the Special Exception Application by the Chelsea School is approved. In the event that the Chelsea School plan does not go forward, the designated environmental setting is the entire 1.4 acre parcel (P73) on which the house is located. An important goal of the proposed Chelsea School plan is the integration of the Riggs-Thompson House into the campus...” Exhibit 324(h).

5/12/99: Historic Preservation Staff re-submits proposed language for the environmental setting changing the phrase “does not go forward” to “is not approved” and a copy of this change is sent to the attorney for the Chelsea School with a cover sheet stating, “draft of revised environmental setting language.” Exhibit 324 (h).

8/1/99: Draft of language for environmental setting forwarded to attorney for the Chelsea School. Exhibit 324(i).

Board of Appeals

10/1/99: Technical Staff summarizes the dual recommendation for the environmental setting in a memorandum to the Board of Appeals for the special exception petition. Staff states that the 1.4 acre parcel will be the environmental setting if the Chelsea School “does not go forward”. Exhibit 324(j).

Planning Board

- 10/28/99: Technical Staff submits a draft of the Board's Final Draft Plan to the Planning Board for their approval. The attached draft removes the dual recommendation from the body of the plan and changes to language in the body to, "[T]he Riggs-Thompson House is located on a 1.4 acre parcel. The environmental setting is 37,056 square feet." Exhibit 324(k).
- 11/4/99: At a worksession on the draft Final Planning Board draft Plan, Ms. Sturgeon advises the Board that Staff has "incorporated all the Planning Board's decisions during the worksession over the past several months, and as part of this week's packet, we've provided the Planning Board with a draft of the final draft. Except for some editorial changes and a few minor things...we're in good shape." Staff did not mention the change to the language on the environmental setting of the Riggs-Thompson House. Exhibit 324(l).
- 12/99: The Planning Board's Final Draft Plan contains the following language in the body of the Master Plan: "The Riggs-Thompson House is located on a 1.4 acre parcel. The environmental setting is 37,056 square feet." Appendix D to the Plan contains the dual recommendation approved by the Planning Board at its March, 1999, "The environmental setting is 37,056 square feet as shown in the shaded area below, pending approval of the Chelsea School special exception by the Board of Appeals. In the event that the Chelsea School plan is not approved, the designated environmental setting is the entire 1.4 acre parcel (P73) on which the house is located. An important goal of the proposed Chelsea School plan is the integration of the Riggs-Thompson House into the campus..."

Board of Appeals

- 3/29/2000: The Board of Appeals votes to approve the Chelsea School's special exception petition. Exhibit 282, p. 9.

District Council

- 5/9/2000: At a hearing before District Council, the attorney for the Chelsea School testifies the special exception for the Chelsea School has been approved and that the Riggs-Thompson house will be the "jewel of the campus", that the school would tear down the non-contributing structures, and turn it into a "beautiful setting for the building". Exhibit 324(o); 3/26/12 T. 69-70.
- 6/5/2000: A memorandum from Council Staff to the PHED Committee advises that "[t]he plan recommends an environmental setting of 37,056 square

feet, for the immediate area surrounding the house assuming the special exception is approved. Alternative, the plan recommends the entire 1.4-acre parcel as the environmental setting if the special exception is denied.” Exhibit 324(p).

8/1/2000: The Council approves the Master Plan with language approved by the PHED Committee. Exhibit 139, Appendix F.

9/20/2000: The M-NCPPC adopts the Council-approved Master Plan. Exhibit 282, p. 9.

Board of Appeals

10/5/2000: The Board of Appeals issues its written decision to approve the Chelsea School special exception. Exhibit 282, p. 9.

From this history, SOECA argues that Planning Board’s intent was to provide a dual recommendation “tied” to the Chelsea School’s occupancy of the property. 3/23/12 T. 334. Ms. Warren interprets the legislative history to mean that the HPC and the Planning Board wanted to give the Chelsea School the flexibility to achieve their goals and, at the same time, protect the historic property. She feels that the situation today is different because the historic house is no longer tied to an institutional use. 3/23/12 T. 334-335. In Ms. Warren’s opinion, the changes in the language between the initial drafts of the Master Plan were accomplished without the explicit consent of the Planning Board, particularly the change moving the dual recommendation, verbally adopted by the Planning Board, to an appendix of the Plan. In Ms. Warren’s opinion, this is reinforced by Council staff’s memorandum to the PHED Committee, which summarizes the Plan’s recommendation as being the dual recommendation even though at that point the dual recommendation had been moved to an appendix. Ms. Warren testified that she felt that certain individuals had “co-opted” the public process, which should be transparent. 3/23/12 T. 336.

Ms. Christensen, on behalf of Montgomery Preservation, Inc. testified that the purpose of the dual recommendation was to preserve both the house and its historic setting. According to her, the HPC typically will identify the significance of the site and recommend the extent of the

environmental setting; the historic resource is not just a building. Rather, it is the combined building and setting. 3/26/12 T. 100-102. She testified that those attending the HPC public hearing on this site indicated that it was sited facing Georgia Avenue to make it a significant feature to those travelling on that road; the location advertised their wealth, prosperity, and the family's ability to build a fine country estate. 3/26/12 T. 103. Ms. Christensen submitted a map of the property during William Thompson's era, which described the house as a "country estate in a park-like setting, architecturally sophisticate as a rare example of Silver Spring estate architecture. 3/26/12 T. 98. A topographical map submitted as part of the Maryland Historical Trust Inventory Plan shows that the house sits atop a "remarkable hill and promontory" between Georgia Avenue and Colesville Road. According to Ms. Christensen, the house was noted in many places for its "choice land embellished by an elegant residence attractively located in the center of the place containing fine forests, beautiful trees and lawns. 3/26/12 T. 99.

Ms. Christensen testified that the 1.4 acre parcel resulted from the economic troubles of the owners during the Depression. The owners were heavily mortgaged and eventually lost the home to foreclosure. Prior to the foreclosure, however, they subdivided the current 5-acre site, and sold it to the Evanswood Association. They chose to retain, however, the 1.4 acre parcel (i.e., Parcel 73) surrounding the home. 3/26/12 T. 105. The parcel, therefore, was established prior to purchase by the Sisters of the Holy Names and reflected the owners' historic sense of place. 3/26/12 T. 105.

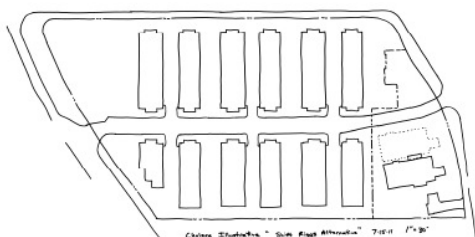
Ms. Christensen explained that Chelsea School's plan for development was to create an academic quad with a green area in the middle. According to the special exception documents, this was intended to "further define a more campus-like environment..." The Chelsea School never implemented the special exception plans. In her opinion, the history behind the Master Plan recommendation for the property was always "very careful to state that it was only for this

particular use, and it was tied very tightly to the special exception which demanded that all of these conditions be met.” 3/26/12 T. 111-113.

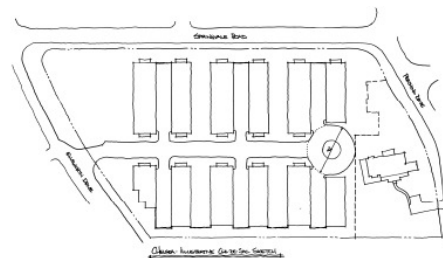
The Applicant, as well as Technical Staff and the Planning Board, opine that the relegation of the dual recommendation to the appendix renders the 37,056 square-foot environmental setting controlling. Both Technical Staff and the Applicant assert that the timing of the special exception approval (occurring prior to the Council’s hearing on the Master Plan) indicates that the dual recommendation was relegated to the appendix because it was no longer relevant when the Plan was approved. Finally, they find it a “leap” to construe the Plan to have a reversion to a larger environmental setting upon sale by the Chelsea School. Exhibits 282, 304. The Planning Board also found that insufficient evidence had been presented regarding the Council’s intent, which it felt more pertinent to the interpretation of the Master Plan. Exhibit 304, p. 4.

C. Alignment of Private Street

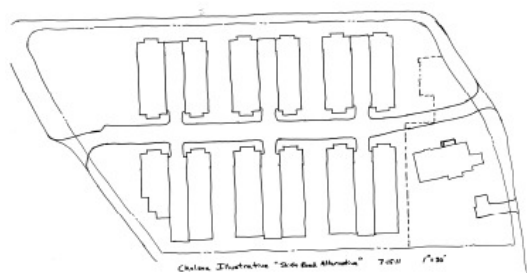
The final issue on remand, and one of the most hotly contested, relates to the alignment of the private street providing access to the development. Historic Preservation Staff opposed the original alignment shown in the first SDP, as did Montgomery Preservation, Inc., because it bisected the environmental setting of the Riggs-Thompson House. Exhibits 107, 120. At the public hearing prior to remand, the Applicant presented six alternative alignments (shown below), many of which raised issues as to whether these alignments could actually be achieved on the site (Exhibit 223-227):



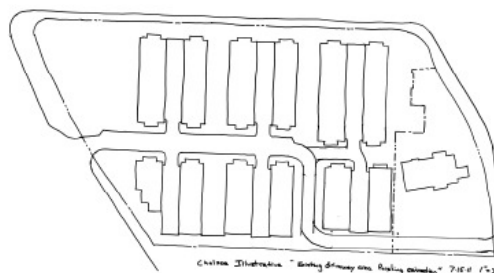
Scenario 2
“Shift Riggs Alternative”



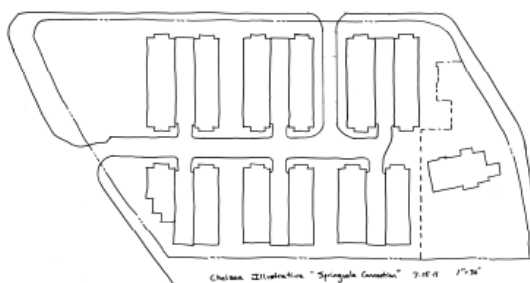
Scenario 3
“Cul-De-Sac Option”



Scenario 4
“Shift the Road Option”



Scenario 5
Existing Driveway Area Pershing
Connection Option”



Scenario 6
Springvale Connection

In particular, the alignment favored in the first hearing by Technical Staff (Scenario 6) created a “loophole” in existing traffic restrictions designed to prevent cut-through traffic. Exhibit 232, p. 2. As the prevention of cut-through traffic was a goal articulated in the Master Plan, and opened the possibility for incompatible development, the District Council recommended remanding the case to obtain more information regarding the alignment and impact of the private street. Exhibit 267, pp. 10-11.

On remand, the Applicant presents a single alignment showing a connection to Springvale Road (shown again on Exhibit 327(e), on the next page), but further to the east than that shown in Scenario 6 (above).

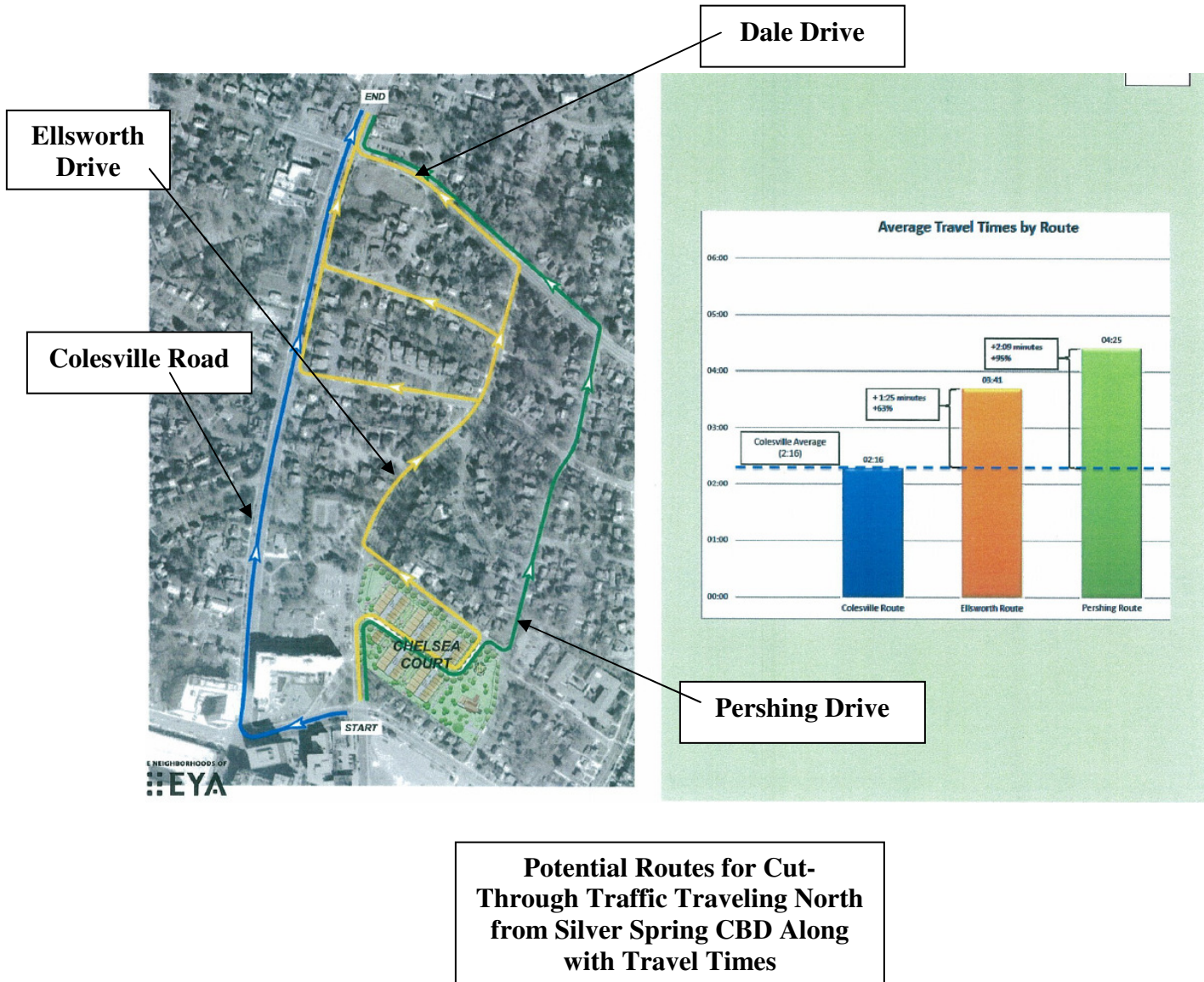


Transportation Division Staff advises that the location further east aligns the road with an existing residential driveway and alleviates the potential for headlights to shine into the homes of residents across the street. Exhibit 282, Attachment 4.

Initially, the Montgomery County Department of Transportation (MCDOT) did not approve of the access point further to the east because it did not meet DOT's site distance guidelines for secondary residential streets. 3/23/12 T. 91-93. Mr. Kabatt testified that the Applicant provided information to MCDOT showing (1) the low traffic volumes on Springvale Road, (2) that only three trips would be added to the existing volume on Springvale Road, and (3) that the Applicant would be eliminating the bus parking area currently located on Pershing Drive. 3/23/12 211-219. During the course of the public hearing, MCDOT advised the applicant that it would approve the alignment shown on the SDP provided the Applicant channelized the Springvale access to prevent left turns from the development onto Springvale Road, eliminated the current bus pick-up and drop-off area, and added channelization to the intersection with Ellsworth to improve operational safety along that street. Exhibit 335.

The Applicant recognizes that the alignment shown creates the potential for traffic to avoid the existing restrictions and cut through the neighborhood streets, but proposes measures which it asserts will prevent the cut-through traffic. 3/23/12 T. 79-90. Those opposing the application assert that these measures are unenforceable and will not prevent cut-through traffic.

In order to understand the “loopholes” in the existing restrictions created by the Springvale connection, and to understand the different solutions proposed by the Applicant to eliminate these, an exhibit submitted by the Applicant to compare the travel times of the various “cut-through” routes (Exhibit 327(e)), is shown below:



This exhibit shows several potential means (delineated by yellow and green lines) by which traffic traveling northbound from the Central Business District could use the private street to avoid the existing traffic restrictions surrounding the subject property.

The first measure proposed by the Applicant to prevent cut-through traffic is signage to be located at the entrance to the property along Ellsworth Road limiting access to residents only. The Applicant also proposes to place signage prohibiting left turns at the egress from the development at Springvale Road. Examples of the types of signs the Applicant proposes are shown below (Exhibit 327(e); 3/23/12 T. 82-84):



An aerial photograph (Exhibit 327(e)) with the existing and proposed restrictions superimposed illustrates the impact of the private street with these turn restrictions in place:



In addition to the signage describe above, the Applicant also proposes specialty pavers for portions of the private road which, according to the Applicant, are designed to make drivers aware

that they are entering private property. EYA submitted photographs showing examples of types of specialty pavers may be used, which are shown on the following page. Exhibit 327(e).



The current SDP includes a binding element committing to the signage and traffic calming measures described above (Exhibit 346(a)):

10. THE INTERNAL PRIVATE ROAD WILL BE RESTRICTED TO USE BY RESIDENTS AND VISITORS OF CHELSEA COURT AND WILL INCLUDE DESIGN FEATURES TO AVOID CUT THROUGH TRAFFIC SUCH AS LIMITED ROADWAY WIDTH, ON-STREET PARKING, SPECIAL PAVING AT EACH OF THE TWO (2) INGRESS/EGRESS POINTS, SIGNAGE PROHIBITING CUT THROUGH TRAFFIC, AND OTHER CONTROL MEASURES, TO BE FINALIZED AT THE TIME OF SITE PLAN APPROVAL.

Finally, Mr. Thakkar testified that the Applicant proposed to channelize the intersection of the private street with Springvale Road to prevent left turns onto Springvale by constructing a “pork chop” at that location and proposed an additional binding element (Exhibit 346(a)) to this effect, shown below. 3/23/12 T. 87.

12. THE INTERNAL PRIVATE ROAD SHALL INCLUDE SIGNAGE AND CHANNELIZATION MEASURES TO PROHIBIT LEFT TURNING MOVEMENTS FROM THE PRIVATE STREET ONTO SPRINGVALE ROAD, SUBJECT TO APPROVAL BY MCDOT, AS PART OF THE SITE PLAN APPROVAL PROCESS.

Technical Staff and the Planning Board supported the revised alignment because it provides better local and regional access, or “connectivity”, to the local and regional road network for residents of the community. In addition, they advised it provided safer emergency access. Exhibit 282, 304; 3/23/12 T. 93. The Applicant’s expert transportation engineer, Mr. Chris Kabatt, testified that connectivity was desirable from a planning standpoint to provide more than one route to destinations. Mr. Kabatt gave as an example the route to Whole Foods on the east side of the Silver Spring Central Business District from the proposed development. Without the Springvale connection, residents of Chelsea Court would have to travel west to Colesville Road, travel south on Colesville, and travel back to the east toward Whole Foods on Fenton Street. With the Springvale Road access, residents of the Chelsea Court development may turn right onto Springvale Road, left onto Pershing, and then right onto Wayne Avenue, which is preferable because Colesville Road is a heavily travelled road. 3/23/12 T. 208-209.

Regarding emergency access, both Technical Staff and the Planning Board advised that the Springvale connection is safer than the cul-de-sac options because it provides two accesses for emergency vehicles. Exhibits 282, 304.

Finally, Mr. Kabatt performed time trials comparing the potential routes by which traffic travelling northbound from the CBD could potentially avoid the existing traffic restrictions in the neighborhood. In his opinion, the results of these trials revealed that Colesville remains the most direct and fastest travel time to reach the Beltway. Based on this study, motorists using Colesville Road may reach the Beltway one minute and 25 seconds faster than those attempting to cut through the private street. 3/23/12 T. 223.

Those opposing the application very strongly supported a single access for the development due to fears about additional cut-through traffic and the inability to enforce the turn restrictions on private property. 3/26/12 T. 196-247. Some believed that the proposed street

violated the intent of the existing traffic restrictions to prohibit any additional cars into the narrow streets of the community. 3/26/12 T. 310-314. They questioned whether the restrictions could be practically enforced, for example, how residents would actually know who was trespassing and who was a legitimate visitor. 3/26/12 T. 201. Some testified that they had been told by MCDOT staff that the traffic signs could not be enforced by the County, and Mr. Gurwitz asserted that the County had no legal ability to enforce private street signs on private property. 3/26/12 T. 201-302, 211, 317. They also presented evidence that DFRS would accept a single access for fire vehicles. 3/26/12 T. 217. Finally, some testified experiences where individual drivers ignored “pork chops” and made illegal left turns. 3/26/12 T. 237. Several acknowledged, however, that the traffic restrictions on the public streets had greatly improved the problem of traffic cutting through the neighborhood and that they would obey the private street signs if erected on the property. 3/26/12 T. 230, 336; 3/30/12 T. 44,46.

The Applicant responded by citing §31-2 of the Montgomery County Code, which they argue authorizes the County Executive, by Executive Order, to have County police enforce private traffic signs on private property if requested by the owner. 3/30/12 T. 54. Mr. Thakkar testified that he spoke with Mr. Fred Lees, the lead engineer in MCDOT’s operations division, who informed him that the County may adopt formal traffic orders to enforce traffic signs on private property and that it was possible to do this for the Chelsea School. 3/30/12 T. 55. Mr. Thakkar stated that he had spoken with the County’s Fire Chief, who informed him that while a single access for emergency vehicles is permitted, it is not preferred. 3/30/12 T. 90. Finally, the Applicant submitted the following binding element:

14. THE HOMEOWNERS ASSOCIATION DOCUMENTS FOR THE PROJECT WILL PROVIDE AUTHORIZATION FOR POLICE ENFORCEMENT OF ALL TRAFFIC RESTRICTIONS AND RELATED SIGNAGE REGARDING ENTRY TO AND EXIT FROM THE SITE AND, UPON SITE PLAN APPROVAL, APPLICANT WILL REQUEST AN EXECUTIVE ORDER (FORMAL TRAFFIC ORDER) FOR COUNTY POLICE ENFORCEMENT OF ENTRY AND EXIT RESTRICTIONS.

D. Development Standards for the Zone

Technical Staff advises that the revised SDP meets all the requirements of the underlying zone, as demonstrated in the Attachment 1 to the Technical Staff Report (below):

Development Standard	Required	Proposed	Applicable Zoning Provision
Minimum Tract Area	20,000 sq ft (0.46 acres)	5.25 acres	§59-C-1.731(a)
Maximum Density	12.5 dwelling units per acre	12.19 dwelling units per acre	§59-C-1.731(b)
Building Setback from Land Classified in One- family Detached Zone	30 ft	30 ft	§59-C-1.732(a)
Building Setback from Public Street	25 ft	25 ft Springvale 25 ft Ellsworth 23.35 Pershing (from Riggs- Thompson)	§59-C-1.732(b)
Building Setback from an Adjoining Side Lot	10 ft	n/a	§59-C-1.732(c)(1)
Building Setback from an Adjoining Rear Lot	20 ft	n/a	§59-C-1.732(c)(2)
Max Building Height	35 ft	35 ft	§59-C-1.733(a)
Max Building Coverage	35 percent	30 percent	§59-C-1.34(a)
Minimum Percentage of Green Area	50 percent	51 percent	§59-C-1.34(b)
Parking	2 spaces per dwelling	2 spaces per dwelling	§59-C-1.735 and §59-E-3.7

Staff advises that Section 59-C-1.722 of the Zoning Ordinance, which requires the building fronts to be staggered by at least two feet between the groups of three units, will be addressed at

site plan. Exhibit 282, p. 8. The Applicant testified that this may be met through architectural elements such as recessed doors and front porches. 3/23/12 T. 63.

E. Environmental Issues

As part of the review of the R-T 15 application, Technical Staff required the Applicant to submit a Preliminary Forest Conservation Plan (PFCP) to demonstrate that the proposed development was approvable, even though the Planning Board would address the issue at later stages of the development process. Exhibit 282, p. 13. Technical Staff required the PFCP because there is an existing Final Forest Conservation Plan for the expansion of the School, although it was never implemented. Exhibit 282, p. 13. Technical Staff reported that the Applicant could meet the requirements of the forest conservation law at the R-T 15 density, although a variance would be required because of the size of some of the trees on the property and because of their association with the historic site. Exhibit 282, p. 14. The Applicant did not submit a revised PFCP for the R-T 12.5 SDP. Technical Staff advises, however, that, “[n]ow with the revised schematic development plan which includes greater setbacks, less density, more green space and less overall disturbance, it appears the forest conservation requirements would be easier to meet.” With regard to the variance, Staff stated, “[h]owever, the increased setbacks and lower density will facilitate the preservation of subject trees, particularly those along the south boundary of the site and those near the Riggs-Thompson house.” Exhibit 282, p. 14.

Those opposing the application did not submit any evidence that the requirements of the County’s reforestation law could not be met. Mr. Don Grove, an expert arborist testifying in opposition to the development, indicated that the law was flawed because it permitted the removal of the mature trees on the property, but did not testify that the requirements of the law could not be met. 3/26/12 T. 292.

Ms. Samiy expressed concern that the development would exacerbate sewage overflows into Sligo Creek. She stated that the Environmental Protection Agency and the Washington Suburban Sanitary Commission (WSSC) have entered into a consent agreement because the existing sewage system is undersized causing overflows into Sligo Creek. 3/26/12 T. 304-305.

On rebuttal, Mr. Thakkar confirmed that there is a consent agreement, but that the development may meet the terms of the consent decree. According to Mr. Thakkar, the consent decree requires anyone developing to make “appropriate” upgrades to the system. He stated that their civil engineer found that the 220-unit apartment project south of Cedar Street is making significant improvements to the sewer system; they believe it’s possible for the Applicant to tie into that system without having to make substantial upgrades itself. 3/30/12 T. 81-82.

F. Subdivision Potential and Transfer of Density From Riggs-Thompson Parcel

SOECA also makes two legal arguments that (1) the subdivision regulations prohibit development of the SDP and (2) §59-A-6.2 prohibits a “transfer” of density from the 1.4 acre parcel on which the Riggs-Thompson House was originally located to the remainder of the site.

SOECA’s argument regarding the subdivision regulations is three-fold. First, it asserts that the existing lot, created for the Chelsea School, combined the pre-existing parcels: Parcel A, which contained the bulk of the School’s property, and Parcel 73, which was originally reserved by the owners of the Riggs-Thompson House. The two parcels were combined in order to legalize the existing problem that school buildings crossed lot lines, resulting in a much larger parcel than is typical in the R-60 Zone. The Board waived the requirement that resubdivided lots “shall be of the same character as to street frontage, alignment, size, shape, width, area and suitability for residential use as other lots within the existing block, neighborhood or subdivision.” *Montgomery County Code*, §50-20(b)(2). SOECA argues that once the Chelsea School leaves the property, the rationale for the Board’s waiver no longer applies. The Planning Board concluded that, “[t]he problem with this

argument is that the Applicant's proposal will require further subdivision of the property, which will supersede the prior preliminary plan approval, eliminating the alleged conflict." Exhibit 304, p. 5.

SOECA further argues that the Applicant should not be able to calculate density based on the entire tract because the preliminary plan will not meet the requirements of §50-20(b)(2), i.e., that won't be "of the same character" as the surrounding lots. While SOECA admits that the Council's determination that R-T zoning is appropriate may waive this requirement for the portion of the property where the townhouses will actually be located, there is no similar implied waiver for the parcel that will contain the Riggs-Thompson House. Exhibit 286(c), pp. 3-4. The Planning Board rejected this argument as well. The Board stated that when defining the neighborhood for the purpose of determining the character of lots within, it has been "Board's existing and long-standing practice to consider only similarly zoned lots, not parcels of land that have not been subdivided into lots." Exhibit 304, p. 5. To do otherwise would, "almost always preclude rezoning in an area containing an existing subdivision." Exhibit 304, p. 6.

At the public hearing, SOECA also argued that the only method by which density could be "transferred" from the Riggs-Thompson House to the balance of the subject property is through the procedures in §59-A-6.2 of the Zoning Ordinance. Section 6.21, in part, provides:

Where any tract of land classified in more than one residential zone contains a site, structure, or area of historic significance suitable for preservation, the Planning Board may permit the transfer of dwelling units from one zone to another in excess of the number of dwelling units otherwise permitted in the zone to which the dwelling units are transferred, for the purpose of preserving the historic site, structure or area if all of the following requirements are met...

Section 59-A 6.21(b) limits the amount of density transferred to the amount of density that would be permitted on the historic site. Because the Riggs-Thompson parcel can be developed in the R-60 Zone, SOECA reasons, the only density that could be transferred would be the density permitted under the R-60 Zone for the 1.4 acre parcel on which the Riggs-Thompson House sits pursuant to this section.

G. Community Response

Six civic associations submitted letters opposing the revised application, including SOECA. With regard to the revised plan, their positions may best be summarized by the Woodside Park Civic Association (Exhibit 330) which objected to:

- The “bunching” of the structures into a small portion of the site;
- “Row upon row of townhouse strings lined up with military precision”;
- Long parking alleys at right angles to the homes on Springvale Road; and
- The absence of meaningful private space for each townhouse.

Similar positions were expressed by the Park Hills Civic Association, the Lyttonsville Community Civic Association, the East Silver Spring Citizens Association (ESSCA), and the Woodside Station Homeowners Association. Exhibits 283, 284, 294, 329.

Several citizens associations stressed the importance of compliance with the Master Plan. The East Silver Spring Citizens Association stated that the revised SDP did not sufficiently reflect the “balance” struck in the Master Plan between allowing higher density in the Silver Spring Central Business District and preserving the bordering neighborhood. Exhibit 294. Similarly, the South Four Corners Civic Association wrote that “Montgomery County has an obligation to make sure developers respect Master Plans.” Exhibit 337. The ESSCA stated that that approving the plan would set a “dangerous precedent” jeopardizing surrounding communities and the long-term planning that went in to developing the Master Plan. Exhibit 294.

Several of the civic associations expressed concern about preserving the Riggs-Thompson House and wanted the environmental setting to include the 1.4 acre parcel on which the house was originally located. Exhibit 283, 284. The Lyttonsville Community Civic Association, noting that it was established in 1853, believes that reduction in density, respecting traffic patterns, and preservation of original 1.4-acre parcel for the Riggs-Thompson House is necessary to preserve historic neighborhoods. Exhibit 284.

Seventeen individuals submitted letters in opposition to the development. Several wanted EYA to re-assert their commitment to having fronts on the end units facing Springvale Road. Exhibits 280, 305. Others felt that the massing and density did not adequately reflect the remand order or comply with the Master Plan. Exhibits 287, 299, 300, 305, 316, 315. Many felt that 1.4-acre parcel on which the Riggs-Thompson house should be excluded from calculating the density for the site. Exhibits 305, 316. They also expressed concern regarding the possibility of cut-through traffic in the neighborhood, overflow parking on surrounding residential streets, and traffic congestion in the area. Exhibits 281, 284, 288, 299, 315, 316. Some disputed EYA's claim that the development complied with principles of Smart Growth. Exhibit 300.

There were also five letters supporting the revised SDP. Those individuals felt that more modern housing types were beneficial to the area, that the amount of green space provided a good transition from the Central Business District, and enhanced the area in general. Exhibits 290, 312, 317, 331, 332, 333.

IV. SUMMARY OF THE HEARING

The testimony and evidence presented at the public hearing is set forth herein as necessary. A detailed summary of the public hearing is set forth in the Appendix to this Report.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Zoning Issues

The full criteria for approval of a floating zone is set forth in the Hearing Examiner's first Report and Recommendation in this case. Because the Council remanded this case for consideration of specific issues, this Report will only address the standards relating to those issues.

1. Compatibility

An application for a floating zone reclassification must be evaluated for compatibility with land uses in the surrounding area. The Council's remand included examination of the compatibility

of the density and massing of the revised plan as well as the impact of traffic on the surrounding roadways.

a. Density

The District Council, along with the Hearing Examiner, found that the Applicant did not meet its burden of proof that the density and massing of the original R-T 15 SDP was compatible with the surrounding area. Specifically they found that a “straight, linear application of the “tent effect” beginning at the center of the CBD was not justified because of the abrupt transition from the CBD to the neighborhood north of Cedar Street. In addition, the evidence presented by the Applicant to prove the *incompatibility* of the R-60 Zone was not persuasive, as these uses are legislatively deemed compatible with the area.

Based on the evidence on remand, the Hearing Examiner finds that the Applicant has proven by a preponderance of the evidence that the reduced density proposed is compatible with the surrounding area. Mr. Armstrong asserts that the only relevant comparables should come from within the Master Plan area. Assuming, without deciding, this is correct, both parties have submitted the same comparables in support of their position. These include:

1. Courts of Woodside: The evidence demonstrates that this is zoned R-T 12.5 and is located at the intersection of Georgia Avenue and Noyes Drive. The Applicant asserts that the R-T 12.5 zoning makes it comparable while the opposition asserts that it is developed at 9.7 units per acre with less density and massing than the revised SDP.
2. Ottawa Place: The Applicant believes this is relevant because it is zoned R-T 12.5. The opposition asserts that it is developed at 11.6 dwelling units per acre with “smaller clusters” of townhouse strings.
3. Fairview Court: The Applicant asserts that this development is relevant because it is zoned R-T 12.5 and developed at 12.38 dwelling units per acre, based on the actual site plan. Those in opposition testified that it is developed at 8.7 units per acre and believe it is more compatible because each unit has its own backyard and the development has only one access point.
4. Woodside Station: Located at the northeast corner of the intersection of Georgia Avenue and Spring Street, this development is also zoned R-T 12.5 and is located adjacent to the Silver Spring Central Business District. Mr. Armstrong testified that it is developed at

11.4 dwelling units per acre; Mr. Thakkar testified that based on the actual site development plan, the density is 12.26 dwelling units per acre.

5. Leighton's Addition Woodside: Located at the corner of Georgia Avenue and Grace Church Road, the Applicant believes it is compatible because it is zoned R-T 12.5 and is developed at 11.95 dwelling units per acre. The opposition asserts it developed at 8.5 dwelling units per acre.

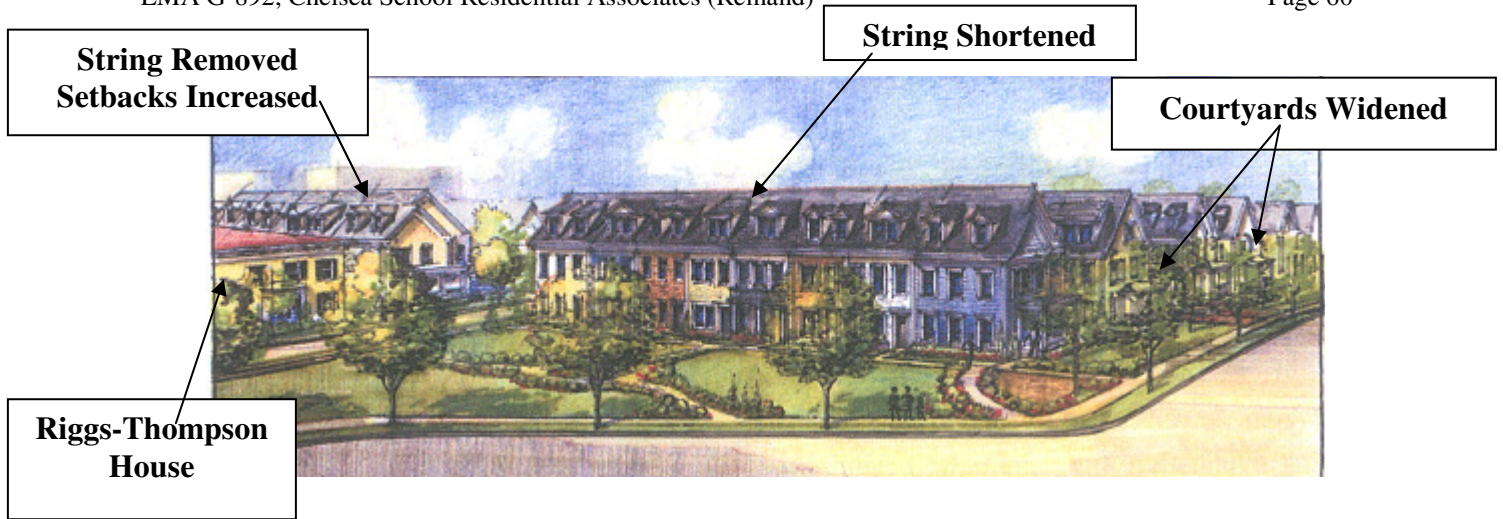
Because the Applicant's comparables have been derived from actual site plans whereas the opposition's were derived from a county website (3/26/12 T. 163), the Hearing Examiner believes that the density calculations provided by the Applicant are better evidence of the actual densities of these development. She further finds that the *zoning* rather than the developed density is a better tool for comparison at this stage of the development process. This is because the developed density for the subject property may be less than the 12.19 proposed after site plan review and site engineering have been completed. Even considering developed densities, however, the evidence demonstrates that there are several townhouse developments between 11 and 12.38 dwelling units per acre within the Master Plan area. The proposed density for this project, at 12.19 dwelling units per acre is well within the range of these other townhouse developments. While those opposing the application point to the fact that most townhouses are located on major highways, arterial roads, or adjacent to commercial zoning, the Hearing Examiner finds that the significant open space buffering the development mitigates this distinction. Further, the Hearing Examiner finds that the density proposed here is appropriate, provided the development is because there are much more significant densities in the surrounding area. While there are some lower density developments in the Master Plan area, the surrounding area in this case includes much higher density developments both within the boundaries of the central business district and on the east and west perimeter of the neighborhood. While a straight line application of the "tent effect" adopted in the Silver Spring Central Business District Master Plan did not justify the density previously proposed, these uses

do suggest that a higher density than 8-10 dwelling units per acre is appropriate for the subject property.

b. Massing

Based on the evidence before her, the Hearing Examiner agrees with Technical Staff and the Planning Board that the massing of the revised SDP has been sufficiently reduced to be compatible with the homes in the surrounding area. She finds that the reductions or “relaxation” in massing *do* contribute to break the mass of the development. While the combined length of the rows is only two feet less than shown in the original SDP, the shortened length of the rows north of the private street *is* significant because it impacts the only location where the townhouse strings actually confront single-family detached homes (i.e., along Pershing Drive). The townhouse strings south of the private road are now screened by the one single-family home on the site (i.e., the Riggs-Thompson House), and are buffered by new, significant setbacks from both the road and the house itself. As a result, the northern string of townhomes is the most visible from Pershing Drive. Nor does the Hearing Examiner find persuasive the Opposition’s argument that reductions in massing are insignificant because the widths of the functional fronts have increased. The widths proposed are not dissimilar to the widths of single-family homes that could be built on the property. Thus, the widening of the courtyards does function to break up the massing of the units despite the increase in widths along Springvale Road in a manner more compatible with the neighborhood. The significance of these changes in massing is perhaps best illustrated by an exhibit submitted included in the Technical Staff Report (Exhibit 45, p. 7) during the first hearing (depicting the proposed R-T 15 development), shown on the next page.

In addition, the Hearing Examiner finds that the massing on the remaining three property boundaries is compatible with the surrounding residential area. The massing along the western (i.e., Ellsworth Road) edge of the site is broken up by shorter townhouse rows between three and



five units. The massing along Springvale Road is reduced by widened courtyards and orientation of the rows perpendicular to Springvale Road with functional front facades. Providing the full 30-foot setback along the southern property line better separates the townhouse strings from the rear yards of the single-family detached structures bordering Cedar Street.

With these changes in massing, the Hearing Examiner finds that the building orientation, architectural elements (including varied rooflines, recessed entrances and porches, and functional fronts) and landscaping to screen the private alleys from Springvale Road achieve compatibility with the surrounding neighborhood. Many in the community felt that the close proximity of the rear of the units, with only private alleys rather than back yards, was incompatible with the single-family detached homes immediately surrounding the site. On remand, the Applicant has more fully demonstrated how these alleys will be screened by the use of decorative walls, landscaping, and a double row of street trees to reduce the impact of headlights and to mitigate visual incompatibility. This screening, combined with the widened courtyards between the fronts of the units, persuades the Hearing Examiner that the elements of the site layout which differ the most from the immediately surrounding neighborhood are sufficiently mitigated to be compatible with the neighborhood.

c. Traffic

In its first decision, the District Council ordered the case remanded because of the number of questions that remained concerning the alignment of the private street and its potential impact on the community.¹ The Applicant proposed six different alignments which had widely different environmental and traffic impacts. As a result, the Council found that the Applicant had failed to meet its burden of proof that traffic generated by the R-T 15 development would be compatible with the neighborhood.

On remand, the Applicant proposes a single alignment which has received conceptual approval from Technical Staff, the Planning Board, and the Montgomery County Department of Transportation. The evidence here indicates that dual access to public streets are preferred both to promote “connectivity” between residents and the surrounding road network and for emergency vehicle access. In addition, Mr. Youngentob testified that, because of the 6% grade rising from west to east on the subject property, the *cul-de-sac* or single access supported by the community would result in a large retaining wall that would reduce the green area surrounding the historic property.

While the Applicant acknowledges that the dual connection creates an opportunity to avoid the existing traffic restrictions on neighborhood streets, it proposes the measures described in Section IV.C of this Report to prevent cut-through traffic. Those opposing the application question the effectiveness of these measures primarily because, in their opinion, they cannot be enforced and because the time-travel study is inadequate to project the impact of the development in the future.

¹ Because the R-T 12.5 SDP generates fewer trips than the R-T 15 SDP, the Hearing Examiner excluded evidence regarding compliance with Local Area Transportation Review and Policy Area Mobility Review on remand. The District Council previously found that the R-T 15 proposal met those standards, and that determination is incorporated herein.

The Hearing Examiner agrees with the opposition that the Applicant's time-travel study does not adequately project the development's impact over time. The evidence as to future traffic is unquantified and speculative—there is little evidence in this record as to the level of congestion that may occur on Colesville Road (or any of the roads) in the future. In addition, the Hearing Examiner finds that Mr. Millson is correct that, were the Applicant's reasoning to be applied to the existing traffic restrictions, one would find them unnecessary, which the evidence demonstrates is not the case.

The Hearing Examiner does find, however, that the proposed signage and channelization of the private road *will* effectively prevent cut-through traffic. This is based on the significant evidence in the record, both in the original case and on remand, that existing traffic restrictions and signage have, in fact, greatly reduced cut-through traffic since implemented in the 1990's. The effectiveness of the existing restrictions is also demonstrated by the low traffic volumes evidenced in the first hearing and again in this hearing with respect to Springvale Road. 5/26/11 T. 89-90, 6/6/11 T. 155, 200-201, 7/18/11 T. 75, 111-117, 5/23/12 T. 222-223, 5/26/12 T. 208-209, 236. While there is some anecdotal evidence that, periodically, people may disobey the signs, it is difficult to draw the conclusion from this record that this is a significant factor.

The additional binding element requiring the developer to seek an executive regulation permitting the County to enforce the private signs is also persuasive in addressing the issue of HOA enforcement of the signs based on the evidence in this record. Mr. Gurwitz argues that private signage is unenforceable by County police, citing to an Attorney General's opinion, 59 Op. Atty. Gen. 659 (1974). The Applicant points to §31-2 of the Montgomery County Code, which provides:

[I]f the private owner of any land used by the general public shall cause to have erected "stop," "speed limit" or other traffic-control signs or devices upon streets, highways and other areas within said private property said signs shall conform to the most recent edition of the "Manual on Uniform Traffic Control Devices for

Streets and Highways" with regard to design, color, size and placement. The county executive is authorized to approve by executive order said traffic-control signs and devices, which shall then have the same effect as those public traffic-control signs and devices erected by the direction of the county executive; provided, that all such signs and devices on private property shall be constructed, erected and maintained at the cost of the owner of said land. (Emphasis supplied).

The Attorney General's opinion is distinguishable from the facts of this case because it involves the application of *State* traffic restrictions on private roads. It does not apply to the situation here, which involves police enforcement of *private* traffic restrictions on private roads. In addition, the Hearing Examiner finds that the Applicant's expert testimony that channelization of the Springvale Road access will effectively prevent left turns onto Springvale Road. While individuals opposing the application did provide some anecdotal evidence that people may make left turns despite the channelization, the weight of evidence in this case supports the Applicant's position. For these reasons, the Hearing Examiner finds that traffic generated by the proposed SDP will be compatible with the surrounding area.

C. The Public Interest

The Applicant must show that the proposed reclassification bears sufficient relationship to the public interest to justify its approval. When evaluating the public interest, the District Council normally considers Master Plan conformity, the recommendations of the Planning Board and Technical Staff, any adverse impact on public facilities or the environment, and factors such as the inclusion of MPDUs and location near public transportation, especially a Metro station.

1. Consistency with the 2000 North and West Silver Spring Master Plan

a. Land Use

The Hearing Examiner and the District Council found that, while the Master Plan did not prohibit R-T Zoning for the subject property, the R-T 15 density proposed did not sufficiently comply the Master Plan because of the nature of the transition from the CBD recommended in

the Master Plan at this location. Specifically, the Hearing Examiner found that the Master Plan did not call for extension of the “tent effect” (adopted in the Silver Spring CBD Sector Plan) beyond Cedar Street. Of particular note was the suddenness of the transition from CBD to R-60 Zoning and the explicit recommendation that the Cedar Street transition be accomplished designating the existing single-family homes north of Cedar Street for professional office special exceptions. The Plan characterized this transition as one “by use not by structure type.”

In her first report, the Hearing Examiner noted that Master Plans legally are guidelines and strict compliance is not mandated. *Trail, et al. v. Terrapin Run, LLC, et al.*, 403 Md. 523 (2009)(footnote deleted).

The parties continue to disagree whether the SDP proposed on remand sufficiently complies with the Plan’s recommendation that the transition at this location be accomplished by changing the use of single-family detached homes, but not the “structure-type”. The Hearing Examiner finds that it does substantially comply with the Master Plan. The Council has already determined that R-T Zoning is appropriate at this location, so some level of deviation from traditional detached structures must be presumed. The Hearing Examiner agrees with Technical Staff and the Planning Board that the careful site layout, along with the use of varied architectural elements, landscaping and screening, and the reductions in massing sufficiently suggest and compatibly relate to traditional single-family detached homes to comply substantially with the Master Plan.

There is no question that these dwellings are, in some respects, different from traditional single-family detached homes. These residents may wish to “live to the front” of the home, without backyards and with large green areas that do not require maintenance by the individual owner typically associated with detached homes. The Hearing Examiner cannot say, however, that these units do not comply with the Master Plan when the potentially incompatible aspects

(such as headlights from the private alleys) are effectively mitigated and where the positive aspects, such as large green areas, sidewalks, and streetscape, further other goals of the Master Plan. In particular, Chapter One outlines the Plan's goals for preserving the residential character of the existing neighborhood, which included the limitation of commercial uses and traffic, as well as providing pedestrian amenities and sidewalks. Exhibit 139, p. 16, 73. The revised SDP implements these goals by substituting the institutional use for a residential use, providing pedestrian amenities such as sidewalks and streetscaping as well as a public access area near the historic house. The Hearing Examiner agrees with Mr. Iraola that the Master Plan noted that provision of public parks or green space is difficult in the R-60 Zone. Exhibit 139, p. 84. The Council determined that an R-T Zone on the property is appropriate because it provides the flexibility to provide these amenities that are typically difficult to achieve in the R-60 Zone. For these reasons, the Hearing Examiner finds that the current SDP substantially complies with the land use goals of the Master Plan.

b. Environmental Setting of the Riggs-Thompson House

The Hearing Examiner found that the R-T 15 SDP was inconsistent with the Master Plan's designation of the environmental setting for the Riggs-Thompson House because it failed to meet the Council's intent when adopting the Master Plan. The Hearing Examiner found unpersuasive the Applicant's argument that the 37,056 square foot environmental setting should remain because it was included in the body of the Master Plan and the dual recommendation had been relegated to the Appendix. Evidence of the legislative history, introduced by those in opposition, indicated that the configuration was approved only because of its incorporation into the larger "campus-like" setting of the Chelsea School to give flexibility to the school to expand but also to protect the historic resource.

On remand, both parties have submitted additional evidence regarding the Plan's intent. Those in opposition argue that 37,056 square-foot setting is "tied" only to the Chelsea School and that the 1.4 acre setting referenced in the appendix controls once the school leaves the property. The Applicant continues to argue, with some additional evidence, that the body of the Master Plan should control because at the time the Council adopted the Plan it knew that the Chelsea School application had been approved.

In her first Report, the Hearing Examiner noted the legal standards controlling interpretation of a Master Plan:

The primary goal of statutory construction, "is to ascertain and implement the legislative intent . . ." *Trembow v. Schonfeld*, 393 Md. 327, 336-337, 901 A.2d 825, 831 (2006). As stated in that decision,

Our goal is to ascertain and implement the legislative intent, and, if that intent is clear from the language of the statute, giving that language its plain and ordinary meaning, we need go no further. We do not stretch the language used by the Legislature in order to create an ambiguity where none would otherwise exist. If there is some ambiguity in the language of the statute, either inherently or in a particular application, we may then resort to other indicia to determine the likely legislative intent." *Id.*

But this standard must be considered in light of the following language from *Maryland-National Capital Park and Planning Commission v. Anderson*, 164 Md. App. 540, 569-570, 884 A.2d 157, 174 (2005), *aff'd* on appeal, 395 Md. 172 (2006):

Even under the plain meaning rule, however, we do not ignore the Legislature's purpose if it is readily known. *State v. Pagano*, 341 Md. 129, 133, 669 A.2d 1339 (1996). In this regard, "we may ... consider the particular problem or problems the legislature was addressing, and the objectives it sought to attain." *Sinai Hosp. of Baltimore, Inc. v. Department of Employment & Training*, 309 Md. 28, 40, 522 A.2d 382 (1987); see also *Romm v. Flax*, 340 Md. 690, 693, 668 A.2d 1 (1995).

The Hearing Examiner agrees with individuals opposing the application that the 37,056 square-foot environmental setting was approved in an attempt to give the school flexibility to develop the property and at the same time, protect the historic resource. The weight of evidence

is clear that the HPC, the Planning Board, and the Council approved the smaller environmental setting at the time because they believed the historic house would integrated into a larger setting that would adequately protect the historic resource. The March, 1999, minutes of the Planning Board meeting indicate that the Board specifically instructed Technical Staff to include language reiterating that the importance of the goal to incorporate the setting into the campus of the Chelsea School. This language remains in Appendix D of the Plan. Similarly, the transcript of the public hearing before the Council reveals the Chelsea School represented that the historic house would be the “jewel” of the campus. Ms. Christensen submitted into evidence the special exception plan, approved prior to the Council’s adoption of the Master Plan, and testified that the school intended to create an “academic quad” which would, in part, frame the house. Unfortunately, the school did not expand and therefore, this goal was never accomplished.

The Hearing Examiner finds it unnecessary, however, to resolve whether the Council intended the environmental setting to revert to 1.4 acres because she finds that the revised SDP continues to meet this legislative intent. Technical Staff advises that the integration of the smaller environmental setting and the public access area provides more prominent views of the historic house because it will be open to perspectives from the corner of Springvale Road and Pershing Drive and continue south along the sidewalk. Similarly, Mr. Iraola testified that the combined open space/environmental setting showcases the location of the house on the most prominent topography on the site and “opens” it to the corner along Springvale Road. While the opposition asserts that the views from the southwest of the house are important because it captures the side and front yards of the house, the Hearing Examiner notes that, without the public access area provided in the revised development plan, it is unclear whether anyone will be able to experience these views.

When queried by the Hearing Examiner about their preference for the original 1.4-acre parcel, it appears that the primary concern is the level of protection afforded historic resource if the public access space is under HOA control. The Hearing Examiner agrees with Ms. Christensen that HOA control is an important factor to protect the resource, but finds that the binding element proposed by Applicant requiring improvements in the public access space to be accomplished by site plan amendment with advice from Historic Preservation Commission sufficient to address these concerns. For these reasons, the Hearing Examiner finds that the 37,056 square-foot environmental setting complies with the intent of the Master Plan.

c. Cut-Through Traffic

As noted, a goal of the Master Plan is the elimination or reduction of traffic cutting through the neighborhood. Because the Hearing Examiner finds that the signage, channelization and other measures which the Applicants have incorporated into a binding element will effectively prevent cut-through traffic, she finds that the application substantially complies with this goal of the Master Plan.

2. Other County Plans and Policies

In the original hearing, the Hearing Examiner and the District Council found that the R-T 15 application complied with the Silver Spring Master Plan, the Housing Element of the General Plan, and that public facilities are adequate to support the use. These findings remain controlling and therefore, need not be addressed on remand. There was some evidence on remand as to whether there was adequate sewage capacity in the surrounding area. Mr. Thakkar acknowledged that there is a consent agreement between the EPA and the WSSC which will require upgrades to the system. His testimony also indicated that upgrades were being provided by the apartment development immediately south of Cedar Street which the Applicant could tie into without significant investment. While it is debatable whether this issue is properly before the Council on

remand, the Hearing Examiner finds that there is not reason to assume, without more, that sewer facilities are inadequate to serve the development.

D. The Environment

At the public hearing on the R-T 15 application, Staff requested the applicant to submit a PFCP in order to demonstrate that that development could comply with the forest conservation requirements. The Applicant did so, although on remand did not revise its PFCP for the R-T 12.5 SDP. Technical Staff advises, however, that the reduction in density and the provision of additional green area will likely make compliance with the forest conservation requirements easier and possibly reduce the need for the variance. While individuals opposing the application objected to the removal of mature trees on the site, there is not evidence that the Applicant cannot comply with the requirements of the law. Based on this evidence, the Hearing Examiner agrees that the proposed development is able to comply with the forest conservation law, subject to further review later in the development process.

E. Potential Subdivision and “Transfer of Density” from The Riggs-Thompson House

With regard to SOECA’s argument that the subdivision regulations do not permit a preliminary plan to be approved in accordance with a revised SDP, the Hearing Examiner agrees with the Planning Board for the reasons expressed in their recommendation (Exhibit 304). Because the Hearing Examiner finds, as did the Planning Board, that none of the justifications for “separating” the Riggs-Thompson House from the rest of the tract area have merit, she finds that §59-A-6.21 does not apply to this application, because by its express terms it permits a transfer of density for “tracts of land classified in more than one residential zone”. *Montgomery County Code*, §59-A-6.21. Upon rezoning, the subject property will be placed in a single zone, with the result that §59-A-6.21 does not apply.

VI. RECOMMENDATION

I, therefore, recommend that Zoning Application No. G-892, requesting reclassification from the R-60 Zone to the R-T 12.5 Zone of approximately 5.25 acres of land at 611 Ellsworth Drive, Silver Spring, Maryland (Lot 58, Evanswood, Section 1), be **approved** in the amount requested and subject to the specifications and requirements of the revised Schematic Development Plan, Exhibit 346(a); provided that the Applicant submits to the Hearing Examiner for certification a reproducible original and three copies of the Schematic Development Plan approved by the District Council within 10 days of approval, in accordance with §59-D-1.64 of the Zoning Ordinance, and that the Declaration of Covenants (Exhibit 345(e)) is filed in the County land records in accordance with § 59-H-2.54 of the Zoning Ordinance and proof thereof submitted to the Hearing Examiner within the same timeframe.²

Dated: May 16, 2012

Respectfully submitted,

A handwritten signature in black ink, consisting of a stylized 'L' and 'R' followed by a long horizontal line.

Lynn A. Robeson
Hearing Examiner

² The Hearing Examiner believes that, pursuant to Zoning Ordinance §59-H-8.2(b), a five-member majority of the Council will be required to approve this application. Although the RT-12.5 classification is not specifically recommended by the Sector Plan, the Planning Board recommended approval. §59-H-8.2(b) provides:

(b) A resolution granting a classification that is not recommended for the subject property by an approved and adopted master or sector plan or functional master plan requires the affirmative vote of 6 members of the district council. However, if the Planning Board recommends approval of the classification, the resolution requires the affirmative vote of only 5 members.

APPENDIX

March 23, 2012, Public Hearing**For the Applicant:**

1. Mr. Aakash Thakkar:

Mr. Thakkar testified on behalf the Applicant, Chelsea Residential Associates, LLC. After the remand, EYA met with the community and Technical Staff regarding the Council's concerns expressed in the remand order, as well as the citizens' concerns. As a result, it revised its Schematic Development Plan (SDP) to request the R-T 12.5 rather than the R-T 15 Zone. T. 29. He also believes that they have addressed concerns related to the historic setting road alignment. As a result, he believes, the Planning Board voted unanimously to recommend approval. T. 33.

Mr. Thakkar testified that he believes the environmental setting recommended by the North and West Silver Spring Master Plan (Plan) is the 37,056 square foot environmental setting set forth in the body of the Plan because, if the Council had wanted an alternative recommendation, it would have said so in the body of the Plan. T. 37-39.

According to Mr. Thakkar, the "green area" surrounding the Riggs-Thompson House shown on the SDP, including both the "public access" area and the 37,056 square-foot environmental setting totals 1.3 acres. While they are not proffering the additional .55 acres of "green area" as the environmental setting, they are proposing it as permanent green space. T. 40. In addition, there is additional property off-site around that house consisting of approximately .12 acres, which would bring the total amount of open space surrounding the house to just under 1.5 acres. T. 40. The 37,056 square-foot environmental setting would be subject to the Historic Preservation Commission approval; the balance of the green space would be subject to the HOA. T. 40. No development will be permitted on the property subject to the HOA. T. 42.

Mr. Thakkar stated that, when revising the SDP, EYA did not use the configuration of the 1.4-acre parcel (P73) upon which the house original sat because it extended further west into the interior

of the site and would require a complete redesign of the SDP. In order to retain the row of townhouses nearest the site, they would have to develop the northeast corner of the property along Pershing Drive and Springvale Road. T. 44-45. In addition, EYA felt that the combination of private “public access” space and environmental setting shown on the SDP provided a better environmental setting for the house; it extends the open space all the way to the corner of Pershing Drive and Springvale Road and permits the public access at that location. EYA also believes that it provides a better environmental setting than what exists today, because the non-contributing structures surrounding the house were never removed and it really doesn’t sit in a “campus-like” setting. T. 46-48.

When asked about the legal restrictions on the open space, Mr. Thakkar responded that construction within the environmental setting would be subject to HPC approval. According to Mr. Thakkar, the HOA documents will prohibit development on the remaining area. They can make it clearer by placing easements on the lot ultimately subdivided for the Riggs-Thompson House. T. 53.

In Mr. Thakkar’s opinion, the revised SDP also addresses the concerns relating to density and massing in the Council’s remand. T. 55. Solely by virtue of requesting the R-T 12.5 Zone, the green space has been increased to 50%, the minimum required in the zone. In addition, obviously, the density has been reduced. According to Mr. Thakkar, other revisions also addressed the density and massing concerns expressed by the Council:

7. The total number of units has been reduced from 77 to 64 dwelling units; the prior SDP showed 10 MPDUs, this SDP shows 8 MPDUs. The total density per acre is approximately 12.19 units/acre, a 17% reduction in the density from the original SDP. T. 56.
8. The strings of town house units have been reduced from rows of 8 and 6 units to 7 and 5 units in this SDP. The strings totaled 132 feet in the R-T 15 SDP; they now total 120 feet in length.
9. The courtyards between the townhouse strings have been widened from 36 feet (in the R-T 15 SDP) to 40 feet in the current SDP.

10. One townhouse row has been removed from the southeast corner of the original SDP. There are now five rather than six rows of townhouses south of the private street, increasing the setback from 28 feet in the prior SDP to 92 feet in the current plan.
11. The current SDP shows 54% open space and they are binding themselves to 50%, compared to the 47 or 48% green space in the prior plan.
12. The private road intersects with Springvale (as opposed to Pershing Drive as shown in the initial SDP) and avoids the environmental setting. T. 59.

Overall, EYA's strategy to address the concerns expressed in the remand order was to create buffers from the surrounding single-family homes, but also to relate to the surrounding community through building orientation (i.e., rows perpendicular to Springvale Road), architectural detail and other items. T. 60. They believe that the best method of relating to the homes across Springvale Road is to align the townhouse rows perpendicular to the road, with fronts facing the road. T. 61.

In order to address the opposition's concerns that the townhouse rows resembled barracks, Mr. Thakkar introduced a model of EYA's Clarendon Park project, which was developed at a much higher density of 28 dwelling units per acre. T. 62. In his opinion, the model demonstrates how the use of architectural elements enhances the compatibility with single-family homes and also to envision how the project will look 10 years after development. T. 64. He stated that EYA still intends to plant a double-row of street trees along Springvale Lane. In addition, he pointed out that the alleys will be screened by low walls with landscaping to prevent headlights shining into the homes across Springvale Road. T. 66. He testified that the architectural elements will be required and that homeowners will not have the choice of waiving them. T. 667. The Zoning Ordinance requirement that the every three units in a string vary by two feet may be met by recessed doors, front porches, and other architectural elements. T. 69.

Mr. Thakkar then testified that EYA did consider including some single-family homes within the SDP. They rejected the idea because they felt they could design a townhouse development

compatible with the surrounding single-family homes and because there was a market for townhouses at this type of location near Metro and the central business district (CBD). T. 71.

Mr. Thakkar explained the reason for the revised road alignment. T. 78-79. In his opinion, the additional traffic from the townhouse development will be minimal along Springvale Road because the existing school parking lot access is along that road. He described the current traffic restrictions. The road alignment potentially could permit cut-through traffic by allowing traffic to avoid a one-way southbound restriction on Ellsworth Road by utilizing the private road and Springvale Lane. T. 79-80. EYA is proposing several measures (T. 82-90) to prevent cut-through traffic:

1. Existing traffic restrictions on surrounding streets will remain the same.
2. The road will be narrower than public streets to deter cut-through traffic.
3. The road will have specialty pavers to denote that it is a private street.
4. Signage at the Ellsworth Road entrance will state that access is permitted only for residents and guests of the project.
5. Signage at the Springvale Road egress will prohibit left turns onto Springvale Road.
6. The Springvale Road access will be channelized (by a “pork chop”) to be right-in, right-out.

Mr. Thakkar testified that the signage prohibiting public access to the private streets will be enforced by the HOA as trespassing. T. 86. In addition, he testified EYA’s traffic engineer performed a travel time study which shows that using the private street to avoid the existing traffic restrictions would be significantly longer than using Colesville Road. T. 88.

Mr. Thakkar also addressed the concerns of the Montgomery County Department of Transportation (MCDOT) regarding the Springvale Road access. T. 91. MCDOT is concerned because the distance from the access road to the intersection of Springvale Road and Pershing Drive does not meet its guidelines. T. 92. Mr. Thakkar believes that DOT will approve that access after reviewing the information on traffic volume at the intersection. In the event they don’t approve the

access shown on the SDP, EYA also can move the road further from the intersection if necessary. T. 92-93. Mr. Thakkar stated that EYA does not want to move it further to the west because that would reduce the public access area. T. 92-93.

In response to questions from the Hearing Examiner, Mr. Thakkar explained why EYA did not design a *cul-de-sac* in the amended SDP. T. 93. After reviewing that option with Technical Staff, fire and safety services, and DOT, EYA determined that two access points were better from many viewpoints. It (1) provided residents with more vehicular connectivity to the community, including the CBD, and (2) allowed a second access for emergency vehicles. T. 93-94. On cross-examination, he explained that access to the east increased access to the portion of the CBD where Whole Foods and other retail are located. T. 111. After studying the issue, EYA proposes two additional binding elements requiring signage prohibiting cut-through traffic and other control measures. He believes that if the existing traffic restriction signs work, these will work as well. T. 96.

2, Mr. Miguel Iraola:

Mr. Iraola qualified as an expert land planner at the public hearing prior to remand. 5/26/11 T. 196. He testified that the development conforms to all standards of the R-T 12.5 Zone and no waivers will be required. T. 119. The density has been decreased to 64 units, 63 townhouses and a single-family home (i.e., the Riggs-Thompson House) for a total density of 12.19 dwelling units per acre. T. 119. In the initial SDP, the Applicant required a waiver of the 30-foot setback from the southern property line. No waivers are required for the current proposal. T. 119-120. The Applicant is still proposing a maximum building height of 35 feet. Setbacks from road rights-of-way are also the minimum 25-foot distance, except at the location of the Riggs-Thompson House, where the setback is 23.35 feet from Pershing Drive. T. 120. The SDP provides 51% green space (50% is required in the R-T 12.5 Zone) and will like result in more than 51% when constructed. T. 120.

In Mr. Iraola's opinion, the revised SDP provides more protection for the trees along the southern boundary, where the larger trees are predominantly aggregated, by relaxing some of the slopes and increasing the area for tree preservation T. 121. Some trees will be retained along the edge of the property and near the Riggs-Thompson House. T. 121.

Mr. Iraola testified that the proposed density is compatible with the surrounding area. The property is on the periphery of the CBD which varies in density from 430 dwelling units per acre to 6 units per acre surrounding the subject property. T. 122. There are a variety of uses surrounding the subject property, including high-rise multi-family housing, public parks, a library, nonresident professional office and moderate density single-family detached residential. He believes the density proposed is also compatible because there are a number of townhouse developments within the Silver Spring area which are zoned at 12.5 dwelling units per acre. T. 122.

Residential townhomes are more compatible with the surrounding area than the existing school, in his opinion, because it will preserve and enhance the residential character of the area. T. 122. It provides a housing choice for diverse lifestyles in a location convenient to the Silver Spring CBD. The ability to walk to these amenities also reduces automobile trips and dependence on automobiles which is part of urban living. T. 123.

The revised SDP, according to Mr. Iraola, is compatible because it provides publically accessible open space not normally found in the R-60 Zone. T. 123. The reduced density permits additional spacing between the townhouse strings and greater setbacks. The townhomes will have working fronts, not cosmetic fronts as previously portrayed. T. 128. The R-T 12.5 Zone provides the flexibility to design units fronting onto existing streets without garage entrances. T. 128. The orientation of the rows is compatible with the rhythm and scale of the neighborhood and is found throughout the neighborhood. T. 128.

Mr. Iraola produced photographs of townhouse communities of similar density located in residential neighborhoods near CBDs. T. 130-131. Some of the communities faced single-family residential homes. These included the following (T. 130-134):

13. Woodside Station, located at Spring and Cedar Streets;
14. Rosedale Park, located between Chestnut Street and Rosedale Avenue near the Bethesda CBD;
15. Good Counsel, located between Arcola Avenue and Georgia Avenue near the Wheaton CBD.
16. Fairview Court located on Fairview Road on the edge of the Silver Spring CBD;
17. Courts of Woodside, located on Georgia Avenue and Noyes Drive;
18. Winchester/Plyers Mill, located approximately 2,300 feet from the Wheaton CBD;
19. Ottawa Place located on Georgia Avenue and Highland Drive;
20. Bonaire Court, located at Sligo Avenue and Bonaire Court; and
21. Ritchie Avenue, located on Ritchie Avenue south of Sligo Avenue.

In Mr. Iraola's opinion, the revised SDP conforms to the recommendations of the Master Plan. T. 133. While this site is not located on a major road, there are several examples of the ones he described which also do not front on a major road. He stated that the development complies with the first chapter of the Master Plan which, in his opinion, is the most important because it addresses preserving the existing neighborhood and the character of the north and west Silver Spring neighborhoods. Having a residential use adjacent to the non-resident professional offices adjacent to Cedar Street stabilizes the residential character of the area to the north. T. 134. He opined that the open space provided in the revised SDP strengthens the delineation between the CBD, with cement plazas, and the area to the north and provides the opportunity for a park-like area, which is unusual in the R-60 Zone. T. 135. The SDP will also further pedestrian connectivity through sidewalks along the perimeter and through the public access area. He believed that the Hearing Examiner's findings

of Master Plan compliance, listed on pp. 83-89 of her Report and Recommendation (Exhibit 258) apply to the revised SDP as well.

He believes that preservation of the Riggs-Thompson House as a single-family home also preserved the character of the neighborhood because it provides a focal point and identity for the community. T. 138.

Mr. Iraola opined that the revised SDP complied with the Master Plan for the same reasons previously submitted (i.e., prior to the remand). T. 133-138. In addition, the reduced density requested addresses the massing concerns expressed by the Council. T. 133.

When questioned how the revised SDP complies with the Master Plan's recommendation that the Cedar Street transition should be by "use, but not by structure type", Mr. Iraola pointed out that the townhouse row along Ellsworth Drive is only three units, rather than a string of five or seven. T. 148-149. In addition, the quality and quantity of the open space reduces the massing because these townhouse units are designed to "live to the front". To this end, Mr. Iraola stated that the increased setbacks and quality of the open space is reminiscent of single-family detached houses, although the HOA rather than individuals will be mowing the front lawn. T. 149. Landscaping, a double row of trees, and low masonry walls will screen the rear alleys from view. T. 149. People will relate in the front of the units rather than the rear of the units. T. 150. Architectural elements, such as variable rooflines, will also differentiate the units so that they will not appear as a solid wall. T. 152.

Mr. Iraola testified that consolidating green space between the strings and on the site resulted in a better design than breaking up the units with open areas. T. 153. The revised SDP has been shifted to the west towards Ellsworth Drive, allowing additional space between the strings and opened up the corner of Springvale Road and Ellsworth Drive. T. 154. It also permitted EYA to increase the setbacks from Pershing Drive by 60 feet; initially, the setback was 67 feet and that has been extended to 127 feet. The distance from the nearest home on Pershing (i.e., 714 Pershing) has

increased by 66 feet, from 230 feet to 296 feet. T. 155-156. The reduced density and the 50% green space requirement in the R-T 12.5 Zone also permits the courtyards to expand and the string lengths to decrease. According to Mr. Iraola, the reduced density enabled the setback from the Riggs-Thompson House to increase by 64 feet, from 28 feet to 92 feet. T. 157. He stated that the relaxed density affords the opportunity to create an outstanding setting for the historic house because it sits at a high plateau on the property and is very prominent. T. 158.

Mr. Iraola referred to his prior testimony regarding the “metrics” used to determine and enhance compatibility of different building types. T. 158. Compatibility does not mean identical building types; rather, different techniques may be used to permit different building types to be harmonious. These include architectural elements, complimentary land uses, massing and scale, building height, building orientation, setbacks, buffers, landscaping and traffic. T. 159. The development will establish a residential rather than institutional use for the property, it will be fee simple ownership, different architectural elements will break up the massing, the building orientation perpendicular to Springvale Road will mirror the single-family homes across the street, and the courtyards between the units will break the massing. As a result, these will not appear as a “continuous building wall” more typical of Baltimore townhouses. T. 160-161. The impact of the parking has been mitigated by having rear-entry garages which are screened by landscaping and other features from the street. T. 162. The alleys will be screened by decorative walls that will “grow” from the façade and be augmented by landscaping and street trees. T. 164.

In Mr. Iraola’s opinion, the revised SDP provides a better setting for the Riggs-Thompson House than the original 1.4-acre parcel on which it was located. The combination of the 37,056 environmental setting and the public access area opens up and “squares” the site. It also “opens up” the corner of Springvale Road and Pershing Drive so that the house sits much more prominently on the property. T. 173. Assuming that the environmental setting is 37,056 square feet, the revised SDP

better frames the house because the configuration is jagged and one could build right up to the edge of the setting. T. 175.

The two access points for the private road provide vehicular connectivity for the residents of the development. Typical suburban development uses cul-de-sacs (or “lollipops”) connected to a larger “loop” roadway. It is unusual to find a “loop and lollipop” configuration inside the Beltway in more urban areas. T. 180. The private road alignment shown on the revised SDP is more compatible with the existing character of the area. T. 180.

On cross-examination, Mr. Iraola acknowledged that the combined total of the townhouse strings on the north and south sides of the private street had decreased from 242 lineal feet to 240 feet in length. T. 183. While the courtyards have been expanded by four feet, the width of the units has increased from 36 and 42 feet to 38 and 42 feet. T. 184. He testified that both emergency services and connectivity could be provided with a *cul-de-sac*, but neither was preferred. He acknowledged that the planning principles could also be served by a further reduction in density, but felt that the articulation of the end units sufficiently mitigated the mass of the townhouse strings. T. 187.

Mr. Iraola stated that he believed that the site is better served by consolidating the green areas rather than breaking up the townhouse string and the gap created is not oriented to the public. T. 195.

3. Mark Posner:

Mr. Posner testified that he has lived on Woodside Parkway since 1987 and served on the SOECA task force investigating the zoning application in 2010. T. 196-197. He believes that the revised SDP is fully compatible with the character of the neighborhood and would be a strong asset because of the proximity of the CBD. T. 197. He believes that cut-through traffic will not be a problem because in the morning rush hour, he observes virtually no traffic heading south along Pershing. He thinks it unlikely in the evening rush hour because of the additional travel time necessary to avoid the existing restrictions. T. 200.

4. Mr. Chris Kabatt:

Mr. Kabatt qualified as an expert transportation engineer. T. 205. According to Mr. Kabatt, an additional access onto Springvale Road is preferred over a single access/egress onto Ellsworth Road because it provides the residents of the development more connectivity to the surrounding area, such as accessing Whole Foods without having to travel on Colesville Road. This would be comparable to the access enjoyed by the existing residents. T. 208. Without this access, residents of Chelsea Court would have to exit via Ellsworth, turn right onto Spring Street, the left onto Colesville Road, then travel south and turn left onto Fenton Street to head east towards Whole Foods. T. 208. With the Springvale Road access, residents of the Chelsea Court development may turn right onto Springvale Road, right onto Pershing, and then right onto Wayne Avenue. This is preferred because Colesville Road is a heavily travelled road. T. 209.

Two access points also provide better emergency access and urban design. Modern community design disfavors cul-de-sacs and prefers connectivity for better “community building”. Transportation staffs, community planning staff, the Historic Preservation Commission staff, the Planning Board and the Montgomery County Department of Transportation also support the dual access private street. T. 209.

He testified that the Applicant has been working with MCDOT to permit the Springvale access at the location shown on the revised SDP. MCDOT initially indicated they would not approve the access shown because it didn’t meet their guidelines for the spacing between intersections and roadway access points. T. 211. The minimum distance under the guidelines is typically 100 feet, although the guidelines expressly state that they should be “subject to administrative interpretation, and based on sound engineering judgment.” T. 212. The Applicant demonstrated to MCDOT that the proposed development would generate fewer trips on Springvale than the existing school and that the existing streets had very low volumes. The development would add only 3 a.m. and 3 p.m. peak

hour trips than the existing school. T. 213. Thus, there would not be a queue at the intersection. T. 213. Based on this information, MCDOT concluded that the spacing was adequate despite being less than 100 feet from the intersection. T. 211. DOT requested that the Springvale access be channelized to permit only a right-in, right-out. T. 214. There are many locations throughout the county and in this immediate area where driveways are within 100 feet of an intersection, including the Springvale Terrace driveway on Springvale Road. According to Mr. Kabatt, Springvale Road access is 60 feet from the intersection of Springvale Road and Pershing Drive. T. 218. Because of the channelization and the elimination of the school bus drop-off on Pershing, the distance was acceptable. T. 219.

In Mr. Kabatt's professional opinion, the proposed development would not permit cut-through traffic through the neighborhood. T. 221. According to him, Dale Drive is the northern most access to Colesville Road, and is less than a half of a mile from Spring Street. The design of the private street will not permit vehicles travelling north to avoid the restriction on northbound traffic on Ellsworth for several reasons (T. 221-224):

1. It is a narrow road (i.e., 20-feet plus parallel parking), which calms traffic and discourages cut-through traffic;
2. Specialty paving at the entrance will denote privacy;
3. Left turns from the private street onto Springvale Road and from Springvale Road onto the private street will be prohibited;
4. Access to the private street will be restricted to residents by the use of private signage;
5. The new street has a 90-degree turn and does not provide a direct connection to Dale Drive, requiring motorists to make multiple turns through the area to reach Dale Drive;
6. The existing restrictions will remain in place.

In his opinion, the existing traffic restrictions have worked well in the area based on the low volumes they discovered during the first SDP. T. 222. This project will employ the same type of turn restrictions, which will be reinforced by channelization at the Springvale access and signage at both

access points. T. 222-223. The HOA has the power to enforce the restrictions, and the County also has the ability to erect and enforce traffic control signs on private streets by executive order. T. 223.

Mr. Kabatt prepared a travel time study which also supports the proposition that the private street alignment will not generate cut-through traffic. Travelling north from the CBD, Colesville remains the most direct and fastest travel time to reach the Beltway. T. 223. Based on this study, motorists using Colesville Road may reach the Beltway one minute and 25 seconds faster than those attempting to cut through the private street. T. 223. For this study, they used actual drivers equipped with GPS devices who started at Spring Street, Cedar, and Ellsworth. To account for the private road, they mimicked the time it took to travel the same distance along Pershing Drive or along Ellsworth. This is a conservative analysis because neither Pershing nor Ellsworth has a 90 degree turn. Their travel time findings were corroborated by Transportation staff and the Planning Board. In his professional opinion, there will not be cut-through traffic through the private street because the route is narrow, longer, more circuitous, and withjas on-street parking. T. 226. In addition, he opined that access via Springvale is preferable than having only one access point and will be an improvement over existing conditions. T. 227.

On cross-examination, Mr. Kabatt testified that even though the development promotes “walkability”, it remains important for the residents to have vehicular connectivity because certain trips will be made by automobile, such as to Whole Foods. Without the Springvale access, residents must use Colesville Road to head either to the southeast or the northeast directions. T. 232. It is also preferable to have two access points for emergency vehicles in the event that one of the access points is blocked. T. 233. Providing vehicular connectivity disperses traffic through a grid of streets, which works well in urban areas. T. 233. Because the use is generating only 3 peak hour trips on Springvale Lane, the benefits of dual access for the community outweigh the potential adverse impact. T. 235.

On cross-examination, Mr. Kabatt testified that the private access could be enforced by the HOA. If residents regularly observed traffic proceeding from Ellsworth to the 90-degree turn, they could report it to the HOA. Other enforcement systems could include permits placed in vehicles or tags placed on the cars. He did a total of 14 runs for the travel time study between 4:00 pm and 7:00 p.m. on two weekdays. T. 247. He stated that the residents of Chelsea Court will not have an advantage over existing residents in terms of routes into the CBD. T. 250. He did not look at potential traffic cutting through to Wayne Avenue because the traffic study indicates that the intersections along Wayne Avenue operate well within the congestion standard. T. 252.

5. Bob Youngentob:

Mr. Youngentob testified that he believes that the revised SDP addresses the Council's concerns expressed in the remand, especially considering that it was a 5-4 vote. T. 257. EYA attempted to create a more "effective" setting for the house than the 37,056 square foot environmental setting by providing the additional open space, which will legally be protected through the imposition of covenants. T. 259. He believes the setting shown on the revised SDP is a far superior setting, not only for the house, but also as a community amenity. T. 259. He believes that the density is appropriate because many of MPDUs, so the Applicant has tried to balance that reduction and while addressing the other concerns expressed by the Council. T. 260.

He stated that he did not believe that taking a single unit out of the middle of the townhouse strings effectively reduced the mass of the development. T. 260. This would leave a 16- to 18-foot space between 35-foot buildings on both sides, leaving the space with very little sunlight and subject to a slope of 10 feet over approximately 38-40 length. This would have very little usable benefit. If standing on Springvale Road, one looking down a 40-foot channel would never see the gaps. T. 260. He stated that creating gaps in the townhouse strings to reduce massing would not produce usable

green space and would have little benefit. It would, however, reduce the density which is not appropriate because of the development's proximity to the CBD. T. 260.

EYA's goal was to concentrate open space around the perimeter of the site, maximize the effective use of the historic setting, and maximize the buffer and setbacks, and removing the need for any waivers. T. 261. They felt it more appropriate to achieve these benefits rather than creating unbeneficial open space between the strings. T. 261.

Mr. Youngentob testified that the *cul-de-sac* design had many practical negative effects. It requires a 90-foot turnaround for fire trucks, which pushes the *cul-de-sac* closer to the historic house than the turn shown on the revised SDP. It also would require a significant retaining wall because there is approximately 150 feet of additional grade to make the turn to Springvale Road. Therefore, the *cul-de-sac* is at a lower grade than the public access area shown on the current SDP, necessitating a significant retaining wall adjacent to the historic setting. T. 261. While many agencies were pushing for connectivity from a planning standpoint, the practical site design limitations made the *cul-de-sac* undesirable because it encroached into the setting for the Riggs-Thompson House and required a significant retaining wall, disconnecting the private road from the remainder of the site. T. 262.

Mr. Youngentob stated that the Applicant would make the right-of-way improvements listed in MCDOT's e-mail agreeing to the Springvale Road access shown on the SDP (Exhibit 335). T. 263.

For the Opposition:

6. Mr. Don Grove:

Mr. Grove qualified as an expert arborist. T. 270. He believes that the density of the plan should be reduced in order to preserve more of the large mature trees on the site, particularly the slow-growing oak trees in the southwest corner of the property. T. 277. According to Mr. Grove,

while the preliminary forest conservation plan states that several large trees will be preserved, none of these are on the site with the exception of some ornamental trees and two southern magnolia trees near the historic house. T. 277. The trees that will be planted to replace those trees will never grow to the same size because they are overcrowded on the site—they are located too close to each other or to buildings to permit an expansive root system. T. 279. Eventually, there will be die-back of the replacement trees. Much of the work he does as an arborist is pruning or removing trees that were planted in developments and quickly become too large for their location. T. 280. An expansive root system is necessary to achieve some of the benefits of replacing the trees, such as reduction of stormwater runoff through absorption. T. 281. In addition, the tree canopy will not be as large as projected because the trees are too crowded to grow to their expected canopy. T. 281. Even though the preliminary forest conservation plan may meet the technical requirements of Montgomery County's forest conservation law, in his opinion, it does not meet the intent. T. 282.

He thinks that the most important trees to preserve are the oldest and slowest growing trees, the White Oaks concentrated in the southwest corner of the property. T. 283. The density should be reduced to preserve those trees. T. 283. It takes a large amount of protected area to preserve a large tree—a 30-inch diameter tree has a critical root zone of approximately 90 feet. He stated that he is not in a position, however, to redesign the site. T. 284.

Even though the development may meet the provisions of the Montgomery County forest preservation law, the law doesn't meet the expectations of Montgomery County residents who came to the area because of the number of large, mature trees. T. 284.

He believes that it is preferable to have a single rather than double row of street trees along Springvale Road because crowded trees are more susceptible to disease and don't receive sufficient light to grow well. T. 285. The taller existing trees are more capable of mitigating the view of the tall buildings in the CBD. T. 286.

On cross-examination, Mr. Grove testified that the street trees along Springvale Road will probably grow to be 60-80 feet tall. T. 290. He agreed that the County's forest preservation law does not preclude the removal of trees and when trees are removed, the law requires replanting either on-site or off-site. T. 292. If trees are planted off-site, they lose their benefit to the local community, although they provide different benefits as forest. T. 292. He believes that the County's forest conservation law, in this instance, doesn't meet its intent due to the loss of the mature trees on this site. T. 293. Elimination of the existing alley on the eastern side of the site and moving the townhouse strings back out of the buffer is a "step in the right direction". T. 299. He acknowledged that the prior plan submitted by those in opposition would also result in significant tree loss. T. 304.

7. Jean Cavanaugh:

Ms. Cavanaugh testified as an individual opposed to the application. She felt that retention of more of the mature trees is necessary for the project to be compatible with the surrounding community. Right now, according to Ms. Cavanaugh, the County's tree canopy tool reports that the canopy over the Chelsea School site covers 46% of the property. The tree canopy over the surrounding neighborhood is currently 70%; she believes that the percentage of tree canopy should remain consistent throughout the neighborhood. T. 310. She provided a list of particular trees that she believes should be preserved on the property. T. 311. She presented slides showing some of the existing trees listed on the preliminary forest conservation plan (Exhibit 40(d)) as well as the trees that would be preserved if the historic setting is determined to be the 1.4-acre parcel (Parcel 73). T. 312. She does not know whether any of these trees may be preserved under the new (R-T 12.5) SDP. T. 313.

On cross-examination, she acknowledged that the expansion of the open area on the revised SDP allows many more trees to be preserved in that public access space/environmental setting. T. 317. She has not had the opportunity to calculate the new tree cover.

8. Vicki Warren:

Ms. Warren is a vice president of SOECA and lives on Pershing Drive. Her major concern is the ability to integrate the historic house into the development. T. 324. She researched the history of the Plan's recommendations for the historic setting. According to Ms. Warren, as early as the Historic Preservation Commission's (HPC) public hearings, the HPC discussed, and ultimately recommended, a dual environmental setting. She believes that even at this stage, there was some confusion over the recommendation, because she found a draft document from the Appendix with tape over the 1.4 acre designation. T. 325. At the HPC public hearings, Staff explained that there would be a dual environmental study: one for the smaller area should the Chelsea School's special exception be approved and one for the larger (i.e., 1.4 acre) area if the Chelsea School special exception was not approved. T. 326.

This dual recommendation for the environmental setting was explained the same way to the Planning Board. According to Ms. Warren, she obtained a tape of the Planning Board's worksession for the Chelsea School site held on March 25, 1999. Ms. Warren indicated that Staff informed the Planning Board that the customary environmental setting would be the entirety of the parcel on which the property was located at the time of designation. T. 326. She testified that she spent considerable time researching all of the M-NCPPC files related to the Plan and found that this was the only time the historic designation was discussed. T. 328.

Ms. Warren stated that in May, 1999, the Planning Board directed Staff to draft language to implement the dual recommendation. The language included a statement that, "an important goal of the Chelsea School Plan is the integration of the Riggs-Thompson House into the campus." The Sisters of the Holy Names, owners of the property at the time, stated that they would not support the Plan unless the Chelsea School was able to locate on the property. T. 331.

The language approved in May, 1999, remained in the Plan until October 28, 1999, at which time it changed to the language which exists today. In her search of M-NCPPC files, she found no authorization from the Planning Board for the change. T. 331-332. On November 4, 1999, Nancy Sturgeon presented the revised draft to the Planning Board and outlined for the Board every change made. According to Ms. Warren, she did not mention the change to the language relating to the Chelsea School. T. 332.

Ms. Warren testified that the Council did not spend much time on the historic setting. She found a memorandum from Council staff to the PHED Committee explaining the recommendation, again (according to Ms. Warren) indicating that the smaller environmental setting was “tied” to the special exception approval. T. 334. She interprets the legislative history to mean that the HPC and the Planning Board wanted to give the Chelsea School the flexibility to achieve their goals and, at the same time, protect the historic property. She feels that the situation today is different because the historic house is no longer tied to an institutional use. T. 335.

She also believes that the public hearing process was “co-opted” when individuals changed the language of the draft Master Plan without authorization from the Planning Board and outside of the public process. T. 335-336. In her opinion, that action violated the integrity of the process. T. 336.

She also testified that other aspects of the legislative history indicate that the Master Plan intended the environmental setting to revert to 1.4 acres if the School’s special exception expired. During the Planning Board hearing, a representative for the school assured the Board members that the environmental setting would not be “cast adrift” from the remainder of the campus. T. 340.

When questioned by the Hearing Examiner why she did not support the combined configuration of open (public access) space and environmental setting shown on the SDP, Ms. Warren replied that she did not believe there were sufficient protections for the property. T. 342.

She felt that the HPC rather than the development's homeowner's association would better protect the historic resource. She also that the house was situated on the original lot (i.e., P73) for a reason—it has a larger front and side yard. Finally, she feels that keeping the environmental setting as the original parcel is a much simpler, provides more easily enforceable protection and prevents the house from being separated from the original land. T. 353.

March 26, 2012, Public Hearing

1. Ms. Judith Christensen:

Ms. Christensen testified that she is a professional historic preservation planner and is Executive Director of Montgomery Preservation, Inc. She testified that Montgomery Preservation supported the preservation of both the house and the original environmental setting because, together, they recreate the sense of a different time. T. 98. The house was a pre-civil war frame house built by George Washington Riggs and expanded in 1866 by William Thompson. She submitted a picture of the home during Riggs' occupancy which showed the rural setting of the property. She then submitted a map of the property during William Thompson's era, which described the house as a "country estate in a park-like setting, architecturally sophisticate as a rare example of Silver Spring estate architecture. T. 98. A topographical map submitted as part of the Maryland Historical Trust Inventory Plan shows that the house sits atop a "remarkable hill and promontory" between Georgia Avenue and Colesville Road. According to Ms. Christensen, the house was noted in many places for its "choice land embellished by an elegant residence attractively located in the center of the place containing fine forests, beautiful trees and lawns. T. 99.

Ms. Christensen described the process by which the house was designated as a historic property. Staff of the Historic Preservation Commission identify potential sites, research them, and submit a Maryland Historic Trust designation form for the property. After submission of the form, Staff reports the existing conditions, and considers whether it conforms with the criteria for

designation as a historic resource to the HPC and makes a recommendation whether to designate the site. The HPC holds a public hearing; its responsibility is to recommend to the County's legislators whether the site meets the criteria for designation set forth in Chapter 24A of the County Code. Typically, the HPC will identify the significance of the site and recommend the extent of the environmental setting, as both the historic site is not just a building; it is the combined building and setting. T. 100-102.

Ms. Christensen testified that she could find only one place during the HPC's public hearing where the Commission members discussed the environmental setting of the house. The transcript of the hearing indicates that those attending indicated that the house was sited facing Georgia Avenue so that it was a significant feature to those travelling on that road; the location advertised their wealth, prosperity, and their ability to build a fine country estate. T. 103. According to Ms. Christensen, some of those at the HPC public hearing felt that the setting should be the 1.4-acre residue of the land originally belonging to the owners. T. 104. There was a desire that the recommendation accommodate both the possibility of the school occupying the property and the opposite outcome. The M-NCPPC zoning analyst assigned to the Chelsea School special exception requested they make their recommendation on the environmental setting "very precise and specific" because of its significant impact on the special exception. T. 104. Ultimately, the HPC voted to have a dual recommendation dependent on whether the Chelsea School special exception proceeded.

Ms. Christensen believes that the HPC made the dual recommendation to protect the historic character of the house. A photograph of the property from the 1920's shows the elegant house surrounded by trees, driveways, lawns, gardens, and a working farm. T. 104. She submitted a 1963 subdivision map of the property. Ms. Christensen testified that the 1.4 acre parcel resulted from the economic troubles of the owners during the Depression. The owners were heavily mortgaged and eventually lost the home to foreclosure. Prior to the foreclosure, however, they subdivided the

current 5-acre site, and sold it to the Evanswood Association. They chose to retain, however, the 1.4 acre parcel (i.e., Parcel 73) surrounding the home. T. 105. The parcel, therefore, was established prior to purchase by the Sisters of the Holy Names. T. 105.

Ms. Christensen testified that Chelsea School's plan for development was to create an academic quad with a green area in the middle. According to the special exception documents, this was intended to "further define a more campus-like environment and provide accessible outdoor [indecipherable] that does not presently exist at the facility." T. 111. The Chelsea School never implemented the special exception plans. T. 112. In her opinion, the history behind the Master Plan recommendation for the property was always "very careful to state that it was only for this particular use, and it was tied very tightly to the special exception which demanded that all of these conditions be met. T. 113.

When questioned whether there was a significant difference between the 1.3-1.5 acres of open space shown on the revised SDP and the 1.4-acre Parcel 73, Ms. Christensen stated that she could "live with" the open space shown on the SDP if the Historic Preservation had "total oversight over it" and development within the area were "subject to an HPC work permit." T. 115, 144. In her opinion, HOA ownership of the public access place wouldn't sufficiently protect the setting of the house because the HOA and the homeowners would have different goals and vested interests for the open area than would the HPC. T. 115. The HOA may want tot lots, bike racks, sandboxes, and other items which, because they are not structural, are usually allowed by right. T. 116. While she thinks those uses should be accommodated, she does not believe that the HOA has the same understanding and experience to be able to locate these types of items on the site without affecting the historic property. She also believes that whoever occupies the property (in her opinion probably a small non-profit) will also need accommodations to the area surrounding the house.

In her opinion, based on experience, she believes the best mechanism to define the competing needs is to develop a master plan for the site, approved by the HPC, so that all of the competing needs could be addressed at one time. She testified that retention of the 1.4-acre parcel on which the house was previously sited is the simplest, easiest and most definable way to protect the historic resource. T. 122-123. It also retains more of the frontage view.

While Ms. Christensen stated she could “live with” an effective environmental setting combining the public access area and the 37,056 square foot environmental setting if subject to the jurisdiction of the HPC, she testified that the idea was “scary” because of the failure of the Chelsea School to fulfill its promises made to the Council and the Board of Appeals. T. 147. The other potential solution would be for the Council to amend the Master Plan to redefine the environmental setting to what is shown on the SDP. T. 148. She believes outright prohibiting any structures on the property would not address the needs of those who live in the development. T. 146.

2. Mr. Tom Armstrong:

Mr. Armstrong, who is the Secretary of SOECA, said that he did not think that the density and massing of the project had been significantly reduced. T. 152. With regard to massing, he testified that while the townhouse strings north of the private street had been reduced, the strings to the south had been lengthened. T. 152. The lengths of the strings north of the private road were reduced from 132 feet to 120 feet, but the strings south of the private road were increased from 110 feet to 120 feet. T. 152. Thus, the total length of the strings is reduced only by 2 feet—from 242 feet to 240 feet. T. 152.

Similarly, he testified that while the landscaped mews between the strings had been widened by four feet, the unit width in three of the strings increased from 36 to 38 feet. Therefore, the mass of the units facing Springvale have increased from 234 feet to 240 feet. T. 152. According to Mr. Armstrong, under the prior proposal the residents along Springvale would have faced a 390-foot wide

development from the end of one string to the other with mews and private alleys in between. Of those 390 feet, he calculated that 234 of it (or 60%) would consist of the townhouse facades. In the current version, Springvale road residents will face a 404-foot wide development, 240 feet of which (or 59.4%) would be the townhouse facades. He believes that these “small tweaks” make for a reduction in massing that is “infinitesimal”. T. 153.

Mr. Armstrong also didn't think that the overall density had been significantly reduced because it is still a dramatic increase over the density in the surrounding area. In his opinion, the comparables were not persuasive because eight of the comparables were outside the North and West Silver Spring Master Plan area and therefore were not relevant. T. 154. Assuming they were relevant, in his opinion the comparables provided by EYA did not support the compatibility with this neighborhood because most were located either directly on major highways or adjacent to nonresidential properties. They are not comparable in his opinion, to the Chelsea School because it is accessed only by interior streets. T. 154. He then testified specifically as to why the other townhouse developments differed from the location of the proposed Chelsea Court:

6. Rose Dale Park is less than half a block from Wisconsin Avenue directly behind a multi-story CBD-1 zoned building and is 10.6 units per acre.
7. The Kaz development is located on Georgia Avenue and adjacent to another R-T 12.5 development. It had a proposed density of 10.7 units per acre, but has abandoned its development plans.
8. Bonaire Court is located on Sligo Avenue, which is an arterial road, and adjacent to a five-story apartment building. It has a density of 11.9 units per acre.
9. Good Counsel is located on Georgia Avenue, a major highway, at the corner of Archola Avenue, with a density of 13.7 units per acre and shares a lot with commercial developments. It directly abuts the Wheaton CBD.
10. Winchester Plyers Mill is also on Georgia Avenue. At 16.0 units per acre, it is the highest density which EYA claims is comparable to the neighborhood and was explicitly recommended for R-T zoning in the Master Plan. T. 154-157.

He believes that comparables for the development should be taken from the geographic area covered by the Master Plan. EYA did not submit some of these developments as comparables:

10. Woodside Way, which is at 16th Street and Second Avenue, both major roads. It has a density of 5.9 units per acre. T. 158.
11. Leighton's Addition Woodside, also located on Georgia Avenue and Grace Church Road, with a density of 8.5 units per acre. T. 159.
12. Courts of Woodside, located on Georgia Avenue at Noyes Drive, is developed at 9.7 units per acre.
13. Fairview Court is on Fairview Avenue, which is not a major road, but abuts a CBD and has 8.7 units per acre.
14. National Park Seminary abuts the Army's Forest Glen Annex and has a density of 8.7 units per acre.
15. Woodside Mews on Third Avenue abuts the MARC tracks and has 9.8 units per acre.
16. Woodside Station, at Georgia Avenue and Spring Street, is developed at 11.4 units per acre and the townhouse strings are shorter.
17. Woodside townhouses located at Georgia Avenue and Ottawa Place are developed at 11.6 units per acre; and
18. The Locust Grove townhouses, at Georgia Avenue and Locust Grove Road, is right at the exit ramp of the inner loop of the Beltway and abuts a commercial area. It is developed at 11.8 units per acre.

Six of the comparables located within the Master Plan area are located on a major highway and the rest abut nonresidential uses. All of them, according to Mr. Armstrong, are less density than the proposed development. T. 158-160. Nor should MPDUs be a contributing factor to the density proposed because they do not relate to compatibility nor has the developer taken advantage of the MPDU density bonus. T. 161.

On cross-examination, Mr. Armstrong acknowledged that all of the townhouse projects that EYA cited were also adjacent to single-family homes. T. 163.

3. Ms. Maria Schmit:

Ms. Schmit distinguished some of the comparable townhouse developments submitted by EYA because they were part of planned mixed-use communities and were not incorporated into an existing R-60 neighborhood. According to Ms. Schmit, EYA's project at Potomac Park (located at I-270 and Montrose Road) consists of around 150 townhouses, two high-rise condominium towers, office buildings and retail stores. It has an 18 percent tree canopy using a web-based tool provided by Montgomery County. T. 168.

Clarendon Market Commons in Virginia, another EYA project, is also part of a master planned, mixed use community. The townhouses are aligned "barracks-style" with street-facing end units. Some of the strings back into the retail center. T. 168. The townhouses back to alleys which are not screened from the road. T. 169.

The National Park Seminary project consists of apartments, townhouses and single-family homes. It was not part of an existing development and the tree canopy is 7.5%. She took photographs of the alleys from the street. EYA's Cameron Hill project has similar alleyways with garages below and balconies above, which she understands is what they are proposing at the Chelsea School site. This development has 11.5% tree canopy.

In her opinion, the revised SDP fails to incorporate the Master Plan's guidelines. She believes the arrangement of townhouse strings in "barracks-type" rows changes little from the prior SDP. She believes that Mr. Iraola was "unable to articulate" how this SDP complied with the Plan other than to see it was still fee simple ownership with doors facing Springvale Road. T. 173. She believes that some of the developments mentioned by Mr. Armstrong, such as Courts of Woodside, Ottawa Place, and Fairview Courts are more comparable because there are shorter townhouse rows, more tree canopy, and are closer to the density in the SOECA neighborhood. T. 174-176. To be more compatible, EYA should commit to preserving more trees on the property, particularly the mature red

and white oaks, thereby maintaining the canopy that shields the neighborhood from the CBD. According to Ms. Schmit, there should only be one access point from the development to the surrounding community to protect the neighborhood from cut-through traffic. T. 179.

When asked to view the model of Clarendon Place with the assumption that the alleys would not be seen, Ms. Schmit stated that the development would “definitely be more acceptable, absolutely.” T. 184.

4. Mr. Peter Perenyi:

In Mr. Perenyi’s opinion, the Planning Board and Technical Staff minimized the problem of cut-through traffic under the revised plan. T. 196. When he moved to the neighborhood in the early 1990’s, cut-through traffic made walking on the streets hazardous. T. 196. This problem was significantly reduced when the traffic protection plan was implemented, which made a “major difference”. T. 197. The traffic protection plan blocked downtown access to Pershing Drive, which is exactly where the proposed private road will exist and will now divert traffic. While the time travel study performed by the traffic expert may have been made during the evening peak hour, the same could have been said for the traffic prior to the roadway restrictions put into place by the County. He does not think that two trials were consistent, and that growth of downtown development in the coming years, combined with the loss of a lane along Wayne Avenue, will exacerbate traffic congestion in the area. T. 199. He pointed out that traffic from the existing school use onto Springvale Lane is not peak hour in the afternoon. T. 199. He is concerned because a representative of the Police Traffic Department informed him that traffic signs could not be enforced on private property. He is not sure how one could tell whether a driver is a resident or legitimate visitor, or a trespasser. T. 201. The intersection of Ellsworth Drive and the entrance to the Silver Spring library is one of the busiest in the community. If there’s a private drive, people are going to see it and it will

be a very attractive nuisance. T. 201. While there has been a huge improvement to the traffic situation in the neighborhood, residents still see people ignoring the signs. T. 206.

5. Mr. Michael Gurwitz:

Mr. Gurwitz testified that EYA has failed to address the massing and density issues identified in the remand order. The photograph he submitted into the record is an actual barracks. With the prior SDP, he would have see row after row of solid wall stretching all the way across the Chelsea School property. This SDP is not better; he will also see 60 feet of townhouses arranged in parallel rows like barracks. T. 206. He is very disappointed that EYA did not do more—EYA could have broken up the rows into smaller, less bulky sections to permit more light and greenery and possibly save more trees. T. 205-208.

Mr. Gurwitz stated that he remains “absolutely opposed” to the Springvale Lane access. The current traffic protection plan demonstrates that cut-through traffic does exist when permitted. Here, the traffic will be able to use the private road to avoid the restriction against northbound traffic on Ellsworth. With the increasing development in the CBD, he finds that EYA’s assurance that there will be no through traffic to be “conjecture and speculation”. This is in part because he does not believe that the private restrictions are easily enforceable—he produced an Attorney General’s opinion which, in his opinion, states that private traffic signs are not enforceable on private property. He also finds it unrealistic to think that the residents will be able to distinguish between residents, visitors, and trespassers. T. 208-213.

Nor does he believe that the channelization measures at the Springvale Road access will successful divert traffic onto Pershing Drive. According to Mr. Gurwitz, the intersection of Pershing Drive and Dale Drive is close to a steep hill and has very poor site distance. He thinks that people will use Springvale to turn north onto Ellsworth Drive to get to the Beltway. He also stated that people, in his experience, ignore channelization methods such as “pork chops”. He has seen several

people at his parent's retirement community make a wide left at such a turn. T. 214. If people begin taking wide lefts here, headlights from the cars will shine into the windows of homes along Springvale Road. T. 214-215.

He further testified that EYA is under no legal obligation to have dual access to the property. He checked with the Fire Marshall and was told that the office would accept a single entrance to the property. In addition, one of the reasons that a *cul-de-sac* was rejected for the prior SDP was that the road would have been considered a tertiary street because it served more than 76 units. The revised SDP serves only 64 units, therefore, it is no longer a tertiary road. T. 216-219. He stated that the Cameron Hill project, which has 57 units, has only a single entrance. Alternative, one could put two access points on Ellsworth or do a *cul-de-sac* or "T" at the end of the interior road. T. 221-223. He does not understand why vehicular connectivity is so important if EYA's motto is "walkability". T. 223.

Mr. Gurwitz was also concerned about spillover parking. He quoted Francoise Carrier, who (according to Mr. Gurwitz) said that such parking was a source of friction between neighbors. T. 224. He believes that EYA's revised SDP fails to address the roadway alignment issues identified in the remand order. T. 228.

On cross-examination, he acknowledged that the existing traffic restrictions were working well.

6. Mr. Kenneth Doggett:

Mr. Doggett, who qualified as an expert in urban design and planning during the first public hearings, testified that there were several problems with the revised SDP in his opinion. 6/30/11 T.19, 5/26/12 T. 252-253. He prepared an alternative plan which, in his opinion, is an improved design because it (1) preserves more of the mature trees on the site, (2) retains the configuration of

the environmental setting surrounding the historic house, and (3) adds more varied trees to the frontage along Springvale. T. 255.

He believes that the environmental setting should be the 1.4 acre parcel on which the house was located prior to purchase of the entire site by the Sisters of the Holy Names. In his opinion, the most significant view of the house is from the southwest because it provides the most side and front yard for the house. He stated that once the area is reduced by road improvements and setbacks, there won't be much of the yard left. T. 252-253. This compromises the setting because the house was built to take advantage of that particular aspect. The rear of the house is oriented towards the north; therefore, he did not believe opening up the northern corner of the property had a significant impact. T. 264-265. Designating Parcel 73 as the environmental setting opens up the front and side yards of the house. T. 269. He opined that the only protection for the house is to have all of the setting under the jurisdiction of the Historic Preservation Commission. T. 257-262.

The design goal for his plan was to save as many trees as possible, according to Mr. Doggett. In his opinion, the revised SDP will sacrifice two of the finest trees (i.e., some very old beech trees) on the site; his plan saves those trees. His plan accomplishes this by eliminating one house in each townhouse string to create greater setbacks from the backyards of the Cedar Street homes and from Springvale Road. He opined that the double-row of street trees shown in the revised plan is out of character with the surrounding neighborhood; he uses the additional depth to create more informal tree plantings rather than in regimented rows more similar to those in the surrounding single-family homes. T. 254-255. In his opinion, the maximum number of units that may be achieved and be compatible with the surrounding neighborhood is 9.1 dwelling units per acre; he believes that this is appropriate in an urban setting for a transitional development. T. 278.

Mr. Doggett did not believe that EYA's model of its Clarendon project really depicts what people would see once the Chelsea School project is constructed. This is because there are no cross-

angled units, only straight rows from Springvale Road to the southern property line. In his opinion, breaking up the strings into four units each is preferable to the existing plan. T. 256-260. The Clarendon project also differs because it is adjacent to retail/industrial. T. 294.

7. Ms. Kathleen Samiy:

Ms. Samiy testified that she was a resident and President of SOECA. She believes that the new plan fails to address the issues on remand. According to Ms. Samiy, the community feels very strongly about several issues relating to the revised SDP.

In her testimony prior to remand, she mentioned that the zoning neighborhood consisted of “gray” and “green” zones, the gray being the CBD and the green being the area north of Cedar Street. For her, the green zone included the mature trees that tower over the houses adjacent to the CBD; without these trees, she believes that the green zone will go gray. T. 298. The existing urban forests collectively define the “environmental buffer line” between two vastly different zones. T. 298-299.

In Ms. Samiy’s opinion, it is a privilege to develop the Chelsea School site, because the master plan calls for very careful consideration of the buffer between the CBD and the SOECA neighborhood. She believes that development of the property is a privilege which should be implemented responsibly and be respectful of the mature trees which define and sustain the neighborhood. According to Ms. Cavanaugh, 77 out of 88 trees which now exist on the property will be destroyed. In her opinion, in order to be compatible with the surrounding area, there should be no net loss of tree canopy. T. 300-301.

Ms. Samiy also testified that the community is strongly opposed to the private street because it violates the intent of the traffic management plan on the surrounding streets, which is to limit any addition of cars into the narrow streets in the northeast corner of Evanswood. T. 301.

In addition, Ms. Samiy testified that the community still believes that the density and massing of the project is too great. The Applicant’s exhibits do not take into account the site’s topography,

which rises approximately 44 feet from Ellsworth Drive to Pershing Drive. As a result, Ms. Samiy testified that neither stormwater nor sewage can be appropriately managed because there is insufficient green area in the developed portion of the property, especially considering the additional development under construction in the CBD. Ms. Samiy stated that portions of the CBD are subject to a consent order between the EPA and the WSSC because the existing sewage pipe is undersized and there have been overflows. T. 304-305.

In her opinion, the developer has not demonstrated the flexibility of design permitted by the purpose clause of the R-T Zone; the revised SDP still has 20-foot alleys even though all other townhouse developments in the master plan area have backyards. In addition, she listed other detrimental (in her opinion) impacts that have not changed from the first SDP:

1. The townhouses are four stories; the surrounding homes are two-three stories;
2. The community lives on public roads; the development has a private street;
3. EYA has not changed the long rows of barracks;
4. Both plans call for losing all trees;
5. Both plans have townhouses within Parcel 73; and
6. Both plans create the potential for cut-through traffic. T. 311-313.

She does not find that the revised SDP pays sufficient deference to the neighbors' concerns. On cross-examination, she testified that she does obey the traffic signs in the neighborhood. T. 336.

8. Ms. Anne Spielberg:

Ms. Spielberg testified that the District Council found that the development must be compatible with the older, single-family detached homes in the neighborhood because Colesville Towers and Springvale Terrace were on the perimeter of the neighborhood and didn't significantly change the single-family character. T. 339. She does not find that the revised SDP is compatible with the neighborhood because it simply reduces the density, but not the massing and design of the

development. The design should be achieved by considering the location, the surrounding uses, and the planning principles set forth in the Master Plan. T. 339-340.

According to Ms. Spielberg, the Master Plan articulated the following planning principles:

4. The transition at this location should be by use and not by type of structure; thus the Plan recommended special exceptions in single-family detached structures for the transition in this area;
5. Where the Master Plan did recommend R-T zoning, it recommended protecting the interior blocks; and
6. The Plan mentions that townhouse zoning is appropriate for locations on arterial roads or commercial areas. T. 339-340.

She does not believe the revised SDP implements these planning principles because the density is significantly out of proportion to the surrounding R-60 community and is higher than any of the townhouse developments within the master plan area. She does not feel that the massing is compatible with the surrounding neighborhood because it is concentrated on the western portion of the site—if one eliminates the combined environmental setting and public access space, the density equals 16.36 acres or two and one-half times the density of the surrounding homes. T. 342. In her opinion, a more compatible density would be that of Woodside Way on 16th Street. It is zoned R-T 8 and is just under 6 dwelling units/acre. T. 343. Even some of the denser townhouse projects along Georgia Avenue are still lower than the proposed development at 9 units per acre. T. 343-344.

According to Ms. Spielberg, a lower density would also help to address the major concerns of the community – loss of tree cover, cut-through traffic, permit more creative groupings of the townhouse strings, and prevent spillover parking from the tandem garages. She believes that the R-T 8 Zone would also permit the Council's affordable housing goals to be met, as 7 MPDUs could be placed on the site with the bonus density. T. 344-346. When asked whether her opinion would change if landscaping and screening prevented her from seeing the entire row of townhomes, she stated that the façade along Springvale Road has actually increased because some of the units have

been widened. In her opinion, the problem with the design of the revised SDP is that it is still long strings of rows. She would prefer to see smaller clusters of rows. T. 353.

March 30, 2012, Public Hearing

1. **Mr. John Millson:**

Mr. Millson testified that he lives directly across Springvale Road from the proposed private street access. He considers the “pork chop” design an improvement because it will help with headlights that might shine into his window. T. 7-8.

Mr. Millson testified that the Applicant’s time travel study didn’t meet the “test of time”. T. 28. He explained that the time travel study was flawed because it doesn’t project future traffic conditions. In his opinion, congestion along Cedar Street, particularly the segment between Ellsworth Drive and Colesville Road, is going to get much worse. Therefore, he believes that pressure is going to increase for traffic to take the private road. When asked whether transit use will ease that pressure, he stated that the purple line will actually remove car lanes from Wayne Avenue. T. 32-36.

Based solely on time travels, one could argue that the existing traffic restrictions in the neighborhood weren’t necessary, according to Mr. Millson. Yet, when he moved to his home in the early 1990’s, he saw a steady stream of cars in the morning rush hour along Springvale Lane and in the evening the stream would reverse. After the traffic protection plan was implemented, this traffic ceased. He believes the restrictions are effective. T. 39.

In his opinion, the safest design is the *cul-de-sac* because of the uncertainty regarding future traffic, even if EYA may lose a few units. There have been several proposals for the Silver Spring CBD which have been proposed and then failed. After the proposals fell through, one could argue that the traffic restrictions weren’t necessary, however, they became necessary over time. T. 36. He

was told by MCDOT that the County could not enforce the signage on private property; he observes people violating the restrictions, but he doesn't call the police because they are too busy.

For the Applicant

2. Mr. Aakash Thakkar:

Mr. Thakkar presented rebuttal testimony on behalf of the Applicant. He stated that, to the extent possible, EYA would try to provide solutions to the problems that had been raised during the opposition's testimony in the form of binding elements. T. 49.

He believes that an assumption that traffic will increase as downtown Silver Spring develops is somewhat speculative. Anecdotally, he sees a generational culture shift in attitudes toward use of transit and living in "walkable" communities. In his office, there are individuals who refuse to own cars, which creates difficulties in his profession. They live in locations like the subject property, and if it's necessary to use a car, these people will use a Zip car. He believes this situation will increase when the purple line is constructed. T. 50. In his opinion, traffic congestion on Colesville may decrease due to the combination of state and federal infrastructure improvements and the cultural shift. T. 50. EYA still includes two-car garages because the parking regulations require it (and possibly market forces). They offer the option of having a one-car garage in their developments in the District of Columbia. T. 51-52. There are competing interests because while some of their residents want smaller garages, sometimes members of the community are concerned about spillover parking. T. 52.

The Applicant agrees with the community that it should be protected from cut-through traffic. He believes that the evidence shows that people do obey the traffic signs, and there is little cut-through traffic as a result. T. 53-54. The Applicant's attorney contacted the Montgomery County Department of Transportation's lead traffic engineer who confirmed that the County does write formal traffic orders for enforcement of traffic signs on private property, which typically consist of

stop signs and turn restrictions. T. 55. Therefore, in addition to “no trespassing” signs at the entrances, the Applicant could also have a sign prohibiting right turns from Ellsworth and left turns onto Springvale which the police could enforce. T. 56. He read into the record a proposed binding element providing that the Applicant will include in the HOA documents authorization for the police to enforce traffic signs on the property and, upon site plan approval, the Applicant will request a formal traffic order from Montgomery County permitting enforcement of the signs. T. 57.

Mr. Thakkar testified that the Montgomery County changed its mind about requiring the access to be at least 100 feet from the intersection of Springvale Road and Pershing Drive when it learned of the existing low traffic volumes and the small number of vehicles the development would add to those existing volumes at the intersection. Because of the low volumes, combined with the requirement that the access on Springvale Road had to be right-in, right out, they found that the site distance proposed was adequate. T. 59-60.

With regard to the possibility of a single-access point, or *cul-de-sac*, Mr. Thakkar stated that the Applicant weighed several competing concerns. In addition to the fact that Technical Staff preferred the vehicular connectivity provided by two access points, they also looked at practical impacts of the *cul-de-sac*, including its impact on the Riggs-Thompson house. The T-turn around didn’t work for emergency vehicles. Because of the grade difference between Ellsworth and Pershing, a *cul-de-sac* would have required a larger radius and a 10-foot retaining wall. This would cut into the setting of the house and create a separation between the open space and the private road. Because EYA believes that cut-through traffic will not be a problem, they balanced the competing concerns with the dual access shown on the revised SDP. T. 60-63.

In Mr. Thakkar’s opinion, the Master Plan is clear that the environmental setting of the Riggs-Thompson House is 37,056 square feet. He pointed out that, at the time of the master plan hearing before the Council, the special exception for the Chelsea School had already been approved. T. 69.

While subsequently, Council staff informed the PHED Committee of the dual recommendation, Mr. Thakkar believes that when the Plan was acted upon, the special exception was approved and the smaller environmental setting was established in the body of the Plan. T. 70-71. In his opinion, the most reasonable interpretation of the Plan is that the Council intended the environmental setting permanently to remain the 37,056 square feet, as they could have made changes to the body of the Plan to reflect a different intent. T. 71.

Aside from the legislative history, Mr. Thakkar testified that EYA believes that the combination of open space and environmental setting provides a superior setting for the house. The house will be framed within the most prominent portion of the site, and will be visible from the northern and southern corners of the property. The non-contributing structures will be removed, thus opening up the historic portions of the structure and the public access area will permit more people to experience the full setting. Ms. Christensen testified that “she could live with it” provided there were sufficient controls over development. There are other historic settings in the County which combine private and public land within the environmental setting.

In order to address the citizens’ concerns over control of the HOA-owned open space, Mr. Thakkar submitted a binding element committing to a restrictive covenant preserving the open space in perpetuity and requiring that any work performed after approval of the initial site plan be accomplished by a site plan amendment, with advice from the Historic Preservation Commission. T. 77-80.

With regard to stormwater and sewer, Mr. Thakkar testified that they will have to meet both County and State requirements in order to construct the project. Currently, the site has no stormwater management, so stormwater improvements can only improve the existing situation. As far as sewer is concerned, their research indicates that there is a county-wide consent order which requires developers making improvements to upgrade the existing system. The 220-unit apartment project

south of Cedar Street is making significant improvements to the sewer system; they believe it's possible for the Applicant to tie into that system without having to make substantial upgrades itself. T. 81-82.

With regard to tree canopy, he estimates that approximately 60-65% of the existing trees are in good condition. The remaining trees are in fair to poor condition. The revised SDP offers additional open areas which may possibly permit more trees to be save or planted. According to Mr. Thakkar, the tree canopy at 20-year growth under the revised SDP would be 1.25 to 1.3 acres which is approximately the same area as the healthy trees on the site. Mr. Thakkar testified that the binding element offered by the community would require trees along Springvale Road to be saved, which is very difficult because of the improvements, grading and utilities that would be required along that road. This is one reason that they have proposed the double row of street trees along Springvale Road. It is too early for EYA to determine whether trees in the southwest corner may be saved because they still have engineering for grading and utilities to perform at the time of site plan approval. The revised SDP, however, does give the Applicant more opportunity to save trees on-site or replace the existing trees with on-site trees. The additional open space also provides more opportunity to provide a park-like, green setting with trees. T. 84-86.

Finally, Mr. Thakkar testified that EYA had reviewed the actual site plans for the townhouse projects located in Silver Spring cited by those in opposition and disagreed with the calculation of the densities cited. They calculated the Woodside Station development at Georgia Avenue and Spring Street to be 12.26 dwelling units per acre rather than the 11.4 dwelling units per acre described by Mr. Armstrong. Fairview Court, which Mr. Armstrong testified was 8.7 units per acre, the determined was 12.38 units per acre. Finally, they calculated the Grace Church development at Georgia Avenue and Grace Church at 11.95 acres rather than the 8.5 acres quoted by Mr. Armstrong. T. 86-87. He felt that the density proposed was a better location than some of the higher densities in

other projects because of the high walk score of the site. There are a number of townhouse communities developed under R-T 12.5 zoning with much lower walk scores for the property. T. 89.

EYA also met with the Fire Chief to clarify the department's position relative to a single access to the site. According to Mr. Thakkar, Ms. Lebow (phonetic) informed him that while a single access is permitted, dual access is preferable. In order to provide the fire engines with sufficient turning radius, the alleys would have to be widened substantially, pushing the townhouse strings into the green area surrounding the historic house.

As for compatibility, Mr. Thakkar believes that the compatibility of the rows along Pershing Drive have been addressed by the large park-like setting. EYA believes that Cedar Street is also addressed by a park setting and the southern border has been addressed by pulling the units out of the setback. He believes that the green zones on all sides, including Springvale Road, addresses compatibility concerns with the surrounding community. The Applicant has committed to making the units have fronts facing Springvale Road; the remaining concern is the alleys. In his opinion, the Applicant has addressed this concern because the alleys to not go all the way through to Springvale Road, and will be screened by decorative walls and landscaping. In order to provide additional assurances on this, Mr. Thakkar submitted a binding element committing EYA to propose a double-row of street trees along Springvale Road at the time of site plan review. T. 90-95.