

**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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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).

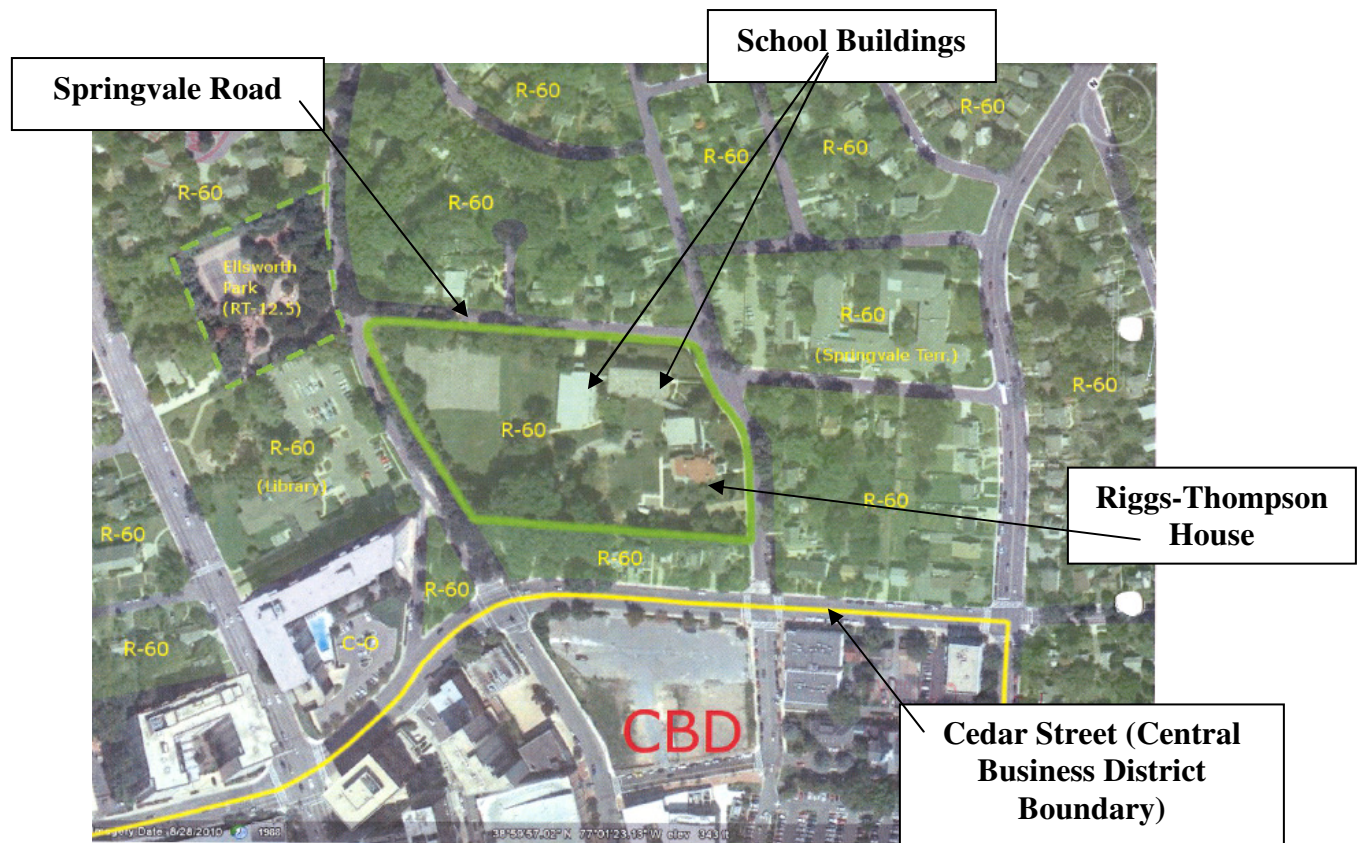
On November 21, 2012, the Applicant submitted a revised SDP and amended its application to request rezoning from the R-60 to the R-T 12.5 Zone. Exhibit 276. The parties also agreed to exchange hearing exhibits by set dates prior to the public hearing. The Hearing Examiner issued a Notice of Public Hearing 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,

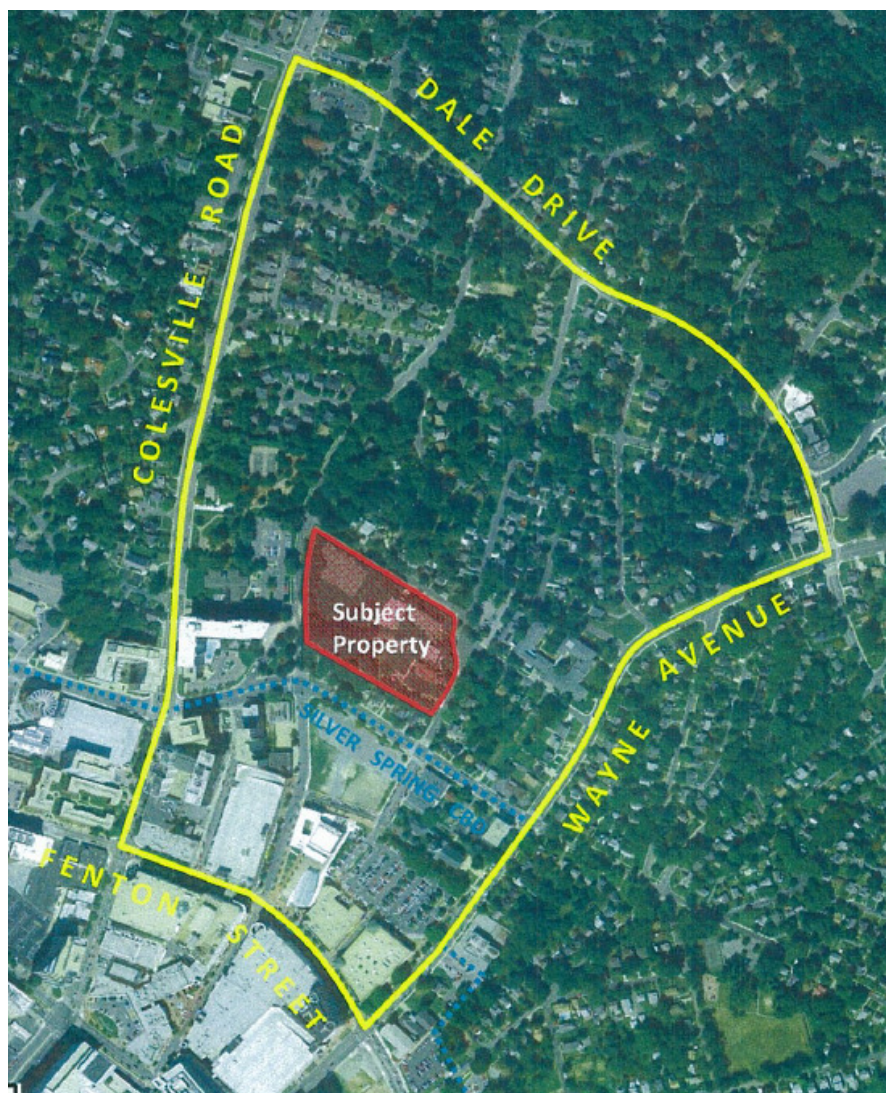
and (3) adjoining the southern property line are a row of single-family detached homes which are recommended to be special exceptions for non-resident professional offices in the master plan, but some of which are still owner-occupied. Exhibit 45, p. 3; Exhibit 314(k); 3/23/12 T. 153, 277. The rear yards 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

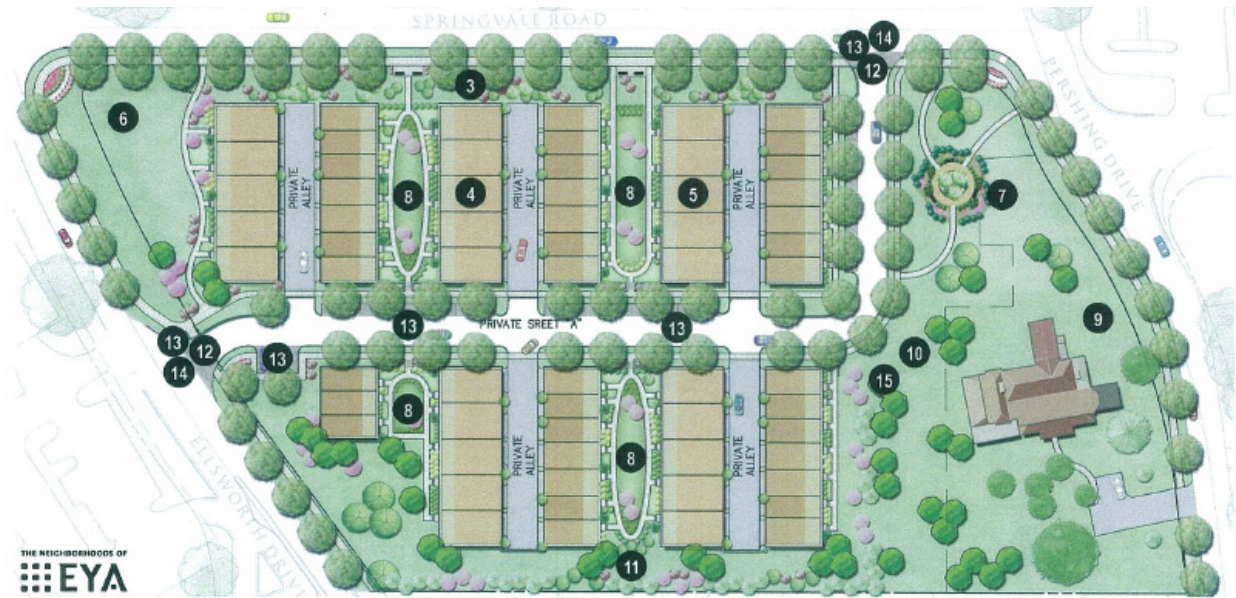


Exhibit 327(e)

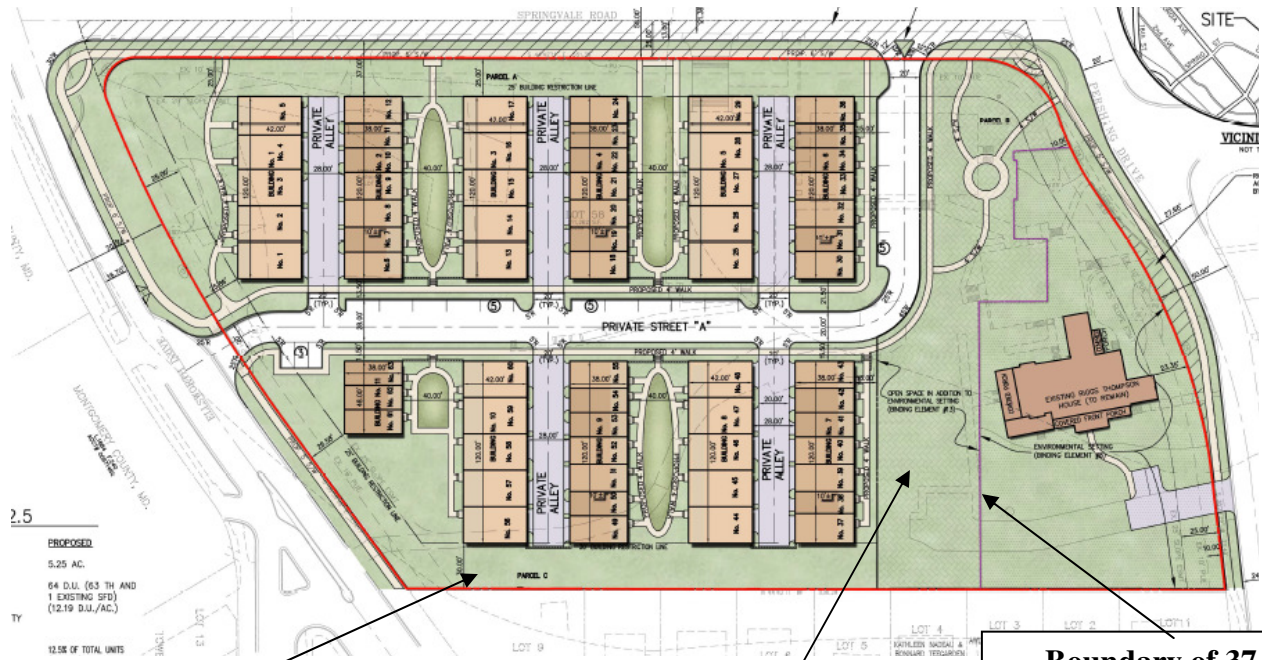
EYA also submitted a side-by-side comparison of the initial (i.e., R-T 15) SDP with the current proposed SDP (Exhibit 327(e)), shown on the next page.

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.



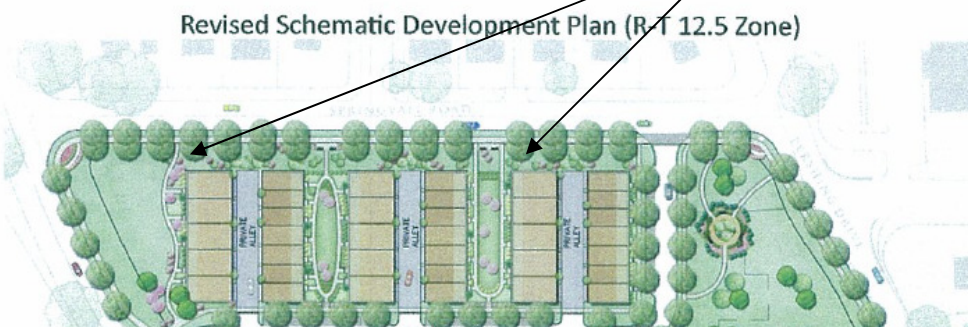
Full 30-Foot Setback

Public Access Area

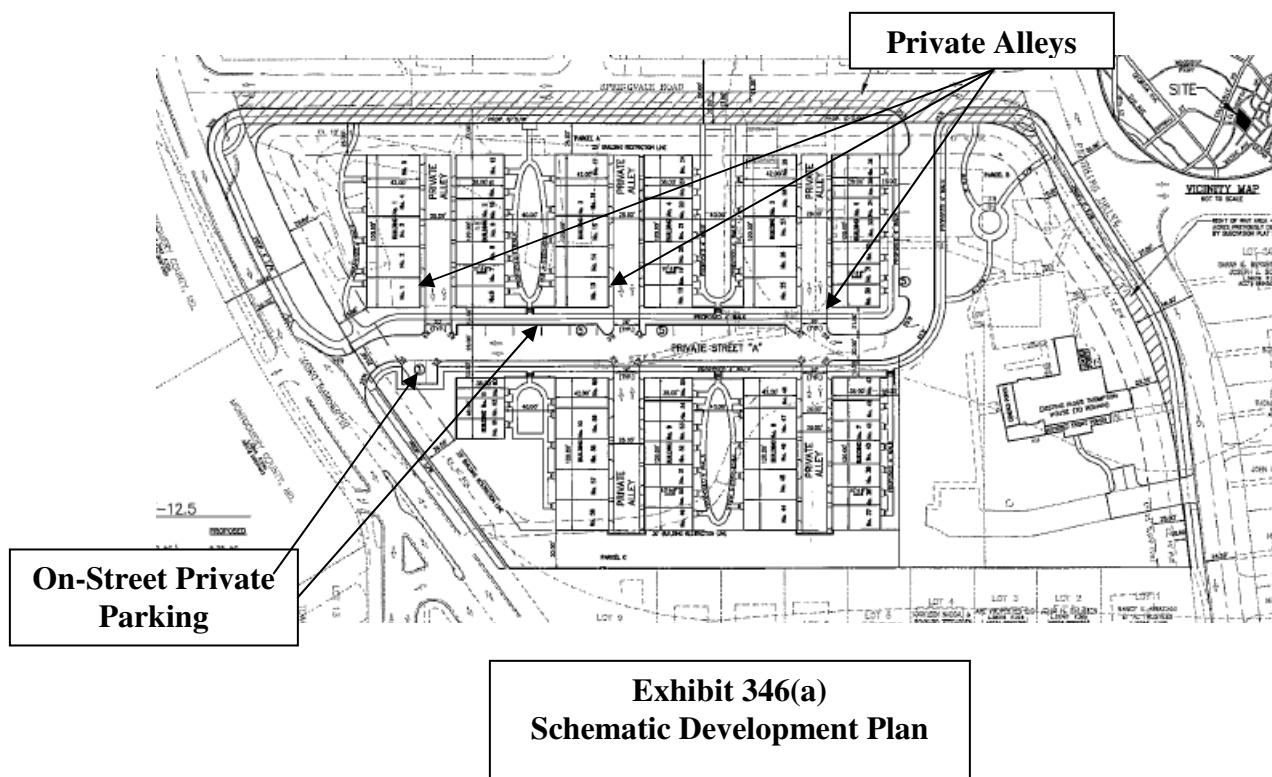
**Boundary of 37,056
Square Foot
Environmental Setting**

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.

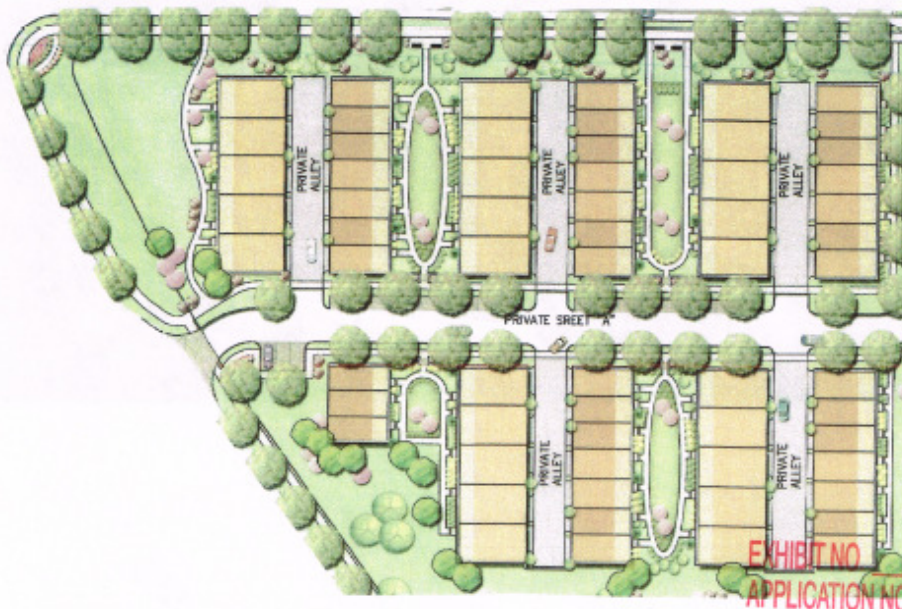
Many individuals expressed a desire to preserve as many of the existing mature trees on the site as possible and believe that this is required for the development to be compatible with the surrounding community. Mr. Don Grove, who qualified as an expert arborist, opined that the

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**



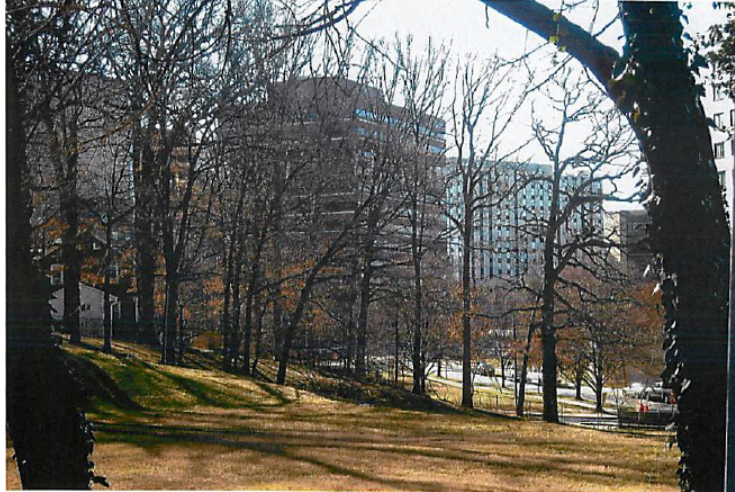
**Specimen Tulip Poplar 32''+ diameter and
additional Tulip Poplar and White Oak**



**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.

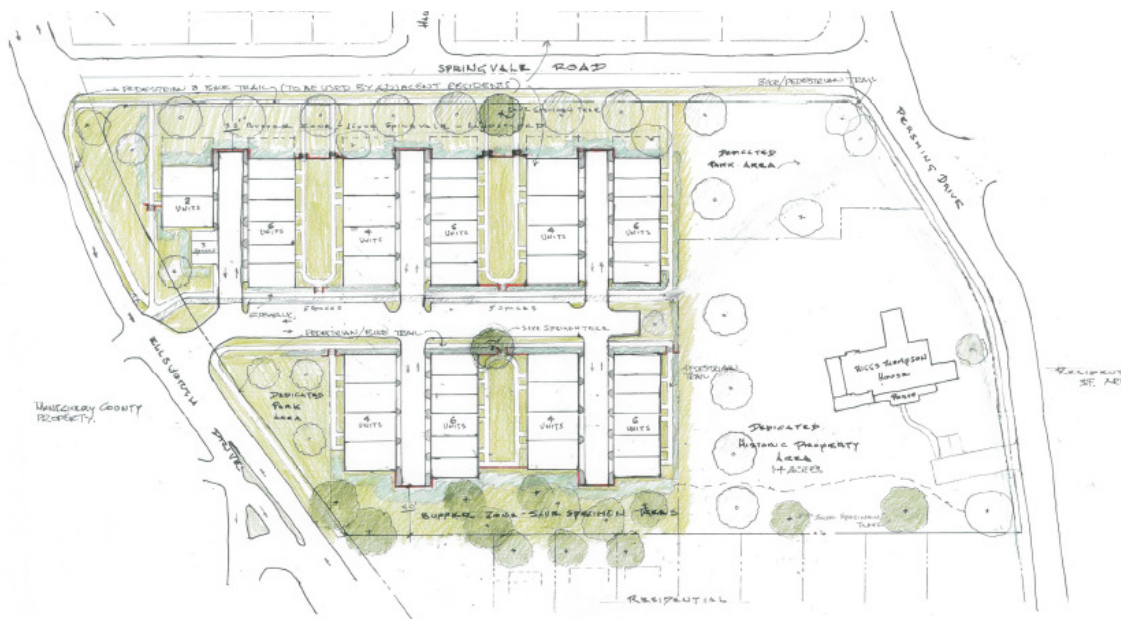
She does not believe the revised SDP implements these planning principles because the density is significantly out of proportion to the surrounding R-60 community and is higher than any of the townhouse developments within the master plan area. In her opinion, the massing is incompatible with the surrounding 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

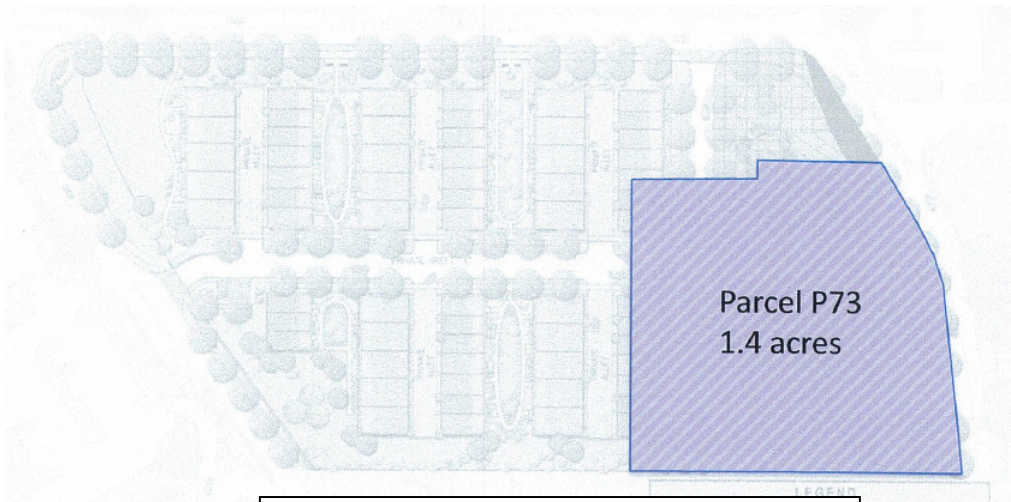
existing trees with on-site trees. The additional open space also provides more opportunity to provide a park-like, green setting with trees. 3/30/12 T. 83-86.

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.

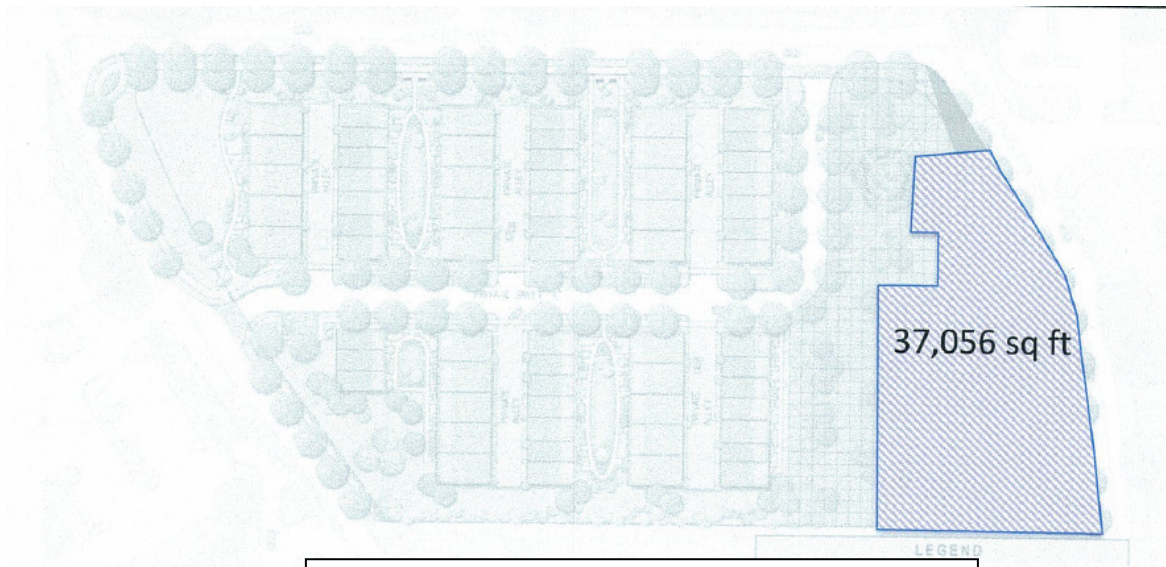
B. The Environmental Setting of the Riggs-Thompson House

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

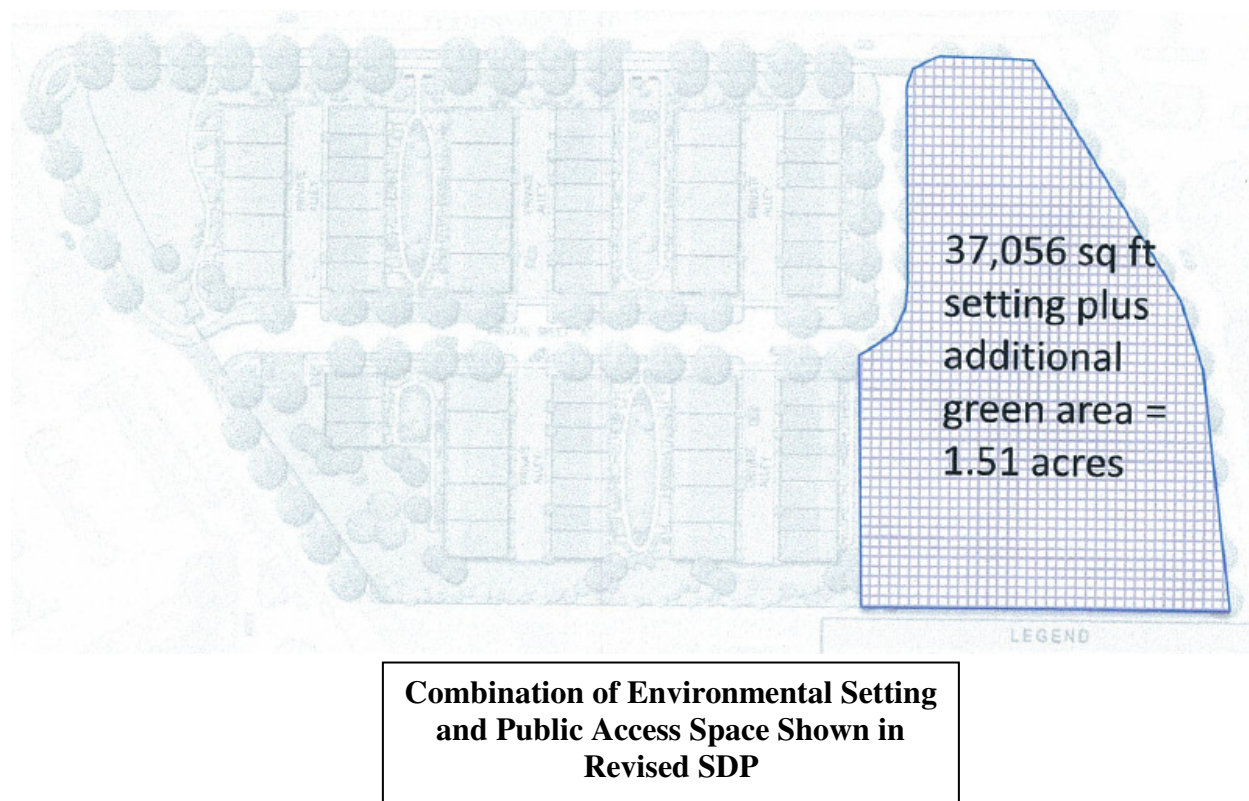
square foot environmental setting called for in the body of the Master Plan, and the combination of open space and environmental setting now included in the revised SDP. Exhibit 291(e).



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

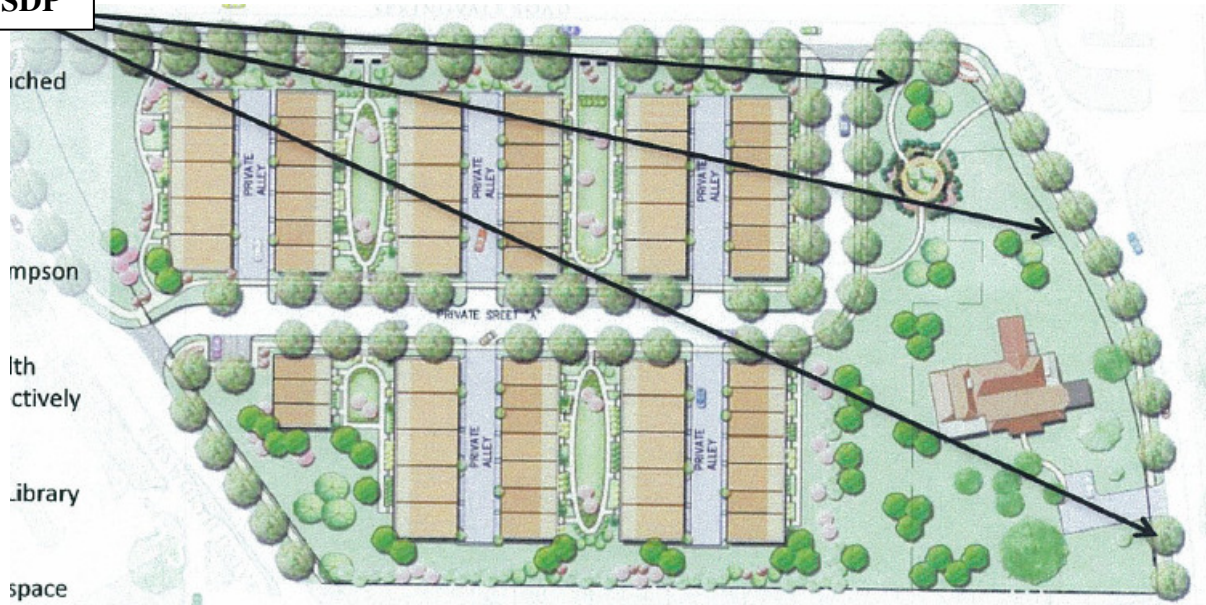


**Environmental Setting Approved for the
Chelsea School**



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)):

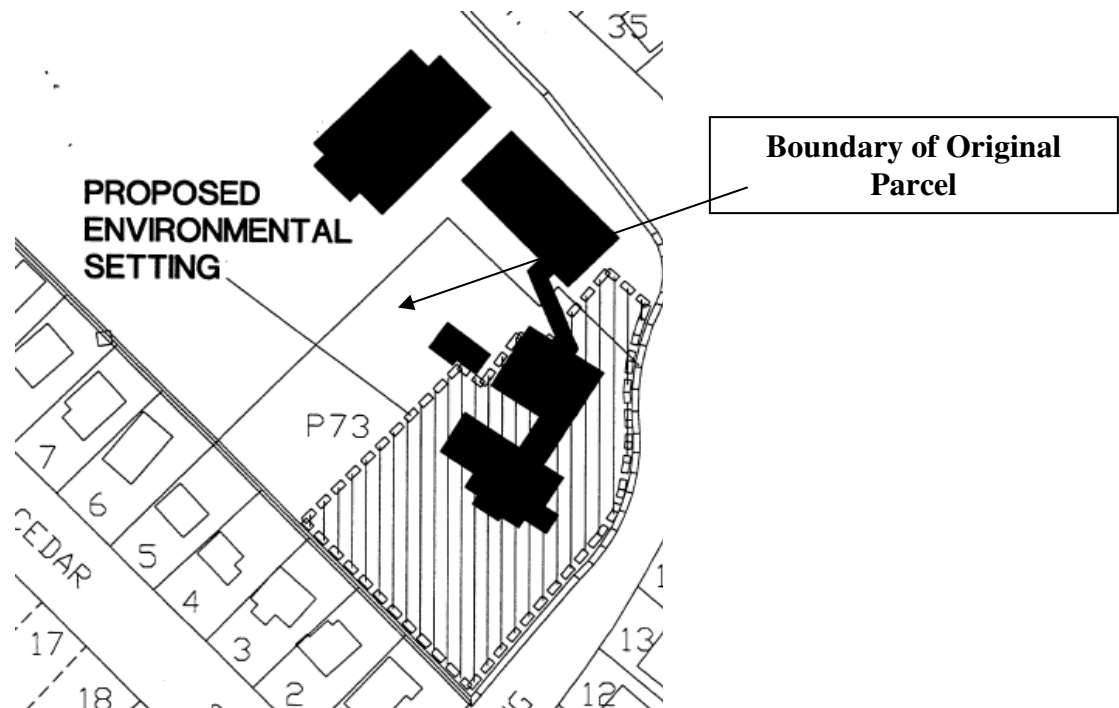
13. AT THE TIME OF RECORD PLAT, THE APPLICANT WILL RECORD A RESTRICTIVE COVENANT FOR THE OPEN SPACE AREA AROUND THE 37,056 SQUARE FOOT ENVIRONMENTAL SETTING FOR THE RIGGS THOMPSON HOUSE, GENERALLY CONSISTENT WITH THE AREA SHOWN ON THE SCHEMATIC DEVELOPMENT PLAN. THE COVENANT WILL ENSURE THAT THE AREA 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.

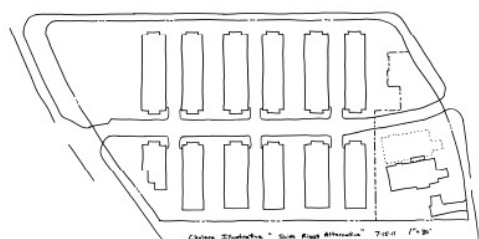
Ms. Christensen explained that Chelsea School's plan for development was to create an academic quad with a green area in the middle. According to the special exception documents, this was intended to "further define a more campus-like environment..." The Chelsea School never implemented the special exception 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.

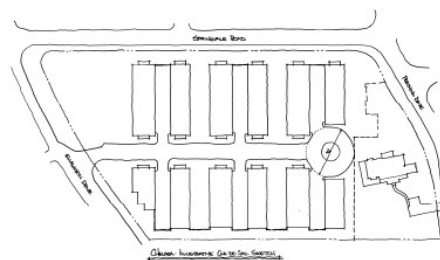
The Applicant, as well as Technical Staff and the Planning Board, opine that the relegation of the dual recommendation to the appendix renders the 37,056 square-foot environmental setting controlling. Both Technical Staff and the Applicant assert that the timing of the special exception approval (occurring 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

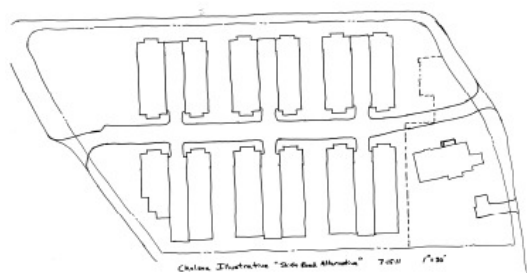
The final issue on remand, and one of the most hotly contested, relates to the alignment of the private street providing access to the development. Historic Preservation Staff opposed the original alignment shown in the first SDP, as did Montgomery Preservation, Inc., because it bisected the environmental 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):



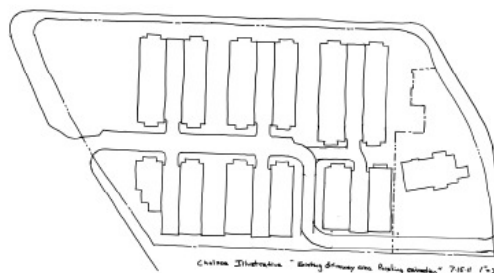
Scenario 2
“Shift Riggs Alternative”



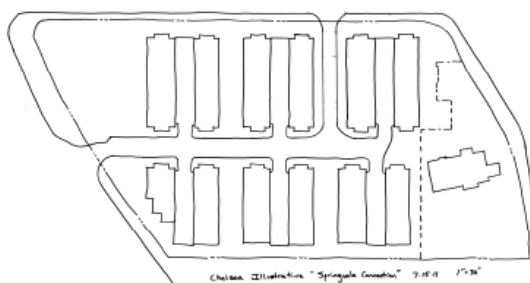
Scenario 3
“Cul-De-Sac Option”



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).

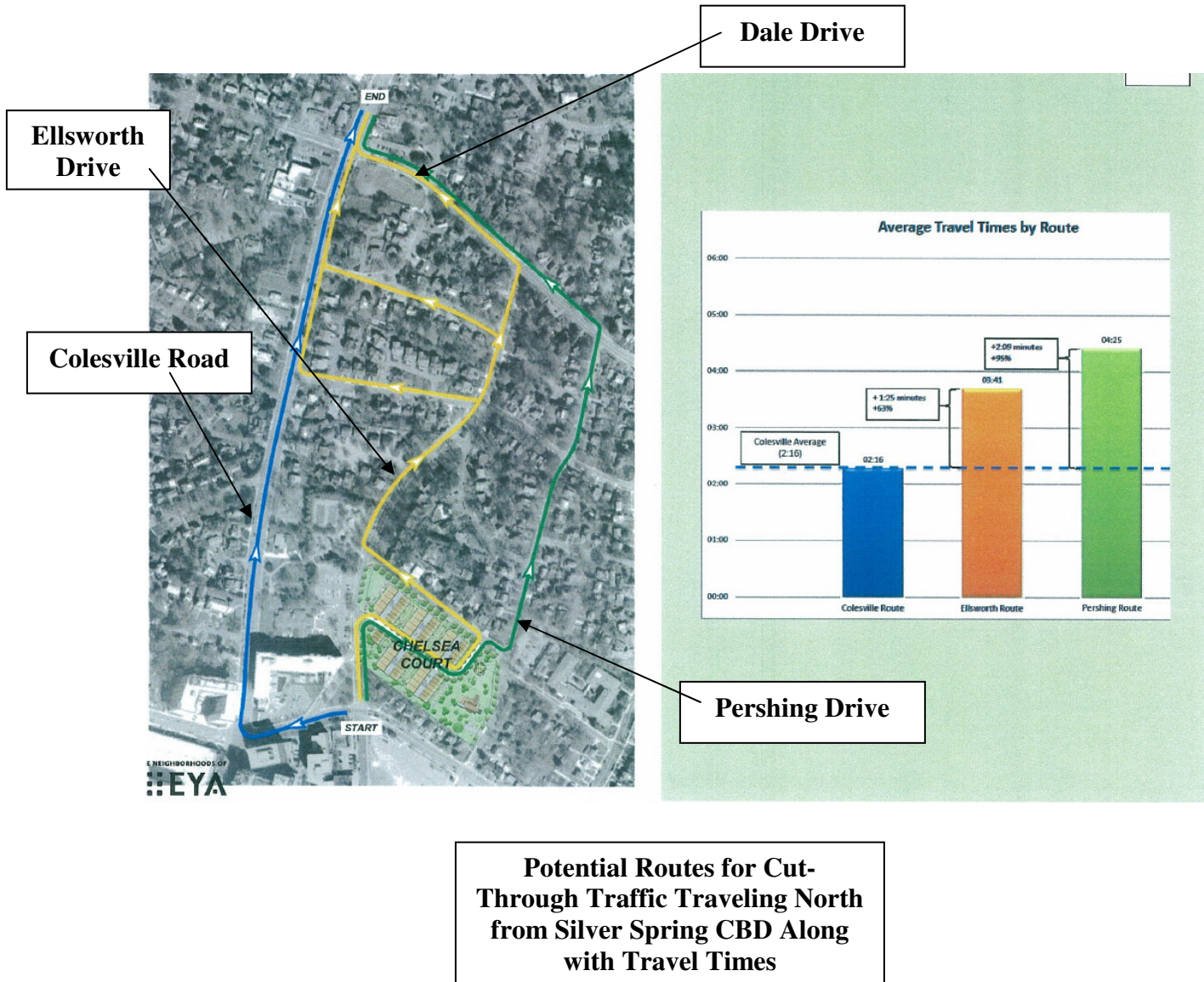


Transportation Division Staff advises that the location further east aligns the road with an existing residential driveway and alleviates the potential for headlights to shine into the homes of residents across the street. Exhibit 282, Attachment 4.

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):

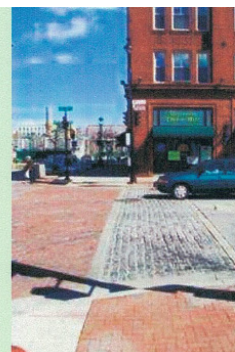


An aerial photograph (Exhibit 327(e)) with the existing and proposed restrictions superimposed illustrates the impact of the private street with these turn restrictions in place:



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 NEIGHBORHOODS OF
FYA



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.

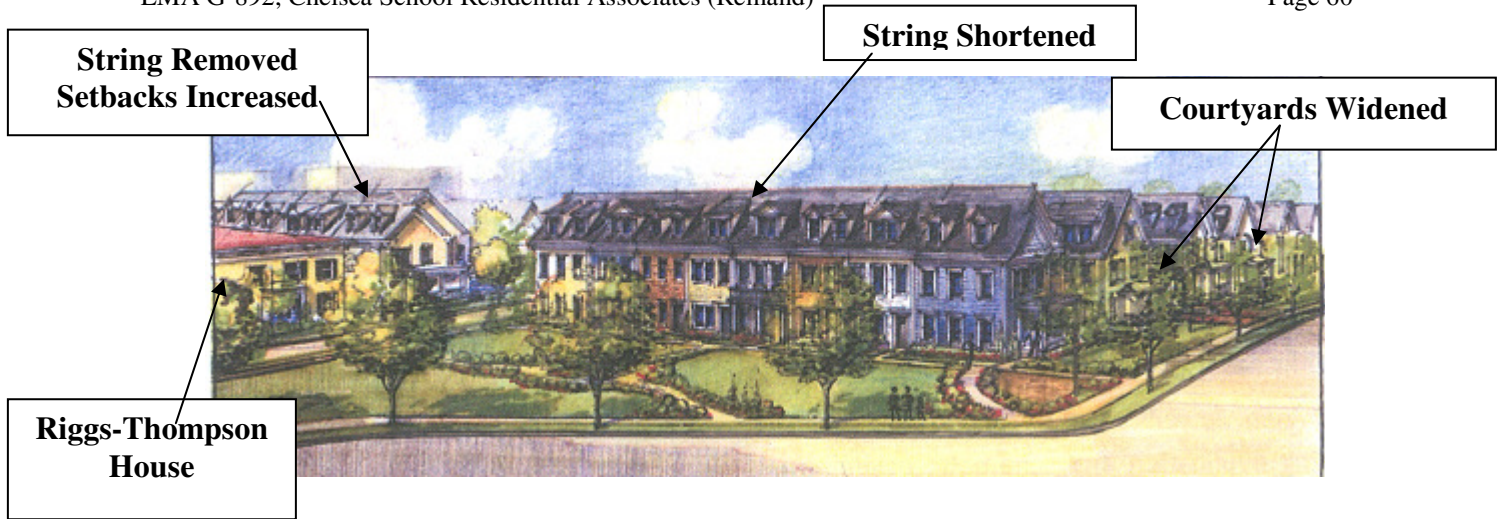
Because the Applicant's comparables have been derived from actual site plans whereas the opposition's were derived from a county website (3/26/12 T. 163), the Hearing Examiner believes that the density calculations provided by the Applicant are better evidence of the actual densities of these development. 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 with 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.