

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

IN THE MATTER OF:

Germantown, LLC

Applicant

David Fink
Kevin A. Foster, ASLA, AICP
Seth C. Churchill, P.E.
Edward Y. Papazian, P. E.

In Support of the Application

Cindy Bar, Esquire
Attorney for the Applicant

Martin Klauber, People's Counsel
for Montgomery County

Neither in Support nor in Opposition

Anne Marie Martinez
Thomas C. Williams, Jr.

In Opposition to the Application

Zoning Application No. G-878

Before: Philip J. Tierney, Hearing Examiner

HEARING EXAMINER'S REPORT AND RECOMMENDATION

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I. EXECUTIVE SUMMARY

- Applicant: Germantown, LLC.
- Local Map Amendment (LMA) and date of filing: G-878, filed Oct. 1, 2009
- Zoning and use sought: Zone: RT-15, Use - 112 Townhouses subject to binding elements of Schematic Development Plan (SDP) on density, setbacks, green space and parking
- Current zone and use: Zone: C-1, Use: 46,173 square foot shopping center
- Location: North side of Clopper Rd. between Mateny Rd. and Cinnamon Dr, Germantown, Md.
- Area to be rezoned: 8.46 acres (368,082 sq. ft)
- Density permitted in RT-15 Zone: 154 dwelling units, 18.2 dwelling units per acre
- Density proposed: 13.2 dwelling units per acre with 14 MPDUs.
- Historic resource: Cemetery to be preserved and maintained
- Green space required/proposed: 30%/45%
- Parking required/proposed: 224/336
- Master Plan: 1989 Germantown Master Plan
- Master plan consistency is disputed. Planning Board and Staff find proposed development consistent with purposes and objectives of plan; Opposition finds proposed zoning inconsistent with elements of plan in terms of density and use.
- Opposition concerns: retention of existing shopping center satisfies a community need, complies with intent of plan to foster local shopping in neighborhoods, and the proposed housing would overwhelm roads and schools.
- Schools: Elementary currently overcrowded and high school projected for future overcrowded conditions in 2014-15. Can be mitigated at Adequate Public Facility (APF) review and payment of impact fee. Middle school remains within capacity for all six years of forecast.
- Traffic: A.M. Peak hour congestion at Clopper/Waring Station roads can be mitigated at APF review
- Storm water management (SWM) concept plan approved by DPS, SWM facilities to be improved and enlarged
- Environment: No streams or wetlands and rezoning would reduce impervious surface and increase green space
- Noise: can be mitigated during APF review.
- Planning Board: recommendation: Approve
- Technical staff recommendation: Approve
- Hearing Examiner recommendation: Approve
- Post zoning controls: Subdivision and Site Plan reviews by Planning Board and Staff; Declaration of Covenants ensures compliance with SDP binding elements, which is enforceable by County

II. STATEMENT OF THE CASE

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

The Application was filed under the Optional Method authorized by Code § 59-H-2.5, which permits a Schematic Development Plan (SDP), with binding limitations with respect to land use, density, development standards and staging. Under maximum build-out, the RT-15 Zone would permit 154 dwelling units at this location. The SDP calls for no more than 112 townhouse units, 14 of which would be moderately priced dwelling units (MPDUs).

The Technical Staff of the Maryland-National Park and Planning Commission (M-NCPPC) reviewed the application and, in a report dated February 23, 2009, recommended approval. The Staff report was revised on April 6, 2009 and the Staff continued to recommend approval. The full Montgomery County Planning Board considered the application at its regular meeting on April 16, 2009 and unanimously recommended approval.

A public hearing was convened on April 28, 2009¹ and testimony was presented both in support of and in opposition to the application. At the conclusion of the hearing,

¹ The public hearing was initially scheduled to take place on March 16, 2009. However the zoning signs disappeared in February and were reposted by the Applicant on March 10, 2009. The hearing was rescheduled for April 28, 2009 in order to provide the public with notice. On March 26, 2009, Thomas C. Williams, Jr., a member of the Opposition, requested an additional 60-day postponement. The Applicant opposed the request. After consideration of contentions from both sides, it was determined that adequate notice was provided by means of the reposted signs, newspaper publication and direct mail to nearby property owners. The request for postponement was denied on April 6, 2009

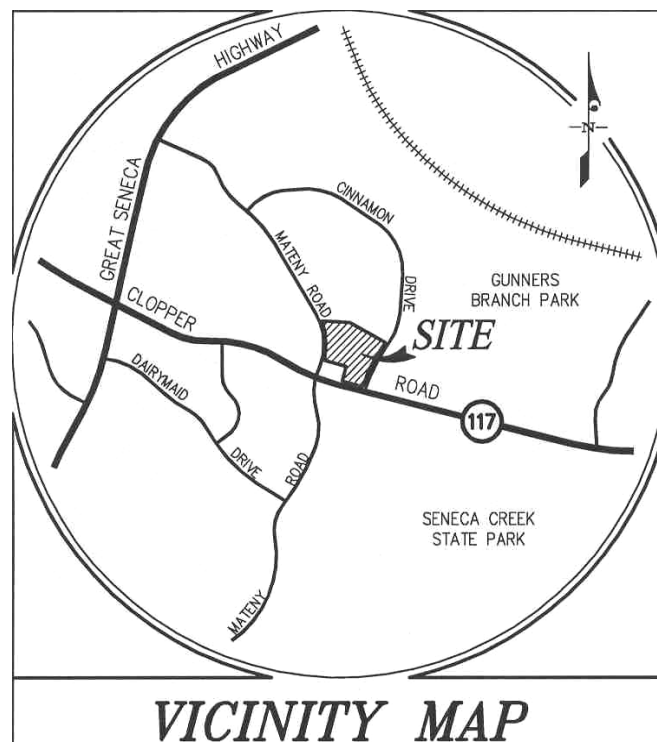
the record was held open to permit the Applicant an opportunity to file revisions to the SDP and allow the Opposition time to respond. The record closed on May 12, 2009.

III. FINDINGS OF FACT

For the convenience of the reader, the findings of fact are grouped by subject matter. Any conflicts in the evidence are resolved under the preponderance of evidence test.

A. Subject Property and Current Use

The subject property forms an irregularly shaped parcel located near the northeast quadrant of the intersection of Clopper (Md. Route 117) and Mateny Roads. The site is located between Mateny Road and Cinnamon Drive in the southeast portion of Germantown. The Site is also located east of the Great Seneca Highway (Md. Route 119) and north of Seneca Creek State Park. The location and shape of the site are depicted below.



The site is generally flat and gently sloping from northwest to southeast at about a 3.6 percent grade in the developed area adjacent to the Mateny Road entrance. The site slopes away from Clopper Road. Mateny Road is about 30 feet higher than Cinnamon Drive as it abuts the site.

The site contains about 250 feet of frontage along Clopper Road, 400 feet of frontage along Mateny Road and 580 feet of frontage along Cinnamon Drive. There are steep slopes at the site where it abuts Clopper Road and Cinnamon Drive. Located immediately southwest of the site at the intersection of Clopper and Mateny Roads is a 7-11 gasoline filling station and convenience store, which is classified under the C-1 Zone. This property is not part of the instant zoning request².

A storm water management facility is located at the southeast corner of the site at the intersection of Clopper Road and Mateny Road. The facility is located at the low point of the site. The high point is at the northwest corner. The existing SWM facility is outdated and does not provide for quality controls.

Located in the southwest corner of the site is an existing cemetery known as the Graff-Musser Family Cemetery. The cemetery contains a plaque documenting its history. The cemetery dates to the 1800s and has African Americans and Caucasians buried side by side, apparently one of the first such burial patterns in the region. The cemetery was once included in the County Locational Atlas and Index to Historic Sites but was subsequently removed. There is a large retaining wall between the cemetery area

² The owner, I.O. Limited Partnership, LLLP, has not objected to the proposed reclassification if the Applicant provides and maintains a solid, sight tight fence, 6.5 feet in height with a buffer of evergreen trees along the common property line. Ex. 21. The SDP should reflect these improvements. However, the SDP only provides for a 6-foot fence and, while some trees of an unspecified nature are reflected on the SDP, they do not appear to be all along the common property line. These discrepancies may prompt a request for oral argument from the adjacent property owner and a request for a remand unless the parties can arrange a private resolution.

and the adjacent convenience store. The Germantown Historical Society considers the cemetery to be historic and expressed concerns about its maintenance and future care. The Applicant submitted a binding element to the SDP to provide for perpetual maintenance and care of the cemetery.

The property is currently developed with a one-story, 46,193 square foot³ shopping center that was built in 1984. The Center contains a grocery store, known as “Super Grand”⁴ which sells Asian food among other types of groceries, a beer and wine store, a drycleaner and a satellite station for the Montgomery County Police Department. The site contains an asphalt parking lot for about 275 cars and grassy areas along the perimeter. The developed area is at the center of the site and this area constitutes about 90% impervious surface. According to the Applicant, the parking area is mostly vacant due to limited activity of the existing retail tenants. The Opposition submitted photographs showing significant use of the parking area, Ex. 58 (21 and 22). These photographs are depicted on the next page. Also see page 14 of this report. The revised Technical Staff report contains an aerial photograph that confirms traffic at the center parking area is significant, Ex. 41, dated April 6, 2009, page 6. Also see page 14 of this report.

The Applicant⁵ bought the center in 2004 with the expectation that a retail upgrade would make the center competitive. However, a combination of factors has resulted in the center not producing expected income. These factors include the

³ The Technical Staff calculated the center to contain 46,197 square feet., See, Ex. 29, p. 5 and Ex. 41, p. 5. The Applicant’s land planner indicated the center contains 46,373 square feet, Ex. 23, p. 3.. The Applicant has the burden of proof and neglected to clarify this inconsistency. For purposes of this analysis, the Technical Staff report is given greater weight than the Applicant’s land use report. Since the proposed zoning would replace the shopping center, it is not necessary to clarify the inconsistency at this time.

⁴ The store is described in the record alternatively as “Super Grand” and “Grand Mart”.

⁵ The Applicant is referred to in the record as both Finmarc Management, Inc. and Germantown, LLC.



economic downturn, nearby competition⁶, a fire that closed the grocery store for about a year, and an inability to attract the right mix of tenants including a national food chain as an anchor store.

The current application to replace the center with townhouses is the Applicant's response to market conditions. The Applicant has no immediate plans to close any of the existing stores or to tear down the center and replace it with the proposed housing. The requested zoning is an option. The Applicant's representative indicated that there is no residential market at this time. The rezoning is important because it would allow the Applicant to move quickly when the residential market improves. The rezoning would also provide the Applicant with more flexibility in the event that the center continues to perform below expectations.

Opposition witnesses presented anecdotal evidence that the shopping center is vital to their community. This evidence shows the center to be a convenient location for older or disabled residents who are unable to drive long distances. The evidence also shows that the tenants provide a unique array of goods and services that reflect an international character to the shopping center. The present mix of tenants also reflects an international character. Indians operate the beer and wine store. Asians operate the dry cleaning service. Koreans operate the Grand Mart. The surrounding area has experienced significant increases in Latino, Asian, Caribbean, African and other immigrant populations that patronize the center.

The financial viability of the center underlies both the Applicant's decision to seek zoning approval for residential use and the Opposition's efforts to retain the center.

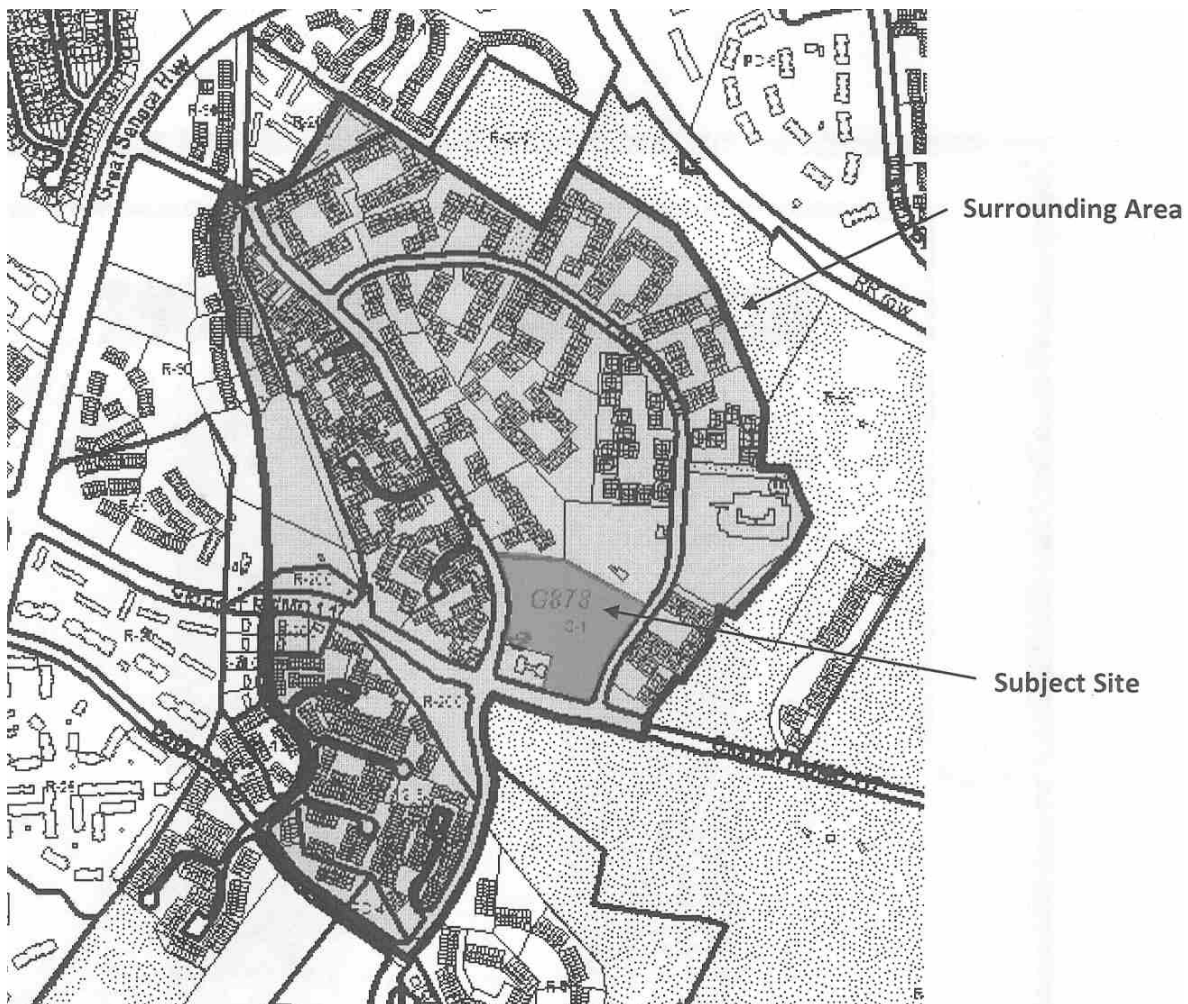
⁶ The competition is a Giant Food store at Clopper Village and a Shoppers Food Warehouse at Kingsview Village. More recent competition is the Lotte Plaza at Wisteria and Route 118.

The Opposition claims the center has a market that would grow if the Applicant better promoted it. However, the Applicant is in the best position to assess the financial viability of the center given its experience in retail property management and its self-interest in making the center work. For these reasons greater weight must be accorded the Applicant's evidence on the center's viability.

B. Surrounding Area

In floating zone cases a surrounding area is defined so as to include uses that are most directly affected by the proposed development. The Technical Staff recommended a surrounding area bounded on the north by Pine Ridge Lane and Cinnamon Woods subdivision; bounded on the east by Gunners Branch Park and the Ashton Place subdivision; bounded on the south by Dairymaid Drive; and bounded on the west by Metz Road and the Stone Ridge subdivision. This area is depicted on the next page. The Applicant defined the surrounding area slightly differently. The boundaries on the north, south and west coincide with the Technical Staff's recommendations. However, the Applicant's eastern boundary would include some of the Seneca Creek State Park and the Williamsburg subdivision. The dashed lines on the density exhibit shown on page 12 depict this area.

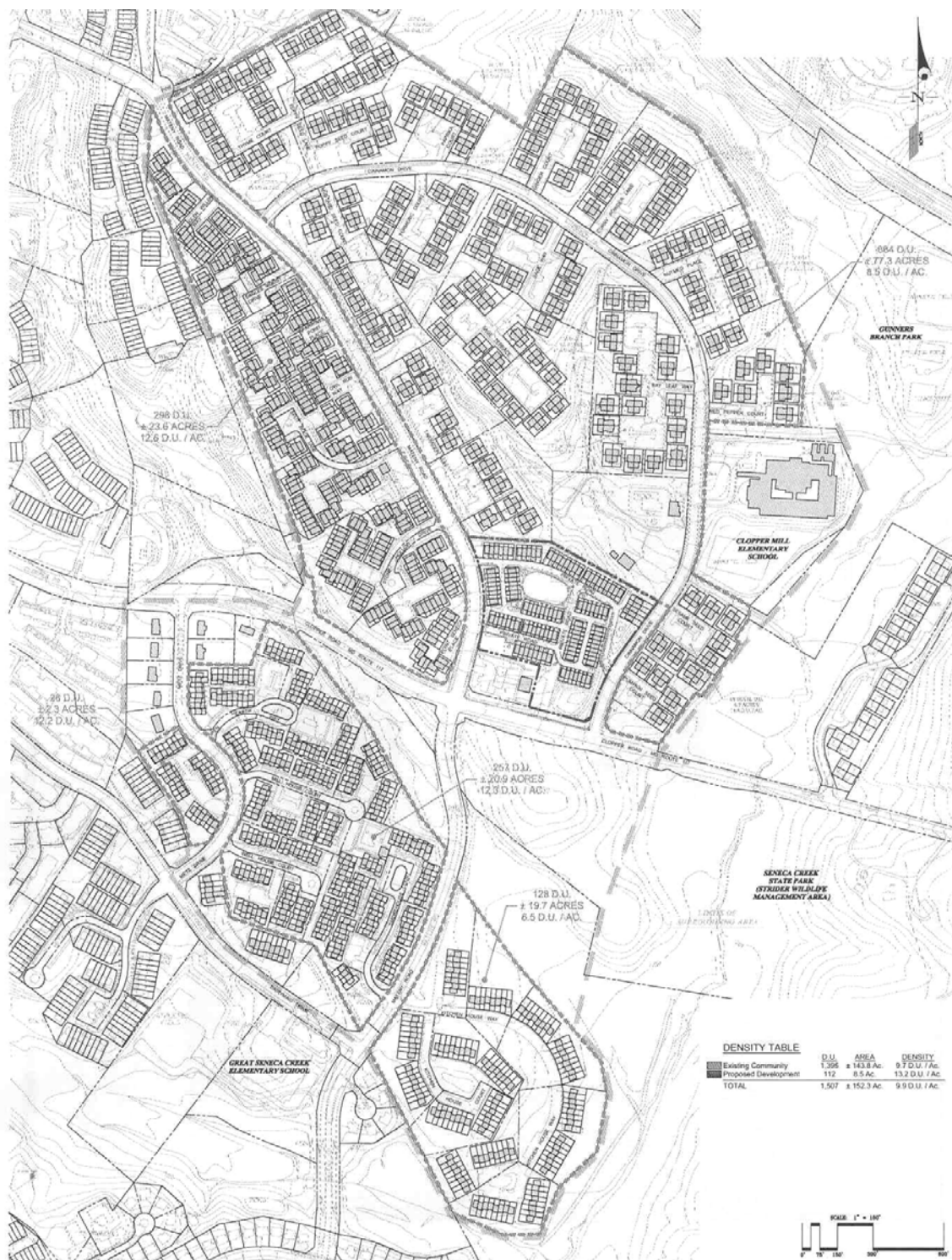
The People's Counsel and the Opposition objected to the Applicant's deviation from the Staff's recommendation because the inclusion of the park and the Williamsburg subdivision would lower the average density for the area. For purposes of this analysis, the Staff's recommendations will be given greater weight because of its considerable knowledge and experience in defining such areas and the absence of persuasive reasons for the rejection of the Staff's proposed boundary.



The character of the surrounding area reflects medium densities made up of townhouses, four-plexes and single-family detached homes. The surrounding area is predominately residential with largely stable and mature communities.

Cinnamon Woods is a community located north and east of the site with 640 older two-story four-plexes or “back to back” style townhouses and related surface parking lots. Much of the area has large green areas. This community contains Clopper Mill Elementary School and the entry to Gunners Branch Local Park. West and northwest of the subject property is the Stone Ridge subdivision, classified under the RT-12.5 Zone,

which contains about 305 older two-story townhouses without garages. The community has surface parking and a density of 12.6 dwelling units per acre.



The area to the south is a stream valley of a tributary of the Gunners Branch beyond which lies the Ashton Place community, classified under the RT-12.5 Zone, that contains about 257 two-story townhouses without garages and dependent on surface parking. The density of the development is 12.3 dwelling units per acre. Some isolated single-family detached homes are located along Metz Drive near Clopper Road.

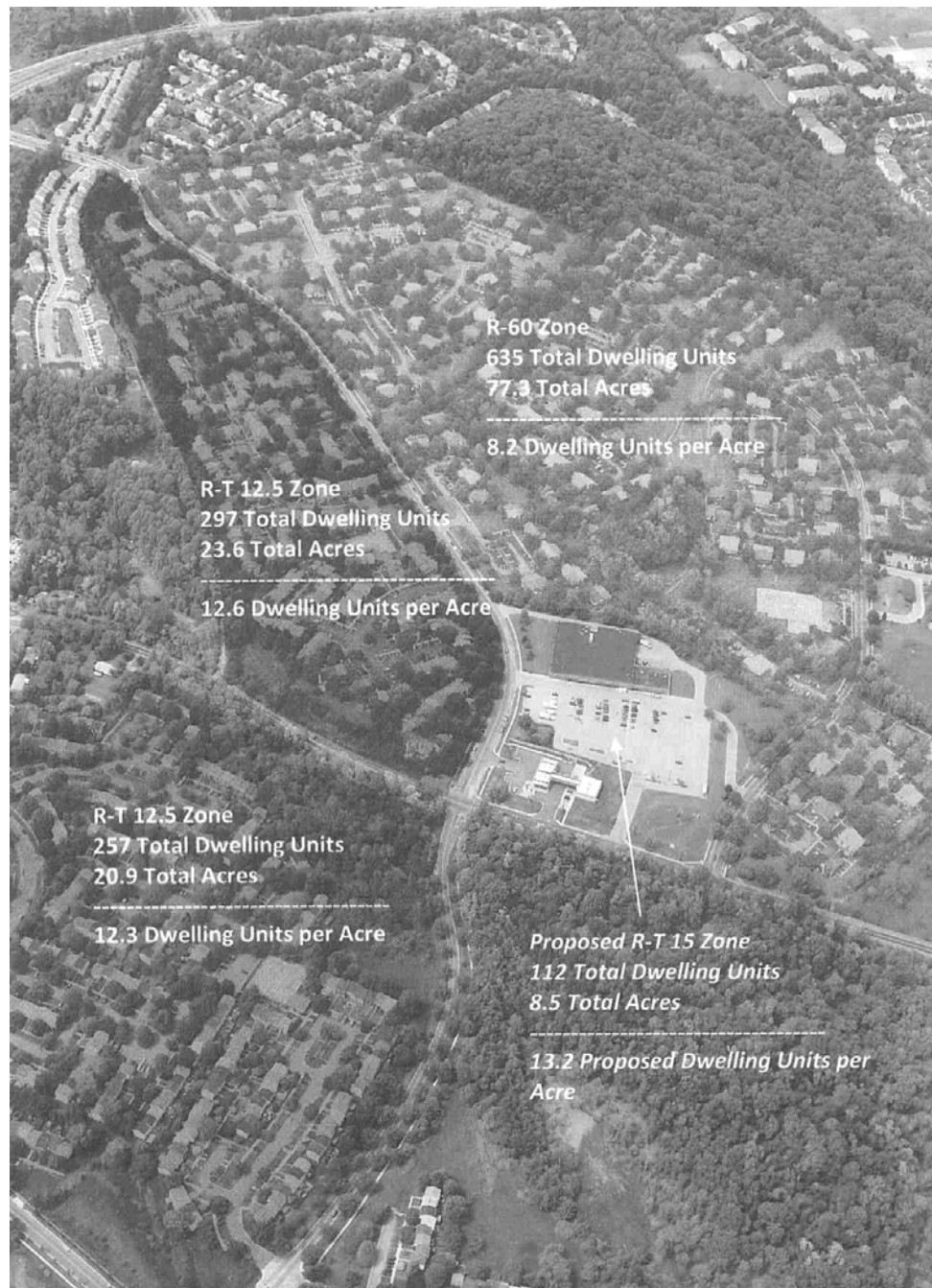
The densities of these communities are in scale with each other. This area was developed in the 1980s amid a gently rolling topography with a high point along Clopper Road. The site abuts townhouses and four-plexes to the north, west and southwest. Elements of the surrounding area also include the road network made up of Clopper Road, Mateny Road, Metz Road, Cinnamon Drive and stream valleys associated with Seneca Creek. An aerial photograph, depicted on the next page, shows the development pattern of the area with density levels superimposed.

C. Zoning and Planning History

The property was the subject of countywide comprehensive zoning in 1958 when it was classified under the Rural Residential (R-R) Zone, which allowed for a density of two dwelling units per acre. In 1969, the property was reclassified from the R-R Zone to the C-1 Zone by LMA F-345. The property was developed as a shopping center under the C-1 Zone in the 1984 and the Weis Market operated a grocery store there until it was leased to the Super Grand in 2004.

The 1989 Germantown Master Plan addressed shopping center uses and encouraged the concentration of retail uses in planned village centers. The plan discourages strip commercial zoning along highways like Clopper Road. Two retail

village centers have since developed near the subject property. Kingsview Village center is located within 2,000 feet of the subject property and Clopper Village is located within 3,000 feet of the subject property. Both retail centers have been built in accordance with the Master Plan. Recently more competition developed with the Lotte Plaza at Wisteria and Route 118.



Susan Soderberg is President of the Germantown Historical Society and provided some historical background on the development of the shopping center.

The “Community and Social Goals and Objectives” states that the plan shall provide for community identity and “To encourage social contacts and community activities through development of the village and neighborhood structures”. Each of the six “Villages” that make up Germantown is composed of several “neighborhoods.” Each neighborhood, among other amenities, was supposed to have a shopping area within walking distance of all residents. Cinnamon Woods was the first neighborhood to be developed and this was the shopping center for this neighborhood. The development of this neighborhood followed the Master Plan and thus served as a model for those that followed. That not all of those followed the first model does not detract from the importance of this first model. By destroying this neighborhood shopping center you would be destroying one of the basic premises of the Mater Plan.

This shopping center has been mis-managed in the past several years by: not having a sign listing the stores on the main road, not bringing on appropriate stores to serve the neighborhood, not keeping up the grounds, not providing incentives for residents to come to this center. This is not a reason to destroy it and replace it with a dense development of row homes. Other older shipping centers in Germantown have been modernizing and re-facing their buildings. The same could be done with this one. [Ex. 41, Attachment No. 9, letter dated March 26, 2009].

Ms. Soderberg concluded that the proposed zoning is not in accord with the Master Plan.

The Opposition supports this view and contended that elements of the 1989 plan dealing with strip commercial(s) uses do not apply to the shopping center since it predates the Master Plan.

The Opposition contentions prompted the Technical Staff to expand its consideration of the master plan issues. The Staff issued a second report, which evaluated the 1974 Master Plan as well as the current plan. The Staff strongly rejected the Opposition’s contention that the subject property was the Village area recommended by the 1974 Germantown Master Plan for the Clopper neighborhood. Instead the Staff

analysis shows that “...the Village Center for Clopper Village should be located at the intersection of Clopper Road and the Western Arterial” [This is now the Great Seneca Highway]. See, Ex. 41, pp. 12-13. The Staff report provides a detailed description and graphics to show that the subject property was deemed inadequate for a village center location.

The Master Plan explicitly recommends the subject property for “other convenience retail center”. The Staff analysis of the 1989 Master Plan shows that the plan discouraged strip commercial development and encouraged sensitivity to development along Clopper Road because of its high visibility to travelers. The Staff concluded that housing would be a preferable use at this location because it will reinforce the established character and identity of the area. Both the Staff and the Planning Board concluded that the proposed use is consistent with the current Master Plan.

D. Proposed Development

The proposed development would replace the existing 25-year-old retail center with 112 townhouses including 14 MPDUs, which would yield a density of 13.2 dwelling units per acre or 42 units less than full development authorized under the R-15 Zone. The townhouses would be 3-story units with rear or front garages arranged in a traditional configuration to orient the front of the units to the street and create an active pedestrian environment.

The Applicant’s illustrative plan shows 426 non-binding parking spaces or 3.8 spaces per dwelling unit. The zoning requires 224 spaces or 2.0 spaces per dwelling units. The community would be developed around a central “village green”, or

community open space, linked with a series of smaller open spaces by pedestrian friendly streetscapes, walkways and trails.

The proposal was revised before the record closed to add several binding elements to the SDP. The binding elements now include the following six items.

1. Density limited to no more than 112 dwelling units;
2. MPDUs will be provided at 12.5% of total density;
3. A minimum of 45% green area will be provided;
4. The Applicant, its successors or assigns, will preserve and perpetually maintain the existing Graff-Musser Cemetery on the property;
5. The site plan for the RT-15 project will include the following minimum building setbacks:

North property boundary – 30 feet from property line;

West property boundary – 20 feet from Mateny Road right of way;

South property boundary – 100 feet from Clopper Road right of way; and

East property boundary - 30 feet from Cinnamon Drive right way; and

6. The site plan for the project will include parking at a minimum of 3.0 spaces per dwelling unit.

The SDP and an illustrative rendering of the proposed development are depicted on the next three pages.

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1. INTRODUCTION

- SITE DATA

1

First Name	Second Name	Third Name	Fourth Name	Fifth Name	Sixth Name	Seventh Name	Eighth Name	Ninth Name	Tenth Name	Eleventh Name	Twelfth Name	Thirteenth Name	Fourteenth Name	Fifteenth Name	Sixteenth Name	Seventeenth Name	Eighteenth Name	Nineteenth Name	Twentieth Name	Twenty-first Name	Twenty-second Name	Twenty-third Name	Twenty-fourth Name	Twenty-fifth Name	Twenty-sixth Name	Twenty-seventh Name	Twenty-eighth Name	Twenty-ninth Name	Thirtieth Name	Thirty-first Name	Thirty-second Name	Thirty-third Name	Thirty-fourth Name	Thirty-fifth Name	Thirty-sixth Name	Thirty-seventh Name	Thirty-eighth Name	Thirty-ninth Name	Fortieth Name	Forty-first Name	Forty-second Name	Forty-third Name	Forty-fourth Name	Forty-fifth Name	Forty-sixth Name	Forty-seventh Name	Forty-eighth Name	Forty-ninth Name	Fiftieth Name	Fifty-first Name	Fifty-second Name	Fifty-third Name	Fifty-fourth Name	Fifty-fifth Name	Fifty-sixth Name	Fifty-seventh Name	Fifty-eighth Name	Fifty-ninth Name	Sixtieth Name	Sixty-first Name	Sixty-second Name	Sixty-third Name	Sixty-fourth Name	Sixty-fifth Name	Sixty-sixth Name	Sixty-seventh Name	Sixty-eighth Name	Sixty-ninth Name	Seventieth Name	Seventy-first Name	Seventy-second Name	Seventy-third Name	Seventy-fourth Name	Seventy-fifth Name	Seventy-sixth Name	Seventy-seventh Name	Seventy-eighth Name	Seventy-ninth Name	Eightieth Name	Eighty-first Name	Eighty-second Name	Eighty-third Name	Eighty-fourth Name	Eighty-fifth Name	Eighty-sixth Name	Eighty-seventh Name	Eighty-eighth Name	Eighty-ninth Name	Ninetieth Name	Ninety-first Name	Ninety-second Name	Ninety-third Name	Ninety-fourth Name	Ninety-fifth Name	Ninety-sixth Name	Ninety-seventh Name	Ninety-eighth Name	Ninety-ninth Name	Hundredth Name																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																			
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1. Positive is labeled to no more than 12 shellies units
2. After being well mixed, poured at 125 °C or 107 °C directly

- [illegible]

VICINITIES MAP
SCALE 1" = 2.005"

- [illegible]

OFFICE OF ZONING AND ADMINISTRATIVE
BUSINESS CERTIFICATION

1. GENERAL CATEGORY THAT BEST DESCRIBES YOUR RESEARCH OR
APPROXIMATE START AND END DATES OF RESEARCH PERIOD:
EQUIPMENT DESIGN AND CONSTRUCTION OF POWER PLANT,
ELECTRIC AND OTHER TRANSMISSIONS, WATER, AIR, SEWER,
WASTE
2. PROJECT TITLE: David L. Little, Jr.
3. PROJECT PI: David L. Little, Jr.

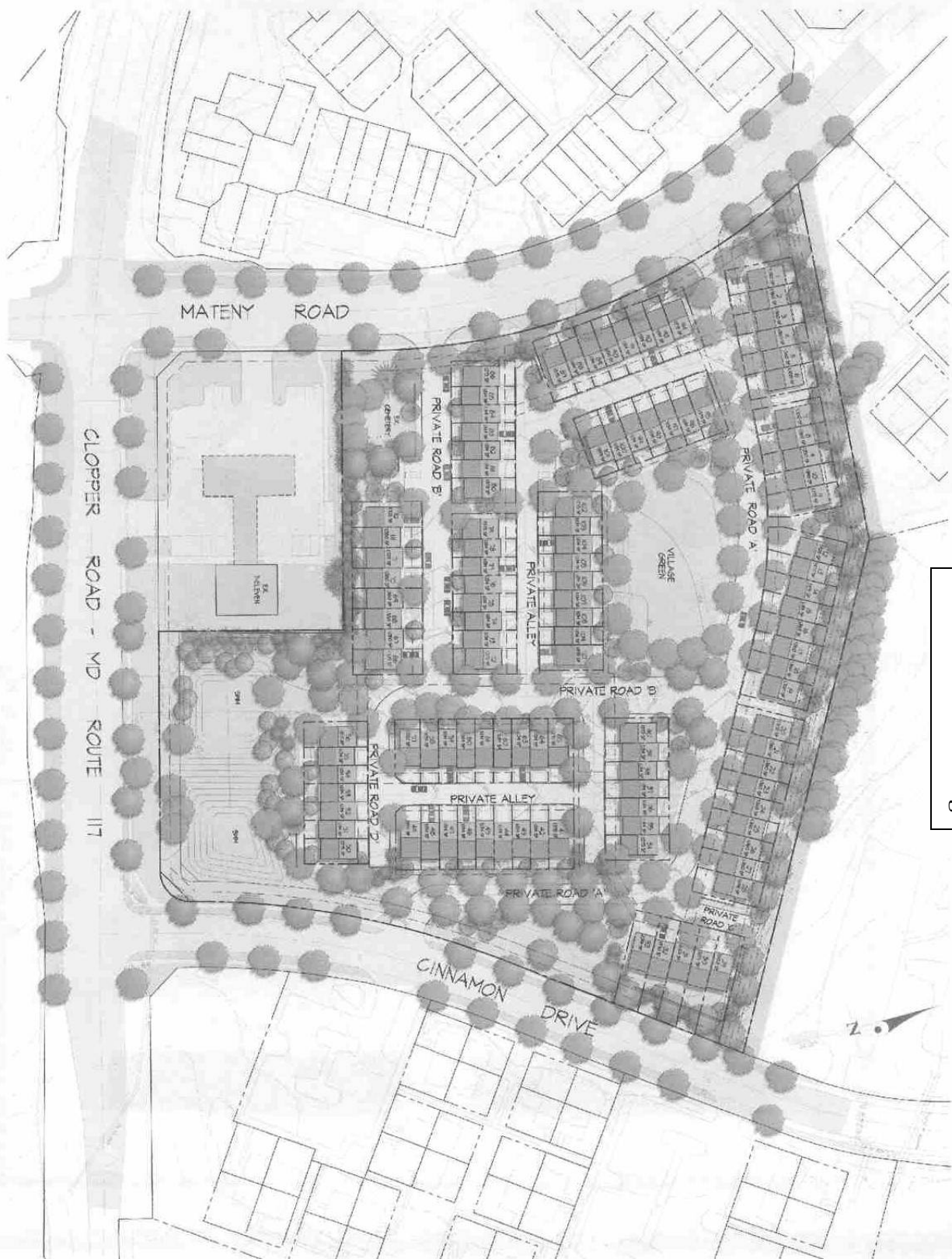
Schematic Development Plan,
Graphics and Legend Only



VICINITY MAP
SCALE 1" = 100'

- LEGEND
- PROPOSED DRAIN & GUTTER
 - PROPOSED LIGHT
 - PROPOSED SPOT GRADE
 - PROPOSED STORM DRAIN, SEWER & WATER
 - STEEP SLOPES
 - EXISTING TOPOGRAPHY
 - PROPOSED TOPOGRAPHY
 - EXISTING STRUCTURES
 - PROPOSED PARKING
 - PROPOSED SIDEWALKS
 - WETLANDS/WETLANDS BUFFER
 - PROPOSED STREETS
 - LIMIT OF DISTANCE

ENGINEER'S CERTIFICATION
I, ENGINEER, CERTIFY THAT THESE COORDINATES WERE OBTAINED BY ME AND THAT I AM A duly LICENSED PROFESSIONAL ENGINEER IN THE STATE OF OHIO. I AM NOT PROVIDING ANY GUARANTEE OR WARRANTY FOR THE ACCURACY OF THESE COORDINATES.
DATE: 10/1/2017
BY: [Signature]
[Stamp]



Illustrative Rendering

E. Environmental and Storm Water Management Issues

The subject property is already developed and a good portion of the site is covered with asphalt and the shopping center building. Unbuilt areas include a grassy strip around the site perimeter, the cemetery and the existing SWM facility. The proposed development would not disturb any forests, wetlands or other environmentally sensitive areas. The existing SWM facility discharges into an existing pond located at the intersection of Clopper Road and Cinnamon Drive.

The Applicant proposes a new and enlarged SWM system. A storm drain system will collect surface runoff from on-site areas. An improved SWM facility will treat both water quantity and quality located in the area where the existing facility is located. The storm water outfall for this portion of the site connects to the existing public storm drain system in Clopper Road. Another treatment facility is to be located in the northeast corner of the property and will treat on-site storm water quality using an underground filtering device that meets County and State water quality treatment criteria. The storm water outfall for this portion of the site will connect to an existing public storm drain system located on Cinnamon Drive. The proposed development would improve the quality of any storm water run-off by providing updated, state of the art SWM facilities.

The Technical Staff reported that the current impervious surface would be reduced to a range of 50 to 55% of the site or a reduction of about one-third of site imperviousness. The reduction of imperviousness would correspond to an increase in green space and landscaping. In addition, the replacement of the asphalt parking lot with landscaping and trees will increase the canopy of the site. A preliminary forest conservation plan reflects 1.27 acres for afforestation.

F. Public Facilities

Public facilities include transportation, water and sewer, and schools. Public utilities such as gas, electric, telephone and cable television are all available to the site along Clopper Road, Cinnamon Drive and Mateny Road. Additional facilities will be built on site as part of the infrastructure development.

1. Transportation

The proposed development will have three access points, two points of access from Mateny Road and one access from Cinnamon Drive. The current Clopper Road access will be eliminated and the right of way will be absorbed into the enlarged SWM facility. The Technical Staff concluded that the proposed access would be safe, adequate and efficient. The Staff also concluded that the internal vehicular/pedestrian circulation system will be safe and adequate

Clopper Road is planned as a six lane major highway within a 120 to 150 foot wide right of way. This road serves as a major east-west connector that joins communities from Boyds to the west and Gaithersburg to the east. The Technical Staff identified three intersections as critical and they include the intersections of Clopper Road at Great Seneca Highway, Clopper Road at Mateny Road and Clopper Road at Waring Station Road. The congestion standard for this area of the County is 1,426 Critical Lane Volume (CLV).

A traffic study reviewed existing traffic, background traffic from approved but undeveloped projects and projected future traffic from the proposed development. The intersections were projected to operate at acceptable levels of service except for the morning peak hour at the Clopper and Waring Station intersection. With the proposed

development, all but one intersection will experience lower CLV totals as compared to background conditions. This reduction, however, may be illusory as it is based on a comparison of background conditions with the retail use as a fully operation use, when in fact, the center is reported to operate at less than maximum levels. Nevertheless, the proposed development would still satisfy the CLV standard except at the Waring Station intersection.

The Technical Staff concluded that the intersection would operate at better than background conditions with the trip mitigation measures the Applicant will provide at the subdivision stage. The mitigation will involve 49 trips and will promote more transit use, safer pedestrian circulation, and other trip reduction strategies. The Technical Staff analysis confirmed that trip mitigation would result in acceptable levels of service.

Other than generalized concerns about increased traffic congestion, the Opposition did not submit evidence to show that the proposed development would lead to traffic congestion above the CLV standard.

The site is served by three different Ride On bus routes most of which operate on a 7 day weekly schedule with pick up at thirty minute internals. The bus services connect riders to the east and the Shady Grove Metrorail Station and return trips to points west. The evidence shows that the area is well served by local and express busses. The subject property is particularly well served as busses stop at the site.

2. Water and Sewer

The Washington Suburban Sanitary Commission determined that the proposed development would not be a burden to the water and sewer systems of the County. Water

and sewer service is deemed to be adequate. Water lines abut the property and a sewer extension has been conceptually approved.

The Applicant submitted evidence to show that the existing water and sewer systems would operate well within capacity and the proposed development would not cause an adverse impact of these facilities. The Technical Staff analysis confirmed this evidence.

3. Schools

The proposed development is projected to generate 24 elementary schools, 13 middle schools and 11 high school students and the high school is currently within capacity. These schools include Northwest High School and Clopper Elementary School, both of which are projected to exceed capacity. An elementary school facilities payment will be required at the subdivision stage to mitigate the impact on the elementary school. The middle school is projected to remain within capacity for the duration of the six year forecast period.

The proposed development is expected to generate 24 elementary school, 13 middle school and 11 high school students. The high school is currently within capacity. However, school enrollment is projected to exceed capacity in 2014 and 2015. Given the requirements of the County's Growth Policy, school capacity issues will be evaluated again later in the development process, by the Planning Board. Nonetheless, the District Council has the responsibility to assess at the rezoning stage whether the students anticipated from the proposed development would cause an adverse impact on already-overcrowded schools sufficient to justify denial of the rezoning. The Planning Board's latest findings on school capacity, which were released after the hearing in this case,

indicate that while the middle and high schools are projected to be only slightly over-capacity in 2014, the elementary schools in the cluster are projected to be at 120 percent of capacity, right on the edge of the level of overcapacity that would mandate a moratorium on residential subdivisions.⁷ This finding makes the question of school impact a close one in this case. In the Hearing Examiner's estimation, the relatively small number of students the proposed development would generate would not have an adverse impact sufficient to warrant denial of the requested reclassification. This is particularly so, given the possibility that the school system may be able to adjust boundaries or make other changes to address capacity issues. And the other public interest factors delineated pages on pages 42-43 supporting rezoning.

The APR review insures that the proposed development will not cause an adverse impact. In the meantime, the school system has flexibility to adjust boundaries or make other changes to address capacity issues.

4. Noise.

The Applicant submitted a preliminary noise study, which reveals that there may be some noise impact on the proposed townhouses in the southwestern portion of the site along Clopper Road. The Technical Staff indicated that a more detailed noise analysis will be submitted at the preliminary plan stage and noise mitigation measures will be formulated as part of the site plan process.

IV. SUMMARY OF HEARING

⁷ The Hearing Examiner hereby takes official notice of the Planning Board Staff memorandum dated June 2, 2009, setting forth proposed school capacity findings for Fiscal 2009-2010. These findings were accepted by the Planning Board on June 8, 2009. As indicated in the June 2 memorandum, if a school cluster is projected to be more than 120 percent over capacity within the forecast period, the Growth Policy requires imposition of a moratorium on residential subdivisions for the upcoming fiscal year.

Testimony presented at the hearing consists of the Applicant's case in chief, community participation, People's Counsel comments and Applicant's rebuttal. The Applicant has the last word in the hearing process as it bears the burden of proof.

A. Applicant's Case in Chief

David Fink is President of Finmarc Management, Inc which owns and manages about six million square feet of space in the Washington, D. C. Metropolitan area in Maryland, Virginia and D.C. area. The company deals largely with retail properties although it has also developed a few residential properties. Since 1997, the company has operated a 42,000 square foot retail facility in Olney, Maryland along Route 108 and includes Starbucks and CVS Pharmacy as tenants. Since 2005 the company has operated a retail center in Darnestown that includes a Harris Teeter grocery store. The company obtained Roots Market, a national food market, as a tenant in the Silo Inn site along Georgia Avenue in Olney. In 2004 the company took control of the Kimmel's Furniture at Four Corners in White Oak and redeveloped it as a Trader Joe's retail center within a 32,000 square foot complex.

Mr. Fink's firm acquired the Germantown Park site in 2005 in hopes of adding an addition and upgrading the retail center. Weis Food Market previously used the site but vacated it because it was under performing. The site was leased to Grand Market, the current tenant. He considers the center to have a poor mix of tenants and wanted to re-market the facility.

Mr. Fink indicated that a number of obstacles occurred that made it difficult to implement the upgrade plan and forced the Applicant to consider other options to protect the value of its investment. For example, the Applicant was unable to attract two

important types of retail uses: fashion or clothing and hard goods like a Radio Shack. The Applicant needed to find more tenants and the right mix before there could be any money committed to expansion of the shopping center. He did not encourage used car dealers or car rentals, as these uses would not make the center an attractive place to shop.

Mr. Fink was unable to secure a national food chain as an anchor store. The competition of Giant on Clopper Road and the Shoppers Food Warehouse along Mateny Road discouraged potential tenants. All existing tenants are suffering from the recession and he has granted them significant concessions on rent rates. Community support for the stores is not strong enough to make the center a viable operation for much longer.

Mr. Fink testified that the proposed zoning is an attempt to retain value of the site. He does not consider the site a viable location for office or apartment use. The Applicant has no immediate plans to tear down the center and replace it with the proposed housing. He does not plan to close any of the existing stores at this time. The requested zoning is purely an option as there is no residential market at this time. The rezoning is important because it would allow him to move quickly when the residential market improves.

Mr. Fink was subjected to sharp questioning by the Opposition. He conceded that he did not conduct a feasibility study for the housing project and he has stopped retail marketing efforts to find new tenants. He conceded that the present mix of tenants offer an international flavor to the retail mix. Indians operate the beer and wine store. Asians or Chinese operate the dry cleaning service. Koreans operate the Grand Mart.

Mr. Fink acknowledged that a fire occurred in 2006 and it seriously damaged the food store. A heating and air conditioner contractor misused a propane torch on the roof

and caused the fire. The fire resulted in over two million dollars in damages. It took about 12 months before the store could reopen. He acknowledged that this delay had an adverse impact on shopping center customers and was a negative factor in his ability to attract new tenants. The fire caused Applicant losses of several thousand dollars.

Kevin Foster qualified as an expert witness in the field of land planning. He was retained by the Applicant to review the site's potential for residential use. He examined multiple development options, which led to the proposed development of 112 townhouse units. The proposal was revised on several occasions until the SDP was submitted on April 15, 2009.

Mr. Foster described site conditions. The site is located along Clopper Road at Mateny Road. There are steep slopes at the site where it abuts Clopper Road and Cinnamon Drive. The site is located adjacent to a 7-11 convenience store and gas station, which is classified under the C-1 Zone. This property is not part of the pending zoning request. The site has three access points: one at Mateny Road on the west, one at Clopper Road on the south, and a third at Cinnamon Drive on the east. The site contains a one-story retail shopping center of 45,000 and 275-space parking lot. The developed area is at the center of the site and this area is about 90% impervious surface. The perimeter of the site contains grassy areas including a historic cemetery at the southwest corner and the storm water management facility at the southeast corner. The cemetery is known as the Musser-Graff cemetery. The cemetery needs work and it would be retained under the SDP with a homeowners association responsible for maintenance.

Mr. Foster described the surrounding area, which he indicated generally follows the area recommended by the Technical Staff and the Planning Board. This area is

bounded on the north by the Cinnamon Woods subdivision, which was developed with townhouses under the R-60 Zone at 8.2 dwelling units per acre, on the west by Metz Road and the edge of the Stone Ridge subdivision classified under the RT-12.5 Zone at 12.6 dwelling units per acre; on the east by a local park classified under the R-200 Zone, and on the south by Ashton Place, classified under the RT-12.5 Zone developed at 12.3 dwelling units per acre, and the Williamsburg Square subdivision.

Mr. Foster testified that the character of the surrounding area is largely stable, mature residential subdivisions dominated by townhouses and four-plexes. The housing in the surrounding area was developed during the 1980s about the same time as the shopping center. A ridgeline along the north side of the surrounding area separates Cinnamon Woods from other subdivisions along the Great Seneca Highway. Williamsburg Square and Ashton Plane are connected to the surrounding area because they have direct access to Clopper Road and an orientation up Mateny Road. A major element of the surrounding area is the road network. Clopper Road is the main east-west highway within a 130 to 150 foot right of way. Mateny Road is a north-south arterial within an 80 foot right of way. Local busses travel along both roads.

Mr. Foster testified that the Cinnamon Woods subdivision has mostly 2 story back-to-back townhouses along the northern portion of the surrounding area. Directly north of the subject property is the Cinnamon Woods maintenance facility, storage yard and community pool and building. To the west of the subject property is Stone Ridge subdivision that contains 2 and 3 story townhouses the majority of which have two car garages. There are some one-car garages. The Williamsburg Square subdivision to the southeast is an older style of 2 and 3 story townhouses, the majority of which face

Mateny road but some are on the backside. Ashton Place contains 2 and 3 story units developed under the RT 12.5 Zone and is newer than the other subdivisions.

Mr. Foster described the proposed development under the SDP. Maximum density permitted under the RT-15 Zone would produce 154 units or 18.3 dwelling units an acre. The SDP is limited to 112 units or 13.2 dwelling units per acre. All the townhouses will face the street so that streetscape will be an important component of the project. There are two types of units proposed: front garage units and rear garage units with front doors facing the street. There are units that will front on the village green. All units will be three stories in height. Cars will use an alley in the rear and will park in the rear. The minimum green space will be 45% of the site. Access to Clopper Road will be closed and the old right of way will be incorporated into the new storm water area.

Mr. Foster reviewed the issues of density and compatibility. The proposed development will have a density of 13.2 dwelling units per acre. Adjacent communities reflect similar densities. For example, Stone Ridge has a density of 12.6 dwelling units per acre. Ashton Place is developed at 12.3 dwelling units per acre. Cinnamon Woods reflects 8.5 dwelling units per acre. Williamsburg Square is built at 6.5 dwelling units per acre.

Mr. Foster stated that other elements of compatibility include the pedestrian character of the area and the enhanced access to pedestrian circulation. The major intersections have push button traffic lights to facilitate safe pedestrian crossing. Streetscape will provide such amenities as benches, trees and improved pedestrian environment. The scale of development is also a compatibility issue. The SDP layout and the 3 story building height are compatible with existing development. He concluded that

the proposed development would be compatible in terms of land use, density and building scale.

Mr. Foster also concluded that the proposed development conforms to the objectives of the 1989 Germantown Master Plan. The plan does not provide specific recommendations for the subject property. However, the proposed zoning is in general conformance with the master plan's objectives. For example, the plan recommends an increase in housing stock and encourages a mix of housing types as well as preservation of historic resources. The SDP addresses all Master Plan objectives with its diversity of housing and preservation of the historic cemetery.

Mr. Foster concluded that the redevelopment of the site is a natural transition that will reinforce the existing residential uses in the area. The 1989 Master Plan's recommendations for shopping centers have already been achieved and the success of nearby centers has contributed to the failure of the subject property as a retail location. The redevelopment will also provide improved SWM facilities that will include newer technology to comply with updated State and County requirements.

Mr. Foster also concluded that the proposed development complies with the requirements of the zoning ordinance. The site is an appropriate location for development at the density proposed and includes amenities that better achieve zoning and planning objectives for this area of the County. The SDP meets all the zoning requirements and standards.

Mr. Foster concluded that the proposed development would not cause any adverse impact of public facilities. Fire and rescues services and water and sewer are adequate for the proposed development. Schools reflect some overcrowding at the elementary

school level but fees can offset the negative impact under Annual Growth Policy criteria. This issue will be examined again under the Planning Board's APF review.

Seth C. Churchill, P.E., qualified as an expert witness in the field of civil engineering. He prepared the SWM concept plan to meet all County and State requirements. The proposed SWM facility will be located in the southwest corner of the site at the intersection of Clopper Road and Mateny Road. The facility will be at the low point of the site. The high point is at the northwest corner. The site slopes away from Clopper Road. Mateny Road is about 30 feet higher than Cinnamon Drive.

Mr. Churchill indicated that State and County environmental regulations have changed dramatically since the site was development in 1984. Today there is much greater emphasis on water quality control. The proposed SWM facilities will have a dry pond in a larger area than the current facility and in an area with significant landscaping around the pond. These improvements will greatly benefit the environment. He concluded that the proposed development would satisfy all necessary requirements. He also concluded that the project will be served by adequate public facilities.

Edward Papazian qualified as an expert witness in the field of transportation planning. He described the area road network. Clopper Road (Route 117) is the major east-west connector with a variable width between two and four lanes. The road has four lanes adjacent to the subject property. Mateny Road extends along the west side of the subject property in a north-south direction and serves as a loop road to connect with the Great Seneca Highway (Route 119), which is a four lane divided highway located to the west. Cinnamon Drive is a two lane local road that extends along the east side of the

subject property. Waring Station Road is a two-lane road that extends north-south from Clopper Road east of the site.

Mr. Papazian described transit service available at the site. The site is served by three different Ride On bus routes most of which operate on a 7 day weekly schedule with pick up at thirty minute intervals. The bus service connects riders to points east and the Shady Grove Metrorail Station and return trips to points west. He concluded that the area is well served by local and express busses. The subject property is particularly well served as the busses stop at the site.

Mr. Papazian conducted a local area transportation review of the area. The standard for this portion of the county is an intersection capacity of 1425 critical lane volume (CLV). His study revealed that all intersections operate at acceptable levels of service except during the morning peak hour at the intersection of Waring Station and Clopper Roads. The congestion at this intersection can be mitigated by measures applied by the Planning Board under the APF review. He concluded that the proposed development could be accommodated by area roads.

B. Community Participation

The community participation was substantial. In addition to the two primary speakers, 145 people signed petitions objecting to the zoning and seven letters were filed in opposition. Ex. 42, 43, 44, 45, 47, 57 and 60.

Anne Marie Martinez is a resident of Cinnamon Woods and a member of the Cinnamon Woods Homeowner's Association and its Board of Directors. She considers the community to include Stone Ridge, Ashton Place, Williamsburg Square, Heritage Preserve, North Creek and Chestnut Oaks.

Ms. Martinez testified that the proposed development does not fit within the community and is not compatible in terms of density. She presented a series of photographs that show the character of Cinnamon Woods as an open community with extensive green areas some of which are used for recreational purposes such as ball fields and tot lots, See, Ex. 58 (1-22). The community was built in 1977 with 784 single family attached homes on 77 acres. She does not consider her community a typical townhouse community given the layout of homes within a quad configuration and location within large green space areas. She indicated that the community possesses an extensive tree cover including many flowering trees, oaks, and pines. The Applicant proposes to squeeze 112 units into 8.46 acres, which would produce total incompatibility with the existing densities. She concluded that the added density would also result in traffic gridlock and compromise pedestrian safety.

Ms. Martinez contended that the schools that serve the community are overcrowded. Roberto Clemente Middle School is a magnet school that is filled up and any vacancies are allotted by lottery. The Northwest High School is at capacity and projected to be overcrowded in the not to distant future. The Clopper Road Elementary School is already overcrowded and has five trailer classrooms on site.

Ms. Martinez stated that the shopping center is busy and two of her photographs, Ex. 58 (21 and 22), shows the activity at the center. The shopping center is in accord with the master plan and it was built to serve the Cinnamon Woods neighborhood. Susan Soderberg recorded the history of this area and her report is included at the end of the Technical Staff report, Ex. 41. The two newer shopping centers were also built in accordance with the master plan and they were never intended to replace the

neighborhood shopping center. The language of the master plan calls for the discouragement of strip commercial centers. This language does not authorize the tear down of an existing center. Indeed, the shopping center at Route 118 and Middlebrook Road was not torn down but was refurbished.

Ms. Martinez criticized the Applicant's contention that fashion stores did not respond to efforts to include this type of store in the shopping center. The two newer centers were also unable to secure fashion stores and the closest fashion store is located at the Milestone commercial area on the east side of I-270. She indicated that the reason the shopping center lost business is attributable to a fire and the long 12 month delay until the reopening of the Grand Mart. During this period more competition developed with the Lotte Plaza at Wisteria and Route 118. The shopping center is needed in this area, especially by the disabled who do not drive. She requested that the SDP be amended to include the proposed 426 parking spaces as a binding element so as to offset the high density proposed.

Thomas C. Williams is also a resident of Cinnamon Woods and indicated that the shopping center represents a vital contribution to the community. Preservation of this shopping center is in the public interests. When Weis Market owned the shopping center, other retail centers started to develop and Weis sold to Super Grand. After the sale a change occurred, the parking lot was full. The community actively patronized the new businesses. In fact, the center was such a success that it took longer to shop there and he tried other locations to shorten his shopping trip. The Shopper's Food Warehouse and Giant provided alternatives.

Mr. Williams testified that the demographics of the area have changed over time. Cinnamon Woods is now over 50% Latino in population. The surrounding area has experienced significant increases in Latino, Asian, Caribbean, African and immigrant populations. The current shopping center tenants serve the needs of this changing community and provide employment for its residents. The tenants have demonstrated a strong commitment to the community. For example, the dry cleaners remodeled its store. The Applicant has not shown a similar commitment. For example, the center lacks the signage normally found at shopping centers to attract people to the businesses located there.

Mr. Williams noted that the current recession began in December, 2007 according to the Bureau of Economic Records and a downturn in business is happening across the Country. The master planning process needs to better reflect the changing demographics of the area. The current shopping center began to fail as a mainstream center. When it became more ethnic, it thrived. The fire and the Lotte Plaza took away some of its Asian business, but Latinos still patronize the center.

Mr. Williams indicated concern over adverse impact on schools. He questions to reasonableness of the school system forecast of only 48 students generated by a development of 112 units. He requested that the parking and setbacks shown on the illustrative plan be made binding elements of the SDP.

Ellyn Cottingham, a resident of Cinnamon Woods, could not attend the hearing but submitted her concerns in writing:

I have a number of concerns with regard to the...rezoning...for the Grand Mart parcel which adjoins Cinnamon Woods.

I would like to first address the lack of notification to the surrounding communities....The Feb. 23, 2009 Planning Department memorandum...mentions the lack of community comments. How can the community respond if we don't know what is happening? Since the signs were reposted, there has certainly been community response.

Second. I would like to address the school issue...[T]he Board of Education projections for number of...children in the proposed community... seems an underestimate to me. ... As I see it, there would either have to be bussing or more portables at Clopper Mill Elementary.

Next. I would like to address the density issue. Cinnamon Woods is zoned R60 and adjoins the parcel on 2 sides. This quadruplex community has a very open feel, with lots of mature trees and open spaces. Why was the proposed development zoned at RT-15? That is certainly a denser zoning which would be incompatible with the neighboring communities.

* * *

The next issue is the traffic. Clopper Road is very backed up during the morning and evening rush hours....

Finally, there is a substantial number of people who use the grocery store, the dry cleaners and the convenience store. ...It would be very difficult for customers to walk to the Shoppers food Warehouse...or the Giant....There are people in the area currently walking to the Grand Mart....If this rezoning is approved, a sidewalk would have to be built along Clopper Road from Mateny Road to Metz Drive....[Letter dated April 28, 2009, Ex. 57, pp. 1-2].

C. People's Counsel

Martin Klauber, People's Counsel for Montgomery County, noted that the best experts on the appropriateness of the proposed development are the residents of the area since they live there on a 24/7 basis. He expressed concern that the proposed density is too much for the surrounding area given the openness of adjacent development. He questioned whether the proposed development can be deemed appropriate and compatible in the absence of binding elements relating to density, setbacks, parking and green space.

Mr. Klauber criticized the benefit of so called “open space” proposed by the Applicant. Most of the ‘open space’ includes the SWM facility and the cemetery. Only a very small part of the open space is useful for passive recreation. He questions whether the proposed density would fit within the neighborhood. A finding of compatibility is dependent on the openness of the proposed development as compared to its neighbors. The elements of the SDP are insufficient to support a finding of compatibility.

Mr. Klauber questioned the Applicant’s land planner and obtained admissions that he did not calculate or take into account the open space areas of existing development in the surrounding area. He argued that the lack of comparative evidence undermines the Applicant’s claims of compatibility and appropriateness of the proposed density. Without further revisions to the SDP, it is difficult to envision the proposed development as a good fit within the existing neighborhood.

Mr. Klauber also questioned the Applicant’s land use consultant on the surrounding area and the inclusion of parkland. The Technical Staff report, Ex. 29, p. 7, did not include the undeveloped public land open space within the surrounding area. The density of land south of the park is half the density of the proposed development. He also questioned the absence of homeowners association documents that insure the perpetual maintenance of the cemetery.

Mr. Klauber recommended that after the hearing examiner’s report is released and considered by the District Council, the matter be remanded back to the Examiner to provide the Applicant an opportunity to add more binding elements.

D. Rebuttal

The Applicant did not present rebuttal testimony but used the opportunity to add binding elements to the SDP. These binding elements addressed parking and setbacks. The revisions provided that parking would include at least three spaces per dwelling unit. The illustrative plan depicts 3.8 spaces per dwelling unit and the required parking is two spaces per dwelling unit. The setbacks have been revised to require 30 feet along Cinnamon Drive, 100 feet along Clopper Road, 30 feet along the northern property line and 20 feet along Mateny Road.

V. ZONING ISSUES

This case presents some unique features not ordinarily found in a zoning request. The request to rezone from commercial to residential use is unusual given the higher value normally accorded commercial property. This “down zoning” from commercial to residential shows the impact of the recession and resulting pressures on a small real estate management firm to protect its land value and secure income from investment property. Also unique is the Opposition’s efforts to retain a commercial use whose owners have lost interest in promoting the use. This situation could produce a significant eyesore and cause adverse impacts on property values in the area.

A floating zone provides a flexible device that allows the District Council to establish a zoning district for a particular land use on a site-specific basis. Individual property owners may seek to have property reclassified to a floating zone by demonstrating that the proposed development will be consistent with the purposes and regulations of the floating zone, compatible with the surrounding area and in the public interest.

A. Purposes of the Zone

The purpose clause of the R-T Zone is found in Code §59-C-1.721 and allows for location of the zone in areas that are designated for R-T Zone densities, or in areas deemed appropriate for residential development at densities allowed under the R-T zones, or where there is a need for buffer or transitional uses. The Applicant contends that it is eligible for consideration under the “appropriate” standard

The Opposition raised the issue of need with respect to the existing shopping center use. The site is located near several existing townhouse communities that have enjoyed the convenience of the shopping center since 1984 and some of whose residents oppose the reclassification. The Opposition contends there is a need to retain the existing center to better serve a changing population that values the stores at the center and to which residents can easily walk.

Need is not a requirement for the location of the RT-15 Zone. Need is sometimes relevant depending on the use. For example, a need requirement must be satisfied for a special exception for a gasoline filling station. However, the need requirement has not been extended to the proposed use. Therefore, need is not a relevant factor to evaluate the appropriateness of the proposal. Even if need was a requirement, the evidence is clear that ample shopping facilities are in the area and the competition from these facilities is one of the reasons the existing center has not done as well as expected.

The “appropriate” standard is usually measured by density, that is, whether or not the proposed density is a good fit in the particular neighborhood. The subject property is located in a section of the County that is appropriate for residential development at the RT-15.0 density. Stone Ridge is directly west of the site and reflects a density of 12.6 dwelling units per acre. Aston Place is southwest of the site and reflects a density of 12.3

dwelling units per acre. Cinnamon Woods, located north and west of the site along Mateny Road, reflects a density of 8.2 dwelling units per acre.

The type of residential unit at the density proposed is entirely consistent with the surrounding area given the commitment to a maximum density limit of 12.3 dwelling units an acre and a provision for a minimum of 45% green space. The site meets the appropriate standard because of its location, relationship to, and compatibility with, surrounding townhouse developments.

The evidence is uncontested that the proposed development meets the development standards of the RT-15 Zone. The design layout, green space, setbacks, density and parking all exceed zoning requirements. The Technical Staff and Planning Board recommendations also confirm that the proposed development would be appropriate for this location and meets the development standards of the RT-15 Zone. Therefore the Applicant has submitted sufficient evidence to satisfy the requirements of the zone.

B. Compatibility

Several members of the Cinnamon Woods community contend that the proposed zoning is not compatible with their community. They argue that their community is more open. While there are differences in density and character, the Applicant has moderated the impact of the differences with binding elements of the SDP relating to green space, setbacks, density, and parking.

By creating an architectural and building mass edge along Clopper Road, the proposed development will function as a buffer and transitional use between the higher intensity uses of the Clopper Road corridor and the adjacent residential communities. As the Staff report observed, it is sound planning policy to wrap the densest residential use

around a commercial activity and phase down density to the perimeter of the surrounding area. The proposed development will function as a buffer between the convenience store and gas station and the nearby residential areas. The proposed development is in scale with the surrounding development as illustrated by the findings of fact.

The proposed development will be compatible with the existing community because the proposed town homes will provide for substantial green space, density limitations, setbacks, and parking. The Technical Staff and Planning Board reviews confirm that the proposed development will be compatible with existing and planned uses in the surrounding area.

C. Public Interest

The public interest evaluation considers master plan conformity, recommendations of the MNCPPC, impact on public facilities and other factors relating to the general health and welfare of County residents.

The proposed zoning is in the public interest and provides immediate and long-term benefits not only to the existing adjacent neighborhood but also the County as a whole. The Planning Board will revisit remaining noise, school, and traffic issues during the subdivision and site plan review stages.

The proposed development provides for a number of benefits. For example, improved and enlarged SWM facilities will benefit the environment. The elimination of the Clopper Road access will permit the increase in SWM facilities and allow for safer more adequate traffic patterns. The replacement of the shopping center will significantly reduce impervious surface and will allow for the introduction of a tree canopy and new green space that promote the environment. The introduction of housing at this location

will allow for more diversity and affordability. The preservation and perpetual maintenance of the historic cemetery will contribute to cultural heritage of the area. Finally, the proposed development is consistent with the master plan and promotes many of its goals and objectives as evidenced by the very detailed analysis by the Technical Staff.

The Opposition contends that the existing shopping center should be retained because it promotes a master plan objective for convenience neighborhood shopping areas, satisfies a community need for accessible shopping for older residents, provides an array of goods and services desired by changing demographic patterns and otherwise unavailable in the area and functions as a Village Center that provides a community meeting place. The Opposition criticized the planning process as too inflexible to properly respond to change in the neighborhood. While the Opposition makes some valid points and the District Council is not required to grant zoning if it is contrary to the public interest, a balancing of the public interest factors appear to weigh in favor of the zoning request. The planning recommendations do not support the Opposition's view. Both the Technical Staff and the Planning Board provided strong, persuasive and unanimous support to approve the rezoning. The evidence of record supports these planning recommendations notwithstanding the Opposition's arguments to the contrary.

The evidence is clear that the zoning is consistent with the 1989 Master Plan, meets the requirements of the zone, is compatible with surrounding uses and will better serve the public interest than retention of the current use.

VI. CONCLUSIONS

Based on the foregoing analysis and after a thorough review of the entire record, the following conclusions are apparent.

1. The application satisfies the requirements and the purpose clause of the RT-15 Zone;
2. The application proposes a form of development that would be compatible with existing and planned land use in the surrounding area; and
3. The requested reclassification to the RT-15 Zone bears sufficient relationship to the public interest to justify its approval.

VII. RECOMMENDATION

I, therefore, recommend that Zoning Application No. G-878, seeking reclassification from the C-1 Zone to the RT-15 Zone of 8.46 acres known as Germantown Park, Lot 685, Subdivision 21, located at 18451 Mateny Road, Germantown, in the 9th Election District, be approved in the amount requested and subject to the specifications and requirements of the final Schematic Development Plan (SDP), Ex. 64 (g);

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

Provided further that, the Applicant submits prior to certification an executed copy of the Declaration of Covenants, Ex. 12, which has been revised to include the most recent binding elements, Ex. 64 (g), and has been filed in the County land records in accordance with Code §59-H-2.54 of the Zoning Ordinance within the aforementioned 10 day period, and a suitable receipt of filing is presented to the Hearing Examiner prior to the certification.

Dated: June 25, 2009

Respectfully submitted,

A handwritten signature in black ink, appearing to read "P. J. Tierney", with a stylized flourish at the end.

Philip J. Tierney
Hearing Examiner

BEFORE THE COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

SITTING AS THE DISTRICT COUNCIL FOR THE MARYLAND-

WASHINGTON REGIONAL DISTRICT IN

MONTGOMERY COUNTY, MARYLAND

Office of Zoning and Administrative Hearings

100 Maryland Avenue, Room 200

Rockville, Maryland 20850

(240) 777-6660

IN THE MATTER OF:

Germantown, LLC, Applicant *

David Fink *

Kevin A. Foster, ASLA, AICP *

James Oltmann, President, *

Cinnamon Woods Home Association *

Steve Traylor, Member *

Cinnamon Woods Home Association *

In Support of Application *

Cindy Bar, Esquire *

Robert Harris, Esquire *

Zoning Application No. G-878

Attorneys for the Applicant *

Martin Klauber *

People's Counsel *

In Support of the Application *

Victoria Bullard-Vinson *

In Opposition to the Application *

Before: Philip J. Tierney, Hearing Examiner

HEARING EXAMINER'S SUPPLEMENTAL REPORT AND RECOMMENDATION

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I. STATEMENT OF THE CASE

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

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

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

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

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

II. FINDINGS AND CONCLUSIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

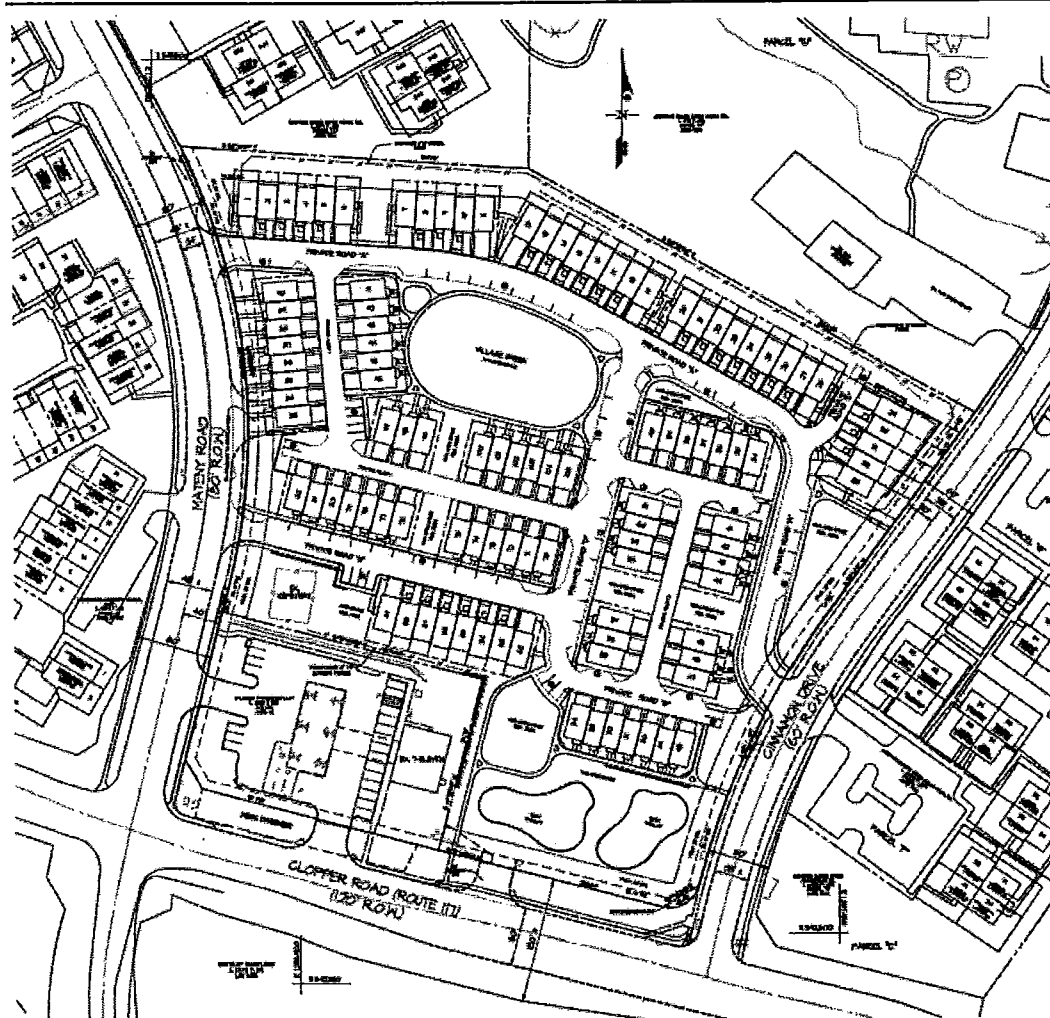
The comparison with existing and proposed development also reveals benefits in terms of increased tree canopy, reduced impervious surface and increased green space. The comparison chart, Ex. 87, shows that tree canopy will increase to 52.4% of the site. Impervious surface will be reduced by 6.0%. The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

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

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

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

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



LEGEND

	PROPOSED CURB & GUTTER
	PROPOSED LIGHT
	PROPOSED SPOT GRADE
	PROPOSED STORM DRAIN, SEWER & WATER
	STEEP SLOPES
	EXISTING TOPOGRAPHY
	PROPOSED TOPOGRAPHY
	EXISTING STRUCTURES
	PROPOSED SIDEWALKS
	WETLANDS/WETLANDS BUFFER
	PROPOSED STRUCTURE

DEVELOPMENT STANDARDS RT-125

	REQUIRED/ALLOWED	PROPOSED
Tract Area	Minimum 40,000 sf (0.92 Ac.)	8.46 Acres
Density	128 DU - (8.8 DU/Ac.) (8.46 Ac. X 128 DU/Ac. = 108 DU, X 122 MPDU Density Density Bonus = 128 DU)	108 DU, (12.41 DU/Ac.)
Moderately Priced Dwelling Units (MPDU)	min. 12.5% of total units up to 18% at max. density	12.5% of total units (14 DU)
Building Setbacks:		
- From any detached dwelling lot or lot classified in a SPD residential zone	30 feet min.	30 feet min.
- From any public right-of-way	25 feet min.	100 feet min. from ROW of Clopper Road 50 feet min. from ROW of Cinnamon Drive 25 feet min. from ROW of Mater Road
- From an adjoining lot:		
- Side (end unit)	10 feet min.	10 feet min.
- Rear	20 feet min.	20 feet min. 30 feet min. from property line adjacent to Cinnamon Road
Building Height		
Main Building	35 feet max.	35 feet max.
Accessory Building	25 feet max.	25 feet max.
Maximum Lot Coverage	55% max.	55% max.
Green Area	min. 30%	min. 30%
Off-street Parking	min. 210 spaces (3.0 spaces / DU)	424 Spaces (4.06 Spaces / DU)
Parking Provided:		
76 Units w/ 2 garage + 2 driveway visitor spaces =		304 Spaces
24 Units w/ 1 garage + 1 driveway space =		36 Spaces
Private on-street + surface visitor parking =		67 Spaces
Total on-site parking proposed (4.06 Spaces / DU)		424 Spaces

GENERAL NOTES

- OWNER/DEVELOPER: GERHANTOWN LLC,
c/o FINANCIAL MANAGEMENT, INC.
4700 BETHESDA AVENUE
BETHESDA, MARYLAND 20814
ATTN: MR. HARC P. SOLOMON & MR. DAVID PINK
PHONE: 301-454-4111
- BOUNDARY SURVEY BY: GUTSCHICK, LITTLE, & NEER, P.A., FEBRUARY, 2006.
- TOPOGRAPHY BY: GUTSCHICK, LITTLE, & NEER, P.A., NOVEMBER, 2007.
- NR/PD BY: GUTSCHICK, LITTLE, & NEER, P.A.
(NR/PD# 42008430; APPROVED: MAY 3, 2008)
- TRAFFIC STUDY BY: KIMLEY-HORN AND ASSOCIATES, INC., 2006
- WATERSHED:
USE CLASS: MIDDLE GREAT SENeca CREEK
CLASS I-P
- DEVELOPMENT PROGRAM: THIS PLAN WILL BE DEVELOPED IN ONE PHASE.
- PROPOSED WATER AND SEWER SERVICE WILL BE PUBLIC. THE EXISTING WATER
AND SEWER CATEGORIES ARE MH, S-1.
- NO KNOWN RARE, THREATENED OR ENDANGERED SPECIES ON SITE.
- NO KNOWN HISTORIC FEATURES ON SITE. THE CRAFT-MESSER FAMILY CEMETERY IS
LOCATED ON THE SITE. (THE CEMETERY WAS REMOVED FROM THE LOCATIONAL
ATLAS AND INDEX OF HISTORIC SITES IN MONTGOMERY COUNTY STATUS IN 1984.)
- THERE IS NO 100-YEAR FLOODPLAIN ON THIS SITE.
- THERE ARE NO KNOWN TREES ON THE SUBJECT PROPERTY THAT ARE COUNTY AND
OR STATE CHAMPION TREES. THERE ARE NO TREES ON THE PROPERTY THAT HAVE
A DBH OF 10% OR MORE OF THE DBH OF THE CURRENT COUNTY AND OR STATE
CHAMPION TREE.
- ALL UTILITIES ARE CONCEPTUAL AND SUBJECT TO CHANGE. SEE APPROPRIATE
APPROVED UTILITY DRAWINGS.

BINDING ELEMENTS

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

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

SITE DATA

- | | |
|---------------------|---------------------------------------|
| 1. EXISTING ZONING: | C-1 |
| 2. PROPOSED ZONING: | RT-12.5 |
| 3. SITE AREA: | 8.46 AC. (LOT 685, PLAT NO. 21254) |
| 4. EXISTING USE: | RETAIL (46,575 SQUARE FEET) |
| 5. PROPOSED USE: | RESIDENTIAL - SINGLE FAMILY TOWNHOUSE |

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

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

F. School capacity for the proposed development

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

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

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

G. The public interest benefits in approving requested land use

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

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

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

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

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

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

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

III. SUMMARY OF HEARING

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

A. Applicant's Case in Chief

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Community Support

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

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

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

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

C. Opposition Testimony

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

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

D. Applicant's Rebuttal

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

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

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

E. People's Counsel Recommendation

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

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

IV. Zoning Issues

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

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

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

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

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

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

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

V. Recommendations

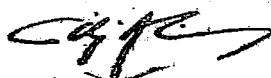
I, therefore, recommend that Zoning Application No. 878, seeking reclassification from the C-1 Zone to the RT-12.5 Zone of 8.46 acres known as Germantown Park, Lot 685, Subdivision 21, located at 18451 Mateny Road, Germantown, in the 9th Election District, be approved in the amount requested and subject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

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

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

Dated: July 15, 2010

Respectfully Submitted,



Philip J. Tierney
Hearing Examiner

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

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

By District Council

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

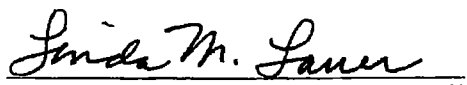
The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District located in Montgomery County, Maryland approves the following resolution:

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

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

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

This is a correct copy of Council action.


Linda M. Lauer, Clerk of the Council

Holland & Knight

ATTACHMENT 2

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June 14, 2010

VIA HAND DELIVERY AND ELECTRONIC MAIL

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

Re: Case No. G-878

Dear Ms. Carrier:

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

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

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

EXHIBIT NO. 96
APPLICATION NO. G-878

Francoise Carrier, Esquire
June 14, 2010
Page 2

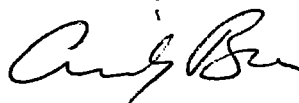
The measures which the Hearing Examiner outlined in his earlier report are still appropriate to address any issues of school capacity in the Cluster. In fact, since the time of the original filing, the County Council funded additional capacity in the CIP in order to bring the Bethesda-Chevy Chase and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

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

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

We appreciate your consideration of our views.

Sincerely,



Cindy Bar

Attachments

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

June 8, 2010

MEMORANDUM

TO: Montgomery County Planning Board

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

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

SUBJECT: FY2011 Growth Policy: Adoption of School Test Results

Recommendation: Adopt FY 2011 School Test Results

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

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

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

Acceptance of School Test Results

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Cluster Area	Projected August 2015 Enrollment	100% MCPSS Program Capacity With CC Adopted FY11-16 CIP	Cluster Percent Utilization in 2015	Growth Policy Test Result Capacity	Cluster Status
Bethesda-Chevy Chase	1,192	1,037	114.9%	Inadequate	School Payment
Montgomery Blair	2,111	2,266	93.2%	Adequate	Open
James Hubert Blake	1,189	1,329	89.5%	Adequate	Open
Winston Churchill	1,433	1,609	89.1%	Adequate	Open
Clarksburg	1,547	2,113	73.2%	Adequate	Open
Damascus	865	954	90.7%	Adequate	Open
Albert Einstein	1,317	1,460	90.2%	Adequate	Open
Galithersburg	1,638	1,751	93.5%	Adequate	Open
Walter Johnson	1,760	1,852	95.0%	Adequate	Open
John F. Kennedy	1,201	1,358	88.6%	Adequate	Open
Col. Zadok Magruder	1,155	1,816	71.5%	Adequate	Open
Richard Montgomery	1,154	986	117.0%	Inadequate	Moratorium at ES Level
Northwest	2,079	1,968	105.6%	Inadequate	School Payment
Northwood	1,152	1,362	84.6%	Adequate	Open
Paint Branch	1,248	1,271	98.2%	Adequate	Open
Poolesville	236	480	49.8%	Adequate	Open
Quince Orchard	1,389	1,648	84.3%	Adequate	Open
Rockville	980	981	99.9%	Adequate	Open
Seneca Valley	1,201	1,464	82.0%	Adequate	Open
Sherwood	1,127	1,476	76.4%	Adequate	Open
Springbrook	1,162	1,230	94.5%	Adequate	Open
Watkins Mill	1,232	1,251	98.5%	Adequate	Open
Wheaton	1,549	1,646	94.1%	Adequate	Open
Wall Whitman	1,347	1,260	107.8%	Inadequate	School Payment
Thomas S. Wootton	1,516	1,606	94.4%	Adequate	Open

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

Cluster Area	Projected August 2015 Enrollment	100% MCPSS Program Capacity With CC Adopted FY11-16 CIP	Cluster Percent Utilization in 2015	Growth Policy Test Result Capacity	Cluster Status
Bethesda-Chevy Chase	1,723	1,656	104.0%	Adequate	Open
Montgomery Blair	2,515	2,839	88.6%	Adequate	Open
James Hubert Blake	1,787	1,724	103.7%	Adequate	Open
Winston Churchill	1,907	1,928	98.9%	Adequate	Open
Clarksburg	1,979	1,971	100.4%	Adequate	Open
Damascus	1,310	1,532	85.5%	Adequate	Open
Albert Einstein	1,593	1,570	101.5%	Adequate	Open
Galithersburg	1,948	2,284	85.3%	Adequate	Open
Walter Johnson	2,173	2,230	97.4%	Adequate	Open
John F. Kennedy	1,557	1,847	84.3%	Adequate	Open
Col. Zadok Magruder	1,678	1,919	87.4%	Adequate	Open
Richard Montgomery	1,848	1,987	94.3%	Adequate	Moratorium at ES Level
Northwest	2,200	2,151	102.3%	Adequate	Open
Northwood	1,439	1,481	97.2%	Adequate	Open
Paint Branch	1,801	1,899	94.8%	Adequate	Open
Poolesville	1,087	1,107	98.2%	Adequate	Open
Quince Orchard	1,787	1,741	101.5%	Adequate	Open
Rockville	1,334	1,539	86.7%	Adequate	Open
Seneca Valley	1,334	1,481	89.5%	Adequate	Open
Sherwood	1,789	2,004	89.3%	Adequate	Open
Springbrook	1,600	2,090	76.8%	Adequate	Open
Watkins Mill	1,615	1,885	85.7%	Adequate	Open
Wheaton	1,284	1,416	90.7%	Adequate	Open
Wall Whitman	1,830	1,873	97.7%	Adequate	Open
Thomas S. Wootton	2,235	2,073	107.8%	Inadequate	School Payment

Summary of School Test for FY 2011

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

School Test Level	Description	Cluster Outcomes by Level		
		Elementary Inadequate	Middle Inadequate	High Inadequate
Clusters over 105% utilization School facility payment required in inadequate clusters to proceed.	5-year test Effective July 1, 2010 Test year 2015-16	B-CC (108.6%) Northwest (119.1%) Northwood (118.8%) Paint Branch (105.5%) Quince Orchard (111.7%) Rockville (114.2%)	B-CC (114.9%) Northwest (105.6%) Whitman (107.8%)	Wootton (107.8%)
Clusters over 120% utilization Montgomery requires a system facility payment to proceed	5-year test Effective July 1, 2010 Test year 2015-16	Richard Montgomery (120.5%)		

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

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

Public School Facilities

S1 Geographic Areas

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

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

S2 Grade Levels

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

S3 Determination of Adequacy

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

S4 Moratorium on Residential Subdivision Approvals

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

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

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

S5 Imposition of School Facilities Payment

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

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

S6 Senior Housing

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

S7 De Minimis Development

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

S8 Development District Participants

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

S9 Allocation of Staging Ceiling to Preliminary Plans of Subdivision

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

S9.1 Assignment of queue date

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

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

S9.2 Calculation of available staging ceiling capacity

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

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

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

S9.3 Applicability of School Facilities Payment

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

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

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

S9.4 Expiration of queue date

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

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

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



Item #10

January 7, 2010

MEMORANDUM

TO: Montgomery County Planning Board

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

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

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

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

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

Background:

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

The annual school test review process has three milestone dates:

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

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

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

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

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

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

Acceptance of Mid-cycle FY2010 School Test Results:

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

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

Preview of FY 2011 School Capacity Conditions

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

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

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

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

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

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

Elementary School Enrollment and MCPS Capacity @ 120%

Cluster Area	Projected August 2014 Enrollment	100% MCPS Program Capacity With CC Adopted FY09-14 Amended CIP and ES Solution PFDs	120% MCPS Program Capacity With CC Adopted FY09-14 Amended CIP	Capacity Remaining @ 120% MCPS capacity	Growth Policy 120% Test Result Capacity Is:	Cluster Moratorium?
B- CC	3,588	3,077	3,892	104	Adequate	No
Blair	3,932	4,282	5,138	1,206	Adequate	No
Blake	2,462	2,556	3,067	605	Adequate	No
Churchill	2,552	2,784	3,341	789	Adequate	No
Clarksburg	3,712	3,303	3,984	252	Adequate	No
Damascus	1,889	2,105	2,526	637	Adequate	No
Einstein	2,487	2,587	3,104	617	Adequate	No
Gallthersburg	3,855	3,932	4,718	863	Adequate	No
Waller Johnson	3,649	3,444	4,133	484	Adequate	No
Kennedy	2,601	2,593	3,112	511	Adequate	No
Magruder	2,610	2,493	2,992	382	Adequate	No
R. Montgomery	2,586	2,171	2,605	19	Adequate	No
Northwest	4,178	3,852	4,394	216	Adequate	No
Northwood	2,968	2,657	3,188	220	Adequate	No
Paint Branch	2,452	2,309	2,771	319	Adequate	No
Poolesville	571	754	905	334	Adequate	No
Quince Orchard	2,889	2,691	3,229	340	Adequate	No
Rockville	2,570	2,237	2,684	114	Adequate	No
Seneca Valley	2,296	1,993	2,392	96	Adequate	No
Sherwood	2,136	2,416	2,889	763	Adequate	No
Springbrook	2,894	3,200	3,840	946	Adequate	No
Watkins Mill	2,561	2,807	3,368	807	Adequate	No
Wheaton	2,816	2,407	2,888	72	Adequate	No
Whitman	2,272	2,061	2,473	201	Adequate	No
Woolton	2,910	3,072	3,686	776	Adequate	No

Middle School Enrollment and MCPS Capacity @ 120%

Cluster Area	Projected August 2014 Enrollment	100% MCPS Program Capacity With CC Adopted FY09-14 Amended CIP	120% MCPS Program Capacity With CC Adopted FY09-14 Amended CIP	Capacity Remaining @ 120% MCPS capacity	Growth Policy 120% Test Result Capacity Is:	Cluster Moratorium?
B- CC	1,187	1,037	1,244	57	Adequate	No
Blair	2,015	2,261	2,713	698	Adequate	No
Blake	1,165	1,332	1,598	433	Adequate	No
Churchill	1,458	1,550	1,850	402	Adequate	No
Clarksburg	1,508	1,138	1,366	-142	Inadequate	Yes
Damascus	908	941	1,129	221	Adequate	No
Einstein	1,209	1,461	1,753	544	Adequate	No
Gallthersburg	1,583	1,771	2,125	542	Adequate	No
Waller Johnson	1,875	1,863	2,236	561	Adequate	No
Kennedy	1,248	1,384	1,661	415	Adequate	No
Magruder	1,110	1,607	1,828	818	Adequate	No
R. Montgomery	1,123	973	1,168	45	Adequate	No
Northwest	2,036	1,969	2,359	323	Adequate	No
Northwood	1,136	1,391	1,689	533	Adequate	No
Paint Branch	1,271	1,308	1,570	299	Adequate	No
Poolesville	284	472	566	282	Adequate	No
Quince Orchard	1,300	1,648	1,978	678	Adequate	No
Rockville	898	972	1,186	288	Adequate	No
Seneca Valley	1,225	1,471	1,765	536	Adequate	No
Sherwood	1,202	1,475	1,770	568	Adequate	No
Springbrook	1,068	1,218	1,459	391	Adequate	No
Watkins Mill	1,074	1,247	1,496	422	Adequate	No
Wheaton	1,546	1,646	1,975	429	Adequate	No
Whitman	1,208	1,267	1,520	312	Adequate	No
Woolton	1,407	1,598	1,918	511	Adequate	No

High School Enrollment and MCPS Capacity @ 120%

Cluster Area	Projected August 2014 Enrollment	100% MCPS Program Capacity With CC Adopted FY09-14 Amended CIP	120% MCPS Program Capacity With CC Adopted FY09-14 Amended CIP	Capacity Remaining @ 120% MCPS capacity	Growth Policy 120% Test Result Capacity Is:	Cluster Moratorium?
B- CC	1,736	1,656	1,987	252	Adequate	No
Blair	2,327	2,876	3,451	1,124	Adequate	No
Blake	1,700	1,715	2,058	358	Adequate	No
Churchill	1,928	1,972	2,366	438	Adequate	No
Clarksburg	1,844	1,593	1,912	68	Adequate	No
Damascus	1,291	1,589	1,907	616	Adequate	No
Einstein	1,553	1,613	1,936	383	Adequate	No
Gallthersburg	1,806	2,067	2,480	574	Adequate	No
Waller Johnson	2,087	2,275	2,730	643	Adequate	No
Kennedy	1,565	1,838	2,206	641	Adequate	No
Magruder	1,606	1,958	2,350	744	Adequate	No
R. Montgomery	1,969	1,949	2,339	370	Adequate	No
Northwest	2,173	2,151	2,581	408	Adequate	No
Northwood	1,474	1,517	1,820	346	Adequate	No
Paint Branch	1,956	1,899	2,279	323	Adequate	No
Poolesville	1,054	1,107	1,328	274	Adequate	No
Quince Orchard	1,788	1,774	2,129	341	Adequate	No
Rockville	1,263	1,584	1,901	638	Adequate	No
Seneca Valley	1,320	1,478	1,774	454	Adequate	No
Sherwood	1,790	2,022	2,426	636	Adequate	No
Springbrook	1,572	2,095	2,514	942	Adequate	No
Watkins Mill	1,438	1,913	2,296	858	Adequate	No
Wheaton	1,222	1,398	1,678	456	Adequate	No
Whitman	1,650	1,891	2,269	619	Adequate	No
Woolton	2,170	2,086	2,503	333	Adequate	No

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

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

Elementary School Enrollment and MCPS Capacity @ 105%

Cluster Area	Projected August 2014 Enrollment	100% MCPS Program Capacity With CC Adopted FY09-14 Amended CP and ES Solution PDFs	105% MCPS Program Capacity With CC Adopted FY09-14 Amended CP	Capacity Remaining @ 105% MCPS capacity	Growth Policy 105% Test Result Capacity Is:	School Facility Payment Required To Proceed?
B- CC	3,588	3,077	3,231	-357	Inadequate	Yes
Blair	3,932	4,282	4,496	564	Adequate	No
Blake	2,462	2,556	2,684	222	Adequate	No
Churchill	2,552	2,784	2,923	371	Adequate	No
Clarksburg	3,712	3,303	3,468	-244	Inadequate	Moratorium
Damascus	1,889	2,105	2,210	321	Adequate	No
Einstein	2,487	2,587	2,716	229	Adequate	No
Galtersburg	3,855	3,932	4,129	274	Adequate	No
Walter Johnson	3,649	3,444	3,616	-33	Inadequate	Yes
Kennedy	2,601	2,593	2,723	122	Adequate	No
Magnuder	2,610	2,493	2,618	8	Adequate	No
R. Montgomery	2,586	2,171	2,280	-306	Inadequate	Yes
Northwest	4,178	3,662	3,845	-333	Inadequate	Yes
Northwood	2,968	2,657	2,790	-178	Inadequate	Yes
Paint Branch	2,452	2,309	2,424	-28	Inadequate	Yes
Poolesville	571	754	792	221	Adequate	No
Quince Orchard	2,889	2,691	2,826	-63	Inadequate	Yes
Rockville	2,570	2,237	2,349	-221	Inadequate	Yes
Seneca Valley	2,296	1,993	2,093	-203	Inadequate	Yes
Sherwood	2,136	2,416	2,537	401	Adequate	No
Springbrook	2,894	3,200	3,360	466	Adequate	No
Walkins Mill	2,561	2,807	2,947	386	Adequate	No
Wheaton	2,816	2,407	2,527	-289	Inadequate	Yes
Whitman	2,272	2,061	2,164	-108	Inadequate	Yes
Wootton	2,910	3,072	3,226	316	Adequate	No

Middle School Enrollment and MCPS Capacity @ 105%

Cluster Area	Projected August 2014 Enrollment	100% MCPS Program Capacity With CC Adopted FY09-14 Amended CP	105% MCPS Program Capacity With CC Adopted FY09-14 Amended CP	Capacity Remaining @ 105% MCPS capacity	Growth Policy 105% Test Result Capacity Is:	School Facility Payment Required To Proceed?
B- CC	1,187	1,037	1,089	-98	Inadequate	Yes
Blair	2,015	2,261	2,374	359	Adequate	No
Blake	1,165	1,332	1,399	234	Adequate	No
Churchill	1,458	1,550	1,628	170	Adequate	No
Clarksburg	1,508	1,138	1,195	-313	Inadequate	Moratorium
Damascus	908	941	988	80	Adequate	No
Einstein	1,209	1,461	1,534	325	Adequate	No
Galtersburg	1,583	1,771	1,880	277	Adequate	No
Walter Johnson	1,675	1,853	1,956	281	Adequate	No
Kennedy	1,246	1,384	1,453	207	Adequate	No
Magnuder	1,110	1,807	1,687	-577	Inadequate	Yes
R. Montgomery	1,123	973	1,022	-101	Inadequate	Yes
Northwest	2,036	1,966	2,084	28	Adequate	No
Northwood	1,136	1,391	1,461	325	Adequate	No
Paint Branch	1,271	1,308	1,373	102	Adequate	No
Poolesville	284	472	496	212	Adequate	No
Quince Orchard	1,300	1,648	1,730	430	Adequate	No
Rockville	896	972	1,021	123	Adequate	No
Seneca Valley	1,229	1,471	1,545	316	Adequate	No
Sherwood	1,202	1,475	1,549	347	Adequate	No
Springbrook	1,068	1,216	1,277	209	Adequate	No
Walkins Mill	1,074	1,247	1,309	235	Adequate	No
Wheaton	1,546	1,646	1,728	182	Adequate	No
Whitman	1,208	1,267	1,330	122	Adequate	No
Wootton	1,407	1,598	1,678	271	Adequate	No

High School Enrollment and MCPS Capacity @ 105%

Cluster Area	Projected August 2014 Enrollment	100% MCPS Program Capacity With CC Adopted FY09-14 Amended CP	105% MCPS Program Capacity With CC Adopted FY09-14 Amended CP	Capacity Remaining @ 105% MCPS capacity	Growth Policy 105% Test Result Capacity Is:	School Facility Payment Required To Proceed?
B- CC	1,735	1,856	1,739	-4	Adequate	No
Blair	2,327	2,876	3,020	693	Adequate	No
Blake	1,700	1,715	1,801	101	Adequate	No
Churchill	1,828	1,972	2,071	143	Adequate	No
Clarksburg	1,844	1,593	1,673	-171	Inadequate	Moratorium
Damascus	1,291	1,589	1,668	377	Adequate	No
Einstein	1,553	1,913	1,994	141	Adequate	No
Galtersburg	1,906	2,067	2,170	264	Adequate	No
Walter Johnson	2,087	2,275	2,389	302	Adequate	No
Kennedy	1,565	1,838	1,930	365	Adequate	No
Magnuder	1,606	1,958	2,058	450	Adequate	No
R. Montgomery	1,869	1,949	2,046	77	Adequate	No
Northwest	2,173	2,151	2,259	86	Adequate	No
Northwood	1,474	1,517	1,593	119	Adequate	No
Paint Branch	1,956	1,899	1,994	38	Adequate	No
Poolesville	1,054	1,107	1,162	108	Adequate	No
Quince Orchard	1,788	1,774	1,863	75	Adequate	No
Rockville	1,263	1,584	1,663	400	Adequate	No
Seneca Valley	1,320	1,478	1,552	232	Adequate	No
Sherwood	1,790	2,022	2,123	333	Adequate	No
Springbrook	1,572	2,095	2,200	628	Adequate	No
Walkins Mill	1,438	1,913	2,009	571	Adequate	No
Wheaton	1,222	1,398	1,468	246	Adequate	No
Whitman	1,650	1,891	1,986	336	Adequate	No
Wootton	2,170	2,086	2,190	20	Adequate	No

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

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

* - with Board acceptance of staff recommendation

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

Public School Facilities

S1 Geographic Areas

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

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

S2 Grade Levels

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

S3 Determination of Adequacy

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

S4 Moratorium on Residential Subdivision Approvals

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

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

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

S5 Imposition of School Facilities Payment

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

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

S6 Senior Housing

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

S7 De Minimis Development

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

S8 Development District Participants

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

S9 Allocation of Staging Ceiling to Preliminary Plans of Subdivision

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

S9.1 Assignment of queue date

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

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

S9.2 Calculation of available staging ceiling capacity

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

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

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

S9.3 Applicability of School Facilities Payment

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

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

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

S9.4 Expiration of queue date

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

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

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



June 15, 2010

MEMORANDUM

TO: Montgomery County Planning Board

VIA: Richard Debose, Chief, Research & Technology Center

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

SUBJECT: Amendment to the FY2011 School Test Results

Amendment:

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

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

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

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

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

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

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

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

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

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

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

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

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

Summary of School Test for FY 2011

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

School Test Level	Description	Cluster Outcomes by Level		
		Elementary Inadequate	Middle Inadequate	High Inadequate
Clusters over 105% utilization	5-year test	B-CC (108.6%)	B-CC (114.8%)	Wootton (107.8%)
School facility payment required in inadequate clusters to proceed.	Effective July 1, 2010	Richard Montgomery (116.5%)	Richard Montgomery (117.0%)	
		Northwest (119.1%)	Northwest (105.6%)	
		Northwood (118.8%)	Whitman (107.8%)	
		Paint Branch (105.5%)		
		Quince Orchard (111.7%)		
	Test year 2015-16	Rockville (114.2%)		
Clusters over 120% utilization	5-year test			
Moratorium required in clusters that are inadequate.	Effective July 1, 2010			
	Test year 2015-16			

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



June 15, 2010

MEMORANDUM

TO: Montgomery County Planning Board

VIA: Richard Debose, Chief, Research & Technology Center

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

SUBJECT: Amendment to the FY2011 School Test Results

Amendment:

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

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

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

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

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

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

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

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

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

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

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

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

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

Summary of School Test for FY 2011

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

School Test Level	Description	Cluster Outcomes by Level		
		Elementary inadequate	Middle inadequate	High inadequate
<u>Clusters over 105% utilization</u> School facility payment required in inadequate clusters to proceed.	5-year test Effective July 1, 2010 Test year 2015-16	B-CC (108.6%) Richard Montgomery (116.5%) Northwest (119.1%) Northwood (116.8%) Paint Branch (105.5%) Quince Orchard (111.7%) Rockville (114.2%)	B-CC (114.9%) Richard Montgomery (117.0%) Northwest (105.6%) Whitman (107.8%)	Wootton (107.8%)
<u>Clusters over 120% utilization</u> Moratorium required in clusters that are inadequate	5-year test Effective July 1, 2010 Test year 2015-16			

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