

**DISTRICT COUNCIL FOR PRINCE GEORGE'S COUNTY, MARYLAND
OFFICE OF THE ZONING HEARING EXAMINER**

ZONING MAP AMENDMENT

A-9802-C-01

and

A-9803-C-01

DECISION

Application:	Amendment of Conditions
Applicant:	Mid-Atlantic Builders (Kenwood Village)
Opposition:	N/A
Hearing Date:	November 2, 2022
Hearing Examiner:	Joyce B. Nichols
Recommendation:	Approval w/conditions

NATURE OF REQUEST

- (1) A-9802-C-01 and A-9803-C-01 is a request for the Amendment of Conditions (Zoning Ordinances 50-1992 and 51-1992) deleting Condition 4 and amending conditions of approval of A-9802-C-01 and A-9803-C-01 which rezoned the subject property from the R-E (Residential Estate) to the R-S (Residential Suburban Development) (1.6 2.6 dua) Zone. The approvals are subject to the same conditions and considerations. to
- (2) Mid-Atlantic Builders is the Applicant for the Subject Property containing approximately 63.10 acres of land, located on the south side of White House Road, approximately 1,300 feet east of Ritchie Marlboro Road, and identified as Tax Map 75, Grids A-4 and B-4, and Tax Map 83, Grids A-1 and B-1, and recorded among the Land Records of Prince George's County in Plat Book SJH 242, Plats No. 50-56, in Upper Marlboro, Maryland.
- (3) The frontage and access of the Subject Property is from White House Road. The Property is undeveloped, wooded, and contains numerous environmental features.
- (4) No one appeared in opposition to the request.
- (5) The record of the original Application A-9802-C and A-9803-C has been made a part of the record in this case and is incorporated herein by reference.

FINDINGS OF FACT

- (1) A-9802-C-01 and A-9803-C-01 were approved subject to the following Conditions relevant to the instant Amendment request:

4. The location and width of the internal trails proposed shall be evaluated and determined by the Trails Coordinator prior to Phase II approval.
7. The minimum lot size shall be 6,000 square feet in Development Envelopes A through D, and 10,000 square feet in Development Envelope E.
8. The 50-foot buffers along the east and south boundaries are labeled as non-disturbance buffers and shall include a 6-foot-high black vinyl-clad chain link fence, extending to the east side of Harry S Truman Drive.
13. The minimum 50-foot non-disturbance buffers along the east and south boundaries shall apply along both sides of all streams and shall be expanded to include the 100-year floodplain, wetlands, steep slopes, and soils with erodibility factors of .35 and greater. Such buffers shall be approved by the Natural Resources Division prior to Specific Design Plan, Phase III. Additional screen plantings may be required to provide adequate screening, to be approved by the Urban Design Section.

The original Conditions will be renumbered with the deletion of Condition 4. The revised conditions pursuant to the Applicants request are, as follows:

4. (Applicant is requesting this Condition be deleted).
6. The minimum lot size shall be 4,200 square feet in all development envelopes.
7. A 50-foot buffer shall be provided along the eastern property boundary and shall include a 6-foot-high black vinyl-clad chain link fence (or approved alternative), extending to the south side of White House Road. The only disturbance to this buffer shall be for the construction of stormwater management facilities located with 550 feet from the right-of-way of White House Road. A 25-foot landscaped buffer shall be provided along the southern property boundary and provide the number of plant units required for a "B" buffer yard, as required by the *2010 Prince George's County Landscape Manual*, and shall include a 6-foot-high black vinyl-clad chain link fence (or approved alternative), extending to the east side of Harry S Truman Drive.
12. A 75-foot non-disturbance buffer shall apply along both sides of all streams and shall be expanded to include the 100-year floodplain, wetlands, steep slopes, and soils with erodibility factors of .35 and greater. Such buffers shall be approved by the Environmental Planning Section prior to Specific Design Plan, Phase III. Additional screen plantings may be required to provide adequate screening, to be approved by the Urban Design Section.

Applicant's Request

(2) The proposed Basic Plan Amendment is being requested to allow for the resubdivision of the Property into as many as 124 smaller lots in order to accommodate a new narrow-frontage detached single-family dwelling type, which will provide a more affordable housing type than currently available detached dwellings, but a larger and more commodious dwelling type than attached townhouses. The appropriateness of this new dwelling type is described in detail on pages 7-9 of the Applicant's amended Statement of Justification (August 8, 2022).

While the original Basic Plan approved allowed for the density which will be proposed by the new development, three (3) of the 14 existing Conditions which prevent the creation of the lots required to accommodate this new dwelling type are proposed to be amended, and one Condition is requested to be deleted. Similarly, minor changes in the Basic Plan layout are requested to accommodate the new development and reflect the proposed amendments to the Conditions.

LAW APPLICABLE

Amendment of Conditions

(1) An Application for the Amendment of Conditions attached to a piecemeal Zoning Map Amendment may be approved in accordance with §27-135(c), which provides, in pertinent part, as follows:

(c) The District Council may (for good cause) amend any condition imposed or site plan approved (excluding Comprehensive Design Zone Basic Plans or R-P-C Zone Official Plans) upon the request of the applicant without requiring a new application to be filed, if the amendment does not constitute an enlargement or extension.

(1) In the case of an amendment of a condition (imposed as part of the approval of the zoning case), the request shall be directed, in writing, to the District Council, and shall state the reasons therefore. Before the Council amends a condition, the Zoning Hearing Examiner shall hold a public hearing on the request, in accordance with Section 27-129, and shall notify all parties of record (including all parties of record on the original application and any amendments thereto) in the same manner as required for an original application. The Planning Board shall post a sign on the subject property, setting forth the date, time, and place of the hearing, in the same manner as required for an original application. After the close of the hearing record, the Zoning Hearing Examiner shall file a written recommendation with the District Council. Any person of record may appeal the commendation of the Zoning Hearing Examiner within fifteen (15) days of the filing of the Zoning Hearing Examiner's decision with the District Council. If appealed, all persons of record may testify before the District Council. Persons arguing shall adhere to the District Council's Rules of

Procedure, and argument shall be limited to thirty (30) minutes for each side, and to the record of the hearing.

Good Cause

(2) The District Council may grant Applicant's request if it finds "good cause" to do so. The Zoning Ordinance does not define "good cause" so we must look to court opinions for guidance.

(3) In Kay Construction Company v. County Council, 227 Md. 479, 177 A.2 694 (1962), the Court of Appeals of Maryland considered the definition of "good cause" where a Council Resolution was reconsidered upon the resignation of a Councilmember and reversed allegedly for "good cause shown." The Court held that "mere reargument based on the evidence originally presented to and accepted by the Council" is not good cause. (277 Md. at 488) The Court of Appeals reliance on a prior decision (Zoning Appeals Board v. McKinney, 174 Md. 551, 199 A.540(1938)), did note that in the absence or presence of a statutory requirement, the administrative body has the right to correct errors in its decisions caused by fraud, surprise, mistake, or inadvertence. More recently the Court of Appeals has held that the determination whether "good cause" exists to allow the waiver of a condition precedent is left to the discretion of the trier of fact and will only be reversed where no reasonable person would take the view adopted. Rios v. Montgomery County, 386 M. 14, 121 (2005)

CONCLUSIONS OF LAW

Conformance with §27-197(c)(7)

(1) Pursuant to Section 27-197(c)(7) of the Prince George's County Code, in approving an amendment to a Basic Plan where no change in land area or increase in land use density or intensity is involved, the District Council shall find that the requirements of Section 27-195(b) for the original approval of a Basic Plan have been met.

The requirements of Section 27-195(b) are as follows:

(1) *Prior to the approval of the application and the Basic Plan, the applicant shall demonstrate, to the satisfaction of the District Council, that the entire development meets the following criteria:*

(A) *The proposed Basic Plan shall either conform to;*

(i) *the specific recommendation of a General Plan Map, Area Master Plan map; or urban renewal plan map; or the principles and guidelines of the plan text which address the design and physical development of the property, the public facilities necessary to serve*

- the proposed development, and the impact which the development may have on the environment and surrounding properties;*
- (ii) The principles and guidelines described in the Plan (including the text) with respect to land use, the number of dwelling units, intensity of nonresidential building and the location of land uses; or*
 - (iii) The regulations applicable to land zoned R-S and developed with uses permitted in the E-I-A Zone as authorized pursuant to Section 27-515(b) of this Code.*
- (B) The economic analysis submitted for a proposed retail commercial area adequately justifies an area of the size and scope shown on the Basic Plan;*
- (C) Transportation facilities (including streets and public transit)*
- (i) which are existing,*
 - (ii) which are under construction, or*
 - (iii) for which one hundred percent (100%) of the construction funds are allocated within the adopted County Capital Improvement Program, or will be provided by the applicant, will be adequate to carry the anticipated traffic generated by the development based on the maximum proposed density. The uses proposed will not generate traffic which would lower the level of service anticipated by the land use and circulation systems shown on the approved General or Area Master Plans, or urban renewal plans;*
- (D) Other existing or planned private and public facilities which are existing, under construction, or for which construction funds are contained in the first six (6) years of the adopted County Capital Improvement Program (such as schools, recreation areas, water and sewerage systems, libraries, and fire stations) will be adequate for the uses proposed;*
- (E) Environmental relationships reflect compatibility between the proposed general land use types, or if identified, the specific land use types, and surrounding land uses, so as to promote the*

health, safety, and welfare of the present and future inhabitants of the Regional District.”

(2) Notwithstanding subparagraphs (C) and (D), above, where the Application anticipates a construction schedule of more than six (6) years (Section 27-179), public facilities (existing or scheduled for construction within the first six (6) years) will be adequate to serve the development proposed to occur within the first six (6) years. The Council shall also find that public facilities probably will be adequately supplied for the remainder of the project. In considering the probability of future public facilities construction, the Council may consider such things as existing plans for construction, budgetary constraints on providing public facilities, the public interest and public need for the particular development, the relationship of the development to public transportation, or any other matter that indicates that public or private funds will likely be expended for the necessary facilities.

(3) In the case of an L-A-C Zone, the Applicant shall demonstrate to the satisfaction of the District Council that any commercial development proposed to serve a specific community, village, or neighborhood is either:

- (A) *Consistent with the General Plan, an Area Master Plan, or a public urban renewal plan; or*
- (B) *No larger than needed to serve existing and proposed residential development within the community, village, or neighborhood.*

All of the applicable criteria are met by the proposed amendments:

- (C) *The proposed Basic Plan shall either conform to:*
 - (i) *the specific recommendation of a General Plan Map, Area Master Plan map; or urban renewal plan map; or the principles and guidelines of the plan text which address the design and physical development of the property, the public facilities necessary to serve the proposed development, and the impact which the development may have on the environment and surrounding properties; or*
 - (ii) *The principles and guidelines described in the Plan (including the text) with respect to land use, the number of dwelling units, intensity of nonresidential building and the location of land uses; or*
 - (iii) *The regulations applicable to land zoned R-S and developed with uses permitted in the E-I-A Zone as authorized pursuant to Section 27-515(b) of this Code.*

The Kenwood Village development meets criterion (A) by virtue of its conformance with the land use recommendation of the Master Plan Map, which provides for Residential Low land use. The General Plan defines “Residential Low” land use as “Residential Areas up to 3.5 dwelling units per acre;” the approved Basic Plan provided for a density of up to 2.18 dwelling units per acre (or 126 units) in accordance with its former R-S (1.6-2.6) zoning.

This conformance with the specific recommendations of the Master Plan Map is sufficient to meet the criterion of 27-195(b)(1)(A), as meeting any one of the three sub-criteria is sufficient to satisfy the criterion.

(B) The economic analysis submitted for a proposed retail commercial area adequately justifies an area of the size and scope shown on the Basic Plan;

No retail commercial area is proposed by this Application.

(C) Transportation facilities (including streets and public transit) (i) which are existing, (ii) which are under construction, or (iii) for which one hundred percent (100%) of the construction funds are allocated within the adopted County Capital Improvement Program, or will be provided by the applicant, will be adequate to carry the anticipated traffic generated by the development based on the maximum proposed density. The uses proposed will not generate traffic which would lower the level of service anticipated by the land use and circulation systems shown on the approved General or Area Master Plans, or urban renewal plans;

The conformance of the proposed amendments to this criterion for approval have been fully addressed by Mr. Mike Lenhart, transportation expert. (T.p. 50-59)

(D) Other existing or planned private and public facilities which are existing, under construction, or for which construction funds are contained in the first six (6) years of the adopted County Capital Improvement Program (such as schools, recreation areas, water and sewerage systems, libraries and fire stations) will be adequate for the uses proposed;

The Technical Staff of the Countywide Planning Section found in their referral that the police, fire and rescue public facilities would be evaluated at the time of Preliminary Plan (though the most recent police response times would have been satisfactory), and that school capacity would similarly be evaluated at the time of Preliminary Plan (Arrowhead Elementary, Kettering Middle and Largo High schools were recently all well under their enrollment capacity, and further that school adequacy is satisfied by the payment of a development surcharge). They note that the area is

served by the Largo-Kettering Branch Library, and further found that the water and sewer category is sufficient evidence of the availability of planned water and sewerage systems.¹

(E) Environmental relationships reflect compatibility between the proposed general land use types, or if identified, the specific land use types, and surrounding land uses, so as to promote the health, safety, and welfare of the present and future inhabitants of the Regional District.

The site of Kenwood Village is located in close proximity to an existing single-family detached development in the RSF-95 (former R-80) Zone on the north side of White House Road which is of very comparable density to that which is proposed. The proposed housing will further be buffered by a wide area of preserved wooded stream valley along the south side of White House Road which will screen the proposed development from view from the north.

The lands to the east will be screened by a buffer, *infra*.

The lands to the west will be buffered from the proposed development by the park which was previously dedicated to MNCPPC and by the width of the relocated Harry S Truman Drive right-of-way.

The farms to the south will be screened by a buffer on the Subject Property, as well as by a new gas right-of-way and a narrow strip of land to the north of it.

More broadly, the recent development around the new interchange of Ritchie-Marlboro Road and the Capital Beltway, including Westphalia Row, Sansbury Crossing and the platted but as-yet undeveloped townhouses on the Greater Morning Star Apostolic Ministries church site make the new housing type proposed for Kenwood Village fit much better into the broader neighborhood character than it would have at the time of the Basic Plan's initial approval in 1992.

The requested amendments will at a minimum, maintain the compatibility between the proposed land use types and the surrounding land uses which existed in the original approval, will better reflect the changes in the character of the neighborhood which have occurred since 1992.

2. *Notwithstanding subparagraphs (C) and (D), above, where the application anticipates a construction schedule of more than six (6) years (Section 27-179), public facilities (existing or scheduled for construction within the first six (6) years) will be adequate to serve the development proposed to occur within the first six (6) years. The Council shall also find that public facilities probably will be adequately supplied for the remainder of the project. In considering the probability of future*

¹ Memorandum, Elena Perry to Dominique Lockhart, August 3, 2022; pp. 69-70 of 87 in the backup material to the Technical Staff Report.

public facilities construction, the Council may consider such things as existing plans for construction, budgetary constraints on providing public facilities, the public interest and public need for the particular development, the relationship of the development to public transportation, or any other matter that indicates that public or private funds will likely be expended for the necessary facilities.

The Kenwood Village project is not anticipated to have a construction schedule of more than 6 years.

3. *In the case of an L-A-C Zone, the applicant shall demonstrate to the satisfaction of the District Council that any commercial development proposed to serve a specific community, village, or neighborhood is either:*
 - A. *Consistent with the General Plan, an Area Master Plan, or a public urban renewal plan; or*
 - B. *No larger than needed to serve existing and proposed residential development within the community, village, or neighborhood.*

No L-A-C Zone is proposed by the subject Application.

The requested amendments will conform to the findings required by Section 27-195(b) for approval of an initial Application, and by extension to the findings required by Section 27-197(c) for approval of a major amendment requiring the same findings as those required for an initial Application.

Conformance with the Purposes of the R-S Zone

(2) Section 27-511(a) establishes seven Purposes of the R-S Zone. Compliance of the subject Application with these Purposes is as follows:

(1) *Establish (in the public interest) a plan implementation Zone, in which (among other things):*

(A) *Permissible residential density is dependent upon providing public benefit features and related density increment factors;*

(B) *The location of the Zone must be in accordance with the adopted and approved General Plan, Master Plan, Sector Plan, public urban renewal plan, or Sectional Map Amendment Zoning Change; and*

(C) *Applicable regulations are satisfied for uses authorized pursuant to Section 27-515(b) of this Code.*

This Purpose addresses the establishment of the R-S Zone as a zone in which achievable residential density of a proposed development is related to the provision of public benefit features. The R-S Zone, like all Comprehensive Design Zones, is a Plan implementation zone, such that the application of the zone to a tract of land must be in accordance with the adopted and approved General Plan, Master Plan, special purpose Plans or a Sectional Map Amendment and to provide for employment and institutional uses if certain locational criteria and other regulations are met.

As the Subject Property is in accordance with the land use recommendations of the Subregion 6 Master Plan, the subject amendments are in harmony with this Purpose of the R-S Zone.

- (2) *Establish regulations through which adopted and approved public plans and policies (such as the General Plan, Master Plans, Sector Plans, public urban renewal plans, or Sectional Map Amendment Zoning Changes) can serve as the criteria for judging individual development proposals;*

This Purpose addresses the reason for the establishment of Comprehensive Design Zones, and their function to enable the use of the Master Plan (or other plans or planning acts) as criteria for judgment of individual development proposals. The original rezoning of the Subject Property to the R-S Zone and the continued conformance of the proposed amended Basic Plan to the Master Plan demonstrates that the instant Application is in harmony with this Purpose for the R-S Zone.

- (3) *Assure the compatibility of proposed land uses with existing and proposed surrounding land uses, and existing and proposed public facilities and services, so as to promote the health, safety, and welfare of the present and future inhabitants of the Regional District;*

This Purpose of the R-S Zone is to assure compatibility between the proposed land uses and the surrounding land uses, and the adequacy of public facilities so as to promote the health, safety, and welfare of the present and future inhabitants of the Regional District. The discussion of the compatibility of the proposed general land use types and the surrounding land uses, *supra*, regarding the criteria of Section 27-197(b)(1)(C), (D), and (E) demonstrates that the Application is in conformance with this Purpose of the R-S Zone.

- (4) *Encourage amenities and public facilities to be provided in conjunction with residential development;*

This Purpose encourages the provision of amenities and public facilities in conjunction with the residential development through the use of density bonuses awarded for the incorporation of public benefit features into the development. Because the subject amendments will continue to incorporate the use of public benefit features into the proposed development, the approval of the requested amendments will be in harmony with this Purpose.

(5) *Encourage and stimulate balanced land development;*

This Purpose of the R-S Zone requires the regulations of the Zone to encourage and stimulate “balanced land development”. The incorporation of the new detached housing type which is to be accommodated by the proposed amendments will especially fulfill this Purpose by providing for a new housing type which will act as a transition in affordability between attached dwellings and the conventional single-family detached dwellings which are currently available in the market.

(6) *Improve the overall quality and variety of residential environments in the Regional District.*

Because the subject amendments continue to retain the natural corridors through the Property, will continue to propose new perimeter buffers between the proposed uses and the adjacent environment, the quality of the residential environment will be improved over standard development. More importantly, the new detached housing type will materially improve the variety of residential environments in the Regional District, and will be in particular harmony with this Purpose.

(7) *Allow qualifying properties in the R-S Zone to develop with uses in the E-I-A Zone pursuant to Section 27-515(b) of this Code.*

The Kenwood Village project is not a “qualifying property” in the context of this Purpose.

In conclusion, the subject Application, A-9802-C-01 and A-9803-C-01, is in conformance with the Purposes of the (former) R-S Zone.

Compliance with the Purposes of the Zoning Ordinance:

(3) There are also fifteen general Purposes of the Zoning Ordinance, which are laid out in §27-102(a). The proposed Zoning Map Amendment would be in harmony with these Purposes, as follows:

1. *To protect and promote the health, safety, morals, comfort, convenience, and welfare of the present and future inhabitants of the County;*

The approval of the requested amendment to the Basic Plan for Kenwood Village will allow for the construction of a new detached dwelling type which will extend the affordability of single-family detached dwellings to a larger portion of the population, and will therefore promote the comfort, convenience and welfare of the present and future inhabitants of the County. It will continue to promote public health and safety by providing sufficient buffers from environmental

hazards such as floodplain, and by protecting the surrounding residents from visual and traffic impacts from the planned development.

Furthermore, the review process inherent in Comprehensive Design Zones provides for a higher level of both planning flexibility and public oversight to promote and protect the public health, safety and welfare.

2. To implement the General Plan, Area Master Plans, and Functional Master Plans;

As discussed *supra*, the proposed development implements the Master Plan Map's recommendations for land use type and density.

3. To promote the conservation, creation, and expansion of communities that will be developed with adequate public facilities and services;

As with the purpose of implementing the General and Master Plans, this Purpose is largely replicated by the criteria for approval of Comprehensive Design Zones found in §27-195(b)(1)(C) and (D) addressing transportation facilities, police, fire, schools and water and sewerage; the harmony of the request for approval of amendments to the Basic Plan with this Purpose of the Zoning Ordinance was discussed at length in the testimony of the transportation planning expert, Mr. Mike Lenhart, (T.p. 50-59), and has been discussed by Technical Staff in the Countywide Planning referral.

4. To guide the orderly growth and development of the County, while recognizing the needs of agriculture, housing, industry, and business;

As noted in the discussion of the Purpose of protecting and promoting the public health and safety, *supra*, the multi-stage public review process inherent in the Comprehensive Design Zones' regulations affords a higher level of guidance for the development at the property (and therefore for its contribution to the growth and development of the County as a whole). These principles are reflected in the approved Basic Plan, and the requested amendments will not affect the review process going forward.

The development of the County and the needs of the homebuying public will be recognized by the approval of the requested amendments, particularly in enabling the development of a new housing type which will extend the affordability of single-family detached dwellings to a larger portion of the population.

For these reasons, the approval of the requested amendments to the Basic Plan at this property will continue to be in particularly close harmony with this Purpose of the Ordinance.

5. To provide adequate light, air, and privacy;

The lot standards which will be established in the Comprehensive Design Plan will ensure the provision of adequate light, air and privacy for the proposed development, and the existence of substantive wooded natural buffers will ensure the provision of adequate light, air and privacy for its neighbors.

The additional standards and design guidelines for the approval of a Comprehensive Design Plan and Specific Design Plans which are required by the regulations for Comprehensive Design Zones afford additional opportunities to ensure the provision of adequate light, air and privacy. These principles are reflected in the approved Basic Plan, and the requested amendments will not affect the adequacy of light, air or privacy; as such, approval of the requested amendments will be in harmony with this Purpose as well.

6. To promote the most beneficial relationship between the uses of land and buildings and protect landowners from adverse impacts of adjoining development;

The requested amendments to the Basic Plan will preserve the buffers to regulated environmental features and between the subject property and the adjacent development, and will protect viewshed from White House Road. As such, approval of the requested amendments will be in harmony with this Purpose of the Zoning Ordinance.

7. To protect the County from fire, flood, panic, and other dangers;

The approval of the requested amendments will not affect the original approval of the R-S Zone at the Subject Property and its harmony with this Purpose of the Zoning Ordinance, as they will not affect the requirements for the proposed development to conform with regulations established in the body of the Zoning Ordinance, as well as other County Ordinances, which are intended to protect from fire, flood, panic and other dangers, namely: the Floodplain Regulations, Stormwater Management Regulations, the Fire Prevention Code, the Building Code, and the Tables of Permitted Uses for the various zones.

8. To provide sound, sanitary housing in a suitable and healthy living environment within the economic reach of all County residents;

Because the subject amendments propose a new, more-affordable housing type, the approval of the requested amendments will bring single-family detached dwellings into the economic reach of a greater proportion of the County's residents

9. *To encourage economic development activities that provide desirable employment and a broad, protected tax base;*

Because the subject amendments propose residential uses, this Purpose is not applicable to the proposed amendments.

10. *To prevent the overcrowding of land;*

The approval of the requested amendments would be in harmony with this Purpose because the amended Plan will not increase the approved developable density of the existing Basic Plan, and will still require the property to be developed in conformance with regulations that are approved through a Comprehensive Design Plan to ensure the prevention of overcrowding, including height limits, setbacks, and minimum green area.

11. *To lessen the danger and congestion of traffic on the streets, and to insure the continued usefulness of all elements of the transportation system for their planned functions;*

The approval of the requested amendments would be in harmony with this Purpose because of several factors. First, as noted *supra*, the criterion of §27-195(b)(1)(C) assures the adequacy of local public transportation facilities as a prerequisite to the approval of the Zone. Secondly, the approval of the proposed amendments would not affect the requirements for the property to be developed in accordance with the regulations established in the body of the Zoning Ordinance (and other County Ordinances) which are intended to lessen the danger and congestion of traffic on roads, including the requirement for substantial improvements to White House Road.

12. *To insure the social and economic stability of all parts of the County;*

As the Zoning Ordinance is the principal tool for the implementation of the planning process by enacting legal requirements which implement the planning goals that strive to maintain the social and economic stability of the County, conformance with the requirements and regulations of the Zoning Ordinance are prima facie evidence of the Application's harmony with this Purpose.

Beyond that, however, the approval of the requested amendments would promote the economic and social stability of the County by allowing for the development of a new,

more-affordable single-family detached dwelling type, which will extend the social and economic stability associated with homeownership to a greater proportion of the County's residents.

13. To protect against undue noise, and air and water pollution, and to encourage the preservation of stream valleys, steep slopes, lands of natural beauty, dense forests, scenic vistas, and other similar features;

The approval of the requested amendments will have no impact to the protections to the County's natural features which were inherent in the original approval of the R-S Zone.

14. To provide open space to protect scenic beauty and natural features of the County, as well as to provide recreational space;

The approval of the requested amendments will have no impact to the open space network which was proposed in the original approval of the R-S Zone; the bulk of the open space, including the buffers to regulated environmental features and the already-dedicated public park will retain the same configuration.

The final Purpose,

15. To protect and conserve the agricultural industry and natural resource.

will be met by the buffer which will be provided between the proposed development and the abutting farms.

Proposed Amended Conditions:

(4) Condition 4:

4. The location and width of the internal trails proposed shall be evaluated and determined by the Trails Coordinator prior to Phase II approval.

This Condition is proposed to be deleted.

As the Applicant discusses in its Statement of Justification, the design of the project as reflected in the approved Specific Design Plan evolved away from the creation of a separate internal trail network, relying instead on the network of sidewalks. It is to be noted that development regulation evolved from the original 1992 approval through the 2015 Specific Design Plan approval, whereby sidewalks are now uniformly provided on both sides of the street in detached housing

neighborhoods, and the width of sidewalks have increased from 4' to 5'. This factor, together with the increased desire to avoid disturbance to regulated natural feature buffers led to the elimination of a separate trail network.

Retaining Condition 4 would only promote confusion in the subsequent reviews of the redesign of Kenwood Village, and its elimination will not affect the conformance of the amended Basic Plan to the approval criteria or the Purposes of the Zone.

(5) Condition 7:

7. *The minimum lot size shall be 6,000 square feet in Development Envelopes A through D and 10,000 square feet in Development Envelope E.*

The Applicant has requested that the lot size minimum be reduced to 4,200 square feet for all envelopes. This Condition is the heart of the instant request, as it is these smaller lots which are necessary to accommodate the new housing type.

(6) Condition 8:

8. *The 50-foot buffers along the east and south boundaries are labeled as non-disturbance buffers and shall include a six-foot-high black vinyl-clad chain link fence, extending to the east side of Harry S Truman Drive.*

The Applicant has proposed the following alternative:

“A 50-foot buffer shall be provided along the eastern property boundary and shall include a six foot-high black vinyl-clad chain link fence (or approved alternative), extending to the south side of White House Road. The only disturbance to this buffer shall be for the construction of stormwater management facilities located within 550 feet from the right-of-way of White House Road. A 25-foot landscaped buffer shall be provided along the southern property boundary and provide the number of plant units required for a “B” buffer yard as required by the Landscape Manual. A six-foot-high black vinyl-clad chain link fence (or approved alternative), extending to the east side of Harry S Truman Drive.”

As the Applicant discusses at length in its Statement of Justification, the modification to the approved east buffer is only to accommodate grading necessary for the new stormwater management measures which were not required at the time of the previous approvals, and will not affect the buffer between the dwellings and the adjoining property.

The buffer along the south property will be reduced, but the reduction will be offset by the new presence of a large-diameter gas main on the adjoining property which will serve (by restricting the use of the northern edge of the abutting property) to create a larger separation of use than would

previously have existed. The Applicant also correctly notes that the on-site buffer proposed by the amended Condition will still be larger than that required by the Landscape Manual.

The amended Condition will conform to the approval criteria and to the Purposes of the R-S Zone.

(7) Condition 13:

13. *A 50-foot non-disturbance buffers buffer along the east and south properties shall apply along both sides of all streams and shall be expanded to include the 100-year floodplain, wetlands, steep slopes and soils with erodibility factors of .35 and greater. Such buffers shall be approved by the Natural Resources Division Environmental Planning Section prior to Specific Design Plan, Phase III. Additional screen planting and may be required to provide adequate screening, to be approved by the Urban Design Section.*

Here the Applicant is proposing only to increase the 50-foot buffer to 75 feet to conform to the current requirements of the Environmental Technical Manual, and to update name of the “Natural Resources Division” to the Environmental Planning Section.

The amended Condition will conform to the approval criteria and to the Purposes of the R-S Zone.

RECOMMENDATION

Based on a finding of good cause, amend the original Conditions of approval of A-9802-C-01 and A-9803-C-01 with deletion of Condition 4 and amendment of new Conditions 6, 7, and 12, which were previously 7, 8, and 13, and additional Conditions 14, 15 and 16 as follows:

CONDITIONS

1. No direct access to any residential lots shall be permitted from White House Road or Harry S Truman Drive.
2. The Applicant/developer and the Applicant’s heirs, successors, and/or assignees shall dedicate a 120-foot-right-of-way for Ritchie Marlboro Road relocated (A-39) (Harry S Truman Drive).
3. The Applicant/developer and the Applicant’s heirs, successors, and/or assignees shall dedicate a 60-foot-right-of-way from the proposed centerline for White House Road (A-36). The Applicant/developer and the Applicant’s his heirs, successors, and/or assignees shall construct or bond to construct a half section of White House Road for the entire segment of

this roadway through the subject parcel per DPW&T requirements prior to the issuance of building permits. This construction shall accommodate a left turn lane along eastbound White House Road at Harry S Truman Drive extended (A-38).

4. At no time prior to Phase II approval or construction of the proposed development shall the Chesapeake Beach trail corridor be damaged, filled with debris or become a storage area for supplies or equipment.
5. There shall be no grading or cutting of trees on the site prior to Phase II approval, except with the written permission of the Prince George's County Planning Board.
6. The minimum lot size shall be 4,200 square feet in all development envelopes.
7. A 50-foot buffer shall be provided along the eastern property boundary and shall include a 6-foot-high black vinyl-clad chain link fence (or approved alternative), extending to the south side of White House Road. The only disturbance to this buffer shall be for the construction of stormwater management facilities located within 550 feet from the right-of-way of White House Road. A 25-foot landscaped buffer shall be provided along the southern property boundary and provide the number of plant units required for a "B" buffer yard, as required by the *2010 Prince George's County Landscape Manual*, and shall include a 6-foot-high black vinyl-clad chain link fence (or approved alternative), extending to the east side of Harry S Truman Drive.
8. A Type I Tree Conservation Plan, in accordance with the Prince George's County Woodland and Wildlife Habitat Conservation Ordinance, is required for review by the Environmental Planning Section to be approved by the Planning Board prior to Comprehensive Design Plan approval. Woodland Conservation of 25 percent of the net tract is recommended.
9. Phase II shall show consistency with the Patuxent River Policy Plan in buffering of streams.
10. Approval of existing Conditions, 100-year Floodplain, and Stormwater Management (SWM) Concept Plan by the Prince George's County Department of the Environment (DoE), prior to the approval of a Preliminary Plan of Subdivision, unless determined by DoE prior to submittal of the Preliminary Plan that this study will not be required until time of specific Design Plan. At a minimum, the following shall be included: 50-foot buffers between the floodplain and lot lines; SWM ponds shall provide 2-10-100-year attenuation; water quality shall be achieved by infiltration or ponds; water quality ponds shall be located outside of wetland areas; and all impervious areas shall drain directly to a water quality facility.
11. The Applicant shall submit a 100-year Floodplain Study and a Stormwater Management (SWM) Concept Plan to the Prince George's County Department of Environmental Resources for approval prior to approval of the Preliminary Plan of Subdivision. The SWM

Concept Plan shall also address road improvements to White House Road and construction of Harry S Truman Drive.

12. A 75-foot non-disturbance buffer shall apply along both sides of all streams and shall be expanded to include the 100-year floodplain, wetlands, steep slopes and soils with erodibility factors of .35 and greater. Such buffers shall be approved by the Environmental Planning Section prior to Specific Design Plan, Phase III. Additional screen plantings may be required to provide adequate screening, to be approved by the Urban Design Section.
13. The Applicant shall submit a detailed soils study to demonstrate the site is geographically suitable for the proposed development, for approval by the Prince George's Soil Conservation District and the Environmental Planning Section, prior to the Specific Design Plan approval.
14. At the time of review of the Preliminary Plan of Subdivision, the Applicant shall allocate developable areas to provide adequate on-site recreational facilities.
15. The Basic Plan shall be modified to conceptually show a second entrance onto Harry S Truman Drive extended. At the time of future development applications, the second entrance shall not be required if the Applicant demonstrates the feasibility of reducing the number of access connections to the site through an operational and queuing analysis.
16. The Applicant shall provide an interconnected network of pedestrian and bikeway facilities, internal to the site. The exact location and design of said facilities shall be evaluated with future applications.

CONSIDERATIONS

1. The character and visual image of White House Road shall be protected and maintained through preservation of the undisturbed buffer along both sides of the adjacent stream. The buffer design shall be approved by the Urban Design Section prior to Specific Design Plan approval.
2. The site shall be developed to maintain compatibility with the surrounding neighborhood with emphasis on the boundaries of the subject site. This shall be accomplished through design techniques such as berms, additional screen plantings and through compatible lot sizes prior to Specific Design Plan approval.
3. The depths of all lots adjacent to Harry S Truman Drive and White House Road shall be adequate to provide visual and sound screening as part of Specific Design Plan approval.

4. The dwellings in all development envelopes shall front on the primary street to the greatest extent possible, with the rears of dwellings oriented toward the interior of the envelopes. The *2010 Prince George's County Landscape Manual* (Landscape Manual) buffering requirements shall apply to any dwellings whose rears face Harry S Truman Drive. Preservation of existing trees shall be the preferred buffering technique to be supplemented, as required by the Landscape Manual.