

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

**AMENDMENT OF BASIC PLAN  
A-9973-02**

**DECISION**

Application: Amendment of Basic Plan & Conditions  
Applicant: Woodside Development, LLC  
Opposition: None  
Hearing Date: September 29, 2021  
Hearing Examiner: Maurene Epps McNeil  
Recommendation: Approval with Conditions

**NATURE OF REQUEST**

(1) A-9973-02 is a request to amend the Woodside Village Basic Plan that currently includes approximately 381.95 acres of land (with multiple owners) in the R-M (Residential Medium Development) and M-I-O (Military Installation Overlay) Zones in order to separate out Applicant's approximately 158.11-acre property (consisting of Parcels 5 and 19) and create a separate Basic Plan, pursuant to Section 27-197(c) of the Zoning Ordinance. The property is located on the southern side of Westphalia Road, approximately 2,000 feet west of its intersection with Ritchie-Marlboro Road, and identified as 10009 Westphalia Road, Upper Marlboro, Maryland.

(2) The Applicant/Owner of Parcel 19, referred to as the Case property, is the Atkinson Trust, LLC. (T. 12) The Applicant/Owner of Parcel 5, referred to as the Yergat property, is Woodside Development, LLC, a wholly owned subsidiary of the Atkinson Trust, LLC. (T. 12) The State Department of Assessments and Taxation has found both entities in good standing to operate within the State of Maryland. (Exhibits 34 and 46)

(3) The Technical Staff recommended approval with conditions, and the Planning Board adopted Staff's recommendation as its own. (Exhibit 48)<sup>1</sup>

(4) No one appeared in opposition to the instant Amendment request.

(5) The record was kept open for several documents. The last of these was received on October 5, 2021, and the record was closed at that time.

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<sup>1</sup> The Technical Staff Report was originally marked as Exhibit 35. However, that exhibit did not include the Backup forwarded by the Technical Staff. The complete Report with Backup has been added as Exhibit 48.

## FINDINGS OF FACT

### Subject Property, Neighborhood and Surrounding Uses

(1) The subject property is approximately 158.11 acres of a larger 381.95-acre development known as the Woodside Village. The subject property consists of Parcel 5 (the Yergat property) and Parcel 19 (the Case Property). The Yergat property is primarily undeveloped, wooded, and contains few environmental features. The Case property is partially developed with a certified nonconforming trash hauling operation (operating as "PG Trash") on the westernmost portion of the site. Applicant noted that this use would cease if the instant request is approved. (T. 29) The subject property has frontage on, and access from, Westphalia Road. (Exhibit 45 (a)-(c)).

(2) A Comprehensive Design Plan was approved for the original assemblage of land subject to A-9973-C in 2008 (CDP-0601) A Phase I archeological survey was conducted on the property at that time. (Exhibit 48, Backup p. 92-94)

(3) The remaining privately owned property within the original Woodside Village has also filed a request to amend A-9973-C to create a separate Basic Plan for its property. (A-9973-01)

(4) The neighborhood is as accepted by the Zoning Hearing Examiner in her review of the original Application (A-9973-C):

The neighborhood contains approximately 6,000 acres of land is bounded on the north and east by Ritchie Marlboro Road, on the south by Pennsylvania Avenue (MD 4) and on the west by I-95 (Capital Beltway).

(Exhibit 23, p.2)

(5) The property is surrounded by the following uses: single-family residential dwellings in R-E Zone, and unimproved vacant land in the R-A Zone, to the north; vacant land in the R-M and M-X-T Zones and single-family residential dwellings in the R-M Zone, to the south; single-family residential dwellings and vacant land in the R-E Zone, to the east; and single-family residential dwellings in the R-R Zone and vacant land in the R-T Zone, to the west. (Exhibit 48, p. 5)

### Master Plan and Sectional Map Amendment/General Plan

(6) The subject property is located in an area governed by the 2007 Westphalia Sector Plan and Sectional Map Amendment ("SMA"). That Plan includes a policy to protect, preserve, and enhance the identified green infrastructure network within the Planning

Area. Applicant will have to update its Natural Resource Inventory Plan to confirm the regulated features onsite and to establish the primary management area prior to development. (Exhibit 48, p. 7)

(7) The 2014 General Plan (“Plan 2035”) placed the property within the Established Communities. The Plan defines the Established Communities as areas “most appropriate for context-sensitive infill and low-to medium-density development.” (2014 General Plan, p.20) Per staff, the Generalized Future Land Use Map recommends a low land use for the property, defined as primarily single-family detached residential areas with a maximum density of 3.5 dwelling units per acre. (Exhibit 48, p. 12) Applicant believes the Plan places its property within the residential medium designation, as noted *infra*. It is important to note, however, the following text that accompanies this Map:

This map generalizes future land use designations as shown in approved sector and master plans. It does not follow parcel boundaries, and its land use categories do not identify permitted uses or imply dimensional standards. By definition, this map should be interpreted broadly and is intended to provide a countywide perspective of future land use patterns. To identify the future land use designation for a specific property, please refer to the property’s relevant approved sector or master plan.

(2014 General Plan, p. 101)

(8) The Sector Plan included a goal of low- to moderate-density residential land use for the property but did not include any particular design or density criteria.(Exhibit 26, Attachment A; Exhibit 48, Backup p.54) However, the SMA placed the property within the R-M Zone which allows a range of densities of 3.5 – 5.8 dwelling units per acre, and A-9973-C provides the same range. (Exhibit 26).

The Sector Plan also included a goal of preserving and enhancing environmentally sensitive areas, such as streams, woodlands and wetlands. (Exhibit 48, p. 54)

### **Applicant’s Request**

(9) The entire 381.95-acre property originally consisted of Parcel 5 (the Yergat property), Parcel 14 (A. Bean property), Parcel 19 (Case property), and Parcel 42 (Suit property) Tax Map 82. This assemblage of land was rezoned from the R-A (Residential-Agricultural) Zone to the R-M (Residential Medium Development) Zone upon the District Council’s approval of the 2007 Westphalia Sector Plan and Sectional Map Amendment via CR-2-2007. (Exhibit 26, pp. 19-26)<sup>2</sup> The District Council’s approval of the SMA included approval of A-9973, with conditions, and added the 11.65-acre Parcel 13 (Wholley property, spelled “Wholley” in some exhibits) as an addition to A-9973. The approved Woodside Village Basic Plan envisioned “a residential development organized

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<sup>2</sup> Due to difficulties experienced in including portions of this Resolution within the body of this decision, it is included as an attachment to the decision for ease of reference.

around a park/school site of approximately 56 acres within the Suit property, which would then be combined with the larger Westphalia Central Park located in the adjacent Parkside subdivision.” (Exhibit 48, p. 8) Applicant’s Statement of Justification contains a Table that succinctly explains the status of all Parcels in Woodside Village. (Exhibit 1, p. 2)

(10) Applicant seeks an amendment of the District Council’s original approval of A-9973-C to remove its property from the approved Basic Plan, thereby creating two Basic Plans – one containing the Yergat and Case properties and the other containing the remaining properties within the original Basic Plan. The District Council’s approval of A-9973-C allowed the Applicant to construct between 1,422 -1,497 dwellings on the adjusted gross acreage (374.14 acres, after providing approximately 116 acres of open space) which equated to approximately 3.8-4.0 du/ac.

Applicant also requests to amend the prior plan to allow the development of 626-661 dwelling units on the adjusted gross acreage of 158.11 acres, which equates to approximately 3.95-4.18 du/ac; and to revise/delete other data to accommodate the request. Applicant’s Statement of Justification sets forth its reasoning for these changes. (Exhibit 1) In short, Applicant is requesting to amend Condition 1 as necessary to recognize the smaller acreage in the new Basic Plan and the concomitant changes that must be made to the development data as a result. Applicant does not seek revision to prior Conditions 3 (a), (b), (c), (f), (h), (j), (o), (p), (q)(s) and (t); 4(b),(c),(d), (g); and 5 (a), (b), (c), and (d). Applicant requests that Conditions 3 (g) and (i); and 4(a) be revised; and that Conditions 2(a) and (b); 3 (d), (e),(k), (l), (m), (n), (r) and (u); and 4(e) and (f) be deleted.

(11) Applicant’s Statement of Justification explains why the request conforms to the 2014 General Plan and the 2007 Westphalia Sector Plan and SMA:

According to the approved 2035 General Plan (Map 10. Generalized Future Land Use Map), the site is labeled as designated as a “Residential Medium.” The General Plan further states that the “Residential Medium” designation represents “[r]esidential areas up to 3.5 and 8 dwelling units per acre. Primarily single-family dwellings (detached and attached).” The uses proposed in this Amendment are consistent with the vision, policies and strategies of the 2035 General Plan. Specifically, the subject application proposes 626 to 661 dwelling units in this portion of the Woodside Village project that would roughly equal 3.96- 4.18 dwelling units per gross acre....

The 2007 Westphalia Sector Plan and Sectional Map Amendment (Westphalia Sector Plan) recommends a low-density residential land use in the area of this Basic Plan Amendment. Moreover, the Sector Plan recommends that the residential areas outside of the core areas of the Westphalia Town Center consist of “townhomes and small lot single-family homes to add diversity to neighborhoods or as a transition between higher density units and lower family single-family neighborhoods”. (See Sector Plan, Policy 5 – Residential Areas).

The instant Basic Plan Amendment does exactly what the recommendations in the Sector Plan call for. Specifically, the proposal contains single-family attached and

detached units to serve as a transitional buffer between the denser Parkside and Westphalia Town Center projects to the south, and the less dense portions of the Sector Plan area to the north and west. The design proposed in this Basic Plan Amendment reflects an efficient and interconnected street system that seamlessly ties in with the adjacent Parkside project, and includes a development pattern that is organized around the public Westphalia Central Park acreage located on the Suit property and Parcel 13, (which has already been acquired by M-NCPPC) ....

(Exhibit 1, p. 9)

(12) Ken Dunn, accepted as an expert in landscape architecture testified on Applicant's behalf. Mr. Dunn prepared the revised Basic Plan for the Application. (Exhibit 40) The first page of the Basic Plan is meant to be an historical record of what had been approved originally and what is being proposed by Applicant at this juncture. It outlines Parcels 5 and 19 with black semi-horizontal and semi-vertical striping (the subject property) and the remaining parties not subject to the Application are depicted with red cross hatching. (T. 17-18) The second sheet of the exhibit is the actual revised Basic Plan showing the "types of [proposed] residential uses, the circulation patterns, the recreational opportunities, the environmental constraints and how this will ultimately related to some of the adjacent properties." (T. 19) Mr. Dunn provided the following testimony on the development proposed on the new Basic Plan:

[T]his plan is currently proposing a mix of single-family residential dwelling units...[with] detached residential dwelling units ...[in] the blue are on the plan [and][t]he orange area is single family attached residential dwelling units. These will all be fee simple and so the mix is really those tow product types and that's important because ... what you're seeing here is a unique opportunity where we're bringing to the table a large number of single family detached dwelling units which you don't see being developed in this area, or generally anywhere in the locality at the moment. So I think this will add residential options to the community for sale availability.

The remainder of the plan demonstrates the open space, the environmental constraints and the circulation pattern. We have 158 acres worth of developable area, of which 2.07 acres are in the 100-year floodplain. The way that density is calculated in these CDZ's is that you would take half of the floodplain and subtract that from your gross tract and that comes up with your net tract. That's the base denominator from which you would calculate your densities. The R-M Zone allows a [range of] dwelling units of 3.6 to 5.7 units, so your base number under this acreage would be 566 dwelling units with a maximum amount of dwelling units of 896....

[W]e're suggesting a range of 626 to 661 dwelling units of the two types I mentioned earlier.... That gives us a range of units above the base density of 60 to 95 dwelling units.... [W]e have ... a range that we're proposing 626 to 661 units, that leaves us with a density base of 3.98 to 4.205 dwelling units per acre. That's 99 acres worth of residential property or 63 percent of the land ..., that leaves 37 acres or 23 percent of the land ... to be open space, with less than 1 percent dedicated to the frontage road improvements of Westphalia Road which is also known as C-626....

[T]here are tow Master Plan Roadways within the boundary of this plan. There are two additional Master Plan roadways that are adjacent. One of which is ... Westphalia Road

...C-626. Adjacent also to the east is MC-631, it does technically run through the site but it's a piece of property that we would dedicate ... to Park and Planning to complete the sort of what we think of as park corridor from Westphalia all the way into the adjacent properties....

[P-] 616 and P-617 run through the site themselves. The circulation is such that those roadways are all an integral part of our circulation pattern for vehicular, pedestrian and bikes list. We have three opportunities for access to Westphalia Road, that would be public roadways that would accommodate bicyclists and pedestrians as well. That's generally in the area of the blue colors which denote the single family detached dwelling units....

We had originally done a natural resource inventory for this property so we're well aware of the location of the environmental constraints on the property which are generally [shown in green on the plan.] The natural resource inventory identifies what's referred to in Prince George's County as the primary management areas, which is a combination of 100-year floodplain, jurisdictional wetlands, their buffers and streams and their buffers as well as steep slopes. So the environmental constraints on this subdivision are respected with the exception of the occasional road crossing perpendicular road crossing and sewer outfall, which are necessary infrastructure for the development of the project....

(T. 22-26) Mr. Dunn noted that if the request is approved, any impacts to these environmental features will be reviewed as part of future entitlement applications.

(13) Mr. Dunn was also accepted as an expert in land use planning. In that role, he testified about the relationship of the subject property to the surrounding properties using Exhibit 45 (a)-(c) to acclimate all in attendance:

To the south is a portion of the original Basic Plan.... To the east is the Bean Property.... To the north across Westphalia Road is a subdivision that has been developed under the R-E Zone, it's got Matapeake Road internal to it, [and] is a residential subdivision.... Also to the north is an R-A zoned property that remains undeveloped. To the west is an R-R zoned single family residential subdivision that has been developed... [and] consists of Castile Drive and a few other roads. And then immediately sort of southwest ... [is] what's called the Smith Home Farm property which is currently under development now....

(T. 42-43)

(14) Mr. Dunn next addressed the applicable provisions of the Zoning Ordinance pertaining to approval of this Basic Plan amendment and concluded that the request meets all:

The 2007 Westphalia Sector Plan and the Sectional Map Amendment recommended a low-density residential land use in this area of the Basic Plan Amendment. It also recommended that residential areas outside of the core areas of the Westphalia Town Center consist of townhomes and small single-family homes for the added diversity to the neighborhoods, as a transition between higher density and it's lower ... single family neighborhoods. That came from Policy 5 of the residential area from the 2007 Westphalia Sector Plan. This application ... does that, it does exactly what the recommendation in

the Sector Plan is calling for, specifically the proposal contained single family attached and detached units to serve the transitional buffer between the denser Parkside and Westphalia Town Center projects to the south and the less dense portions of the Sector Plan area to the north and west. The design proposed in this Basic Plan Amendment reflects [an] efficient and interconnected street system that ties with the adjacent Parkside project and includes a development pattern that is organized around the Westphalia Central Park acreage located on the Suit Property in Parcel 13, which has already been acquired by Park and Planning....

[Section 27-197 (b)] allows for the amendment of the Basic Plan to be divided into ... two or more separate Basic Plans. So the application before us here today is relying on that section of the Zoning Ordinance, and it's clear that the circumstances have significantly changed since the original approval.... [S]pecifically[,] the Maryland National Capital Park and Planning Commission has purchased a key portion of the property located within the original approved Basic Plan.

Outside of that portion of the land now owned by Park and Planning, there's also multiple or an additional owner operator of the remaining portion of the land ... such that there's no common ownership between the entire original Basic Plan, making the development of this property practically impossible, or a practical impossibility. It's also impractical to comply with many of the land use requirements as written from the original application. So this application seeks to address those changes in circumstances that create practical difficulties that were not self-imposed by separating the Case and [Yergat] properties, Parcels 5 and 19 from the remainder of the original proposal....

[This Application] ... would not involve an increase in the overall density approved for Woodside Village Development set forth in the original plan.... [T]he simple purpose of this Basic Plan Amendment is to divide the Basic Plan by deleting the [Yergat] and Case properties from the local assemblage of the properties in A-9973. The [Yergat] and Case Properties are controlled by the applicant and will stand on their own as a separate Basic Plan, the residential development of Woodside Village would not exceed the 1,497 dwelling units approved originally in A-9973.

The applicant proposes a maximum aggregate density of 661 dwelling units, that leaves a density of 836 remaining units that were originally approved and that can be reallocated to the Bean property which is the remaining developable property, Parcel 14, that's the only remaining privately held property. So this Basic Plan Amendment is eligible to be processed under the condensed review procedures set forth in 27-197(b)....

[The approval of this Amended Basic Plan] ... would not impair the character of the original approved Basic Plan. The land use density ranges, circulation patterns, and amenities proposed for Case and [Yergat] are substantially consistent with those approved under the initial plan....

No owner of the land included in the original Basic Plan will be denied any reasonable use of their property. The Suit Property and Parcel 13 are owned by Park and Planning and is contiguous with other land holding by Park and Planning to be utilized for the Westphalia Central Park. The [Yergat] and [Case] properties, Parcels 19 and 5, are controlled by the applicant, will stand on their own as a separate Basic Plan. The residential development of [the] Case and [Yergat] portions of Woodside Village would not exceed the total of 1,497 dwelling units. So the applicant proposes a maximum aggregate density of 661 dwelling

units and this leaves 836 that could be allocated to the Bean property which can stand on its own as well, with that remaining density....

(T. 47-53)

(15) Mr. Dunn concluded his testimony by affirming that the Applicant agreed with all but one of the Technical Staff's recommended conditions of approval. Applicant did correct the chart on the Basic Plan as suggested by Staff. However, it disagrees with the wording of recommended condition 15c when it refers to a "market" at the historic Dunblane Cemetery (located at the northwest corner of the property close to Westphalia Road) and asks that the word be replaced with "marker". (T. 54-56)

(16) Dr. Charles Edwards, the managing member of both the Atkinson Trust, LLC and the Woodside Development, LLC, and was authorized to testify in support of the request. He explained that the two entities own Parcel 5 (the Yergat property) and Parcel 19 (the Case property), purchasing them in March and May of 2021, respectively. (T. 28) The Atkinson Trust is the largest owner of Woodside Development, LLC. (T.31) Dr. Edwards averred that the Application was filed because "the previously envisioned assemblage cannot be developed because Park and Planning purchased over 150 acres to become a park [and] now there is not common ownership..." and noted that the request is more desirable since "it can in fact be developed for high quality residential use, whereas the existing plan is at an impasse [due] to the diversity of ownership." (T. 29-30)

(17) Michael Lenhart, accepted as an expert in transportation planning, prepared a traffic impact analysis for the Application that reviewed all of the study intersections used in the traffic impact analysis that was prepared for the original Basic Plan for Woodside Village. (Exhibit 12; T. 34-35) Mr. Lenhart summarized the results of the current traffic impact analysis as follows:

The results show that all of the study intersections will pass the adequate public facilities requirements with the exception of [MD] 4 at Westphalia Road, which ... had been longstanding failing intersection for many, many years. And [the] District Council approved a Public Facilities Financing and Implementation Program, otherwise referred to as a PFFIP and all properties located in Westphalia for the past 10 years or so that have received Preliminary Plan approval have been required to pay their pro rata fee into the PFFIP as calculated at the time of Preliminary Plan of Subdivision and payable at the time of building permit for all properties. And this project if approved and once it gets to the preliminary plan stage it will be subject to a new adequate public facilities test and the PFFIP payment would be calculated at that time....

[T]his site does have three access points on Westphalia Road, and there will be internal connections through adjacent properties to MC-631 and the Master Plan Road Network as defined.... [A]ll of the study intersections including the access points will pass the adequate public facilities test, based on the study we've done at [this] time....

[In my opinion the subject application satisfies all transportation requirements in Section 27-195(b).] That criteria basically says that transportation facilities which are existing or under construction or 100 percent funded through the CIP or State's CTP or others will be



adequate to carry the anticipated traffic generated by the proposed development, based upon the maximum proposed density, and that 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 Plan. And I would point out that ... there are many reasons for this amendment and there are conditions that need to be changed really to make this a viable project and to allow it to move forward. But the density that is allowed and proposed from the approved to this proposed plan ... really does not increase significantly and if we're looking at what's allowable under the proposed, it's not a substantial change. It has a very negligible impact on the traffic that could be generated by this site....

(T. 35-38)

### **Agency Comment**

(18) The Environmental Planning Section approved a Natural Resources Inventory for the original assemblage of properties in A-9973-C. (Exhibit 11) It notes that no further information is needed at this time, although a new NRI will be required in the future to confirm the regulated features on the site and to establish the primary management area. (Exhibit 48, Backup pp. 159-162) Staff noted that Marlboro clay is found to occur along the southern property line of Parcel 48, which now belongs to MNCPPC. It also stated that "no sensitive species project review areas are indicated or mapped on the site" and "no rare, threatened, or endangered species are indicated as present on-site." (Exhibit 48, p. 4) There is an approved Type I Tree Conservation Plan ("TCP") for the overall development approved in A-9973-C, and a Type II TCP for Parcel 19. All future applications will require a revision to these TCPs. (Exhibit 48, p. 7)

(19) There is an Historic Resource on site – the Dunblane Site and Cemetery (Historic Resource # 78-010). The Historic Preservation Section recommended a condition to ensure that this resource be protected and stay in place, and Applicant has agreed to the condition. The Historic Preservation Section also reminded Applicant that two archeology sites were identified on the property in the past and they previously recommended that the property "be subject to Phase II evaluation" although it need not be done at this time. (Exhibit 13) The Historic Preservation and Public Facilities Planning Section noted that fire services were adequate for the site. (Exhibit 48, Backup p. 106) The Department of Parks and Recreation acknowledged that MNCPPC would be providing much of the public active open space on its land and agreed that any of the original recreational conditions could be revised. (Exhibit 48, Backup pp. 128-134)

(20) The Transportation Planning Section analyzed Applicant's traffic impact study of the intersections most likely to be impacted by the Application utilizing the "2010 Transportation Review Guidelines, Part 1", and made the following observations:

To meet the legal threshold [in Section 27-195 (b)(1)(C)], the applicant has provided staff... with an April 2021 traffic impact study....

The traffic study identified 16 background developments whose impact would affect some or all of the study intersections. In addition, a growth of 0.5 percent over six years was also applied to the traffic volumes. A second analysis was done, depicting background conditions. Those results [indicate all intersections will operate at acceptable levels of service] ....

The ... proposed development will be adding 492 and 587 trips during the AM and PM peak hours, respectively. A third analysis depicting total traffic conditions was done.... The results under total traffic conditions show that the intersections will all operate adequately. It is worth noting that while the intersection of MD 4 and Westphalia Road – Old Marlboro Pike is projected to operate adequately, the analysis was predicated on an interchange being built at the current location. Pursuant to CR-66-2010, the cost of the construction of that interchange will be borne by developers whose development traffic will pass through that intersection. This matter will be dealt with in greater detail at the PPS phase of this development....

(Exhibit 48, pp. 13-16)

(21) The Technical Staff, recommended approval with conditions. It provided the following explanation in support of its recommendation:

- The request will not impair the recommendation of the 2007 Westphalia Sector Plan or the 2014 General Plan since there are no design or density recommendations for low-density development in the former, and although the density proffered in the amended Basic Plan is slightly higher than that recommended in the Generalized Future Land Use Map in the General Plan it is within that allowed in the R-M Zone and Sector Plan. However, the request does meet the General Plan Policy that urges the strengthening and enhancement of existing residential areas in the Established Communities.
- No sensitive species project review areas are indicated as mapped on the site nor are there rare threatened or endangered species indicated on-site; and no rare, threatened, or endangered species are indicated as present on-site. Accordingly, the request would not have a significant negative impact on the environment and aligns with the Master Plan goals of protecting the environmental features within the Sector Plan areas.
- Applicant's traffic impact study indicates that, under total traffic conditions, all affected intersections will operate adequately. Moreover, Applicant will have to pay its share of the cost for the planning, engineering and construction of the Westphalia Road/MD 4 intersection/interchange, and all proposed residential development will be subject to the appropriate school and public safety surcharges. Thus, other existing or planned public facilities will be adequate to serve the development proposed.

(Exhibit 48, pp.6-16)

(22) Staff concluded as follows:

Basic Plan A-9973, as approved by CR-2-2007, contained five conditions. Subdivision Section staff recommends that Conditions 3b, 3j, 4b, 4c, 4d, 4g, and 5(a-d) be carried forward and renumbered (13, 14, and 15) below, as part of the Applicant's Basic Plan Conditions of Approval. Staff also recommends removing Condition 3g(1) because the Cabin Branch stream valley is not located on the subject property, modifying Condition 3m to remove the requirement to provide a multiuse stream valley trail because it is not located on the subject property, and replacing Condition 4g with the language shown in Condition 13 ... because it provides further details on the Park Club agreement....

This application meets the requirements of Section 27-197 (b) of the Prince George's County Zoning Ordinance. The division of the single basic plan is needed for development to proceed to the comprehensive design plan phase, given that a significant portion of the original development was purchased by the Maryland-National Capital Park and Planning Commission and cannot be dedicated as parkland by the applicant. The amended basic plan will maintain the density of the original basic plan. The residential character of the Residential Medium Development Zone and the requested basic plan provides an appropriate transition in the density and land uses envisioned in the 2014 *Plan Prince George's 2035 Approved General Plan*, the 2007 *Westphalia Sector Plan and Sectional Map Amendment*, and the 2017 *Countywide Green Infrastructure Plan of the Approved Prince George's County Resource Conservation Plan: A Countywide Functional Master Plan*. Consequently, staff recommends APPROVAL of Zoning Map Amendment A-9973-02, Woodside Village, with conditions, to accommodate development of 626 and 661 single-family attached and detached dwelling units, respectively, between the two parcels....

(Exhibit 35, pp. 19-20)

### **LAW APPLICABLE**

(1) Section 27-197(b) of the Zoning Ordinance sets forth the procedures by which requests to amend an approved Basic Plan which does not involve a change in land area or an increase in land use density or intensity may be approved:

(b) An amendment of an approved Basic Plan which results in dividing a single approved Basic Plan into two (2) or more separate Basic Plans may be approved by the District Council where significant changes in circumstances with regard to the approved Basic Plan have created practical difficulties for the applicant to the extent that, unless the Basic Plan is amended to separate a specified amount of land area, the applicant will be unable to proceed to the Comprehensive Design Plan phase. An amendment will not be granted where the practical difficulty is self-created or self-imposed, or where the applicant had knowledge of, and control over,

the changing circumstances and the problems bringing about the practical difficulty at the time the Basic Plan was approved. The following procedures shall apply to consideration of any such amendment in lieu of the requirements of Subsection (c), below:

- (1) The applicant shall file the request in triplicate with the Clerk of the Council. The petition shall be accompanied by a new reproducible copy of the proposed new Basic Plan graphic showing how the Basic Plan is to be divided and any other proposed revisions, three (3) copies of the proposed new Basic Plan Text if any, and the names and addresses of the current owners of the property separated by the proposed amendment. The Clerk's office shall advise the applicant in writing that the Technical Staff has found that the request is complete.
- (2) The Clerk of the Council shall refer copies of the request and accompanying documents to the Planning Board and to the People's Zoning Counsel. The Planning Board and the People's Zoning Counsel shall submit any comments which they have on the request to the District Council, the Zoning Hearing Examiner, the petitioner, and all persons of record in the original Zoning Map Amendment application. The comments shall be submitted not later than sixty (60) days after the date the petition is referred, unless such deadline is waived in writing by the applicant.
- (3) Within one hundred twenty (120) days after referral of the petition to the Planning Board and People's Zoning Counsel, the Zoning Hearing Examiner shall conduct a public hearing on the petition. The hearing shall be held in accordance with Section 27-129. The hearing shall not be held until after the sixty (60) day review period has expired, unless both the Planning Board and People's Zoning Counsel have submitted their comments.
- (4) In approving the petition, the applicant shall establish, and the District Council shall find, that:
  - (A) The approval of the amended Basic Plan will not result in a change in land area, or an increase in land use density or intensity, for the overall area included in the original, approved Basic Plan;
  - (B) The approval of the amended Basic Plan will not significantly impair the character of the original, approved Basic Plan with respect to land uses, density ranges, unit types, circulation, accessibility, public facilities, public benefit features, and open space;
  - (C) The proposed amended Basic Plan conforms to the requirements of Section 27-195(b);
  - (D) The separate Basic Plans that result will be capable of standing by themselves as individual, cohesive developments;
  - (E) Any staging of development that was required in the approval of the original Basic Plan, and that is still appropriate, is included as part of the amended Basic Plan; and
  - (F) No owner of any land which is included in the original, approved Basic Plan will, by the approval of the proposed amended Basic Plan, be denied reasonable use of his property.
- (5) Within thirty (30) days from the close of the hearing record, the Zoning Hearing Examiner shall file a written recommendation with the District Council, unless such deadline is waived in writing by the applicant.

- (6) Any person of record may appeal the recommendation of the Zoning Hearing Examiner within fifteen (15) days of the filing of the Zoning Hearing Examiner's recommendation with the District Council. If appealed, all persons of record may testify before the District Council.
- (7) 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.
- (8) If the Council does not act within forty-five (45) days of the filing of the written recommendation, the petition shall be considered to have been denied.

(2) Section 27-195(b) of the Zoning Ordinance sets forth the criteria which must be met prior to the approval of a request to amend an approved Basic Plan as follows:

**(b) Criteria for approval.**

(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; 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 buildings, 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, within the current State Consolidated Transportation 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) The Application must also be found to satisfy the general purposes of the Zoning Ordinance, Section 27-102(a), and the specific purposes of the R-M Zone, Section 27-507 (a).

**CONCLUSIONS OF LAW**

(1) The District Council found the original Basic Plan satisfied the general Purposes of the Zoning Ordinance and the specific purposes of the R-M Zone upon its approval of A-9973-C. Nothing within the instant request would negate that finding as Applicant is not changing the zoning nor exceeding the densities allowed in the R-M Zone and the original Basic Plan.

(2) The Application satisfies all of the criteria for approval set forth in Section 27-197 (c) (4) the Zoning Ordinance. The instant request will not change the overall area included in A-9973-C, nor increase the land use density or intensity approved therein. (Section 27-197(c)(4)(A)) Approval of the request will not significantly impair the character of the original Basic Plan as it only proposes single-family attached and detached dwellings, stays below the density approved in the original plan, has sufficient internal circulation and access to the public right-of-way, and the properties acquired by MNCPPC will be used to provide the public facilities and public benefit features and some of the open space envisioned in the original Basic Plan. Applicant is including 23 percent of the site as permanent open space. (Section 27-197(c)(4)(B)) The request satisfies the requirements of Section 27-195(b) of the Zoning Ordinance, for reasons discussed below.

(Section 27-197(c)(4)(C)) This Basic Plan, and the one filed by the owner of the remaining privately owned parcel, will be able to stand alone as individual cohesive developments if the request is approved since they have sufficient acreage, density and access to do so. Moreover, failure to approve the request makes it more likely that they properties will not be able to develop in a cohesive manner since there is no longer a common ownership once MNCPPC acquired much of the original land area. (Section 27-197(c)(4)(D)) There is no staging of development in A-9973-C. (Section 27-197 (c)(4)(E)) Approval of the request will not deny the remaining owner reasonable use of its property since sufficient density and public right-of-way access remain for it to develop its land as an individual cohesive development, and that owner has filed its own request for a Basic Plan Amendment (A-9973-01). (Section 27-197 (c)(4)(F))

(3) The subject property is in conformance with the General Plan's vision for Established Communities since Applicant is providing context sensitive infill development consisting of a mix of single-family homes, attached and detached, that compliments the denser Parkside and Westphalia Town Center to the south and less dense area of the Sector Plan to the north and west.. Moreover, the requested amendment conforms to the 2007 Westphalia Sector Plan and SMA's recommended density for the property since the SMA placed the property in the R-M Zone, approved the Basic Plan and set the density at 3.5-5.8 dwelling units per acre. The instant Basic Plan proposes a range from 3.96 4.18 dwelling units per acre, well within that permitted in the Zone. (Section 27-195(b)(1)(A))

(4) The instant Application does not propose retail or commercial uses. (Section 27-195(b)(1)(B)).

(5) The Transportation Planning Section and Applicant's expert transportation planner agree that all transportation facilities will be adequate to carry the traffic anticipated to be generated by this request. The Applicant will also be required to pay its per rata share of the cost for the planning, engineering, and construction of the Westphalia Road/MD 4 interchange. (Section 27-195(b)(1)(C))

(6) The record does not indicate that any public facility will be inadequate to serve the development. Fire services are found to be adequate, and much of the public recreation will be provided by MNCPPC on the properties if has acquired that were part of the original assemblage in A-9973-C. All residences will be subject to applicable school and public safety surcharges imposed by the County. (Section 27-195(b)(1)(D))

(7) The Environmental Planning Section and Applicant's expert landscape architect noted the existence of the prior Natural Resource Inventory approval which maps the areas of environmental constraints on the property. The property can be developed in a manner to protect environmentally sensitive areas, and a new NRI and a stormwater management plan will be required as part of future entitlement applications. Marlboro Clay is only found on the Parcel owned by MNCPPC, and no rare, threatened or endangered species are found on the site. (Section 27-195(b)(1)(E))

(8) The anticipated construction schedule for the instant Application will not exceed six years. (Section 27-195(b)(2))

(9) The instant Application does not include the V-M (Village-Medium), V-L (Village-Low) or L-A-C Zone. (Sections 27-195(b)(3) and (4))

**RECOMMENDATION**

I believe the Applicant has shown the requisite practical difficulty if force to develop its land under the original Basic Plan, for reasons noted above, and recommend APPROVAL of A-9973-02 subject to the following Conditions:

1. The following development data and conditions of approval serve as limitations on the land use types, densities, and intensities, and shall become a part of the approved Basic Plan:

<b>Total Area</b>	<b>158.28 acres</b>
Land in the 100-year floodplain*	2.07 acres
Adjusted gross area: (158.28 acres less half the floodplain)	157.25 acres
Density permitted under the R-M (Residential Medium) Zone	3.6 - 5.7 dwelling units/acre
Base residential density (3.6 du/ac)	566 dwelling units
Maximum residential density (5.7 du/ac)	896 dwelling units

<b>Proposed Land Use Types and Quantities</b>	
Residential: 157.25 gross acres @ 3.98-4.205 du/ac	626 - 661 dwelling units
Number of the units above the base density:	60-95 dwelling units
Density proposed in the R-M (Residential Medium) Zone	3.98 – 4.205 dwelling units/acre
Permanent open space: (23 percent of original site area) (Includes environmental, recreational, and HOA areas)	37 acres

2. Prior to certification of the basic plan, the plan shall be modified as follows:
- a. Add bearings and distances for the boundaries of the subject property (on Sheet 2).



- b. In the Development Data column on Sheet 2, specify that Parcel 5 and Parcel 19 each consist of two parcels. List the individual acreage of each of the four parcels.
  - c. In the Approved Land Use Types and Quantities table on Sheet 2, include a line item showing the land area to be dedicated to master-planned roadways (other than Westphalia Road).
  - d. In the Approved Land Use Types and Quantities table on Sheet 2, correct the gross acreage to match that given in the Development Data table.
  - e. Remove “to be dedicated to MNCPPC” from the southeast section of Parcel 5.
  - f. In the Subject Property table, show the Liber/Folio number of each property’s deed reference in addition to the tax account number.
3. Prior to approval of any preliminary plan of subdivision, the applicant shall provide a final report detailing the Phase II investigations on sites 18PR898, 18PR900, and 18PR901, and shall ensure that all artifacts are curated to Maryland Historic Trust standards.
4. Prior to approval of a specific design plan, if an archeological site has been identified as significant and potentially eligible to be designated as an historic site or determined eligible to the National Register of Historic Places, the applicant shall provide a plan for:
  - a. Avoiding and preserving the resource in place; or
  - b. Phase III Data Recovery investigations and interpretation.
5. If required, prior to approval of a specific design plan or the area including the cemetery and the archeological sites, the applicant’s Phase III Data Recovery plan shall be approved by the Maryland-National Capital Park and Planning Commission staff archeologist. The Phase III (Treatment/Data Recovery) final report shall be reviewed for compliance with the *Guidelines for Archeological Review* before any ground disturbance or before the approval of any grading permits within 50 feet of the perimeter of the archeological site(s) identified for Phase III investigation.
6. Prior to approval of a specific design plan, the applicant shall provide a plan for any interpretive signage to be erected (based on the findings of the Phase I, Phase II, or Phase III archeological investigations). The location and wording of the signage shall be subject to approval by the Historic Preservation Commission and the Maryland-National Capital Park and Planning Commission staff archeologist.

- Installation of the signage shall occur, prior to issuance of the first building permit for development.
7. Prior to approval of a specific design plan for the area including the cemetery and any archeological sites, the applicant shall provide for buffering of the Dunblane (Magruder/McGregor family) cemetery and/or any archeological site designated as an historic site, in compliance with the 2010 Prince George's County Landscape Manual.
  8. Prior to approval of the first building permit for development, the applicant shall provide for a permanent wall or fence to delineate the Dunblane (Magruder/McGregor family) cemetery boundaries and provide for the placement of an interpretive marker at a location close to or attached to the cemetery fence/wall. The applicant shall submit the design of the wall or fence and proposed text for the marker for review and approval by the Historic Preservation Commission.
  9. Provide the below master plan facilities, designed to be consistent with the 2012 *AASHTO Guide for the Development of Bicycle Facilities*, as part of subsequent applications and shown prior to their acceptances, unless modified by the Prince George's County Department of Permitting, Inspections and Enforcement, with written correspondence:
    - a. Minimum 10-foot-wide path along Westphalia Road (C-626)
    - b. Shared roadway pavement markings and signage along P-616
    - c. Minimum 10-foot-wide path along P-617
    - d. Minimum 10-foot-wide path along MC-631
  10. Internal streets and shared-use paths are to follow the 2009 Approved Countywide Master Plan of Transportation Complete Streets Policies and Principles and include traffic calming measures, as well as a bicycle boulevards network. These will be reviewed as part of subsequent applications.
  11. All sidewalks within the subject site shall be a minimum of 6 feet in width, unless modified by the Prince George's County Department of Permitting, Inspections and Enforcement, with written correspondence.
  12. The applicant shall make a monetary contribution into a park club. The total value of the payment shall be \$3,500 per dwelling unit in 2006 dollars, as recommended by the 2007 *Approved Westphalia Sector Plan and Sectional Map Amendment*. The Maryland-National Capital Park and Planning Commission (M-NCPPC) shall adjust the amount of the contribution using the Consumer Price Index for inflation at the time of payment. Monetary contributions shall be used for construction, operation, and maintenance of the public recreational facilities in the central park

and/or the other parks that will serve the Westphalia Sector Plan area.

Prior to approval of the final plat, the applicant shall enter into an agreement with the Prince George's County Department of Parks and Recreation establishing a mechanism for payment of fees into a park club account administered by M-NCPPC. If not previously determined, the agreement shall also establish a schedule of payments. The payment schedule shall include a formula for any needed adjustments to account for inflation. The agreement shall be recorded in the Prince George's County Land Records by the applicant, prior to final plat approval.

13. The following shall be required as part of the comprehensive design plan submittal package:
  - a. The Transportation Planning staff shall review the list of significant internal access points as proposed by the applicant along master plan roadways, including intersections of those roadways within the site. This list of intersections shall receive a detailed adequacy study at the time of preliminary plan of subdivision. The adequacy study shall consider appropriate traffic control, as well as the need for exclusive turn lanes at each location.
  - b. Provide a description of the general type, amount, and location of any recreational facilities on the site, including provision of private open space and recreational facilities to serve development on all portions of the subject property.
14. At the time of preliminary plan of subdivision and/or prior to the first plat of subdivision, the applicant shall:
  - a. Submit hydraulic planning analysis to the Washington Suburban Sanitary Commission (WSSC) to address access to adequate water storage facilities and water service to be approved by WSSC to support the fire flow demands required to serve all site development.
  - b. Submit a letter of justification for all proposed primary management area impacts, in the event disturbances are unavoidable.
15. Prior to submittal of any grading or building permits, the applicant shall demonstrate that the Dunblane (Magruder/McGregor family) cemetery shall be preserved and protected, in accordance with Section 24-135.02 of the Prince George's County Subdivision Regulations, including:
  - a. An inventory of existing cemetery elements.
  - b. Measures to protect the cemetery during development.

- c. Provision of a permanent wall or fence to delineate the cemetery boundaries, and placement of an interpretive marker at a location close to or attached to the cemetery fence/wall. The applicant shall submit for review and approval by the Historic Preservation staff, the design of the wall and design and proposed text for the marker at the Dunblane (Magruder/McGregor family) cemetery.
- d. Preparation of a perpetual maintenance easement to be attached to the legal deed (i.e., the lot delineated to include the cemetery). Evidence of this easement shall be presented to and approved by the Prince George's County Planning Board or its designee, prior to final plat.