



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772
www.mncppc.org/pgco

PGCPB No. 11-99(C)(A)

File No. 4-11003

A M E N D E D C O R R E C T E D R E S O L U T I O N

WHEREAS, Property and Industry Coordinators is the owner of a 12.26-acre parcel of land known as Parcel 104, located on Tax Map 119 in Grid B-2, said property being in the 15th Election District of Prince George's County, Maryland, and being zoned Multifamily Low-Density Residential (R-30) and is within the Official Plan for Marlton-Recreation Planned Community (R-P-C) Zone; and

WHEREAS, on May 10, 2011, Property and Industry Coordinators filed an application for approval of a Preliminary Plan of Subdivision for 92 lots and 4 parcels; and

WHEREAS, the application for approval of the aforesaid Preliminary Plan of Subdivision, also known as Preliminary Plan 4-11003 for Heathermore was presented to the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission by the staff of the Commission on October 20, 2011, for its review and action in accordance with Article 28, Section 7-116, Annotated Code of Maryland and the Regulations for the Subdivision of Land, Subtitle 24, Prince George's County Code; and

WHEREAS, the staff of The Maryland-National Capital Park and Planning Commission recommended APPROVAL of the application with conditions; and

WHEREAS, on October 20, 2011, the Prince George's County Planning Board heard testimony and received evidence submitted for the record on the aforesaid application.

†WHEREAS, by letter dated May 10, 2018, the applicant requested a waiver and reconsideration of Condition 18 and Finding 9 related to off-site transportation improvements at the intersection of US 301 (Robert S. Crain Highway) and MD 382 (Croom Road); and

†WHEREAS, on June 7, 2018, the Planning Board approved the waiver and request for reconsideration due to good cause in furtherance of substantial public interest (Rules of Procedure, Section 10(e)); and

†WHEREAS, on June 7, 2018, the Planning Board heard testimony regarding the reconsideration.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to the provisions of Subtitle 24, Prince George's County Code, the Prince George's County Planning Board APPROVED the Type 1 Tree Conservation Plan *[(TCP1-003-11-01)] (TCP1-006-11), and further APPROVED Preliminary Plan of Subdivision 4-11003, Heathermore for 92 lots and 4 parcels with the following conditions:

†Denotes Amendment

*Denotes Correction

Underlining indicates new language

[Brackets] and ~~strikethrough~~ indicate deleted language

1. Prior to signature approval of the preliminary plan of subdivision, the following technical corrections shall be made:
 - a. Add to Note 5 the breakdown of the acreage for the total lots and parcels and indicate that the parcels are to be conveyed to the homeowners association (HOA).
 - b. Note 7 shall be revised to 98 lots permitted.
 - c. Note 11 shall be revised to water Category 4 and sewer Category 4.
 - d. Note 14 shall be revised to Mandatory Dedication of Parkland to be private on-site recreation facilities.
 - e. Add a note for Archeological Site 18PR1020, The Duvall Tenant House Site, will be preserve in place.
 - f. Add the stormwater management concept approval (SWM) date to Note 12.
 - g. Remove the asterisk from Note 7.
 - h. Remove "and case number" from the Note 1, and add "Marlton West."
 - i. Modify Road "C" along the east property line to relocate the pavement outside the 20-foot-wide landscape strip of the 4.7 buffer.
 - j. Show curb ramp or depressed curb at the sidewalk from the handicap parking space along Road "B" in the area of perpendicular parking.
2. Development of this site shall be in conformance with Stormwater Management Concept Plan 6853-2011-00 and any subsequent revisions.
3. Prior to signature approval of the preliminary plan, revise the Type 1 Tree Conservation Plan as follows:
 - a. Revise the plan so that all afforestation areas meet the minimum size of 10,000 square feet and the minimum width of 50 feet.
 - b. Add a TCP1 approval block to the plan with the correct TCP1 number.
 - c. Revise the labels for woodland conservation areas on the plan to match the terminology used in the legend.
 - d. Have the revised plans signed and dated by the qualified professional who prepared them.

4. Development of this subdivision shall be in conformance with an approved Type 1 Tree Conservation Plan (TCP1-006-11). The following note shall be placed on the Final Plat of Subdivision:

"This development is subject to restrictions shown on the approved Type 1 Tree Conservation Plan (TCP1-006-11 or most recent revision), or as modified by the Type 2 Tree Conservation Plan, and precludes any disturbance or installation of any structure within specific areas. Failure to comply will mean a violation of an approved Tree Conservation Plan and will make the owner subject to mitigation under the Woodland and Wildlife Habitat Conservation Ordinance. This property is subject to the notification provisions of CB-60-2005. Copies of all approved Tree Conservation Plans for the subject property are available in the offices of the Maryland-National Capital Park and Planning Commission, Prince George's County Planning Department."

5. Prior to approval of the final plat, the applicant and the applicant's heirs, successors, and/or assignees shall be subject to the following orders of approval:
- a. A Marlton Official Plan Amendment to show a townhouse use on the subject property, or;
 - b. A special exception for the townhouse use on the subject property, and
 - c. Approval of a detailed site plan in accordance with Part 3, Division 9 of Subtitle 27.

These reviews shall further analyze conformance of this site to the overall Marlton Official Plan Amendment as approved through the 2009 *Approved Subregion 6 Master Plan and Sectional Map Amendment*.

6. Prior to the approval of the detailed site plan, the following issues, which may result in a loss of lots, shall be addressed:
- a. The guidelines set forth in Section 27-274(a)(11) and the requirements of Section 27-433 of the Zoning Ordinance.
 - b. Provision of opportunities to provide additional visitors' parking spaces.
 - c. Detailed design of the on-site recreational facilities, to include landscaping, benches, special lighting, trash cans, play equipment, special paving, and shelters, in the central green space and the area around the archeological site shall be reviewed for adequacy and proper siting.
 - d. The spacing between groups of townhouse lots for pedestrian access and possible buffer plantings.

- e. The Detailed Site and Landscape Plan shall have enhanced landscaping along the frontage of Heathermore Boulevard, as approved by M-NCPPC staff at the time of the detailed site plan approval.
7. Prior to the approval of the detailed site plan, details of all lighting fixtures shall be submitted for review along with certification that the proposed fixtures are full cut-off optics and a photometric plan showing proposed light levels. The following note shall be placed on the detailed site plan:

“All lighting shall use full cut-off optics and be directed downward to reduce glare and light spill-over.”
8. Prior to approval of the detailed site plan, the applicant and the applicant's heirs, successors and/or assignees shall provide a standard sidewalk along the subject site's frontage of Heathermore Boulevard, unless modified by the Department of Public Works and Transportation (DPW&T).
9. Prior to approval of final plats, the applicant and the applicant's heirs, successors and/or assignees shall provide a financial contribution of \$210 to the DPW&T for the placement of bikeway signage. A note shall be placed on the final record plat for payment to be received prior to the issuance of the first building permit. If additional road frontage improvements or restriping are required by DPW&T, bicycle compatible pavement markings are encouraged.
10. Prior to approval of final plats, the applicant and the applicant's heirs, successors, and/or assignees, shall submit three original executed Recreational Facilities Agreements (RFA) to The Maryland-National Capital Park and Planning Commission (M-NCPPC) Prince George's County Planning Department, Development Review Division (DRD) for the construction of private recreational facilities on-site. Upon approval by the DRD Division, the RFA shall be recorded among the land records of Prince George's County, Upper Marlboro, Maryland.
11. Prior to approval of building permits, the applicant and the applicant's heirs, successors, and/or assignees, shall submit a performance bond, letter of credit or other suitable financial guarantee, in an amount to be determined by the DRD Division, for the construction of private on-site recreational facilities.
12. Prior to approval of the detailed site plan, the applicant and the applicant's heirs, successors, and/or assignees shall:
 - a. Submit four copies of the final Phase I and Phase II archeological reports for archeological site 18PR1020 to the Historic Preservation Section (M-NCPPC) for review and approval.
 - b. Ensure that all recovered artifacts from archeological site 18PR1020 are deposited with the Maryland Archeological Conservancy Laboratory in Calvert County, Maryland for permanent curation; proof of disposition shall be provided to Historic Preservation staff.
 - c. Provide the language for interpretive signage and other appropriate interpretative measures for archeological site 18PR1020 such as brochures, web site material, etc., designed to

provide public information about the significance of the archeological site.
The language for the signage shall be reviewed by the Historic Preservation Section and submitted to the HPC for approval.

13. Prior to the approval of the detailed site plan, archeological site 18PR1020 and associated interpretive signage shall be incorporated into a passive recreational facility.
14. Prior to approval of the final plat, the applicant and the applicant's heirs, successors, and/or assignees shall establish an archeological conservation easement around archeological site 18PR1020 that includes a 20-foot buffer as determined on the DSP. The following note shall be placed on the final plat:

"Any ground disturbance within the proposed conservation easement must be reviewed and approved by The Maryland-National Capital Park and Planning Commission (M-NCPPC) Prince George's Planning Department, Countywide Planning Division, Historic Preservation Section."
15. Prior to the approval of any grading permit or any ground disturbance for the subject property, the applicant shall install a super-silt fence around the boundaries of archeological site 18PR1020 and provide proof of the installation and its placement to Historic Preservation Section (M-NCPPC). The location, installation and removal of the super-silt fence shall be determined at the time of detailed site plan.
16. Prior to the approval of building permits, the applicant and the applicants heirs, successors and/or assignees, shall demonstrate that a homeowners association (HOA) has been established and that common areas have been conveyed to the homeowners association (Parcels A through D). Land to be conveyed shall be subject the following:
 - a. A copy of unrecorded, special warranty deed for the property to be conveyed shall be submitted to the Subdivision Review Section of the Development Review Division (DRD) along with the final plat.
 - b. All waste matter of any kind shall be removed from the property prior to conveyance, and all disturbed areas shall have a full stand of grass or other vegetation upon completion of any phase, section, or the entire project.
 - c. The conveyed land shall not suffer the disposition of construction materials, soil filling, discarded plant materials, refuse, or similar waste matter.
 - d. Any disturbance of land to be conveyed to a homeowners association shall be in accordance with an approved detailed site plan. This shall include, but not be limited to, the location of sediment control measures, tree removal, temporary or permanent stormwater management facilities, utility placement, and stormdrain outfalls. If such proposals are approved, a written agreement and financial guarantee may be required to warrant restoration, repair or improvements required by the approval process.

- e. Stormdrain outfalls shall be designed to avoid adverse impacts on land to be conveyed to a homeowners association. The location and design of drainage outfalls that adversely impact property to be conveyed shall be reviewed and approved by the DRD Division prior to the issuance of grading or building permits in accordance with the approved detailed site plan (DSP).
 - f. Temporary or permanent use of land to be conveyed to a homeowners association for stormwater management shall be approved by the DRD in accordance with the approved DSP.
 - g. The Prince George's County Planning Board or its designee shall be satisfied that there are adequate provisions to assure retention and future maintenance of the property to be conveyed.
17. Total development within the subject property shall be limited to a residential development or equivalent development which generates no more than 64 (13 in; 51 out) AM peak-hour trips and 74 (48 in; 26 out) PM peak-hour trips. Any development generating an impact greater than that identified herein above shall require a new preliminary plan of subdivision with a new determination of the adequacy of transportation facilities.
18. Prior to the issuance of any building permits within the subject property, the following road improvements shall (a) have full financial assurances through either private money or full funding in the Maryland Department of Transportation "Consolidated Transportation Program" or the Prince George's County "Capital Improvement Program;" (b) have been permitted for construction through the operating agency's permitting process; and (c) have an agreed-upon timetable for construction with the appropriate operating agency, †unless the Maryland State Highway Administration, as the operating agency, refuses in writing to permit the improvements::
- a. US 301 and Croom Road intersection
 - b. Modify the westbound approach to provide a left turn lane and a shared left-through and right-turn lane.
 - c. Modify the traffic signal to provide split phasing.
19. At the time of final plat, the applicant shall dedicate a ten-foot-wide public utility easement (PUE) along the public and private rights-of-way as delineated on the approved preliminary plan of subdivision or as determined at the time of detailed site plan with concurrence of all affected utility companies.

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BE IT FURTHER RESOLVED, that the findings and reasons for the decision of the Prince George's County Planning Board are as follows:

1. The subdivision, as modified, meets the legal requirements of Subtitles 24 and 27 of the Prince George's County Code and of Article 28, Annotated Code of Maryland.
2. **Development Data Summary**—The following information relates to the subject preliminary plan application and the proposed development.

	EXISTING	APPROVED
Zone	R-30/R-P-C	R-30/R-P-C
Use(s)	Undeveloped	Residential-Townhouses
Acreage	12.26	12.26
Lots	0	92
Outlots	0	0
Parcels	1	4
Dwelling Units	0	92
Public Safety Mitigation Fee	No	No
Variance	No	No
Variation	No	No

Pursuant to Section 24-119(d)(2) of the Subdivision Regulations, this case was heard before the Subdivision and Development Review Committee (SDRC) on May 27, 2011.

3. **Official Plan for Marlton**—The Official Plan for Marlton was approved in 1969 pursuant to Zoning Map Amendment (ZMA) A-6696-C. At that time, the entire Marlton property was placed in the Recreation Planned Community (R-P-C) Zone and density was limited to 6,192 dwelling units. The Official Plan was amended two times pursuant to ZMA A-9730-C and A-9731-C. A-9730-C, the first amendment included 431.5 acres of land located in what is now referred to as East Marlton. East Marlton is located along the Penn-Central Railroad line, between Croom Road and Duley Station Road to the east. The second amendment A-9731-C, is for approximately 1.86 acres of land located in West Marlton. Overall, these amendments allowed 200 additional units in Marlton, which increased the total allowable number of dwelling units to 6,392.

The most recent Official Plan amendment was done through the adoption of the 2009 *Approved Subregion 6 Master Plan and Sectional Map Amendment*. PGCPB Resolution No. 09-66, as adopted on May 7, 2009, added a paragraph to the master plan that the Marlton Official Plan Amendment is included as an appendix to the master plan. The District Council then adopted the master plan as endorsed by the Planning Board on September 15, 2009 to rezone the subject property (Parcel 104) from the R-R (Rural Residential) Zone to the R-30 (Multifamily Low-Density Residential) Zone. The R-30 Zone permits both multifamily and townhouses, the plan was not revised to determine the specific use of Parcel 104, to provide the maximum flexibility in the final Official Plan Amendment document, as included as an appendix to the 2009 *Approved*

Subregion 6 Master Plan and Sectional Map Amendment. The Appendix has 13 conditions that amend and restate all conditions attached to the previous approved zoning map amendments for Marlton into one document. The following conditions in **bold** are relevant to the review of this preliminary plan; and are grouped according to issues:

1. **That this Official Plan designates an area of approximately 100 acres for public park purpose, the same to be dedicated, in states and at the time of platting, to the Maryland-National Capital Park and Planning Commission.**
11. **No residential building permits shall be obtained by the applicant (or anyone else upon a sale or transfer) for any property within East Marlton in the R-T, R-35, R-10 or R-E Zones, except the area zoned R-T (R-P-C) and R-R (R-P-C) known as Sections 18 and 19, until:**
 - a. **The applicant shall rough grade a minimum of two (2) acres and deed to entity designated by the Citizens Association of Marlton a Youth Center site of approximately 3.3 acres.**
 - b. **The applicant shall develop in West Marlton the two park/school sites according to plans submitted to the Citizens Association of Marlton and dependent on approval by the appropriate County agencies. Sites are located off Grandhaven Avenue (Parcel 25) and Trumps Hill Road (Parcel 5).**
 - c. **The above conditions 11(a) and (b) may be modified by the Prince George's County Planning Board as allowed by Section 27-158(b) of the Prince George's County Zoning Ordinance in furtherance of other recreational opportunities such as the proposed "South Marlton Recreation Area" proposed to be constructed on Maryland National Park and Planning Commission property located on Parcels 144, 145, and 149 Tax Maps 127-C2 and 127-C3.**
 - d. **The above conditions 11(a) and (b) shall be considered satisfied upon approval of an appropriate recreational facilities agreement by the Prince George's County Planning Board setting forth the location of facilities, requirements for the timing of their provision and the posting of a performance bond(s) with the appropriate governmental agency.**

All the recreation facilities established by the Official Plan Amendment for Marlton will be built on existing or future Department of Parks and Recreation property and be open to all residents of Marlton and the public. The Official Plan does not establish a financial structure for the construction of both public and private recreation facilities. However, since the subject property is in the Marlton R-P-C Zone and is using the density established by the Official Plan, it is appropriate and the applicant is in agreement to establish a mutual financial agreement with Lake

Marlton L.P., the developer of Marlton for the construction of the recreation facilities established by the Official Plan of Marlton. The financial agreement for the construction of recreation facilities should be examined and determined at the time of special exception or amendment of the Official Plan for this site, which will allow for the residential development of the subject site as proposed.

9. **Subject to approval by the appropriate agency, where necessary, the applicant shall make the following changes to Heathermore Boulevard and East Marlton Avenue to reduce the environmental impacts and lessen the length and number of stream crossings:**
 - a. **Design Heathermore Boulevard to modify the extent of grading to be only 100 feet of the 120-foot right-of-way (ROW), and design East Marlton Avenue to transition from the relocated round-about to an 80-foot ROW.**
 - b. **From the end of the existing Heathermore Boulevard dedication on the east side of the PEPCO ROW, Developer shall, beginning at the east side of the PEPCO ROW and merging into the alignment of East Marlton Avenue just before the dedicated Board of Education property, realign Heathermore Boulevard to the south. This realignment shall preserve, outside the limit of disturbance required to construct the realigned Heathermore Boulevard roadway as shown on the approved Detailed Site Plans, the area of the proposed park containing the Southwest Branch and the jurisdictional side branch stream flowing from the east between Sections 18 and 19 and the adjoining Duley property.**
 - c. **Heathermore Boulevard shall be constructed as a four-lane divided arterial beginning at the proposed Grandhaven Avenue round-about through to the proposed round-about at East Marlton Avenue. Any space used as a lane divider shall be constructed as green space with plantings as opposed to concrete or equivalent material.**
 - d. **The Heathermore Boulevard ROW shall transition to a two-lane East Marlton Avenue roadway within an 80-foot ROW from the proposed East Marlton Avenue round-about.**

The Official Plan Amendment does not establish a financial structure or timeline for the construction of the Heathermore Boulevard extension. However, under an agreement with the Department of Public Works and Transportation (DPW&T), all subsequent development in Marlton must contribute a (per unit) fee based on a pro-rata share towards the construction of Heathermore Boulevard Extension. The applicant is in agreement with the contribution and is responsible for their frontage improvement and portion of Heathermore Boulevard as to be determined by DPW&T. While the applicant appears to be amenable to paying a pro-rata share for Heathermore Boulevard, the Planning Board found that such a condition is not appropriate with

this preliminary plan approval. The subsequent submittal and evaluation of the Official Plan Amendment application or special exception would be a more appropriate time to address those issues, which are beyond the adequate public facilities analysis conducted for this subdivision application.

10. **Detailed site plan review, in accordance with Part 3, Division 9 of the Zoning Ordinance, shall be required and include the following:**
 - a. **The requirements of Sections 27-171 and 27-176 of the Zoning Ordinance for R-P-C considerations.**
 - b. **Prior to final plat approvals, the applicant shall submit a Recreational Facilities Agreement to the Prince George's County Planning Board, or its designee, which indicates the recreational facilities which will be provided as part of the development of Marlton. It will further indicate the location of the facilities and include requirements for the timing of the transfer of all proposed parkland to the Maryland-National Capital Park and Planning Commission.**

Conformance with the above conditions will be determined at the time of subsequent plan approvals and appropriate notes required on the record plats.

In the R-P-C Zone, pursuant to Section 27-540(b)(3) of the Zoning Ordinance, the overall density of the entire planned community shall not be more than eight dwelling units per gross acre and the density in specific residential shall not exceed the density designated on the Official Plan. The total allowable unit established by the Official Plan for Marlton is 6,392 units, of which 3,199 units have been platted. The proposed 92 townhouse lots on 12.26 acres is below the maximum allowable density of eight dwelling units per gross acres (which is 98 lots) and is within the limit of the total allowable units in Marlton-R-P-C Zone.

4. **Community Planning**—The 2002 *Prince George's County Approved General Plan* designates the subject property within the Developing Tier. The vision for the Developing Tier is to maintain a pattern of low-to moderate-density suburban residential communities, distinct commercial centers, and employment areas that are increasingly transit serviceable. The preliminary plan is consistent with the General Plan Development Pattern policies for the Developing Tier by proposing a moderate density townhouse development. Approval of this preliminary plan does not violate the General Plan's growth goals for the year 2025, based upon review of the Prince George's County's current General Plan Growth Policy update.

The subject property was classified in the R-30 Zone through the 2009 *Approved Subregion 6 Master Plan and Sectional Map Amendment*. The master plan recommends improvement for pedestrian mobility and encourages road connections and alternative modes of transportation. The preliminary plan shows two possible road connections onto the adjacent communities. The roads

in adjacent communities are private and this plan is proposing private roads as well. A future road connection between this property and the adjacent communities will have to be agreed upon by the private homeowner associations. The proposed preliminary plan and described development are in general conformance with the residential land use recommendation of the master plan.

5. **Urban Design**—The Zoning Ordinance and the 2010 *Prince George's County Landscape Manual* contain the following site design guideline and requirements that are applicable to the review of this preliminary plan.

Zoning Ordinance

Section 27-538 (d)(3) Site Plans in the R-P-C Zone: This section puts forth certain situations in which a detailed site plan (DSP) is required in the R-P-C Zone and states the following:

- (3) **If a use is permitted in a zoning subcategory subject to the approval of a Detailed Site Plan (as are uses in the R-T Zone), this Detailed Site Plan shall be prepared in accordance with the design guidelines in the Official Plan, as well as any requirement which pertains to the use elsewhere in this Subtitle.**

This requirement applies to the subject site, which has a zoning subcategory of R-30, and is proposed to be developed with 92 townhouses. A DSP is required for the proposed townhouse development, including any associated community building or recreational facilities, in accordance with Section 27-433, R-T Zone (Townhouse) and Part 3, Division 9 of the Subtitle, as stated in Section 27-283, Site Design Guidelines, which further refers to Section 27-274, Design Guidelines.

Section 27-539(c)(2) Uses Permitted in the R-P-C Zone: This section requires that the uses allowed in the R-P-C Zone must conform to the uses allowed in (and in the locations of) the zoning subcategories shown on the Official Plan and states the following:

- (2) **Specific uses (in addition to zoning subcategories) may be shown on the Official Plan. If a use shown normally requires the grant of a Special Exception, a separate Special Exception shall not be required. If a use normally requiring the grant of a Special Exception is not shown, a separate Special Exception must be obtained. If the Special Exception is granted, it shall automatically be considered an amendment of the Official Plan.**

The most recent Official Plan for Marlton, as approved through the 2009 *Approved Subregion 6 Master Plan and Sectional Map Amendment*, shows a school use on the subject property, with no specific residential use, such as the townhouse use included in this application. Per Section 27-441(b) the permitted use table, under the zoning subcategory of the R-30 Zone, a special exception for a general townhouse use is required. Therefore, a separate special exception must be obtained for the proposed townhouse use on the subject property. Alternatively, the issue could be resolved through an Official Plan Amendment to show the townhouse use on the subject property. As such, prior to final plat, either an Official Plan Amendment or a special exception should be approved for the townhouse use on the subject property. In either situation, it is recommended that the

approval be obtained prior to, the approval of the required DSP to ensure all issues are addressed in an appropriate manner.

Additional requirements for a townhouse special exception are provided in Section 27-416.01, which specifies that the site plan be designed in accordance with the guidelines in Section 27-274(a)(11), Design Guidelines for a Conceptual Site Plan, and the use comply with the requirements in Section 27-433, R-T Zone (Townhouse). These design guidelines and requirements be applied to the final site design of the subject property, whether a special exception or an Official Plan Amendment is pursued.

Section 27-540(b), Regulations for the R-P-C Zone: The proposed townhouse lots are in general conformance with the regulations for the R-30 Zone as stated in Section 27-442 of the Zoning Ordinance, in terms of general layout and lot size. Additional review will occur at the time of DSP review.

2010 Prince George's County Landscape Manual

The proposed 92 townhomes in the R-P-C Zone with a zoning subcategory of the R-30 Zone are subject to the following requirements of the 2010 *Prince's George's County Landscape Manual*: Section 4.1, Residential Requirements, Section 4.6, Buffering Development from Streets, Section 4.7, Buffering Incompatible Uses, Section 4.9, Sustainable Landscaping Requirements, and Section 4.10 Street Trees Along Private Streets. Compliance with these requirements will be reviewed at the time of DSP approval. However, the following are some of these requirements that may affect the proposed lotting pattern and should be considered at the time of DSP unless noted otherwise:

Section 4.6—Rear yards of townhouses that are oriented toward a primary or lower road classification, such as internal private roads, require a minimum 20-foot-wide buffer, planted with a specified amount of plant material. The corner lots of the submitted preliminary plan appear to be wide enough to accommodate the 20-foot-wide buffer, however a full analysis of this requirement will be evaluated at the time of DSP when building locations are specifically established. When rear yards are oriented toward a major collector road, such as Heathermore Boulevard, a 50-foot-wide buffer, planted with a specified amount of plant material, is required. The submitted preliminary plan of subdivision (PPS) appears to provide sufficient space for a 50-foot-wide buffer from Heathermore Boulevard.

Section 4.7—Townhomes adjacent to a public utility with overhead power lines would require a Type "B" Bufferyard, which includes a 30-foot building setback and a 20-foot landscape yard. The submitted PPS generally conforms with this requirement, except where proposed Road C encroaches into the area of the required landscape yard. A recommendation of this approval will require the modification of Road C to meet the required Type "B" bufferyard.

Other Design Issues

Per Section 27-568 of the Zoning Ordinance, townhouses are required to provide 2.04 parking spaces per dwelling unit, which would require 188 parking spaces for the proposed 92 units. Compliance with this requirement will be determined at the time of detailed site plan approval; however, the required number of parking spaces does not take into consideration additional visitor parking. Given the subject site is located far away from the public parking facility of the Marlton Town Center area, additional parking for visitors should be provided to the extent practical within the development.

The submitted preliminary plan proposed multiple private recreational facilities, including sitting areas, play areas and a gazebo in a central green space, surrounded by private streets, and the area around the existing archeological site. Given the importance of both of these areas to the identity of the community, it is recommended that a detailed design be done for these areas as part of the DSP to ensure that appropriate attention is paid to the features, appearance, safety and usability of these amenities.

The submitted preliminary plan shows some locations in which only five feet is provided between groups of townhouse lots. This is problematic as this space needs to serve as an access path for residents with interior lots to walk from the front to the rear of their lots and as a planted buffer between the lots. This has been discussed on several occasions with the applicant. Five feet in width is usually deemed sufficient for an access path, but this does not leave any room for plantings which is recommended in this case. Therefore, at the time of DSP, the spacing between groups of townhouse lots be increased to ten feet where feasible to ensure there is sufficient room for both pedestrian access and possible buffer plantings.

5. **Environmental**—A signed a Natural Resource Inventory, NRI-162-06, and Type 1 Tree Conservation Plan, TCP1-006-11, for the subject property has been reviewed. The site is subject to the Woodland and Wildlife Habitat Conservation Ordinance effective September 1, 2010, because there are no previous tree conservation plan approvals.

Located on the east side of Robert E. Crain Highway (US 301) the site is bordered on the south by Heathermore Boulevard, a divided roadway with a 120-foot-wide right-of-way; on the west and north by existing townhouse development; and on the east by a PEPCO right-of-way containing major transmission lines. Farther to the east is the existing Consolidated Rail Corporation railroad track which is located approximately 588 feet east of the subject property. According to mapping research and information submitted, no regulated streams and associated primary management areas (PMAs) are located on the site. The site has frontage on and proposes direct vehicular access to Heathermore Boulevard, a master planned major collector roadway that is not regulated for noise.

The CSX railroad line is a nearby noise source that is a sufficient distance from the proposed residences so that noise levels above 65 dBA Ldn is not anticipated. The proposal is not expected to be a noise generator. The soil series found to occur on-site according to the *Prince George's County Soil Survey* include Sandy land and Westphalia. According to available information, Marlboro clay occurs near this site, on the east side of the CSX tracks, but at a lower elevation that

the subject property. According to information obtained from the Maryland Department of Natural Resources Natural Heritage Program, there are no records of rare, threatened, or endangered species found to occur on or in the vicinity of this property. This property is located in the Charles Branch watershed of the Patuxent River basin and in the Developing Tier as reflected in the 2002 *Prince George's County Approved General Plan*. The entire property is located within the designated network of the 2005 *Approved Countywide Green Infrastructure Plan* including both Evaluation Area and Network Gaps. No designated scenic or historic roads will be affected by the proposed development.

Master Plan Conformance

The 2009 *Approved Subregion 6 Master Plan and Sectional Map Amendment*, contains the following environmental goals, policies and strategies that are applicable to the environmental review for this site. The preliminary plan and TCP1 must demonstrate conformance with the Master Plan. The text in **bold** is the relevant text from the master plan.

Policy 1: Protect, preserve, and restore the identified green infrastructure network and areas of local significance within Subregion 6 in order to protect critical resources and to guide development and mitigation activities.

Strategies

1. **Protect priority areas that will meet multiple protection objectives such as those related to green infrastructure, the priority preservation area, and the Patuxent River Rural Legacy Program.**
2. **Protect primary corridors (Patuxent River, Charles Branch, Collington Branch, Piscataway Creek, Mattawoman Creek, and Swanson Creek) during the review of land development proposals to ensure the highest level of preservation and restoration possible, with limited impacts for essential development elements. Protect secondary corridors to restore and enhance environmental features, habitat, and important connections.**
3. **Preserve and connect habitat areas to the fullest extent possible during the land development process.**
4. **Preserve or restore regulated areas designated in the green infrastructure network through the development review process for new land development proposals.**
5. **Protect portions of the green infrastructure network outside the primary and secondary corridors to restore and enhance environmental features, habitat, and important connections.**
6. **Evaluate land development proposals in the vicinity of SCAs to ensure that the SCAs are not negatively impacted and that green infrastructure connections are either maintained or restored.**

The subject site is located in the Charles Branch watershed, which is a designated primary corridor. The site is not within a Special Conservation Area (SCA). The site does not contain any regulated environmental features (streams, wetlands, or floodplains). The site does contain both Evaluation Areas and Network Gaps as designated in the 2005 *Approved Countywide Green Infrastructure Plan* as discussed further in this section.

Policy 2: Restore and enhance water quality in areas that have been degraded and preserve water quality in areas not degraded.

Strategies

- 1. Protect and restore groundwater recharge areas such as wetlands and the headwaters areas of streams and watersheds.**

Development activities are subject to federal, state and local requirements for the protection of wetlands, streams and headwaters. However, none of these features occur on the subject property.

- 7. Require environmentally-sensitive site design which includes limiting impervious surfaces and implementing best practices in on-site stormwater management to reduce the impact of development on important water resources.**

Development of the site will be subject to stormwater management concept, site design and final plan approval by the Department of Public Works and Transportation (DPW&T) during the development review process. DPW&T has determined that the environmental site design (ESD) practices shown on the approved stormwater management concept plan meet the maximum extent practicable (MEP) standards.

Policy 8: Reduce energy usage from lighting, as well as light pollution and intrusion into residential, rural, and environmentally sensitive areas.

Strategies

- 1. Encourage the use of alternative and energy-saving lighting technologies for athletic fields, shopping centers, gas stations, and car lots so that light intrusion on adjacent properties is minimized. Limit the amount of light output from these uses.**
- 2. Require the use of full cut-off optic light fixtures for all proposed uses to reduce sky glow.**

There are areas adjacent to the subject property, mainly areas to the east, that are sensitive to spill-over lighting. It is recommended that at the time of detailed site plan, the use of full cut-off optics be required to ensure that off-site light intrusion into environmentally-sensitive areas and abutting properties is minimized.

Policy 9: Reduce adverse noise impacts to meet acceptable state noise standards.

Strategies (as applicable to this application)

1. **Evaluate development and redevelopment proposals using Phase I noise studies and noise models where noise levels exceed 65 dBA.**
2. **Provide for adequate setbacks for development exposed to existing and proposed noise generators and roadways of arterial classification or greater.**
3. **Provide for the use of approved attenuation measures when noise issues are identified.**
5. **Require development within Ldn 65 dBA and greater noise exposure areas to be properly protected from the transmission of noise through the use of appropriate site designs, the use of barriers that affect sound propagation, and/or the use of sound absorbing materials in construction.**
6. **Work with the State Highway Administration to ensure that as state roads such as MD 4 and US 301 are upgraded, appropriate noise reduction measures are incorporated into the roadway design.**

The subject property is located adjacent to a major collector, which is a roadway classification that does not generate sufficient traffic volumes to result in noise levels of 65 dBA Ldn or greater. The site is also near to the CSX railroad track. A minimum 300-foot lot depth is required adjacent to a transit right-of-way; however, this site is located approximately 500 feet from the tracks at its closest point. Vibration and noise can be a concern within 100 feet of the centerline of the railroad track, but due to the distance separating the train from this site; it is not a concern at this location based on the Phase I noise study submitted by the applicant.

The Phase I noise study of the potential noise impacts from the nearby CSX railroad track on the proposed residential development was reviewed. A site survey was performed and sound levels were measured in the locations reflected in the report for nearly six days. The design goal was to ensure that the projected day-night average sound level (dBA Ldn) did not exceed 65 dBA Ldn in outdoor recreation areas. The highest measured dBA Ldn was 58.9 dB which is approximately 500 feet from the railroad. The 65 dBA Ldn contour was therefore estimated to be approximately 200 feet from the railroad which is approximately 300 feet from the boundary of the subject property. The noise study demonstrates that the subject property is located a sufficient distance from the railroad tracks so that the 65 dBA Ldn noise contour does not occur on the subject property.

Green Infrastructure Plan Conformance

The subject property is entirely within an Evaluation Area and a Network Gap of the designated network of the 2005 *Approved Countywide Green Infrastructure Plan*. The site contains no Regulated Areas which would be considered a high priority for preservation, or "regulated environmental features" such as a delineated Primary Management Area (PMA) or wetlands.

With regard to the portions of the site that are within the Evaluation Areas, the priorities for preservation are provided in Subtitle 25, Division 2, the Woodland and Wildlife Habitat Conservation Ordinance in Section 25-121(b). There are few areas of high priority for preservation on the subject site because of the absence of regulated environmental features, critical habitat areas, and specimen, historic or champion trees. There is an opportunity for preservation of a large block of woodlands adjacent to the PEPCO right-of-way on Parcel B. The woodland area shown to be preserved in this area is 0.51 acres in size and will be located adjacent to the utility corridor which provides opportunities for wildlife movement.

Environmental Review

The NRI shows no regulated environmental features and no specimen trees on the site. The elements of the signed NRI are correctly reflected on the preliminary plan of subdivision. According to the *Prince George's County Soil Survey*, the principal soils on the site are in the Sandy land and Westphalia series. Westphalia soils are highly erodible on severe and steep slopes. This information is provided for the applicant's benefit. The county may require a soils report in conformance with County Council Bill CB-94-2004, regarding sub-surface water conditions for proposed residential construction with a basement, during the building permit process review.

This property is subject to the provisions of the Prince George's County Woodland and Wildlife Habitat Conservation Ordinance because the gross tract area is greater than 40,000 square feet in size, there are more than 10,000 square feet of existing woodland on-site, and the property does not have a previously approved tree conservation plan. The subject site has a total woodland conservation requirement of 5.62 acres, which is proposed to be satisfied with 1.11 acres of on-site woodland preservation, 0.78 acres of on-site reforestation and 3.73 acres of off-site woodland conservation. The labels on the plan for the woodland conservation methods used should be revised to match the terms used in the legend.

To meet the woodland conservation requirements, a hierarchy of priorities has been established in Division 2 of Subtitle 25, in Section 25-121(b). While the forest structure was found to be good to excellent, this site does not contain any Priority 1 or Priority 2 areas. The 1.11 acres of on-site preservation proposed are located in Stand A and B which have the highest retention value on the site.

During the review of the subject application it was previously unclear what road improvements within the Heathermore Boulevard right-of-way would be required to be constructed along the frontage of the development. The TCP1 now shows construction of a full-width divided collector roadway per DPW&T. No woodlands have been identified within the right-of-way, so no off-site clearing is proposed.

Some of the woodland afforestation areas proposed are less than the minimum size of 10,000 square feet and may also be less than the minimum width of 50 feet wide (Section 25-122(b)). Portions of Afforestation Area 2 do not meet the minimum 50-foot width requirement and the tree conservation plan (TCP) must be revised accordingly prior to signature approval.

Woodland conservation areas and landscape buffering have been setback a minimum of ten feet from townhouse lot lines to allow for full access for utility installation and grounds maintenance. The TCP1 plan shows a paved walkway through an area of woodland preservation which has a width of approximately four feet. Because canopy coverage will be maintained in this area, a walkway of this width is acceptable if best management practices are required with the approval of the subsequent DSP and TCP2.

Subtitle 25, Division 3, the Tree Canopy Coverage Ordinance, requires a minimum percentage of tree canopy coverage on properties that require a grading permit. Properties zoned R-30 are required to provide a minimum of 15 percent of the gross tract area in tree canopy. The gross tract area is 12.26 acres resulting in a requirement of 1.84 acres. It appears that the subject application will be able to meet this requirement with a combination of woodland conservation and proposed landscaping, which will be reviewed at the time of detailed site plan.

6. **Stormwater Management**—The Department of Public Works and Transportation (DPW&T), Office of Engineering, has determined that on-site stormwater management is required. A Stormwater Management Concept Plan, 6853-2011-00, was approved on May 23, 2011 and is valid until May 23, 2014. The approved concept plan has conditions to ensure that development of this site does not result in on-site or downstream flooding. Development must be in accordance with this approved plan and subsequent revisions.
7. **Parks and Recreation**—The site was not the subject of a previously approved preliminary plan of subdivision therefore mandatory park dedication has not been previously evaluated for the subject site. In accordance with Section 24-134(a) of the Subdivision Regulations, the applicant provides adequate, private recreational facilities in accordance with the standards outlined in the Park and Recreation Facilities Guidelines. In this preliminary plan, the applicant proposes private on-site recreation facilities that include one play area, two sitting area, a gazebo on Parcel D, and a picnic area and the archeological site on Parcel A. Parcels A and D (226 acres) are to be conveyed to the homeowners association for on-site recreation facilities. Parcel B is the woodland preservation and Parcel C is for private roads.

Adequate open space exists to provide private on-site recreational facilities to meet the requirements of Section 24-134 of the Subdivision Regulations. The amount and type of recreation facilities should be reviewed further with the detailed site plan. Modification to these facilities could occur through subsequent plan approvals. However, the passive recreation facilities associated with the archeological site on Parcel A (HOA) are considered an important element to the overall design of the subdivision.

As previously stated, this property is in the Marlton R-P-C Zone and is the subject to the Official Plan Amendment for Marlton as approved with the 2009 *Approved Subregion 6 Master Plan and Sectional Map Amendment*. The Official Plan Amendment has umbrella conditions affecting all of the Marlton R-P-C Zone. There are two conditions that relate to the recreational facilities review of this preliminary plan:

1. That this Official Plan designates an area of approximately 100 acres for public park purpose, the same to be dedicated, in states and at the time of platting, to the Maryland-National Capital Park and Planning Commission.
11. No residential building permits shall be obtained by the applicant (or anyone else upon a sale or transfer) for any property within East Marlton in the R-T, R-35, R-10 or R-E Zones, except the area zoned R-T (R-P-C) and R-R (R-P-C) known as Sections 18 and 19, until:
 - a. The applicant shall rough grade a minimum of two (2) acres and deed to entity designated by the Citizens Association of Marlton a Youth Center site of approximately 3.3 acres.
 - b. The applicant shall develop in West Marlton the two park/school sites according to plans submitted to the Citizens Association of Marlton and dependent on approval by the appropriate County agencies. Sites are located off Grandhaven Avenue (Parcel 25) and Trumps Hill Road (Parcel 5).
 - c. The above conditions 11(a) and (b) may be modified by the Prince George's County Planning Board as allowed by Section 27-158(b) of the Prince George's County Zoning Ordinance in furtherance of other recreational opportunities such as the proposed "South Marlton Recreation Area" proposed to be constructed on Maryland National Park and Planning Commission property located on Parcels 144, 145, and 149 Tax Maps 127-C2 and 127-C3.
 - d. The above conditions 11(a) and (b) shall be considered satisfied upon approval of an appropriate recreational facilities agreement by the Prince George's County Planning Board setting forth the location of facilities, requirements for the timing of their provision and the posting of a performance bond(s) with the appropriate governmental agency.

All the recreation facilities established by the Official Plan Amendment for Marlton will be built on existing or future M-NCPPC property and be open to all residents of Marlton and the public. The Official Plan does not establish a financial structure for the construction of these recreation facilities. However, since the subject property is in the Marlton R-P-C Zone and is using the density established by the Official Plan, it is appropriate, and the applicant is in agreement, to establish a mutual financial agreement with Lake Marlton L.P., the developer of Marlton for the construction of the overall recreation facilities established by the Official Plan of Marlton. The financial agreement for the construction of recreation facilities should be examined and determined at the time of special exception or amendment of the Official Plan for this site which will allow for the residential development of the subject site as proposed.

8. **Trails**—The preliminary plan has been reviewed for conformance with the 2009 *Approved Countywide Master Plan of Transportation* (MPOT) and the 2009 *Approved Subregion 6 Master Plan and Sectional Map Amendment* (SMA) in order to implement planned trails, bikeways, and pedestrian improvements. The property is located in an area bounded by Heathermore Boulevard to the south, Marlton Center Drive to the north, the PEPCO right-of-way to the east, and existing townhouse development to the west.

The MPOT has several policies related to pedestrian access and the provision of sidewalks within the Developing Tier. The Complete Streets Section includes the following policies regarding sidewalk construction and the accommodation of pedestrians.

Policy 1:

Provide standard sidewalks along both sides of all new road construction within the Developed and Developing Tiers.

Policy 2:

All road frontage improvements and road capital improvement projects within the developed and Developing Tiers shall be designed to accommodate all modes of transportation. Continuous sidewalks and on-road bicycle facilities should be included to the extent feasible and practical.

The Trails, Bikeways, and Pedestrian Mobility chapter of the MPOT also includes the following policy regarding pedestrian connections between and within communities.

Policy 9:

Provide trail connections within and between communities as development occurs, to the extent feasible and practical.

Related to this, Basic Plan A-9730-C includes the following condition that requires appropriate pedestrian and trail connections:

- 2g. **An appropriate system of community-wide pedestrian and bridle trails shall be developed.**

In light of these recommendations and prior conditions, the feasibility of pedestrian connections to the adjoining residential communities was explored. Connections appeared to be possible from the subject site to either Woods View Street or Marlton Center Drive. However, as the roadways in the adjoining communities are privately owned and maintained, these connections cannot be made without their consent and agreement. As the existing community voiced opposition to these connections for both vehicular and pedestrian connections, there are no recommendations by staff for sidewalk or trail connections to either Woods View Street or Marlton Center Drive with this application. However, it should be noted that two private streets stub at the edge of the subject site near Woods View Street and Marlton Center Drive in the abutting community. It will be possible to connect the two roads in the future, if desired and agreed to by the communities. A sidewalk or

pedestrian connection could be provided at that time. Under the submitted plans, pedestrian access will be provided to the adjacent community via the sidewalk along Heathermore Boulevard.

One of the major park facilities in the vicinity of the subject site is the planned East Marlton Stream Valley Park (M-NCPPC). The planned park will incorporate a stream valley trail and other open-space amenities. This park lies approximately 1,200 linear feet to the east of the subject site and will be accessible from the development via the sidewalk and bikeway along Heathermore Boulevard.

From the standpoint of non-motorized transportation, it is determined that this plan is acceptable, fulfills the intent of applicable master plans and functional plans, fulfills prior conditions of approval, and meets the finding required for a preliminary plan as required under Section 24-123 of the Subdivision Regulations.

9. **Transportation**—The findings contained herein are based on the traffic study dated June 8, 2011, and was later revised and received on September 27, 2011. This updated traffic study was found acceptable and was referred to Department of Public Work and Transportation (DPW&T) and State Highway Administration (SHA) for their review and comments.

The site is 12.26-acre, R-30 zoned property is located on the north side of Heathermore Boulevard and approximately 1.5 miles east of Robert E. Crain Highway (US 301). The subject application proposes the construction of 92 townhouses. The subject property is located within the Developing Tier as defined in the 2002 *Prince George's County Approved General Plan*. As such, the subject property is evaluated according to the following standards:

- **Links and signalized intersections:** Level-of-service (LOS) D, with signalized intersections operating at a critical lane volume (CLV) of 1,450 or better;
- **Unsignalized intersections:** *The Highway Capacity Manual* (Transportation Research Board) procedure for unsignalized intersections is not a true test of adequacy but rather an indicator that further operational studies need to be conducted. Vehicle delay in any movement exceeding 50.0 seconds is deemed an unacceptable operating condition at unsignalized intersections. In response to such a finding, the Planning Board has generally recommended that the applicant provide a traffic signal warrant study and install the signal (or other less costly warranted traffic controls) if deemed warranted by the appropriate operating agency.

The findings outlined below are based upon a review of these revised materials and analyses consistent with the "Guidelines for the Analysis of the Traffic Impact of Development Proposals."

Traffic Study Analysis:

The application is a preliminary plan of subdivision for a residential development consisting of 92 townhouses. Using the "Guidelines for the Analysis of the Traffic Impact of Development Proposals," the proposed development will be adding 64 (13 in; 51 out) AM peak-hour trips and 74 (48 in; 26 out) PM peak-hour trips.

The traffic generated by the proposed preliminary plan would impact the following critical intersections:

- US 301 & Croom Road (MD 382)
- US 301 & South Osborne Road
- US 301 & Heathermore Boulevard

None of the intersections are programmed for improvement with 100 percent construction funding within the next six years in the current Maryland Department of Transportation Consolidated Transportation Program (CTP) or the Prince George's County Capital Improvement Program (CIP).

The traffic study identified the following links and critical:

Existing Traffic Conditions (2010) (Level-of-Service (LOS)/Critical Lane Volume (CLV))		
Intersection	AM (LOS/CLV)	PM (LOS/CLV)
US 301 & Croom Road (MD 382)	C/1204	C/1298
US 301 & South Osborne Road	B/1073	C/1214
US 301 & Heathermore Boulevard	C/1197	A/974

The traffic study identified 11 background developments whose impact would affect some or all of the study intersections. Additionally, a growth rate of 1.0 percent per year was applied to the through traffic along US 301 through 2016. A second analysis was done to evaluate the impact of the background developments on existing infrastructure. The analysis revealed the following results:

Background Traffic Conditions (2016) Level-of-Service (LOS)/Critical Lane Volume (CLV)		
Intersection	AM (LOS/CLV)	PM (LOS/CLV)
US 301 & Croom Road (MD 382)	D/1317	E/1463
US 301 & South Osborne Road	C/1182	D/1410
US 301 & Heathermore Boulevard	D/1301	B/1113

Using the "Guidelines for the Analysis of the Traffic Impact of Development Proposals," the traffic study has indicated that the proposed development of 92 townhomes will be adding 68 (14 in; 54 out) AM peak-hour trips and 78 (51 in; 27 out) PM peak-hour trips. As was the case for the background analyses, the study assumed full build out up to the year 2016. Applying a growth rate

of one percent per year for through traffic along US 301, and combining the site-generated traffic along with background developments, the following results were determined:

Total Traffic Conditions (2016) Level-of-Service (LOS)/Critical Lane Volume (CLV)		
Intersection	AM (LOS/CLV)	PM (LOS/CLV)
US 301 & Croom Road (MD 382)	D/1343	E/1487
US 301 & South Osborne Road	C/1208	D/1433
US 301 & Heathermore Boulevard	D/1312	B/1141

The results of the analyses show that the intersection of US 301 and Croom Road (MD 382) would operate at failing level of service under total traffic conditions. As a result of that finding, the applicant had proffered the following improvements:

US 301 & Croom Road

- Modify the westbound approach to provide a left turn lane and a shared left-through and right-turn lane
- Modify the traffic signal to provide split phasing.

The following intersections when analyzed with the proffered improvements by the applicant, was found to operate as follows:

Total Traffic Conditions (2016) Level of Service (LOS)/Critical Lane Volume (CLV)		
Intersection	AM (LOS/CLV)	PM (LOS/CLV)
US 301 and Croom Road (MD 382)	D/1343	E/1487
<i>With restriping plus split phasing</i>	<i>D/1320</i>	<i>D/1445</i>

The results shown in the table above have indicated that all of the intersections that will operate acceptably under total traffic conditions with the proffered improvement.

Upon review of the applicant's traffic study (including revisions), staff is in general agreement with the findings and conclusions of the traffic study. In addition to the Transportation Planning staff, the traffic study was reviewed by two other agencies, the State Highway Administration (SHA) and the Department of Public and Transportation (DPW&T).

In a June 29, 2011 memorandum to staff (Issayans to Burton), Mr. Issayans (DPW&T) acknowledged that the study intersections were under the control of the SHA, and consequently deferred to SHA for final recommendation. The SHA, in its review of the subject study raised the following issues as follows:

- There was a discrepancy between the departing (northbound) traffic volume at the US 301 and South Osborne Road intersection and the arriving volume at the US 301 & Croom Road intersection.
- The traffic study recommendation to change the signal phasing to a split phasing at the US 301 and Croom Road (MD 382) intersection, will require a Synchro analysis along US 301 within the study area.

Based on the September 27, 2001 revised traffic study, both of the aforementioned issues raised by SHA have been resolved to the satisfaction of staff. †It is noted that the proposed improvements at US 301 and MD 382 are modifications to the existing pavement markings, signage, and signals. As such, because traffic patterns changed between the date of approval and the time that the improvements were proposed for construction, in 2017, SHA refused to permit the improvements required by the Planning Board. On reconsideration, the Planning Board has determined that, as a matter of equity, the applicant may proceed with the completion of the development of the subdivision based on the specific facts in this case and the determination that the LOS at the intersection of US 301 and MD 382 will operate at an adequate level of service.

†Background for Reconsideration

The original scope for the 2011 traffic impact study prepared by the applicant included the intersection of US 301 and MD 382. The intersection was shown to not meet the LOS D standard during the PM peak-hour under background traffic and total traffic required for approval of the PPS. In response to the PM peak-hour inadequacy, the applicant proffered the following improvements in the traffic study:

- Modify the westbound approach to provide a left-turn lane and a shared left-through and right-turn lane.
- Modify the traffic signal to provide split phasing.

†At the time of review, SHA raised two issues, and the Planning Board resolution indicates that both issues were resolved in a subsequent revision to the traffic study. As a result, these improvements were adopted as Condition 18 in the Planning Board resolution.

†Denotes Amendment

*Denotes Correction

Underlining indicates new language

[Brackets] and ~~strikethrough~~ indicate deleted language

†The improvements were originally bonded by the applicant through the County, and approximately one-third of the 92 dwelling units in the subdivision were permitted, constructed, and occupied. The applicant moved forward with the development on good faith that the road improvements could ultimately be implemented. However, when the applicant attempted to get the road improvements permitted for construction, it was determined that SHA was the appropriate permitting agency for the improvements, and originally the County should not have bonded the SHA improvement.

†In March 2017, the applicant tried to bond and permit the improvements with SHA, and SHA determined that they would need additional information based on current counts before moving forward. Upon a reanalysis using current counts for the intersection of US 301 and MD 382, the applicant determined that (a) the conditioned improvements under current traffic would in fact deteriorate operations at the intersection; and (b) the intersection, in consideration of background and total traffic, would operate at LOS D without further improvements. This may be based on the fact that, between 2011 and 2017, the adjacent shopping center on the west side of US 301 was extensively rebuilt and expanded, and this would have accounted for a significant shift in traffic patterns.

†This issue was brought to the attention of the Planning Department in March 2018, and it was noted that SHA refused to permit the required improvements and that there were no similar improvements to the critical intersection that the applicant could implement. The final determination by SHA is included with the reconsideration request as an email (Peter Campanides, SHA to Glenn Cook, Traffic Group) dated April 10, 2018. SHA's determination is based upon operational considerations. This refusal by the operating agency to permit the improvement precludes the applicant from completing the subdivision for which they have already implemented all of the necessary infrastructure including roads, water and sewer, and stormwater management.

†While the mere issuance of a building permit does not create a vested right, the issuance of all but 15 of 92 residential permits, followed by the construction of infrastructure and many of the homes associated with validly approved building permits, raises the specter that this project has become vested (*Cromwell v. Ward*, 102 Md. App. 691(1995)). Under these unusual circumstances including that, in accordance with the transportation guidelines, the intersection in question would pass a current adequacy analysis, the equitable solution is to amend Condition 18.

The preliminary plan proposes a single-access point along Heathermore Boulevard. The initial preliminary plan proposed an access driveway approximately 120 feet from the southwest corner of the property line. Initial access location appeared to align with the proposed access point of the approved Detailed Site Plan (DSP-02037) for the Eagle Crest at Marlton located on the south side

†Denotes Amendment

*Denotes Correction

Underlining indicates new language

[Brackets] and ~~struck through~~ indicate deleted language

of Heathermore Boulevard from the subject site. Through the review process, it was found that in order to locate the entrance to the subject site in alignment with the approved (but unbuilt) access on the Eagle Crest site, the grading would result in the need to install an 18-foot-high retaining wall. In addition, the archeological site was found to be approximately 80 feet north of the initial access point. To protect the archeological site and remove the need to construct an 18-foot-high retaining wall, staff and the applicant agreed to relocate the access point approximately 230 feet to the west as shown on the proposed preliminary plan. The relocated access point is more appropriate by creating a better lot layout with the topography of site and a better opportunity to preserve the entire archeological site. DPW&T has reviewed the location of the access and deemed it to be acceptable.

Heathermore Boulevard is recommended on the current 2009 *Approved Countywide Master Plan of Transportation* as a major collector (MC-601) within a 120-foot right-of-way. The subject site plan is proposing sufficient right-of-way consistent with the master plan requirements. Heathermore Boulevard is envision to transition down to a two-lane, no median, roadway section for the bridge over the CSX railroad track to the east, toward East Marlton Avenue, a designated 80-foot-wide collector right-of-way. Since the subject property is one of the last properties in West Marlton before the PEPCO right-of-way and CSX railroad track, the transition of Heathermore Boulevard to a two-lane right-of-way may affect the properties frontage improvements and possible median location. At the time of building permits the applicant will be responsible for their frontage improvements and construction of that portion of Heathermore Boulevard as determined by DPW&T.

Official Plan for Marlton

The property is in the Marlton R-P-C Zone and is the subject to Official Plan Amendment for Marlton as approved with the 2009 *Approved Subregion 6 Master Plan and Sectional Map Amendment*. The Official Plan Amendment has umbrella conditions affecting all of the Marlton R-P-C Zone. There following conditions relate to road improvements for this preliminary plan:

9. **Subject to approval by the appropriate agency, where necessary, the applicant shall make the following changes to Heathermore Boulevard and East Marlton Avenue to reduce the environmental impacts and lessen the length and number of stream crossings:**
 - a. **Design Heathermore Boulevard to modify the extent of grading to be only 100 feet of the 120-foot right-of-way (ROW), and design East Marlton Avenue to transition from the relocated round-about to an 80-foot ROW.**
 - b. **From the end of the existing Heathermore Boulevard dedication on the east side of the PEPCO ROW, Developer shall, beginning at the east side of the PEPCO ROW and merging into the alignment of East Marlton Avenue just before the dedicated Board of Education property, realign Heathermore Boulevard to the south. This realignment shall preserve, outside the limit of disturbance required**

to construct the realigned Heathermore Boulevard roadway as shown on the approved Detailed Site Plans, the area of the proposed park containing the Southwest Branch and the jurisdictional side branch stream flowing from the east between Sections 18 and 19 and the adjoining Duley property.

- c. Heathermore Boulevard shall be constructed as a four-lane divided arterial beginning at the proposed Grandhaven Avenue round-about through to the proposed round-about at East Marlton Avenue. Any space used as a lane divider shall be constructed as green space with plantings as opposed to concrete or equivalent material.
- d. The Heathermore Boulevard ROW shall transition to a two-lane East Marlton Avenue roadway within an 80-foot ROW from the proposed East Marlton Avenue round-about.

The above condition generally relates to east Marlton. The Official Plan Amendment does not establish a financial structure or trigger for the construction of the Heathermore Boulevard Extension which is under the authority of DPW&T. Under an agreement with the DPW&T, all subsequent development in Marlton must contribute a (per unit) fee based on a pro-rata share towards the construction of Heathermore Boulevard Extension. The applicant is in agreement with the contribution and is responsible for their frontage improvement and portion of Heathermore Boulevard as determined by DPW&T. While the applicant appears to be amenable to paying a pro-rata share for Heathermore Boulevard, the Planning Board found that such a condition is not appropriate this preliminary plan. The subsequent submittal and evaluation of the Official Plan Amendment application or special exception would be a more appropriate time to address those umbrella issues, which are beyond the Adequate Public Facilities analysis conducted for this subdivision application.

Based on the preceding findings it is determined that adequate access roads will exist as required by Section 24-124 of the Subdivision Regulations.

10. **Schools**—The proposed preliminary plan has been reviewed based on the original submittal of 97 lots for impact on school facilities in accordance with Section 24-122.02 of the Subdivision Regulations and County Council Resolution CR-23-2003 and concluded the following:

Impact on Affected Public School Clusters

Affected School Clusters #	Elementary School 4 Cluster	Middle School 2 Cluster	High School 2 Cluster
Dwelling Units	97 DU	97 DU	97 DU
Pupil Yield Factor	.14	.11	.10
Subdivision Enrollment	13.6	10.7	9.7
Actual Enrollment	4,001	5,564	12,737
Total Enrollment	4,014.6	5,574.7	12,746.7
State Rated Capacity	4,144	5,430	13,026
Percent Capacity	96.9%	102.7%	97.8%

Source: Prince George's County Planning Department, M-NCPPC, January 2007

County Council Bill CB-31-2003 established a school facilities surcharge in the amounts of: \$7,000 per dwelling if a building is located between I-495 and the District of Columbia; \$7,000 per dwelling if the building is included within a basic plan or conceptual site plan that abuts an existing or planned mass transit rail station site operated by the Washington Metropolitan Area Transit Authority; or \$12,000 per dwelling for all other buildings. County Council Bill CB-31-2003 allows for these surcharges to be adjusted for inflation and the current amounts are \$8,299 and \$ 14,227 to be paid at the time of issuance of each building permit.

The school facilities surcharge may be used for the construction of additional or expanded school facilities and renovations to existing school buildings or other systemic changes.

11. **Fire and Rescue**—The proposed preliminary plan has been reviewed for adequacy of fire and rescue services in accordance with Section 24-122.01(d) and Section 24-122.01(e)(1)(C) and (E) of the Subdivision Regulations.

The proposed development is within the 7-minute required response time for the first due fire station using the *Seven Minute Travel Times and Fire Station Locations Map* provided by the Prince George's County Fire/EMS Department.

First Due Fire/EMS Company #	Fire/EMS Station	Address
45	Upper Marlboro	7710 Croom Road

Pursuant to County Council Resolution CR-69-2006, the Prince George's County Council and the County Executive suspended the provisions of Section 24-122.01(e)(1)(A) and (B) regarding sworn fire and rescue personnel staffing levels.

The Fire/EMS Chief has reported that the Fire/EMS Department has adequate equipment to meet the standards stated in County Council Bill CB-56-2005.

Capital Improvement Program (CIP)

There are no public facility projects in The Capital Improvement Program for Fiscal Years 2011-2016.

The above findings are in conformance with the 2008 *Approved Public Safety Facilities Master Plan* and the "Guidelines for the Mitigation of Adequate Public Facilities: Public Safety Infrastructure."

12. **Police Facilities**—The subject property is located in Police District V, Clinton, Maryland. The response time standard is ten minutes for emergency calls and 25 minutes for nonemergency calls. The times are based on a rolling average for the preceding 12 months. The preliminary plan was accepted for processing by the Planning Department on May 10, 2011

Reporting Cycle	Previous 12 Month Cycle	Emergency Calls	Nonemergency Calls
Acceptance Date 5/10/2011	5/2010-4/2011	11 minutes	9 minutes
Cycle 1	6/2010-5/2011	11 minutes	9 minutes
Cycle 2	7/2010-6/2011	10 minutes	9 minutes
Cycle 3			

Based upon police response times for Reporting Cycle 2, the response time standards of 10 minutes for emergency calls and 25 minutes for nonemergency calls were met.

Pursuant to County Council Resolution CR-69-2006, the Prince George's County Council and the County Executive suspended the provisions of Section 24-122.01(e)(1)(A) and (B) regarding sworn police personnel staffing levels.

13. **Water and Sewer**—Section 24-122.01(b)(1) of the Subdivision Regulations states that "the location of the property within the appropriate service area of the Ten-Year Water and Sewer Plan is deemed sufficient evidence of the immediate or planned availability of public water and sewer for preliminary or final plat approval."

The 2008 *Water and Sewer Plan* placed existing Parcel 104 in water and sewer Category 5, Future Community System, inside the Sewer Envelope within the Developing Tier. The applicant submitted an application to Department of Environmental Resources (DER) for the December 2010 Legislative Cycle of Amendments to change the water and sewer Category 5 to 4. The sewer category change was approved by County Council Resolution, CR-20-2011 on June 21, 2011. The site is therefore in the appropriate service area to be served by public systems. The property must be approved for sewer and water Category 3 through the administrative amendment procedure before approval of a final plat.

Water and sewer lines abut the property. Water and sewer line extensions are required to service the proposed subdivision and must be approved by the Washington Suburban Sanitary Commission (WSSC).

14. **Health Department**—The Prince George's County Health Department has evaluated the proposed preliminary plan of subdivision and has no comments to offer.
15. **Public Utility Easement (PUE)**—In accordance with Sections 24-122(a) and 24-128(b)(12) of the Subdivision Regulations, when utility easements are required by a public utility company, the subdivider should include the following statement in the dedication documents recorded on the final plat:

“Utility easements are granted pursuant to the declaration recorded among the County Land Records in Liber 3703 at Folio 748.”

The preliminary plan of subdivision correctly delineates a ten-foot public utility easement along the public and private rights-of-way as requested by the utility companies.

16. **Archeology**—A Phase I archeological survey on the subject property resulted in the identification of archeological site 18PR1020, a 19th through early 20th century domestic occupation. As a result of the findings of the Phase I survey, Phase II investigations were requested by the Historic Preservation Section to further evaluate the significance of site 18PR1020.

Archival Research

Archival research indicates that site 18PR1020 is located on the Croom land grant. This land was once part of Edward Scott's plantation. Edward Scott, father of Polydore E. Scott, was a planter and large slaveholder. He held 32 enslaved laborers in 1850. At the time of the 1850 Census, Polydore Scott (45, farmer) was living with his father, Edward Scott (81, planter), a 54-year old female M.A. Scott, Polydore's daughter Mary C. Scott (8), M.E. Scott (4-year old female), John Sweeney (24, laborer), and Caroline Sweeney (23).

Edward Scott died in 1851 and presumably devised his land in the Croom survey to his son, Polydore Scott. Polydore E. Scott died in 1855. At this time he was suffering from financial difficulties and the settling of his debts that was protracted for a period of more than 30 years. These debts were the subject of the case brought to the Court of Appeals of Maryland and detailed in Volume 48 of the Court's records (Stockett 1879). At the time of his death, Polydore E. Scott was a widower with one young daughter, Mary C. Scott, and had been in business with his brother, Horatio C. Scott, since 1826. The brothers first set up a mercantile partnership in Upper Marlboro under the name of H.C. Scott and Co., but dissolved the business by mutual agreement in 1830. The brothers subsequently set up business as H.C. and P.E. Scott and carried on as an active business until 1842 when they closed the operation. However, this firm was not dissolved until the death of Polydore and it appears that the brothers settled much of their debt, incurred as a result of their primary profession of planters, through this business. Despite the efforts of three separate auditors, Mr. Mullikin, Mr. Hance, and Mr. Chew, employed by various courts over the 30 years that it took to resolve their outstanding debts, the accounts of the two brothers were found almost

impossible to disentangle. To further complicate matters Horatio C. Scott died in 1861 and his wife, Henrietta M. Scott, was appointed executrix along with C.C. Magruder on behalf of the court and Charles Clagett as Guardian of Mary C. Scott, daughter of Polydore E. Scott. Unfortunately, both Charles Clagett and Henrietta M. Scott died before the resolution of the case and a further trustee, Edward G.W. Hall was appointed to represent their estate. Given this confusion it is not possible to determine if anyone lived on the lands of Polydore E. Scott from the time of his death in 1855 until the purchase of part of his real estate by Benjamin Frank Duvall in 1885.

Benjamin Frank Duvall purchased two lots from the executor of the estate of Polydore E. Scott, deceased, in 1885. The lots comprised 188.2 and 189 acres, respectively, of which the second is believed to contain the subject property. After his death this land appears to have passed to his wife and children.

Benjamin Frank Duvall, Jr., held the subject property since 1914, first as single man, then jointly with his wife Geneva Duvall, Trafton, and then singly again after the dissolution of his marriage. An heir to the estate of Benjamin Frank Duvall, Benjamin Frank Duvall, Jr., procured the 234.32 acres from the other heirs of the estate, primarily his siblings and his mother, Elizabeth VanNess Duvall (PGC 101:397). His father, Benjamin Frank Duvall (1858-1893), was the son of Benjamin Franklin Duvall (1831-1922) who served as Judge of the Prince George's County Orphans Court. Benjamin Franklin Duvall lived at the nearby Trumps Hill farm.

In June 1952 Benjamin Frank Duvall, Jr., conveyed 180 acres to Ira E. and Viola C. Van Tessell. The Van Tessells sold about 170 acres to Orville J. and Ruth M. Richie and John V. and Priscilla Borden in 1963. The Bordens and Richies platted this land and other parcels as the Marlton Subdivision in 1966. In 1977 the current 12-acre parcel was deeded to the Prince George's County Board of Education (BOE).

Consultation of the census records available for the early twentieth century indicate that the owner of the land on which the site is located did not reside locally and instead lived in Washington, D.C., which would seem to indicate that the parcel of land and any extant structures were rented out to third parties. Given the fact that most of the surrounding entries within the census indicate that the majority of white families owned their farms/houses, while the majority of African-American families rented theirs from others, it would appear that the site was most likely occupied by an African-American family in the early 20th century, if not before. The names of two families, Hall and Simms, often reoccur in association with nearby entries in the census records from this period and it is possible that they previously occupied structure/s represented by the Heathermore Site.

Phase II Archeological Evaluation

Phase II archeological evaluation of the Heathermore Site, 18PR1020, was conducted in July 2011. The excavation of 122 shovel test pits at five-meter intervals revealed a significant amount of disturbance across a majority of the site, a number of areas that appeared undisturbed, and a wide scatter of brick fragments. Additional artifacts included pearlware (a type of ceramic manufactured from the early to mid-nineteenth century) but primarily consisted of artifacts from the late nineteenth through early twentieth century. Four 1-x-1 meter test units were disbursed across the

site. An additional six units were subsequently excavated based upon the identification of the remains of a cellar-hole in the southwest corner of the site. In total 1,117 artifacts were recovered from the ten test units, of which 945 artifacts were recovered in direct association with the cellar hole feature. As with those recovered from the rest of the site, the artifacts run the temporal span from the early nineteenth century through the 1930s, with the majority appearing to date to the end of the nineteenth century through early twentieth century. The recovery of an elephant-topped powder jar, dating to the 1930s, from the feature fill seems to indicate that the house was occupied until that time.

Phase II investigations confirmed the presence of a nineteenth to early twentieth century domestic residence in the southwestern portion of the subject property. The building appears to have burned in the 1930s and the superstructure demolished shortly thereafter. A portion of the structure was pushed into the house's cellar that remains intact below the ground surface. The area surrounding the cellar appears to have been disturbed by bulldozing in the mid-twentieth century. The portion of the Heathermore Site in the vicinity of the cellar retains its archeological integrity and has high research value.

Although numerous sites dating from the late nineteenth to early twentieth century still exist in the county, few of these sites have been studied from an archeological perspective. The Heathermore Site, 18PR1020, was likely occupied in the post-Civil War period by formerly enslaved African American tenant farmers and could provide information on the transition of African American families from slavery to tenancy. Since this aspect of African American farm tenancy has been little studied in Prince George's County, the research value of this property is high and can contribute to the expansion of our knowledge on this subject.

Archeological site 18PR1020 is eligible for listing in the National Register of Historic Places under Criterion D: "the site has yielded, or may be likely to yield, information important in prehistory or history." In addition, site 18PR1020 is historically and culturally significant under County Subtitle 29-104 criteria (1)(A)(i) – it has significant character, interest, or value as part of the development, heritage, or cultural characteristics of the County, State, or Nation, and (1)(A)(iv) – it exemplifies the cultural, economic, social, political, or historic heritage of the County and its communities. The period of significance for the archeological site relates directly to the occupancy of the property by African American tenants from the mid-1800s to the 1930s, when the house burned and was demolished.

Preservation in place with appropriate buffer is generally preferable for archeological sites with high interpretive value and is encouraged by the Prince George's County Planning Board. The Heathermore Site, 18PR1020, could provide information to the general public through the development of interpretive signage and the preservation of open space in the vicinity of the house site and cellar.

Historic Preservation Commission

The preliminary plan was referred to the Historic Preservation Commission (HPC) and was reviewed at the September 20, 2011 meeting in the absence of the applicant. The HPC voted unanimously for preservation in place with an archeological conservation easement and the

provision of a 20-foot limit-of-disturbance (LOD) be established around archeological site 18PR1020. It is recommended that the archeological site be incorporated into a passive recreational facility with appropriate picnic area and interpretive signage which should be reviewed by the Historic Preservation staff and submitted to the HPC for approval at the time of detailed site plan. The passive recreational facility with archeological site will be a valuable asset and focal point for this proposed subdivision, as well a cultural and educational site for the residents and their guests.

The HPC also voted unanimously that Parcel A, on which the archeology site 18PR1020 is located, be conveyed to the homeowners association (HOA) and that the homeowners documents provide for the establishment of a fund sufficient to provide income for the perpetual maintenance of the archeological site. While it is acknowledged that a designated line item in the HOA financials may be appropriate for the HOA to establish a fund for maintenance of the archeological site, the Planning Board could not condition this of a future HOA. Appropriate protection will be provided for by an archeological conservation easement as recommended in this report. The perpetual maintenance will be performed by the HOA as part of the overall responsibilities associated with the ownership and declarations and covenants.

Historic Preservation Commission found that the archeological site 18PR1020 (named as Duvall Tenant House Site) meets two of the criteria for classification as a Prince George's County Historic Site pursuant to 29-104 (1)(A)(i) and (1)(A)(iv). That designation would be most expeditiously addressed through Subtitle 29-120.01, which provides for the designation of a Historic Site through a process of joint public hearings with the Planning Board and District Council and this can be initiated by the property owner.

At the Planning Board hearing on October 20, 2011, the applicant proffered to initiate the process of designating Archeological Site 18PR1020 as a Prince George's County Historic Site according to the provisions of Subtitle 29-120.01 of the County Code at the time of submittal of the detailed site plan.

17. **Use Conversion**—This preliminary plan was analyzed based on the proposal for townhouse development. The analysis includes access, noise, mandatory dedication and views of the property, specifically relating to the townhouse land use proposed with this application. While the subject application is not proposing any non-residential development, if such a land use were proposed, a new preliminary plan should be required if appropriate.

BE IT FURTHER RESOLVED, that an appeal of the Planning Board's action must be filed with Circuit Court for Prince George's County, Maryland within thirty (30) days following the date of notice of the adoption of this Resolution.

* * * * *

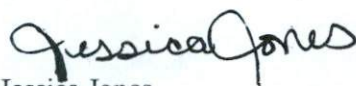
This is to certify that the foregoing is a true and correct copy of the action taken by the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission on the motion of Commissioner Bailey, seconded by Commissioner Squire, with Commissioners Bailey, Squire and Hewlett voting in favor of the motion, and with Commissioners Cavitt and Washington absent at its regular meeting held on Thursday, October 20, 2011, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 17th day of November 2011 *and corrected on February 3, 2012.

†This is to certify that the foregoing, indicated in underline and deletion, is a true and correct copy of the reconsideration action taken by the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission relating to the off-site transportation improvements on the motion of Commissioner Washington seconded by Commissioner Geraldo, with Commissioners Washington, Geraldo, Bailey, Doerner and Hewlett voting in favor of the motion, at its regular meeting held on Thursday, June 7, 2018, in Upper Marlboro, Maryland. The adoption of this amended resolution based on the reconsideration action taken does not extend the validity period of the preliminary plan of subdivision.

†Adopted by the Prince George's County Planning Board this 7th day of June 2018.

Elizabeth M. Hewlett
Chairman

By 
Jessica Jones
Planning Board Administrator

EMH:JJ:AT:rpg

APPROVED AS TO LEGAL SUFFICIENCY


M-NCPPC Legal Department

Date 6/8/18

†Denotes Amendment

*Denotes Correction

Underlining indicates new language

[Brackets] and ~~strike through~~ indicate deleted language