

R E S O L U T I O N

WHEREAS, the Prince George's County Planning Board is charged with the approval of Detailed Site Plans pursuant to Part 3, Division 9 of the Zoning Ordinance of the Prince George's County Code; and

WHEREAS, in consideration of evidence presented at a public hearing on November 16, 2006, regarding Detailed Site Plan DSP-05001 for Lincolnshire, Phase II, the Planning Board finds:

1. **Request**—The subject application proposes to construct 156 multifamily dwellings as condominium units. The plan includes site, landscape, and tree conservation plans and architecture. Companion to this case are Variance VD-05001 and Departures from Parking and Loading Spaces DPLS-320 and Departure from Design Standards DDS-568.
2. **Development Data Summary**

	EXISTING	PROPOSED
Zone(s)	R-18	R-18
Use(s)	Vacant	multifamily dwellings
Acreage	13.17	13.17
Lots	1	1
Parcels	0	0
Dwelling Units:		
Attached	0	0
Detached	0	0
Multifamily	0	156

Other Development Data

Gross Site Area	13.17 acres
100-year floodplain	0 acres
Net Tract Area	13.17 acres
Dwelling Units permitted (12 du./ac.)	158 units
Dwelling Units proposed	156 units
Maximum Lot Coverage	40 percent
Proposed Lot Coverage	38.5 percent
Minimum Green area	60 percent
Green area proposed	61.5 percent

Parking Required (156 x 3.00)	468 spaces
*Parking Provided	336 spaces
Loading required (1 space per 100-300 DU)	1 space
***Loading provided	1 space

*Parking provided has been designed as tandem parking spaces, i.e., one space under a carport behind a garage space. According to Section 27-552(e)(1), parking for one-family dwellings is the only type of dwelling that allows for parking spaces to be located one behind the other. The design shown on the plans is not permitted in conjunction with either two-family dwellings or multifamily. In order to modify this requirement, the applicant has filed a Departure from Design Standards (DDS-568) application. Also, there is a shortage of parking proposed for the site. A Departure from the number of Parking and Loading Standards (DPLS-320) has been submitted for the project.

***Loading calculations are provided on the site plan, and one space has been provided on the site plan. The loading space is not near any of the units, so it should be relocated to a more convenient location for use by the residents.

3. **Location**—The subject application is located on the east side of Karen Boulevard extended, north of its intersection with Ronald Road within Planning Area 75A.
4. **Surroundings and Use**—To the north is an existing townhouse development in the R-T Zone, to the east is John Bayne Elementary School, to the south is an existing multifamily development, and to the west is the proposed Karen Boulevard and Lincolnshire Phase I, a 24-unit townhouse development recently approved as Detailed Site Plan DSP-04012.
5. **Design**—The proposed subdivision will have a single vehicular access point from the proposed extension of Karen Boulevard, which will be constructed as part of the project to the north, approved as DSP-04012. The plan proposes a two-part stormwater management pond, separated by a minor embankment created by the road entrance into the subdivision. The facility expands across the entire frontage of the property, with Karen Boulevard acting as the major embankment. The units across the stormwater management pond will front toward the pond and will be served by alleys in the rear of the dwellings. Steep slopes are proposed throughout the development, a result of the existing topography and the proposed unit type, which does not allow for the transitioning of grades from one building pad to another.
6. **Previous Approvals**—The property is the subject of Preliminary Plan 4-03084, which was adopted on January 29, 2004 as PGCPB Resolution No. 04-03. On October 27, 2005, the Planning Board granted a three-month extension. On April 20, 2006, the Planning Board approved a one-year extension to Preliminary Plan 4-03084. The subject preliminary plan is valid until April 29, 2007.

The preliminary plan included two tracts of land. On the west side of Karen Boulevard is R-T-zoned land that is not the subject of this detailed site plan, but was approved by the District

Council as DSP-04012. The remaining portion is on the east side of Karen Boulevard and is zoned R-18, which is the subject of this application.

7. **Definition of Unit Type**—The preliminary plan was approved for the development of multifamily dwelling units with an allowed density of 20 dwelling units per acre, because the buildings were proposed to be four stories with an elevator (27-442(h) Footnote 20). The approved density, based on that proposal, was 262 dwelling units. However, the applicant has since changed the design of the unit type, is no longer proposing an elevator in the units, and therefore, cannot develop with a density of 20 dwelling units per acre. The allowed density for a building without an elevator is 12 units per acre (27-442(h) Table VII, Density, footnotes 3 and 4.)

The detailed site plan originally proposed an architectural product type commonly known as two-over-two or stacked townhouses. The Zoning Ordinance classifies this product as a two-family dwelling. Stacked townhouses are four stories with one family living on the first and second floors and one family living on the third and fourth floors. The original units proposed separate entrances for each of the units. The exterior appearance of the two-over-two unit looks like four-story townhouses. The Associate General Counsel of M-NCPPC opined that “two-over-two” units are not multifamily dwellings as defined by Section 27-107.01(a)(75), but are two-family dwellings as defined by Section 27-107.01(a)(80). In an e-mail dated January 17, 2006, Green to Lareuse, she stated the following:

“Generally speaking any type of building, as defined under the code, that is not designed for one single family is considered multifamily. However the Zoning Ordinance, definitionally and in the use tables, carves out certain types of multiple dwellings under the multifamily umbrella, i.e., duplex, three-family and quads, and treats those types of dwellings differently. The type of dwelling unit described (two-over twos) below is one of those exceptions to the multifamily umbrella. This type of multiple family dwelling is carved out and specifically listed in the definition table and the use table as a ‘two-family dwelling.’ The Zoning Ordinance pursuant to section 27-107.01(a)(1) states that the particular and the specific control the general. In this particular case the general is ‘multifamily’ and the particular and specific is ‘two-family dwelling’.”

The Zoning Ordinance allows the use of two-family dwellings in the R-18 Zone, however, at a much lower density than that which was proposed for the subject site at the time of the preliminary plan. Two-family dwellings in the R-18 Zone can be developed in accordance with applicable R-T regulations as stated in Section 27-441(b) footnote 2. However, the maximum density of development in the R-18 Zone for two-family dwellings is eight units per acre. At the time of the preliminary plan of subdivision, the applicant proposed multifamily units with an elevator, which allows a density of 20 units per acre.

Based on the Associate General Counsel’s opinion regarding two-family dwellings and the applicant’s desire to increase the density on the property, the applicant revised the architecture to create a shared entry for four units, which qualifies the product type as a multifamily unit, thus allowing for the density of 12 units per acre (without an elevator), as stated in the density table. This revision to the architectural floor plans and elevations allows the category of multifamily to

apply to the unit type; however, the final product could be deemed less desirable than the previously proposed traditional two-family dwelling, which had individual entrances to each of the units.

8. **Previous Approvals**—The property is the subject of Preliminary Plan 4-03084, which was adopted on January 29, 2004 as PGCPB Resolution No. 04-03. Two extensions to the preliminary plan have been granted for this project.

The approved preliminary plan included the following conditions of approval that warrant discussion pertaining to conformance of the detailed site plan to the approved preliminary plan:

5. **Review of the DSP shall include the review of the proposed stormwater management facilities for views and landscaping. The pond at the entrance of the subdivision shall be designed as an amenity to the community.**

Comment: The plan proposes a large stormwater management pond at the front of the project. The plan proposes a two-part stormwater management pond, separated by the embankment created by the road entrance into the subdivision. The facility extends across the entire frontage of the property. The units across the stormwater management pond will front toward the pond. Landscaping is minimal along the road edge because it is an embankment and the Department of Environmental Resources (DER) prohibits planting on embankments. However, street trees are proposed along the street line and the plans propose larger beds of ornamental grasses along the embankment and the street edge. These plantings should provide a visual softening to the edge of the streetscape and filter rain into the stormwater management pond.

6. **The applicant, his heirs, successors and or assignees shall provide standard sidewalks along both sides of internal streets unless modified by the Department of Public Works and Transportation.**

Comment: The site plan shows sidewalks on both sides of the road.

7. **In accordance with Section 24-135(b) of the Subdivision Regulations, the applicant shall be providing private on-site recreational facilities. Facilities shall be provided in accordance with the *Parks and Recreational Facilities Guidelines* on Parcel A for the townhouses and on Parcel C for the multifamily dwelling units.**

Comment: Parcel A for the townhouses has an approved detailed site plan, DSP-04012 which was approved by the Planning Board with a tot-lot shown on the plan. The plan was subsequently reviewed by the District Council, whose action on the case deleted the tot-lot due to concerns of attracting undesirable criminal activity. The applicant provided a letter dated December 19, 2005, that stated the following:

“Please be advised that the District Council requested in Condition No. 7 [for DSP-04012] that there be three options for recreational facilities: (1) clear and grade the area and leave an open space, (2) pay a fee in lieu, or (3) provide recreational facilities in accord with the DPR guideliness

“It is my client’s decision that he will pay a fee in lieu. It is my client’s understanding that the District Council with respect to Districts 5, 6, and 7 are looking for a central park in the vicinity of the site. Therefore, we believe the fee in lieu option is the appropriate option for recreational facilities, especially given that the property adjoins public park land.”

Comment: It appears that the applicant is trying to fulfill the condition above with the provision of a fee-in-lieu, based on the District Council’s previous action in the review and approval of Phase I of the project, approved under DSP-04012. This proposal by the applicant does not conform to the approved preliminary plan, therefore, staff recommends that the plans be revised prior to signature approval to include a tot-lot, a preteen lot, and a one-half multipurpose court. In order to achieve the provision of recreational facilities on site, a reduction in the number of units would be required to create space for the facilities.

9. **Variance—Conformance to the Requirements of the Zoning Ordinance in the R-18 Zone**

—The proposed plan is not in conformance with the development regulations for the R-18 Zone in two (2) respects. The application includes a variance from a footnote in the use table and a variance from the distance required between unattached multifamily buildings.

- a. When the applicant changed the architectural product type from two-family dwellings to a multifamily product type, as described earlier in this report, this triggered the Zoning Ordinance requirements for multifamily units, to which this architectural product does not easily conform. The most important of these is the requirements of the Table of Uses, Section 27-441 of the Zoning Ordinance, for multifamily units in the R-18 Zone, provided below:

USE	ZONE R-18
(A) In general (CB-67-2003; CB-109-2004)	P ⁷⁶
(B) Subject to applicable bedroom percentages	P
(C) In excess of applicable bedroom percentages	SE
(D) Restricted to one-bedroom and efficiency apartments	X
(E) Higher than 110 feet (CB-85-1988)	X
(F) Up to six dwelling units in a building of no more than two stories, where the first story was previously used for commercial purposes (CB-91-2004)	X

⁷⁶ Provided:

- (A) A condominium plat is recorded, in accordance with the provisions of the Maryland Condominium Act, setting out each dwelling unit as a separate unit, or a housing cooperative is established to own the dwelling units; and

- (B) At least ninety percent (90%) of all required parking spaces are provided in a parking structure.

(CB-109-2004)

The Zoning Ordinance excerpt above lists the types of multifamily units that are permitted in the R-18 Zone. The staff is of the opinion that the proposed architectural product is only permitted as a special exception, as stated in (C) above.

However, the applicant filed a variance from footnote 76 of the use table to allow at least 90 percent of all the required parking spaces to be in a carport, rather than a typical parking structure, in order to conform to category (A) above, and to allow the case to be processed as a detailed site plan. The applicant provides the following justification statement, dated November 1, 20066

“I. Introduction

“PDC Lincolnshire, LLC (the ‘Applicant’) proposes a variance from Section 27-442(b), footnote 76¹, of the Prince George’s County Zoning Ordinance (the ‘Zoning Ordinance’) and as permitted through Sections 27-230, 27-239.03 and 27-239.04 of the Zoning Ordinance in conjunction with Detailed Site Plan No. DSP-05001 (the ‘DSP’). The subject property is located on the east side of Karen Boulevard Extended, north of its intersection with Ronald Road, in Capitol Heights, Maryland and is more specifically known as Lot 1 and consisting of 13.14 acres of land (the ‘Site’). The Applicant is filing this proposed variance from the 90% structured parking requirement of footnote 76. As interpreted by the Urban Design Staff the term “structured parking” is synonymous with the defined term ‘parking garage.’ While the Applicant disagrees with this strict interpretation it has agreed to file this variance request to allow the substitution of attached parking structures as illustrated on the plans submitted under separate cover. These attached parking structures would be completely covered with a weatherproof roof, separated by brick wing walls between pairs of parking spaces and enclosed on each end by brick end walls.

“II. Required Findings under the Zoning Ordinance

“In Prince George’s County, a final decision involving a zoning case must be based only on the evidence in the record, and must be supported by written findings of basic facts and written conclusions. Md. Ann. Code art. 28, § 8-123 (2004); see also Zoning Ordinance §27-141. The basic facts and conclusions required in order to approve a variance request are found in Zoning Ordinance §27-230, as permitted by §27-239.03. See also Cromwell v. Ward, 102 Md. App. 691, 701, 651 A.2d 424, 429 (1995) (stating

¹ “¹ 76 provided:(A) A condominium plat is recorded, in accordance with the provisions of the Maryland Condominium Act, setting out each dwelling unit as a separate unit, or a housing cooperative is established to own the dwelling units; and(B) At least ninety percent (90%) of all required parking spaces are provided in a parking structure.(CB-109-2004)

that a zoning board has authority to grant variances from the strict application of regulations when by reason of exceptional narrowness, shallowness, or shape of specific parcels of property or by reason of exceptional topographical conditions or other extraordinary situations of specific parcels of property, the strict application would result in unusual practical difficulties to, or exceptional or undue hardship); Dolan v. City of Tigard, 512 U.S. 374, 380 (1994)(variances are granted only where it can be shown that, owing to special circumstances related to a specific piece of the land, the literal interpretation of the applicable zoning provisions would cause ‘an undue or unnecessary hardship’ unless the variance is granted); see generally Mastandrea v. North, 361 Md. 107, 760 A.2d 677 (2000); McLean v. Soley, 270 Md. 208, 310 A.2d 783 (1983).

“The Applicant hereby presents evidence that the proposed variance is justified based on the standards and requirements of §27-230 of the Zoning Ordinance. The requirements, as applicable, are addressed in turn below:

“Section 27-230. Criteria for granting appeals involving variance.

“(a) A variance may only be granted when the Board of Appeals finds that:

“(1) A specific parcel of land has exceptional narrowness, shallowness, or shape, exceptional topographic conditions, or other extraordinary situations or conditions;

“COMMENT: The Site is irregularly shaped and possesses significant topographic relief and other extraordinary conditions which necessitate the need for the requested variance. The existing slope of the adjacent roadway, Karen Boulevard, and the limited sight distances severely restrict the location and number of ingress and egress points. Karen Boulevard drops from elevation 228.00 down thirty-two feet (32’) to elevation 194.00 at the site entrance drive. This driveway elevation is at or near the lowest existing grade of the subject site. In addition to the slope of Karen Boulevard the development is encumbered with a large on-site storm water management facility which can only be located along the entire eastern edge of the site between Karen Boulevard and the proposed multifamily dwellings. From the low point of elevation 192.00 the topography rises eighty (80) feet in elevation to a high point of 272.00 at the western tip of the site. The existing site is also irregularly shaped with its widest dimension running along Karen Boulevard the north property line leaves Karen Boulevard running to the east and then doglegs south. The southern property line leaves Karen Boulevard running east in a series of switch backs (north and east) to meet the northern property line.

“As a result of the existing road grades and sight distances, the existing st and the large, required on-site storm water management facility, and the in

of the property, the possible locations and orientations of the multifamily buildings and

associated structured parking are limited.² The buildings must run roughly parallel to the slope and Karen Boulevard in order to create the level parking courts which contain the attached parking structures between the rears of the buildings.

“The uniqueness and peculiarity of the Site in comparison to the surrounding properties causes Section 27-442(b), Footnote 76 to impact the Site in a disproportionate manner.

“(2) The strict application of this Subtitle will result in peculiar and unusual practical difficulties to, or exceptional hardship upon, the owner of the property; and

“COMMENT: In light of the uniqueness and physical characteristics of the Site, as described above strict compliance with the requirements of § 27-442(b), Footnote 76 would result in an unreasonable hardship and undue burden on the Applicant. Were the Applicant to comply with the regulations set forth in §27-442(b), Footnote 76, the lot yield would be reduced in order to make land area available for the provision of additional parking garages. Keeping in mind that the approved density of development is 262 dwelling units, as established by Preliminary Plan 4-03084, the current proposal of 156 dwelling units already represents a 40% reduction in density. A further reduction in approved density due to the rigid application of the undefined term “structured parking” would constitute an exceptional and undue hardship.

“(3) The variance will not substantially impair the intent, purpose, or integrity of the General Plan or Master Plan.

“COMMENT: The proposed use is in conformance with the 2002 Prince George’s County General Plan (the “General Plan”) and the 1985 Suitland-District Heights Approved master Plan & Adopted sectional Map Amendment (the “Master Plan”). The Site is located within the “Developed Tier” of the General Plan and situated within walking distance of the Addison Road Metro.

“The requested variance from the traditional parking garage to attached parking structures as designed will not impair the primary intent of the General Plan Developed Tier’s policies, which is to encourage and facilitate medium to high density, quality infill development. In fact, grant of this variance will promote the General Plan policies by providing flexibility and innovation necessary to develop infill sites.

“The Master Plan and SMA designated the subject property R-18 (Multifamily Medium Density Residential). The proposed multifamily two-over-two units, with structured parking, meet the intent and purpose of the Master Plan and preserve its integrity.

“III. Conclusion

² “Applicant has filed a DDS to permit “tandem” parking due to these same extraordinary site constraints.

“The unique and unusual conditions of the Site, create a disproportionate impact to the Applicant if §27-442(b), Footnote 76 of the Zoning Ordinance is strictly applied. This impact in turn creates an unreasonable hardship for the Applicant in development of the Site. As such, pursuant to §§27-230 and 27-239.03 we would respectfully request that a variance be granted to accept the attached parking structures as shown in lieu of parking garage spaces as illustrated on the plans submitted by Applicant.”

- b. The applicant filed a variance from the regulations governing the distance required between unattached multifamily buildings. Section 27-442(g) requires 70 feet between the buildings and the application reflects 31 feet between end units. A variance of 39 feet is requested and the applicant provides the following justification dated August 21, 2006:

“PDC Lincolnshire, LLC (the applicant) proposes a variance from Section 27-442(g) of the Prince George’s County Zoning Ordinance (the ‘Zoning Ordinance’) and as permitted through Sections 27-230, 27-239.03 and 27-239.04 of the Zoning Ordinance in conjunction with Detailed Site Plan No. DSP-05001 (the ‘DSP’). The subject property is located on the east side of Karen Boulevard Extended, north of its intersection with Ronald Road, in Capitol Heights, Maryland and is more specifically known as Lot 1 and consisting of 13.14 acres of land (the ‘Site’). The applicant is filing this proposed variance for the allowance of less than the required distance between unattached multifamily dwellings and courts as set forth in Section 27-442(g))

“The DSP application for the Site was accepted for review by the Maryland-National Park and Planning Commission (the ‘M-NCPPC’) on or about November 9, 2005. Prior to the scheduled September 14, 2006 Prince George’s County Planning Board hearing on the matter, it was questioned during review whether the distance between buildings was less than what is permitted in the R-18C Zone. As a result, the Technical Staff recommended that the instant variance request be filed in order to justify the distance (side of building to side of building) between unattached multifamily dwellings.

“In Prince George’s County, a final decision involving a zoning case must be based only on the evidence in the record, and must be supported by written findings of basic facts and written conclusions. Md. Ann. Code art. 28, § 8-123 (2004); see also Zoning Ordinance §27-141. The basic facts and conclusions required in order to approve a variance request are found in Zoning Ordinance §27-230, as permitted by §27-239.03. See also *Cromwell v. Ward*, 102 Md. App. 691, 701, 651 A.2d 424, 429 (1995) (stating that a zoning board has authority to grant variances from the strict application of regulations when by reason of exceptional narrowness, shallowness, or shape of specific parcels of property or by reason of exceptional topographical conditions or other extraordinary situations of specific parcels of property, the strict application would result in unusual practical difficulties to, or exceptional or undue hardship); *Dolan v. City of Tigard*, 512 U.S. 374, 380 (1994)(variances are granted only where it can be shown that, owing to special circumstances related to a specific piece of the land, the literal interpretation of the applicable zoning provisions would cause ‘an undue or unnecessary

hardship' unless the variance is granted); see generally *Mastandrea v. North*, 361 Md. 107, 760 A.2d 677 (2000); *McLean v. Soley*, 270 Md. 208, 310 A.2d 783 (1983).

"The applicant hereby presents evidence that the proposed variance is justified based on the standards and requirements of §27-230 of the Zoning Ordinance. The requirements, as applicable, are addressed in turn below:

"Section 27-230. Criteria for granting appeals involving variance.

"(a) A variance may only be granted when the Board of Appeals finds that:

"(1) A specific parcel of land has exceptional narrowness, shallowness, or shape, exceptional topographic conditions, or other extraordinary situations or conditions;

"The Site is uniquely shaped and possesses significant topographic relief and other extraordinary conditions which necessitate the need for the requested variance. The existing slope of the adjacent roadway, Karen Boulevard, and limited sight distances severely restrict the location and number of ingress and egress points. This situation is further exacerbated by the requirement for a large on-site storm water management facility which can only be located along the entire eastern edge of the site between Karen Boulevard and the proposed multifamily dwellings.

"As a result of the existing road grades, the existing topography and the large, required on-site storm water management facility the possible areas, the locations and orientations of the multifamily buildings and the associated parking are limited. The uniqueness and peculiarity of the Site in comparison to the surrounding properties causes §27-442(g) to impact the Site disproportionately."

Staff comment: Staff agrees with the applicant's assertion that the topography of Karen Boulevard and the onsite topography are "exceptional topographic conditions" that justify the distance between the buildings to be reduced from that distance required by the Zoning Ordinance. The property is steep; the unit type proposed for the site is one that requires a flat parcel of land in order to build. Also, the unit type is most closely related in style and bulk to a townhouse product, as opposed to multifamily. The building sticks are substantially less massive than a traditional multifamily product.

"(2) The strict application of this Subtitle will result in peculiar and unusual practical difficulties to, or exceptional or undue hardship upon, the owner of the property; and

"In light of the uniqueness and characteristics of the Site, as described above and which results in a disproportionate impact for the use of the Site, compliance with the regulations of §27-442(g) would result in an unreasonable hardship and undue burden on

the applicant. Were the applicant to comply with the regulations set forth in §27-442(g), the lot yield would be significantly reduced thus placing an undue hardship on the property owner. Keeping in mind that the approved density of development is 262 dwelling units, as established by Preliminary Plan 4-03084, the current proposal of 156 dwelling units already represents a 40% reduction in density. Any further reduction in approved density due to the rigid application of the distance between buildings would constitute an exceptional and undue hardship.”

Staff comment: The applicant’s argument that the project has suffered a reduction of 40 percent in density from the approval of the preliminary plan is not a viable argument. At the time of the preliminary plan for this case, the proposal was for multifamily units with elevators, which allows for a density of 20 units per acre. The applicant has changed the development concept of the property by proposing the modification to the two-family dwelling type, also known as two-over-twos or stacked townhouses, to qualify the product as a multifamily unit category for the purpose of allowing a greater density than is allowed under the R-18 Zone for two-family dwellings. When analyzed in this way, the property would have only yielded eight units per acre, or 105 dwelling units. By altering the floor plan of the units, deleting the separate entrance for each of the units, and combining the entrances into one to serve four units, the applicant has qualified the unit as a multifamily product and gained an increase in density of 51 units over the two-family dwellings originally proposed. Therefore, staff disagrees with the applicant’s argument that the project has suffered a loss of units since the approval of the preliminary plan; the applicant’s choice of unit type is entirely responsible for the decrease in density. Any hardship resulting from a loss of density is entirely self-imposed.

“(3) The variance will not substantially impair the intent, purpose, or integrity of the General Plan or Master Plan.”

“In terms of the Master Plan, the proposed use will be in conformance. The Site is within Planning Area 75A, which is guided by the 2002 *Prince George’s County General Plan* (the “General Plan”) and the 1985 *Suitland-District Heights Approved Master Plan & Adopted Sectional Map Amendment* (the “Master Plan”). The Site is within the Developed Tier of the General Plan and situated within walking distance of the Addison Road Metro.

“The variance from the distance (side of building to side of building) between unattached multifamily dwellings will not impair the primary intent of the General Plan Developed Tier’s policies which is encourage and facilitate medium to high density, quality infill development. In fact, grant of this variance will promote the General Plan policies by providing flexibility and innovation when redeveloping infill sites.

“The Master Plan and SMA designated the subject property R-18 (Multifamily Medium Density Residential). The proposed multifamily two-over-two units, with structured parking, meet the intent and purpose of the Master Plan and preserve its integrity

“Due to the unique and unusual conditions of the Site, a disproportionate impact to the

applicant results upon application of §27-442(g) of the Zoning Ordinance, which in turn creates an unreasonable hardship for the applicant in development of the Site. As such, pursuant to §§27-230 and 27-239.03 we would respectfully request that a variance be granted to lessen the distance between multifamily buildings as illustrated on DSP-05001.”

Staff comment: Staff supports the applicant’s requested variance to allow the distance between the end units of buildings to be reduced from 70 feet to 39 feet for the project, primarily for the reasons stated above, under the first criterion. The applicant submitted a revised justification statement dated October 31, 2006 (attached) and clearly indicated that the variance request was for 39 feet and only applies to the relationship of end unit to end unit.

10. **Conformance to the Requirements of the Prince George's County *Landscape Manual***—This development proposal is subject to Sections 4.1, Residential Requirements, and 4.7, Buffering Incompatible Uses.

In regard to Section 4.1 of the *Landscape Manual*, the plans indicate the minimum number of trees required for the development is 217 shade trees. The plant schedule indicates that this requirement was met.

Section 4.7 of the *Landscape Manual*, Buffering Incompatible Uses, is required between the proposed development and the adjacent townhouse site and the adjacent school site. The required buffer between the subject property and the townhouses to the north is a minimum 10-foot-wide landscaped strip and 20-foot-wide building setback, both of which have been provided. The required number of plant units has been provided. The required buffer yard between the subject property and the adjacent school site (John H. Bayne Elementary) is a 20-foot-wide landscaped yard and a 30-foot-wide building setback. The plans provide for the requirements above.

11. **Conformance to the Requirements of the Woodland Conservation Ordinance**—The property is subject to the provisions of the Prince George’s County Woodland Conservation Ordinance because it has a previously approved tree conservation plan. A Type II Tree Conservation Plan (TCPII/77/04) was previously approved in conjunction with DSP-04012. A revised Type II Tree Conservation Plan (TCPII/77/04-01) in conjunction with the current application has been reviewed and was found to require minor revisions in order to be in conformance with TCPII/77/04. The revised Type II tree conservation plan as submitted must be revised to clearly identify each phase of development.

Recommended Condition: Prior to certificate approval of the detailed site plan, TCPII/77/04-01 shall be revised as follows:

- a. Revise the TCPII to include both Phase I and II, which constitute the entire site in compliance with the approved Type I Tree Conservation Plan TCPI/58/03.
- b. Remove from the plan “Preliminary, not approved, not for construction.”

- c. Revise Parcel "A" Conservation Area to reflect compliance with revised final plat.
 - d. Eliminate the use of any woodland conservation area that is less than 35 feet in width.
 - e. Revised the reforestation on Parcel A to reflect what was approved on the TCPI.
 - f. Show correct amount of total clearing on Phase II (cumulative acres of net tract also changes).
 - g. Make all other changes and adjustments in the worksheet as required.
 - h. Revise the worksheet accordingly to address any changes made to the plan.
 - i. Have the plan signed and dated by the qualified professional who prepared the plan.
12. **Archeological Review**—Phase I (Identification) archeological investigations are recommended on the above-referenced property. According to the 1861 Martenet map, members of the Berry family including Thomas Berry, Albert Berry, and J.E. Berry, Jr., had residences to the north and east of the property. The Berrys were slaveholders in the county, and archeological remains of slave quarters or burials may be present on the property.

Phase I archeological investigations should be conducted according to Maryland Historical Trust (MHT) guidelines, *Standards and Guidelines for Archeological Investigations in Maryland* (Shaffer and Cole 1994), and the Prince George's County Planning Board's *Guidelines for Archeological Review* (May 2005), and report preparation should follow MHT guidelines and the *American Antiquity* or *Society of Historical Archaeology* style guide. Archeological excavations shall be spaced along a regular 15-meter or 50-foot grid, and probing should be conducted also to search for possible burials. Excavations should be clearly identified on a map to be submitted as part of the report.

Comment: This requirement should be fulfilled prior to the issuance of a grading permit for the subject site.

13. **Environmental Review**—The Environmental Planning Section originally reviewed the subject property as Preliminary Plan 4-87179 and Special Exception SE-4447. The previously approved preliminary plan of subdivision for the townhouses lots on the subject property has expired without recordation. The Environmental Planning Section last reviewed the subject property in 2003 as Preliminary Plan 4-03084 in conjunction with TCPI/58/03, which were approved with conditions. The subject property has an approved Conceptual Stormwater Drain Plan, CSD 20523-2003-01, dated September 16, 2004.

The subject property is located in the northeast quadrant of the intersection of Karen Boulevard and Ronald Road, approximately 1,000 feet north of Walker Mill Road. The surrounding properties are residentially zoned. The site is characterized by terrain sloping toward the east and west of the property, and drains into unnamed tributaries of the Lower Beaverdam Creek

watershed in the Anacostia River basin. The predominant soil types on the site are Adelphia, Sandy Land, Chillum, Beltsville and Sassafras. These soil series generally exhibit slight to moderate limitations to development due to steep slopes, impeded drainage, and seasonally high water table. The site is undeveloped and fully wooded. Based on information obtained from the Maryland Department of Natural Resources, Natural Heritage Program publication entitled, "Ecologically Significant Areas in Anne Arundel and Prince George's Counties," December 1997, there are no rare, threatened or endangered species found to occur in the vicinity of this Site. There are streams, waters of the US, and wetlands associated with the site. There are no floodplains, Marlboro clays or scenic or historic roads located on or adjacent to the subject property. The subject property is located quite some distance away from any major noise generator. This property is located in the Developed Tier as delineated on the approved General Plan.

A forest stand delineation (FSD) was reviewed with the preliminary plan submittal and was generally found to address the requirements for detailed FSD in compliance with the requirements of the Woodland Conservation Ordinance. No further action is required with regard to the detailed FSDD

A stormwater management concept approval letter (CSD 20523-2004-01) dated September 16, 2004, was submitted with the review package. A copy of the approved stormwater management concept plan is required for the office file, and is in conformance with the detailed site plan.

Recommended Condition: Prior to certificate approval of the detailed site plan, a copy of the approved stormwater management concept plan shall be submitted. The stormwater management concept plan shall reflect the same limits of disturbance as the TCPII.

14. **Transportation**—The subject application was referred to and reviewed by the Transportation Planning Section. The transportation staff commented that the widening of the proposed street at Karen Boulevard to at least 36 feet and the prohibition on on-street parking along the same street is appropriate.
15. By telephone call from Rick Thompson, Department of Environmental Resources (DER) to Susan Lareuse, DER acknowledged that the proposed stormwater management ponds shown on the plans are in conformance to the concept plan approval.
17. As required by Section 27-285(b), the detailed site plan represents a reasonable alternative for satisfying the site design guidelines, without requiring unreasonable costs and without detracting substantially from the utility of the proposed development for its intended use.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to Subtitle 27 of the Prince George's County Code, the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission adopted the findings contained herein and APPROVED Variance Application No. VD-05001 as follows:

- a. A variance from Section 27-442(b), footnote 76 to allow the substitution of attached car ports for a parking structure; and

- b. A variance from Section 27-442(g) to allow the distance between unattached multifamily dwellings to be reduced from 70 feet to 31 feet; and

APPROVED the Type II Tree Conservation Plan (TCPII/77/04/01) and further APPROVED Detailed Site Plan DSP-05001 subject to the following conditions:

1. Prior to certificate approval of the detailed site plan, TCPII/77/04-01 shall be revised as follows:
 - a. Revise the TCPII to include both Phase I and II, which constitute the entire site in compliance with the approved Type I Tree Conservation Plan TCPI/58/03.
 - b. Remove from the plan "Preliminary, not approved, not for construction."
 - c. Revise Parcel "A" Conservation Area to reflect compliance with revised final plat.
 - d. Eliminate the use of any woodland conservation area that is less than 35 feet in width.
 - e. Revised the reforestation on Parcel A to reflect what was approved on the TCPI.
 - f. Show correct amount of total clearing on Phase II (cumulative acres of net tract also changes).
 - g. Make all other changes and adjustments in the worksheet as required.
 - h. Revise the worksheet accordingly to address any changes made to the plan.
 - i. Have the plan signed and dated by the qualified professional who prepared the plan.
2. Prior to certificate approval of the detailed site plan, the following information shall be submitted or the plans shall be revised to provide:
 - a. A copy of the approved stormwater management concept plan and letter shall be submitted. The stormwater management concept plan shall reflect the same limits of disturbance as the TCPII.
 - b. A Phase I archeological investigations shall be conducted according to Maryland Historical Trust (MHT) guidelines, *Standards and Guidelines for Archeological Investigations in Maryland* (Shaffer and Cole 1994), and the Prince George's County Planning Board *Guidelines for Archeological Review* (May 2005), and report preparation should follow MHT guidelines and the *American Antiquity* or *Society of Historical Archaeology* style guide. Archeological excavations shall be spaced along a regular 15-meter or 50-foot grid, and probing should be conducted also to search for possible burials. Excavations should be clearly identified on a map to be submitted as part of the report.

- c. The plan shall be revised to include a tot-lot, a preteen lot, and a one-half multipurpose court.
 - d. The loading space shall be relocated to a more convenient place for use by the residents.
 - e. The architectural elevations shall be revised to indicate that all front elevations of the buildings shall be a minimum of 80 percent brick and all end walls shall be brick up to the second floor.
3. The plans shall be revised prior to signature approval as follows:
- a. Relocate the four-plex which was relocated and to the south west corner of the site adjacent to the eleven foot tall retaining wall as shown in applicant's Exhibit #1.
 - b. The building located adjacent to the play area shall be rotated 90 degrees so the fronts of units will face the fronts of adjacent units. Additional guest parking shall be provided at the rear of the units.
 - c. Conform to the Parks and Recreational Facilities Guidelines.
 - d. The plans shall incorporate the details and specification of the retaining walls for the site and shall be reviewed for appropriate design and aesthetics by the Urban Design Section.
 - e. The retaining walls located in and around the central recreational facilities shall be designed to provide a ball-wall as an additional recreational facility associated with the multipurpose court, if possible.

BE IT FURTHER RESOLVED, that an appeal of the Planning Board's action must be filed with the District Council of Prince George's County within thirty (30) days following the final notice of the Planning Board's decision.

* * * * *

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 Vaughns, seconded by Commissioner Clark, with Commissioners Vaughns, Clark, Squire, Eley and Parker voting in favor of the motion at its regular meeting held on Thursday, November 16, 2006, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 14th day of December 2006.

Trudye Morgan Johnson
Executive Director

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By Frances J. Guertin
Planning Board Administrator

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