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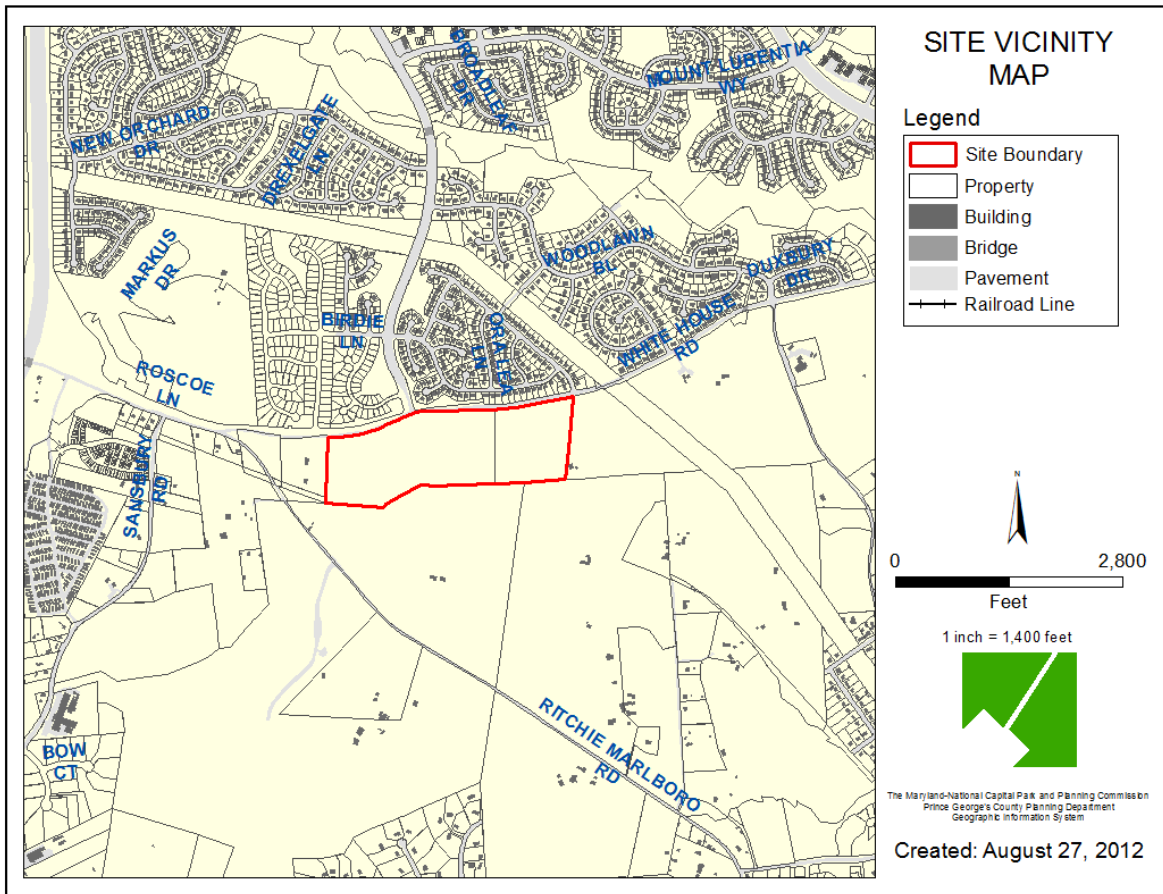
Preliminary Plan 4-06159

Reconsideration Hearing

Application	General Data	
Project Name: Kenwood Village Location: Southeast intersection of Ritchie-Marlboro Road And White House Road Applicant/Address: White House Road LTD Partnership 7220 Wisconsin Avenue #200 Bethesda, MD 20813 Property Owner: Same as Applicant	Planning Board Hearing Date:	07/11/13
	Memorandum Date:	07/01/13
	Plan Acreage:	62.9
	Zone:	R-S
	Parcels:	1
	Lots:	73
	Planning Area:	78
	Tier:	Developing
	Council District:	06
	Election District	15
	Municipality:	N/A
	200-Scale Base Map:	203SE09

Purpose of Application
RECONSIDERATION HEARING: This preliminary plan of subdivision was approved by the Planning Board on September 13, 2007 (PGCPB Resolution No. 07-169) and was mailed on October 22, 2007. Michele LaRocca of Myers, Rodbell & Rosenbaum, P.A., on behalf of the applicant, by letter dated May 2, 2013, requested a reconsideration of Conditions 4, 11, 12, 20, 27, and 28, and related Findings. On May 30, 2013, the Planning Board granted that request. This scheduled hearing on July 11, 2013 is the hearing on the merits of that request.

Staff Recommendation		Staff Reviewer: Whitney Chellis Phone Number: 301-952-4325 E-mail: Whitney.Chellis@ppd.mnccppc.org	
APPROVAL	APPROVAL WITH CONDITIONS	DISAPPROVAL	DISCUSSION
	X		



July 1, 2013

MEMORANDUM

TO: The Prince George's County Planning Board

FROM: Whitney Chellis, Supervisor Subdivision Review Section, Development Review Division

SUBJECT: Reconsideration Hearing for Kenwood Village
Preliminary Plan of Subdivision 4-06159

This preliminary plan of subdivision was approved by the Planning Board on September 13, 2007 (PGCPB Resolution No. 07-169) and was mailed on October 22, 2007. Michele LaRocca of Myers, Rodbell & Rosenbaum, P.A., on behalf of the applicant, by letter dated May 2, 2013, requested a waiver and reconsideration of Conditions 4, 11, 12, 20, 27, and 28, and the related Findings. On May 30, 2013, the Planning Board granted that request. This scheduled hearing on July 11, 2013 is the hearing on the merits of that reconsideration.

The property is approximately 62.9 acres and was rezoned to the R-S Zone from the R-E Zone in 1992 pursuant to the District Council adoption of Zoning Map Amendments A-9802-C (Zoning Ordinance No. 51-1992) for 47.2 acres, and A-9803-C (Zoning Ordinance No. 52-1992) for 15.7 acres. On October 17, 2005, the District Council approved Comprehensive Design Plan (CDP) CDP-0303. Preliminary Plan of Subdivision (PPS) 4-06159 was then approved on September 13, 2007. The applicant then obtained approval from the Planning Board of a Specific Design Plan (SDP) SDP-0805 (PGCPB Resolution No. 13-31) which was adopted on May 2, 2013. That approval has been appealed by the applicant to the District Council and is currently pending. The PPS 4-06159 is valid until December 31, 2013.

The resolution of approval for the PPS (PGCPB Resolution No. 07-169) contains 33 conditions. The applicant has requested the reconsideration of six of those conditions and associated findings as it would be required to support the amendments. The revised findings would be reflected in the amended resolution of approval if revisions are necessary based on the Planning Boards action.

By letter dated May 2, 2013 (La Rocca to Hewlett), the applicant requests a reconsideration of conditions of not only the PPS, but the CDP and SDP. The analysis contained herein is solely for the Planning Board's consideration in the applicants request for the PPS 4-06159. The applicants request in part states:

“In furtherance of substantial public interest, reconsideration is requested for “good cause” as the passage of time has shown that certain conditions of preliminary plan 4-06159, CDP-0303 should not be imposed on the applicant with regard to SDP-0805 as the facts on which they were based have changed with the passage of time.”

The applicant requests reconsideration of Conditions 4, 11, 12, 20, 27, 28 (PGCPB Resolution No. 07-169), Preliminary Plan of Subdivision (PPS) 4-06159. The following is the condition in [bold], the applicants proposed revisions and justification, and the staff analysis and recommendation:

Condition 4

The applicant shall comply with the following concerning their parkland dedication:

- a. The applicant shall construct a combination of on-site and parkland recreation facilities to be determined at the time of SDP.**
- b. The recreational facilities shall be constructed in accordance with the applicable standards in the Parks and Recreation Facilities Guidelines.**
- c. Detailed construction drawings for recreational facilities on park property including grading plans, sections, equipment, and landscaping schedules shall be submitted to DPR for review and approval prior to submission of any application for building permits in Kenwood Village.**
- d. Detailed construction drawings shall be prepared by a designer specializing in playgrounds in cooperation with a design team from DPR. DPR staff shall review the credentials and approve the design consultant prior to development of the plans.**
- e. Prior to application of the building permit for the construction of the recreational facilities in the park, DPR, staff shall review credentials and approve the contractor proposed for the park construction work based on qualifications and experience.**
- f. Submission of three original executed Recreational Facilities Agreements (RFA) to DPR for approval three weeks prior to submission of a final plat. Upon approval by DPR, the RFA shall be recorded among the land records of Prince George’s County.**
- g. At least two weeks prior to applying for building permits, the applicant shall submit to DPR a performance bond, letter of credit, or other suitable financial guarantee to secure construction of the recreational facilities on park property, in an amount to be determined by DPR.**

Applicants Request:

“Delete this condition in its entirety as no parkland recreational facilities will be provided since there is no park anticipated to be constructed in the near future.”

Staff Finding and Recommendation:

The applicant requests the deletion of Conditions 4, 27 and 28 entirely which relate to the future dedicated parkland. These conditions are discussed collectively below.

According to these conditions, the applicant is required to construct a ten-foot-wide gravel maintenance access road from Ritchie Marlboro Road and grade the southern portion of the parkland in the time frame established by Conditions 27 and 28. In addition, the applicant is required to provide construction drawings, the public recreational facilities agreement, and a

performance bond to the Department of Parks and Recreation (DPR). The applicant proposes a payment of a fee-in-lieu of construction of the gravel maintenance access road and grading of the southern portion of the parkland. The applicant and members of the surrounding community were concerned about possible illegal vehicular access to the undeveloped portion of the parkland being located in close proximity to the residential properties and to adjacent farmland. It is anticipated that the improvements in the park, including trailhead facilities, will be constructed at the time of the construction of the master-planned trail on the adjacent park property. The future development of the parkland is anticipated when additional development occurs in the surrounding area, beyond the subject property. After consideration of these concerns, the DPR recommends that the Planning Board accept the applicant's proposal of a fee-in-lieu in the amount of \$70,000 in 2013 dollars, with an additional condition for the payment as recommended below. With the deletion of the conditions regarding specific improvements, the bonding, construction drawings and recreational facilities agreement is no longer necessary. The monetary contribution will be placed in a park development account and used at a later date for the same purposes as described in the Conditions 4, 27 and 28.

Staff recommends the deletion of Condition 4, 27 and 28 subject to an additional condition.

Condition 11

Prior to acceptance of the specific design plan application, it shall be inspected to ensure that it includes a Phase II noise study that states the proposed noise mitigation measures and to ensure that the measures are shown on the SDP. The Phase II noise study shall address all traffic-related noise and location of the mitigation 65 dBA Ldn ground level and upper level contours. If a noise wall is proposed, it must be place on an HOA parcel and show minimum of 10 feet of unencumbered area on each side of the wall for future access and maintenance. All rear outdoor activity areas shall be mitigated to 65 dBA Ldn or less and all interior residential areas shall be mitigated to 45 dBA Ldn or less.

Applicant Request:

"Amend this condition such that noise mitigation measures will only be required for roads that are in existence or fully funded for construction at the time of SDP approval."

Staff Finding and Recommendation:

At the time of the original preliminary plan review, the noise impact area was determined to be 144 feet from the centerline of White House Road and 228 feet from the centerline of Harry S Truman Drive based on the Environmental Planning Section noise model, which uses the projected average daily traffic for each right-of-way. This information was found to be acceptable in lieu of a study. Because no lots were to be impacted by noise from White House Road, mitigation was not required. The model did indicate that several lots would be impacted by noise associated with the extension of Harry S Truman Drive. The approved TCPI shows the unmitigated 65 dBA Ldn noise contour generated by the model. Lots 1, 2, 62 thru 65, 71, and 72 were estimated to be impacted as part of the preliminary plan approval.

The preliminary plan review further established the need to address traffic-related noise with respect to the approved lotting pattern and established the specific design plan (SDP) as the timing mechanism to ensure that any mitigation measures that may be needed would be addressed at that time. The approval was left somewhat open as to how the mitigation would be accomplished. Condition 11 was also written to address the likelihood of a wall being needed to mitigate noise, not the fence that we now know based on the noise study should be adequate to mitigate the adverse noise impacts.

As part of the SDP application, a noise study was submitted for Harry S Truman Drive, by the applicant. While the title of this study indicates that it is a Phase I noise study, it included a mitigation evaluation as required in what is typically referred to as a Phase II noise study and was accepted with the SDP as meeting Condition 1. The analysis of this reconsideration request brings forward the noise report submitted with the SDP entitled Kenwood Village Phase I Noise Analysis, prepared by Phoenix Noise & Vibration, LLC, and dated January 31, 2013.

The noise study prepared by the applicants expert not only determined the location of the unmitigated 65 dBA Ldn upper and ground level noise contours based on modeling, it also included a Phase II assessment that provided recommendations for mitigation to reduce noise to an acceptable level. Because the road has not yet been built, the study was based on future modeling that included existing conditions and future site development, and assumptions regarding the road design. Noise modeling is an accepted practice in the field of acoustical analysis, and often used by the Planning Board in projecting impacts of future development.

The applicant's noise study showed that the unmitigated 65 dBA Ldn noise contours for Harry S Truman Drive are estimated at approximately 150 feet (ground level) and 190 feet (upper level) from its centerline, which results in noise impacts to proposed Lots 1, 71, 72, 63, 64, and 65 as shown on the SDP. It should be noted that with the refinement in the location of the unmitigated 65 dBA Ldn provided in the applicant's noise study, the lots estimated to be affected by unmitigated noise were reduced as reflected on the TCPII associated with the SDP.

Section 24-121(a)(4) of the Subdivision Regulations states: "Residential lots adjacent to existing or planned roadways of arterial classification shall be platted with a minimum depth of one hundred and fifty (150) feet. Residential lots adjacent to an existing or planned roadway of freeway or higher classification, or an existing or planned transit right-of-way, shall be platted with a depth of three hundred (300) feet. Adequate protection and screening from traffic nuisances shall be provided by earthen berms, plant materials, fencing, and/or the establishment of a building restriction line, when appropriate." Based on the applicant's noise study, adequate protection in the form of a fence would be appropriate. In addition to the requirements of the Subdivision Regulations, the Zoning Map Amendment (A-9803) approved by the County Council contained the following consideration: "The depths of all lots adjacent to Harry S Truman Drive and White House Road shall be adequate to provide visual and sound screening as part of Specific Design Plan approval." While this consideration is specific to lot depth, it demonstrates that mitigation of noise associated with Harry S Truman Drive was considered from the very beginning of this case.

To mitigate for the rear yards of these lots, the applicant's noise study recommended a nine-foot-tall fence along the rear yard of four lots, or approximately 615 linear feet, of the 940 linear feet of frontage this site has along the east side of Harry S Truman Drive which will be deducted at time of final plat. The report estimated that the proposed fence would mitigate noise in the rear yards to below 60 dBA Ldn. In accordance with the above condition, the fence was shown on the SDP on an HOA parcel. The final building material and fence details should be addressed as part of the SDP in accordance with the materials outlined in the study. The final location and dimensions of the noise fence should also be determined as part of the SDP.

Staff does not support the applicant's request to eliminate the above condition for many reasons. As a result of the rezoning of the property (A-9803), a 120-foot right-of-way for the extension of Harry S Truman Drive (Master Plan Road A-39) was required to be dedicated. While the applicant is not required to build the road, and funding is not readily available for the Department of Public Works and Transportation (DPW&T) to construct the road, there is a reasonable expectation that the road will eventually be built. The future needs of the homeowners should be

addressed based on the required dedication. The applicant's request to eliminate the above condition would shift the burden of providing noise mitigation onto the government (DPW&T) to fulfill when the road is built. Providing a fence for noise mitigation purposes, as outlined in the applicant's noise study, would not be an unreasonable economic burden for the applicant and would protect the homeowners. The installation of a fence would serve many purposes in addition to providing noise mitigation.

The fence, as outlined in the applicant's noise study, would be a design consistent with residential uses and serve the following purposes: provide privacy while still allowing a view of the HOA parcel and the wooded right-of-way; provide the delineation of a rear yard so that homeowners would not have to build a fence themselves; provide a visual buffer when the road is installed; and provide a measure of safety from the road when it is installed.

While the HOA parcel was originally envisioned to provide common space away from the lots for the installation and maintenance of a wall and is not necessarily needed for the installation and maintenance of a residential type fence, it is recommended that the HOA parcel shown on the SDP remain to allow the greatest flexibility in fence location and to provide space to fulfill the screening requirements of the 2010 *Prince George's County Landscape Manual*.

In regards to their request, the applicant is specifying that noise mitigation measures should only be required for roads that are in existence or fully funded for construction at the time of SDP approval. Again, Section 24-121(a)(4) of the Subdivision Regulations, states the following:

- (4) Residential lots adjacent to existing or planned roadways of arterial classification shall be platted with a minimum depth of one hundred and fifty (150) feet. Residential lots adjacent to an existing or planned roadway of freeway or higher classification, or an existing or planned transit right-of-way, shall be platted with a depth of three hundred (300) feet. Adequate protection and screening from traffic nuisances shall be provided by earthen berms, plant materials, fencing, and/or the establishment of a building restriction line, when appropriate.**

Section 24-121(a)(3) of the Subdivision Regulations also states that:

- (3) As used in this Section, a planned roadway or transit right-of-way shall mean a road or right-of-way shown in a currently approved State Highway plan, General Plan, or master plan.**

Therefore, the applicant's argument is contradicted by the code requirement which specifically defines lot depths and noise issues should apply to "existing and planned" arterial roadways, regardless of the roads funding status. The roadway in question is the master planned Harry S Truman Drive, which is listed as an arterial roadway in the 2009 *Countywide Master Plan of Transportation* (MPOT). Dedication of right-of-way for this road through the subject property was required by the District Council at time of the approval of A-9802/9803 (Condition 2) in 1992. The issue of noise impacts from Harry S Truman Drive was also brought up with A-9802/9803, as memorialized in Consideration 3 of that approval as follows:

Consideration 3

The depths of all lots adjacent to Harry S Truman Drive and White House Road shall be adequate to provide visual and sound screenings as part of Specific Design Plan approval.

The Planning Board, through Condition 11 attached to the approval of Preliminary Plan of Subdivision 4-06159, furthered this consideration, by requiring a Phase II Noise Study be

submitted with the SDP and proposed noise mitigation measures be shown on the SDP to address all traffic-related noise. Furthermore, at the time of SDP review, the applicant did submit a noise study indicating that the noise impacts could be mitigated with a nine-foot-high fence, along the rear of four lots which has a less onerous economic impact, compared to other possible mitigation measures, and could serve as a benefit to potential homeowners to have their rear yards already partially fenced. Therefore, staff does not agree that it is justified to modify the PPS condition as the applicant requests. However, due to the results of the Phase II Noise Study, it is appropriate to delete the following sentence from Condition 11 in order to leave the utmost flexibility in the design of the noise mitigation measures at the time of SDP review:

“If a noise wall is proposed, it must be placed on an HOA parcel and show a minimum of 10 feet of unencumbered area on each side of the wall for future access and maintenance.”

While a large, permanent noise wall would be most appropriately placed on a separate HOA parcel in order to provide sufficient access space for maintenance, it is not necessary for a fence, which usually does not require large equipment to maintain or repair.

Staff does not support the deletion of Condition 11, but does recommend a revision to Condition 11 to allow greater flexibility at the time of SDP.

Condition 12

Prior to the approval of building permits, a certification by a professional engineer with competency in acoustical analysis shall be placed on the building permits stating that building shells of structures have been designed to reduce interior noise levels to 45 dBA or less.

Applicant Request:

“Eliminate this condition since no internal noise attention has proven to be needed.”

Staff Finding and Recommendation:

The applicant’s noise study showed that even with the installation of the recommended fence, the upper levels of the future homes on several proposed lots would be impacted by interior noise levels above the 45 dBA Ldn standard. The noise study further stated that a building shell analysis of the proposed building materials would be needed in order to accurately determine if the structures themselves would mitigate interior noise. At the time of the study, that information was not available to the noise consultant. Prior to the issuance of the building permits, a noise certification should be provided with the architectural plans to ensure that the materials are sufficient to mitigate interior noise levels to below 45 dBA Ldn.

Staff does not support the applicant’s request to delete Condition 12.

Condition 20

The applicant shall provide the following improvements along White House Road pursuant to DPW&T specifications:

- **Provision of a deceleration and an acceleration lane along White House Road at the site entrance.**
- **Provision of a left-turn bay on westbound White House Road at its intersection with the site access road.**

Applicant Request:

“Amend this condition to state “unless modified by DPW&T.”

Staff Finding and Recommendation:

The Transportation Planning Section reviewed the applicants request and found that none of the improvements listed in Condition 20 are needed to provide extra capacity, but rather, are needed for safety reasons and are under the jurisdiction of the Department of Public Works and Transportation (DPW&T). Consequently, DPW&T can require the applicant provide or not provide frontage improvements under Subtitle 23, Road Code.

Staff recommends approval of a modification of Condition 20, as requested by the applicant.

Condition 27

The applicant shall construct 10-foot-wide gravel maintenance access road from Ritchie-Marlboro Road to the dedicated parkland as shown on attachment Exhibit “B”. This area shall be graded at the time of mass grading of the project area and reviewed and approved by DPR staff prior to issuance of the first building permit. Prior to the issuance of the 37th building permit, the gravel maintenance road and park gates shall be constructed.

Applicant Request:

“Delete this condition in its entirety as the park associated with this construction is not anticipated to be initiated anytime soon.”

Staff Finding and Recommendation:

Staff recommends the deletion of Condition 27 based on the findings contained in the discussion with the Condition 4.

Condition 28

The applicant shall grade the southern portion of the dedicated parkland and stabilize the area according to local codes and ordinances. DPR staff shall establish the exact boundaries and elevation of park grading at the time of SDP. Park grading shall be completed and inspected by DPR staff prior to issuance of the first building permit.

Applicant Request:

“Delete this condition it its entirety as the park associated with this construction is not anticipated to be initiated anytime soon.”

Staff Finding and Recommendation:

The Environmental Planning Section has reviewed the applicant’s request to delete this condition only as it relates to the information shown on the approved TCPI. Type I Tree Conservation Plan TCPI-017-04-01 currently shows the following note on Parcel B that is to be dedicated to the Department of Parks and Recreation (DPR). The note reads: “Area of Parkland to be graded by applicant per “Exhibit ‘A’, CDP-0303, D.P.R. 2.16.05 H.asan” – 3.9 +/- Acres.” Should the applicant’s request to delete condition 28 be approved, the note on the TCPI will need to be deleted and the TCPI will need to be certified as the ‘-02’ revision (TCPI-017-04-02).

Staff recommends the deletion of Condition 28, based on the findings contained in the discussion with Condition 4.

RECOMMENDATION

Staff recommends the preparation of an amended resolution of approval for Preliminary Plan of Subdivision 4-06159, and the approval of the following amended, deleted, and additional conditions, with the revised findings as stated herein:

PGCPB Resolution 07-169, File 4-06159

4. ~~The applicant shall comply with the following concerning their parkland dedication:~~
 - a. ~~The applicant shall construct a combination of on-site and parkland recreational facilities to be determined at the time of SDP.~~
 - b. ~~The recreational facilities shall be constructed in accordance with the applicable standards in the *Parks and Recreation Facilities Guidelines*.~~
 - c. ~~Detailed construction drawings for recreational facilities on park property including grading plans, sections, equipment, and landscaping schedules shall be submitted to DPR for review and approval prior to submission of any application for building permits in Kenwood Village.~~
 - d. ~~Detailed construction drawings shall be prepared by a designer specializing in playgrounds in cooperation with a design team from DPR. DPR staff shall review the credentials and approve the design consultant prior to development of the plans.~~
 - e. ~~Prior to application of the building permit for the construction of the recreational facilities in the park, DPR staff shall review credentials and approve the contractor proposed for the park construction work based on qualifications and experience.~~
 - f. ~~Submission of three original executed Recreational Facilities Agreements (RFA) to DPR for approval three weeks prior to a submission of a final plat. Upon approval by DPR, the RFA shall be recorded among the land records of Prince George's County.~~
 - g. ~~At least two weeks prior to applying for building permits, the applicant shall submit to DPR a performance bond, letter of credit, or other suitable financial guarantee to secure construction of the recreational facilities on park property, in an amount to be determined by DPR.~~
11. Prior to acceptance of the specific design plan application, it shall be inspected to ensure that it includes a Phase II noise study that states the proposed noise mitigation measures and to ensure that these measures are shown on the SDP. The Phase II noise study shall address all traffic-related noise and the location of the mitigation 65 dBA Ldn ground level and upper level contours. ~~If a noise wall is proposed, it must be placed on an HOA parcel and show a minimum of 10 feet of unencumbered area on each side of the wall for future access and maintenance.~~ All rear outdoor activity areas shall be mitigated to 65 dBA Ldn or less and all interior residential areas shall be mitigated to 45 dBA Ldn or less.

20. Unless modified by DPW&T, [F]the applicant shall provide the following improvements along White House Road pursuant to DPW&T specifications:
- Provision of a deceleration and an acceleration lane along White House Road at the site entrance.
 - Provision of a left-turn bay on westbound White House Road at its intersection with the site access road.
27. ~~The applicant shall construct 10-foot-wide gravel maintenance access road from Ritchie Marlboro Road to the dedicated parkland as shown on attached Exhibit "B". This area shall be graded at the time of mass grading of the project area and reviewed and approved by DPR staff prior to issuance of the first building permit. Prior to the issuance of the 37th building permit, the gravel maintenance road and park gates shall be constructed.~~
28. ~~The applicant shall grade the southern portion of the dedicated parkland and stabilize the area according to local codes and ordinances. DPR staff shall establish the exact boundaries and elevation of park grading at the time of SDP. Park grading shall be completed and inspected by DPR staff prior to issuance of the first building permit.~~
34. Prior to issuance of the 34th building permit, the applicant, their heirs, successors and/or assigns shall make a payment to the M-NCPPC Department of Parks and Recreation in the amount of \$70,000 in 2013 dollars for the grading of the southern portion of the dedicated parkland, construction of a 10-foot-wide gravel maintenance access road from Ritchie Marlboro Road and preparation of the detailed construction drawings for the improvements on dedicated parkland. At the time of payment, this amount shall be adjusted for inflation using the Consumer Price Index (CPI). The monetary contribution shall be placed into a park account designated for this park.
35. Prior to approval of the final plat, the following note shall be removed from TCPI-17-04-01: "Area of Parkland to be graded by applicant per "Exhibit 'A', CDP-0303, D.P.R. 2.16.05 H.asan" – 3.9 +/- Acres." The plan shall be certified as the -02 revision.

STAFF RECOMMENDS APPROVAL OF PRELIMINARY PLAN OF SUBDIVISION 4-06159 AND TCPI-17-04-02