TITLE: Villas at Manchester

FILE NUMBER: SP-90-15  
(AP#14854, FRO#14855, APFO#14878)

REQUEST: Site Development Plan Approval  
The Applicant is requesting Site Development Plan Approval for a multi-family group development consisting of 78 dwelling units within 13 buildings and 1 existing single family detached dwelling on a 9.52 acre site.

PROJECT INFORMATION:  
ADDRESS/LOCATION: 5614 New Design Road; located along the west side of New Design Road, southwest of the intersection of New Design Road and Crestwood Boulevard  
TAX MAP/PARCEL: Tax Map 77 Parcel 30  
COMP. PLAN: High Density Residential  
ZONING: R-16 – High Density Residential  
PLANNING REGION: Frederick  
WATER/SEWER: S-1/W-1

APPLICANT/REPRESENTATIVES:  
APPLICANT: Comstock Holding Company  
OWNER: Lawrence J. and Ilona M. Hogan  
ENGINEER: Dewberry Consultants, LLC

STAFF: John Dimitriou, R.A. Principal Planner

RECOMMENDATION:  
Conditional Approval

ATTACHMENTS:  
Exhibit 1 – Site Plan Rendering  
Exhibit 2 – Tree, Parking & Lighting Modification Request  
Exhibit 3 – FRO Modification Request  
Exhibit 4 – APFO Letter of Understanding
STAFF REPORT

ISSUE

Development Request

The Applicant is requesting Site Development Plan Approval for a multi-family group development consisting of 78 dwelling units within 13 buildings and 1 existing single family detached dwelling on a 9.52 acre site. The proposed use is being reviewed as an “multi-family group” land use under the heading of Residential Uses per §1-19-5.310 Use Table in the Zoning Ordinance and is a principal permitted use in the R-16 Zoning District subject to site development plan approval.

Modification Requests

1. Modification of street tree planting requirement to allow the trees to be planted within open space that is not along New Design Rd.
2. Modification to allow some spill over lighting at the driveway entrances to New Design Rd.
3. Modification to allow more (207 spaces) than the minimum required 196 spaces.

BACKGROUND

Development History

This Site was originally rezoned from A-Agricultural to R-16 High Density Residential in 1989 (Case #R-88-50). The Board of County Commissioners (BOCC) approved the rezoning (Ordinance # 89-39-570 effective June 12, 1989) with the following conditions:

1. A maximum of 144 dwelling units may be constructed on this property.
2. The maximum floor area for new construction on this site (excluding the house and out-buildings existing on the date of the enactment of this Ordinance) shall be 100,000 square feet.
3. In accordance with the site development plan submitted by the applicant with this application in this case, no more than 25% of the property shall be covered in buildings, parking area or access roads. The remaining area will be in green area or outdoor recreation areas.

In 2014, a request was submitted to the County for a rezoning condition amendment (Case # R-88-50 (A)) to eliminate conditions #2 and #3 as listed in Ordinance 89-39-570. On May 28, 2014, the Frederick County Planning Commission voted to recommend approval of the request and on June 17, 2014, the Board of County Commissioners voted to approve the revised Ordinance 89-39-570. The revised ordinance maintained condition #1, deleted conditions #2 and #3 and added the following condition:

2. The existing farmhouse/residence and smokehouse on the property shall be preserved.

Existing Site Characteristics

The Site is currently zoned R-16 High Density Residential and is generally flat but heavily wooded, with elevations decreasing toward the rear/western end of the Site. An area containing both wet and flooding soils runs parallel to the western property boundary. The Site is developed with a large stuccoed stone and brick house said to date from 1795 and referred to as Manchester. The Site also includes an existing

Villas at Manchester
April 8, 2015
Page 2 of 15
stone smoke house, stone spring house, and modern garage. A tree-lined drive provides access to the house complex from New Design Road and terminates in a circle at the front of the house (see aerial photo below).

The Property is bordered on the north, south, and west by the Crestwood Village PUD, a 1,025 unit residential development. The areas of Crestwood Village immediately adjacent to the proposed development are all designated as variable width open space areas. New Design Road is located immediately to the east along the entire property frontage. Beyond New Design to the east is an area zoned R8 that contains the Foxcroft II subdivision, Parkway Community Church, and Emmanuel Alliance Church (see zoning map below).
ANALYSIS

The key issues associated with the Site Development Plan were designing a layout that facilitates preservation of the existing historic home as required by the Phase I rezoning amendment, providing for protection of existing environmental features, providing visitor and overflow parking, and providing sufficient parkland for future residents of the development. In addition, Staff worked with the Applicant to ensure that a loop road system was developed for the Site rather than a dead end system. The current design achieves these objectives.

Detailed Analysis of Findings and Conclusions

Site Development Plan Approval shall be granted based upon the criteria found in §1-19-3.300.4 Site Plan Review Approval Criteria of the Frederick County zoning ordinance.

**Site Development §1-19-3.300.4 (A):** Existing and anticipated surrounding land uses have been adequately considered in the design of the development and negative impacts have been minimized through such means as building placement or scale, landscaping, or screening, and an evaluation of lighting. Anticipated surrounding uses shall be determined based upon existing zoning and land use designations.

Findings/Conclusions

1. **Dimensional Requirements/Bulk Standards §1-19-6.100:**
   - Minimum dimensional requirements for a multifamily group development in the R-16 zoning district are as follows:
     - Front Setback: 40’
     - Side and Rear Setbacks: Equal to the Height of the Structure
     - Maximum Height: 100’

   The height for the proposed buildings is 30’, well below the 100’ maximum. As such, the required dimension for the side and rear setbacks is 30’.

   The proposed development exceeds the minimum required setbacks with a 62’ front setback proposed along New Design Road, a 30’ side setback proposed along both the north and south property lines, and 80’ setback proposed along the rear property line.

   The minimum lot area per unit, and lot width, for multifamily group development in the R16 zoning district are 2,700 square feet and 100’ respectively. The proposed development and subject property exceed these requirements. The existing lot with ranges between 446’-477’ in width and the existing lot size provides considerably more than the minimum 2,700 square feet of lot area per unit.

2. **Signage §1-19-6.300:**
   - One Subdivision and Community Identification sign is proposed at the southern Site entrance. The maximum sign size is 64 square feet and a maximum of 6’ in height. A minimum setback of 15’ from the right-of-way is required. The proposed maximum sign size and placement conform to these minimum requirements. A separate sign permit application must be submitted and reviewed for approval and conformance with these requirements prior to construction.
3. Landscaping §1-19-6.400:
The Applicant has provided buffering and screening along the full length of both the north and south property lines between the proposed development and the existing Crestwood Village PUD. The proposed landscaping includes both deciduous and evergreen species that will add visual interest and adequate buffering and screening between the residential developments.

The interior of the Site includes several street trees along the private loop drive and within the open space areas.

Street Trees:
The Site has approximately 470’ feet of frontage along New Design Road, which at a rate of 1 tree per 35’ of frontage results in a requirement of 14 street trees.

As allowed in §1-19-6.400(I) of the Zoning Ordinance, the Applicant has requested Planning Commission approval of an alternate landscaping plan for the street trees due to on-site constraints (sight distance and lack of street tree planting area within the New Design r-o-w).

The alternative planting design proposed by the Applicant distributes the required number of trees along New Design Road in an irregular fashion that is not inconsistent with the character of the area. The proposed street trees include 4 sugar maples, 8 white oaks, and 2 river birch. The irregularly spaced and distributed tree planting design is more reflective of the character of development within the vicinity of the Site. Staff recommends approval of the modification request for an alternative planting design for streets trees along New Design Road.

Parking Area Landscaping:
Three primary parking areas are proposed: 1) adjacent to the southern Site entrance; 2) at the western end of the Site, south of the existing dwelling; and 3) around the perimeter of the proposed park in the eastern portion of the Site. Planting areas are provided at locations at the end of each proposed parking bay. Overall, trees and shrubs proposed within the planting areas exceed the minimum requirement of 1 tree and 2 shrubs per 100 square feet of landscape area.

Total area of proposed parking, including all three “lots”, equals 22,032 sf. Total required canopy coverage is (22,032 X 20%) 4,406 sf. Total canopy coverage provided at maturity is 5,164 sf. The total proposed parking lot area, as well as each lot individually, complies with the canopy coverage requirement.

Parking Area Buffering and Screening:
Parking area buffering and screening is required by Zoning Ordinance where adjacent to residential uses or zoning districts or when located adjacent to a roadway with at least a collector status. The parking area in the southeastern corner of the Site is adjacent to New Design Road, which is a major arterial as designated in the County Comprehensive Plan. Proposed landscaping includes evergreen shrubs that will provide effective buffering and screening from New Design Road, the entrance drive, and the adjacent Crestwood Village development to the south. Buffering and screening is also proposed along the southern border of the western most parking area adjacent to the existing dwelling. However, there is insufficient landscaping on the western boundary of this parking area which does not effectively screen or buffer the proposed parking area from the adjacent Crestwood development located beyond the western Site property boundary. Evergreen and deciduous shrubs grouped near the 2 proposed white oaks should be added to provide partial screening of the parking area. Full screening adjacent to the western boundary of this parking area is not required or recommended due to the nearby open space amenity.
4. **Lighting §1-19-6.500:**

   Pole mounted lighting is proposed throughout the Site along the proposed internal private street. 23 fixtures are proposed on poles not to exceed 12’ in height and will be fully shielded and directed downward. Proposed lighting does not exceed .5 footcandles except at the proposed southern entry from New Design Road. The Applicant is requesting a modification to allow spillover illumination at this location to provide intersection emphasis and increase visual safety. Staff has no objection to the lighting modification request.
Transportation and Parking §1-19-3.300.4 (B): The transportation system and parking areas are adequate to serve the proposed use in addition to existing uses by providing safe and efficient circulation, and design consideration that maximizes connections with surrounding land uses and accommodates public transit facilities. Evaluation factors include: on-street parking impacts, off-street parking and loading design, access location and design, vehicular, bicycle, and pedestrian circulation and safety, and existing or planned transit facilities.

Findings/Conclusions

1. Access/Circulation:
Site access is attained via two entrances from New Design Road. The northern entrance is a right-in/right-out access point to New Design. The second access point is located at an existing median break along New Design Rd. and allows for full movements to New Design northbound and southbound.

The spacing between the proposed entrances is approximately 240’.

The two proposed access points allow for a loop road system to be provided, preventing a dead end street system. The interior of the Site is served by the proposed Hogan Circle, a 22’ wide private road that narrows to 20’ at a location adjacent to the existing residential dwelling. An emergency vehicle turnaround has been provided at the western terminus of the northern portion of the loop road. The turnaround provides adequate emergency vehicle access to the dwelling units located in the northwest portion of the Site.

The Site is bound by existing residential dwellings and open space parcels which preclude street connectivity between the proposed development and existing neighborhoods.

2. Public Transit:
The #10 Connector Route runs along New Design Road adjacent to the Site. Currently, the nearest bus stop is located on the southwest corner of Crestwood Blvd and New Design Road. Sidewalks connecting the proposed development and existing bus stop will provide an opportunity for public transit use.

3. Vehicle Parking §1-19-6.220:
Parking for the proposed development is required at the following rates and quantities:

<table>
<thead>
<tr>
<th>Dwelling Type</th>
<th>Rate</th>
<th>Requirement</th>
<th>Provided</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Family Detached</td>
<td>2 per dwelling unit</td>
<td>2</td>
<td>207</td>
</tr>
<tr>
<td>Multifamily Group Development</td>
<td>1 per unit + .5 per bedroom</td>
<td>195</td>
<td></td>
</tr>
</tbody>
</table>

The Applicant is proposing 12 spaces in addition to the required amount. This is a surplus of 6% for the purposes of overflow and visitor parking. The Applicant has submitted a modification request to allow parking in excess of the required number of 195. These surplus spaces provide flexible parking provision to accommodate temporary increases in parking demand. Staff recommends approval of the modification request.
4. **Bicycle Parking §1-19-6.220 (H):**
Bicycle parking is required at a rate of 1 rack for each 10 units. At 79 total units, a total of 8 racks are required and have been proposed. Although the Applicant has provided bicycle parking details they are not consistent with the Frederick County Bicycle Parking Design Guide and must be amended.

5. **Pedestrian Circulation and Safety §1-19-6.220 (G):**
Safe and efficient pedestrian circulation has been provided to and from parking areas and building entrances. Sidewalks five feet in width are provided along both sides of all proposed streets, extend into proposed parking areas and parkland, and interconnect with the existing sidewalk along New Design Road. Walkways connect the proposed sidewalks with each proposed building.

**Public Utilities §1-19-3.300.4 (C):** Where the proposed development will be served by publicly owned community water and sewer, the facilities shall be adequate to serve the proposed development. Where proposed development will be served by facilities other than publicly owned community water and sewer, the facilities shall meet the requirements of and receive approval from the Maryland Department of the Environment/the Frederick County Health Department.

**Findings/Conclusions**

1. **Public Water and Sewer:** The site is to be served by public water and sewer and is classified W-1, S-1 in the Frederick County Water Plan. Water will be supplied by the New Design Water Treatment Plant with sewage processed at the Ballenger McKinney Wastewater Treatment Facility. The Division of Utilities and Solid Waste Management has reviewed and conditionally approved the proposed Site Development Plan.

**Natural features §1-19-3.300.4 (D):** Natural features of the site have been evaluated and to the greatest extent practical maintained in a natural state and incorporated into the design of the development. Evaluation factors include topography, vegetation, sensitive resources, and natural hazards.

**Findings/Conclusions**

1. **Vegetation:** As discussed in more detail under the FRO heading below, the property contains 7.70 acres of existing forest. The Applicant proposes to clear 7.30 acres of forest. The remaining 0.40 acres of forest located in the southwest corner of the property (as depicted on the Combined Preliminary/Final Forest Conservation Plan) will be placed under a perpetual forest conservation easement. In addition, the Applicant has proposed landscaping and screening along the property boundaries and within the development to meet Zoning Ordinance requirements.

2. **Sensitive Resources:** The Site contains a band of wet and flooding soils that generally runs parallel to the western property boundary. This area has been delineated on the proposed site development plan with the required 25’ setback. Except for the small existing portion of the indoor pool shown within the setback, the setback area shall be maintained or planted with natural vegetation. The proposed residential structures are within 100 feet of the wet soils boundary however, the units will not contain basements therefore submission of a geotechnical report is not required.

3. **Natural Hazards:** There are no areas of FEMA floodplain or wetlands located on the Site.
**Common Areas §1-19-3.300.4 (E):** If the plan of development includes common areas and/or facilities, the Planning Commission as a condition of approval may review the ownership, use, and maintenance of such lands or property to ensure the preservation of such areas, property, and facilities for their intended purposes.

**Findings/Conclusions**

1. **Proposed Common Area:** The Applicant has proposed a combination of open space and parkland intended to serve as common areas. The Applicant worked with County Staff to provide a parkland/green area located centrally and of a sufficient size to accommodate active recreation. The 11,540 square foot parkland area along Manchester Drive is centrally located, relatively flat, and includes adjacent parking available for visitors. In addition, a small parkland area has also been provided at the western end of the Site adjacent to the proposed parking area. As stated in Note 14 of the Site Development Plan, all open spaces and private streets shall be owned and maintained by a Home Owner’s Association.

2. **Ownership:** The Applicant intends to develop the residential dwellings as condominiums. As part of this process, it is necessary for County Agencies to review and approve the condominium documents to ensure adherence to County ordinances and regulations.

**Other Applicable Regulations**

**Moderately Priced Dwelling Units – Chapter 1-6A:**

The proposed development is more than 25 units to be served by public water and sewer and is therefore subject to the Moderately Priced Dwelling Unit provisions of the Frederick County Code. As stated in Note 31 of the Site Development Plan, 10 MPDU units are required for this project. The Applicant intends to utilize the fee-in-lieu payment to meet this obligation.

**Stormwater Management – Chapter 1-15.2:**

A Stormwater Management Concept Plan for the project has been reviewed and approved (AP#14786).

**APFO – Chapter 1-20 (See Exhibit #4):**

1. **Schools.** The Project is projected to generate 11 elementary school students, 4 middle school students and 5 high school students, assuming a two over two student yield rate. Based on these numbers and considering enrollment projections from pipeline development, the school adequacy test fails at the elementary school level for Ballenger Creek ES. The Developer has chosen the option to mitigate the school inadequacy by paying the School Construction Fees under Section 1-20-62 of the APFO. This Project is eligible to utilize the School Construction Fee option per the criteria set forth in Section 1-20-62 of the APFO.

2. **Water/Sewer.** The Property has water and sewer classification of W-1 and S-1.

3. **Roads.** This project generates 50 weekday pm peak trips and fewer am peak trips, and is therefore exempt from APFO Roads testing per 1-20-30, which sets a threshold at 51 or more trips. In accordance with the developer option outlined in Section 1-20-12 of the County Code, the Developer is required to pay its proportionate contribution toward existing escrow accounts in the project area. A total of $156,705 for 21 existing escrow payments must be paid to the County by the Developer, its successors or assigns, prior to the issuance of any
building permit for the Project. Should this payment not be made within one year of the execution of this Letter, the County reserves the right to adjust this amount, based on an engineering cost index.

**Period of Validity:** The APFO approval is valid for three (3) years from the date of Commission approval; therefore, the APFO approval expires on April 8, 2018.

In accordance with the January 5, 2011 Traffic Impact Analysis by Street Traffic Studies, LTD, the total uses on the site are capped at a total amount of 120 A.M. and 139 P.M. weekday, and 162 Saturday, peak hour vehicle driveway trips

**Forest Resource – Chapter 1-21:**

The Applicant has submitted a Forest Stand Delineation and Preliminary Forest Conservation Plan. The property contains 7.70 acres of existing forest. The Applicant proposes to clear 7.30 acres of forest. The remaining 0.40 acres of forest is located in the southwest corner of the property will be placed under a perpetual forest conservation easement. In addition to the 0.40 acre forest easement, the project generates 4.91 acres of additional mitigation requirement due to the amount of forest being cleared. The 4.91 acres will be provided via use of 0.04 acres of miscellaneous credit for on-site tree save areas and by providing forest banking credits.

The site contains 5 specimen trees (trees that are 30 inches or greater in diameter). Three specimen trees are proposed to be removed by the Applicant. The removal of 1 of these trees has been approved at Staff level: Tree #8423 is a 33.5” Tree of Heaven, which is an invasive/exotic species. The Applicant is seeking a modification of the Forest Resource Ordinance (FRO) to permit the removal of the following 2 specimen trees under the provisions of §1-21-40:

<table>
<thead>
<tr>
<th>Tree ID #</th>
<th>Size and Species</th>
<th>Location</th>
<th>Condition</th>
</tr>
</thead>
<tbody>
<tr>
<td>8400</td>
<td>33.5” Silver Maple</td>
<td>Intersection of Hogan Cir. and Manchester Dr.</td>
<td>Fair</td>
</tr>
<tr>
<td>8252</td>
<td>33” Silver Maple</td>
<td>SE corner of property and building 13</td>
<td>Fair/Poor</td>
</tr>
</tbody>
</table>

The Applicant’s FRO Modification Request (Exhibit #3) discusses each tree, its condition, and why its removal is proposed:

- Tree #8400 appears healthy, though it has an unusual structure that could be prone to failure in the future. The Applicant states that saving this tree will require the elimination of one of the proposed buildings, thus a reduction to the proposed density of the project and the financial viability of the project.
- Tree # 8252 exhibits an unusual structure that is likely prone to failure, and exhibits limb dieback. The Applicant states that saving this tree will require the elimination of one of the proposed buildings, thus a reduction to the proposed density of the project and the financial viability of the project.

Per §1-21-40 of the FRO, nonhazardous specimen trees must be retained unless reasonable efforts have been made to protect them, the plan cannot reasonably be altered, and the FCPC finds that the requirements for granting a modification have been met.
§ 1-21-21. MODIFICATIONS.

(A) Modification requests. A person may submit a request to the Frederick County Planning Commission (FCPC) for a modification from this chapter or the requirements of Md. Code Ann., Natural Resources Article, §§ 5-1601 through 5-1612, if the person demonstrates that enforcement would result in unwarranted hardship to the person.

(B) Required information. An applicant for a modification shall:

1. Describe the special conditions peculiar to the property that would cause the unwarranted hardship;
2. Describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas;
3. Verify that the granting of the modification will not confer on the landowner a special privilege that would be denied to other applicants;
4. Verify that the modification request is not based on conditions or circumstances that are the result of actions by the applicant;
5. Verify that the request does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; and
6. Verify that the granting of a modification will not adversely affect water quality.

(C) Modification approval. The FCPC must make a finding that the applicant has met the requirements in subsection (B) of this section and that enforcement would cause the applicant unwarranted hardship before the FCPC may approve any modification.

In order for the FCPC to grant a modification to allow the removal of specimen trees, the FCPC must find:

- that reasonable efforts have been made to protect the specimen trees and that the plan cannot reasonably be altered (in accordance with § 1-21-40 (B)(1), and;
- that the Applicant meets the six criteria outlined under §1-21-21 (B)

The Applicant has submitted a Combined Preliminary/Final FRO Plan. The Combined Preliminary/Final FRO Plan must be approved prior to final Site Development Plan approval. FRO mitigation must be provided prior to applying for grading permits or building permits, whichever is applied for first.

Historic Preservation – As previously discussed the Site contains a large stuccoed stone and brick house. Based on available information, the Maryland Historical Trust Review Form states that the Manchester property is not eligible for the National Register of Historic Places. However, the property is associated with Margaret Scholl Hood, a locally prominent figure. Therefore, a 2014 rezoning condition amendment revised the 1989 Rezoning Ordinance (89-39-570) to require preservation of the residence and structure. The revised ordinance added a new condition that states the following: The existing farmhouse/residence and smokehouse on the property shall be preserved. This Phase I rezoning condition has been met. The proposed site development plan retains the existing residence and smokehouse. The residence is intended to be used as a dwelling.

Summary of Agency Comments

<table>
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<tr>
<th>Development Review Engineering:</th>
<th>Conditional Approval</th>
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</thead>
<tbody>
<tr>
<td>Development Review Planning:</td>
<td>Hold: Address all agency comments as the plan proceeds through to completion</td>
</tr>
<tr>
<td>Div. of Utilities and Solid Waste Mgmt. (DUSWM):</td>
<td>Conditional Approval – Add conditions related to County review of condo documents and billing.</td>
</tr>
<tr>
<td>Health Dept.</td>
<td>Conditional Approval</td>
</tr>
<tr>
<td>Office of Life Safety</td>
<td>Conditional Approval</td>
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<tr>
<td>DPDR Traffic Engineering</td>
<td>Approved</td>
</tr>
<tr>
<td>Historic Preservation</td>
<td>Conditional Approval</td>
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</table>
RECOMMENDATION

Staff has no objection to conditional approval of the Villas at Manchester Site Development Plan. If the Planning Commission conditionally approves the site plan, the site plan is valid for a period of three (3) years from the date of Planning Commission approval and is therefore valid until April 1, 2018.

Based upon the findings and conclusions as presented in the staff report the application meets or will meet all applicable zoning, APFO, and FRO requirements once the following modifications are approved and conditions are met:

1. The Applicant shall comply with all Staff and agency comments through the completion of the plan.
2. Planning Commission approval of the requested street tree modification to allow an alternate landscape design that provides the required 14 street trees located within open spaces throughout the site rather than within the public right-of-way along New Design Rd..
3. The Applicant shall work with DPDR Staff to provide a combination of evergreen and deciduous shrubs to the western boundary of the western most parking area to provide partial screening and buffering of the parking area from the adjacent Crestwood residential development.
4. Planning Commission approval of the requested modification to allow lighting to exceed .50 foot-candles at the main entrance to New Design road as shown on the proposed photometric plan for the purpose of increased intersection visual safety.
5. Planning Commission approval of the requested parking modification to allow 12 parking spaces more than the 195 required spaces for the purposes of providing on-site visitor and overflow parking.
6. Planning Commission approval of the requested FRO Modification to permit the removal of 2 specimen trees (#8400 and 8252).
7. A note shall be added to the Index Sheet and the Landscape Details Sheet (8 of 12) shall be amended to provide that bicycle parking shall be consistent with the Frederick County Bicycle Parking Design Guide.
8. The existing farmhouse/residence and smokehouse on the property shall be preserved (per Ordinance # 14-11-666).
9. Prior to issuance of the 1st residential building permit for the project the condominium declaration and bylaws shall be submitted to the Office of the County Attorney for review and approval by appropriate County agencies.
10. A separate sign permit application depicting conformance with the approved maximum size and location as shown on the site development plan shall be submitted for review and approval prior to construction.
11. The Combined Preliminary/Final FRO plan must be approved prior to Preliminary Plan approval. FRO mitigation must be provided prior to applying for grading permits or building permits, whichever is applied for first.
12. The Project is required to meet the MPDU provisions in accordance with the Frederick County Code.
13. The DUSWM and the Office of the County Attorney must review and approve water and sewer language in the condominium documents prior to DUSWM approval of any water/sewer improvement plans required for the project.
14. The County shall not be responsible for operation and maintenance of the private on-site water distribution system (i.e., that portion after the master water meter) and private on-site sewage collection system (i.e., that portion not contained in a public water and/or sewer easement),
15. The County shall provide a single bill for the water meter and the condominium association shall be the responsible for payment of the water and sewer bills. The County shall not provide individual billing to the condominium unit owners.
16. Complete the requirements of the APFO LOU for the Villas at Manchester.

PLANNING COMMISSION ACTION

MOTION TO APPROVE

I move that the Planning Commission APPROVE the Villas at Manchester Site Development Plan with conditions and modifications as listed in the staff report including APFO and FRO for the existing dwelling and the proposed 78-unit multifamily group development, based on the findings and conclusions of the staff report and the testimony, exhibits, and documentary evidence produced at the public meeting.
March 2, 2015

John Dimitriou  
Frederick County Government  
Community Development Division  
30 N. Market Street  
Fredrick, MD 21701

RE: Villas at Manchester – Type I Site Plan (A/P#14854)  
Modification Request

Dear Mr. Dimitriou,

On behalf of our client, Comstock Homes of Washington, we respectfully submit for consideration by the Planning Commission this request for modifications to requirements set forth in the Fredrick County Zoning Ordinance. In addition we are providing justification for each requested modification.

Street Tree Modification

Pursuant to §1-19-6.400(A) of the Zoning Ordinance, one (1) street tree must be provided for every 35 feet of roadway frontage along the paved surface of an existing or proposed public right of way. If the number of required street trees cannot be accommodated within the public right of way and alternative planting design may be approved by the Planning Commission. A total of 14 street trees are required along the total public right of way of new Design road which totals approximately 478 linear feet. Due to sight distance and street tree location requirements set forth in the Guidelines for Traffic Control Devices, Street Lights and Street Trees for New Developments, in addition to the lack of a tree panel within the New Design Road right-of-way, we request a modification to provide 14 street trees at alternative locations in the open space throughout the site.

Lighting Plan Modification

Pursuant to §1-19-6.500(D) of the Zoning Ordinance, lighting shall not exceed .50 foot-candles as measured from the property line. The Planning Commission may modify the lighting standards within this section based on characteristics of the proposed use, photometric studies, nationally recognized standards, or other documentation as approved by the Planning Commission. We request a modification to allow spillover of light over the property line at the following locations:

1. The proposed main entrance at New Design Road.

The spillover will provide additional illumination at the New Design Road entrance to emphasize the intersection and increase visual safety.

Parking Modification

Pursuant to §1-19-6.200 of the Zoning Ordinance, parking spaces shall be limited to the number of spaces required by the proposed use in the table found in 1-19-6.220 and an increase or reduction in the number
of required spaces may be granted by the Planning Commission. We request that an additional 12 spaces (207-195=12) be provided over the 195 spaces require for the multi-family use. The additional 12 spaces provide an increase of 6% which is to provide visitor or overflow parking for the development. These spaces are provided in two parking lots and on-street spaces.

If you have any questions or concerns related to our understanding written above, or any of the submitted documents, please do not hesitate to contact me at your convenience.

Sincerely,

[Signature]

William 'KC' Reed, PE
Associate / Project Manager

Cc:  Tracy Graves, Comstock Homes
     Bob Hagel, Comstock Homes
     Tim Hogan, Owner’s Representative
February 26, 2015

Mike Wilkins
Frederick County Government
Community Development Division
30 N. Market Street
Frederick, MD 21701

RE: Villas at Manchester
Request for FRO Modification – Specimen Tree Modification
Type I Site Plan #14854 and FRO #14855

Dear Mr. Wilkins,

On behalf of the applicant, Comstock Homes of Washington, we are requesting a Modification from the provisions of § 1-21-40(B)(1)(e) of the Frederick County Code also known as the Forest Resource Ordinance (FRO) of Fredrick County, to allow for the disturbance of trees, shrubs, and plants in priority areas which include nonhazardous trees that:

(1) Are part of a historic site;

(2) Area associated with a historic structure;

(3) Have been designated by the state or the Department as a national, state, county, or municipal champion tree; and

(4) Are specimen trees, or are 75 percent or more of the diameter, measured at 4.5 feet above the ground, of the current state champion tree of that species as designated by the Department of Natural Resources.

The Applicant is seeking a modification to permit the removal of two (2) nonhazardous specimen trees to accommodate the proposed improvements for a multifamily development that includes thirteen – 9-unit buildings and one existing single family detached unit with various outbuildings to remain.

Pursuant to §5-1611 of the Natural Resources Article of the Maryland Annotated Code and §1-21-21 of the Frederick County Code, we respectfully submit this request for a Modification from Chapter 1-21 and provide the following justification explaining the special features, site circumstances or other information that demonstrates that enforcement of the Code would result in an unwarranted hardship to the Applicant.

This Variance is being submitted for review and approval in conjunction with Type I Site Plan #14854 and Forest Resource Ordinance Plan #14855.
Background

This Modification request accompanies the submission of a site plan that proposes 13 six-plex residential buildings, associated road network, parking areas and open space in addition to the preservation of an existing residence and outbuildings with questionable historical value (a total of 79 dwelling units). Located at 5614 New Design Road approximately 500’ south of Crestwood Boulevard, the Subject Property is identified on Tax Map 77 as Parcel 30, a 9.52 acre parcel.

In 1989 the property was rezoned from Agricultural to R-16 Residential as shown in Ordinance No. 89-39-570 with three conditions:

1. A maximum of 144 dwelling units may be constructed.

2. The maximum floor area for new construction (excluding the existing house and outbuilding that exist on the date of enactment of the ordinance) was limited to 100,000 square feet.

3. No more than 25% of the property shall be covered in building, parking area or access roads with the remaining area to be green areas or outdoor recreation areas.

In July 2014 Rezoning Case No. R-88-50 and subsequent adoption of Ordinance 14-11-666 deleted conditions 2 and 3 and added a new condition which requires the preservation of the existing farmhouse/residence and smokehouse on the property.

Variance Trees

This Variance requests the removal of two (2) nonhazardous specimen trees as described in the below table and as shown on the Forest Resource Ordinance Plan:

<table>
<thead>
<tr>
<th>Tree#</th>
<th>Common Name</th>
<th>Scientific Name</th>
<th>DBH(in.)</th>
<th>Condition</th>
<th>Remarks</th>
<th>Proposed Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>8400</td>
<td>Silver Maple</td>
<td><em>Acer saccharinum</em></td>
<td>33-5</td>
<td>Fair</td>
<td>Poison ivy, English ivy</td>
<td>To be Removed</td>
</tr>
<tr>
<td>8252</td>
<td>Silver Maple</td>
<td><em>Acer saccharinum</em></td>
<td>33</td>
<td>Fair/Poor</td>
<td>English ivy, Poor Canopy</td>
<td>To be Removed</td>
</tr>
</tbody>
</table>

Explanation of Proposed Disturbances to Individual Trees

Specimen Tree #8400 (33.5” d.b.h. Silver Maple)

Tree #8400 is located along the northern property line approximately 360’ west of New Design Road. Although the apparent health of this tree is considered Fair with structural defects that predisposes the tree to failure (enveloped in ivy, dead limbs, and poor limb structure) it has no apparent target. Because there is a lack of target, the tree is considered non-hazardous. Due to the shape of the property and proposed layout configuration, if this tree is to be preserved, it would require the elimination of one of the proposed buildings and reducing the overall density, thus impacting the project’s financial viability.
Specimen Tree #8255 (33” d.b.h. Black Walnut)

Tree #8255 is located along the southern property line approximately 140' west of New Design Road. Although the apparent health of this tree is considered Poor with structural defects that predisposes the tree to failure (enveloped in ivy, dead limbs, and poor limb structure) it has no apparent target. Because there is a lack of target, the tree is considered non-hazardous. Here to, due to the shape of the property and proposed layout configuration, if this tree is to be preserved, it would require the elimination of one of the proposed buildings and reducing the overall density, thus impacting the project’s financial viability.

Pursuant to § 1-21-21 of the Fredrick County Code, a written request may be submitted to the Fredrick County Planning Commission (FCPC) to request a modification from the Chapter or any regulation adopted under it if it is demonstrated that enforcement would result in unwarranted hardship to the person. Under § 1-21-21(B) Required Information, states that an applicant for a modification must:

1. Describe the special conditions peculiar to the property which would cause the unwarranted hardship;
2. Describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas;
3. Verify that the granting of the modification will not confer on the landowner a special privilege that would be denied to other applicants;
4. Verify that the modification request is not based on conditions or circumstances that are the result of actions by the applicant;
5. Verify that the request does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; and
6. Verify that the granting of a modification will not adversely affect water quality.

As required, we provide the following justification:

1. Describe the special conditions peculiar to the property which would cause the unwarranted hardship;

The proposed removal to the two (2) specimen trees is needed to implement the proposed Site Plan layout and provide the target density utilizing the preferred residential product. There are a number of special conditions peculiar to the property, which, if enforcement of the Chapter would result in in an unwarranted hardship. As noted, the property currently is the site of an existing dwelling and outbuildings with some historical significance located on the western ¼ of the site, which per the conditions of approved Rezoning Ordinance 14-11-666, is to be preserved along with a portion of its surroundings. Also, in considering the current R-16 zoning and zoning approval of a maximum 144 dwelling units, the proposed 79 units is 45% less than allowed. If the two (2) trees are required to be preserved, the outcome would be the elimination of 2 buildings (12 units) and affect the project’s financial viability. In addition, when considering that the Zoning Ordinance requires a loop street system for the project since there was no provision to provide connection(s) through adjacent developments, greatly impacts the layout options for providing an efficient development. Providing the required street network, associated infrastructure, and acceptable fire access design within the rather restrictive width of the parcel makes it logical to site dwellings around the periphery of the site, which is where the two (2) specimen trees are situated. Due to these conditions, if the request for the removal of these trees is denied, it would cause an unwarranted hardship to the applicant.
(2) Describe how enforcement of this Chapter will deprive the landowner of rights commonly enjoyed by others in similar areas.

The preservation of two (2) specimen trees would require significant changes to the density and current Site Plan layout of which the applicant has worked with Staff on progression to this point. If the request is not granted, it will deprive the landowner of rights commonly enjoyed by others that develop similar properties with special conditions as this one.

(3) Verify that the granting of the modification will not confer on the landowner a special privilege that would be denied to other applicants;

The Planning Commission has previously granted requests for specimen tree removal to similar projects, therefore this will not confer the landowner a special privilege that would be denied to other applicants.

(4) Verify that the modification request is not based on conditions or circumstances that are the result of actions by the applicant;

As described in (1) above, this modification request is not based on conditions or circumstances that are the result of actions by the applicant, however due to conditions peculiar to the property. In addition, the applicant is adhering to the requirements of the Frederick County Zoning Ordinance in the development of the Site Plan.

(5) Verify that the request does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; and

This request for the removal of two (2) specimen trees is based on the conditions peculiar to this property as described above and does not arise from a condition related to land or building use on a neighboring property.

(6) Verify that the granting of a modification will not adversely affect water quality.

The project is subject to the Frederick County Stormwater Management Ordinance and Sediment and Erosion Control Ordinance which both are in accordance with State regulations. The removal of the two (2) trees included in this request will not result in measurable degradation in water quality.

Thank you for your consideration of this Modification request. We believe that the supporting information presented with this letter provides adequate justification for the approval of the requested Modification to remove two (2) nonhazardous specimen trees. Please free to contact me at 301-337-2863 if you have any questions.

Respectfully Submitted,
Dewberry Consultants LLC

[Signature]

George R Warholic, RLA

Dewberry

Page 4 of 4
HAZARDOUS TREE - This tree has structural defects that predisposes the tree to failure including but not limited to:

The tree has major down limbs, splits, and poor limb structure.

- Ivy damage
- Dead limbs
- Fair condition
HAZARDOUS TREE - This tree has structural defects that predispose the tree to failure including but not limited to: The tree has major down limbs which are hanging by the ivy present, splits, and poor limb structure.
ADEQUATE PUBLIC FACILITIES LETTER OF UNDERSTANDING

Villas at Manchester

Site Development Plan #SP-90-15   AP #14854

In General: The following Letter of Understanding ("Letter") between the Frederick County Planning Commission ("Commission") and Comstock Homes of Washington, L.C. ("Developer"), together with its/their successors and assigns, sets forth the conditions and terms which the Commission deems to be the minimum necessary improvements dealing with school, water, sewer, and road improvements that must be in place for the property identified below to be developed, as proposed under the approved Villas at Manchester Site Development Plan (the "Project"), in compliance with the Frederick County Adequate Public Facilities Ordinance ("APFO").

The Developer, its successors and assigns, hereby agrees and understands that unless the required improvements (or contributions to road escrow accounts, as specified below) are provided in accordance with this Letter, APFO requirements will not be satisfied and development will not be permitted to proceed.

This Letter concerns itself with the Developer's 9.52 +/- acre parcel of land, which is zoned R-13 (High Density Residential), and located on the west side of New Design Road, just south of Crestwood Boulevard. This APFO approval will be effective for development of 78 new one over one condominium units (student yields generated at the two/over two rate), which are shown on the site development plan for the above-referenced Project, which was conditionally approved by the Commission or April 8, 2015.

Schools: The Project is projected to generate 11 elementary school students, 4 middle school students and 5 high school students. Based on these numbers and considering enrollment projections from pipeline development, the school adequacy test fails at the elementary school level for Ballenger Creek ES. The Developer has chosen the option to mitigate the school inadequacy by paying the School Construction Fees under Section 1-20-62 of the APFO. This Project is eligible to utilize the School Construction Fee option per the criteria set forth in Section 1-20-62 of the APFO. The School Construction Fees shall be paid prior to plat recordation based on the specific fees required by Section 1-20-62(E) at the time of plat recordation, per unit type and the school level(s) to be mitigated.

Water and Sewer: The Property has water and sewer classification of W-1 and S-1. While the public sewer and water facilities are currently adequate to serve the Project, the Applicant is aware that capacity is not guaranteed until purchased. APFO approval for sewer and water does not guarantee that plats will be recorded and building permits issued. Plat recordation and building permit issuance is subject to compliance with the Annotated Code of Maryland,
Environment Article Section 9-512, et seq. and all applicable County regulations, including but not limited to Sec. 1-16-106 of the Frederick County Subdivision Regulations.

**Road Improvements:** This project generates 50 weekday pm peak trips and fewer am peak trips, and is therefore exempt from APFO Roads testing per 1-20-30, which sets a threshold at 51 or more trips. In accordance with the developer option outlined in Section 1-20-12 of the County Code, the Developer is required to pay its proportionate contribution toward the following existing escrow accounts in the project area:

1. Escrow Account No. 3307 for a signal at the intersection of New Design Rd/Crestwood Blvd - The estimated cost of the improvement is $200,000. As determined by DPDR-Traffic Engineering Staff, the Developer's proportionate share of this Road Improvement is 3.53%. Therefore the Developer hereby agrees to pay $7,060 to the escrow account for this Road Improvement.

2. Escrow Account No. 3247 for a signal and ped phase at the intersection of New Design Rd/Corporate Dr - The estimated cost of the improvement is $156,800. As determined by DPDR-Traffic Engineering Staff, the Developer's proportionate share of this Road Improvement is 7.63%. Therefore the Developer hereby agrees to pay $11,969 to the escrow account for this Road Improvement.

3. Escrow Account No. 3311 for an additional eastbound approach lane at the intersection of MD 180/US 340 westbound off-ramp/Himes Ave. - The estimated cost of the improvement is $201,240. As determined by DPDR-Traffic Engineering Staff, the Developer's proportionate share of this Road Improvement is 0.46%. Therefore the Developer hereby agrees to pay $638 to the escrow account for this Road Improvement.

4. Escrow Account No. 3301 for a signal and a lengthened approach lane at the intersection of MD 180/US 340 westbound off-ramp - The estimated cost of the improvement is $201,240. As determined by DPDR-Traffic Engineering Staff, the Developer's proportionate share of this Road Improvement is 0.46%. Therefore the Developer hereby agrees to pay $916 to the escrow account for this Road Improvement.

5. Escrow Account No. 3302 for additional northbound left turn, southbound through and westbound approach lanes at the intersection of MD 180/US 340 westbound on-ramp/Solarex Ct - The estimated cost of the improvement is $872,000. As determined by DPDR-Traffic Engineering Staff, the Developer's proportionate share of this Road Improvement is 0.70%. Therefore the Developer hereby agrees to pay $6,084 to the escrow account for this Road Improvement.

6. Escrow Account No. 3303 for an additional southbound left turn and through approach lanes at the intersection of MD 180/Ballenger Center Dr - The estimated cost of the improvement is $601,000. As determined by DPDR-Traffic Engineering Staff, the Developer's proportionate share of this Road Improvement is 3.87%. Therefore the Developer hereby agrees to pay $23,265 to the escrow account for this Road Improvement.

7. Escrow Account No. 3300 for a reconstruction of MD 351/MD 180 to a 4 lane dual roadway from Ballenger Center Dr. to Himes Ave. - The estimated cost of the improvement is $9,002,760. As determined by DPDR-Traffic Engineering Staff, the Developer's
proportionate share of this Road Improvement is 0.30%. Therefore the Developer hereby agrees to pay $26,911 to the escrow account for this Road Improvement.

8. Escrow Account No. 3286 for a signal at the intersection of New Design Rd/English Muffin Way - The estimated cost of the improvement is $220,000. As determined by DPDR-Traffic Engineering Staff, the Developer's proportionate share of this Road Improvement is 0.22%. Therefore the Developer hereby agrees to pay $493 to the escrow account for this Road Improvement.

9. Escrow Account No. 3306 for a southbound right turn lane at the intersection of New Design Rd/Crestwood Blvd - The estimated cost of the improvement is $241,000. As determined by DPDR-Traffic Engineering Staff, the Developer's proportionate share of this Road Improvement is 3.53%. Therefore the Developer hereby agrees to pay $8,507 to the escrow account for this Road Improvement.

10. Escrow Account No. 3279 for a westbound acceleration lane at the intersection of Crestwood Blvd/MD 85 - The estimated cost of the improvement is $103,870. As determined by DPDR-Traffic Engineering Staff, the Developer's proportionate share of this Road Improvement is 0.28%. Therefore the Developer hereby agrees to pay $289 to the escrow account for this Road Improvement.

11. Escrow Account No. 3280 for a northbound right turn lane at the intersection of Crestwood Blvd/MD 85 - The estimated cost of the improvement is $251,339. As determined by DPDR-Traffic Engineering Staff, the Developer's proportionate share of this Road Improvement is 0.28%. Therefore the Developer hereby agrees to pay $698 to the escrow account for this Road Improvement.

12. Escrow Account No. 3281 for an additional westbound approach lane at the intersection of Crestwood Blvd/MD 85 - The estimated cost of the improvement is $77,960. As determined by DPDR-Traffic Engineering Staff, the Developer's proportionate share of this Road Improvement is 0.28%. Therefore the Developer hereby agrees to pay $217 to the escrow account for this Road Improvement.

13. Escrow Account No. 3282 for an additional northbound through lane at the intersection of Crestwood Blvd/MD 85 - The estimated cost of the improvement is $1,158,300. As determined by DPDR-Traffic Engineering Staff, the Developer's proportionate share of this Road Improvement is 0.28%. Therefore the Developer hereby agrees to pay $3,218 to the escrow account for this Road Improvement.

14. Escrow Account No. 3344 for an additional southbound receiving lane at the intersection of Crestwood Blvd/MD 351 - The estimated cost of the improvement is $170,000. As determined by DPDR-Traffic Engineering Staff, the Developer's proportionate share of this Road Improvement is 0.99%. Therefore the Developer hereby agrees to pay $1,688 to the escrow account for this Road Improvement.

15. Escrow Account No. 3345 for a northbound right turn lane at the intersection of Crestwood Blvd/MD 351 - The estimated cost of the improvement is $165,000. As determined by DPDR-Traffic Engineering Staff, the Developer's proportionate share of this Road Improvement is 0.99%. Therefore the Developer hereby agrees to pay $1,688 to the escrow account for this Road Improvement.
Improvement is 0.99%. Therefore the Developer hereby agrees to pay $1,638 to the escrow account for this Road Improvement.

16. Escrow Account No. 3347 for an additional westbound right turn lane at the intersection of Crestwood Blvd/MD 351 - The estimated cost of the improvement is $158,730. As determined by DPDR-Traffic Engineering Staff, the Developer's proportionate share of this Road Improvement is 0.99%. Therefore the Developer hereby agrees to pay $1,576 to the escrow account for this Road Improvement.

17. Escrow Account No. 3454 for an additional northbound through lane (relocated right turn lane) at the intersection of MD 180/US 340 eastbound off-ramp/Himes Ave - The estimated cost of the improvement is $1,530,367. As determined by DPDR-Traffic Engineering Staff, the Developer's proportionate share of this Road Improvement is 0.46%. Therefore the Developer hereby agrees to pay $6,967 to the escrow account for this Road Improvement.

18. Escrow Account No. 3624 for a signal at the intersection of New Design Rd/Guilford Dr - The estimated cost of the improvement is $190,000. As determined by DPDR-Traffic Engineering Staff, the Developer's proportionate share of this Road Improvement is 3.70%. Therefore the Developer hereby agrees to pay $7,037 to the escrow account for this Road Improvement.

19. Escrow Account No. 3764 for eastbound and westbound right turn lanes at the intersection of New Design Rd/Corporate Blvd - The estimated cost of the improvement is $587,364. As determined by DPDR-Traffic Engineering Staff, the Developer's proportionate share of this Road Improvement is 7.63%. Therefore the Developer hereby agrees to pay $44,837 to the escrow account for this Road Improvement.

20. Escrow Account No. 3935 for an additional southbound left turn lane at the intersection of Crestwood Blvd/MD 351 - The estimated cost of the improvement is $205,095. As determined by DPDR-Traffic Engineering Staff, the Developer's proportionate share of this Road Improvement is 0.99%. Therefore the Developer hereby agrees to pay $2,036 to the escrow account for this Road Improvement.

21. Escrow Account No. 4054 for an additional southbound through lane at the intersection of MD 180/US 340 westbound on-ramp/Solarex Ct - The estimated cost of the improvement is $97,900. As determined by DPDR-Traffic Engineering Staff, the Developer's proportionate share of this Road Improvement is 0.70%. Therefore the Developer hereby agrees to pay $681 to the escrow account for this Road Improvement.

A total of $156,705 for the escrow payments described above must be paid to the County by the Developer, its successors or assigns, prior to the issuance of any building permit for the Project. Should this payment not be made within one year of the execution of this Letter, the County reserves the right to adjust this amount, based on an engineering cost index.

Period of Validity: The APFO approval is valid for three (3) years from the date of Commission approval; therefore, the APFO approval expires on April 8, 2018.
Disclaimer: This Letter pertains to APFO approval only, and shall not be construed to provide any express or implied rights to continue the development process. The Project remains subject to all applicable rules and regulations, including but not limited to those related to zoning, water and sewer, and subdivision. The Planning Commission's jurisdiction and authority is limited by State and County law, and approvals may be required from other local or state governmental agencies before the proposed development can proceed.

DEVELOPER: COMSTOCK HOMES OF WASHINGTON, L.C.  
BY: COMSTOCK HOLDING COMPANIES, INC., MANAGER  

By: ___________________________  
Date: ___________________________

Name: Dennis Kelleher, President

FREDERICK COUNTY PLANNING COMMISSION:

By: ___________________________  
Date: ___________________________

Dwaine E. Robbins, Chair or Anthony Bruscia, Secretary

ATTEST:

By: ___________________________  
Date: ___________________________

Steve Horn, Director, Community Development Division

Planner’s Initials / Date  
(Approved for technical content)

County Attorney’s Office Initials / Date  
(Approved as to legal form)