TITLE: Landsdale PUD
Portions of Section 3b and 3c

FILE NUMBER: S-1130, SP-08-33, AP#17892
(APFO#17893, FRO #17894)

REQUEST: Combined Preliminary/Site Plan Approval
The Applicant is requesting a new Preliminary/Site Plan approval for a portion of a Planned Unit Development (PUD) with an active Preliminary Plan approval that is nearing expiration.

PROJECT INFORMATION:
ADDRESS/LOCATION: Located north of MD80 and west of MD 75 on the west side of Ed McClain Road
TAX MAP/PARCEL: TM 88; Parcel 44
COMP. PLAN: Low Density Residential
ZONING: PUD-Planned Unit Development
PLANNING REGION: Urbana
WATER/SEWER: W-1; S-1

APPLICANT/REPRESENTATIVES:
APPLICANT: Monocacy Investments MC, LLC
OWNER: - same -
ENGINEER: Rodgers Consulting
ARCHITECT: N/A
ATTORNEY: N/A

STAFF: John Dimitriou, R.A., Principal Planner II

RECOMMENDATION: Conditional Approval

ATTACHMENTS:
Staff report for original approval (AP#13403).
MEMORANDUM

ISSUE

Development Request

The Applicant is requesting a new Combined Preliminary/Site Plan approval for a portion of a Planned Unit Development (PUD) that has an active approval that is nearing expiration. The plan under review is not substantively different than the currently approved plan.

The complete Landsdale PUD development contains 1,100 dwellings on 395.7 acres of land. The Frederick County Planning Commission approved two separate Combined Preliminary/Site Development Plan applications:

- Section 1 for 399 dwellings with a community pool and clubhouse approved on January 9, 2013 under AP# 13053, and

- Sections 2 & 3 for 701 dwellings with a future elementary school site approved on June 12, 2013 under AP# 13403.

The Preliminary Plan approval is valid for five (5) years, or until June 12, 2018. The Site Development Plan approval validity period is three (3) years, but approval has been vested with “Start of Construction” as defined in § 1-19-11.100 of the Frederick County Zoning Ordinance.

This application continues to be subject to the approved Development Rights and Responsibilities Agreement (DRRA) and the Adequate Public Facilities Ordinance Letter of Understanding (APFO LOU), both executed on October 4, 2012, with the DRRA validity extending to October 4, 2037 (25 years) and the LOU validity extending to October 4, 2027 (15 years).

The development is progressing through later stages of the regulatory process with significant and ongoing lot recordation and building permit activity. Given the imminent expiration of the Preliminary Plan (June 12, 2018), the Applicant is seeking a new Combined Preliminary/Site Plan approval for a portion of Section 3 in order to ensure the ability to continue lot recordation for the project.

An extension of the approval period might seem more appropriate in this case, where a project was previously approved, is currently underway, and has not changed. However, §1-16-71(R)(2) of the Subdivision Rules and Regulations of the Frederick County Code allow extensions only “when the developer has started construction of improvements which will be substantially affected by changes in applicable laws and regulations.” As this is not the case with this project, a new approval is required.

The application is substantively identical to the approved plan. There are no changes to dwelling unit mix or configuration, lot configuration, road configuration, or open space arrangement. Notably, the only significant area of difference between the approved plan and the current application is an increase in the quantity, diversity, and native species selection of proposed landscaping.

As such, the staff report and all associated modifications originally submitted for AP#13403 Combined Preliminary/Site Development Plan are detailed in the staff report for the previously approved Combined Preliminary/Site Plan. A copy of this report is attached in support of this current application (AP#17892) for Combined Preliminary/Site Plan approval.
SECTIONS 3B AND 3C
PLANNING COMMISSION ACTION

MOTION TO APPROVE

I move that the Planning Commission APPROVE S-1130, SP-08-33, AP#17892, with conditions and modifications as listed in the original staff report (AP# 13403 June 12, 2013) for the Landsdale PUD Sections 2&3, based on the findings and conclusions of the staff report and the testimony, exhibits, and documentary evidence produced at the public meeting.
TITLE: Landsdale Combined Preliminary Subdivision/Site Plan Sections 2 and 3
FILE NUMBER: S-1130, AP# 13403
REQUEST: Combined Preliminary Subdivision/Site Plan Sections 2 and 3 Approval
The Applicant is requesting Combined Preliminary Subdivision/Site Plan approval for 701 dwellings, 389 front loaded single family detached residential lots, 112 rear loaded single family detached residential lots, and 200 townhouse lots on 533 acres.

PROJECT INFORMATION:
ADDRESS/LOCATION: West side of Ed McClain Road, north of MD80, west of MD75, south of Bush Creek
TAX MAP/PARCEL: Tax Map 88 Parcels 44, 45, 24
COMP. PLAN: Low Density Residential
ZONING: PUD
PLANNING REGION: Urbana
WATER/SEWER: W4/S4

APPLICANT/REPRESENTATIVES:
APPLICANT: Monocacy Ventures, LLC
OWNER: Monocacy Ventures, LLC
ENGINEER: Rodgers Consulting
ARCHITECT: N/A

STAFF: John Dimitriou R.A., Principal Planner

RECOMMENDATION:
Staff has no objection to conditional approval of S-1130 and AP#13403 the Landsdale Combined Preliminary Subdivision / Site Plan Sections 2 and 3.

ATTACHMENTS:
1 – Modification Request – Landscaping and Parking
2 – FRO Modification Request
ISSUE
The Applicant is requesting Combined Preliminary Subdivision/Site Plan approval for 701 dwellings, composed of 389 front loaded single family detached residential lots, 112 rear loaded single family detached residential lots, and 200 townhouse lots (35 surface parking and 165 rear loaded) on 269.5 acres of PUD zoned land. The application is being reviewed under § 1-16-71 Approval Procedures, Article IV: Required Improvements, and Article VI: Design Standards and Requirements of the Subdivision Rules and Regulations, and § 1-19-3.300 through 1-19-3.300.4 Site Plan Review of the Zoning Ordinance. This is section 2 and 3 of 3 total sections being submitted for this project.

BACKGROUND

Development History
This project was originally referred to as Green Valley Active Adult and was planned as an age-restricted community. The site was rezoned PUD as an age-restricted community as part of rezoning case R-02-01, made effective by Ordinance 04-10-354 on June 24, 2004. Currently, the project is referred to as Landsdale and is planned as an all-age community. An amendment to the Phase I PUD zoning approval that removed the age-restriction was granted in September of 2012 and was enacted by Ordinance 12-26-621 on October 4, 2012. The overall project (sections 1, 2, and 3) is approved for 1100 residential dwelling units. As part of the review and approval for the PUD Amendment, the primary issues were:

- Removal of the age restriction established in the original PUD rezoning,
- Dedication of a school site for construction of a new elementary school building by FCPS,
- Payment of the school construction fee to satisfy school adequacy requirements,
- Payment of the MPDU fee in lieu, and
- Escrow payments for regional road improvements.

The Phase I PUD amendment was submitted in tandem with a Developers Rights and Responsibilities Agreement (DRRA). As such, Adequate Public Facilities Ordinance (APFO) review occurred in conjunction with the Phase I Amendment process and was approved directly by the Board of County Commissioners (BOCC).

This current request is for preliminary subdivision plan approval of Sections 2 and 3 of the proposed all-age development, totaling 701 dwelling units, and site plan approval for all-age townhouse dwelling units. Section 1 of this project received combined preliminary subdivision/site plan conditional approval for 399 dwellings and a community center on January 9, 2013.

Existing Site Characteristics
The site is currently zoned PUD (see below) and is undeveloped. Property to the north of the site (on the other side of Bush Creek and the railroad tracks) is developed with a Costco distribution facility. The property to the south, east, and west of the site is vacant (see below) with the exception of a few existing single-family residential dwellings along Ed McClain Road that abut portions of the subject property. The Town of New Market is directly to the north of the site, and a small crossroads community referred to as Green Valley is located to the south at the intersection of MD75 and MD80.
ANALYSIS

Summary

Staff Findings

- This Combined Preliminary Subdivision / Site Plan meets the requirements of the Frederick County Code, with approval of certain modifications as provided for in the County Code.
- Applicable conditions of the Phase I approval (R-02-01A) are adequately addressed in the plan.
- Landsdale, Phase 1 Mass Grading and SWM Plans (ponds #1 - #5) were approved on January 15, 2009.
- Landsdale, Phase 1A Plans were approved on May 3, 2010.
- Landsdale, Phase 2 SWM Plans were approved on January 3, 2013.
- There are no further SWM facilities proposed in the Landsdale Subdivision at this time and what has been approved to date and outlined above provides the proper stormwater management for the plans we have seen thus far for Landsdale.
- APFO review and approval was conducted concurrent with Phase I approval because a Developers Rights and Responsibilities Agreement was being employed. The final Letter of Understanding outlining required public improvements is recorded in the County records at BK9133 PG0264 and was effective on 10/4/2012.

Specific Planning Commission Action Required

- Approval of the following proposed dimensional bulk restrictions for this application:

<table>
<thead>
<tr>
<th>Lot Type</th>
<th>House From Street</th>
<th>House Rear 15' (2)</th>
<th>House Side 5'</th>
<th>Front Porch From Street 10'</th>
<th>Front Porch Side 5'</th>
<th>Height 35'</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Family Detached</td>
<td>15’</td>
<td>15’</td>
<td>5’</td>
<td>10’</td>
<td>5’</td>
<td>35’</td>
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<tr>
<td>Front Loaded (1)</td>
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<td></td>
</tr>
<tr>
<td>Single Family Detached</td>
<td>10’</td>
<td>5’</td>
<td>5’</td>
<td>5’</td>
<td>5’</td>
<td>40’</td>
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<tr>
<td>Rear Loaded</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Townhouse Rear Loaded</td>
<td>10’</td>
<td>5’</td>
<td>3’</td>
<td>5’</td>
<td>5’</td>
<td>40’</td>
</tr>
<tr>
<td>Townhouse Rear Detached</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Garage</td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Townhouse Surface Parking</td>
<td>10’</td>
<td>5’</td>
<td>3’</td>
<td>5’</td>
<td>5’</td>
<td>40’</td>
</tr>
</tbody>
</table>

(1) 23’ required setback from face of garage to inside edge of sidewalk.
(2) Where rear yard is adjacent to open space.
(3) Where rear yard abuts another residential lot.

- Approval of the requested modification for decrease of on-street parallel parking stall width along local residential streets from 8’ to 7’.
- Approval of the requested modification to increase the number of on-site parking spaces.
- Approval to provide an additional connection to Ed McClain Road from Emerald Crown Mews.
- Approval of requested landscaping modifications.
- Finding of whether the FRO Management Plan “cannot reasonably be altered” and approval of a modification to allow the removal of the 10 specimen trees.
Detailed Analysis of Findings and Conclusions

PUD Phase I Conditions of Approval

The following (summarized) conditions of approval of the Phase I PUD Amendment adopted on October 4, 2012, pertain to this Combined Preliminary Subdivision / Site Plan (Section 2).

- Condition 1 – Total of 1,100 dwellings indicated on plan. MPDU fee in lieu to be paid at building permit.
- Condition 2 – 200 lots may be recorded per calendar year with previous year’s lots to be carried into the following year.
- Condition 3 - Ed McClain Road shall be improved/relocated from the project’s main entrance to MD 80 prior to the occupancy of any dwellings.
- Condition 5 – Left turn from project site is prevented with channelized median.
- Condition 6 – Escrow payments established by APFO LOU requirement.
- Condition 7 – Adequate pedestrian and bicycle access to adjoining developments and the commercial area is provided through sidewalks and trails throughout the development.
- Condition 10 - The Applicant shall dedicate 96.5 ± acres of parkland, subject to acceptance by the County, for a special use park along Bush Creek. Title to this parkland property shall be transferred to the County upon the recordation of the first lot in this PUD. Alternatively, easements for a trail system in this same location will be conveyed, at the discretion of the County. During the Preliminary Plan Review of the PUD, the Planning Commission shall determine appropriate public access to the park, or trail system, and the Applicant shall provide this public access to the park, or trail system. Any internal trails/paths within the project shall allow for public access and provide connections to the Bush Creek park/corridor.
- Condition 12 - The Applicant shall also dedicate, subject to acceptance by the County, a 3.4 +/- acre public use site for future use by the County as established with the approved preliminary plan (Public Use Parcel G) for this property.
- Condition 15 – Memorandum of Understanding between the Applicant and the Board of Education to be executed by the time of Preliminary Plan Approval.
- Condition 16 – School construction fee to be paid at building permit.

Preliminary Subdivision Plan

§ 1-16-12 Public Facilities

- The subdivision will be served through a system of roads with a combination of classifications and design/location that meet subdivision regulations.
- All proposed lots will access publicly maintained roads with continuously paved surfaces of 20 feet in width.
- Section 1-19-10.500.4(D)(1) of the PUD regulations requires that “Prior to Phase II application the Planned Development District property must be classified at least W4/S4 on the Frederick County Water and Sewerage Plan.” The property is currently classified W4/S4 on the Frederick County Water and Sewerage Master Plan indicating improvements to, or construction of, publicly-owned community sewerage or water systems are planned within a 4 to 6 year time period. After a S-4/W-4 classification has been granted, an application may be submitted to the Maryland Department of the Environment for Water and/or Sewerage construction permits, as applicable.
§1-16-109 Street, Common Driveway, and Sidewalk Construction
• Street improvements shall be constructed in accordance with the specifications in the Frederick County Design Manual.
• Sidewalks are provided on both sides of all closed section roads with dwelling unit frontage within the development.
• Required minimum width for sidewalks is 4 feet. All sidewalks provided are a minimum of 5 feet wide.
• An 8 feet wide hiker/biker trail is provided along major roads throughout the development, connecting to natural and scenic features, to the future Elementary School site, to points north within the development including the Bush Creek Park, and to points east with potential future neighboring developments.

§1-16-111 Parks
• Per the PUD Phase I approval, 119 acres of open space/green area has been approved. Of this, a 96.5 acre Special Use Park (Out Lot “A”) has been proffered by the applicant subject to acceptance by the County. Per the provision of this parkland, passive and active recreation land requirements are met.

§ 1-16-217. Land Requirements
• The Comprehensive Plan land use designation for the PUD zoned site is Low Density Residential. This designation is intended to be applied only within Community Growth Areas and indicates a residential density range of 3 to 6 dwellings per acre on public water and sewer. The proposed subdivision is within a Community Growth Area and is planned for a residential development on public water and sewer with a gross density of approximately 3 dwelling units per acre.
• The existing topography is the basis for the overall community layout, with the higher elevations delineated as areas of development, and the lower elevation areas delineated as undeveloped areas to be maintained in a more natural state.

§ 1-16-218. Block Shape
• No block dimension is greater than 1800 feet. Sidewalks have been extensively provided to facilitate circulation to neighborhood destinations.

§ 1-16-219. Lot Size and Shape:
• The size, width, depth, shape orientation and yards of the proposed lots are generally appropriate for the type of development and land use proposed. In accordance with PUD requirements in Section 1-19-10.500.6(H)(2) of the zoning ordinance which states that “setbacks and height shall be established by the Planning Commission at Phase II...” the Applicant has submitted the following dimensional/bulk restrictions for section 2 & 3 of this development:

<table>
<thead>
<tr>
<th>Lot Type</th>
<th>House</th>
<th>Front Porch</th>
<th>Height</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>From Street</td>
<td>Rear</td>
<td>Side</td>
</tr>
<tr>
<td>Single Family Detached</td>
<td>15’</td>
<td>15’[2]</td>
<td>20’[3]</td>
</tr>
<tr>
<td>Front Loaded</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Single Family Detached</td>
<td>10’</td>
<td>5’</td>
<td>5’</td>
</tr>
<tr>
<td>Rear Loaded</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Townhouse</td>
<td>10’</td>
<td>5’</td>
<td>3’</td>
</tr>
<tr>
<td>Rear Loaded</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Townhouse</td>
<td>10’</td>
<td>5’</td>
<td>5’</td>
</tr>
<tr>
<td>Rear Detached Garage</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Townhouse</td>
<td>10’</td>
<td>5’</td>
<td>3’</td>
</tr>
<tr>
<td>Surface Parking</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(1) 23’ required setback from face of garage to inside edge of sidewalk.
(2) Where rear yard is adjacent to open space.
(3) Where rear yard abuts another residential lot.
• Depth-to-width lot ratio is not greater than 5 to 1 for any residential lot in this application.
• Other than a couple of lots affected by the alternative connection from Emerald Crown Mews, there are no other proposed panhandle lots as part of this application.

§ 1-16-235. Right-Of-Way and Paved Surface Widths:
• The Applicant has proposed 50’ rights-of-way for local streets and 70’ rights-of-way for collector streets (Monrovia Boulevard and Landsdale Parkway).
• The paved surface width is adequate to serve the proposed use and meets or will meet the requirements within the Frederick County Design Manual.

§ 1-16-236. Other Street Requirements:
• The streets within the proposed development comply with subdivision requirements within this section. Four cul-de-sacs are proposed. Proposed cul-de-sacs are located on portions of the property where steep topography, forest easements, stream valley buffers, wetland buffers, and floodplains constrain the provision of through streets.

Driveway Entrance Spacing Policy
• Adopted by the FCPC in 2002 (amended 2004), this policy provides a system of evaluating driveway locations for public safety, to preserve rural character of roads located in rural parts of the County, and allowing tighter spacing in areas of the County designated for denser development.
• Proposed driveways are all located on local residential streets, which have no spacing restrictions. Lots fronting residential collector streets within the proposed development are accessed from rear alleys, with no driveways located on a collector.

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

§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.

• In accordance with 1-19-6.400(A)(2) the Applicant has submitted justification for an alternate planting design to meet the street tree requirements as provided in the zoning ordinance (See Attachment 1). Due to conflicts with utilities, the Applicant is requesting three modifications from the requirements. The first modification is for a reduction in the required planting area from 7’ to 5’ in width. The second is a modification to plant street trees in alternate locations, i.e. other than along the right of way. The third modification is to allow spacing of streets trees greater than one per 35’ of roadway frontage.
• The areas impacted by the requested modifications are not extensive or prominent. Modified portions of the plan are not along predominant thoroughfares or public spaces within the development. Rather, the areas subject to modification are in the margins of the development and adjacent to large areas of open space. Given that the modified areas are not predominant aspects of the development, as well as the fact that access to landscaping is supplemented by adjacent open space, Staff does not object to these modifications or approval of the alternate planting design.
• Interconnectivity between the future development Monrovia Town Center to the east of the project site has been addressed through proposed road and trail connections. A hiker/biker trail has been expanded to connect from Ed McClain Road at Monrovia Boulevard, which will extend into the Monrovia Town Center development, to the future proposed Bush Creek Park.

• An elementary school site (Out Lot H) has been proffered by the developer and will be located at Monrovia Boulevard at Ed McClain Road, which is a location that will be convenient and central to both Landsdale and Monrovia Town Center. The school site was considered in the design of the development including interconnectivity of roadways and trails. A direct access point between Ed McClain Road and the school site may be provided to maximize the school’s circulation planning options. Design and location of a future access point at this location would be reviewed for compliance with County standards and design criteria at time of site plan review for the school site itself.

• Proposed lighting will be directed downward and will not exceed a height of 14’.

• Proposed lighting does not exceed .5 foot-candles from the site property line.

§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.

• In spite of the high level of road interconnections within the development, connections to the external road network are limited to two points along Ed McClain Road, primarily due to grading constraints. Given the large number of dwellings in this entire subdivision (1,100), providing an access point in addition to the two that have been designed is a cautious and conservative approach to avoiding the creation of choke points at these locations. This is an elevated concern at the northern access point due to the adjacency of the school site and the potential for periods of high traffic volume during specific times of the day. Furthermore, as the surroundings develop and new destinations are created in neighboring subdivisions, having the potential to create additional cross connections between developments would create a more convenient and efficiently distributed transportation network.

For these reasons Staff supports and requests an additional connection be made between Emerald Crown Mews and Ed McClain Road. The applicant has shown an alternative to add this additional access point in their plans. The design will meet the zoning condition with respect to limiting left-turn (northbound) movement onto Ed McClain Road. Staff will continue to refine the layout and orientation of adjacent lots that are affected by this access point through the final approval.

• Proposed road, trail, and sidewalks provide connectivity within and between the proposed development and surrounding existing and future development. Road and trail connections provide interconnectivity between the proposed development and the future development of Monrovia Town Center to the east of the project site. A hiker/biker trail will provide a connection from Ed McClain Road at Monrovia Boulevard, into the Monrovia Town Center development, to the future proposed Bush Creek Park.
• Required parking per §1-19-6.220 of the Frederick County Code is as follows:

<table>
<thead>
<tr>
<th>Dwelling Type</th>
<th>Requirement</th>
<th># of Units</th>
<th>Required</th>
<th>Total Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single family</td>
<td>2 for each unit</td>
<td>501</td>
<td>1,002</td>
<td></td>
</tr>
<tr>
<td>Townhouse</td>
<td>1 per unit, plus .5 for each bedroom</td>
<td>200</td>
<td>500</td>
<td>1,502</td>
</tr>
</tbody>
</table>

• The Applicant has submitted a modification request to permit parking spaces in excess of the required amount (see Attachment 1). The required number of spaces is 1,502. The plan provides 1,585 on-site spaces. Staff concurs with the Applicants justification (attached) and supports the request for increased parking.

• Prior developments in the County have indicated that the required parking for townhouses in higher density developments must be supplemented to meet the needs of residents and guests.

• In addition, the Applicant has noted several locations where an additional 276 on-street parking spaces have been provided. While these on-street spaces are not required by the Zoning Ordinance, Staff is in support of the additional parking.

• Prescribed stall width and depth per § 1-19-6.220 (B)(1) for parallel parking spaces is 8′ x 22′. A decrease in width from 8′ to 7′ feet is requested by the Applicant for parallel parking along the proposed residential local roads (see Attachment 1). Staff concurs with the requested modification (justification attached) and supports the request for a decrease in the stall width along local roads. However, where noted, standard 8′x22′ parallel parking is planned for residential sub-collectors.

• The zoning ordinance does not require bicycle parking within townhouse developments where garages are provided. However, bicycle parking is required for townhouses without garages at a rate of 1 rack for each 10 units. There are 35 townhouse units without garages, requiring 4 racks. The Applicant has been made aware of the requirement and will work with Staff to provide the bicycle parking in compliance with the County bike parking Design Guide as the plan moves through to completion.

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.

• The proposed development will be served by public water and sewer facilities. Water will be provided by the New Design Water Treatment Plant and sewer will flow into the Ballenger McKinney Wastewater Treatment Plant. Adequate sewer service will be provided by the Bush Creek Sewer Interceptor Middle Phase, the design and construction of which has been funded by the applicant.

• Adequacy of water and sewer for this project is outlined in the APFO LOU.

• 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.

• The existing topography is the basis for the overall community layout, with the higher elevations delineated as areas of development, and the lower elevation areas delineated as undeveloped areas to be maintained in a more natural state.
• The project has an existing Wetland Mitigation Plan that was approved by the Soil Conservation Service in June of 2009 and by Frederick County in July of 2009.
• The final Forest Resource Ordinance forest plan has been approved. FRO easements must be recorded prior to plat recordation. A modification for removal of specimen trees has been submitted (see attached Exhibit 2 FRO Modification Request).
• There is a small area of FEMA floodplain along the northern boundary of the project site within the open space area.

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.

• The Bush Creek Special Use Park shall be dedicated upon recordation of the first subdivision plat. The park may be deeded to the County at the County’s discretion. However, if the County does not prefer ownership, easements may be dedicated for public access to the park.

Stormwater Management
§1-15.2: A Stormwater Management Plan was originally approved in January of 2009. An application for an administrative waiver that allows construction of this development to be governed by the stormwater regulations in effect as of May 4, 2009 was granted in August of 2010. Revisions to the Preliminary Subdivision Plan from the Green Valley version of the project did not impact the stormwater management design. In fact, the subsequent minor revisions from the Green Valley plans actually decreased the original impervious area amounts. The originally approved Stormwater Management Plan was not changed and the facilities therefore have more volume control with the latest revisions.

Adequate Public Facilities Ordinance (APFO)
§1-20: The project has been reviewed for APFO adequacy by the Board of County Commissioners (BOCC) as part of a Developers Rights and Responsibilities Agreement (BK 9133 PG 0221-0246). The Letter of Understanding (LOU) outlining the requirements for public improvements (Roads, Schools, and Water & Sewer) under the APFO was effective on October 4, 2012 and will remain valid through October 4, 2027. The required improvements are described in detail in the signed APFO LOU (BK 9133 PG 0264-0273).

Forest Resource Ordinance (FRO)
§ 1-21: A Revised Final Forest Conservation plan has been submitted for sections 2 and 3. The FRO easements required for section 1 have been recorded. The site (including section 1) contains 54.90 acres of existing forest.

The Applicant proposes to meet the FRO requirements by retaining 26.42 acres of existing forest on-site, 11.90 acres of forest off-site (on the adjacent Ag-zoned parcels), and planting approximately 63.67 acres of new forest (45.16 within the PUD and 18.51 acres on the adjacent Ag parcels). The Revised Final FRO plan must be approved prior to Preliminary Plan final approval. FRO mitigation must be provided prior to lot recordation, grading permits, or building permits, whichever is applied for first.

The Applicant is seeking a modification of the FRO requirements to permit the removal of 10 specimen trees and has provided a request letter (see Attachment 2). State and County laws require (County: 1-21-40 (B), State: 5-1607(c)(2)) all specimen trees (trees that are 30 inches or greater in diameter) to be retained unless the
Applicant has demonstrated that “all reasonable efforts have been made to protect them and that the plan cannot reasonably be altered”.

As reviewed by Maryland Qualified Forest Professionals hired by the Applicants, the 10 trees proposed to be removed are noted in the table below.

<table>
<thead>
<tr>
<th>Tree #</th>
<th>Description</th>
<th>Condition</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>43” white oak</td>
<td>good</td>
<td>Lot 961</td>
</tr>
<tr>
<td>6</td>
<td>35” black walnut</td>
<td>good</td>
<td>Lot 960</td>
</tr>
<tr>
<td>8</td>
<td>32” white oak</td>
<td>good</td>
<td>Near Lot 938</td>
</tr>
<tr>
<td>9</td>
<td>51” red oak</td>
<td>Poor. Trunk and limb decay</td>
<td>B/W Tavern Alley and Tavern Lane</td>
</tr>
<tr>
<td>11</td>
<td>34” red oak</td>
<td>good</td>
<td>B/W Tavern Alley and Tavern Lane</td>
</tr>
<tr>
<td>13</td>
<td>36” red oak</td>
<td>good</td>
<td>B/W Tavern Alley and Tavern Lane</td>
</tr>
<tr>
<td>16</td>
<td>31” black cherry</td>
<td>Poor. Trunk and limb decay</td>
<td>B/W Tavern Alley and Tavern Lane</td>
</tr>
<tr>
<td>17</td>
<td>35” white oak</td>
<td>good</td>
<td>Lot 903</td>
</tr>
<tr>
<td>19</td>
<td>34” black walnut</td>
<td>good</td>
<td>Lot 1078</td>
</tr>
<tr>
<td>32</td>
<td>30” Tulip Poplar</td>
<td>good</td>
<td>Moss View Ct R.O.W</td>
</tr>
</tbody>
</table>

Sections 2 and 3 of the project contain a total of 18 specimen trees, of which 8 are being retained within the forest conservation easement areas. Staff notes that two of the trees (Tree # 9 and #16 as referenced above) are in very poor condition.

The Applicant’s FRO Modification Request Letter provides significant details about the history of this project, its previous approvals, and a detailed analysis of each tree proposed to be removed. Staff notes that the previously approved Final FRO Plan proposed removing 12 specimen trees. The Applicant made reasonable efforts to save two additional specimen trees that were originally planned to be removed.

To allow the removal of the 10 specimen trees outlined above, the Planning Commission must find that “the plan cannot reasonably be altered” and approve a modification to allow the removal of specimen trees.

**Moderately Priced Dwelling Units**

§1-6A: The payment in lieu of building MPDU’s option (§ 1-6A-5.1) is being utilized for this project.

**Historic Preservation**

§1-23: The Lemuel Griffith Farmstead (F-7-144) was demolished in 2010. There are no other historic sites within the boundary of this Preliminary Plan.
SUMMARY OF AGENCY COMMENTS

<table>
<thead>
<tr>
<th>Agency</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>CDD Engineering</td>
<td>Approved</td>
</tr>
<tr>
<td>CDD Planning</td>
<td>Hold. Must meet all agency and FCPC comments and conditions.</td>
</tr>
<tr>
<td>State Highway Administration</td>
<td>Waived.</td>
</tr>
<tr>
<td>DUSWM</td>
<td>Conditionally Approved. Water line sizes throughout the site to be finalized at Improvement Plan.</td>
</tr>
<tr>
<td>Health Department</td>
<td>Conditionally Approved.</td>
</tr>
<tr>
<td>Office of Life Safety</td>
<td>Conditionally Approved.</td>
</tr>
<tr>
<td>CDD Traffic Engineering</td>
<td>Approved.</td>
</tr>
<tr>
<td>Historic Preservation</td>
<td>Approved.</td>
</tr>
<tr>
<td>Street Naming</td>
<td>Hold.</td>
</tr>
</tbody>
</table>

RECOMMENDATION

Staff has no objection to conditional approval of S-1130 and AP#13053 the Landsdale Combined Preliminary Subdivision / Site 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.

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 conditions are met:

1. Comply with all agency comments.
2. Provide additional connection to Ed McClain Road from Emerald Crown Mews, and work with staff on any final lot layout orientation issues for the affected lots.
3. An access point between Ed McClain Road and the school site may be provided at the time of site plan approval of the school site.
4. Approval of setbacks and height restrictions for this portion of the development as proposed by the Applicant (specifically outlined in the staff report) and to be included on the cover sheet of the final preliminary/site plan.
5. Approval of decrease of on-street parallel parking stall width along local residential streets from 8’ to 7’, excluding spaces along residential sub-collectors (Monrovia Boulevard and Landsdale Parkway) as described in the Staff report and Attachment 1.
6. Approval of a parking modification to allow an increase in the number of on-site parking spaces provided (1,502 required / 1,585 provided) as described in the Staff report and Attachment 1.
7. Alternate planting design approval as described in the Staff report and Attachment 1.
8. Approval of FRO modification described in the Staff Report and Attachment 2.
9. The Applicant shall provide 4 bicycle racks in the location of the townhouses without garages. A note
shall be added to the cover sheet of the proposed plan stating the required number of bicycle racks, and that they will be provided in compliance with the Frederick County Bicycle Parking Design Guide.

10. Comply with all requirements of the DRRA between the Applicant and the Board of County Commissioners signed on September 26, 2012 (BK 9133 PG 0221-0246), and the signed APFO LOU between the Applicant and the Board of County Commissioners effective on October 4, 2012 (BK 9133 PG 0264-0273), unless otherwise amended. In summary, the current requirements related to plat recordation are indicated below. However, any future amendments to the DRRA or LOU shall take precedence to the below. The following is for informational purposes only:

a. The school construction fee shall be paid prior to plat recordation based on the specific fees required by 1-20-63(E) at the time of plat recordation.

b. Pro-rata contributions into County-held Escrow Accounts shall be paid prior to recordation of the first subdivision plat.

c. Payment at lot recordation for MD75 Corridor road improvements as outlined in the LOU.

d. The Bush Creek Special Use Park shall, if desired by the County, be dedicated upon recordation of the first subdivision plat. If dedication is not desired, the Applicant may deed an easement for public access to a trail system within the Park, if desired by the County.

e. Dedication of the Public Use Site, if desired by the County, shall occur by recordation of the first subdivision plat.

f. At such time as shall be determined at the sole discretion of the BOE, by written notification to the Developer, the Public School Site shall be conveyed, but no earlier than recordation of the first plat for lots in the Project and not later than the recordation of the plat for the 501st lot in the Project.

g. Prior to recordation of the 401st dwelling unit of the Project (unless determined to be later upon further capacity analysis by the Applicant and the County), the Applicant shall construct for the Project a water storage tank/tower sized to accommodate the Project or participate in the costs to construct a regional tower as agreed upon between Applicant, Division of Utilities and Solid Waste Management (DUSWM) and any third party developer.

h. A separate Memorandum of Understanding between the BOE and Developer shall be executed by the time of Preliminary Plan approval for the Project which BOE MOU shall establish and control other aspects of the Public School Site and the rights and responsibilities of the parties relative to the Public School Site and the construction of an elementary school.

In addition, staff recommends the Planning Commission:

- Approve the setbacks and height restrictions for this portion of the development as proposed by the Applicant (specifically outlined in the staff report) and to be included on the cover sheet of the final site plan.
- Approve the decrease of on-street parallel parking stall width along local residential streets from 8’ to 7’, excluding spaces along residential sub-collectors (Monrovia Boulevard and Landsdale Parkway) as described in the Staff report and Attachment 1.
- Approve the parking modification to allow an increase in the number of on-site parking spaces provided (1,502 required / 1,585 provided) as described in the Staff report and Attachment 1.
- Approve the alternate planting design approval as described in the Staff report and Attachment 1.
- Approve the FRO modification described in the Staff Report and Attachment 2.
MOTION TO APPROVE AS MODIFIED

I move that the Planning Commission APPROVE S-1130 and AP# 13053 with conditions as listed in the staff report and APPROVE the MODIFICATIONS as described in the staff report for the proposed Preliminary Subdivision / Site Plan, based on the findings and conclusions of the staff report and the testimony, exhibits, and documentary evidence produced at the public meeting.
May 20, 2013

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

Re: Landsdale, Section Two & Three
Combined Revised Preliminary & Site Plan Application
Modification Request A/P 13404
RCI Project No. 0747A2

Dear Mr. Dimitriou:

On behalf of Monocacy Ventures LLC, Monocacy Investments MC LLC, and Monocacy Investments CI LLC (collectively, the “Applicant”), please accept this request for modifications to Sections 1-19-6.220 and 1-19-6.400 of the Frederick County Zoning Ordinance (the “Zoning Ordinance”), in order to permit the Applicant to provide parking in excess of that required under Section 1-19-6.220 of the Zoning Ordinance; to decrease certain parallel parking stall widths; and to utilize an alternate landscaping design in a portion of the above-referenced Project. We submit this modification request pursuant to Section 1-19-10.500.9(D) of the Zoning Ordinance, which grants the Planning Commission the authority to grant modifications to parking and landscaping requirements as part of its approval of a Planned Unit Development Phase II plan, and in full conformance with the applicable provisions of Article VI of the Zoning Ordinance.

We respectfully request the following modifications:

1) Parallel Parking Space Dimension:
   - Modification from the standard 8' x 22' parallel space to a 7' x 22' parallel space for the local residential roads. The primary roads, as agreed with the county traffic engineer, will maintain the 8' parallel parking space width.

   Justification:
   - The property is currently zoned Planned Unit Development ("PUD").
   - Section 1-10-10.500.3 of the Zoning Ordinance requires PUDs to be compact, employing design principles that result in efficient consumption of land.
   - Section 1-19-6.220 (B)(3) allows modifications to the stall widths for parallel parking spaces in compact developments provided that the narrower dimensions can reasonably be accommodated with no adverse impact on safety or site circulation efficiency.
   - The Landsdale PUD is a compact development designed to cluster development into compact land bays in a manner that conserves natural open space areas. This compact community design was reviewed and approved by the Board of County Commissioners of Frederick County, and the reduction in parallel parking space dimension.
   - The requested reduction in parallel parking space dimension is consistent with the state environmental goals of reducing impervious areas within the Chesapeake Bay watershed and with the Zoning Ordinance’s requirements that PUDs be designed to promote the efficient consumption of land.
• The narrower dimensions requested will provide adequate parking area for today's standard car size that has an average width of 6 feet, and in combination with the 12 foot travel lane provided for the local roads, there will be no adverse impact on safety, site circulation or efficiency.

2) Excess Parking:

• Modification to permit the provision of parking in excess of that required under Section 1-19-6.220 of the Zoning Ordinance.

Justification:

• Section 1-19-6.220 of the Zoning Ordinance sets forth the general parking requirements applicable to PUDs, and states that parking shall be limited to two spaces per single family dwelling unit and one space plus one-half space for each bedroom in a townhouse unit.
• The Planning Commission may modify these general requirements to permit the provision of additional parking spaces when an Applicant demonstrates that additional parking is needed based on characteristics of the proposed use.
• As a result of the Project's compact development design, on-street parking is limited, and the Applicant has determined, after consultation with staff from the Frederick County Community Development Division, that additional parking is necessary to serve the townhouse portion of the Project.
• Based on several years of observation of land use practices, including the evaluation of existing townhome communities parking practices, the 2.5 parking spaces per unit allowed by the Frederick County Code (3 bedroom townhome), does not meet the minimum parking required for residents and guests.

3) Alternate Landscaping Design:

• Modification to reduce the minimum planting panel from 7 feet to 5 feet;
• Modification to permit the planting of street trees in alternate locations; and,
• Modification to permit street trees to be separated by distances greater than 1 tree every 35 feet of public roadway frontage.

Justification:

• Section 1-19-6.400 of the Zoning Ordinance sets forth the general landscaping requirements applicable to PUDs, and states that street trees shall be provided along the property line adjacent to the paved surface of an existing or proposed public right of way in a planting area no less than 7 feet wide, and planted with shrubs or trees, which include at a minimum one tree at least 6 feet in height at the time of planting per 35 feet of roadway frontage.
• The Planning Commission may modify these general requirements and approve an alternate planting design that locates trees at an alternate on-site location due to physical site constraints.
• The Applicant has submitted an alternate planting design which reduces the planting panel for street trees from a minimum of 7 feet to 5 feet; locates street trees on residential lots as opposed to along the frontage of public or private roadways; and spaces street trees at distances greater than 35 feet apart.
• These design modifications are necessary due to physical site constraints and in order to achieve the compact development designs required of PUDs, while also complying with the policies of the Development Review Engineering Division ("DRE") and the Department of Utilities and Solid Waste Management ("DUSWM"), which prohibit the planting of street trees in locations that compromise vehicle site distances and/or may potentially interfere with public utilities installed within the public right of way.
• Section 1-19-10.500.3 of the Zoning Ordinance requires PUDs to be compact, employing design principles that result in efficient consumption of land. In order to achieve these compact design principles, the Applicant has reduced the planting panel for street trees from a minimum of 7 feet
to 5 feet. This reduction to 5 foot landscaping panels allows the Applicant to achieve the desired community planning objectives within PUDs without compromising the health of the street trees, as 5 feet provides an adequate area to promote the growth and maintenance of the street tree species specified.

- Section 1-19-6.400 of the Zoning Ordinance requires the planting of 752 street trees along public roadways and 57 street trees along private roadways. However, DRE and DUSWM policies restrict street tree plantings in and around the easement areas for public utilities (water/sewer/storm drain) and streetlights. In addition, street trees may not be located so as to unacceptably impede vehicle sight distance.

- The Applicant's alternate planting design proposes 750 street trees located along public roadways, 191 street trees along the private roadways and within the HOA open space parcels, and an additional 100 street trees on-lot at the street frontage.

- While this proposed alternate planting design actually increases the overall number of street trees within the PUD; these street trees are not uniformly spaced at a distance of one street tree per every 35 feet of roadway frontage. The alternate planting design spaces these street trees at 35 feet when and where possible; however, due to site constraints and planting restrictions imposed by DRE and DUSWM, street tree spacing does exceed 35 feet at times.

The Applicant requests that the Planning Commission exercise the authority granted to it in Section 1-19-10.500.9(D) of the Zoning Ordinance and approve the requested modifications to Sections 1-19-6.220 and 1-19-6.400 of the Zoning Ordinance, in order to permit the Applicant to provide parking in excess of that required under Section 1-19-6.220 of the Zoning Ordinance; to decrease certain parallel parking stall widths; and to utilize an alternate landscaping design for street trees within the Project. As set forth above, the requested modifications fully comply with the applicable requirements of Sections 1-19-6.220(A)(1), 1-19-6.220(B)(3), and 1-19-6.400(A)(2) of the Zoning Ordinance, and are the minimum relief necessary in order to permit the Applicant to develop the Project with sufficient parking to serve the townhouse portion of the Project; provide sufficient on-street parallel parking; and to provide street trees in locations that do not compromise vehicle site distances and public utilities programmed for installation within rights of way. Please contact us at (301) 948-4700 with any questions or comments.

Sincerely,

[Signature]

Randall D. Frey, P.E.

Cc: Jason Wiley, Monocacy Investments
    Robert Dalrymple, Linowes & Blocher
    Lisa Graditor, Linowes & Blocher
    Mark Fris, Rodgers Consulting
    File
May 3, 2013

Mr. Michael Wilkins
Frederick County
Community Development Division
30 N. Market Street
Frederick, MD 21701

Re: Landsdale (13406)
FRO Modification Request
RCI Project No.: 747A2

Dear Mr. Wilkins:

On behalf of Monocacy Ventures LLC, Monocacy Investments MC LLC, and Monocacy Investments CI LLC (collectively, the “Applicant”), please accept this justification statement in support of the Applicant’s request for a modification to the requirement set forth in Section 1-21-40(B)(1)(e) of the Forest Resource Ordinance of Frederick County (“FRO”), that nonhazardous trees with a diameter at breast height (“dbh”) of 30” or greater be retained and protected, and left in an undisturbed condition. The Applicant is seeking a modification in order to remove eight nonhazardous specimen trees (eight specimen trees are being preserved in conjunction with the subdivision and development of 701 single family dwelling units (501 single family detached and 200 townhomes) in Sections 2 & 3 of the Landsdale PUD (the “Project”), which is located on the west side of Ed McClain Road, approximately 1500 feet north of MD Route 80 (the “Property”). This modification request is submitted pursuant to Section 5-1611 of the Natural Resources Article of the Annotated Code of Maryland (“State Law”) and Section 1-21-40(B)(2) of the Frederick County Code (“County Law”) and, as set forth fully below, satisfies all of the requirements for approval of a modification/variance,¹ as outlined in both the State Law and the County Law.

Background

Landsdale has been an approved planned unit development (“PUD”) consisting of 1,100 single family dwelling units since June, 2004, when the Board of County Commissioners of Frederick County (“BOCC”) approved rezoning case number R-02-1, and reclassified the Property to the PUD zoning district. Between the years 2004 and 2012, the Applicant pursued the numerous development approvals necessary to complete the development of the Property as an age-restricted active adult community with housing types and amenities customary for an age-restricted development (for some of that time the Project was commonly referred to as “Green Valley Active Adult”). Specifically, the Applicant obtained Frederick County Planning Commission (“Planning Commission”) approval for a Phase II PUD development plan on March 9, 2005; Planning Commission approval for the Project under the County’s Adequate Public Facilities Ordinance (“APFO”) on April 13, 2005; Planning Commission approval for the Phase III Preliminary Plan of Subdivision for the Project on October 11, 2006 (the Preliminary Plat for Landsdale was signed on February 2, 2007); Planning Commission approval of a final forest conservation plan for the Project on August 27, 2008 (the “Approved Final FRO Plan”); and approval of a preliminary stormwater management plan for the entire Project in October, 2008. Between 2008 and 2012, the Applicant obtained approval for the location and sizing of public utilities needed in connection with the development of the Project and recorded numerous easements related thereto.

¹ The relief is described as a “modification” in the County Law, but as a “variance” in the State Law.
On March 23, 2012, the Applicants submitted an application to amend the PUD Phase I Concept Plan and zoning conditions applicable to the Property in order to allow units in the Project to be marketed and sold to buyers of all ages, and to re-design the Project to include amenities appropriate for an all-age community. The Applicant, in preparing this amended Phase I Concept Plan (referred to herein as the “Amended Phase I Concept Plan”), had to address numerous competing requirements applicable to the Project, specifically:

1) the density requirements applicable to the Project under Maryland’s Smart Growth Standards for priority funding areas (a minimum of 3.5 units per acre);

2) the new design standards applicable to PUDs (codified in Division 5 of the Frederick County Zoning Ordinance (the “Zoning Ordinance”), Section 1-19-10.500 et seq.) that mandate pedestrian connectivity, integrated parking, and preservation of open space;

3) the Property’s approved stormwater management plans, which had been fully engineered and granted an administrative waiver in 2010 and pursuant to Ordinance No. 10-09-544 (the administrative waiver permitted the Project to be designed in accordance with the 2000 Stormwater Management Regulations rather than with regulations enacted in 2010 that require stormwater to be managed using Environmental Site Design), and that are the driving force behind the Project’s grading and road layouts; and

4) The Property’s Approved Final FRO Plan, which identifies the forested areas on the Property which are required to be preserved.

In order to conform to all of these requirements, it was first necessary to identify and map the Property’s environmental features, thereby establishing the developable portions of the land and further establishing the base plan for which all of the development elements identified above would need to be factored into the Amended Phase I Concept Plan. The Applicant was required to have all of the design changes conform to the standards now applicable to PUDs, which specifically require that the landscape be preserved in its natural state insofar as practical and that tree removal and soil disturbance be minimized. See Section 1-19-10.500.9(B) of the Zoning Ordinance. Thus, the Project’s Amended Phase I Concept Plan established setbacks and set asides that offered additional protection to the Property’s environmental features; reflects a design wherein roadways, housing, amenities and infrastructure are laid out and designed so that the Property’s natural features are focal points; and stream valleys flow from and through the Property and are protected with generous stream buffers that create a greenway that serves as a biological corridor for wildlife, protects water quality and creates a recreational amenity for the residents (the stream valleys and natural features also inform the clustering and layout of the community and in several places, open spaces are designed adjacent to or extending from these natural features and roadways have been designed to capture views into the open space areas). However, these amendments made to preserve the Property’s environmental features also constrained the developable portion of the Property, challenging the Applicant’s ability to achieve the density required under Maryland’s Smart Growth Standards for priority funding areas and to ensure that the Project otherwise met the needs of the marketplace and achieved the design excellence required.

Thus, the resulting Amended Phase I Concept Plan for the Project struck a delicate balance between numerous competing objectives in order to achieve a compact, dense residential community designed to enhance and preserve the Property’s existing environmental features, including wetlands, streams, scenic vistas, forests and specimen trees, all while honoring the grading and stormwater
management facilities previously approved for the Property and the forested areas identified for retention in the Approved Final FRO Plan. While the Applicant was able to develop Section 1 of the Project in accordance with the Amended Phase I Concept Plan without making any changes to the Approved Final FRO plan, unfortunately, the changes to the overall design of Sections 2/3 of the Project could not be implemented without amending the Project's Approved Final FRO Plan. Because the submission of an amendment to the Approved Final FRO Plan triggers compliance with Section 5-1607 of the State Law (codified in FRO Section 1-21-40(B)(1)(c) of the County Law), which was enacted in 2009 after the Project had been substantially engineered and the Approved Final FRO Plan approved, the Applicant is now required to obtain a modification/variance in order remove any nonhazardous specimen trees, as defined in both the State Law and the County Law.

The Approved Final FRO Plan approved for the Project in 2008 included the removal of twelve specimen trees located in Sections 2/3 of the Project. Knowing of the subsequently enacted changes to State Law and County Law relating to the preservation of specimen trees, and the resulting need to amend the Approved Final FRO Plan, the Applicant carefully examined each specimen tree and made an effort to preserve it in its current, undisturbed state in preparing the Amended Phase I Concept Plan and all subsequent development plans. For example, the proposed lots on the east side of proposed Monrovia Boulevard were designed to minimize grading and retain several specimen and non-specimen trees. The road design and the green space at the intersection of Railway Circle and Moss View Court were re-designed to retain upland forest and specimen and non-specimen trees. This area was further adjusted in order to also retain tree # 34, a 31" American Beech, along with other non-specimen trees and forest. As a result of these re-designs, the Applicant was able to retain two additional specimen trees located within the developable portion of Sections 2/3 of the Project. In addition, compliance with the new design requirements applicable to PUDs, as set forth in the Zoning Ordinance, has resulted in the retention of innumerable specimen trees located within preserved open space areas outside of the development footprint of the Project.

Notwithstanding extended efforts to preserve more of the specimen trees, the Applicant has determined that it is not possible to retain the ten specimen trees identified below and also accomplish the desired and required community design (which, as noted above, balances environmental protection, context-sensitive design, implementation of County policies concerning housing and safe and efficient infrastructure and has already been determined by the BOCC to minimize tree removal). As a preliminary matter, recent investigations into the health of the specimen trees located within the developable portion of Sections 2/3 of the Project has resulted in the determination that two of the specimen trees, Tree Tag Nos. 9 and 16, fail to meet the standards for nonhazardous trees delineated in Section 1-21-5 of the County Law. Thus, these trees are not subject to the preservation requirements of Section 1-21-40 of the County Law. Both of these specimen trees suffer from serious structural defects that render them unsafe due to their proximity to targets (photographic images depicting the current condition of these two trees are attached hereto as Attachment A-1 and A-2). Tree Tag No. 9 has significant trunk and limb decay; shedding and loss of upper branches and smaller limbs; and very limited Spring leaf-out. It is located within an active public open space area, and adjacent to and within fifteen feet of a private alley designed for regular vehicular access. Tree Tag No. 16 has significant trunk and limb decay and a significant lean. It is located within an open space area intended to be utilized by residents, and is immediately adjacent to Tavern Lane (within 15 feet) and Monrovia Boulevard (within 30 feet) and their respective sidewalks. Thus, while these specimen trees are located within Sections 2/3 of the Project, a modification/variance is not required in connection with their removal because they are hazardous.

The remaining eight nonhazardous trees identified for removal are located in areas where the construction of the community and infrastructure will disturb the trees' critical root zones and, as will be described in greater detail as to each tree below, it is infeasible and would be an unwarranted hardship
to avoid the removal of these trees. Therefore, the Applicant hereby requests a modification/variance, pursuant to State Law and Section 1-21-21 of the County Law in order to remove the following trees:

<table>
<thead>
<tr>
<th>Tree Tag #</th>
<th>Size (dbh)</th>
<th>Common Name</th>
<th>Condition</th>
</tr>
</thead>
<tbody>
<tr>
<td>#5</td>
<td>43&quot;</td>
<td>White Oak</td>
<td>Nonhazardous</td>
</tr>
<tr>
<td>#6</td>
<td>35&quot;</td>
<td>Black Walnut</td>
<td>Nonhazardous</td>
</tr>
<tr>
<td>#8</td>
<td>32&quot;</td>
<td>White Oak</td>
<td>Nonhazardous</td>
</tr>
<tr>
<td>#11</td>
<td>34&quot;</td>
<td>Red Oak</td>
<td>Nonhazardous</td>
</tr>
<tr>
<td>#13</td>
<td>36&quot;</td>
<td>Red Oak</td>
<td>Nonhazardous</td>
</tr>
<tr>
<td>#17</td>
<td>35&quot;</td>
<td>White Oak</td>
<td>Nonhazardous</td>
</tr>
<tr>
<td>#19</td>
<td>34&quot;</td>
<td>Black Walnut</td>
<td>Nonhazardous</td>
</tr>
<tr>
<td>#32</td>
<td>30&quot;</td>
<td>Tulip Poplar</td>
<td>Nonhazardous</td>
</tr>
</tbody>
</table>

Table 1: Specimen trees required to be removed and requiring a FRO modification

**Tree Tag No.5.** This tree is located on proposed lot 961, which contains only 8,000 square feet. Its removal is required in order to provide the lot with a sufficient back yard and in order to grade the lot in accordance with the Project's approved erosion/sediment control plans.

**Tree Tag No.6.** This tree is located on proposed lot 960, within five feet of the proposed residence. The lot's small size, approximately 8,000 square feet, renders further redesign impracticable, and thus removal of the tree is necessary in order to ensure the safety of the future residents of this lot. In addition, removal is required in order to grade the lot in accordance with the Project's approved erosion/sediment control plans.

**Tree Tag No.8.** This tree is located alongside Tavern Lane and adjacent to proposed Lot 938 and must be removed for the following reasons: the grade establishment for Tavern Lane, pursuant to Frederick County design standards for safe, adequate and efficient roadways requires significant cut at this location, which directly results in the removal of the tree; removal is required in order to grade the lot in accordance with the Project's approved erosion/sediment control plans; and removal is further required in order to install County-required utilities (storm drain, sewer, water) within the roadway.

**Tree Tag No.11.** This tree is located within a proposed community recreation area surrounded by Tavern Lane and Tavern Alley and must be removed for the following reasons: the grade establishment for Tavern Lane, pursuant to Frederick County design standards for safe, adequate and efficient roadways requires significant cut at this location, which directly results in the removal of the tree; removal is required in order to grade the lot in accordance with the Project's approved erosion/sediment control plans; and removal is further required in order to install County-required utilities (storm drain, sewer, water) within the roadway.

**Tree Tag No.13.** This tree is located within a proposed community recreation area surrounded by Tavern Lane and Tavern Alley and must be removed for the following reasons: the grade establishment for Tavern Lane, pursuant to Frederick County design standards for safe, adequate and efficient roadways requires significant cut at this location, which directly results in the removal of the
tree; removal is required in order to grade the lot in accordance with the Project's approved erosion/sediment control plans; and removal is further required in order to install County-required utilities (storm drain, sewer, water) within the roadway.

**Tree Tag No.17.** This tree is located within the footprint of the dwelling unit to be constructed on proposed lot 903. The lot's small size, approximately 7,900 square feet, renders further redesign impracticable, and thus removal of the tree is necessary. In addition, removal is required in order to grade the lot in accordance with the Project's approved erosion/sediment control plans.

**Tree Tag No.19.** This tree is located on proposed lot 1078 within five feet of the proposed residence. The lot's small size, approximately 8,000 square feet, renders further redesign impracticable, and thus removal of the tree is necessary in order to ensure the safety of the future residents of this lot. In addition, removal is required in order to grade the lot in accordance with the Project's approved erosion/sediment control plans.

**Tree Tag No. 32.** This tree is located within the right-of-way of Moss View Court. The roadway near this location was designed to retain many other specimen and non-specimen trees that are of a larger size and/or higher quality than tree 32. The decision was made to sacrifice tree 32 in order to retain these other more desirable and healthier trees, and as a result, the grading approved as part of the Project's approved erosion/sediment control plans requires its removal. In addition, the grade establishment for Moss View Court, pursuant to Frederick County design standards for safe, adequate and efficient roadways also requires the direct removal of tree 32.

It is important to note that the Applicant has made extraordinary efforts to retain specimen and non-specimen trees located on this Project. The BOCC determined, as part of its approval of the Amended Phase I Concept Plan, that the Project's re-design did preserve the Property's natural features and minimize tree removal. In addition, the Applicant has reviewed all areas where specimen trees are proposed to be disturbed and the number of specimen trees required to be removed and has made every effort to retain these specimen trees when doing so could be practically achieved, through redesigns that did not compromise other environmental features on the Property or the Project's overall design. The removal of eight nonhazardous specimen trees is not unreasonable for a project of this size. In fact, on February 13, 2013, the Frederick County Planning Commission approved a FRO modification to permit the removal of ten specimen trees for Harvest Ridge, a project that contains only 136 residential units. Sections 2/3 of this Project contain over 700 units, but require removal of fewer nonhazardous specimen trees.

**Specific Findings of 1-21-21**

*Describe the special conditions peculiar to the property that would cause the unwarranted hardship;*

As previously described within the Background section of this Justification Statement, this Project was fully-designed and engineered prior to the effective date of Section 1-21-40(B)(1)(e) of the FRO. Thus, the Project's FRO and tree save areas were already identified and mapped, the stormwater management drainage and treatment facilities reviewed and approved, and the Project's grading and sediment control plan approved. As a result of amendments made to the Project's zoning conditions, the Applicant has had to re-design the Project in conformance with the new design requirements applicable to PUDs. These new PUD design requirements, coupled with the land dedications required as a condition to the amendment of the zoning conditions (provision of a +/- 10-12
acre school site, +/- 96.5 acre Bush Creek linear park dedication, +/- 3.4 acre public use site, and substantial protected open space) significantly constrain the Applicant’s ability to preserve specimen trees in Sections 2/3 of the Project. While the Applicant took appropriate steps to identify environmental features of the overall Property prior to redesigning the Project with an Amended Phase I Concept Plan that meets all of the other design criteria for this PUD (as discussed above), and additionally has substantially re-designed portions of the Project even further in order to retain two additional nonhazardous specimen trees, it is unable to preserve the eight remaining nonhazardous specimen trees for many compelling design reasons, including the fact that the grading and roadway system already approved for Section 1 of the Project must tie into and be consistent with the grading and roadways proposed in Section 2/3 of the Project in a reasonable and practical manner. The community open space areas must be created as shown on the Amended Phase I Concept Plan and the Project must be developed in accordance with the State’s density standards for projects within priority funding areas. Thus, the reduction of lots in the Project would contravene Maryland’s Smart Growth standards. In addition, the Property’s physical configuration (topography, boundary, stream valleys, etc), further reduces the Applicant’s ability to preserve these remaining eight nonhazardous specimen trees through re-designs. Upon balancing all factors needing to be considered, the special conditions peculiar to this Property described herein, render if an unwarranted hardship to preserve the eight nonhazardous specimen trees identified above in their existing natural state.

Describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas;

Prohibiting the removal of these specimen trees will deprive the Applicant of its right to implement previously-approved plans and provide the necessary infrastructure in the manner that is logical and reasonable in continuing the infrastructure system being constructed in the already approved Section 1 of the Project and that is consistent with all other approval criteria for this PUD that ensure, upon balancing of all factors (some competing) design excellence. The Applicant has examined each specimen tree located within Sections 2/3 of the Project; has preserved eight nonhazardous specimen trees (two more than would have been preserved under the Approved Final FRO Plan) through feasible re-designs of infrastructure and community features (often times at great cost); and has determined that the preservation of the eight remaining nonhazardous specimen trees cannot be achieved without substantial loss of project density, compromises to community designs already approved by the BOCC as part of the Amended Phase I Concept Plan; realignment of roadways; and jeopardizing the conditions for public infrastructure systems (such as water and sewer systems) approved for installation within these roadways. Given all of the public open spaces, the dedicated school site, and all of the other unique features of this Project (including environmental areas, stormwater management, setbacks and other set asides discussed herein), the development of this Property is already challenged more than is typical for other similarly situated parcels. Having to further compromise the development by retaining these eight nonhazardous specimen trees would deprive the Applicant of development rights enjoyed by others similarly situated.

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

Other applicants for subdivision have requested and obtained similar relief that the Applicant is currently requesting – the approval to remove nonhazardous specimen trees that cannot be preserved without unwarranted hardship. By example, the developer of the Harvest Ridge subdivision was granted a FRO modification to permit removal of ten specimen trees in connection with a 136-unit subdivision. The granting of this modification will not confer a special privilege to this landowner that would be denied to other applicants. The basis for the modification stems from the conditions peculiar to the Property, as described above, regardless of who owns the land. Other applicants will be required to explore all reasonable options for tree preservation, and if meaningful compromises result in a situation whereby balancing all factors equates to good policy allowing tree removal to ward off hardship, then it is likely the modification/variance will be granted.
Verify that the modification request is not based on conditions or circumstances that are the result of actions by the applicant;

As noted above, the Applicant's inability to preserve the eight nonhazardous specimen trees identified for removal is due to the physical constraints of the Property itself (topography, stream valleys, and other environmental features); the substantial design requirements applicable to PUDs; and the need to integrate public infrastructure improvements for Sections 2/3 of the Project with those already approved for Section 1. This request is not based on conditions or circumstances that are the result of actions by this Applicant. To the contrary, the Applicant has made all reasonable efforts to preserve specimen trees located within Sections 2/3 of the Project and is preserving eight nonhazardous specimen trees (two more than would have been preserved under the Approved Final FRO Plan), and thus, the modification/variance request is the minimum reasonably necessary because the actions of the Applicant to preserve a large number of trees through thoughtful re-design.

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 modification request is based upon the conditions peculiar to this Property as fully described above and does not arise from a condition related to land or building use on a neighboring property.

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

The Project will be implemented through the plan approvals, permits and inspections under Frederick County's Stormwater Management Ordinance and Erosion and Sediment Control Ordinance. Compliance with both ordinances has been found by the State of Maryland to meet the State's water quality standards and therefore, will not adversely affect water quality.

In closing, for all of the reasons set forth above, the Applicant requests approval of a modification to Section 1-21-40(B)(1)(e) of the FRO in order to remove the eight nonhazardous specimen trees identified herein. This modification/variance request is consistent with and in accordance with the State Law requirements for specimen tree preservation and the removal of specimen trees by grant of a variance. Please contact us at (301) 948-4700 with any questions or comments.

Sincerely,
Rodgers Consulting, Inc.

[Signature]
Dusty Rood
Environmental Team Leader, Vice President
TREE # 16
BLACK CHERRY
TREE ANALYSIS

SUBSTANTIAL
LEAN

TRUNK ROT ON
PRIMARY LEADER