

**IN THE MATTER OF:  
THE PETITION OF GARRETT GATEWAY  
PARTNERS L.L.C. FOR APPROVAL OF A  
TOWNHOUSE LIVING COMMUNITY AS A  
CONDITIONAL USE IN THE RE-1 ZONE  
PURSUANT TO SECTION 59-3.3.1D2.B OF  
THE 2014 MONTGOMERY COUNTY ZONING  
ORDINANCE**

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\* Case No. CU15-\_\_\_\_\_  
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**PETITIONER'S STATEMENT IN SUPPORT**

Petitioner, GARRETT GATEWAY PARTNERS LLC hereby submits this Statement in Support of its Petition for approval of a "Design for Life" qualifying nineteen (19) unit Townhouse Living Community as a Conditional Use in the RE-1 Zone. The two acre property upon which the Design for Life community is proposed is located at 7009 Garrett Road, Derwood, Maryland 20855 (the "Subject Property"). The Subject Property is known of record as "Part of Lot Number 5, Block B, in the subdivision identified as "Lots 5 to 12, Block B, A Resubdivision of Lots 1, 2 & 3, Block B Cashell Estates Subdivision." The Subject Property is the same property described in a Deed dated December 19, 2014, recorded in Liber 49677 at folio 284, among the Land Records of Montgomery County, Maryland, a copy of which is included as Exhibit 1 to this Statement in Support. Tax Account No.: 04-25-00118126.

**I. Introduction to Design for Life.**

The Montgomery County Council established what is now known as the Design for Life tax credit program by a legislative enactment that became effective on July 1, 2014. The Design for Life program tax credit was intended to incentivize the development of new communities, designed to be fully accessible to every person, regardless of mobility or other physical limitations. A key objective of the County's Design for Life tax credit program is to increase the stock of new residential communities that accommodate individuals of diverse abilities. For that reason the County Council enacted Council Bill 5-13 to establish tax credits to homeowners for including features in new and existing residential housing that improve accessibility for persons of all ages, including seniors and those with disabilities.

The challenge presented by the County's Design for Life tax credit program is the establishment of communities where persons with disabilities are not isolated from the general population, but live side by side with neighbors who are not physically challenged. The intent of the tax credit established by Council Bill 5-13 was to increase the stock of accessible dwelling units in the County and to facilitate the development of inclusive communities. The availability of the tax credit has proven insufficient as an incentive for the development of accessible, inclusive communities.

Recognizing that the inclusive community housing policy that the tax credit was intended to incentivize has not been realized, the County Council enacted ZTA 15-02 effective May 11, 2015

“to allow a conditional use for Design for Life projects with increased density under certain circumstances. ZTA 15-02 would create a new conditional use for Design for Life communities that include features to make access easier for visitors and residents. The approval of the conditional use would increase the number of dwelling units per acre over a site’s base zoning and require Level II accommodations.”

## **II. The Design for Life Tax Credit Requirements and Standards.**

Two levels of accessibility standards were established in Section 52-18U of the Montgomery County Code as amended (the “County Code”). In order to qualify for Conditional Use approval a proposed Townhouse Living project must meet or exceed the higher level II accessibility standards codified in Section 52-18U of the County Code. Level II includes all of the following Level I standards:

- at least one no-step entrance located at any entry door to the house that is connected to an accessible route to a place to visit on the entry level.
- a usable powder room or bathroom, and a 32-inch nominal clear width interior door

The additional requirement for certification of compliance with the Level II Accessibility Standards includes:

“an accessible circulation path that connects the accessible entrance to an accessible kitchen, a full bath, and at least one accessible bedroom, as further defined and described in Executive Regulations adopted under Method 2.” (County Code Section 52-18U(a).)

The 2014 Zoning Ordinance contemplates that the Department of Permitting Services (“DPS”) will certify that the Subject Property meets or exceeds the eligibility requirements for the Level II Tax Credit in order to qualify for approval of a Conditional Use application under Section 59-3.3.1.D.2.(b) of the 2014 Zoning Ordinance.<sup>1</sup>

Compliance with the Level II eligibility requirements is evident from the Conditional Use Plan and conceptual floor plans. The site design includes community use passive recreation areas, paths and other amenities that are fully accessible for use and enjoyment, regardless of an individual’s mobility status. Also, as is evident from the conceptual architectural elevations and floor plans, each dwelling unit will be designed to include a no-step or “zero-entry” entrance to the house, through the attached two car garage. The zero entry entrance is connected to a ground floor family room with elevator access to the first (main) floor living room, dining room and kitchen. The open area interior design provides an accessible circulation path connecting the elevator from the zero entry entrance to fully accessible living areas on the main level and an

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<sup>1</sup> The certification process has not been fully established. While the Zoning Ordinance requires Level II eligibility certification, Section 59-3.3.1.D.2b. prohibits the issuance of a tax credit to the developer/builder of a Design for Life Community.

accessible powder room that is also located on the main level. All interior doorways, on every level, will be constructed with a 32-inch nominal clear width.

All of the bedrooms are located on the third or upper level of each dwelling unit. The upper level is accessible by the elevator that accesses a wide square shaped hallway with a minimum clear width of four (4) feet at its narrowest point. Two full accessible bathrooms are located on the upper level of each dwelling unit.

### **III. The Subject Property.**

The Subject Property is classified in the RE-1 Zone pursuant to the 2014 Zoning Ordinance and it is identified as “the west two acres of Lot 5, Block B Cashell Estates Subdivision.” Lot 5 was established as a recorded lot by a certain plat recorded in Plat Book 32 at Plat 2038. The Subject Property and the adjacent portion of Lot 5 to the east were surveyed in 1960 by the then County Surveyor, R.K. Maddox. Lot 5 was subdivided by that certain deed dated October 27, 1960 recorded among the Montgomery County Land Records in Liber 2796 at folio 293, attached as Exhibit 2, into the West 2 acres, with the East 3 acres remaining as residue from the parent deed recorded in Liber 1122 at Folio 222. The 1960 Maddox Survey illustrates this deed subdivision and is attached as Exhibit 3. To the best of our knowledge the division of Lot 5 into the West 2 acres and the East 3 acres was accomplished by the 1960 Maddox Survey.

The Subject Property is currently developed with a one family detached dwelling that will be demolished upon approval of this Conditional Use Application. Access is provided via a driveway from Garrett Road adjacent to the Garrett Road/Redland Road intersection.

The Subject Property is generally flat, with no forest or other environmental features that would require special attention. The Subject Property has frontage along Redland Road, on the west and Garrett Road on the south. The Subject Property is bounded on the north and east by vacant land acquired by the State Highway Administration (the “SHA”) for Maryland Route 200, the Inter-county Connector (the “ICC”). The ICC effectively serves as the eastern neighborhood boundary, separating the western portion of Cashell Estates from the eastern segment of the Cashell Estates community.

The surrounding area or “zoning neighborhood” for purposes of evaluating the proposed development is bounded by the SHA right of way for the ICC and retained property under SHA control to the north and east. The Subject Property is across Redland Road from the Redland Local Park on the west. Garrett Road forms the southern boundary, across from which are existing one family homes on RE-1 zoned Property.

### **IV. The Surrounding Neighborhood**

In order to approve a Conditional Use Application the Hearing Examiner must find that the proposed development “is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the (applicable master) plan” (Zoning Ordinance Section 59-7.3.1.E.1.d.) For analysis purposes, the surrounding neighborhood is bounded on the east by, and to a great extent defined by, the SHA right-of-way for the ICC.

The recent construction and opening of the ICC drastically altered the character of Cashell Estates, isolating the Subject Property and other properties fronting on Redland Road

from the rest of Cashell Estates. Garrett Road, now a dead end street terminating in a cul de sac previously served as a connector road between Redland Road and the Cashell Estates neighborhood. As a result of the opening of the ICC, Cashell Estates was functionally divided into two separate neighborhoods. The neighborhood east of the ICC remains as it was, a developed RE-1 residential community while the neighborhood west of the ICC, containing vacant land in public ownership, scattered RE-1 housing, a local park and previously developed R-200 zoned communities is no longer characteristically a RE-1 neighborhood. (See Neighborhood Plan, Exhibit 4.)

The boundaries of the surrounding neighborhood also include the SHA and Mid County rights-of-way and State owned properties on the north and the western boundary of the Redland Local Park on the west. Continuing southward, the surrounding neighborhood is defined by the rear property lines of the R-200 Copperwood community that includes the townhouse development along Catalopa Court. Redland Road serves as a spine road providing access to both the R-200 and RE-1 zoned portions of the surrounding neighborhood and to the Redland Park that confronts the Subject Property on the west side of Redland Road.

#### **V. The Proposed Design for Life Townhouse Community.**

Universally accessible homes are at a premium in Montgomery County, typically the result of random efforts undertaken to accommodate a particular individual's needs. Accessible communities in the County currently fall into the "special needs" category of housing limited to housing for the elderly or housing for the disabled that have residential restrictions resulting in the isolation of the elderly and persons with mobility, vision or other disabilities from the mainstream of community living. The proposed, unrestricted fully accessible community will be a first for Montgomery County.

The proposed nineteen (19) unit townhouse community will enable elderly residents and persons with disabilities to fully participate in the mainstream of community life enjoying the same access to community amenities, a local park and neighbors' homes because there will be no physical barriers to livability or visit-ability in the community. The phrase "mainstream of community life" identifies that which is essential to the success of a Design for Life Community.

The Applicant intends to undertake educational and marketing actions to familiarize organizations that provide services to the elderly and to persons with disabilities, the "target population" with the benefits of the proposed Design for Life community. However, the success of the project depends on encouraging all potential residents to become owners and residents, establishing the integrated community intended by the Zoning Ordinance.

As discussed in detail below the Applicant proposes that the Conditional Use approval be subject to specific binding elements governing accessibility and visit-ability.

#### **VI. Binding elements governing accessibility.**

The following construction and development standards specific to a Design for Life Community constitute binding elements of the proposal.

A. Amenity Space. All active and passive amenity or recreational areas must be barrier-free and fully accessible to all persons regardless of ability or disability.

B. Parking. Van accessible parking and “handicapped” parking spaces will be available at a ratio of two spaces per unit. All driveways will be wide enough to accommodate a van and the garage will be van accessible for a single van. A no-step access will be provided into the first level from the at least one exterior entryway.

C. Exterior Dwelling Unit Features including:

A no-step entrance with a threshold that does not exceed ½ inch in depth with tapered advances and return surfaces that provide access to the main living space of the residence that is connected to an accessible route to the entry level, including a usable powder room or bathroom.

D. All interior doorways must provide a 32-inch wide or wider clear opening.

E. At least one accessibility-enhanced bathroom that includes either a walk-in or roll-in shower or tub. Walls around at least one toilet, reinforced to allow for the proper installation of grab bars installed in accordance with the Americans with Disabilities Act Standards for Accessible Design.

F. Maneuvering space of at least 30 inches by 48 inches in bathrooms and kitchens so that a person using a mobility aid may enter the room, open and close the door, and operate each fixture or appliance.

G. At least one bedroom must be connected to an accessible route to the entry level.

H. A warning device structurally integrated into the dwelling unit designed to assist an individual with a sensory disability.

I. All dwelling units must include, at the purchaser’s option, either an installed elevator or an electrically pre-wired elevator shaft that will accommodate the installation of an elevator.

## **VII. Site Design.**

Lighting and landscaping. The lighting and landscaping is shown and identified on sheet 4 of 6 of the Conditional Use Plan prepared by Packard & Associates, LLC. There are six proposed 12 foot high fiberglass streetlights with a LED colonial post top. No other site lighting is proposed.

The proposed landscaping includes a number of deciduous, conifer, ornamental trees and shrubs. The intent is to provide the following:

- 1) Standard street trees per the county standards of types and spacing;
- 2) Landscaping to enhance the esthetics for each individual lot, as limited by space and useable yard area;
- 3) Open space planting to buffer the common areas between unit blocks;

4) Landscaping to buffer between adjoining properties.

All landscaping and tree planting is subject to review by the Department of Permitting Services for canopy coverage compliance at building permit and by the M-NCPPC Planning Department at subdivision approval. Additional landscaping will be designed and proposed at building permit to comply with County final design standards and location of the stormwater management facilities.

Internal pedestrian path access and Site Amenities. Site amenities for the proposed project include a fully handicap accessible 4' wide circulation pathway, providing access to the individual lots, and access to the interior drive. Connective accessible access will be provided to the existing bus stop on Redland Road and for on-site recreation within the open space area. The pathway shall be green design, constructed of pervious pavement, except at the driveway aprons. A gazebo structure and benches shall be proposed as amenities.

Internal roads system access. Internal vehicular access will be provided by a 20' wide paved private roadway that will intersect with Redland Road approximately 320 feet from the Redland Road/Garrett Road intersection. The private road will be built to County construction standards. All individual driveways and on-site parking spaces will be accessible from the private roadway. The Private road has been designed to accommodate a full sized fire truck in compliance with the County Fire Code.

In compliance with the County Code, the farthest distance from the fire department apparatus access point to any dwelling unit access point will not be more than 150 feet. The dwelling unit access point as defined by the County Code applies to one and two family dwellings of three stories or less, providing access to the occupied interior through a side-hinged door, via a clear and unobstructed walkable grade. Code compliance requires installation of automatic sprinkler systems. The maximum distance the fire department apparatus access point dead-end may be from an accessible roadway is 150 feet, meaning the maximum "back up" distance permitted for a fire truck under the County Code and Montgomery County Executive Regulation 29-08 AM is 150 feet.

### **VIII. Master Plan Compliance.**

The proposed Design for Life community is located at the intersection of Redland Road and Garrett Road in the Upper Rock Creek Planning Area. The applicable Master Plan is the 2004 Approved and Adopted Upper Rock Creek Master Plan (the "Master Plan"). The Upper Rock Creek Planning Area is located in the east central part of Montgomery County, adjacent to the City of Rockville to the south, the Olney Planning Area to the north and east, the Gaithersburg Vicinity Planning Area to the west, and the Town of Laytonsville to the north.

The Master Plan objectives recommend the reinforcement of the "the low-density residential character of the area north of Muncaster Mill Road in the Residential Wedge." (Master Plan page 11. Emphasis added.) The proposed Design for Life community is located south of Muncaster Mill Road in an area along Redland Road in which residential development at R-200 densities followed the transformation of the area from large lot development utilizing septic sewage disposal systems to R-200 development using public sewer. (See Master Plan page 3.)

The Upper Rock Creek Master Plan recognizes that:

“The ability to offer housing of varying types and prices to residents in a wide range of socioeconomic strata is a key component in measuring Montgomery County’s overall quality of life.” The 1993 General Plan Refinement set out as its Housing Goal that the County “encourage and maintain a wide choice of housing types and neighborhoods for people of all incomes, ages, lifestyles, and physical capabilities at appropriate densities and locations.”

“These goals and objectives are the foundation of the County’s Housing Policy, which guides implementation of housing programs and policies. In addition to those objectives articulated in the General Plan Refinement, the Housing Policy stresses the provision of affordable housing, of assistance to those with diverse housing needs, such as the elderly, the physically disabled and those with mental illness, and of equal opportunity in seeking housing. This Plan endorses the County’s Housing Policy.” (Master Plan page 35. Emphasis added.)

The County’s housing policy aside, the Upper Rock Creek Master Plan affirmed the 1985 recommended RE-1 zoning for the Cashell Estates area, including that segment of Cashell Estates that bordered on Redland Road and was linked to the RE-1 zoned eastern segment of Cashell Estates by Garrett Road. Today, Garrett Road is a “dead-end” street terminating in a cul-de-sac. Its prior connector function permanently disrupted by the chosen alignment of the ICC (Maryland State Route 200). The governmentally chosen alignment in which the ICC was constructed was not what the Master Plan recommended.

According to the Master Plan’s “Transportation Plan”

“The Master Plan alignments for the Intercounty Connector (ICC) traverse the Upper Rock Creek Planning Area. The feasibility of the ICC has been reviewed through both state and local transportation studies that have not yet been concluded. This Plan, therefore, does not recommend any changes to the ICC rights-of-way already defined in the Master Plan of Highways and the 1985 Upper Rock Creek Master Plan.” (Master Plan page 63. Emphasis added.)

The land use and zoning recommendations in the Master Plan for that portion of Derwood in which the Subject Property is located placed heavy reliance on the character of the then existing, contiguous residential wedge of RE-1 zoned and sparsely developed land, now severed by the chosen alignment of the ICC. The character of the area along Redland Road differs significantly from the character of the RE-1 area east of the ICC.

The surrounding neighborhood today is dominated by development densities consistent with R-200 zoning not RE-1 zoning. In fact, the Master Plan acknowledges that the Derwood section of the Upper Rock Creek is of a different character than “(m)ost of the Upper Rock Creek Planning Area (that) is within one of the County’s rural policy areas...” In the introduction to its Transportation Plan, the Master Plan distinguishes the neighborhood in which the Subject Property is located from the remainder of the Rock Creek Planning Area, stating that

“only the Derwood section of the Planning Area is outside this rural classification.” (Master Plan page 63.)

Notwithstanding the recognition of the non-rural character of the area surrounding the Subject Property, the Master Plan, relying on the Master Plan Alignment of the ICC, continued to recommend the RE-1 zoning classification for all of Cashell Estates, including the “non-rural” area of Derwood along Redland Road where the Subject Property is located. In 2004 the RE-1 zoned Cashell Estates extended eastward from Redland Road, along Garrett Road, all the way to Old Mill Run. That neighborhood no longer exists as a cohesive RE-1 residential wedge due to the governmental rejection of the Master Plan Alignment of the ICC and the construction of that limited access highway just east of the eastern boundary of the Subject Property. The ICC effectively severed Cashell Estates into two separate areas with distinctly different characteristics.

The Subject Property although classified in the RE-1 zone, is served by public sewer as is the remainder of the area along Redland Road that is defined in the Planning Report as the “Surrounding Neighborhood.”

We conclude that the proposed Design for Life Conditional Use complies with the purposes and intent of the Upper Rock Creek Master Plan, specifically the Master Plan embraced Housing Policy objective that stresses the provision of providing for “those with diverse housing needs, such as the elderly, the physically disabled...” Further, the proposed Design for Life community is consistent with the Master Plan recommended RE-1 zoning as a result of the legislative recognition that townhouse living that meets or exceeds Design for Life standards is compatible with other existing and planned uses in the RE-1 Zone.

## **IX. Public facilities**

**Water & Sewer.** The Subject Property is in Sewer Category S-3 and Water Category W-3 pursuant to the current Comprehensive Water Supply and Sewerage Service Systems Plan (the “Water & Sewer Plan”). Public sewer, located in the Redland Road right of way is available to serve the Subject Property and adequate transmission or treatment capacity exists to serve the proposed nineteen unit development. The existing sewer main in Redland Road terminates approximately 300’ south of the Subject Property and will be extended by the Applicant to provide public sewer service for the proposed Design for Life Community.

The Subject Property is classified in water service category W-3 and an existing 16” water main is located in the Redland Road right-of-way and an 8” water tee stub” is located adjacent to the Subject Property in the Garrett Road right-of- way. The Applicant will extend the existing 8” water main in Garrett Road to serve the proposed Design for Life Community.

**Storm Water Management.** Stormwater runoff is currently uncontrolled and all of the runoff from the Subject Property sheet flows southward from the property and from Garrett Road and Redland Road to inlets on Redland Road and in the Redland Park property. These inlets flow to a storm drain system in Copperwood Court, which crosses Founders Mill Road, into a stream. Under this development proposal stormwater runoff will be controlled and managed by



an Environmental Site Design storm drainage system that will direct storm water from the Subject Property, Garrett and Redland Roads, into a swale on the Redland Park property then downstream existing storm drain system. Even though a drainage swale is currently located on the park property leading to the existing storm drain inlets, a Park Permit will be required to make the necessary grading and improvements to ensure the safe conveyance of runoff from the proposed storm drainage system outfall, and through the existing swale.

Stormwater management utilizing Environmental Site Design to the Maximum Extent Possible (“ESD to the MEP”) will be provided onsite with one micro-bioretenention and two landscape infiltration facilities. The two landscape infiltration facilities will collect runoff from the eastern part of the site and infiltrate the first 1.8” of rainfall and overflow the excess runoff onto adjoining state property. The micro-retention facility will collect water from the remainder of the site, infiltrate the first 1.8” of rainfall and overflow the excess runoff into the proposed storm drain system. Stormwater management for the improvements to Redland and Garrett Roads will discharge into a swale and outfall into a proposed swale, running parallel to the southerly boundary of Redland Park, connecting overflow drains to the existing storm drain system.

**X. Forest Conservation and other environmental factors.**

There are no streams, stream buffers, floodplain or wetlands on the Subject Property. As evident from the approved Natural Resources Inventory/Forest Stand Delineation (“NRI/FSD”), there are only five (5) specimen trees and no forest on the Subject Property. There are no historical or culturally significant features on the Subject Property and there was no visible habitat or endangered species evident when the NRI/FSD was prepared.

**XI. Transportation.**

The Subdivision Staging Policy establishes the “*Local Area Transportation Review (LATR) and Transportation Planning Area Review (TPAR) Guidelines*” utilized by the Montgomery County Planning Board when considering an application for approval of a Preliminary Plan of subdivision and by the Zoning Hearing Examiner when considering the adequacy of public facilities to serve a conditional use project.

The Guidelines, as applicable to this Conditional Use Application require a Traffic Statement to determine the applicability and status of the LATR and TPAR requirements.

A Traffic Statement dated October 17, 2015 has been submitted for the record. The Subject Property is proposed to be developed with 19 residential townhouse living dwelling units. Trip generation rates were obtained from The LATR Guidelines and applied to the proposed development. The proposed development will generate 9 AM peak hour trips and 16 PM peak hour trips. Because the proposed nineteen unit project will generate fewer than 30 peak hour trips it is exempt from LATR.

The Subject Property is located in the Derwood Policy Area which has been identified as “inadequate” under the TPAR transit test. As a result, a mitigation fee equal to 25% of the transportation impact fee is required to mitigate the deficit identified by the TPAR analysis.

Redland Road is an existing two lane roadway with no shoulder and a posted speed limit of 35 MPH in the vicinity of the Subject Property. Redland Road is designated as a two lane Primary Residential road (P-7) by the Upper Rock Creek Area Master Plan. Redland Road is located within a 70 foot right-of-way from Needwood Road to Muncaster Mill Road. A sight Distance Study conducted by Packard and Associates, LLC determined that the sight distance at the entryway to the proposed community is 365 feet to the right and 900 feet to the left, exceeding the County's ASHTO (American Association of State Highway and Transportation Officials) guideline of 250 feet for a primary street with a 35 miles per hour posted speed.

Notwithstanding its primary residential classification and 35 miles per hour posted speed, Redland Road, as acknowledged by the Master Plan, "operates more as an arterial roadway than as a primary residential roadway." (Master Plan page 69.) The Master Plan also acknowledges that while the operational characteristics of Redland Road are common to arterial roadways, the function of Redland Road has not been compromised by its current classification as a primary residential road." (Master Plan page 70.)

In the opinion of the Michael Lenhart, the Applicant's transportation planner, the inclusion of site generated traffic from the proposed Design for Life Townhouse Living community will not adversely affect the functionality of Redland Road.

The Upper Rock Creek Master Plan designates Redland Road (BL-29) as an On-road (Class II or III) bikeway from Crabbs Branch Way to Muncaster Mill Road. The Master Plan also notes that Class II or Class III bikeways should be improved to meet safety standards before bikeway signs or markings are placed on the road, and specifically notes that Redland Road is one of these roads that are likely to require such safety improvements. It should be noted that a Class II bikeway is an outdated term for bike lanes and a Class III bikeway is an outdated term for a shared roadway.

According to the Countywide Bikeways Functional Master Plan (2005) and the Maryland-National Capital Park and Planning's ("M-NCPPC") Master Plan of Bikeways, Redland Road is designated as BL-29 with bike lanes from Needwood Road to Muncaster Mill Road. A 5 foot wide bike path will be provided along the property frontage, consistent with the intent of the Master Plan.

Based on the information contained in the Traffic Statement, the Applicant submits that approval of the proposed conditional use, generating a maximum of 16 PM peak hour trips will not have an adverse impact on the operational characteristics of Redland Road.

## **XII. Compliance with Section 59-7.3.1.A and B**

Section 59-7.3.1.A requires approval of a conditional use application for a Design for Life Townhouse Living community in the RE-1 zone. The Conditional Use Application for Garrett Road includes all of the two acre property described as Part of Lot 5, Block B, Cashell Estates. There are no previous approvals establishing conditions or binding elements that require compliance. Site plan approval is not required by Article 59-3 and the Subject Property is not included in a sketch plan

Section 59-7.3.1.B establishes the Application Requirements for ownership. The Applicant owns the subject property, none of which is owned or controlled by the State, County, or any other governmental entity or agency. The following documents have been submitted for review:

- a. The application form and fees;
- b. The Deed establishing proof of ownership;
- c. This statement detailing how the proposed development satisfies the criteria to grant the Application;
- d. A certified copy of official zoning vicinity map.
- e. A list of abutting and confronting property owners;
- f. A list of any civic and homeowners associations within 1/2 mile;
- g. A Traffic Statement prepared by Michael Lenhart;
- h. A map showing existing buildings, structures, circulation routes, zoning, and the legal descriptions of the proposed development property and within 500 feet of the perimeter boundary;
- i. An existing and proposed dry and wet utility plan;
- j. A written description of operational features of the proposed use is included in this Statement in Support;
- k. Plans of the proposed development showing:
  - i. footprints, ground-floor layout, and heights of all buildings and structures;
  - ii. required open spaces and recreational amenities;
  - iii. layout of all sidewalks, trails, paths, roadways, parking, loading, and bicycle storage areas;
  - iv. rough grading;
  - v. landscaping and lighting;
  - vi. the approved Natural Resources Inventory/Forest Stand Delineation;
  - vii. the approved preliminary forest conservation plan;
  - viii. Stormwater Management Concept Plan application, required under Chapter 19.

### **XIII. Section 59-7.3.1. E.1 Required Findings**

Zoning Ordinance Section 59-7.3.1.E identifies the required findings for approval of a conditional use application. The general requirement in Section 59-7.3.1.E.1.a that a conditional use must be consistent with applicable previous approvals does not apply in this case because there are no previous approvals pertaining to the Subject Property.

Section 59-7.3.1.E.1.b requires that every proposed conditional use satisfy the requirements of the zone in which the property is located and the use standards in Article 59-3 of the Zoning Ordinance. Compliance with Section 59-3.3.1.D of Article 59-3 is detailed in Section IX below. The proposed Conditional Use complies with Section 59-7.3.1.E.1.b

Section 59-7.3.1.E.1.c requires a finding of substantially conformity with the recommendations of the applicable master plan, in this case the Upper Rock Creek Area Master Plan. Master Plan compliance is discussed in detail in Section Compliance with Section 59-3.3.1.D of Article 59-3 is detailed in Section VIII above. The proposed Conditional Use complies with Section 59-7.3.1.E.1.c.

Section 59-7.3.1.E.1.d requires a finding that the proposed use is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the master plan. The surrounding neighborhood is defined by the SHA and Mid County Highway rights-of-way and State owned properties on the north, by the western boundary of the Redland Local Park on the west and on the south by the rear property lines of the R-200 Copperwood community that includes the townhouse development along Catalopa Court. The surrounding neighborhood includes substantial residential development in the R-200 zone, sparse RE-1 improved properties, a public park and vacant highway rights-of-way. An existing townhouse development is located along the southern tip of the surrounding neighborhood, adjacent to detached one-family homes. The proposed Conditional Use complies with Section 59-7.3.1.E.1.d.

The Subject Property confronts the Redland Local Park, across Redland Road on the west and adjoins vacant state owned land on the north and east. Two detached one family homes are located on the South side of Garrett Road, approximately seventy (70) feet south of the south property line of the Subject Property and a distance of approximately one hundred feet (100') from the closest proposed townhouse. Additional buffering will be provided along Garrett Road by the planting of Dogwood Trees or other similar ornamental street trees approved by the Planning Department and appropriate County agencies.

Townhouse living has been legislatively determined to be compatible with detached housing and the proposed 19 unit Townhouse Living community is both presumptively and factually compatible with existing and planned uses in the surrounding neighborhood. The uses that adjoin and confront the Subject Property on three sides are either vacant State owned land or a public park. The one family home on Lot 11, south of Garrett Road is located west of the Subject Property's western boundary and the home on Lot 10 is in an angular orientation, approximately 100 feet distant from the nearest townhouse homes proposed for the Subject Property.

Section 59-7.3.1.E.1.e requires a finding that the proposed use will not, when evaluated in conjunction with existing and approved conditional uses in any neighboring residential detached zone, increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area; a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area.

The Applicant is not aware of any currently valid special exception of conditional use within the defined neighborhood or in any neighboring residential detached zone. However, the Official Zoning Map depicts a single Special Exception use, Case Number SE-299, on Lot 12, south and west of the Subject Property. The official zoning map identifies a prior special exception, SE 299, having been approved for the property located at 7000 Garrett Road. There are no current records maintained by the County Board of Appeals pertaining to the property at 7000 Garrett Road. We are advised by the staff in the Office of Zoning and Administrative Hearings that a special exception for the 7000 Garrett Road property appears to have been abandoned in 1971.

The proposed, unique, residential Conditional Use of the Subject Property for a Design for Life Townhouse Living community reinforces, rather than alters, the “the predominantly residential nature of the area.” The approval of the requested Design for Life Conditional Use will not “when evaluated in conjunction with existing and approved conditional uses in any neighboring Residential Detached zone, increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area.” The proposed Conditional Use complies with Section 59-7.3.1.E.1.e

Section 59-7.3.1.E.1.f requires a finding that the proposed use will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities.

As stated in the Land Planning Report, the Subject Property is in Water Category W-3 and Sewer Category S-3 and an existing 16” water main is located in the Redland Road right of way and an 8” water main “tee stub” is located adjacent to the Subject Property in the Garrett Road right of way. The proposed 8 inch water main in Garrett Road will be extended to serve the proposed Design for life Community. Public sewer, located in the Redland Road right of way is available to serve the Subject Property and adequate transmission or treatment capacity exists to serve the proposed nineteen unit development.

Stormwater runoff will be controlled as required by State and County law. Stormwater management utilizing Environmental Site Design to the Maximum Extent Possible (“ESD to the MEP”) will be provided onsite with one micro-bioretenion and two landscape infiltration facilities. The two landscape infiltration facilities will collect runoff from the eastern part of the site and infiltrate the first 1.8” of rainfall and overflow the excess runoff onto adjoining state property. Stormwater management for the improvements to Redland and Garrett Roads will utilize a proposed bio-swale, running parallel to the southerly boundary of Redland Park, connecting overflow drains to the existing storm drain system.

The Subject Property is in the Magruder High School cluster and is subject to a school payment for the Elementary School Test being inadequate per the Subdivision Staging Policy Results of School Test Results for FY2015. Both police and fire protection serves are available and adequate. The closest police station is located on South Summit Avenue in Gaithersburg approximately 2.8 miles from the Subject Property. The nearest fire station is located at Muncaster Mill Road and Shady Grove Road, approximately 0.7 miles from the subject property. Public park and library services are available and adequate. The proposed Conditional Use complies with Section 59-7.3.1.E.1.f.

As contemplated by subsection 1.ii of Section 59-7.3.1.E.1 of the Zoning Ordinance, approval of a preliminary plan of subdivision is require and will be filed for concurrent review by the Planning Department and approval by the Planning Board. Accordingly, the determination that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage will be made by the Planning Board as part of the subdivision review process.

Section 59-7.3.1.E.1.g requires a finding that the proposed use will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect on the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood. Section 59-7.3.1.E.1.g also requires a finding that the proposed use will not cause undue harm to the neighborhood as a result of non-inherent traffic, noise, odors, dust, illumination, or a lack of parking or the health, safety, or welfare of neighboring residents, visitors, or employees.

*Schultz v. Pritz*<sup>2</sup> is the oft-cited seminal judicial decision by the Maryland Court of Appeals distinguishing those effects on a surrounding neighborhood that are typically associated with a particular special exception or conditional use, in other words affects inherently associated with such use regardless of its location and those affects that are “above and beyond” those inherently associated with the proposed use, irrespective of its location and are “non-inherent.” While there are numerous judicial articulations of the *Schultz* test, it is universally accepted administrative law that the existence of a non-inherent adverse effect is sufficient basis for denial of a Conditional Use.

Typically, when a legislative body designates a use as “conditional” it does so in order to require specific development standards needed to assure compatibility between the conditional use and those uses Permitted Uses, those uses that are permitted by right. The conditions legislatively imposed on the Design for Life Conditional Use are intended to assure the establishment of a fully accessible townhouse community that integrates the elderly and persons with disabilities into the main stream of community life with accessible and visit-able dwellings and common area features, where ability or disability is irrelevant.

The proposed Design for Life development achieves the intended legislative purpose, implementing one of the Master Plan’s housing objectives by providing appropriate housing for persons with disabilities and elderly persons in a community in which they are not isolated from the mainstream of community life. Townhouse Living dwellings are combatable with detached dwellings and found in various combinations throughout the County.

The exterior physical appearance of the proposed townhouse dwelling units is typical of townhouse style dwellings located elsewhere in the County and the distinguishing wider doors and “zero-entry” access are not characteristics that would be considered to have an adverse effect on neighboring properties. The Applicant submits that there are no non-inherent adverse effects on the surrounding community and the inherent feature of townhouses that are attached to other townhouses that distinguishes townhouses and detached houses is presumptively and factually compatible with the surrounding neighborhood.

Section 59-7.3.1.E. 2 requires that any structure to be constructed, reconstructed, or altered under a conditional use in a Residential Detached zone must be compatible with the character of the residential neighborhood.

The conceptual façade drawings prepared for this application depicts the proposed townhouse living dwelling units, each of which is typical of residential townhouse units found

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<sup>2</sup> 291 Md.1m 432 A.2d 1319 (1981)

throughout Montgomery County. Townhouse dwelling units are considered to be one-family dwellings and are permitted in several Residential Detached Zones as compatible with other one family dwellings. Under that same planning standard, the proposed residential Design for Life Conditional Use will be compatible with the character of the residential neighborhood.

#### **XIV. Compliance with Article 59-3, Section 59-3.3.1.D.**

Section 59-7.3.1.E of the Zoning Ordinance also requires that every proposed conditional use satisfy the requirements and use standards for the zone found in Article 59-3 of the Zoning Ordinance. By virtue of the enactment of ZTA 15-02, amending the Use Table in Zoning Ordinance Section 59-3.1.6, townhouse living is a type of “Household Living” allowed as a conditional use in the RE-1 zone. The Zoning Ordinance defines “Household Living” to mean “the residential occupancy of a dwelling unit by a household on a monthly or longer basis.” (Section.59-3.3.1A.)

In order for a townhouse living community to be approved as a Conditional Use, it must meet or exceed the Level II Accessibility Standards established by Section 52-18T of the County Code and satisfy the specific standards applicable to “Design for Life” communities in Section 59-3.3.1.D.2.b of the Zoning Ordinance.

The proposed nineteen unit townhouse living community is a “Design for Life” community that meets or exceeds all of the specific standards for approval as a conditional use in the RE-1 zone. Compliance with the applicable use standards in Section 59-3.3.1.D.2.b.2 are discussed below.

In order for the Hearing Examiner to approve this Conditional Use Application the proposed Design for Life Community must meet or exceed the Level II accessibility standards codified in Section 52-18U of the County Code. (Sect.59-3.3.1.D.2.b.2. i.) Every proposed residential dwelling unit will meet or exceed the Level II Accessibility Standards established by the County Code. As detailed in Section II of this Statement in Support, every dwelling will be accessible via a no-step entrance connected to an accessible route to the unit’s entry level at which an accessible powder room or bathroom will be located. All interior doorways will have at least a 32-inch nominal clear width.

In addition, every unit will feature an accessible circulation path that connects the accessible entrance to an accessible kitchen, a full bath, and at least one accessible bedroom on the second level. Also as detailed above, and as depicted on the Conditional Use Plan, common areas, and public open spaces, community use passive recreation areas, paths and other amenities are designed to be fully accessible for use and enjoyment, regardless of an individual’s mobility status.

Public bus service must be available on a road abutting the site. (Sect.59-3.3.1.D.2.b.2.ii.). An existing bus stop located on the west side of Redland Road will be available to residents and visitors via a proposed pedestrian crosswalk connected to the interior path system serving the community.

A Metro Station must be within 2 miles of the site. (Sect.59-3.3.1.D.2.b.2.iii.) The Shady Grove Metro Station is located within 2 miles of the proposed Design for Life Community.

Public recreation or park facilities must be within 1,000 feet of the site. (Sect.59-3.3.1.D.2.b.2.iv.) Redland Park is located directly opposite the proposed community on the west side of Redland Park and is easily accessible via the proposed pedestrian crosswalk connected to the interior path system serving the community.

A grading plan must demonstrate that the post construction site will have a slope less than five percent (5%). (Sect.59-3.3.1.D.2.b.2.v.). Compliance with these standards is evidenced by the grading plan submitted with the Application. Also, as shown on the approved NRI/FSD, the Subject Property is relatively flat and will not require extensive land disturbing activities in order to comply with the five percent grade restriction.

Section 59-3.3.1.D.2.b.2.vi requires that the gross square footage of the tract of land for which a Design for Life Conditional Use is requested be at least 2 acres. The Subject Property, the west part of Lot 5, was surveyed in 1960 by the then County Surveyor, R.K Maddox, who determined that the property contained 2 acres of land. The Subject Property remains the same size now as it was in 1960.

Pursuant to Zoning Ordinance Section 59-3.3.1.D.2.b.2.vii, the density limitations and development standards of the TMD zone under the optional method (Section 4.4.12.C) apply to this proposed Conditional Use, notwithstanding any other limitation in the Zoning Ordinance. The chart below identifies compliance with the applicable Section 4.4.12.C standards as Amended by ZTA 15-09

TMD Optional Method Standard	Required	Proposed
1. Site		
Dimensions (min)		
Usable Area	20,000 SF	75,768 sf
(Amended)Density (max) Density (units/acre of usable area)	15.25	10.92
Open Space (min) Common open space (% of usable area) (See Section 6.3.5)	20% (amended )	34.8%
Site Coverage (Max.)	40% (amended)	24.7%
2. Lot	Townhouse	
Dimensions (min)	800 SF	1,872 sf
Lot area		
Lot width at front building line	Determined at site plan	24' min
Lot width at front lot line	14'	24' min
Frontage on street or open space		
Coverage (max)	N/A (amended)	N/A
Lot		



TMD Optional Method Standard	Required	Proposed
3. Placement	Townhouse	
Principal Building Setbacks (min)	10'	12' min
Front setback from public street		
Front setback from private street or open space	4' (amended)	20' min
Side street setback	5' (amended)	5' min
Side or rear setback	Determined at site plan	5' min / 12' min
Side or rear setback, abutting property not included in application	Equal to required setback for a detached house in the abutting zone under standard method	10' min / 40' min
Rear setback, alley	4' (amended)	20' min
4. height		
Height (max)	40'	40' max
Principal building		

Zoning Ordinance Section 59-3.3.1.D.2.b.2viii prohibits any reduction in the number of required parking spaces through alternative compliance under Division 6.8 and no parking reduction has been requested.

A minimum of one parking space for each dwelling unit is required. Two parking spaces will be available that satisfy the dimensional standards for handicapped-accessible vehicle parking and a minimum 8 foot wide access aisle required by the State. (Section 59-3.3.1.D.2.b.2 ix.) The driveway for each dwelling unit will, at a minimum, be 16 feet by 22 feet in length in accordance with the required standards.

As a condition of approval, any property owner of the conditional use project must be prohibited from seeking a tax credit under Section 52-18U or Section 52-93(e). This prohibition does not apply to additional accessibility. The intent of this provision is to “pass on” the tax credit to the ultimate purchaser by prohibiting the Conditional Use project owner/developer from benefiting from the tax credit.

## **XV. Report Summaries.**

The attached reports prepared by the Applicant's Land Planner, William R. Landfair, AICP of Vika Maryland LLC; The Engineering Report prepared by Dean Packard, P.E. of Packard and Associates LLC; and the Traffic Statement prepared by Michael Lenhart, Lenhart Traffic Consulting, Inc., are summarized in specific sections of the Statement in Support. The photometric Study prepared by Phillips Lighting of North America is discussed in Section VI, Site Design.

## **XVI. Summary of Proof.**

The Applicant will establish that the proposed Design for Life Conditional Use complies with all of the applicable standards for medium density townhouse living, under the optional method, and that it is a permissible conditional use in the RE-1 zone. The evidence presented will also establish that the proposed conditional use implements the housing policies enumerated in the Upper Rock Creek Area Master Plan and is consistent with the Master Plan recommended RE-1 zoning classification.

The Applicant will establish through testimony and exhibits that the proposed Design for Life Conditional Use meets each of the applicable general and Design for Life standards enumerated in the 2014 Montgomery County Zoning Ordinance, that it will be served by adequate public facilities and that it is compatible with existing and planned land uses in the defined Surrounding Neighborhood.

## **XVI. Exhibits.**

Completed Conditional Use Application  
Planning Report prepared by William Landfair, VIKA Maryland, LLC  
Montgomery County Tax Map GT 41  
A copy of Record Plat No. 2038  
Certified Zoning Map  
Conditional Use Site Development Plan prepared by Packard & Associates, LLC  
Conceptual Exterior Elevations and Renderings  
Preliminary Interior Floor Plans  
Traffic Statement Prepared by Michael Lenhart, Lenhart Traffic Consulting, Inc.  
Engineering and Environmental Report prepared by Dean Packard, Packard & Associates, LLC  
Concept Stormwater Management Plan prepared by Packard & Associates, LLC  
Relevant portions of the 2004 Approved and Adopted Upper Rock Creek Area Master Plan  
Landscape Plan and Details prepared by William Landfair, prepared by Packard & Associates, LLC  
Proposed Site Lighting Plans and Photometric plan prepared by Philips Lighting, North America  
Concept Utility Plan prepared by Packard & Associates, LLC.  
Site and Surrounding Area Map prepared by Packard & Associates, LLC  
Approved Natural Resources Inventory/Forest Stand Delineation Plan  
Preliminary Forest Conservation Plan prepared by Packard & Associates, LLC  
List of Adjoining and Confronting Property Owners and Local Citizens Associations  
Community Outreach documents  
Consultant Resumes

## **XVII. Anticipated Witness Testimony.**

1. William R. Landfair, AICP. Mr. Landfair is qualified as an expert in land planning and will testify about Master Plan compliance and compliance with the required findings for approval of the proposed Conditional Use in Section 59-7.3.1.E of the Zoning

Ordinance; and compliance with the requirements and use standards for the zone found in Article 59-3 of the Ordinance.

2. Dean Packard, P.E. a professional engineer and registered land surveyor will testify as to the physical characteristics of the Subject Property; the Conditional Use plan design and the availability of certain public facilities such as water, sewer and storm drainage.

3. An AIA, licensed Architect will be retained and designated and the architect's credentials and testimony summary will be submitted to the Office of Zoning and Administrative Hearings as promptly as possible.

4. Jackie Simon, REALTOR®. Ms. Simon, a recognized expert and advocate for housing for disabled persons will testify about the history, intent and purpose of the County's Design for Life Program and compliance with the standards required for certification under that program.

5. Michael Lenhart, P.E., PTOE, an experienced transportation and traffic impact consultant will testify about compliance with County APF standards and the physical and operational characteristics of the surrounding road network and interior roadway design.

6. Organizational representatives

7. Individuals testifying in support

#### **XIX. Petitioner's Time**

Petitioner estimates that its presentation will require one full day.

Respectfully Submitted,  
MCMILLAN METRO, P.C.

By: \_\_\_\_\_  
Stephen J. Orens

Revised January 6, 2016