

MAYOR & COUNCIL AGENDA COVER SHEET

MEETING DATE:

July 23, 2007

CALL TO PODIUM:

Erica Shingara, Environmental Services Director

RESPONSIBLE STAFF:

Erica Shingara, Environmental Services Director

AGENDA ITEM:

(please check one)

<input type="checkbox"/>	Presentation
<input type="checkbox"/>	Proclamation/Certificate
<input type="checkbox"/>	Appointment
<input type="checkbox"/>	Public Hearing
<input type="checkbox"/>	Historic District
<input type="checkbox"/>	Consent Item
<input type="checkbox"/>	Ordinance
<input checked="" type="checkbox"/>	Resolution
<input type="checkbox"/>	Policy Discussion
<input type="checkbox"/>	Work Session Discussion Item
<input type="checkbox"/>	Other:

PUBLIC HEARING HISTORY:

(Please complete this section if agenda item is a public hearing)

Introduced	
Advertised	
Hearing Date	
Record Held Open	
Policy Discussion	

TITLE:
Resolution of the Mayor and City Council Approving a Waiver of the Environmental Standards for Development Regulation to Permit Approximately One Acre of Disturbance Within the Stream Valley Buffer at Asbury Methodist Village

SUPPORTING BACKGROUND:
<p>A condition of concept approval of Asbury Methodist Village- North Village (SP-07-0001) is for the applicant to obtain approval of an environmental waiver from the Mayor and City Council for intrusions into the stream buffer, as required by the <i>Environmental Standards for Development Regulation</i>.</p> <p>Asbury Methodist Village is requesting an environmental waiver for three storm drain outfalls, totaling approximately one acre, to safely convey stormwater to an existing stormwater management pond and to a tributary of Whetstone Run. The attached waiver exhibit delineates the location of each waiver and the proposed mitigation plan.</p> <p>In order to compensate for the disturbance, the applicant shall work with staff to design and construct approximately 400 linear feet of stream stabilization in the vicinity of the south pond (area designated as "Emergency Stabilization" in Exhibit 2c) prior to the release of bonds for this project. In addition, the applicant shall work with staff to develop an agreement that would implement a plan to restore approximately 800 linear feet of stream (area designated as "Stream Restoration" in Exhibit 2c). It is anticipated that this agreement would provide for the expenditure of \$158,000 of public funds (previously collected from other developers), and would require the City to seek grant funds from outside sources that would reduce the cost to both parties. In any event, the applicant's total stream improvement obligation under this development approval shall not exceed \$250,000.</p> <p>The draft resolution includes eight conditions and staff will continue to work with the applicant and outside agencies to implement stream improvements.</p> <p>Attachments: Exhibit 1: Resolution Exhibit 2: Environmental Waiver Application A. Letter from Geoffrey Ciniero, Johnson Bernat Associates, Inc., dated April 3, 2007, concerning the Asbury Villas North Environmental Waiver Application B. Environmental Waiver Application C. Environmental Waiver and Mitigation Plan Exhibit</p>

DESIRED OUTCOME:
Vote on Resolution.

RESOLUTION NO. _____

**RESOLUTION OF THE MAYOR AND CITY COUNCIL APPROVING A WAIVER OF
THE ENVIRONMENTAL STANDARDS FOR DEVELOPMENT REGULATION
TO PERMIT APPROXIMATELY ONE ACRE OF DISTURBANCE WITHIN
THE STREAM VALLEY BUFFER AT ASBURY METHODIST VILLAGE**

WHEREAS, the *Environmental Standards for Development Regulation* was adopted by the Mayor and City Council on November 19, 2001, providing the Mayor and City Council the authority to grant a waiver; and

WHEREAS, a condition of concept plan approval of Asbury Methodist Village- North Village (SP-07-0001) is for the applicant to obtain approval of an environmental waiver from the Mayor and City Council for intrusions into the stream buffer, as required by the *Environmental Standards for Development Regulation*; and

WHEREAS, pursuant to Section 33, Stream Quality Enhancement, of the *Environmental Standards for Development Regulation*, in cases where an existing stream on the site is degraded and experiencing erosion, bank failure, undercutting of adjacent trees or other problems related to the integrity of the stream channel, a plan addressing bioengineering or stream stabilization must be submitted for Planning Commission approval; and

WHEREAS, staff has reviewed the proposed waiver and determined that this circumstance warrants a waiver because the public interest benefits outweigh the risks to the environment, there are no other feasible alternatives, and the proposed mitigation measures will compensate for the disturbance to the stream valley buffer:

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and City Council of Gaithersburg, that the request for a waiver of the *Environmental Standards for Development Regulation* to permit approximately one acre of disturbance within the stream valley buffer at Asbury Methodist Village, including three storm drain outfalls, is hereby approved subject to the following conditions:

1. The limits of disturbance and concept designs outlined in the waiver application are not absolute and may be modified by staff during final engineering and field coordination to minimize clearing, grading, tree removal, and encroachments into stream and wetland buffers;
2. The applicant will obtain all necessary approvals and permits from all local, State, and Federal findings agencies prior to disturbing the stream valley buffer;

3. Pursuant to Section 33 of the *Environmental Standards for Development Regulation* and as part of the project's onsite mitigation plan, the applicant shall work with staff to design and construct approximately 400 linear feet of stream stabilization in the vicinity of the south pond (area designated as "Emergency Stabilization" in Exhibit 2c) prior to the release of bonds for this development. In addition, the applicant shall work with staff to develop an agreement that would implement a plan to restore approximately 800 linear feet of stream (area designated as "Stream Restoration" in Exhibit 2c). It is anticipated that this agreement would provide for the expenditure of \$158,000 of public funds (previously collected from other developers), and would require the City to seek grant funds from outside sources that would reduce the cost to both parties. In any event, the applicant's total stream improvement obligation under this development approval shall not exceed \$250,000; and
4. Storage or deposition of equipment, trucks, materials, waste, or debris within the stream buffer is prohibited.

ADOPTED by the Mayor and City Council this 23rd day of July, 2007.

SIDNEY A. KATZ, MAYOR and
President of the Council

THIS IS TO CERTIFY that the foregoing
Resolution was adopted by the City Council
in a public meeting assembled on the 23rd day
of July, 2007.

David B. Humpton, City Manager



Johnson ♦ Bernat ♦ Associates, Inc.

April 3, 2007

Ms. Trudy Schwarz
City of Gaithersburg
Planning & Code
31 S Summit Ave
Gaithersburg, MD 20877

Re: Asbury Villas North
Environmental Waiver SP-07-0001
JBA Job# 06-031

Dear Ms. Schwarz;

Pursuant to Article III Paragraph 38 of the 2001 City of Gaithersburg Environmental Standards for Development Regulation we are requesting a waiver from the stream buffer regulations outlined in Article III Paragraph 25 (1) a for the Asbury Methodist Village.

The Asbury Methodist Village is a 110 acre elderly housing community bounded by Russell Avenue, Odend'hal Avenue and Goshen Road. Within this community exists two stormwater management facilities. The upper facility is a private facility used to provide quantity control for the campus community only. The lower facility is a regional pond used for quantity control for the Asbury campus as well as properties upstream. The lower pond discharges into a stream (Whetstone Run) before flowing under Odend'hal Avenue. The stormwater management ponds and the stream are encompassed by a 100 foot stream valley buffer. The regional pond and stream below are in good condition.

A new onsite development, of 10.54 acres, east of the regional pond and stream is proposed as 43 single story villa type units and related infrastructure. As part of this infrastructure, three storm drain/stormwater management outfalls have been designed to outfall through the onsite stream valley buffer. The first will discharge into an existing storm drain manhole which sits within the buffer. The second will discharge into the regional pond and the third will discharge directly into the stream below the regional facility.

All outfalls will be vegetative stabilized after installation and the discharge points will be stabilized by using engineer designed rip rap.

For these three storm outfalls, we are requesting a waiver from the stream valley buffer regulations Article III Paragraph 25 (1) for the construction and maintenance of these outfalls.

If you have any questions, please contact me at (301) 963-1133.

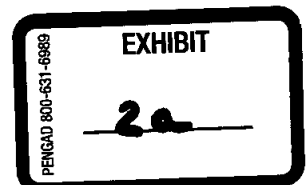
Sincerely,

Johnson ♦ Bernat ♦ Associates, Inc.

Geoffrey L. Ciniero, P.E.
Vice President

Engineering ♦ Surveying ♦ Planning

1395 Piccard Drive, Suite 350 ♦ Rockville, MD 20850 ♦ (301) 963-1133 ♦ (301) 963-6306 Fax
www.jba-inc.net



APR - 5 2007

P&CA

PLANNING AND CODE ADMINISTRATION



City of Gaithersburg • 31 South Summit Avenue • Gaithersburg, Maryland 20877 • Telephone: (301) 258-6330 • Fax: (301) 258-6336
plancode@gaitthersburgmd.gov • www.gaitthersburgmd.gov

ENVIRONMENTAL STANDARDS WAIVER APPLICATION

Application No.	<u>PI-V070005</u>
Fee	<u>\$1000.00</u>
Date Filed	<u>4.5.07</u>
P&CA Review Date	_____
DPW&E Review Date	_____
PC Review Date	_____
PC Action	_____
M&CC Review Date	_____
M&CC Decision	_____
Decision Date	_____

In accordance with the Environmental Standards for Development Regulation
(Regulation No. 01-01)

All information requested in this application must be answered completely.

PROJECT NAME ASBURY VILLAS NORTH
 LOCATION SOUTHEAST INTERSECTION OF ASBURY DRIVE & ODAND'HALL AVE.
 PARCEL NUMBER 1 PROPERTY TAX ID 09-00843078 ZONE R-90
 MARYLAND SUBWATERSHED #: Muddy Branch Great Seneca Other _____
 # 02140202 # 0214208 # _____
 TRIBUTARY: Muddy Branch Long Draught Branch Whetstone Run Other _____

APPLICANT ASBURY METHODIST HOMES INC. TELEPHONE (301) 216-4043
 ADDRESS 201 RUSSELL AVE.; GAITHERSBURG, MD. 20877
 CONTACT PERSON MIKE RAYNOLDS TELEPHONE (301) 216-4043

OWNER ASBURY METHODIST HOMES INC. TELEPHONE (301) 216-4043
 ADDRESS 201 RUSSELL AVE.; GAITHERSBURG, MD. 20877

NATURE OF WAIVER REQUEST
 The size of the site: TOTAL = 110 ACRES
DEV. SITE = 10.54 ACRES The size of the area impacted by the waiver: Approx. 1.0 acre +/-

- Environmentally sensitive areas impacted by the waiver:
- | | | |
|--|--|---|
| <input type="checkbox"/> streams/floodplains | <input type="checkbox"/> wetlands | <input type="checkbox"/> rare/threatened/endangered/watchlist species |
| <input type="checkbox"/> headwaters | <input type="checkbox"/> wetland buffers | <input type="checkbox"/> critical habitat |
| <input checked="" type="checkbox"/> stream buffers | <input type="checkbox"/> forest | <input type="checkbox"/> erodible/unsuitable soils |
| <input type="checkbox"/> cultural resources | <input type="checkbox"/> specimen trees | <input type="checkbox"/> other _____ |

The current level of stream quality (according to the most recent stream assessment): _____

Briefly describe the nature of the waiver: TO ALLOW THREE (3) SEPARATE STORM DRAIN PIPES & OUTFALLS TO BE BUILT & MAINTAINED WITHIN THE EX. STREAM BUFFER.

Identify any potential hazards and/or downstream impacts: NO DOWNSTREAM HAZARDS OR IMPACTS ARE ANTICIPATED.

Describe the current and proposed land use of the area impacted by the waiver: STREAM & OPEN AREA.

continued on reverse side

EXHIBIT

2b

PENGAD 800-631-8888

SUBMISSION REQUIREMENTS

An application for an environmental waiver must be submitted to the City Council for review prior to site plan approval. If staff concur that a waiver would cause a minor impact, the applicant may submit a letter to the City Council requesting that the Council delegate the authority to the Planning Commission to review and grant the waiver during the site plan review process.

A written statement describing the waiver request.

Address all waiver criteria identified in Section 38 of the Environmental Standards for Development Regulation (see below).

A description of all proposed mitigation and compensation measures, including type, size, location and description of the benefits associated with the proposed enhancements.

All appropriate plans, e.g., NRI/FSD, site plan, etc.

Tree (3) copies of full size plans folded to 8½" x 11" and one (1) reduced copy that fits on 8½" x 11"

Supporting documentation, e.g., photographs, elevations, environmental studies, etc.

Fees (see fee schedule).

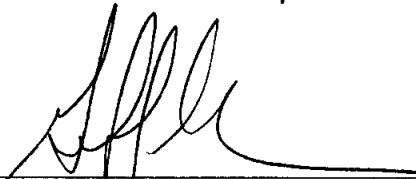
WAIVER CRITERIA

According to Section 38 of the Environmental Standards for Development Regulation, waivers will only be granted upon:

- Completion of required approvals, rulings, permits, or waivers from all appropriate State and Federal findings agencies.
- A showing of good and sufficient cause and meeting the criteria outlined in Article III of the regulation, including:
 - Reasonable alternatives are not available.
 - Encroachment/disturbance is minimized.
 - Existing sensitive areas have been avoided.
 - The proposed use is consistent with the preferred use of the buffer.
 - The plan design provides full or partial compensation for the loss of buffer function from the disturbance.
 - There is measurable improvement in the effectiveness of the SWM system if it is placed in the buffer.
 - Excessive grading would be caused by using an uphill SWM location.
 - Severely degraded conditions exist within the buffer area that could not be improved if the SWM facility is outside the buffer area.
 - Man-made structures (e.g., farm ponds) exist in the buffer that can be converted to SWM use without excessive disturbance.
- A determination that failure to grant a waiver would result in unnecessary or undue hardship to the applicant.
- A determination that the granting of the waiver will not result in increased flood heights, additional threats to public safety, extraordinary public expenses, or the creation of nuisances.
- A determination that there are no conflicts with existing local and State laws or ordinances.

I have read and complied with the submission requirements and affirm that all statements contained herein are true and correct.

Applicant's Signature: _____



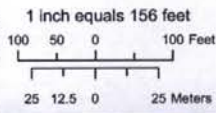
Date: _____

4/1/07

Asbury Methodist Village

Proposed Stream Restoration Project

~ 1,200 Linear Feet



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City of Gaithersburg
City Manager's Office
31 S Summit Ave
Gaithersburg, MD 20877
(301) 258-6338
www.gaithersburgmd.gov

Asbury Stream Restoration Project - 11a17.mxd - 28-June-2007 - mps

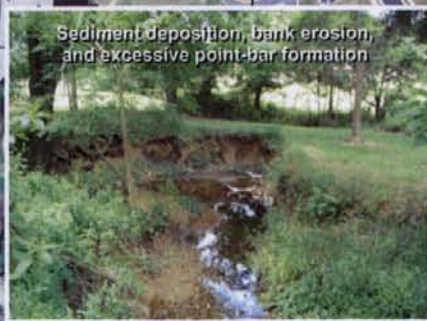


EXHIBIT
2c
PENCLD 900-531-6989