

Resolution No. 15-326Introduced: September 9, 2003Adopted: September 9, 2003

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION  
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT  
IN MONTGOMERY COUNTY

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By: County Council

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**Subject:** APPLICATION NO. G-806 FOR AMENDMENT TO THE ZONING ORDINANCE MAP,  
Robert Harris, Esquire, Jody S. Kline, Esquire and Stephen J. Orens, Esquire, Attorneys  
for Purchasers, OPINION AND RESOLUTION ON APPLICATION  
Tax Account Nos. 02-00016905; 02-00016916; 02-00022666; 02-00020725

**OPINION**

Application No. G-806, filed on December 16, 2002 by Applicants Adventist Healthcare, Inc., FFTM I Limited Partnership and King Farm Partnership, LLP, requests reclassification from the RE-1/TDR, RMX-1/TDR and I-3 Zones to the MXPB Zone of 283.5 acres of land east of Clarksburg Road (MD 121), west of I-270 and north of West Old Baltimore Road in Clarksburg, in the 2nd Election District. As required under Code § 59-D-1.11, the application was accompanied by a Development Plan with binding specifications related to land use, density, development standards and staging. Development under the MXPB Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the MXPB Zone.

The Hearing Examiner recommended approval of the application on the basis that (i) the submitted Development Plan satisfies all of the applicable requirements set forth in the Zoning Ordinance; and (ii) the proposed rezoning and development would satisfy the purposes and standards of the MXPB Zone, would be compatible with existing and planned land uses in the surrounding area, and would serve the public interest. The Montgomery County Planning Board (the "Planning Board") and its Technical Staff provided similar recommendations. The District Council agrees with these conclusions.

The Applicants seek reclassification of approximately 283.5 acres of land in Clarksburg, which will be referred to as the "subject property." The subject property comprises roughly the eastern

half of a 535-acre tract of land that has been assembled by the Applicants and a fourth party, Winchester Homes, Inc. (together, the "Property Owners"). This 535-acre area forms a triangle abutting Clarksburg Road (MD 121) to the west and north, I-270 to the east and West Old Baltimore Road to the south, and will be referred to as the "Cabin Branch Community." The Applicants propose to develop the entire Cabin Branch Community as a single planned development with residential, employment, retail and service uses. The portion of the Cabin Branch Community outside the subject property is intended to be developed under its existing RMX-1/TDR zoning.

While each of the Property Owners retains the right to proceed with the development of its property independently, the development team approached the whole of the Cabin Branch Community as a single project. As a result, all of the graphical exhibits in the record, including the Land Use Plan that is the central component of the Development Plan, cover the entire Cabin Branch Community. Moreover, the Property Owners intend to present to the Planning Board a single application for preliminary plan approval for the entire Cabin Branch Community. For ease of reference, the Cabin Branch Community as a whole will sometimes be referred to as the "site," and the 251.5 acres not included in the subject property will be referred to collectively as the "west side" of the site.

The subject property is comprised of the 127.7-acre Gosnell parcel (also known as the King Farm Limited Partnership parcel), the 13-acre Faller parcel, and the 142.8-acre Adventist HealthCare parcel, for a total of 283.5 acres. It has approximately 4,000 feet of frontage on I-270, 2,100 feet of frontage on Clarksburg Road, and 1,600 feet of frontage on West Old Baltimore Road. The property is dominated by fields in active agricultural use, bordered by hedgerows, and has several abandoned farm buildings. A stream valley for a tributary of Little Seneca Creek flows through the subject property and is partially forested. The majority of the subject property lies within the Clarksburg Special Protection Area.

The west side of the site (outside the subject property) is developed in a similar fashion, with fields in active agricultural use and a small number of abandoned farm buildings. It also contains a small property known as the Magee Property, which is the location of the Byrne-Warfield House,

designated in the *1994 Clarksburg Master Plan* as a historic site. The Property Owners have contracted to purchase the Magee Property and intend to preserve this historic site as a community amenity. A tributary of Cabin Branch Creek runs through the west side of the site. Most of the stream valley, as well as a sizeable area adjacent to it, is forested. Two small areas in the west side of the site are within the Clarksburg Special Protection Area.

The surrounding area for this application is bounded roughly by I-270 on the east, an undeveloped I-3 zoned parcel adjacent to the new Clarksburg Detention Center on the north, Ten Mile Creek on the west, and Black Hill Regional Park and the Linthicum West Realty property to the south. The surrounding area is dominated by agricultural fields to the north, west and south, classified under the RE-1/TDR Zone, and Black Hill Regional Park to the south. Scattered houses have been and are being developed along Clarksburg Road and West Old Baltimore Road in the RE-1/TDR Zone. Immediately north of the subject property are the Clarksburg Road/I-270 interchange, a rubble excavation area left over from I-270 construction, a recently built Montgomery County Detention Facility, and undeveloped land classified under the I-3 Zone. Immediately south of the Cabin Branch Community, abutting the south side of West Old Baltimore Road, is the Linthicum West Realty property, which is designated in the *1994 Clarksburg Master Plan* for residential development under the RE-1/TDR Zone. East of I-270 (outside the designated surrounding area) are the Gateway 270 Corporate Office Park and the Lockheed Martin office development.

The subject property was classified under the RR Zone (Rural Residential, now known as R-200, 20,000-square-foot minimum lot size) in the 1958 Countywide Comprehensive Zoning. It was rezoned to a combination of RE-1/TDR, RMX-1/TDR and I-3 by sectional map amendment G-710 in 1994.

The *1994 Clarksburg Master Plan* (the "Master Plan") was intended to "guide the growth of Clarksburg from a rural settlement to a transit- and pedestrian-oriented town surrounded by open space." Master Plan at 15. It divides the study area into a series of geographic areas including the "Cabin Branch Neighborhood," a 950-acre area that includes the Cabin Branch Community north of

West Old Baltimore Road, plus an additional 415 acres south of West Old Baltimore Road. See Master Plan at 40-41. The Cabin Branch Neighborhood is the only area of Clarksburg west of I-270 that the Master Plan proposes for significant residential development. The Master Plan identified several reasons to designate this area as a "mixed-use neighborhood center," including proximity to the Boyds commuter rail station and the transitway (a dedicated light rail or bus route) proposed east of I-270; access to Clarksburg Road, which has one interchange with I-270 and is planned for a second one; land ownership in several large parcels conducive to an overall planned development concept; close proximity to Black Hill Regional Park offering the opportunity for a strong neighborhood-park relationship; and extensive frontage on I-270, opposite existing high-tech uses. See Master Plan at 64. Relevant Master Plan objectives for the Cabin Branch Neighborhood are outlined below.

- Provide a mix of uses including 1,950 residential dwelling units (45 to 55 percent detached, 35 to 45 percent attached, and 10 to 20 percent multi-family), 2–2.3 million square feet of employment uses, 120,000 square feet of retail space, and public uses including places of worship, child care, a community building, a park and an elementary school.
- Encourage an employment pattern that is supportive of I-270 as a high-technology corridor, with RMX and I-3 as base zoning along I-270 and rezoning to MXPD recommended.
- Create a transit-oriented land use pattern that facilitates bus access and circulation, with a neighborhood core that is linked by bus to the proposed transitway east of I-270 and to the existing MARC station in Boyds, and that is located within one-quarter mile of as many residential units as possible.
- Maximize access to the proposed open space system by locating public uses such as a local park, an elementary school and passive open spaces adjacent to the Cabin Branch stream valley, locating residential streets adjacent to the stream

valleys on at least one side, and connecting the two central stream valleys with public open spaces.

- Provide an interconnected roadway system with site access via a widened Clarksburg Road and an extension of Newcut Road as a four-lane highway from Clarksburg Road, through a new I-270 interchange, to Mid-County Highway; West Old Baltimore Road was also described as an attractive rural road that should not be widened, but was also designated as an Arterial Highway which, if built to County standards, would require a wide corridor and widening of the roadway from the existing 20 feet to 44 feet including shoulders.
- Create a strong neighborhood focal point by concentrating public and retail uses in the same general area.
- Emphasize protection of the west fork of Cabin Branch, which has high water quality and tree cover.

The Development Plan in this case contains adequate information concerning the required elements, including site access, proposed buildings and structures, parking areas, land to be dedicated to public use, and land intended for common or quasi-public use but not intended to be in public ownership. The Land Use Plan divides the Cabin Branch Community into Areas A, B, C and D, which constitute the subject property, and Area E on the west side. While it does not specifically identify the intended use of each individual structure, the Land Use Plan identifies the type and density of land uses to be built in Areas A through D and specifies, in the tables reproduced on the next page, the maximum total density to be permitted for each type of use in the entire subject property.

The Land Use Plan includes a development program that outlines the phasing for development of structures, open spaces, vehicular and pedestrian circulation systems and recreational facilities. Pursuant to this development program, the first buildings to be constructed on the subject property are required to be office and health care facilities in Area C and office facilities in Area A. The

**Uses and Densities on Subject Property  
Excerpted from Land Use Plan, Exhibit 67(g)**

**Tables from Page 18 of HE Report**

Land Use Plan also identifies planned recreational amenities, including the stream valley buffer areas, in which no construction is to occur except for utilities, road right-of-way and stormwater management.

The Land use Plan also includes "General Notes" that provide important commitments by the Applicants, including the following:

- Note (2) restricts development in Areas A through D to the uses and densities specified in the summary tables.
- To demonstrate compliance with MXPDP requirements, notes (3) and (4) specify, for Areas A through D, maximum residential densities and minimum and maximum square footage and floor area ratio ("FAR") for employment uses.
- In compliance with the MXPDP Zone, note (7) requires at least 50 percent green area in the residential area of the subject property and 40 percent in the commercial area.
- Note (8) underscores the binding nature of the maximum densities specified in the MXPDP Yield Summary table.
- Note (9) memorializes the commitment to dedicate land for road right-of-way as required at preliminary plan review.

The Applicants have specified on the Land Use Plan additional binding elements in textual form, which were developed jointly by the Applicants, Technical Staff and the People's Counsel. Some of the binding elements apply to the west side of the site as well as to the subject property. The first binding element commits the Applicants to acquiring the same number of transferable development rights that would be required if all of the property currently classified under the RMX-1/TDR Zone were developed according to its existing zoning. Other binding elements commit the Applicants to dedicating sites for an elementary school, a local park and a recreation facility; considering trip reduction measures during preliminary plan review; creating a network of interconnected public and private streets in a grid pattern; designing streets with pedestrian-friendly elements; designing the road that leads to Black Hill Regional Park to serve as a park gateway; maintaining the rural character of West Old Baltimore Road by minimizing environmental impacts and providing generous green edges; including in the service/public uses up to 500 dwelling units for seniors or persons with disabilities; and providing on-street parking on streets with retail uses. Binding element number 5 contains a clerical error that should

be corrected, as specified on page 21 of the Hearing Examiner's Report and Recommendation, to correspond more closely to the evidence of record.

The Development Plan includes a Road Hierarchy Plan, Exhibit 47, which shows that the main roadways through the development would be First Avenue and Second Avenue, running north/south from Clarksburg Road to Newcut Road. First and Second Avenues are both numbered A-304 because they represent a reconfiguration of the Master Plan-designated Route A-304, which was recommended to be a four-lane divided highway. To better support the goal of a pedestrian- and transit-friendly development, the Applicants show A-304 as two separate, two-lane roadways that would run roughly parallel to one another. Both would be divided by medians and allow on-street parking.

The Master Plan recommended that Newcut Road be constructed as a four-lane divided highway from Clarksburg Road to Mid-County Highway, with a new interchange at I-270. Newcut Road was to serve as one of the main through points for traffic. To avoid the environmental damage of building Newcut Road through the middle of the Cabin Branch stream valley, and to avoid having a major highway pass through the development, the Applicants propose Newcut Road as a two-lane road (divided by a median) extending from West Old Baltimore Road north to the terminus of Second Avenue, where it would turn east and connect with a new I-270 interchange. Thus, traffic bound for I-270 would need to use West Old Baltimore Road to get from Clarksburg Road to the Newcut Road interchange, or drive up Clarksburg Road to its interchange with I-270 a short distance to the north. The Applicants propose to widen West Old Baltimore Road to accommodate additional traffic.

The Master Plan recommended widening Clarksburg Road to six lanes for a short distance south of its interchange with I-270, then to four lanes from there to its new intersection with Newcut Road, and to two lanes from that point south to Boyds. The Applicants propose to widen Clarksburg Road to six lanes for a short distance south of the I-270 interchange, then to four lanes from that point to Second Avenue, which is considerably north of where Newcut Road would have intersected Clarksburg Road under the Master Plan concept. The Applicants propose to taper Clarksburg Road down to two lanes immediately south of Second Avenue.



The Applicants were supported in their decisions concerning Newcut and Clarksburg Roads by Technical Staff, who testified that the environmental harm attendant to extending Newcut Road to Clarksburg Road through the Cabin Branch stream valley was too great to justify the transportation benefit. Technical Staff also stated that based on current transportation modeling, the full number of lanes recommended for Clarksburg Road in the Master Plan is not needed. See Tr. June 12 at 123-132. Staff opined that replacing the four lane recommended Route A-304 with two two-lane, pedestrian-friendly streets, consistent with a short-block grid pattern, would be valuable in attaining the Master Plan goal of integrating the employment areas into the overall Cabin Branch Community. See Staff Report, Ex. 38 at 17.

The plans for the Cabin Branch Community incorporate principles of traditional neighborhood design such as creating neighborhoods with a pedestrian scale, mixing uses horizontally and vertically, and locating both public and private services and amenities within a five-minute walk of as many residences as possible. These principles were applied in designing the interconnected road system, short blocks, buildings close to the road with parking in the rear, numerous bus stops, and a retail core area along First Avenue, within a five-minute walk for many residents. The Development Plan includes specific efforts to create physical and visual connections to the stream valleys throughout the Cabin Branch Community, including parks, trails, and open spaces between buildings. The design would employ structured parking to reduce the amount of surface parking. Where surface parking is used, the Applicants intend to incorporate bio-retention stormwater management facilities into landscaping areas. This would avoid large, unrelieved paved parking areas and at the same time contribute significantly to protecting groundwater quality and quantity.

The District Council finds that the Development Plan submitted with this application satisfies all of the applicable requirements under Code §59-D-1.61(a)-(e). Each of the required findings is addressed below.

**§59-D-1.61(a): master plan consistency.** The proposed development of the subject property is fully consistent with the uses and density indicated by the *1994 Clarksburg Master Plan*.

The Master Plan designated the subject property as part of a mixed-use neighborhood with employment, retail, public uses and residential, and the Applicants propose the same mix of uses. The potential number and types of residential units the Applicants propose on the subject property is consistent with the Master Plan's recommendations for the number and type of residential units in the Cabin Branch Neighborhood. The square footage of employment and retail uses proposed by the Applicants also is consistent with the amounts recommended in the Master Plan. Evidence related to the county capital improvements program indicates that that the proposed reclassification would not conflict with that program.

**§59-D-1.61(b): purposes, standards and regulations of the zone; safety, convenience and amenity of residents; and compatibility with adjacent development.** The purpose clause for the MXPDP Zone contains a number of goals and objectives, all of which are satisfied by this application. The District Council's findings as to each section of the purpose clause are set forth below.

**Introductory paragraph and paragraph (a): Master Plan implementation.** The proposed rezoning would allow implementation of the Master Plan recommendation to develop the subject property as part of a comprehensively planned, multi-use center. As stated by Technical Staff, "the MXPDP Zone will permit an integrated approach to design and development in which land uses are combined, densities are shared, impact on the environment is mitigated, and infrastructure is located in an efficient manner without the constraints of property [or zoning] lines." The proposed reclassification would provide the flexibility needed to allow the Property Owners to cooperate productively in creating a single, comprehensively planned mixed-use center. As a result, the subject property would be developed in a fashion more consistent with the objectives of the Master Plan than would be possible with the current split zoning.

**Paragraph (b): concept plan.** The Applicants chose not to use the concept plan option.

**Paragraph (c): higher density residential uses integrated into overall multi-use center.** The Land Use Plan includes higher-density multi-family residential uses as an integral part of the

development. Most of the multi-family uses would be within easy walking distance of the retail core, and all would be in close proximity to employment uses and other types of residential development. The system of interconnected roadways, trails and open space would strengthen the linkages between higher-density uses and lower-density residential, public parks and other recreational amenities.

Paragraph (d): internal compatibility of residential and nonresidential uses. The Land Use Plan presents a development with a high degree of internal compatibility. The density and intensity of uses decrease from the I-270 frontage to the west side of the property, allowing employment uses to provide a noise buffer for most of the residential uses while placing most of the residential units within a five-minute walk of the retail core. Residents would have easy access to commercial, recreational, employment and institutional amenities within the non-residential areas, including shopping, employment opportunities, health services, parks and other open space.

Paragraph (e): ensure compatibility with surrounding uses through higher standards of land planning and site design than under conventional zoning. The Development Plan required in the MXPDP Zone serves as an additional, more comprehensive level of review than would be required for the underlying zones. The MXPDP Zone also incorporates specific standards, particularly with regard to setbacks, that assure compatibility with adjoining uses. Moreover, the proposed reclassification would permit a comprehensive, integrated approach to developing the subject property which, by its nature, involves higher standards of land planning and site design than could be accomplished under the differing requirements of the existing zoning classifications.

Paragraph (f): open space to benefit community generally, with physical and aesthetic integration of uses and activities within the development, structured parking to minimize surface parking, and landscaping for surface parking. Open space to be provided on the subject property includes the Little Seneca stream valley, the Central Park, additional urban parks and open spaces, and trail connections. Additional open space including the Cabin Branch stream valley would be available on the west side of the site. Many of these elements would be along the edges of the subject property, making them accessible to the general community for relaxation, recreation and social activity. The grid pattern

of the roadways, the attention to maintaining open vistas of the stream valleys and links between the two main stream valleys, the location of the larger recreational amenities abutting a stream valley, and the extensive system of trails, bike paths, parks and other open spaces would result in a high degree of physical and aesthetic integration of uses and activities. The Applicants intend to incorporate on-street parking, structured parking, and extensively landscaped surface parking in the development.

Paragraph (g): comprehensive non-vehicular circulation networks and linkages among different types of uses. The Development Plan incorporates a comprehensive non-vehicular circulation network including an interconnected system of sidewalks, trails and bike paths, with short blocks in a grid pattern to encourage residents to walk within the development. This network would provide extensive linkages among the various uses and open spaces on the subject property and in the Cabin Branch Community as a whole.

Paragraph (h): efficient use of energy resources. The evidence demonstrates that the Applicants are aware of this element of the purpose clause and will explore a variety of measures to satisfy its requirements, including installing energy-efficient appliances, windows and lighting fixtures.

Paragraph (i): preserve and take the greatest possible aesthetic advantage of trees, and minimize grading. The submitted Development Plan includes preservation of higher quality forest as well as reforestation and afforestation in the stream valleys. Applicable forest conservation requirements would be satisfied on site. The comprehensive approach taken to development of the subject property and the Cabin Branch Community as a whole would allow the site design to follow the topography and minimize grading.

Final paragraph: three findings. The purpose clause states that the PD Zone may be approved if three findings are made:

- (1) the application is proper for the comprehensive and systematic development of the county;
- (2) the application is capable of accomplishing the purposes of this zone; and
- (3) the application is compatible with the general plan and applicable master plan.

As explained further in the remainder of this resolution, based on the preponderance of the evidence, the District Council concludes that the proposed reclassification is proper for the comprehensive and systematic development of the county, is capable of accomplishing the purposes of the MXP zone, and is compatible with the general plan and the applicable master plan.

The MXP Zone includes a number of standards and regulations, each of which would be satisfied by the proposed development of the subject property. These regulations and the application's compliance with them are summarized below.

59-C-7.51(a): Master Plan. Land cannot be classified under the MXP Zone unless it is recommended for mixed-use development in an approved and adopted master plan. The 175-acre portion of the subject property fronting on I-270, which corresponds roughly to the area from I-270 to First Avenue, was recommended in the Master Plan for MXP mixed-use zoning. The remainder of the subject property was recommended in the Master Plan for its current zoning classification, RMX (Residential Mixed Use).

59-C-7.51(b): Minimum area. At 283.5 acres, the subject property substantially exceeds the 20-acre minimum for the zone.

59-C-7.51(c): Adjacent and readily accessible from major highways. The subject property is located adjacent to and has access to I-270, a major limited access freeway.

59-C-7.52(a): All residential uses permitted. The proposed development would include single-family detached, single-family attached and multi-family residential dwellings, as well as housing and related facilities for senior adults or persons with disabilities. The planned development would follow closely the recommendations of the Master Plan. Locations and types of residential units proposed are shown on the Development Plan, with multi-family uses close to both commercial and lower density residential uses. Multi-family uses would be integrated in the overall fabric of the development and would contribute to the mix of uses along the main street in the development, First Avenue.

59-C-7.52(b) and (c): Commercial and Industrial. The submitted Development Plan shows the location and general types of commercial and industrial uses, as required.

The District Council's approval of the Development Plan includes approval of the locations and general types of commercial and industrial uses proposed. Retail uses would occupy roughly ten percent of the commercial floor area, well below the 20 percent limit. Industrial uses would comply with the environmental control provisions of Section 59-C-5.46.

59-C-7.52(d): Transitory use. Transitory uses are permitted; none are proposed.

59-C-7.52(e): Equipment. Any installation of rooftop-mounted antennas and related unmanned equipment will comply with §59-A-6.14, as required.

59-C-7.53(a). The maximum residential density proposed on the subject property is approximately 20 dwelling units per acre, consistent with the recommendations of the Master Plan and well below the limits set for the zone.

59-C-7.53(b). The District Council must determine whether the density applied for is appropriate, taking into consideration the master plan, the purposes of the MXPD Zone, the requirement to provide MPDUs, and county housing policy. The proposed density is well below the maximum permitted in the zone, so clearly it is not excessive. A moderate overall density is appropriate in light of the Master Plan recommendations specifying a maximum of 1,950 residential units in the entire 950-acre Cabin Branch Neighborhood, and the emphasis in the purpose clause on compatibility. A development with densities approaching the levels permitted in the MXPD Zone would have difficulty maintaining compatibility with the largely rural, low-density uses in the surrounding area. Accordingly, the District Council finds that the residential density proposed for the subject property is appropriate for the site.

59-C-7.53(c). The Master Plan recommended a comprehensively developed mixed-use center with residential and non-residential components, as proposed here. The residential density proposed on the Development Plan is consistent with the recommendations of the Master Plan.

59-C-7.54: Density of commercial/industrial development. The maximum commercial/industrial density proposed on the Development Plan is a FAR of 0.59, which is compatible with the recommendations of the Master Plan and below the limit established for the zone.

59-C-7.55: Compatibility standards. All uses must conform to the purposes of the MXPDPD Zone and must be compatible with existing or proposed uses in the surrounding area. Three threshold requirements apply, related to setbacks and height limits. The Development Plan would satisfy each of these requirements. Moreover, based on a more general consideration of compatibility, the District Council finds that the proposed development would be compatible with existing and proposed uses in the surrounding area.

The proposed development would be a significant change from the current agricultural use of the subject property, and would be a more intense form of development than the rural, low-density uses prevailing in the surrounding area. However, only small portions of the subject property abut residentially developed property, and for the most part the development facing those residences would be buffered by green space and/or roads. The largest borders of the Cabin Branch Community that abut residential uses would be in the west side of the site, where development is intended to be almost entirely low-density, single-family detached residential. The Linthicum Realty property south of the Cabin Branch Community is expected to be developed for single-family residential use, creating easy compatibility in that portion of the site. Mixed-use development of the subject property would result in employment uses along I-270 that would be much more compatible with a high-speed freeway than the existing agrarian uses. Moreover, the proposed development would implement the principal goals of the Master Plan, including focusing development in identified areas and preserving surrounding green space. Technical Staff testified that they found the proposed development to be compatible because of the layout, including setbacks, and because of the support it garnered among Clarksburg residents. For all of these reasons, based on the preponderance of the evidence, the District Council concludes that the proposed rezoning and development would be compatible with existing and proposed uses in the surrounding area.

59-C-7.56: Minimum green area and amenity requirements. A binding element of the Land Use Plan commits the Applicants to meeting the minimum green area requirements for the zone.

59-C-7.57: Public facilities and utilities. The Development Plan provides for property dedication for roadways and for the principal public facilities recommended in the Master Plan: an elementary school, a recreation center/community building, and a local park. The Applicants have represented that all utility lines would be installed underground.

59-C-7.58: Parking facilities. The Applicants have represented that they would satisfy the requirements of Chapter 59-E and that off-street surface parking areas would be carefully designed and landscaped to comply with this provision and a similar provision in the purpose clause for the zone.

In addition to the purpose and regulations of the zone, the application satisfies the requirement to provide for the maximum safety, convenience and amenity of residents. Residents would enjoy a neighborhood developed with a high level of planning and attention to convenience, making the best use of amenities. Many residences would be within a very short of walk of shopping and employment opportunities, and all would have ready access by foot, bicycle, bus or car. Residents would be able to enjoy the aesthetic benefit of the stream valleys within the Cabin Branch Community, close proximity to Black Hill Regional Park, and the view of the surrounding countryside. The extensive, efficient roadway network with its grid pattern and easy access to neighboring roadways would provide for residents' safety.

§59-D-1.61(c): safe, adequate and efficient internal vehicular and pedestrian circulation systems. The evidence supports a finding that the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate, and efficient, particularly in view of the extensive roadway improvements that the Applicants would be obligated to provide to satisfy Planning Area Transportation Review and Local Area Transportation Review requirements.

§59-D-1.61(d): preservation of natural features. The evidence supports a finding that because of the comprehensive, integrated nature of the proposed development, it would tend to prevent soil erosion, minimize grading and preserve natural vegetation and other natural features of the site considered to have the highest environmental value. The Development Plan demonstrates that the



Applicants would satisfy forest conservation requirements on-site, and the approved Preliminary Water Quality Plan demonstrates compliance with water resource protection requirements.

**§59-D-1.61(e): common area maintenance.** The Land Use Plan specifies in binding element number 13 that at site plan review, the owners of the property would enter into a Site Plan Review Agreement providing for perpetual maintenance of open space areas and other areas to be used for recreational, common or quasi-public purposes. This statement satisfies this requirement.

The District Council further determines that the proposed zoning bears sufficient relationship to the public interest to justify it. The proposed rezoning and development would be in substantial compliance with the use and density recommended in the Master Plan. The Development Plan would depart from the Master Plan's recommendations for roadway configuration because the Applicants would widen West Old Baltimore Road to serve as the main east-west through road, instead of directing the main flow of traffic through the new development on Newcut Road. The record contains no discussion of the environmental impacts of widening West Old Baltimore Road, although presumably they are less dramatic than the severe impacts of building a new four-lane roadway through a stream valley. Technical Staff and the Planning Board concluded that under today's standards and based on current traffic modeling, the benefits of extending Newcut Road as recommended in the Master Plan are clearly outweighed by the costs. Based on the preponderance of the evidence, the District Council concludes that the proposed rezoning and development would be in substantial compliance with the *Clarksburg Master Plan*.

The District Council further concludes that the proposed development would be adequately served by and would not adversely affect public facilities in the area. A community member presented anecdotal evidence that development of the roadway network as proposed by the Applicants would have adverse effects on area roadways. While frustration with traffic congestion is understandable, the Applicant presented competent, probative and substantial evidence that the proposed development would not adversely affect traffic congestion during the weekday peak periods, which is the commonly accepted measure of traffic impact in this County. To allow such evidence to be

outweighed by contentions that amount to little more than generalized concerns and unsupported allegations would be counter to the dictates of Maryland law. See *Rockville Fuel & Feed Co. v. Board of Appeals*, 257 Md. 183, 192-93 (1970); *Moseman v. County Council of Prince George's County*, 99 Md. App. 258, 265 (Ct. Spec. App. 1994).

Correspondence from Montgomery County Public Schools indicates that school capacity may not be adequate to accommodate the proposed development. However, the Planning Board bases its determination concerning school capacity on the AGP, which currently states that school capacity in the Clarksburg/Damascus school district is considered adequate. Under these circumstances, the evidence does not justify denial of the requested rezoning on the basis of school capacity.

For these reasons and because to approve the instant zoning application would aid in the accomplishment of a coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District, the application will be approved in the manner set forth below.

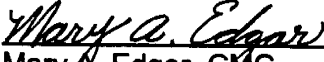
### **ACTION**

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District located in Montgomery County, Maryland approves the following resolution:

Zoning Application No. G-806, for the reclassification from the RE-1/TDR, RMX-1/TDR and I-3 Zones to the MXPB Zone of 283.5 acres of land east of Clarksburg Road (MD 121), west of I-270 and north of West Old Baltimore Road in Clarksburg, in the 2nd Election District, is hereby approved in the amount requested and the Development Plan submitted in conjunction therewith is also approved, subject to the specifications of the Land Use Plan, Ex. 67(g), which forms its central component; provided, however, that within 10 days of receipt of the District Council's approval resolution, the Applicants must submit a reproducible original and three copies of the approved Land Use Plan, Ex. 67(g), with binding element no. 5 revised to read "Area D will be designed with a public or private street connecting First Avenue (Route A-304) and Newcut Road (Route A-302) in a grid pattern

with a particular emphasis on a building line to frame Newcut Road Extended, with parking in the rear”  
for certification in accordance with §59-D-1.64 of the Zoning Ordinance.

This is a correct copy of Council action.

  
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Mary A. Edgar, CMC  
Clerk of the Council

