



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
Item No.: 14
Date: 7/19/2018

Avalon Residential: Preliminary Plan No. 120180110

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Staff Report Date: July 6, 2018

Description

Request for 50 lots for 16 attached and 34 detached dwelling units, including 16% MPDUs (8 units); located at 22821 Frederick Road, approximately 600 feet north of the intersection of Frederick Road (MD 355) and Shawnee Lane; identified as parcels P765, P770, and P801 on Tax Map EW41; 10.28 acres; TF-5 zone; 1994 *Clarksburg Master Plan & Hyattstown Special Study Area*.

Application Acceptance date: 1/17/2018

Applicant: 3 Sons Avalon, LLC

Review Basis: Chapters 19, 22A, 50, and 59



Summary

- Staff recommends approval of Preliminary Plan 120180110 with conditions.
- A Preliminary Water Quality Plan, Stormwater Management Concept Plan, and Preliminary Forest Conservation Plan ("PFCP") associated with this application have been reviewed and recommended for approval with conditions.
- The Application is consistent with the recommendations of the *1994 Clarksburg Master Plan and Hyattstown Special Study Area*.
- The Application is being reviewed for compliance with the development standards for the Townhouse Floating (TF-5) Zone as specified in the use standards.
- Site plan approval is required before record plat.

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SECTION 1 – RECOMMENDATION AND CONDITIONS

Preliminary Plan No. 120180110: Staff recommends approval of the Preliminary Plan and associated Preliminary Water Quality Plan and Preliminary Forest Conservation Plan No. 120180110, subject to the following conditions:

1. This Preliminary Plan is limited to 50 lots for 16 single-family attached and 34 single-family detached dwelling units, including a minimum of 15% MPDUs, with the final number of MPDUs to be determined at site plan.
2. The Applicant must obtain Planning Board approval of a Final Water Quality Plan in substantial conformance with the Preliminary Water Quality Plan and the binding elements of County Council Resolution No. 18-739.
3. The Applicant must comply with the following conditions for Preliminary Forest Conservation Plan No. 120180110, approved as part of this Preliminary Plan, including:
 - a. The Applicant must record a Category I Conservation Easement over all areas of forest planting as specified on the Final Forest Conservation Plan. The Category I Conservation Easement approved by the M-NCPPC Office of the General Counsel must be recorded in the Montgomery County Land Records by deed and the Liber/Folio for the easement must be referenced on the record plat.
 - b. Prior to the start of any clearing or grading on the Property, the Applicant must record a Certificate of Compliance for an offsite forest mitigation bank within the Clarksburg Special Protection Area or, at a minimum, within the Great Seneca Creek watershed, if possible, for any amount of required forest planting that cannot be met onsite. Offsite requirements may be met by purchasing from a mitigation bank elsewhere in the County if forest is unavailable for purchase within the Great Seneca Creek watershed.
4. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation (“MCDOT”) in its letter dated July 5, 2018, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
5. The Planning Board accepts the recommendations of the Maryland State Highway Administration (“MDSHA”) in its letters dated May 23, 2018 and June 26, 2018, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the

recommendations as set forth in the letters, which may be amended by MDSHA provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.

6. Prior to Certified Preliminary Plan, the Applicant must revise the Preliminary Plan and all related plan drawings to show the left turn lane on Frederick Road as required by MDSHA.
7. Prior to issuance of access permits, the Applicant must satisfy the provisions for access and improvements as required by MDSHA.
8. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Service ("MCDPS") – Water Resources Section in its Preliminary Water Quality Plan and Stormwater Management Concept letter dated June 9, 2018, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
9. The Planning Board accepts the recommendations of the MCDPS, Fire Department Access and Water Supply Section in its letter dated April 5, 2018, and hereby incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which MCDPS may amend if the amendments do not conflict with other conditions of Preliminary Plan approval.
10. The Applicant must dedicate and show on the record plat(s) the following dedications:
 - a. Sixty (60) feet from the existing pavement centerline along the Subject Property frontage for Frederick Road (MD 355).
11. The Applicant must dedicate and construct all road rights-of-way to the full width designated on the Preliminary Plan (fifty (50) feet of total right-of-way for Road 'A'). Road 'A' must include a 5-foot wide sidewalk on one side of the street and be constructed per the details designated in the Preliminary Plan.
12. Prior to recordation of the plat(s) the Applicant must satisfy MCDPS requirements to ensure the construction of a five-foot wide sidewalk along the property frontage on Frederick Road.
13. The Applicant must provide Private Road 'B', including any sidewalks, bikeways, storm drainage facilities, street trees, street lights, private utility systems, and other necessary improvements as required by either the Preliminary Plan or the subsequent Site Plan within the delineated private road area (collectively, the "Private Road"), subject to the following conditions:
 - a. The record plat must show the Private Road in a separate parcel.
 - b. The Private Road must be subjected by reference on the plat to the Declaration of Restrictive Covenant for Private Roads recorded among the Land Records of Montgomery County, Maryland in Book 54062 at Page 338, and the terms and conditions as required by the Montgomery County Code with regard to private roads set forth at §50-4.3.E et seq.
 - c. Prior to issuance of building permit, the Applicant must deliver to the Planning Department, with a copy to MCDPS, certification by a professional engineer licensed in the State of Maryland that the Private Road has been designed and the applicable building permits will provide for construction in accordance with the paving detail and structural cross-section specifications of a tertiary road (MC-2001.01) as required by the Montgomery County Road Code, as may be modified on this Preliminary Plan or a subsequent Site Plan, and that the

road has been designed for safe use including horizontal and vertical alignments for the intended target speed, adequate typical section(s) for vehicles/pedestrians/bicyclists, ADA compliance, drainage facilities, sight distances, points of access and parking, and all necessary requirements for emergency access, egress, and apparatus as required by the Montgomery County Fire Marshal.

14. The Applicant must provide Private Alleys 'A' and 'B', including any sidewalks, bikeways, storm drainage facilities, street trees, street lights, private utility systems, and other necessary improvements as required by either the Preliminary Plan or the subsequent Site Plan within the delineated area (collectively, the "Private Alleys"), subject to the following conditions:
 - a. The Private Alleys must be shown on their own parcels on the record plat and built to the structural standards of a public tertiary road standard (MC-2001.01) as required by the Montgomery County Road Code. Prior to issuance of building permit, the Applicant must deliver to the Planning Department, with a copy to MCDPS, certification by a professional engineer licensed in the State of Maryland that the Private Alleys have been designed and the applicable permits will provide for construction in accordance with the structural standards noted above (MC-2001.01) and the cross-section specifications included on the plans.
 - b. The record plat must reflect common ingress/egress and utility easements over all alleys.
15. Prior to record plat, the Applicant must record in the Land Records of Montgomery County a covenant to provide for a future inter-parcel road, bike, pedestrian, and infrastructure connection for public use between and across the outlot shown on the Preliminary Plan and Parcel P660 to the north of the Subject Property, if such a connection is required by the Planning Board in its review of the future redevelopment of Parcel P660. The covenant must be in a form approved by MCDOT and the M-NCPPC Office of the General Counsel.
16. The Applicant must provide a pedestrian connection through open space parcel 'F' as shown on the Certified Preliminary Plan between Frederick Road and Private Road 'B.'
17. The record plat must show necessary easements.
18. The record plat must reflect all areas under Homeowners Association ownership and specifically identify stormwater management parcels.
19. The record plat must reference the Common Open Space Covenant recorded at Liber 28045 Folio 578 ("Covenant"). The Applicant must provide verification to Staff prior to release of the final building permit that the Applicant's recorded HOA Documents incorporate the Covenant by reference.
20. The Applicant must comply with binding elements of County Council Resolution No. 18-739 approving Local Map Amendment H-115.
21. The Adequate Public Facility ("APF") review for the Preliminary Plan will remain valid for sixty-one (61) months from the date of mailing of this Planning Board Resolution.
22. The certified Preliminary Plan must contain the following note:

Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of site plan approval. Please refer

to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot.

23. At the time of site plan submittal, the Applicant must provide a noise analysis for exterior and interior noise levels prepared by an engineer specializing in acoustics to show that noise levels conform to the 1983 *Staff Guidelines for the Consideration of Transportation Noise Impacts in Land Use Planning and Development*. Any private outdoor space found to be in excess of the applicable noise standard may require attenuation measures to be shown on the site plan.
24. No clearing or grading of the site, or recording of plats prior to certified site plan approval.
25. Final approval of the number and location of dwelling units, on-site parking, site circulation, sidewalks, and bike paths will be determined at site plan.
26. In the event that a subsequent site plan approval substantially modifies the subdivision shown on the approved Preliminary Plan with respect to lot or right-of-way configuration, the Applicant must obtain approval of a Preliminary Plan amendment prior to certification of the site plan.

SECTION 2 – PROPERTY LOCATION AND DESCRIPTION

Site Location

The subject property is identified as parcels P765, P770, and P801 on Tax Map EW41, and is located at 22821 Frederick Road, approximately 600 feet north of the intersection of Frederick Road (MD 355) and Shawnee Lane ("Subject Property" or "Property") (Figure 1) in the area covered by the 1994 *Clarksburg Master Plan & Hyattstown Special Study Area* ("Master Plan"). The 10.28-acre Property has approximately 750 feet of frontage on Frederick Road.



Figure 1. Vicinity map of the Property.

Site Vicinity

The Subject Property is zoned TF-5 (Townhouse Floating-5). The predominant use in the neighborhood is single-family detached homes. Institutional uses include a small church across the street from the Property and Clarksburg High School to the south of the Property across Frederick Road. The neighboring properties on all sides of the Property are zoned R-200 (Figure 2). Just to the northwest across Frederick Road is the unbuilt Dowden's Station subdivision, which is zoned PD-4 and has been approved for 105 residential units (21 single-family and 84 townhouse units).

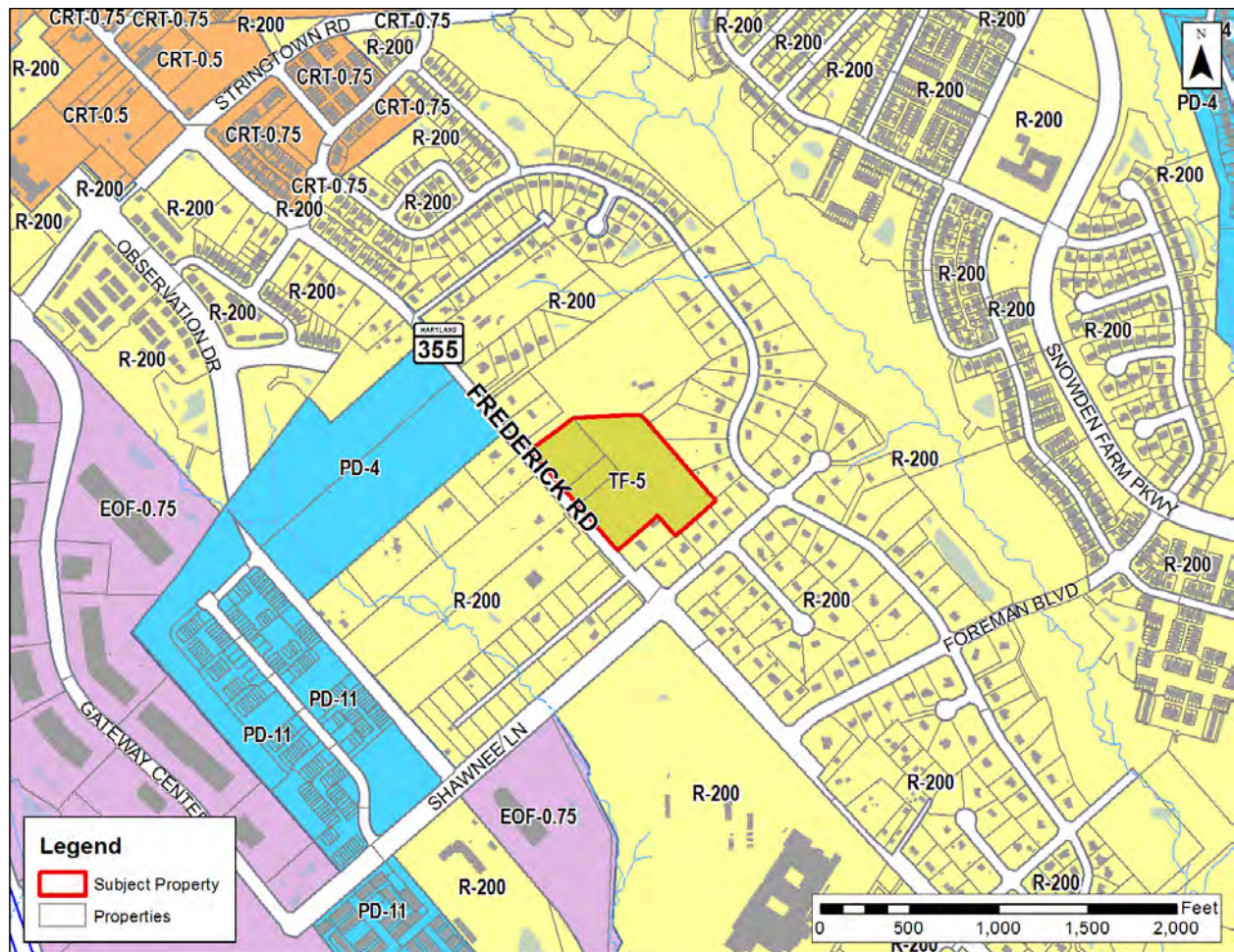


Figure 2. Zoning map. The Subject Property is in the Townhouse Floating “TF-5” zone. The unbuilt Dowden’s Station development (105 residential units) is located in the PD-4 zone just to the northwest of the Property.

Site Description

The Property is currently undeveloped except for an old paved driveway for a home which stood near the center of the Property (Figure 3). The topography is gently sloping, from an elevation of 622 feet in the north to 562 feet at its lowest point along the southern boundary. The Property is within the Clarksburg Special Protection Area (SPA). There are no streams, steep slopes, highly erodible soils, or 100-year floodplains on the Property. The Property contains approximately two acres of forest and there are five specimen trees (≥ 30 inches Diameter at Breast Height (DBH)) on or adjacent to the Property.



Figure 3. 2017 aerial view of Subject Property.

History

The Board of Appeals approved Special Exception S-2685 on October 25, 2007 to permit a private educational institution on the Property (the “Avalon School”). One condition of approval of the Special Exception required that the applicant obtain approval of a preliminary plan of subdivision. The applicant submitted a preliminary plan application in 2006 (plan no. 120070470), but the plan never proceeded to the Planning Board for consideration and was officially withdrawn in 2010. The Special Exception was revoked in 2014 after being declared invalid for lack of implementation.

The Montgomery County Zoning Hearing Examiner recommended approval of Local Map Amendment (LMA) H-115 and its associated Floating Zone Plan (Attachment A) on January 30, 2017. The County Council, sitting as the District Council, approved H-115 on February 28, 2017 (Resolution 18-739) (Attachment B). LMA H-115 found the Property to be suitable for up to 50 dwelling units with the same mix of attached and detached units proposed under this application.

SECTION 3 – PROPOSAL

Preliminary Plan Application No. 120180110, Avalon Residential (“Application” or “Preliminary Plan”) proposes to create 50 lots for 34 single-family detached units and 16 single-family attached (townhouse)

units. The Preliminary Plan (Attachment D) utilizes the optional method of development using Moderately Priced Dwelling Units (MPDUs). The final density of 4.87 units per acre was established with Floating Zone Plan H-115. By providing at least 15% of the units as MPDUs, the Applicant received a 22% density bonus on top of the maximum allowed density in the zone, which was established at four units per acre by the Master Plan, giving a maximum total density of 4.88 units per acre. As such, the applicant is providing 8 MPDU townhouses in the development, or 16% of the total number of units.

The Preliminary Plan also proposes several parcels for stormwater management, forest conservation, and open space, and there is one outlot to accommodate a future inter-parcel road connection to the property to the north of the Subject Property should that property redevelop with more intensity.

The Applicant is dedicating right-of-way along the Property's Frederick Road frontage as well as the right-of-way for the public street that will serve the Property. See Figure 4 for the proposed layout.

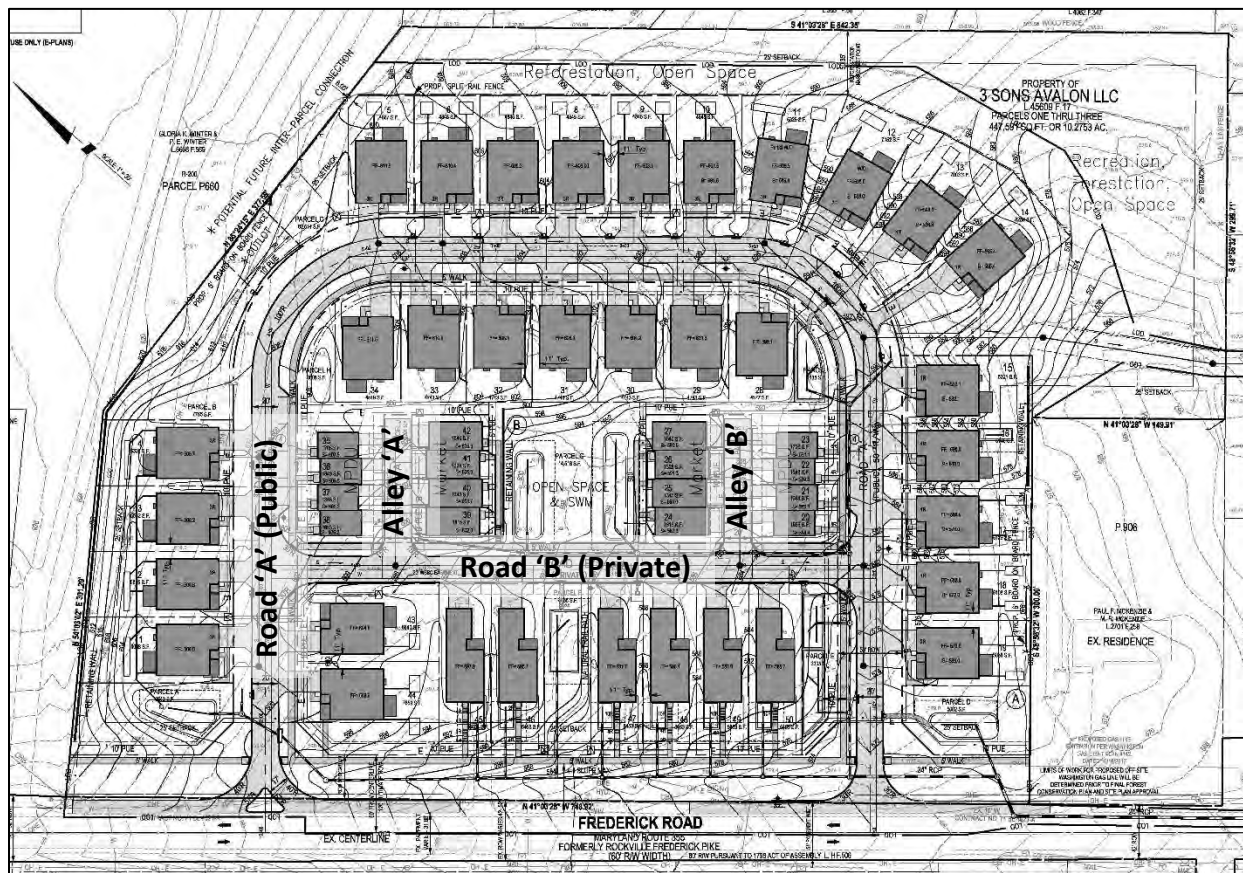


Figure 4. Preliminary Plan detail.

The Preliminary Plan places only single-family detached units around the perimeter of the Property; the townhouses and some additional detached units are placed in the interior.

The Subject Property is served by a U-shaped public road (Road 'A') with two access points on Frederick Road. The Applicant is providing shoulder improvements and a left turn lane along MD 355 to serve the site as approved by MDSHA (Attachments G1 and G2). The northern access point is limited to a right-in/right-out turn. A private road (Road 'B') and two private alleys (Alleys 'A' and 'B') will serve the

interior units: the private road serves the properties facing Frederick Road and provides access to the two alleys, which serve the driveways and garages of the rear-loaded townhouse units.

The Applicant is constructing five-foot-wide concrete sidewalks along the entire site frontage on Frederick Road and on one side only of Roads 'A' and 'B'. The Applicant is providing a path connection from the sidewalk on Frederick Road to the common open space in the center of the Property. The Property will be served by public water and sewer, with a new sewer connection to be constructed through an easement on a neighboring property and along Shawnee Lane to connect to the existing system near the intersection of Timber Creek Lane and Shawnee Lane.

Stormwater management goals are being met via numerous drywells, bioswales, and microbio retention facilities. Because the Property is within the Clarksburg Special Protection Area, the Applicant agreed to a 35% impervious surface area goal. At the time of rezoning, the project was estimated to yield 34.5% imperviousness. However, the Preliminary Plan proposes just over 36% imperviousness due to the shoulder improvements along Frederick Road required by MDSHA and will slightly increase with the addition of the left turn lane. (The Applicant notes that the total imperviousness amount shown on the plan is a conservative measurement that includes optional front porches, rear decks/additions, and fireplaces on most units, which may or may not be purchased by future homeowners.)

As part of the requirements of the Forest Conservation Law and to provide screening from the properties behind the development, the Applicant is also providing a large area of afforestation behind the single-family houses at the back (northeast) of the Property. Additional afforestation/reforestation requirements will be mitigated offsite. As required by the Floating Zone Plan, the Preliminary Plan also includes two fences along the site boundary to provide privacy for two of the neighboring properties.

The Applicant has also included an outlet to be used to create an inter-parcel connection with the property to the north of the site (P660) should that property ever redevelop. The Applicant will either retain ownership of the outlet or will convey it to the HOA and will include language on the record plat to ensure a future inter-parcel road connection for a road, sidewalk(s), and any other necessary infrastructure at such time as the neighboring property redevelops. The note on the record plat will also inform future residents of this subdivision that a road connection may be constructed in the future.

SECTION 4 – PREVIOUS APPROVALS

The approved Floating Zone Plan from Local Map Amendment H-115 is shown in Figure 5 and in Attachment A. The binding elements of the plan are as follows:

1. Development may not exceed 50 dwelling units.
2. To ensure compatibility with the surrounding neighborhood, only single-family detached units may be constructed around the perimeter of the site, as depicted on the Floating Zone Plan. This includes units separated from the site boundary by stormwater management, forest, or other buffers.
3. Setback from site boundary is a minimum of 25 feet.
4. The maximum building height is 40 feet.
5. To minimize impervious surfaces on the property, development of the property should pursue an imperviousness goal of 35 percent or less of the tract area as calculated using the *Environmental Guidelines: Guidelines for Environmental Management of Development in Montgomery County, January 2000*.

6. Board-on-board fencing of at least 6 feet in height shall be provided along portions of the site's northern and southern boundaries as depicted on the floating zone plan.

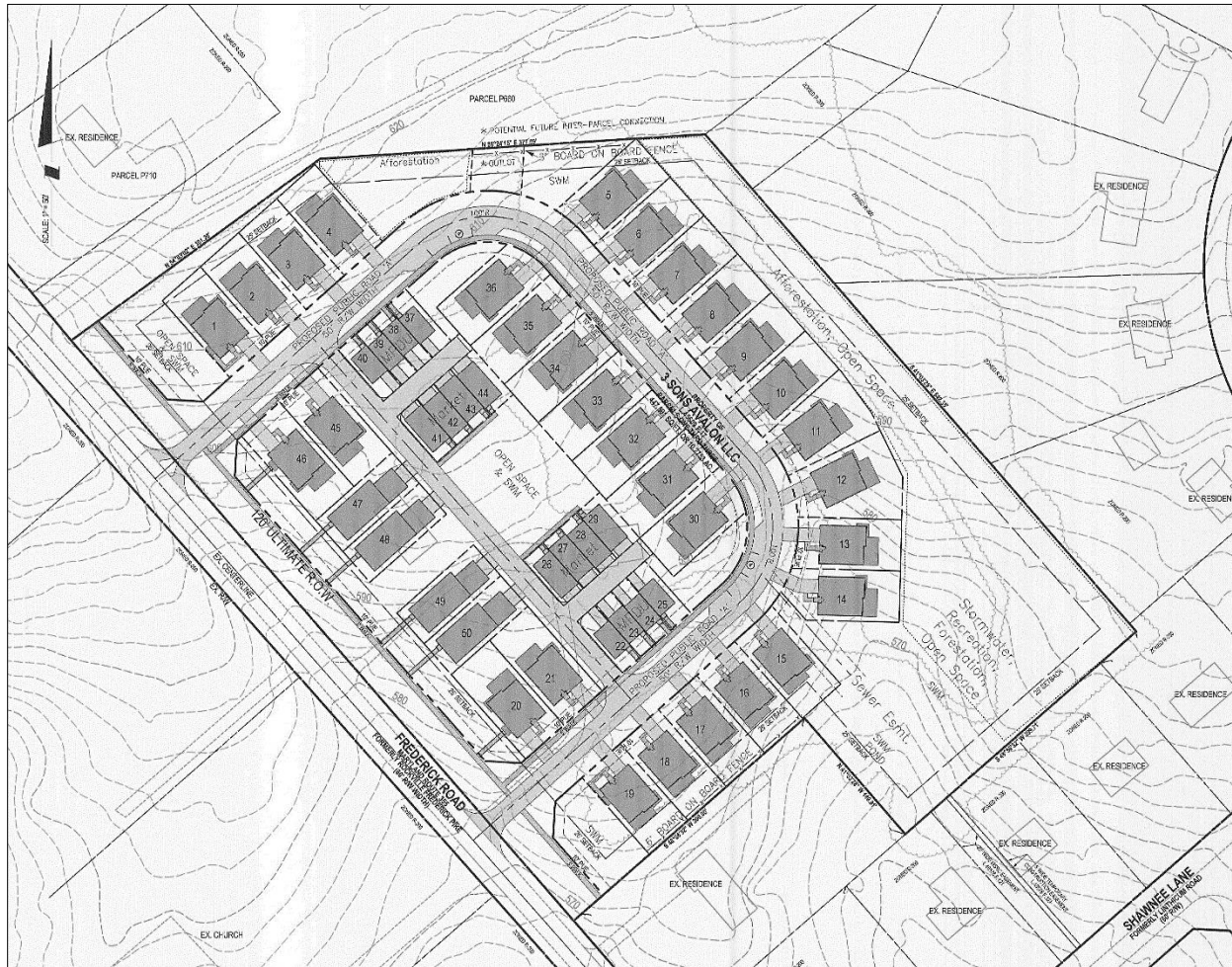


Figure 5. Approved Floating Zone Plan H-115.

The Application remains substantially unchanged from what was approved by the District Council. As conditioned, the Preliminary Plan will comply with the conditions of the LMA approval.

SECTION 5 - ANALYSIS AND FINDINGS

Section 50.4.2.D. of Montgomery County Code Chapter 50: Subdivision of Land describes the required findings for a preliminary plan, including subdivision layout, master plan compliance, adequate public facilities, and Forest Conservation Law requirements, as follows:

1. *The layout of the subdivision, including size, width, shape, orientation and diversity of lots, and location and design of roads is appropriate for the subdivision given its location and the type of development or use contemplated and the applicable requirements of Chapter 59*

- a. The block design is appropriate for the development or use contemplated

The blocks are well-designed given the size and shape of the Property. The maximum block width is about 450 feet (well under the 1,600-foot maximum), and new public Road 'A' is designed to create a second tier of lots at the back of the site as required. Private Road 'B' provides for another block with two tiers of lots (one of single-family homes, the other of the townhouses). Private Road 'B' also creates a single tier of lots along MD 355 in order to provide rear-loaded units along that road to minimize new curb cuts along MD 355. The applicant will also provide a mid-block cut-through path to provide pedestrian access from MD 355 to the open space at the center of the site; this connection will help break up the block and make it easier for pedestrians to access the open space. All proposed blocks are appropriately designed for the development.

- b. The lot design is appropriate for the development or use contemplated

Section 5.2.5.C. of the Zoning Code (Residential Floating Zones: Development Standards) stipulates that minimum lot sizes are established by the site plan approval process, although the Floating Zone Plan did establish a 25-foot setback from the site boundary. The Applicant has provided lots that allow for this 25-foot setback. Since the Zoning Code does not specify which development standards apply to this site, in its staff report for Local Map Amendment H-115 Staff recommended using the standards of the Townhouse Low Density (TLD) when reviewing the preliminary and site plans. The relevant standards from this zone are shown in Table 1.

Table 1. 59.4.4.11.C. TLD Zone, Optional Method Development Standards

Development Standard	Detached House	Townhouse
Lot area (min.)	3,000 SF	800 SF
Lot width at front building line	Determined at site plan	
Lot width at front lot line	15'	14'
Frontage on street or open space	Required	
Coverage (max)	60%	n/a
Setbacks:		
Front (from public street)	10'	10'
Front (from private street or open space)	4'	4'
Side street	10'	5'
Side or rear	Determined at site plan	
Side or rear setback, abutting property not included in application	Equal to required setback for a detached house building type in the abutting zone under standards method	
Rear (alley)	4'	4'
Height (principal building)	40'	40'

The smallest proposed lot for a detached house in the Preliminary Plan is over 4,500 SF, and the smallest proposed townhouse lot is over 1,300 SF. The lot width at the front lot line is typically 40-50 feet for the detached houses and 20-27 feet for the townhouses. All units front on a street or open space and all are set back at least 10 feet from a public street or at least 4 feet from open space. The rear setback for units that back to alleys is over the required 4 feet. A binding condition of the Floating Zone Plan caps the height of all units at 40 feet. Other

standards are to be established at site plan, but all lots seem reasonably designed to accommodate the proposed houses on those sites.

The lots are also appropriately shaped and oriented for the proposed houses. Side lot lines of interior lots are aligned perpendicular to the road line or radial to a curved road line to the extent possible. The through lots are necessary to provide rear access to the houses fronting on MD 355 to eliminate individual driveways along that road. The proposed lots meet the requirements of Chapter 50 of the Montgomery County Code and are appropriate for the proposed housing types.

- c. The Preliminary Plan provides for required public sites and adequate open areas

Master Planned Sites

There are no master-planned sites on the Property.

Local Recreation

The Applicant has provided a central open space area and additional areas of open space scattered around the site where recreational facilities could be located. The Floating Zone Plan requires 10% common open space; the Applicant is providing nearly 30% open space. A minimum of 50% of the required common open space must be in one contiguous area or only separated by a residential street; the Applicant has provided two spaces in the development that provide the minimum required common open space. The specific details and placement of recreational facilities will be determined at site plan, but the Preliminary Plan does provide adequate space to accommodate recreational uses.

Transportation and Utilities

The Applicant is providing space for all required public and private roads, other internal circulation (sidewalks and alleys), and is providing all necessary easements for stormwater management facilities and public utilities.

Public Use

The Applicant does not propose any dedication of land to public use other than the MD 355 frontage and Public Road 'A.' The Applicant is proposing an outlot that may be used to provide public access to an adjoining parcel should it be necessary at the time that parcel redevelops.

Reservation

Staff does not foresee the need to place into reservation any land for future public uses other than to create the outlot for a future inter parcel road connection.

- d. The Lot(s) and Use comply with the basic requirements of Chapter 59

The lots were reviewed for compliance with the dimensional requirements for the TF-5 zone as specified in the Zoning Ordinance and in the approved Floating Zone Plan. The lots as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. A summary of this review is included in Table 2.

Table 2. Development Standards in the TF-5 Zone/approved Floating Zone Plan (LMA H-115) and Applicant's proposal

Development Standard	Required/Allowed	Proposed/Provided
Gross Tract Area	10.28 acres	10.28 acres
Maximum Allowed Density	4.87 DU/acre (with bonus density) [50 units]	4.87 DU/acre (with bonus density) [50 units]
Unit Types		
Detached house	N/A	34
Townhouse	N/A	16
Total Units	50	50
MPDUs	8 DUs	8 townhouse units
Setback from Site Boundary	25 ft.	25 ft.
Maximum Building Height	40 ft.	40 ft.
Min. Lot Area and Lot Width		TBD at Site Plan
Parking		
Market Rate Units	2 spaces/lot	84 spaces
MPDUs	1 space/lot	16 spaces (2 spaces/lot)*
Visitor	8 spaces	8 spaces
Total Parking Spaces	100 spaces	108 spaces
Common Open Space (Min.) Percent of Usable Area	10% (1.03 acres)	29.79% (3.06 acres)

*MPDUs contain one parking spot in a garage and one parking spot in the driveway; spaces are tandem.

The maximum allowed density established by the Floating Zone Plan was based on Master Plan recommendations of up to 4 units per acre and on the provision of 15% MPDUs, which allows for a density bonus of 22% under Chapter 25A. The Applicant is proposing a minimum of 15% MPDUs as conditioned, and therefore they are allowed the maximum 22% density bonus, giving the maximum allowed density of 4.88 units per acre. Multiplying this density by the gross tract area (10.2753 acres) yields 50 dwelling units, or 4.87 units per acre.

2. *The Preliminary Plan substantially conforms to the Master Plan or Urban Renewal Plan*

The Hearing Examiner, as well as the Planning Board, found that LMA H-115 substantially conformed with the *1994 Clarksburg Master Plan and Hyattstown Special Study Area* ("Master Plan"). The proposed Preliminary Plan does not include any substantial changes to the lot configuration that was included in the Floating Zone Plan (FZP) approved with the map amendment, and so remains in substantial conformance with the Master Plan.

As discussed at the time of the Floating Zone Plan review, the Master Plan does not make specific recommendations for the Subject Property, but as noted below, makes general land use and zoning recommendations for the area in which the Property is located.

The Master Plan places the Property in the Transit Corridor District (Figure 6). The first of the relevant plan objectives for the Transit Corridor District is to “continue the present residential character along MD 355.”

The Applicant’s proposal meets the objective of continuing the residential character along MD 355 that was present in 1994 when the Master Plan was approved. As stated in the Master Plan, the Transit Corridor District “includes properties fronting MD 355 which have developed over many decades in accord with traditional patterns found elsewhere in the ‘Up-County’: single-family detached lots fronting the road. The most significant planning challenge here is to maintain and continue this residential character while addressing the need for increased traffic capacity along MD 355” (p. 54).

When the Floating Zone Plan was approved, the Applicant had shown four of the single-family detached units along Frederick Road with their sides oriented toward the road but with architectural treatments to make it appear that their front doors were facing Frederick Road to continue the present residential character along the road. As stated in the Zoning Hearing Examiner’s report on H-115 (Attachment C):

[The Floating Zone Plan] maintains the existing character of the area by having single-family detached homes face Md. Rte. 355. Staff concluded that the detached homes are “reasonably well spaced, and set back from the road a distance similar to other houses in the corridor.” The higher density townhomes are located in the interior of the site. Mr. Ager [David Ager, a witness called by Mr. Soltesz] agreed, testifying that the frontage of single-family detached homes both complied with the Master Plan and made the development more compatible with the existing neighborhood.

Similarly, the District Council found the development meets the master plan objective in its resolution (18-739):

It maintains the existing character of the area by having single-family detached homes face, or appear to face, Frederick Road.

The District Council also addressed Necessary Finding 7.2.1.E.2.d., namely:

- *Be compatible with existing and approved adjacent development.*

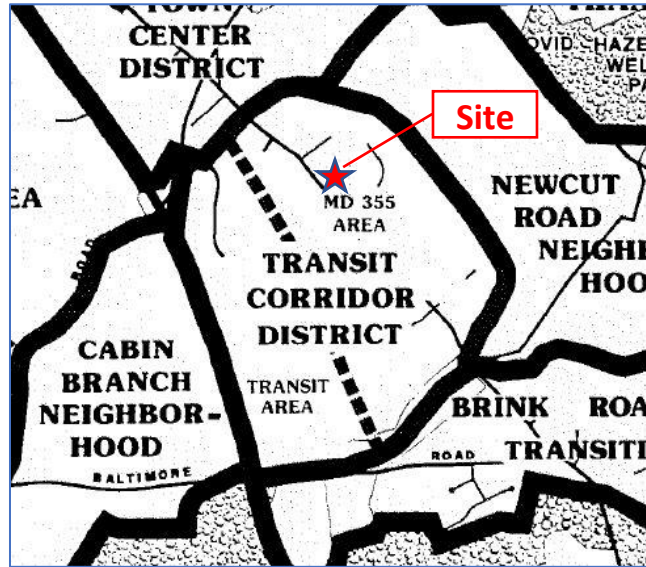


Figure 6. The location of the site within the Transit Corridor District in the Master Plan.

The District Council found that:

The character of the surrounding area is residential, consisting mostly of single-family detached homes. The proposed development is compatible with the surrounding area because single-family detached homes are located on the perimeter of the site, which is a binding element of the FZP. Homes located along Frederick Road will either front the road or will be made to appear as if they front the road.

The Preliminary Plan has reconfigured units along Frederick Road so that only three houses now have their sides oriented towards the road (lots 1, 19, and 44). Preliminary plans do not determine the orientation of houses, so at the time of site plan approval, the necessary treatments for these units to face or appear to face MD 355 will be further reviewed and analyzed.

Other relevant Master Plan objectives identified by the District Council is the recommended residential density of between 2 and 4 units per acre, the implementation of a “greenway” (a series of bike and pedestrian connections throughout the area), and the diversification of housing types through a recommended mix of 5-20% multifamily, 30-40% attached houses, and 50-60% detached houses.

In addition to maintaining the residential character along MD 355 as discussed above, the District Council found that the proposed development meets the other Master Plan objectives as follows:

- *The proposed base density of 4.0 dwelling units per acre is within the range recommended by the Master Plan. The Plan instructs that bonus density for MPDUs should be added to the base density, as it is in this case.*
- *While there are presently no direct connections to the Frederick Road bike pathway, the Applicant will provide a sidewalk along Frederick Road to support a future connection.*
- *The proposed development implements the housing mix that the Master Plan recommends for the MD 355 District. There are no other townhomes within the District except for those in the recently approved Dowden’s Station development. [This plan] will add an additional 16 townhomes.*

The Preliminary Plan substantially conforms to the recommendations within the 1994 *Clarksburg Master Plan & Hyattstown Special Study Area* (“Master Plan”).

3. *Public Facilities will be adequate to support and service the area of the subdivision*

a. Roads and Other Transportation Facilities

Transportation access is adequate to serve the proposed development by this Preliminary Plan. The Subject Property has frontage on one public road (Frederick Road/MD 355) and proposes a network of public and private streets and alleys to serve the interior of the project.

Master Planned Improvements

Frederick Road (MD 355) is a Master Planned Arterial Road with Planned Bus Rapid Transit (BRT) (A-251). It is master planned with a minimum 120-foot right-of-way and is envisioned to be a four-lane divided roadway in the future. In both the 2005 Countywide Bikeways Functional Master Plan and our Draft 2018 Bicycle Master Plan, Frederick Road is also designated to have a side path on the west side, opposite the Subject Property. The Preliminary Plan is providing the

necessary dedication to provide 60 feet from the centerline of Frederick Road across the entire Property frontage and is also providing a five-foot wide sidewalk along the full frontage.

Internal Streets

The Applicant is proposing to create a modified public secondary residential street that loops from the southern end of the property at the south access point to the northern end of the property at the north access point (Public Road 'A').

Design Exceptions

The Applicant requests a design exception to provide a 50-foot right-of-way for this road, a modification from the 60-foot right-of-way required of standard secondary residential streets (design standard MC-2002.02). They also propose two 10-foot travel lanes and an eight-foot parking lane in two sections versus the standard of an 11.5-foot travel lane, a 10-foot travel lane, and an 8-foot parking lane. The road has also been designed with a sidewalk on only one side of the street instead of on both sides. The two sections of parking lane on the loop road provides 8 on-street parking spaces for guests. The Applicant's rationale for the design exceptions is included in Attachment E.

In its letter dated July 5, 2018 (Attachment H), MCDOT points out that the Applicant will need a separate design exception for the portion of the loop road that does not include a parking lane since this is an exception to a different design standard (design standard MC-2002.01). The Applicant is proposing two 10-foot travel lanes within a 50-foot right-of-way with a sidewalk on one side of the street versus the standard's requirement of two 13-foot travel lanes within a 60-foot right-of-way with sidewalks on both sides of the street.

MCDOT recommended approval to the requested design exceptions.

Section 50.4.2.E.2.a.i of the Subdivision Code "allows the Planning Board to approve a narrower than standard road right-of-way if it meets minimum fire access requirements and the Board finds that a narrower right-of-way is environmentally preferable, improves compatibility with adjoining properties, or allows better use of the tract under consideration." The Board must consider the recommendations of MCDOT or other review agencies, the amount of traffic expected, the maximum road right-of-way required, and the increased traffic, travel lane, and right-of-way requirements that would be created by maximum use and development of land using the road. Staff agrees with MCDOT's recommendations because the narrower right-of-way is environmentally preferable since it reduces site imperviousness and the reduced right-of-way allows for better use of the tract under consideration. The modified design standard can adequately accommodate the expected amount of traffic on the road.

The Applicant also proposes a 100-foot centerline radius at the two turns in the loop road. The minimum centerline radius allowed on a secondary road is 150 feet. According to Section 49.32.a:

If the Planning Board, in approving a subdivision or site plan, finds that a waiver from any applicable design standard is necessary to promote context-sensitive design of a specific road, the Executive or the Executive's designee must adopt the Board's recommendation unless the Executive or the Executive's designee notifies the Board why approving the waiver would significantly impair public safety.

The Applicant had originally proposed roads using a tertiary street standard, which allows a 100-foot centerline radius, but changed their request to a secondary street standard at the request of MCDOT because no tertiary street standards include parking. Staff believes that the reduced centerline radius helps achieve a better lot layout and can provide additional traffic calming and recommends approval of the reduced radius.

Justification for Private Road

The Applicant is proposing a private road that will parallel MD 355 and provide access to the six houses fronting Frederick Road and the internal alleys that provide access to the townhouses (Private Road 'B'). Per section 50.4.3.E.4.b of the Subdivision Code, an applicant must provide a list of proposed design elements that do not meet public road standards and justify why those design elements are necessary for the proposed development (Attachment F). The Applicant has requested the following revisions to the public road design elements:

- Reduced right-of-way width (32 feet instead of 44 feet);
- Revised cross slope (graded at a cross slope of 3% with no crown); and
- A sidewalk on only one side of the road.

The *Environmental Guidelines* recommend several methods to reduce impervious area, including narrower streets and providing sidewalks only on one side of the street. The reduced right-of-way width and provision of sidewalks with green panels on only one side of the street reduces impervious area by reducing driveway lengths and eliminating sidewalks on one side and allow for more area of the Property to be dedicated to open space, green area, and stormwater management. The revised cross slope better accommodates stormwater flow within the site based on necessary grading of the overall Property.

The sidewalk along the private road also creates a pedestrian loop with Public Road 'A' within the development. The roadway will be built to MCDOT standards and construction specifications with respect to surface depths, structural design, alignments, intersection spacing, driveway locations, parking, lighting, landscaping, utilities, and turning radii. Furthermore, the private road will not be discernable to the public as different from the public street that it connects to and will function properly for safe vehicular and pedestrian traffic and emergency access.

The Applicant has also proposed two private alleys off of Private Road 'B' to serve the rear-loaded townhouses.

Justification of Curbs and Gutters

The Applicant has proposed curbs and gutters along the roads and alleys shown on the Preliminary Plan. Chapter 49, Article 3 (Streets and Roads, Road Design and Construction Code), Section 33, Road Construction Requirements, subsection (e)(1)(C) requires, for lots fronting on a public road, that the Applicant install sidewalks, master-planned bikeways, ramps, curbs, and gutters, except any sidewalk in an environmentally sensitive area with limits on the amounts of impervious surface allowed, if the Planning Board finds that a sidewalk is unnecessary for pedestrian movement. The Property is in an SPA, an environmentally sensitive area, and therefore this subsection applies.

The Applicant is installing all required items but has only proposed sidewalks on one side of the streets as a way of reducing imperviousness. Staff feels that having a sidewalk on both sides of the street is unnecessary for pedestrian movement. Having only one sidewalk along the roads

still provides a walking loop for residents of the neighborhood and a convenient pedestrian connection to Frederick Road, and there are currently no external pedestrian connections to bring additional sidewalk users from outside the development.

Subsection (l)(1)(A) of Section 33 prohibits the installation of any curb or gutter in any portion of a road that is in an environmentally sensitive watershed area. However, subsection (l)(2) permits the Director of Permitting Services to allow a person to install curbs and gutters in a portion of a road located in an environmentally sensitive area *after giving the Planning Board a reasonable opportunity to comment, if:*

- (A) installing curbs and gutters will not significantly degrade water quality in the area;*
- (B) curbs and gutters are necessary for vehicular or pedestrian safety or the proper grading or maintenance of the road, or to reduce the environmental impact of the road on any park, forest, or wetland; and*
- (C) a preliminary subdivision plan or site plan approved by the Planning Board for the land abutting the portion of the road where curbs and gutters may be installed expressly permits the curbs and gutters to be installed, if either plan is required for the land in question.*

The Applicant has obtained approval for a Preliminary Water Quality Plan, which includes curbs and gutters on the streets. The approval of the PWQP indicates that the water quality is still adequate with the curbs and gutters and will not significantly degrade water quality in the area.

Curbs and gutters provide vertical separation between pedestrians and vehicles, and with the addition of a tree panel and street trees, provide the necessary safety in the pedestrian realm for this project. Furthermore, the proposed closed-section road allows for shortened driveway lengths to reduce imperviousness when compared to an open section road. And even though the Applicant has proposed curbs and gutters, a good portion of the proposed road includes bioswales behind the curb (fed by curb cuts) and the remainder is treated by micro bioretention measures (fed by curb cuts), thereby meeting the intent of the requirement for an open section road. Staff supports the use of curbs and gutters shown on the Preliminary Plan.

Other Improvements

The Applicant, in coordination with SHA, will provide the required access improvements to Frederick Road to enable safe movements in and out of the Subject Property. Based on the May 23, 2018 letter from SHA (Attachment G1), the applicant is required to provide shoulder improvements prior to and after each access point in lieu of full or partial acceleration/deceleration lanes. On June 26, 2018, Staff received a second letter from SHA that includes a requirement of a left turn lane for southbound MD 355 at the Property's southern access point (Attachment G2). This letter arrived too close to the date of this report to fully consider at the time of preliminary plan review and will be more fully considered at the time of site plan review. This left turn lane will not impact the design of the neighborhood, but does increase impervious surfaces. Staff supports the addition of a left turn lane given the volumes of traffic on MD 355 and projected peak hour evening turning movements into the development. As a condition of approval, the Applicant must revise all necessary drawings to reflect the required left-turn lane prior to Certified Preliminary Plan.

Additionally, given the additional density added to this project during the rezoning case, Planning Staff asked the Applicant to work with adjacent property owners to the south (Parcel

906) to provide sidewalk access to the nearby bus stop 300 feet to the south at Shawnee Lane and MD 355. The owners of Parcel 906 have not dedicated right-of-way to allow for construction of the sidewalk in a safe location and, according to the Applicant, are not interested in providing an access easement over their property for a sidewalk to the nearby bus stop.

b. Local Area Transportation Review (LATR)

The Preliminary Plan was reviewed using the 2016-2020 Subdivision Staging Policy and associated 2017 Local Area Transportation Review (LATR) Guidelines. The project would generate 51 person trips during the AM weekday peak period and 65 person trips during the PM weekday peak period based on the *ITE Trip Generation Manual*, 9th Edition and adjusted for the Clarksburg policy area. Because the project generated 50 or more person trips, a full traffic study was required to satisfy the LATR Guidelines. The project would not generate enough transit, bicycle, or pedestrian person trips to require additional analysis for any of those transportation modes.

The traffic study was completed on April 25, 2018 and studied two local intersections in addition to the two access points of the project. All study area intersections were located within the Clarksburg policy area, with one of those intersections bordering on both the Clarksburg and Clarksburg Town Center policy areas. The Critical Lane Volume (CLV) standard for intersections within the Clarksburg policy area is 1425. The traffic study looked at existing conditions, background conditions which include approved but unbuilt projects that may send trips through the study area intersections, and total future traffic which adds the projected impact of the subject Application to the background traffic. None of the critical intersections would have a CLV standard that exceeds the policy area standard under the future traffic condition. In addition, a Highway Capacity Manual (HCM) delay-based level of service analysis for the intersection of MD 355 and MD 121/Stringtown Road was performed because the intersection is located in an orange policy area that requires this level of analysis (Clarksburg Town Center). This intersection would operate under future conditions well below the Clarksburg Town Center policy area delay congestion standard of 63 seconds and also well below the Clarksburg policy area delay congestion standard of 51 seconds. Therefore, since both the CLV and HCM analyses were within acceptable levels, no infrastructure improvements are required to satisfy the LATR guidelines. The critical intersections and the analysis of the CLV and HCM standards are shown in Table 3 below.

Table 3. Critical Intersection Capacity and Delay Analysis

Intersection	CLV Analysis					
	Existing		Background		Total Future	
	AM	PM	AM	PM	AM	PM
MD 355 & MD 121/ Stringtown Road	1052	917	1325	1145	1345	1146
MD 355 & Foreman Blvd	994	937	1160	1162	1164	1166
MD 355 & N. Site Access	(Intersection doesn't exist)				263	775
MD 355 & S. Site Access	(Intersection doesn't exist)				674	793

	HCM Analysis (seconds)					
	Existing		Background		Total Future	
	AM	PM	AM	PM	AM	PM
MD 355 & MD 121/ Stringtown Road	22.2	16.4	34.9	21.8	35.9	22.1

c. School Adequacy Analysis

Applicable School Test

The Preliminary Plan is scheduled for Planning Board review on July 19, 2018, and therefore the applicable annual school test is the FY19 Annual School Test, approved by the Planning Board on June 21, 2018 and effective July 1, 2018.

Calculation of Student Generation

To calculate the number of students generated by the proposed development, the number of dwelling units is multiplied by the applicable student generation rate for each school level. Dwelling units are categorized by structure type: single family detached, single family attached (townhouse), low- to mid-rise multifamily unit, or high-rise multifamily unit. The subject property is located in the Upcounty Region of the County.

Table 4. Per Unit Student Generation Rates – Upcounty Region

	Elementary School	Middle School	High School
SF Detached	0.214	0.123	0.168
SF Attached	0.251	0.116	0.151
MF Low- to Mid-Rise	0.204	0.074	0.099
MF High-Rise	0.074	0.031	0.037

With a net of 34 single family detached and 16 single family attached units, the proposed project is estimated to generate the following number of students:

Table 5. Number of Students Generated

Type of Unit	Net Number of Units	ES Generation Rates	ES Students Generated	MS Generation Rates	MS Students Generated	HS Generation Rates	HS Students Generated
SF Detached	34	0.214	7.276	0.123	4.182	0.168	5.712
SF Attached	16	0.251	4.016	0.116	1.856	0.151	2.416
TOTAL	50		11		6		8

This project is estimated to generate 11 new elementary school students, 6 new middle school students, and 8 new high school students.

Cluster Adequacy Test

The project is located in the Clarksburg High School Cluster. The student enrollment and capacity projections from the FY19 Annual School Test for the Clarksburg Cluster are noted in the following table:

Table 6. Projected Enrollment and Application Impact

School Level	Projected Cluster Totals, September 2023			Moratorium Enrollment Threshold	Projected Enrollment + Application Impact
	Enrollment	Program Capacity	% Utilization		
Elementary	4,573	4,735	96.6%	5,683	4,584
Middle	2,168	2,164	100.2%	2,597	2,174
High	2,199 ¹	2,034	108.1%	2,441	2,207

The Moratorium Enrollment Threshold identified in the table is the enrollment at which the 120% utilization threshold is exceeded, resulting in a cluster-wide residential development moratorium. As indicated in the last column, the projected enrollment plus the estimated impact of this application fall below the moratorium thresholds at all three school levels. Therefore, there is sufficient capacity at the elementary, middle and high school cluster levels to accommodate the estimated number of students generated by this project.

Individual School Adequacy Test

The applicable elementary and middle schools for this project are Little Bennett ES and Rocky Hill MS, respectively. Based on the FY19 Annual School Test results, the student enrollment and capacity projections for these schools are noted in the following table:

Table 7. Projected Enrollment and Application Impact on Individual Schools

School	Projected School Totals, September 2023				Moratorium Enrollment Thresholds		Projected Enrollment + Application Impact
	Enrollment	Program Capacity	% Utilization	Seat Deficit	120% Utilization	Seat Deficit	
Little Bennett ES	611	624	97.9%	+13	749	734	622
Rocky Hill MS	969	1,020	95.0%	+51	1,225	1,200	975

Under the individual school adequacy test, a school is deemed inadequate if the projected school utilization rate exceeds 120% and if the school seat deficit meets or exceeds 110 seats for the elementary school or 180 seats for the middle school. If a school's projected enrollment exceeds both thresholds, then the school service area is placed in a residential development moratorium.

¹ The projected cluster high school enrollment of 2,896 has been modified to reflect the estimated impact of a future boundary change that will reassign students from Clarksburg HS to Seneca Valley HS upon completion of the programmed revitalization/expansion project at Seneca Valley HS in September 2020.

The Moratorium Enrollment Thresholds identified in the table above are the enrollments at which the 120% utilization threshold and the seat deficit threshold are exceeded. As indicated in the last column, the projected enrollment plus the estimated impact of this application falls below both applicable moratorium thresholds for both Little Bennett ES and Rocky Hill MS. Therefore, there is sufficient anticipated school capacity to accommodate the estimated number of students generated by this project.

School Adequacy Analysis Conclusion

Based on the school cluster and individual school capacity analysis performed, using the FY2019 Annual School Test, there is adequate school capacity for the amount and type of development proposed by this application.

d. Other Public Facilities and Services

The Subject Property is in sewer category S-3 and water category W-1 which is consistent with the Applicant's proposal to connect to public water and sewer which are available and adequate to serve the development. A new water line will tie into the existing water line in MD 355 and a new sewer line will outfall through an adjacent property via an easement that has been acquired for this purpose. The new sewer line will traverse this easement to Shawnee Lane and then connect to an existing sewer line near the intersection of Shawnee Lane and Timber Creek Lane. The existing electrical service provided by Potomac Edison will be upgraded to serve the proposed uses.

The Application has been reviewed by the MCDPS Fire Department Access and Water Supply Section, which determined that the Property has adequate access for fire and rescue vehicles by transmittal dated April 5, 2018 and amended June 12, 2018. (Attachment I).

Other public facilities and services, such as police stations, firehouses and health services are currently operating within the standards set by the 2016-2020 Subdivision Staging Policy.

4. *All Forest Conservation Law, Chapter 22A requirements are satisfied*

a. Natural Resources Inventory/Forest Stand Delineation

A Natural Resources Inventory/Forest Stand Delineation (NRI/FSD #420170780) was approved by Planning Staff on June 28, 2017. The site is located within the Clarksburg SPA and the Clarksburg Tributary of Little Seneca Creek watershed, a Use Class IV-P watershed. County Stream Monitoring in 2014 rated this watershed as "Fair" in water quality. This is a decline from the "Good to Excellent" water quality reported in 1998.

There are no streams, wetlands or floodplains on or in near proximity to this site.

b. Forest Conservation Plan

This project is subject to the Montgomery County Forest Conservation law (Chapter 22A of the County code). As shown on the Preliminary Forest Conservation Plan (Attachment M), the Applicant proposes to remove the two acres of on-site existing forest, which generates a planting requirement of four acres. Mitigation will take place with 1.44 acres of on-site planting,

0.80 acres of on-site landscape credit and 1.76 acres of off-site mitigation. Off-site mitigation should take place within the Clarksburg Special Protection Area, or at a minimum, within the Seneca Creek watershed.

c. Forest Conservation Tree Variance

Section 22A-12(b)(3) of the Montgomery County Forest Conservation Law provides criteria to identify certain individual trees as high priority for retention and protection (“Protected Trees”). The law requires no impact to trees that: measure 30 inches or greater DBH; are part of a historic site or associated with an historic structure; are designated as a national, State, or County champion trees; are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species. Any impact to a Protected Tree, including removal or disturbance within the Protected Tree’s critical root zone (CRZ) requires a variance. An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. In the written request for a variance, an applicant must demonstrate that strict adherence to Section 22A-12(b)(3), i.e. no disturbance to a Protected Tree, would result in an unwarranted hardship as part of the development of a property.

Variance Request - The Applicant submitted a variance request in a letter dated June 26, 2018 (Attachment N), for the removal of one Protected Tree (“Variance Tree”). Details of the Variance Tree to be affected are listed in Table 8.

Table 8. Trees to be removed.

Tree Number	Species	DBH (in)	Location	Disposition	CRZ Area (sf)	CRZ Impact (sf)	CRZ Impact (%)	Justification
398	<i>Ulmus pumila</i> Siberian Elm	35	Offsite, adjacent to sewer esmt.	Removal	8,659	3,203	37	Necessary for sewer connection

Unwarranted Hardship Basis - Per Section 22A-21, a variance may only be considered if the Planning Board finds that leaving the variance trees in an undisturbed state would result in an unwarranted hardship. Tree #398 is on adjacent Lot 2 of Clarkbrooke Estates. The only way that sewer can be extended to the subject property is from the south, via an easement across Lot 3 next to Lot 2. The limits of disturbance for the sewer line and a manhole will be constructed within 8 feet of the tree. This will impact at least 37% of the tree’s CRZ. Avoiding impacts to the CRZ of tree #398 will make it impossible for sewer to be extended to the property, which would cause an unwarranted hardship to the property being developed.

Variance Findings - Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made by the Planning Board in order for a variance to be granted.

Staff has made the following determination based on the required findings that granting of the requested variance:

1. *Will not confer on the applicant a special privilege that would be denied to other applicants.*

The existing site drops in elevation from north to south, and connection to gravity sewer must be to the south within the Shawnee Lane right of way. The proposed development avoids impacts to all but one specimen tree, which is located offsite, but in close proximity to the location of the sewer connection needed to serve the site. Therefore, this is not a *special privilege* to be conferred on the applicant.

2. *Is not based on conditions or circumstances which are the result of the actions by the applicant.*

The requested variance is based on the on- and off-site conditions and the location of the existing sewer infrastructure and sewer easement. This is not a result of actions by the Applicant.

3. *Is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*

The surrounding land uses do not have any inherent characteristics or conditions that have created or contributed to the need for a variance.

4. *Will not violate State water quality standards or cause measurable degradation in water quality.*

The granting of this variance will not adversely affect water quality. Tree #398 is not directly adjacent to any streams, or part of a riparian buffer system or within any wetland systems. The Property will be developed using storm water quality and quantity control measures designed for Special Protection Areas.

Mitigation for Trees Subject to the Variance Provision

Mitigation for the loss of the Variance Tree will take place by planting three 3-inch caliper shade trees in addition to other required site landscaping.

County Arborist's Recommendation on the Variance - In accordance with Montgomery County Code Section 22A-21(c), the Planning Department is required to refer a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a recommendation prior to acting on the request. The request was forwarded to the County Arborist. On June 28, 2018, the County Arborist provided a letter recommending that the variance be granted (Attachment O).

d. Conclusion

The Preliminary Forest Conservation Plan No. 120180110 with conditions meets all applicable section of Chapter 22A of the Montgomery County Code, therefore, Staff recommends approval of the Preliminary Forest Conservation Plan, subject to the conditions cited above.

5. *All stormwater management, water quality plan, and floodplain requirements of Chapter 19 are satisfied*

The Property is within the Little Seneca Creek watershed and drains to an unnamed tributary (LSLS302) to Little Seneca Creek across MD 355 from the property. Subwatershed LSL302 currently

has an impervious level of 23.5%. This project is within the Clarksburg SPA and is the subject of a preliminary plan of subdivision, and therefore is required to obtain approval of a water quality plan under section 19-67 of the Montgomery County Code, which also includes a stormwater management concept plan.

Under the provision of the law, the Montgomery County Department of Permitting Services and the Planning Board have different responsibilities in the review of a water quality plan. The Planning Board's responsibility is to determine if environmental guidelines and forest conservation requirements have been satisfied. In addition, the Board must review the appropriateness of the proposed impervious level of the new development.

a. County DPS Special Protection Area Review Elements

MCDPS has reviewed the elements of the SPA Preliminary Water Quality Plan under its purview. The Preliminary Water Quality Plan was approved by DPS on June 9, 2018 (Attachment K). MCDPS requested more information for the Final Water Quality Plan.

Stormwater Management

DPS will require that full Environmental Site Design be achieved to meet the goals. The applicant's current plan relies heavily on micro-bioretenention cells to meet requirements. They also propose to connect along MD 355 to an existing stormwater management drainage system.

Sediment and Erosion Control

Redundant sediment control structures will also be required such as oversized traps, super silt fence for small drainage areas and phasing to promote quick stabilization.

Monitoring of Best Management Practices

BMP monitoring will be done by Montgomery County Department of Environmental Protection (MCDEP) with fee money from the applicant. The law that established the monitoring requirement was put into place in June of 2013. Previously a program and protocols would be specified by the County but operated by the Applicant. One year of pre-construction monitoring must be completed prior to the issuance of a sediment control permit.

b. Planning Board Special Protection Area Review Elements

Environmental Guidelines

A Natural Resources Inventory/Forest Stand Delineation (NRI/FSD #420170780) was approved by Planning Staff on June 28, 2017. The Property is located within the Clarksburg SPA and the Clarksburg Tributary of Little Seneca Creek watershed, a Use Class IV-P watershed. County Stream Monitoring in 2014 rated this watershed as "Fair" in water quality. This is a decline from the "Good to Excellent" water quality reported in 1998.

There are no streams, wetlands or floodplains on or near the site, so there are no encroachments to sensitive areas. The plan meets the requirements of the *Environmental Guidelines* for sensitive area protection.

Imperviousness

A main goal for new development in all SPAs is to reduce the area of impervious surfaces. The Clarksburg SPA, which was created following approval of the Clarksburg Master Plan and subsequently amended, specifies no maximum imperviousness cap in this portion of the SPA. However, during the rezoning process the District Council created the following binding element:

To minimize impervious surfaces on the property, development of the property should *pursue an imperviousness goal of 35 percent* or less of the tract area as calculated using the *Environmental Guidelines*.

This was based on exhibit 44(d) of that case: “The FZP includes a binding element limiting impervious area to 35%.” With this goal in mind, staff has worked with the applicant to minimize the imperviousness of this site development design. Attachment L shows the imperviousness analysis for the Preliminary Plan. The proposed impervious level is currently shown as 36.1%. This includes shoulder improvements to MD 355 to facilitate site access. This will bring the LSL302 subwatershed of Little Seneca Creek to an impervious level to 24.1%, which is approaching an impervious level that typically supports only poor water quality. The addition of the required left turn lane, which will be reviewed further with the site plan, will bring the proposed impervious level to over 36.5%. Staff will investigate other means to minimize imperviousness at the time of site plan.

Although Staff is concerned that imperviousness has exceeded 35 percent, we find that the current level of proposed imperviousness is acceptable because the improvements proposed onsite are comparable with those shown on the approved Floating Zone Plan. The offsite improvements, which are in great part due to SHA’s requirements, account for most of the additional imperviousness over 35%. Note that Staff requested the elimination of accel/decel lanes along the Property frontage and SHA concurred. The imperviousness analysis also includes all possible options (decks, patios, additions) future homeowners could select, even though not all purchasers will select all options. Imperviousness will need to be re-examined at the time of site plan review.

Forest Conservation

The Forest Conservation Plan is one of the review elements of the Water Quality Plan. As expressed above, the Preliminary Forest Conservation Plan meets the requirements of Chapter 22A of the County Code.

c. Conclusion

The Special Protection Area, Preliminary Water Quality Plan No 120180110 as conditioned meets all applicable sections of Chapter 19 of the Montgomery County Code; therefore, Staff recommends approval, subject to the condition cited above.

6. *Any other applicable provisions specific to the property and necessary for approval of the subdivision is satisfied.*

Staff is not aware of any other applicable provisions specific to the property necessary for approval of the subdivision.

SECTION 6 – CITIZEN CORRESPONDENCE

The Application was submitted and noticed in accordance with all required procedures. Application signs were posted along the Property's frontage on Frederick Road. The Applicant held a pre-submission meeting with the citizens at 7:00 p.m. on October 11, 2017 at the Clarksburg High School Cafeteria. To date, Staff has not received any community inquiries or correspondence regarding this Application.

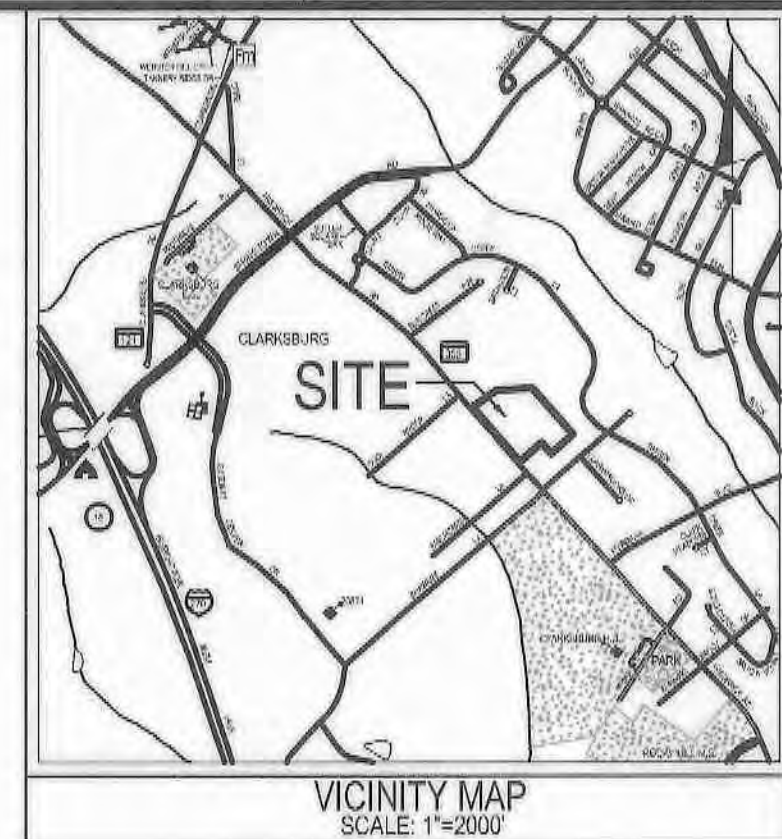
Conclusion

The proposed lots meet all requirements established in the Subdivision Regulations and the Zoning Ordinance and substantially conform to the recommendations of the 1994 Approved and Adopted Clarksburg Master Plan & Hyattstown Special Study Area. Access and public facilities will be adequate to serve the proposed subdivision. The PFCP meets all applicable requirements of Chapter 22A of the County Code. The Water Quality Plan meets all applicable requirements of Chapter 19 of County Code. The Application has been reviewed by other applicable county agencies, all of which have recommended approval of the Preliminary Plan. Therefore, Staff recommends approval of the Application with the conditions as specified above.

Attachments

- A. Floating Zone Plan H-115 drawing
- B. Floating Zone Plan H-115 District Council Resolution 18-739
- C. Hearing Examiner's Report for H-115
- D. Overall Preliminary Plan drawing
- E. Rationale for Design Exception for Public Road
- F. Justification for Private Road
- G. MDSHA letters
- H. MCDOT letter
- I. MCDPS Fire Code Enforcement Section approval letter
- J. DHCA Letter
- K. MCDPS Preliminary Water Quality Plan approval letter
- L. Impervious Area Exhibit
- M. Preliminary Forest Conservation Plan cover page
- N. Variance request
- O. Arborist letter

LOCAL MAP AMENDMENT AVALON RESIDENTIAL



GENERAL NOTES:

1. THE EXISTING ZONE IS R-200.
2. BOUNDARY INFORMATION IS FROM A SURVEY PREPARED BY SOLTESZ, INC.
3. THE PROJECT LIES WITHIN THE CLARKSBURG MASTER PLAN.
4. THIS SITE LIES WITHIN THE LITTLE SENECA CREEK WATERSHED. IT IS WITHIN THE CLARKSBURG SPECIAL PROTECTION AREA.
5. PEPCO, BELL ATLANTIC, MD, INC., WASHINGTON GAS LIGHT CO. OF MD, THE CITY OF ROCKVILLE, WASHINGTON SUBURBAN SANITARY COMMISSION AND CABLE TV MONTGOMERY ARE THE PUBLIC UTILITY COMPANIES THAT WILL PROVIDE SERVICE TO THE PROPOSED DEVELOPMENT.
6. THE LAYOUT OF ALL SITE ELEMENTS DEPICTED ON THIS PLAN, SUCH AS PARKING, DRIVEWAYS, BUILDINGS, OPEN SPACES, AND UTILITIES, ARE APPROXIMATE AND SUBJECT TO CHANGE.
7. NO FLOODPLAIN EXISTS ON SITE.
8. NO WETLANDS AND/OR INTERMITTENT OR PERENNIAL STREAMS EXIST ON OR WITHIN 100' OF THIS PROPERTY.
9. THERE ARE NO DESIGNATED HISTORIC SITES ASSOCIATED WITH THESE PARCELS.
10. THERE ARE NO KNOWN RARE, THREATENED, OR ENDANGERED SPECIES OCCURRING ON THIS PROPERTY.
11. AN APPROVED NR/FSD EXISTS FOR THIS SITE. PLAN NUMBER 420130730 APPROVED 12/05/2012, RECERTIFIED/APPROVED 01/05/2015.

Binding Elements:

- No. 1: Development may not exceed 50 dwelling units.
- No. 2: To ensure compatibility with the surrounding neighborhoods, only single-family detached units may be constructed around the perimeter of the site, as depicted on the Floating Zone Plan. This includes units separated from the site boundary by stormwater management, forest, or other buffers.
- No. 3: Setback from site boundary is a minimum of 25 feet.
- No. 4: The maximum building height is 40 feet.
- No. 5: To minimize impervious surfaces on the property, development of the property should pursue an imperviousness goal of 35 percent or less of the tract area as calculated using the Montgomery County Environmental Guidelines.
- No. 6: Board-on-board fencing of at least 6 feet in height shall be provided along portions of the site's northern and southern boundaries as depicted on the Floating Zone Plan.

Zoning	AVALON RESIDENTIAL	
	Existing R-200	Proposed TF-5 (Townhouse Floating)
	Required/Allowed Zoning Ordinance Development Standards	Proposed Zoning Ordinance Development Standards
Site Area:		
Gross Tract Area:	N/A	10.28 acres
Density of Development:		
Maximum allowed density	4.36 D.U./AC or 44.7 D.U.	4.87 D.U./AC (With Bonus Density)
Density with MPDU Bonus (22%)	44.7 x 1.22 (MPDU Bonus Density) = 54.5	50 D.U.
Unit Types:		
Detached house (front-load)		30 D.U.
Detached house (rear-load)		4 D.U.
Townhouse (Market Rate)		8 D.U.
Townhouse (MPDU)		8 D.U.
Total Number of Units		50 D.U.
Zoning Standards		
Setback from Site Boundary		25 feet
Detached house		
Min. Lot Area	-	TBD at Site Plan
Min. Lot Width at Street Front	-	TBD at Site Plan
Maximum Building Height	-	40 feet
Parking	2 spaces/lot	88 spaces
Townhouse		
Min. Lot Area (Market Rate)	-	TBD at Site Plan
Min. Lot Area (MPDU)	-	TBD at Site Plan
Min. Lot Width at Street Front	-	TBD at Site Plan
Maximum Building Height	-	40 feet
Parking (Market Rate)	2 spaces/lot	16 spaces
Parking (MPDU)	1 space/lot	8 spaces
Parking (visitor)	-	8 spaces
Open Space (5.2.5.D)	10% or 1.03 Acres	10% or 1.03 Acres

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS CERTIFICATION
THIS IS A TRUE COPY OF THE FLOATING ZONE PLAN
(EXHIBIT NUMBER 14-01) APPROVED BY THE DISTRICT COUNCIL
ON February 27, 2017 BY RESOLUTION NUMBER
12-739 IN APPLICATION NUMBER 14-15
HEARING EXAMINER John K. Robbins DATE 3/10/2017
HEARING EXAMINER'S NAME PRINTED

FOR ILLUSTRATIVE PURPOSES ONLY

FLOATING ZONE PLAN

LOCAL MAP AMENDMENT AVALON RESIDENTIAL

P. 801, P. 830, P. 765

2ND ELECTION DISTRICT, MONTGOMERY COUNTY, MARYLAND



1" = 50'

SHEET
1
OF
1

PROJECT NO.
3337-00-00

APPLICANT:

3 SONS AVALON, LLC.
2 RESEARCH PLACE, SUITE 100
ROCKVILLE, MD 20850
TELEPHONE 301-948-2750
FAX 301-948-9067

ENGINEER

SOLTESZ, INC.
2 RESEARCH PLACE, SUITE 100
ROCKVILLE, MD 20850
TELEPHONE: 301-948-2750
FAX: 301-948-9067

ATTORNEY:

MILLER, MILLER & CANBY
200-B MONROE STREET
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TELEPHONE: 301-762-5212
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SOLTESZ
Rockville
Larcham
Walton
Leonardtown
Frederick
Soltesz DC, LLC

Rockville Office
2 Research Place, Suite 100
Rockville, MD 20850
P. 301.948.2750 F. 301.948.9067

www.solteszco.com

NO.	REVISIONS	BY	DATE
1	Submission for signature	ldf	3/1/17
DESIGNED:	NOVEMBER 2, 2016	CAD STANDARDS VERSION:	V8 - 2009
TECHNICAL:		CHECKED:	

MISS UTILITY NOTE
INFORMATION CONCERNING EXISTING UNDERGROUND UTILITIES WAS OBTAINED FROM AVAILABLE RECORDS. THE CONTRACTOR MUST DETERMINE THE EXACT LOCATION AND ELEVATION OF ALL EXISTING UTILITIES AND UTILITY CROSSINGS BY DIGGING TEST PITS BY HAND, WELL IN ADVANCE OF THE START OF EXCAVATION. CONTACT MISS UTILITY AT 1-800-457-7171 48 HOURS PRIOR TO THE START OF EXCAVATION. IF CLEARANCES ARE LESS THAN SHOWN ON THIS PLAN OR TWELVE (12) INCHES, WHICH EVER IS LESS, CONTACT THE ENGINEER AND THE UTILITY COMPANY BEFORE PROCEEDING WITH CONSTRUCTION. CLEARANCES LESS THAN NOTED MAY REQUIRE REVISIONS TO THIS PLAN.

OWNER/DEVELOPER/APPLICANT
3 SONS AVALON, LLC.
2 RESEARCH PLACE
SUITE 100
ROCKVILLE, MD 20850
PHONE 301-948-2750
FAX 301-948-9067
JIM SOLTESZ

MAP	4026	GRID	03 H9
TAX MAP	EW, 41	ZONING CATEGORY:	EXISTING R-200 / PROPOSED TF-5
WSSC 200 SHEET		XXXX	
DATE	2/22/17	XXXX	
HORIZONTAL:	NAD83	XXXX	
VERTICAL:	NAD83	XXXX	



PROFESSIONAL CERTIFICATION
I HEREBY CERTIFY THAT THESE DOCUMENTS WERE PREPARED OR APPROVED BY ME, AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MARYLAND.
LICENSE NO. 44048 EXPIRATION DATE 03/17

03/08/17

Resolution No.:	<u>18-739</u>
Introduced:	<u>February 28, 2017</u>
Adopted:	<u>February 28, 2017</u>

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

By: District Council

SUBJECT: APPLICATION NO. H-115 FOR AMENDMENT TO THE ZONING ORDINANCE MAP, Soo Lee-Cho, Esquire, Attorney for the Applicant, 3 Sons Avalon LLC; OPINION AND RESOLUTION ON APPLICATION; Tax Account Numbers 02-00019087, 02-00019098, 02-0019076

OPINION

Application No. H-115 requests reclassification of property from the R-200 Zone to the TF 5.0 Zone. The Applicant is 3 Sons Avalon LLC (Avalon or Applicant). The property consists of approximately 10.28 acres of land located at 22821 and 22901 Frederick Road, Clarksburg, Maryland, in the 2nd Election District (Tax Account Numbers 02-00019087, 02-00019098, 02-0019076). Exhibit 1.

Avalon seeks to develop 34 single-family detached homes and 16 townhouses. Eight of the townhouses will be MPDUs, which is 16% of the total number of units. Staff of the Montgomery County Planning Department (Planning Staff) recommended approval of the application in a report dated December 7, 2015. Exhibit 26. The Montgomery County Planning Board recommended approval as well. Exhibit 30.

After a public hearing on December 9, 2016, the Hearing Examiner also recommended approval. *Hearing Examiner's Report and Recommendation*, (January 30, 2017). She found that the proposed reclassification and development will meet the standards set forth in the *2014 Montgomery County Zoning Ordinance* and that it will be consistent with the coordinated and systematic development of the Regional District, as required by State law. *Maryland Land Use Article, Code Ann.*, § 21-101(a)(4)(i).

To avoid unnecessary detail in this Opinion, the Hearing Examiner's Report and Recommendation is incorporated herein by reference. Based on its review of the entire record, the District Council finds that the application meets the standards required for approval of the requested rezoning for the reasons stated by the Hearing Examiner.

SUBJECT PROPERTY

The subject property is located on the east side of Frederick Road (Md. Rte. 355) north of Shawnee Lane and south of Stringtown Road. It is zoned R-200. The property is vacant and has no significant environmental features (e.g., forest, floodplains, stream valley buffers, steep slopes.) The Frederick Road bike path is slated for construction on the opposite site (i.e., the western side) of Frederick Road.

SURROUNDING AREA

The surrounding area, or the area most directly impacted by the development, must be identified in a floating zone case so that compatibility can be evaluated properly. The District Council agrees with the Hearing Examiner that the area most directly impacted includes: Suncrest Avenue and Battalion Court to the north, properties along Timber Creek Lane to the east, Foreman Boulevard and Clarksburg High School to the south, and properties generally along planned Observation Drive to the west. All properties are zoned R-200, with the exception of the Dowden Station development, recently approved in the PD-4 Zone. Adjoining properties to the south, east, and north are improved with single-family detached homes. The District Council characterizes the area as residential, predominantly consisting of single-family detached homes.

PROPOSED DEVELOPMENT

Avalon proposes 34 single-family detached homes and 16 townhouses. Eight of the townhouses, or 16% of the total units, will be Moderately Priced Dwelling Units (MPDUs). The proposed density is 4.87 dwelling units per acre. The base density is 4.0 dwelling units per acre. Avalon plans to use the 22% bonus density permitted when more than 15% of the units are MPDUs. *Montgomery County Code*, §25A-5(c)(3). Access will be from an internal loop road that intersects with Frederick Road at two locations. The southern access is a full movement intersection. The northern access is a limited movement intersection (right-in, right-out) due to concerns about site distance. Four of the dwellings adjacent to Frederick Road will face the road. The remaining four units adjacent to Frederick Road will use architectural treatments to make the sides of these units appear as the fronts.

ENVIRONMENT

While the property contains no sensitive environmental features, it is located in the Clarksburg Special Protection Area. The purpose of the Special Protection Area is to preserve water quality by limiting the amount of impervious area in new developments. There are no specific caps on impervious area for this location. After reviewing the density, site layout, circulation requirements, and sensitive environmental features, Staff of the Montgomery County Planning Department concluded impervious surfaces should not exceed 35% of the tract area. Exhibit 29. Under the FZP, 34.5% of the tract area will be impervious surface. Exhibit 44(c). The FZP includes a binding element limiting impervious area to 35%. Exhibit 44(d).

FLOATING ZONE PLAN

Section 59-7.2.1.B.2.g of the Zoning Ordinance requires that Floating Zone applications must include a “Floating Zone Plan” (FZP) that contains specified information, including the location, massing, and height of buildings and anticipated uses. These are illustrative unless made specifically binding on future approvals. Avalon filed a plan meeting this requirement (Exhibit 44(d)).

The single-family detached homes are located on the perimeter of the site to heighten compatibility with the adjacent single-family detached homes. The townhouses and open space are in the interior. A 50-foot strip of forest will buffer the eastern edge. Additional forested area is located along the northeastern boundary. Avalon has reserved an outlot on the northern property boundary for a road connection to any future development on the adjacent parcel. Adjacent property owners to the northeast and south requested that Avalon install a fence to screen their properties from the development. Avalon has agreed and included this as a binding element. The binding elements are as follows:

1. Development may not exceed 50 dwelling units.
2. To ensure compatibility with the surrounding neighborhood, only single-family detached units may be constructed around the perimeter of the site, as depicted on the Floating Zone Plan. This includes units separated from the site boundary by stormwater management, forest, or other buffers.
3. Setback from site boundary is a minimum of 25 feet.
4. The maximum building height is 40 feet.
5. To minimize impervious surfaces on the property, development of the property should pursue an imperviousness goal of 35 percent or less of the tract area as calculated using the Montgomery County Environmental Guidelines.
6. Board-on-board fencing of at least 6 feet in height shall be provided along portions of the site’s northern and southern boundaries as depicted on the floating zone plan.

NECESSARY FINDINGS

Zoning Ordinance §59-7.2.1.E. establishes the “Necessary Findings” the District Council must make to approve a Floating Zone application. The District Council’s findings on each are set forth below.

A. Required “Necessary Findings” (§59-7.2.1.E.2.)¹

- a. For a Floating zone application the District Council must find that the floating*

¹ One of the required findings applies only where a non-residential zone is sought for property that is currently zoned residential. See, §59-7.2.1.E.2.f. As the Applicant here requests a residential zone, the standard does not apply to this case and is not included in this Resolution.

zone plan will:

- a. substantially conform with the recommendations of the applicable master plan, general plan, and other applicable County plans;*

The property lies within the area covered by the *1994 Clarksburg Master Plan and Hyattstown Special Study Area* (Master Plan or Plan). The Plan includes the property in the “Transit Corridor District,” and in a sub-area called the “MD 355 Area.”

The Plan has several objectives for the Transit Corridor District. The first is to maintain the existing residential character along Frederick Road. The Plan identifies traditional Up-County development as having homes that front Frederick Road. The second recommends residential densities of between 2 and 4 dwelling units per acre. Finally, the Plan seeks to implement a “greenway,” or a series of bike and pedestrian connections throughout the area. The Plan also recommends diversifying housing types. The mix recommended for the MD 355 Area is: Multi-family: 5%--20%, Attached: 30%-40%, Detached: 50%-60%.

The District Council finds that the proposed development meets all of the applicable Master Plan objectives, as did the Hearing Examiner. It maintains the existing character of the area by having single-family detached homes face, or appear to face, Frederick Road. The proposed base density of 4.0 dwelling units per acre is within the range recommended by the Master Plan. The Plan instructs that bonus density for MPDUs should be added to the base density, as it is in this case. While there are presently no direct connections to the Frederick Road bike pathway, the Applicant will provide a sidewalk along Frederick Road to support a future connection.

The proposed development implements the housing mix that the Master Plans recommends for the MD 355 District. There are no other townhomes within the District except for those in the recently approved Dowden Station development. The FZP will add an additional 16 townhomes.

- b. further the public interest;*

The Council has interpreted the “public interest” in conformance with State law, i.e., that the plan is appropriate for the systematic development of the County by complying with County plans and policies. This includes a review of whether public facilities are adequate to serve the use, including schools, utilities, stormwater management facilities, and public services (transportation facilities are discussed later in this Opinion). The record demonstrates that public facilities are adequate to serve the proposed use. The property is located in the Clarksburg School Cluster. This Cluster operates well under the maximum 105% utilization rate. The development will be served by public water and sewer. Public water is located along Frederick Road abutting the property. Avalon will bring in public sewer from an existing public sewer line through an easement it has acquired. The development complies with the Master Plan and furthers the County’s goal to provide affordable housing. The District Council finds that the FZP will further the public interest.

- c. satisfy the intent, purposes, and standards of the proposed zone and requirements of this Chapter;*

For the reasons set forth in Parts IV.B through E of the Hearing Examiner's Report, summarized below, the District Council finds that the proposed FZP will satisfy the intent, purposes and standards of the proposed zone and the requirements of the Zoning Ordinance.

d. be compatible with existing and approved adjacent development;

The character of the surrounding area is residential, consisting mostly of single-family detached homes. The proposed development is compatible with the surrounding area because single-family detached homes are located on the perimeter of the site, which is a binding element of the FZP. Homes located along Frederick Road will either front the road or will be made to appear as if they front the road. Forested buffers line the eastern and north eastern boundaries.

e. generate traffic that does not exceed the critical lane volume or volume/capacity ratio standard as applicable under the Planning Board's LATR Guidelines, or, if traffic exceeds the applicable standard, that the applicant demonstrate an ability to mitigate such adverse impacts;

This section requires the District Council to make a preliminary finding that transportation infrastructure will be adequate to support a proposed development. *Zoning Ordinance*, §59-7.2.1.E.2.e. The Planning Board will make the final determination of whether these facilities are adequate at the time of subdivision. *See, Montgomery County Code*, §50-35(k).

The principal tool used by the County to evaluate the capacity of transportation facilities to handle a proposed development is Local Area Transportation Review ("LATR").² For properties estimated to generate more than 30 new trips on area roadways, LATR requires a traffic study to evaluate whether a proposed development would result in unacceptable congestion during the morning and evening peak hours. LATR measures congestion levels at specified intersections by Critical Lane Volumes (CLV). Maximum CLV levels are set within different geographic policy areas throughout the County.

This property is located within the Clarksburg Policy Area, which has a maximum CLV of 1,425. The uncontroverted evidence demonstrates that all intersections studied operated well below the maximum CLV level. Exhibits 23(d), 29.

² After this application was filed but before the Planning Board's review, the Council adopted a new Subdivision Staging Policy (SSP), which contains new LATR standards. *Council Resolution 18-671*, adopted November 15, 2016. The new SSP applies to *preliminary plans* filed after January 1, 2017, but is silent on its application to rezonings. Because the Planning Board reviewed this application under the old SSP (cited above), it apparently took the position that the new SSP applies to rezoning applications filed after January 1, 2017, as well. This is supported by Section 7.2.1.E.2.e of the Zoning Ordinance, which mandates that traffic from the development be within limits set by the Planning Board's LATR Guidelines. At present, the only LATR Guidelines that the Planning Board has adopted are those implementing the SSP in effect prior to November 15, 2016. All citations are to that SSP (i.e., Council Resolution No. 17-601, adopted November 13, 2012).

B. The Intent of the Floating Zones (§59-5.1.2.)

The application must meet the intent for all floating zones, stated in §59-5.1.2 of the Zoning Ordinance:

- A. Implement comprehensive planning objectives by:*
 - 1. furthering the goals of the general plan, applicable master plan, and functional master plans;*
 - 2. ensuring that the proposed uses are in balance with and supported by the existing and planned infrastructure in the general plan, applicable master plan, functional master plan staging, and applicable public facilities requirements; and*
 - 3. allowing design flexibility to integrate development into circulation networks, land use patterns, and natural features within and connected to the property; and*

The District Council has already found that the proposed development furthers the goal of the Master Plan and is supported by adequate public facilities. The Hearing Examiner concluded that the FZP uses design flexibility to provide two access points to Frederick Road and to include an outparcel that ensures a road connection to future development. The District Council agrees and finds that this purpose of the floating zones has been met.

- B. Encourage the appropriate use of land by:*
 - 1. providing flexible applicability to respond to changing economic, demographic, and planning trends that occur between comprehensive District or Sectional Map Amendments;*
 - 2. allowing various uses, building types, and densities as determined by a property's size and base zone to serve a diverse and evolving population; and*
 - 3. ensuring that development satisfies basic sustainability requirements including:*
 - a. locational criteria,*
 - b. connections to circulation networks,*
 - c. density and use limitations,*
 - d. open space standards,*
 - e. environmental protection and mitigation; and*

The development will implement the residential growth called for in the Master Plan in a manner that furthers the Plan's objectives, including diversifying housing types. The evidence demonstrates that development will meet an impervious limit of 35% of the tract area. The District Council finds that the FZP meets this purpose of floating zones.

- C. Ensure protection of established neighborhoods by:*
 - 1. establishing compatible relationships between new development and existing neighborhoods through limits on applicability, density, and uses;*

- 2. providing development standards and general compatibility standards to protect the character of adjacent neighborhoods; and*
- 3. allowing design flexibility to provide mitigation of any negative impacts found to be caused by the new use.*

The compatibility requirements of this section are repetitive of the compatibility findings required in §59-7.2.1.E.2.d, above. As was stated there, the District Council finds that the proposed development will be compatible with existing and approved adjacent development.

C. Prerequisites for Application (§59-5.1.3)

Section 59-5.1.3 of the new Zoning Ordinance sets up a series of tests to determine whether the requested Floating Zone may be applied to a particular site where, as here, the Master Plan does not recommend the property for a floating zone. Prerequisites applicable to this FPZ are as follows:

C. If a Floating zone is not recommended in a master plan, the following apply:

- 1. The maximum allowed density is based on the base zone and on the size of the tract as stated in Division 5.2 through Division 5.5. Any density bonus requested under Chapter 25A may be added to the density allowed under Division 5.2 through Division 5.5 and included in the units per acre or FAR of the zone requested.*

The Hearing Examiner concluded that the maximum density permitted by the Zoning Ordinance is 5.21 dwelling units per acre, including the MPDU bonus density. The density proposed in this application is 4.87 dwelling units per acre, well under the amount permitted. The District Council concludes that this standard has been met.

2. Residential Base Zone

b. When requesting a Townhouse Floating (TF) zone, Apartment Floating (AF) zone, or Commercial Residential Neighborhood Floating (CRNF) zone for a property with a Residential base zone:

- i. The property must front on a nonresidential street or must confront or abut a property that is in a Residential Townhouse, Residential Multi-Unit, Commercial/Residential, Employment, or Industrial zone; and*
- ii. The application must satisfy a minimum of 2 prerequisites for each of the categories under Section 5.1.3.D.*

Frederick Road is classified as an arterial road, meeting the prerequisite in 59-5.1.3.2.b.i. The District Council finds that the requirements of Section 59-5.1.3.b.ii are met for the reasons contained in the Hearing Examiner's Report.

D. Purpose, Land Uses, and Building Types Permitted by the TF 5.0 Zone (Section 59-5.2)

The application must comply with the purposes of the TF 5.0 Zone as well as the permitted uses and building types. Relevant standards from Section 59-5.2 are listed below:

Section 5.2.2. Purpose

The purpose of Residential Floating Zones is to:

A. allow flexibility in residential development, including site layout, lot size, and placement;

* * *

C. provide residential development that is compatible with the surrounding neighborhood.

The District Council has already found that the development uses flexible design standards resulting in development compatible with the surrounding area. This standard has been met.

Sections 59-5.2.3 and 5.2.4. Land Uses and Building Types permitted

The land uses permitted in a TF floating zone depend on the number of units proposed. *Zoning Ordinance*, §59-5.2.3. For projects of the density proposed here (i.e., 4.87 dwelling units per acre), the Zoning Ordinance allows all uses permitted in the TLD (Townhouse Low Density) Zone. *Id.*, §59-5.2.3.A. The two uses proposed here, single unit living and townhouses living, are both permitted in the TLD Zone. *Id.*, §59-3.1.6. Section 59-5.2.4 specifies the building types permitted in the TF Zone. The Zone permits both detached house and townhouse building types, the two proposed in this application. This requirement is met.

E. Development Standards for the TF 5.0 Zone (Section 59.5.2.5)

The property meets all of the development standards of the TF 5.0 Zone, as described in detail in both the Staff Report (Exhibit 29), and the Hearing Examiner's Report and Recommendation. Building heights are limited to 40 feet and the perimeter site setback is 25 feet. Ten percent of the land area is open space, as required by Section 59-5.2.5.D. Any restrictions on height, which are required by Section 59-4.1.8 of the Zoning Ordinance, may be addressed at site plan.

F. General Requirements (Article 59-6)

Staff advises that the following divisions of Article 59-6 apply to the subject property: Division 6.2 (parking), Division 6.3 (Open Space and Recreation), and Division 6.4 (General Landscaping and Outdoor Lighting). Exhibit 29. The detailed requirements of these sections will be applied at site plan.

Conclusion

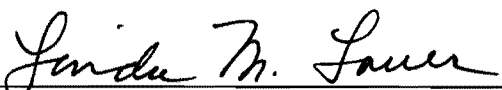
Based on the foregoing analysis, the Hearing Examiner's Report and Recommendation, and a thorough review of the entire record, the District Council concludes that the proposed reclassification and development will meet the standards set forth in *2014 Zoning Ordinance* and that it will be consistent with a coordinated and systematic development of the Regional District, as required by State law.

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:

That Local Map Amendment Application No. H-115, requesting reclassification of 10.28 acres of land located at 22821 and 22901 Frederick Road, Clarksburg, Maryland, in the 2nd Election District (Tax Account Numbers 02-00019087, 02-00019098, 02-0019076), from the R-200 Zone to the TF 5.0 Zone be **approved** in the amount requested and subject to the specifications and requirements of the Floating Zone Plan, Exhibit 44(d). The Applicant must submit to the Hearing Examiner for certification a reproducible original and three copies of the Floating Zone Plan approved by the District Council within 10 days of approval.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council

**BEFORE THE COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THE MARYLAND-
WASHINGTON REGIONAL DISTRICT IN
MONTGOMERY COUNTY, MARYLAND
Office of Zoning and Administrative Hearings
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 200
Rockville, Maryland 20850
(240) 777-6660**

IN THE MATTER OF:	*	
3 SONS AVALON, LLC	*	
Applicant	*	
	*	
James Soltesz	*	
David Ager	*	
Phil Isaja	*	
Glen E. Cook	*	
	*	
For the Application	*	Local Map Amendment
	*	Application No. H-115
	*	
<u>Soo Lee-Cho, Esquire</u>	*	
Attorney for the Applicant	*	
*****	*	
	*	
<u>Patricia McKenzie, Esquire</u>	*	
(representing Paul and Mary McKenzie)	*	
	*	
*****	*	
Before: Lynn A. Robeson, Hearing Examiner		

HEARING EXAMINER’S REPORT AND RECOMMENDATION

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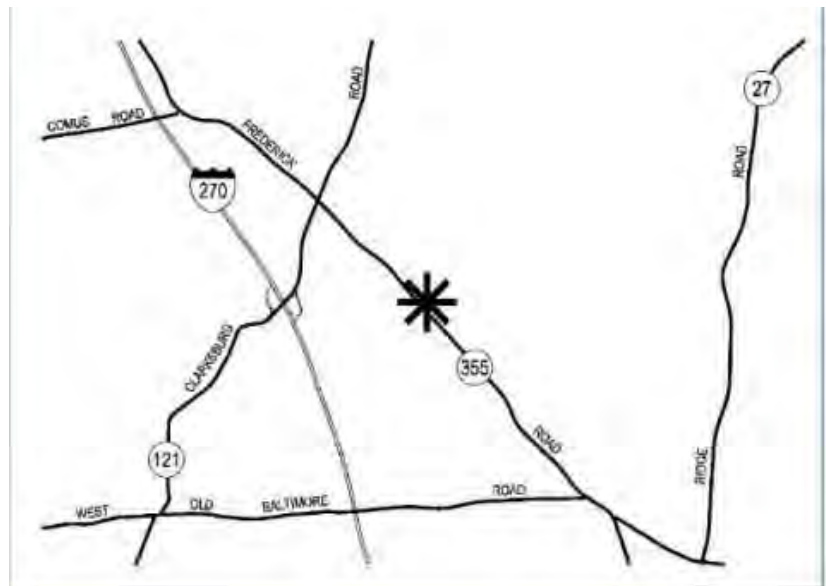
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I. EXECUTIVE SUMMARY

Applicant: 3 Sons Avalon, LLC.

Property Location: 22821 and 22901 Frederick Road, Clarksburg, MD; located on the eastern side of Md. Rte. 355 (Frederick Road) approximately 2,700 feet south of Stringtown Road and 400 feet north of Shawnee Lane, as shown below (Exhibit 29, p. 1):



Acreage: 10.28 acres

Current Zone and Use: R-200/Vacant Land

Proposed Zoning: TF 5.0 (Townhouse Floating);

Proposed Use: 34 single-family detached homes and 16 single-family attached homes; 8 MPDUs (16%)

Density Permitted: 4.88 dwelling units per acre (4.0 dwelling units per acre with MPDU bonus density of 22%). The maximum density permitted is based on the recommendations of the Clarksburg Master Plan. The maximum density permitted by the Zoning Ordinance is 5.3 dwelling units per acre with MPDU bonus density.

Density Planned: 4.87 dwelling units per acre

Open Space Required/Provided: 10% / 10% (1.03 acres)

Environmental Issues: The site lies within the Clarksburg Special Protection Area. Staff

	recommends a 35% cap on impervious tract area; FZP proposes 34% impervious tract area. No other environmental issues.
Consistency with Master Plan:	The project is consistent with the general intent and objectives of the <i>1994 Clarksburg Master Plan and Hyattstown Special Study Area</i> .
Neighborhood Response:	Both support and opposition. Supporters felt that project would implement Master Plan vision and jump start road improvements. Those in opposition objected to the proposed density and felt that the development should not occur until infrastructure called for in Master Plan is built. Adjoining neighbors raised concerns regarding screening of proposed use.
Water/Sewer:	Public Water and Sewer
Technical Staff Recommends:	Approval
Planning Board Recommends:	Approval
Hearing Examiner Recommends:	Approval
District Council votes required for approval:	5

II. STATEMENT OF THE CASE

Local Map Amendment (LMA) Application No. H-115, filed on June 1, 2016, by 3 Sons Avalon LLC (Applicant or Avalon), requests reclassification from the R-200 Zone to the TF 5.0 (Townhouse Floating) Zone. The property consists of approximately 10.28 acres of land located at 22821 and 22901 Frederick Road, Clarksburg, Maryland, in the 2nd Election District (Tax Account Numbers 02-00019087, 02-00019098, 02-0019076).

Avalon originally requested rezoning to the TF 6.0 Zone but, after amending its Floating Zone Plan (FZP) twice, modified the application to request the TF 5.0 Zone. Exhibits 19, 20, 23. The Hearing Examiner issued a new public hearing notice based on the revised application, scheduling a hearing for December 9, 2016. Exhibit 26.

Staff of the Montgomery County Planning Department (Planning Staff or Staff) reviewed the amended application and recommended approval on November 4, 2016 (Exhibit 26). The Planning Board issued its recommendation to approve the application on November 30, 2016. Exhibit 30.

The public hearing was convened, as scheduled, on December 9, 2016. Avalon presented evidence and called four witnesses in support of the application: Mr. James Soltesz, a representative of the owner, Mr. Dave Ager, an expert in land planning, Mr. Phil Isaja, an expert in civil engineering, and Mr. Glen E. Cooke, an expert in transportation planning and traffic engineering. Ms. Patricia McKenzie appeared representing Mr. Paul and Mary McKenzie, who own adjoining property to the south. Their testimony is included where relevant.

The record was held open after the hearing to enter a corrected FZP and Declaration of Covenants. These were received on December 21, 2016 (Exhibits 44, 45), at which time the record closed. Based on all of the testimony and evidence in this case, the Hearing Examiner recommends

that the Council approve this application for rezoning to the TF 5.0 Zone for the reasons that follow.

III. FACTUAL BACKGROUND

A. Subject Property

The subject site consists of three parcels totaling approximately 10.28 acres, which are shown in the following aerial photo supplied by Planning Staff (Exhibit 29, p. 5):



The property now lies vacant. The Board of Appeals had approved a special exception for the Avalon School on the property. The school never implemented the special exception. T. 13; Exhibit 29, Attachment 5. Staff advises that the property gently slopes from north to south. Other than its location in a special protection area, there are no outstanding environmental features on

the property. Exhibit 29, p. 3.

B. Surrounding Area

The surrounding area in a Floating Zone case includes the area that will be most directly impacted by the proposed development. It is identified and characterized in order to assess whether the new development will be compatible with the area directly impacted.

Planning Staff and the Applicant disagree on the boundaries of the surrounding area in this case. An aerial map from the Staff Report (Exhibit 29, p. 4, below) shows the differing boundaries (Staff's shown in green, Avalon's shown in red):



Staff defines the boundaries to include Suncrest Avenue and Battalion Court to the north, properties along Timber Creek Lane to the east, Foreman Boulevard and Clarksburg High School to the south, and properties generally along planned Observation Drive to the west. The Applicant

extends the boundaries of the neighborhood further to the north to include the properties at the intersection of Frederick Road and St. Clair Road and west to Gateway Center Drive. T. 49-50.

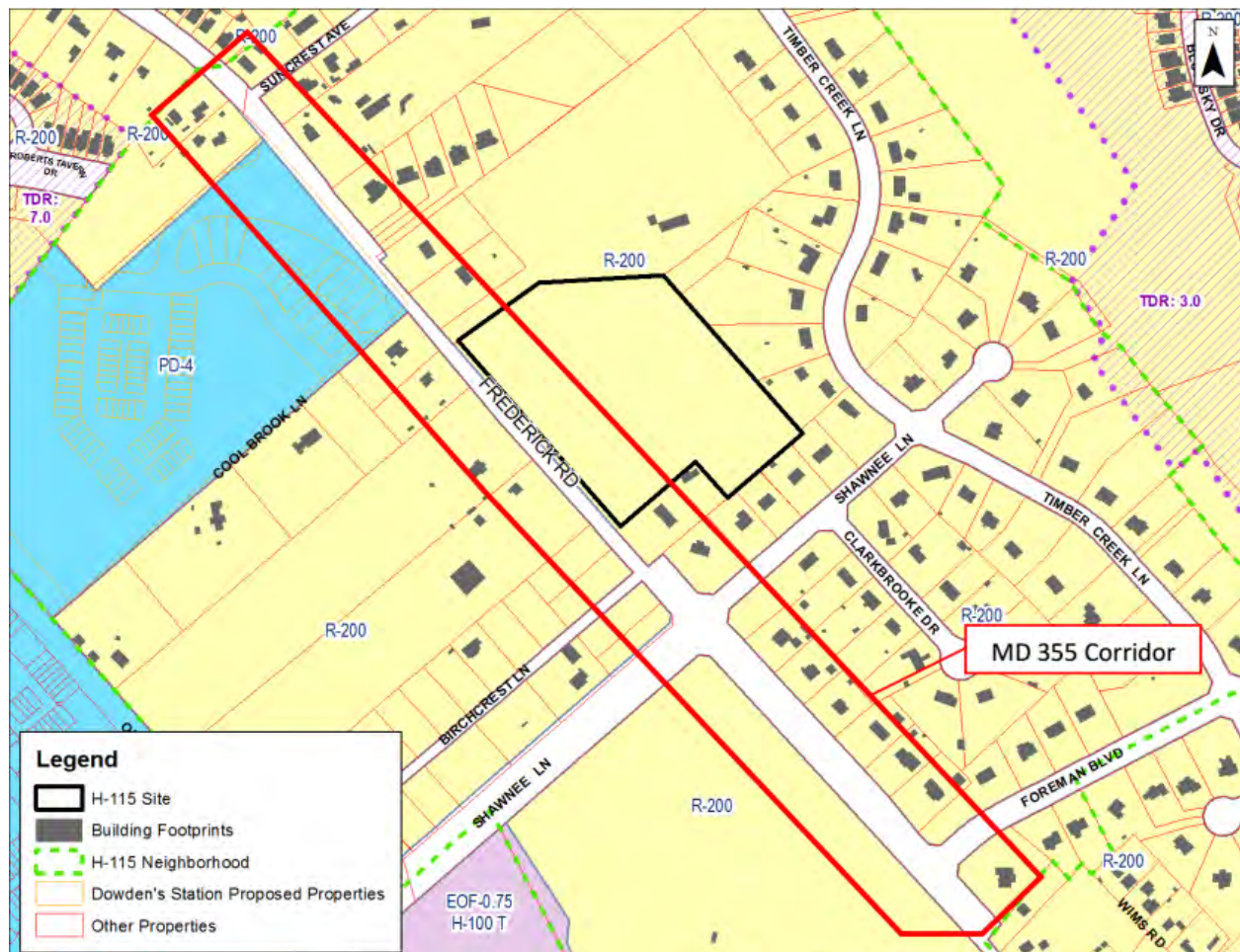
Staff determined that its boundaries were more appropriate because the property was better centered within the area and the Applicant's larger "neighborhood" included "many properties minimally affected by the proposed plan." Exhibit 29, p. 3. The Applicant argues that the areas to the north are properly included within the surrounding area because of the development's traffic impact on Frederick Road. Mr. David Ager, Avalon's expert in land planning, opined that the neighborhood should include the next major intersection north of the property. The additional area also includes the Highland community. The layout of that community addressed the Master Plan's guidelines for frontage along Route 355 in a manner similar to the proposed development. T. 50-51.

When asked whether the different boundaries affected the characterization of the neighborhood, Mr. Ager testified that the difference was nominal because all properties were still within the R-200 Zone. T. 50-51. The Hearing Examiner finds that Staff's delineation is more persuasive because the project's impact on properties to the north and west are more attenuated, although it does not appear to make a significant difference in this case.

Staff characterized the neighborhood as follows:

All properties within the neighborhood are zoned R-200 except for Dowden's Station, which was recently rezoned from R-200 to PD-4. The predominant use in the neighborhood is single-family detached homes. Institutional uses include a small church across the street from the site and Clarksburg High School.

To illustrate the existing residential character of development fronting Md. Rte. 355, Staff included a graphic in the Staff Report showing the location and spacing of homes in that area (Exhibit 29, p. 5, on the following page.)



**Character of Area Fronting Frederick Rd.
Exhibit 29, p. 5**

Mr. Ager testified that the character of the neighborhood is “evolving” because of the Dowden Station rezoning to PD-4. He agreed that the character of the neighborhood remained residential, but could evolve from the R-200 Zoning under the Master Plan guidelines. T. 52-53.

The Hearing Examiner agrees with Mr. Ager that the neighborhood character is evolving, but remains primarily residential, predominantly comprised of single-family detached homes. The area fronting Md. Route 355 still consists of single-family detached homes that front the roadway, consistent with that described in the Master Plan (discussed in Part III.D of this Report.) The evolving nature of the residential character is reflected by the recent rezoning of the Dowden Station development, which was approved at 4.31 dwelling units per acre. Exhibit 29, p. 23.

C. Proposed Development and Floating Zone Plan

The Floating Zone Plan (FZP) must show many illustrative details of the proposed development, including building locations, height, preliminary stormwater management strategies, and on-site circulation. *Zoning Ordinance*, §59-7.2.1.B.2. The Applicant must also include any “binding elements” on the proposed development. *Id.* Binding elements are restrictions that will permanently apply to development of the property. These may restrict building types, density, or height, among other aspects of the development. *Id.*, §59-1.4.2.

Avalon proposes to build 34 single-family detached homes and 16 townhouses. Eight of the townhouses, or 16% of the total units, will be Moderately Priced Dwelling Units (MPDUs). Single-family detached homes surround the site’s perimeter and front on Frederick Road. A circular road provides access, with townhomes and open space in the interior. Avalon proposes to establish forest conservation areas on the eastern and northern edges of the site to buffer the use from adjoining R-200 development.

Most of the single-family detached homes are front-loaded facing the internal public road. The sides of four of the homes along Frederick Road face the roadway. Avalon proposes architectural treatments that will give the sides the appearance of being the front of the home. The remaining homes along Frederick Road will be rear-loaded and the entrances will face the road. Exhibit 29, p. 7.

Avalon proposes two access points, a full-movement access to the south and a limited movement (right-in, right-out) access to the north. Mr. James Soltesz, a representative of the owner, testified that the special exception approval for the Avalon school showed two full movement intersections. When his staff reviewed the site, however, they felt that the northern access might not have the sight distance required by the State Highway Administration (SHA), which issues access permits for State roads. As a result, Avalon designed the limited movement

access for the northern site entrance. SHA has not yet responded to their request for review of the northern access. Mr. Soltesz did, however, contact Mr. Al Roshdieh, Director of the Montgomery County Department of Transportation (MCDOT) to review the access. Mr. Roshdieh commented that MCDOT had “no objections to your current access concept,” but noted that the final decision remained with SHA. T. 30.

The FZP shows an outlot on the northern property line. The outlot will provide a future connection to the adjacent property to the north (i.e., the “Winters Property” or Parcel 660) should it be developed. Below is a rendered version of the FZP (Exhibit 44(d)):



Avalon includes the following binding elements on the FZP (Exhibit 44(d)):

1. Development may not exceed 50 dwelling units.
2. To ensure compatibility with the surrounding neighborhood, only single-family detached units may be constructed around the perimeter of the site, as depicted on the Floating Zone Plan. This includes units separated from the site boundary by stormwater management, forest, or other buffers.
3. Setback from site boundary is a minimum of 25 feet.
4. The maximum building height is 40 feet.
5. To minimize impervious surfaces on the property, development of the property should pursue an imperviousness goal of 35 percent or less of the tract area as calculated using the Montgomery County Environmental Guidelines.
6. Board-on-board fencing of at least 6 feet in height shall be provided along portions of the site's northern and southern boundaries as depicted on the floating zone plan.

D. Master Plan

Several sections of the Zoning Ordinance require a rezoning application to conform substantially to the applicable master plan. Section 59-7.2.1.E.2.a requires the District Council to find that the Floating Zone Plan will “substantially conform with the recommendations of the applicable master plan, general plan, and other applicable County plans.” Another provision, Section 59-5.1.2.A.1., states that:

. . . The intent of the Floating zones is to:

A. Implement comprehensive planning objectives by:

1. furthering the goals of the general plan, applicable master plan, and functional master plans; . . .

To avoid duplication in this report, conformance of the application to the master plan will be discussed here.

The subject site is located in the area covered by the *1994 Clarksburg Master Plan and Hyattstown Special Study Area* (Master Plan or Plan). Staff advises that there are no site specific recommendations for the property in the Master Plan. Exhibit 29, p. 10. The property is located within two sub-areas of the Master Plan: the “Transit Corridor District” and, within that District,

the “Md. 355 Area.” Exhibit 29, p. 9; *Plan*, p. 9-10. The Plan contains three broad objectives for properties within these areas.

A major objective for the Transit Corridor District is to retain the area’s existing residential character. The Plan describes this character as follows (*Plan*, p. 54):

...properties fronting MD 355 which have developed over many decades in accord with traditional patterns found elsewhere in the ‘Up-County’: single-family detached lots fronting the road. The most significant planning challenge here is to maintain and continue this residential character while addressing the need for increased traffic capacity along MD 355.”

The Master Plan recommends densities of between 2-4 dwelling units per acre in the Transit Corridor District. *Plan*, p. 55. Mr. Ager testified that the Master Plan instructs that MPDU bonus densities should be in addition to the base densities recommended by the Plan. T. 60.

The Plan also calls for diversifying housing types within the area. It designated sub-districts with specific targets for unit mixes. *Plan*, p. 35. The housing mix sought for the MD 355 Area is: Multi-family: 5%--20%, Attached: 30%-40%, Detached: 50%-60%. *Plan*, p. 39.

The Plan recommended establishing a “greenway system” along stream valleys in the area. According to the Plan, a “greenway” could be “as elaborate as a paved hiker-biker trail and as simple as a woodland path.” *Plan*, p. 20. The Plan calls for new developments to have strong pedestrian and bike connections to these greenways. *Id.* at 54-56.

Staff concluded that the application meets all three Master Plan objectives. It maintains the existing character of the area by having single-family detached homes face Md. Rte. 355. Staff concluded that the detached homes are “reasonably well spaced, and set back from the road a distance similar to other houses in the corridor.” The higher density townhomes are located in the interior of the site. Mr. Ager agreed, testifying that the frontage of single-family detached homes both complied with the Master Plan and made the development more compatible with the existing neighborhood. T. 61-62.

Staff determined that the number of units proposed complied with the Master Plan's density recommendation of 2-4 units per acre. The base density for this project is 4.0 dwelling units per acre. The Zoning Ordinance permits a 22% bonus density (above the base density). With the MPDU bonus, the project density could be a maximum of 4.88 dwelling units per acre. The proposed density is 4.87 dwelling units per acre.

Staff also found that the proposed project met the Plan's goal to diversify the area's housing mix (Exhibit 29, p. 22):

Given that there are currently no attached single-family houses in the MD 355 Area of the Transit Corridor District other than those approved for Dowden's Station, this plan will help achieve the Master Plan's housing mix target.

The last major Master Plan recommendation that affects the property is to encourage strong pedestrian linkages to the greenway. Staff reasoned that the application met this goal due to its proximity to a County bike trail planned for the western side of Frederick Road directly across from the subject property (Exhibit 29, p. 20):

At its closest point, the property is about 850 feet from the Master Plan greenway, and therefore cannot make a direct connection to the greenway. However, the site is directly across the street from the approved Frederick Road Bike Path (mandatory referral MR2015025), which will connect to the greenway. The applicant will need to show how the proposed development will link to the shared use path at the time of preliminary plan review; providing a safe crossing to the path would further this Master Plan goal.

The Hearing Examiner questioned Staff on whether the path should be counted when there is no existing connection or other means of crossing Frederick Road. Staff replied (Exhibit 30):

The 'bicyclist route' the staff report refers to is primarily the approved but unbuilt shared-use path on the west side of Frederick Avenue, but, according to one of our transportation planners when asked about this term, Frederick Road—and indeed any non-access-controlled road in the County—could be considered a "bicyclist route". The term is not defined in the zoning code.

Mr. Ager testified that the property was technically "adjacent" to the bike trail because it abuts the right-of-way. He also testified that Avalon will provide a sidewalk on its frontage that

will eventually lead to the intersection of Shawnee Road and Frederick Road. That intersection will permit a pedestrian to cross, although it will not be a controlled intersection. T. 55-56.

The Hearing Examiner finds that the FZP satisfies all of the identified goals of the Master Plan. The base density is 4 dwelling units per acre. Because more than 15% of those units will be MPDUs, the project qualifies for a 22% density bonus. This brings the maximum density to 4.88 dwelling units per acre. The actual density proposed is 4.87 units per acre.

She also finds that the FZP furthers the Plan's goal to preserve the existing neighborhood character along Frederick Road. Homes along the road that do not face the road will have architectural treatments to make them appear as if they front the road. The Hearing Examiner has no evidence to refute Staff's assessment that the spacing between the homes is a "reasonable" method of sustaining the roadway's existing character.

The uncontroverted testimony also supports a finding that the application will further the Master Plan's goal to diversify the types of housing in the Maryland 355 Area. It will add 16 townhomes to the area. The Maryland 355 Area has no other townhomes except for those in the recently rezoned Dowden Station development.

Finally, the Hearing Examiner finds that the FZP adequately furthers the Master Plan's goal to create connections to Clarksburg's "greenway" system. The site's close proximity to the Frederick Road Bike Path is sufficient for Master Plan compliance at the rezoning stage even if there presently is no easy access. The sidewalk constructed along the Frederick Road frontage will provide a necessary link in the future. There is nothing in this record to indicate that access to the bike path cannot occur at some point in the future along Frederick Road.

Environmental goals of the Master Plan are discussed in Part II.F of this Report.

E. Public Facilities

Under the County's Adequate Public Facilities Ordinance ("APFO," Code §50-35(k)), an

assessment must be made at subdivision as to whether the transportation infrastructure, area schools, water and sewage facilities, and other services will be adequate to support a proposed development, and in turn, whether the proposed development will adversely affect these public facilities. Both the Planning Board and the Council have roles to play in this assessment process.¹

The Planning Board makes the final determination on whether public facilities are adequate at preliminary plan review under parameters that are set by the County Council every four years in the Subdivision Staging Policy (SSP). Council Resolution No. 17-601, adopted November 13, 2012. While the final test under the APFO is carried out at subdivision review, the District Council must first make its own evaluation as to the adequacy of public facilities in a rezoning case. Section §59.7.2.1.E.2.e requires the District Council to find that traffic generated by the site meet the Planning Board's LATR Guidelines:

For a Floating zone application the District Council must find that the floating zone plan will: . . .

e. generate traffic that does not exceed the critical lane volume or volume/capacity ratio standard as applicable under the Planning Board's LATR Guidelines, or, if traffic exceeds the applicable standard, that the applicant demonstrate an ability to mitigate such adverse impacts . . ."

The Zoning Ordinance revisits the issue of public facilities in Section 59.5.1.2.A.2, which provides that:

The intent of the Floating zones is to: A. Implement comprehensive planning objectives by: . . . 2. ensuring that the proposed uses are in balance with and

¹After this application was filed but before the Planning Board's review, the Council adopted a new Subdivision Staging Policy (SSP). *Council Resolution 18-671*, adopted November 15, 2016. The new SSP applies to *preliminary plans* filed after January 1, 2017, but is silent on its application to rezonings. Because the Planning Board reviewed this application under the old SSP (cited in this Section), it apparently took the position that the new SSP applies to rezoning applications filed after January 1, 2017, as well. This is supported by Section 7.2.1.E.2.e of the Zoning Ordinance, which mandates that traffic from the development be within limits set by the Planning Board's LATR Guidelines. At present, the only LATR Guidelines that the Planning Board has adopted are those implementing the SSP in effect prior to November 15, 2016. Normally, the Hearing Examiner is required to apply the substantive law in effect at the time of her recommendation, *see, e.g., McHale v. DCW Dutchship Island, LLC*, 415 Md. 145, 170 (2010). In this case, however, both the Zoning Ordinance and the Planning Board's interpretation favor application the SSP in effect prior to November 15, 2016. All citations are to that SSP (i.e., Council Resolution No. 17-601, adopted November 13, 2012).

supported by the existing and planned infrastructure in the general plan, applicable master plan, functional master plan staging, and applicable public facilities requirements; . . . [Emphasis added.]

1. Transportation Facilities

The principal tool used by the County to evaluate the ability of transportation facilities to accommodate a proposed development is Local Area Transportation Review (“LATR”). LATR generally involves a traffic study intended to evaluate whether a proposed development would result in unacceptable congestion during the peak hours of the weekday morning and evening peak periods.² In this case, a full traffic study was required because the total trips generated by the proposed development will exceed 30 trips in both the morning and evening peak periods.

LATR measures congestion levels at specified intersections near a proposed development by Critical Lane Volumes (CLV). Maximum CLV levels are set within different geographic policy areas throughout the County. This property is located within the Clarksburg Policy Area, which has a maximum CLV of 1,425. Staff reports that all intersections studied operated well below the maximum CLV level, as demonstrated in the table from the Staff Report shown on the following page (Exhibit 29, p. 15).

Transportation Policy Area Review (TPAR) measures whether road and transit capacity in the Policy Area is sufficient to serve the development. Staff advises that the roadway capacity in the Clarksburg Policy Area is adequate, but transit capacity is not. As a result, Avalon will be required to make a TPAR payment equal to 25% of the General District Transportation Impact Tax. The type and amount of tax will be reviewed again at preliminary plan.

Based on the uncontroverted evidence in this case, the Hearing Examiner finds that the application meets the Planning Board’s LATR Guidelines, as required by Section 7.2.1.E.2.e of the Zoning Ordinance.

² Planning Department’s *LATR and TPAR Guidelines* (2013), p. 6.

Studied Intersection	Traffic Condition					
	Existing		Background		Total	
	AM	PM	AM	PM	AM	PM
Frederick Road & Stringtown Road	1,086	914	1,339	1,124	1,364	1,125
Frederick Road & Foreman Boulevard	816	855	909	954	914	959
Frederick Road & Northern Site Access	n/a				546	711
Frederick Road & Southern Site Access					541	735

**Table Showing Maximum
CLVs Expected With Proposed
Development**

2. School Facilities

The test for whether school facilities are adequate is also set in the County's Subdivision Staging Policy. New residential developments in school clusters (i.e., elementary, middle, and high schools) that exceed 105% utilization must pay a tax to proceed to development. No new residential developments are permitted if the utilization rate exceeds 120%. The utilization rates for school clusters are established annually.

The subject property lies within the Clarksburg School Cluster. Staff stated that utilization rates are "adequate" for this cluster. Exhibit 29, p. 8. Mr. Ager testified that the cluster utilization rates for schools within the Clarksburg cluster are between 94% and 98%. T. 70; Exhibit 37. Having no evidence to the contrary, the Hearing Examiner finds that school capacity is adequate to serve the proposed use, meeting the intent of the floating zone articulated in Section 59.5.1.2.A.2 and compliant with State law.

3. Water and Sewer

Mr. Soltesz and Mr. Ager testified that both public water and sewer will be available to serve the property. Public water is currently located along the property's frontage on Frederick Road. T. 103. Avalon obtained a sewer easement that connects the subject property to an existing

sewer line on Shawnee Lane. The WSSC has approved the sewer study required to connect the property to the existing line. T. 19. When Avalon brings the sewer line to the property, it will permit the McKenzies, who live on Frederick Road immediately south of the property, to connect to the line. T. 20. The Hearing Examiner finds that water and sewer facilities are adequate to serve the proposed use.

4. Other Public Facilities

With regard to other listed public facilities and services, the 2012-2016 Subdivision Staging Policy provides, on p. 21, that we “. . . must consider the programmed services to be adequate for facilities such as police stations, firehouses, and health clinics unless there is evidence that a local area problem will be generated.” There is no evidence of inadequacy in this case, and therefore police stations, firehouses and health clinics will be considered sufficient.

Based on this record, the Hearing Examiner finds that the proposed use will be served by adequate public services and facilities.

F. Environment

Under the 2014 Zoning Ordinance, an Applicant for rezoning is not required to submit an approved Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) with its rezoning application;³ however, it does require an “Existing Conditions Plan,” certified by a professional and showing the existing conditions on the site and in the vicinity within 100 feet, including existing topography; watershed; Special Protection or Primary Management areas; floodplains; wetlands; streams and associated buffers; forests; and the absence of rare, threatened, or endangered species.

³ Compare Section 59-D-1.3(a) of the old Zoning Ordinance with Section 59.7.2.1.B.2.g.v.(b) of the new Zoning Ordinance, which calls for “a plan certified by a licensed professional, showing existing site conditions and vicinity within 100 feet . . .,” including a variety of environmental information. The approval process for an NRI/FSD is pushed back to site plan review by the Planning Department under the new Zoning Ordinance.

Staff approved an NRI/FSD for this site in 2012 and re-certified it in 2015. Exhibit 11. Staff advises that there are no environmentally sensitive site features (i.e., forest, streams, buffers, wetlands, etc.). Exhibit 29, p. 3.

1. Impervious Area

The one environmental issue applicable to the property is its location within the Clarksburg Special Protection Area (SPA). The Master Plan called for establishment of the SPA to protect water quality in Clarksburg. The SPA accomplishes this goal by limiting the amount of impervious surface in new developments. Staff advises that there is no specific cap on imperviousness in this area of Clarksburg. Therefore, Staff performed an analysis of the appropriate impervious level based on “density, site layout, circulation requirements, and sensitive environmental features.” Exhibit 29, p. 17.

For this application, Staff recommended a goal limiting impervious surfaces to 35% of the tract area. Staff found this level similar to that imposed on other new developments in the area. Staff felt the 35% target was justified because there are no other environmentally sensitive features on this site. A table summarizing the impervious area goals of nearby new development is included in the Staff Report and shown below (Exhibit 29, p. 17):

Development	Zone	Dwelling Units	Property Size (acres)	Density (DUs/acre)	Imperviousness Level
Dowden’s Station	PD-4	105	24.37	4.31	30%
Eastside	PD-4	265	23.82	11.1	41%
Garnkirk Farms	PD-11	392	37.18	10.5	47.5%
Gateway Commons	R-200/TDR(7)	284	34.51	8.2	36%
Greenway Village	PD-4	844	210	4.0	34.5%
Highlands at Clarksburg	RMX-2	85	16.1	5.3	26.9%
	R-200	119	49.9	2.4	

A binding element of Avalon's FZP sets an impervious surface goal of no more than 35% of the tract area. Exhibit 44(d). Avalon submitted an "Impervious Area" exhibit to demonstrate that 34% of the illustrative layout is impervious area, under the goal recommended by Staff. Exhibit 44(c).

Based on this evidence, the Hearing Examiner finds that this goal is acceptable for the project and that the FZP will comply with the requirements of the SPA.

2. Forest Conservation

While there are trees on the property, none of the existing vegetation qualifies as "forest" under Montgomery County's Forest Conservation Law (Chapter 22A of the Code). Exhibit 29, p. 16. The law requires Avalon to plant 1.5 acres of forest. Currently, Avalon proposes to plant a 50-foot forested strip along the eastern property line and an additional forested area on the northeastern boundary. Staff expressed concern that the 50-strip on the east side will not survive, because historically, these have not survived long term "at great cost." *Id.* A current policy also requires rear yard forested areas to be setback from houses by at least 35 feet. To protect the forest, Staff recommended installing a fence at the setback area.

Forest conservation will be reviewed in detail at the time of preliminary plan. The Applicant has shown that the Code requirements may be met on the site. The forested buffer shown is also critical to a finding that the use is compatible with the surrounding area. Based on this record, the Hearing Examiner is satisfied that the proposed use raises no new environmental or compatibility concerns, and specific impacts will be further evaluated at the time of preliminary plan review.

G. Community Concerns

The record reflects both support and opposition to this development. Exhibit 29, Attachment 5. Some individuals felt it would further development of Clarksburg as envisioned in the Master Plan. Others felt that development was premature because the infrastructure called for

in the Master Plan (particularly planned road improvements) are not in place. Several others expressed safety concerns regarding the property's access onto Frederick Road. *Id.*

Patricia McKenzie, Esquire, appeared at the public hearing to present the position of Paul and Mary McKenzie, who own the abutting property to the south. She filed a pre-hearing statement outlining items they are requesting from Avalon. These include a connection to the sewer line for the project, a 6-foot white vinyl fence along the McKenzie's northern property line, pressure washing the McKenzie house after construction, and monthly window washing during construction. Exhibit 27. She stated that Mr. and Mrs. McKenzie had "no objection" to the application, but wanted to make sure that the McKenzie's concerns were met. She felt that connection of the McKenzie property to the public sewer furthered the County's interest in making homes "fully occupiable." T. 115.

According to Mr. Soltesz, he met with the owner (a Mr. Winters) of Parcel 660, which abuts the property to the north. That owner also requested a board-on-board fence at the northern edge of the property to screen the view from that property. A binding element of the FZP guarantees the location of the two fences. Exhibit 44(d).

V. FINDINGS AND CONCLUSIONS

Zoning involves two basic types of classifications, Euclidean zones and floating zones. Euclidean zoning divides the territory of a local jurisdiction into zoning districts with set boundaries and specific regulations governing aspects of land development, such as permitted uses, lot sizes, setbacks, and building height. *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926).

A floating zone is a more flexible device that allows a legislative body to establish a district for a particular category of land use, with regulations specific to that use, without attaching that district to particular pieces of property. Individual property owners may seek to have property reclassified to a floating zone by demonstrating to the Council that the proposed development will

meet the standards set forth in the Zoning Ordinance and that it will be consistent with a coordinated and systematic development of the regional district, as required by the State law. *Maryland Land Use Article, Code Ann. §21-101(a)(4)(i).*⁴

While the Council has a broader discretionary role in determining whether to approve a rezoning, the Zoning Ordinance still requires a structured and detailed analysis for the Council's review of rezoning applications, as follows:

Zoning Ordinance §59.7.2.1.E. establishes a set of “Necessary Findings” the Council must make for any Floating Zone application:

A. The “Necessary Findings” Required (§59.7.2.1.E.2)

For a Floating zone application the District Council must find that the floating zone plan will:

a. substantially conform with the recommendations of the applicable master plan, general plan, and other applicable County plans;

Conclusion: For the reasons stated in Part III.D. of this Report, the Hearing Examiner finds that the proposed Floating Zone Plan will substantially conform to the recommendations of the applicable master plan, general plan, and other applicable County plans.

b. further the public interest;

Technical Staff determined that the FZP furthered the public interest for the following reasons (Exhibit 29, p. 31):

The proposed plan furthers the public interest by providing additional housing units and a mix of housing types as recommended by the Master Plan, and includes 8 MPDUs. The plan also provides for a future connection to the parcel adjacent to the site should that property ever redevelop, which furthers the public interest by providing greater connectivity and access options for general circulation and emergency vehicle access.

⁴ Effective October 1, 2012, the Regional District Act, Article 28, Md. Code Ann., was re-codified, without a change in substance, into a new “Land Use Article.” Section §21-101(a)(4)(i) of the Land Use Article contains the rough equivalent of the previous language in Article 28, Md. Code Ann., § 7-110.

Conclusion: Based on this undisputed evidence, the Hearing Examiner finds that the proposed development will further the public interest. The Hearing Examiner adds that the application satisfies the requirements for adequate public facilities review, and therefore, the development will be consistent with the coordinated and systematic development of the Regional District, as required by State law.

c. satisfy the intent and standards of the proposed zone and, to the extent the Hearing Examiner finds it necessary to ensure compatibility, meet other applicable requirements of this Chapter;

Conclusion: For the reasons set forth below in V.B through V.E of this Report, the Hearing Examiner finds that the proposed FZP will satisfy the intent and standards of the proposed zone, and to the extent necessary to ensure compatibility, it will meet the other applicable requirements of the Zoning Ordinance.

d. be compatible with existing and approved adjacent development;

Planning Staff concluded that the development will be compatible with surrounding area for several reasons. The spacing, orientation, and architectural treatment of the homes fronting Frederick Road are consistent with the existing pattern of development. The density is similar to the recently approved Dowden Station, a rezoning to PD-4 Zone. Even though the density proposed here is slightly higher than that of Dowden Station, this site has fewer environmental constraints than the Dowden Station site. Exhibit 29, p. 22-23. Mr. Ager testified that placing the single-family detached units on the perimeter, along with natural buffers on the eastern and northern edges, makes the development compatible with the immediate area. T. 58-59.

Conclusion: The existing character of the neighborhood is residential and is evolving to comply with the recommendations of the Master Plan. The development maintains the existing residential character by locating the single-family detached homes on the perimeter of the site, while at the same time providing new housing types in the area, furthering the Plan's goal for the "Maryland

355 Area.” The Hearing Examiner finds that the proposed development will be compatible with existing and approved adjacent development.

e. generate traffic that does not exceed the critical lane volume or volume/capacity ratio standard as applicable under the Planning Board’s LATR Guidelines, or, if traffic exceeds the applicable standard, that the applicant demonstrate an ability to mitigate such adverse impacts; and

Conclusion: For the reasons set forth in Part III.E.1. of this report, the Hearing Examiner finds that the proposed development will not generate traffic that exceeds the maximum amount permissible under the Planning Board’s LATR Guidelines.

f. when applying a non-Residential Floating zone to a property previously under a Residential Detached zone, not adversely affect the character of the surrounding neighborhood.

Conclusion: This provision is inapplicable because the proposed development applies a residential Townhouse Floating Zone to a Residential Detached Zone.

B. The Intent and Standards of Floating Zones (§59-5.1.2)

The next step in the review process is a determination of whether the proposed development will satisfy the intent and general standards applicable to all floating zones. These standards are set forth in *Zoning Ordinance*, §59.5.1.2:

The Residential Floating, Commercial/Residential Floating, Employment Floating, and Industrial Floating zones are intended to provide an alternative to development under the restrictions of the Euclidean zones mapped by Sectional Map Amendment (the Agricultural, Rural Residential, Residential, Commercial/Residential, Employment, Industrial, and Overlay zones). To obtain a Floating zone, an applicant must obtain approval of a Local Map Amendment under Section 7.2.1. The intent of the Floating zones is to:

- A. *Implement comprehensive planning objectives by:*
 1. *furthering the goals of the general plan, applicable master plan, and functional master plans;*
 2. *ensuring that the proposed uses are in balance with and supported by the existing and planned infrastructure in the general plan, applicable master plan, functional master plan staging, and applicable public facilities requirements; and*
 3. *allowing design flexibility to integrate development into circulation networks, land use patterns, and natural features within and connected to*

the property; and

- B. *Encourage the appropriate use of land by:*
 - 1. *providing flexible applicability to respond to changing economic, demographic, and planning trends that occur between comprehensive District or Sectional Map Amendments;*
 - 2. *allowing various uses, building types, and densities as determined by a property's size and base zone to serve a diverse and evolving population; and*
 - 3. *ensuring that development satisfies basic sustainability requirements including:*
 - a. *locational criteria,*
 - b. *connections to circulation networks,*
 - c. *density and use limitations,*
 - d. *open space standards,*
 - e. *environmental protection and mitigation; and*
- C. *Ensure protection of established neighborhoods by:*
 - 1. *establishing compatible relationships between new development and existing neighborhoods through limits on applicability, density, and uses;*
 - 2. *providing development standards and general compatibility standards to protect the character of adjacent neighborhoods; and*
 - 3. *allowing design flexibility to provide mitigation of any negative impacts found to be caused by the new use.*

Section 59.5.1.2.A – Implement comprehensive planning objectives by . . .

Conclusion: The first test listed under this section essentially asks whether the proposal will comport with the goals of the general plan and the applicable master plan. The standard set forth in §59.5.1.2.A.1. is of course, repetitive of the previously discussed Master Plan standards, and for the reasons stated in Part III.D. of this Report, the Hearing Examiner finds that the proposed FZP will further the goals of the general plan, applicable master plan, and functional master plans.

Section 59-5.1.2.A.2 addresses the adequacy of existing and planned public facilities. For the reasons set forth in Part III.E. of this Report, it is clear that the proposed use is supported by existing and planned infrastructure.

The final subsection of 59-5.1.2.A encourages the use of design flexibility to integrate the development into the existing circulation network and land use patterns. Staff concluded that the Applicant's proposed right-in/right-out northern access point helps integrate the development into

the existing vehicular circulation network and the proposed inter-parcel connection will also facilitate connections when adjacent properties develop.

Conclusion: Based on this record, the Hearing Examiner finds that the proposed development will satisfy the intent standards for floating zones in Section 59-5.1.2.A. She further finds application has utilized design flexibility to create a compatible design that incorporates the Master Plan's goal to diversity housing types in the Maryland 355 Area.

Section 59.5.1.2.B - Encourage the appropriate use of land by. . .

Staff determined that the subject site is an appropriate location for the proposed development because of the evolving nature of the area. Staff notes that "significant growth has occurred as the 1994 Master Plan is implemented." Exhibit 29, p. 21.

Conclusion: The Hearing Examiner agrees that the proposed development will satisfy the intent standards in this section of the Zoning Ordinance. The proposed development implements the density and diversity in housing types called for by the Master Plan in a manner compatible with the existing area.

Section 59.5.1.2.C - Ensure protection of established neighborhoods . . .

The third prong of the intent provision (Section §59.5.1.2.C.) seeks to ensure protection of established neighborhoods by requiring design flexibility and compatibility with existing developments. Once again, the requirements of this section are repetitive of the general compatibility findings required by Section 59.7.2.1.E.2.d and have been discussed in Part V.A of this Report.

Conclusion: As was stated with regard to the compatibility findings required in §59.7.2.1.E.2.d above, the FZP will be compatible with the surrounding area. This standard has been met.

C. Eligibility for a Floating Zone (§59.5.1.3)

Where, as here, the property has not been recommended for a floating zone in the Master

Plan, Section 59-5.1.3. of the Zoning Ordinance sets up a series of tests to determine whether the requested Floating zone may be applied to the site in question. Each subsection is listed separately below, followed by the Hearing Examiner's finding on each:

Section 59.5.1.3. A. A Floating zone must not be approved for property that is in an Agricultural or Rural Residential zone.

Conclusion: Subsection "A" is not applicable since the subject site is zoned R-200, a Residential Detached Zone.

Section 59.5.1.3. B. If a Floating zone is recommended in a master plan, there are no prerequisites for an application. For properties with a master plan recommendation for a Floating zone for which an application can no longer be made as of October 30, 2014, the following table identifies the equivalent Floating zones for which an applicant may apply:

* * *

Conclusion: The Master Plan does not recommend a floating zone for this property, so the application must meet the criteria in Section 59-5.1.3.C (next).

Section 59.5.1.3. C. If a Floating zone is not recommended in a master plan, the following apply:

1. The maximum allowed density is based on the base zone and on the size of the tract as stated in Division [5.2](#) through Division [5.5](#). Any density bonus requested under Chapter 25A may be added to the density allowed under Division [5.2](#) through Division [5.5](#) and included in the units per acre or FAR of the zone requested.

Conclusion: This subsection requires the maximum density to be calculated in accordance with Section 59-5.2.5, which is done in the next part of this report.

2. Residential Base Zone

b. When requesting a Townhouse Floating (TF) zone, Apartment Floating (AF) zone, or Commercial Residential Neighborhood Floating (CRNF) zone for a property with a Residential base zone:

i. The property must front on a nonresidential street or must confront or abut a property that is in a Residential Townhouse, Residential Multi-Unit, Commercial/Residential, Employment, or Industrial zone; and

- ii. The application must satisfy a minimum of 2 prerequisites for each of the categories under Section [5.1.3.D](#).*

Conclusion: Staff advises that Frederick Road is an arterial roadway, meeting the requirement of Section 59-5.1.3.C.2.b.i. Staff assessed whether the application meets the required prerequisites under Section 59-4.1.3.D in a table included in the Staff Report (Exhibit 29, pp. 24-25, on the following page).

Conclusion: Planning Staff concluded that the property had sufficient pre-requisites in each category to be considered for a floating zone. The only pre-requisite discussed at the public hearing was whether the property meets the pre-requisite that it be “adjacent” to a bicycle route that connects it to commercial services. The Frederick Bike Path is located on the opposite side of Frederick Road and there are no dedicated pathways to access the bike path. Mr. Ager opined that the bike path was adjacent because it is located within the right-of-way of Frederick Road, which borders the property across the paved portion of the road. Exhibit 121. Staff advised that roadways are considered bike routes, even if not dedicated as such. Exhibit 30. Mr. Ager seconded that position, testifying that the Hearing Examiner has “broad discretion” to interpret the term “bicyclist route” because it is not defined in the Zoning Ordinance. T. 122.

Rather than interpret the term “bicyclist route” to mean any roadway, the Hearing Examiner looks at the meaning of the term “adjacent,” which is the critical part of the question in this case. The Hearing Examiner presumes, without deciding, that the prerequisite exists to promote development that is accessible to commercial services by non-auto modes of travel. The primary meaning of the term “adjacent” is “nearby.” The secondary meaning is “having a common endpoint

Category	Prerequisite Choices	Met
Transit & Infrastructure	At least 75% of the site is within ¼ mile of a Level 3, ½ mile of a Level 2, or ¾ mile of a Level 1 transit station/stop.	✓
	The site has frontage on and vehicular, bicycle, and pedestrian access to at least 2 roads, at least one of which is nonresidential.	
	The site is served by existing water and sewer infrastructure that will not require either an upgrade to the service line or installation of a pump station due to the proposed development.	
	All signalized intersections within ¼ mile of the site boundary are operating below the applicable congestion standard.	✓
	The project is age-restricted or senior housing, or if proposing development that may generate students, the site must not be in an area that is under moratorium due to school capacity or result in a school utilization rate greater than 120% because of the	✓

Category	Prerequisite Choices	Met
	proposed development. For any site within 2 school clusters, only the portions of the site that satisfy this requirement can proceed.	
Vicinity & Facilities	The site is in a transitional location between property in an existing Residential Multi-Unit, Residential Townhouse, or non-Residential zone and property in a Residential Multi-Unit, Residential Townhouse, or Residential Detached zone.	
	The site is adjacent to a bicyclist route that provides access to commercial services within 3 miles.	✓
	The site is adjacent to a route that provides access to an existing or master-planned school within ½ mile.	✓
	The site is adjacent to a pedestrian route that provides access to existing public park and recreation facilities that satisfy a minimum of 30% of the recreation demand under the Planning Board's Recreation Guidelines, as amended, within ¾ mile.	
	The site is adjacent to a pedestrian route that provides access to an existing grocery store or County-permitted farmer's market within ¼ mile.	
Environment & Resources	The limits of disturbance for the development will not overlap any stream, floodplain, wetland, or environmental buffer or any slopes greater than 25% or slopes greater than 15% where erodible soils are present.	✓
	The site does not contain any forest or, if forest is present, the limits of disturbance for the development will not reduce the forest cover to less than an area of 10,000 square feet and width of 35 feet at any point.	✓
	The site does not contain any rare, threatened, or endangered species or critical habitats listed by the Maryland Department of Natural Resources.	✓
	The site is on land containing contaminated soils and is developed in conjunction with an environmental Voluntary Cleanup Program under the Maryland Department of Environmental Protection.	
	The site is currently developed with more than 75% impermeable surfaces, including paving and roofed-structures, and does not currently provide stormwater management meeting the standards applicable on the date of filing.	

or border.” “Adjacent.” *Merriam-Webster.com*. Merriam-Webster, n.d. Web. 11 Jan. 2017. The Hearing Examiner finds that the proximity of the Frederick Road bike path is sufficiently nearby the subject property to meet the “adjacency” requirement. While at present there is not a dedicated means for bicyclists to access the Frederick Road Path, there is nothing in this record that indicates access can’t be accomplished by further improvements in the future. Avalon will provide part of this connection by installing a sidewalk along Frederick Road.

The details relating to the other pre-requisites are contained in the Staff Report and will not be repeated here. Based on the evidence in this case, including the Staff Report, the Hearing Examiner finds that the application meets all the pre-requisites for approval of a floating zone contained in Section 59-5.1.3.C.

D. Compliance with Purposes, Uses and Building Types of Residential Floating Zones (Division 59-5.2)

Zoning Ordinance §59-5.2 lists the Residential Floating Zones, specifies their purpose, designates the allowed uses and building types, and sets forth the applicable development standards. The development standards are discussed in the next part of this report, Part V.E.

Division 5.2. Residential Floating Zones

Section 5.2.2. Purpose

The purpose of Residential Floating Zones is to:

A. allow flexibility in residential development, including site layout, lot size, and placement;

Conclusion: Staff concluded that the FZP furthers this purpose because it permits diversified housing types (single-family detached and attached) on smaller lots than would be permitted by the base R-200 Zone. The Hearing Examiner agrees and finds that this purpose has been met.

B. allow residential development of a certain size to provide limited accessory commercial uses for the daily needs of the community; and

Conclusion: The FZP doesn’t propose commercial uses. This standard is inapplicable.

C. provide residential development that is compatible with the surrounding neighborhood.

Conclusion: The Hearing Examiner has already found the development compatible with the neighborhood. The application furthers this purpose of the residential floating zones.

Section 59.5.2.3. Land Uses

The land uses permitted in a TF floating zone depend on the number of units proposed. For projects of the density proposed here (i.e., 4.87 dwelling units per acre), the Zoning Ordinance allows all uses permitted in the TLD (Townhouse Low Density) Zone. *Zoning Ordinance*, §59-5.2.3.A.

Conclusion: Allowed uses under the TLD Zone include single-unit and townhouse living, the two uses proposed here. *Id.*, §59-3.1.6. The application complies with this standard.

Section 59.5.5.4. Building Types Allowed

This section specifies the building types permitted in the TF Zone. The Zone permits both detached house and townhouse building types, the two proposed in this application. This requirement is met.

E. Compliance with the Development Standards for the TF 5.0 Zone (§59-5.2.5)

Development Standards for the TF 5.0 Zone are spelled out in Zoning Ordinance §59.5.2.5. These are analyzed below.

A. Density

* * *

2. If a Floating zone is not recommended in a master plan, the following density limits apply:

3. An applicant may limit density below the maximum allowed by Section 5.5.5.A to support the necessary findings of approval under Section 7.2.1.

Conclusion: The maximum density of a development in the TF Zone depends on the current

zoning (in this case R-200), the minimum lot size permitted in the existing zone and the size of the property proposed for rezoning. Staff found that the maximum density permitted by the Zoning Ordinance is 4.36 dwelling units per acre (without the MPDU bonus), as follows (Exhibit 29, p. 27):

Pre-Existing Euclidean Zone	Base Lot/Site Size	Base Density in Units per Acre	Maximum Allowed Density in Units per Acre		
			Less than 3 times the base lot/site size	3 to <6 times the base lot/site size	At least 6 times the base lot/site size
R-200	20,000 SF	2.18	2.18	3.27	4.36

Conclusion: With a 22% MPDU bonus density, the maximum density permitted by the Zoning Ordinance would be 5.21 dwelling units per acre (i.e., $4.36 * 1.22$). Because the Master Plan recommends a base density of 4.0 dwelling units per acre, the FZP proposes a maximum base density of 4.0 dwelling units per acre. When the 22% MPDU bonus density is added to the base density, the maximum density permitted is 4.88 dwelling units per acre (i.e., $4.0 * 1.22$). The proposed development is 4.87 dwelling units per acre, under the maximum densities permitted by the Zoning Ordinance and recommended by the Master Plan.

B. Setback and Height

- 1. If a Floating zone is recommended in a master plan, height must not exceed that recommendation.*
- 2. Setbacks from the site boundary and maximum height are established by the floating zone plan. All other setbacks are established by the site plan approval process under Section 7.3.4.*
- 3. Height must satisfy the compatibility standards for the applicable building type under Section 4.1.8.B.*

Conclusion: As mentioned above, the Master Plan does not recommend a floating zone for the property. Therefore, the height provisions in Sections 59.5.2.5.B.2 and 3 apply. Avalon proposes a 25-foot setback from the site perimeter and a 40-foot height limit. Staff found the height limit

appropriate because the underlying R-200 Zone (optional method of development) and the TLD Zone both have 40-foot height limits. Staff found that the 25-foot perimeter setback compatible as well (Exhibit 29, p. 28). The Hearing Examiner finds both the proposed height and setback compatible based on this evidence.

Section 59-4.1.8.B contains additional compatibility requirements when a floating zone adjoins property in a Residential Detached Zone, as does this property:

When the subject property abuts a property in an Agricultural, Rural Residential, Residential Detached, or Residential Townhouse zone that is vacant or improved with an agricultural or residential use, any structure may not protrude beyond a 45 degree angular plan projecting over the subject property measured from a height equal to the height allowed for a detached house in the abutting zone at the setback line determined by Section 4.1.8.A.

Three sides of the property abut properties in a Residential Detached Zone (i.e., R-200) that are improved with single-family detached homes. Exhibit 44(d). Staff found it difficult to apply this section because the Zoning Ordinance “provides no guidance in determining the rear setback line used to measure height compatibility.”⁵ Staff found that the rear setback in the Townhouse Low Density (TLD) Zone (optional method development) was comparable because it is the same as the rear setback in the adjoining R-200 Zone under the standard method of development. The rear setback in the TLD Zone is 30 feet. A 30-foot setback would limit heights on the lots abutting the R-200 Zone to 40 feet. If the 25-foot perimeter setback is used, maximum heights would be 35 feet.

Conclusion: Staff’s interpretation of this section is reasonable, although the Zoning Ordinance could be read to mandate the *setbacks* identified in Section 59-4.1.8.A, even though that section doesn’t specifically apply to residential zones. The Hearing Examiner finds it unnecessary to resolve the issue, as this height compatibility standard will be applied at the time of site plan. The

⁵ Section 59-4.1.8.A applies only to Residential Multi-Unit, Commercial/Residential, Employment and Industrial Zones.

40-foot height maximum does not conflict with lower heights that may be required by this section at the time of site plan.

C. Lot Size

Minimum lot sizes are established by the site plan approval process under Section 7.3.4.

Conclusion: Any concerns in this regard will be addressed at Site Plan, as required by this section.

D. Minimum Open Space

Minimum open space must be provided as a percentage of the site area as determined by the most intense building type approved and density in units per acre.

Conclusion: Staff found that the most intense building type included in this application are the townhouse units. These building type requires the provision of 10% open space:

Open Space Required				
Building Type	Minimum Open Space Required Based on Units per Acre			
	1-19 units/acre	20-39 units/acre	40-59 units/acre	60+ units/acre
Detached House or a Building for a Cultural Institution, Religious Assembly, Public Use or conditional use allowed in the zone	0%	10%	10%	15%
Duplex	0%	10%	15%	20%
Townhouse	10%	15%	20%	25%
Apartment, Multi Use, or General Building	15%	20%	25%	30%

Conclusion: The Applicant is proposing 10% open space. The FZP meets this standard.

E. General Requirements

1. Parking, recreation facilities, screening, and landscaping must be provided under Article 59-6 as required for the Euclidean zone that establishes uses under Section 5.2.3 for each applicable residential or commercial area.

2. The floating zone plan may provide for additional parking, open space, recreation facilities, screening, or landscaping or further restrict lighting to allow the District Council to make the necessary findings of approval under Section 7.2.1.

Staff advises that the following divisions of Article 59-6 apply to the subject property: Division 6.2 (parking), Division 6.3 (Open Space and Recreation), and Division 6.4 (General Landscaping and Outdoor Lighting). The detailed requirements of these sections will be applied at site plan. The application proposes a total of 92 parking spaces, 8 more than the minimum required. These are located along the curvature of the circular interior road.

The applicable development standards, and the Applicant's compliance therewith, are summarized by Staff in a Table in their report (Exhibit 29, p. 30):

Development Standard	Required / Permitted	Proposed
Minimum Tract Area	20,000 SF	10.2753 acres (447,591 SF)
Maximum Density	-	-
Base Density	4 DUs/acre (per Master Plan)	4 DUs/acre
Final Density with MPDU Bonus	4.88 DUs/acre	4.87 DUs/acre
Number of Units	50	50
Detached Houses	-	34 (no MPDUs)
Townhouses	-	16 (8 MPDUs)
Minimum Building Setbacks from Site Boundary	Established by Floating Zone Plan	25 feet
Maximum Building Height	Established by Floating Zone Plan	40 feet
Lot Area/Lot Widths at Street and Front Building Line/Setbacks	-	TBD at Site Plan
Minimum Open Space	10%	10%
Minimum Parking	2 spaces per DU (market rate) 1 space per DU (MPDU) (84 spaces total)	2 spaces per DU (market rate) 1 space per DU (MPDU) Plus 8 visitor spaces (92 spaces total)

Conclusion: Based on this undisputed record, the Hearing Examiner finds that the subject floating zone application either meets all the development standards set forth in Section 59-5.2.5 or may meet them at the time of site plan.

VI. CONCLUSION

Based on the foregoing analysis and after a thorough review of the entire record, the Hearing Examiner concludes that the proposed reclassification and development will meet the standards set forth in the Zoning Ordinance, and that it will be consistent with a coordinated and systematic development of the regional district, as required by the Maryland Land Use Article, Code Ann. § 21-101(a)(4)(i) (2012).

VII. RECOMMENDATION

I, therefore, recommend that Local Map Amendment Application No. H-115, requesting reclassification from the existing R-200 Zone to the TF 5.0 Zone, of property located at 22821 and 22901 Frederick Road, Clarksburg, Maryland, and consisting of 10.28 acres of land be **approved** in the amount requested and subject to the specifications and requirements of the Floating Zone Plan, Exhibit 44(d); provided that the Applicant files an executed covenant reflecting the binding element in the land records and submits to the Hearing Examiner for certification a true copy of the Floating Zone Plan approved by the District Council within 10 days of approval, as required by §§59.7.2.1.H.1.a. & b. of the Zoning Ordinance.

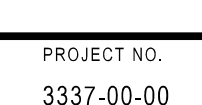
Dated: January 30, 2017

Respectfully submitted,



Lynn A. Robeson
Hearing Examiner

9-8-2017
Soltész
WAS layout



January 8, 2018(Revised March 27,2018), Rev.April 5,2018, Rev.June 6,2018, Rev June 13,2018

Ms. Rebecca Torma
Senior Planning Specialist
Montgomery County Department of Transportation
101 Monroe Street, 10th Floor
Rockville, MD 20850

Re: Avalon Residential Preliminary Plan #120180110
Design Exception Package

Dear Ms. Torma,

On behalf of our client, 3 Sons Avalon, LLC, we are submitting a Design Exception for the above referenced project. The Preliminary Plan has been submitted to M-NCPPC for their review.

The following information is provided per MCDOT's submission requirements for Design Exceptions:

1. Exception to Montgomery County Code Section 49-33 (I)(1) B

(I) Curbs and gutters.

(1) A person must not install any curb or gutter in any portion of a road that is located in:

(B) an area that the Department of Environmental Protection designates as environmentally sensitive, after giving the Department of Transportation and the Planning Board a reasonable opportunity to comment.

a. Written explanation describing the proposed modification(s)

The project is proposing closed section roadways for a secondary interior road within the Clarksburg Special Protection Area.

b. Rationale for the request.

A tertiary roadway with a 50-foot right-of-way and parallel parking and sidewalk on one side was shown on the development plan for this project during the zoning application for Local Map Amendment H-115. This zoning application was approved on February 28, 2017, reclassifying the property from the R-200 zone to the TF 5.0 zone (Townhouse Floating Zone). A Preliminary Water Quality Plan has been submitted and is currently under review by the Department of Permitting Services.

As requested by MCDOT at Preliminary Plan review, the project of 50 homes is proposed to be served by a secondary road with parallel parking and sidewalk on one side, which provides circulation through the development and access to MD 355

Frederick Road. The road provides direct access to single family detached homes to be constructed around the perimeter of the site, in accordance with the conditions of approval of H-115, to ensure compatibility with the surrounding neighborhoods. An interior private road provides circulation and access to single family houses facing MD 355, as well as to the rear-loaded garage townhouses served by alleys.

The majority of the single family detached lots are 50 feet in width, with frontage and access from Road A, a public road with parallel parking and a sidewalk on one side. It would be impractical to implement an open section roadway to serve these lots. The standard open section secondary residential street per MCDOT Standard No. MC-2002.04 requires a right-of-way width of 78 feet, a paving section of 24 feet, and sidewalk on both sides. This would lengthen all of the driveways by 12 feet, and add considerable impervious area to the development.

Local Map Amendment H-115 stipulated that the development of the property should pursue a goal of 35% or less. The applicant proposes a modification of Secondary Residential Street Standard 2002.02, to provide a 50-foot right-of-way with curb and gutter, sidewalk on only one side, and some parallel parking on one side, which would be more appropriate, and address the environmental and design considerations for the site, parking needs and the master plan for the area.

Installing curbs will allow for reduction of pavement and right-of-way width. Stormwater is managed on site by the use of ESD's and stormwater infiltration ponds which will provide for better control of runoff and water quality throughout the site. No wetlands or floodplain exist on the site.

- c. *Measures that were evaluated to avoid the need for the modification(s) and why they were determined unacceptable.*

The applicant reviewed and evaluated standards for applicable roadways. Expanding the right-of-way would also significantly impact the depth of the lots and, given the 25-foot setback from the property boundary which was required as a condition of approval of the Floating Zone Plan, would affect the yield and location of roadways within the development. Adding 28 feet to the right-of-way would not leave enough room for the dwelling units to be sited outside of the required setback from the property boundary and the area set aside for forest conservation, as well as area set aside for open space. Similar conflicts were found with other standard right-of-ways.

- d. *Anticipated impact on vehicular, bicycle and pedestrian traffic.*

No negative impact on vehicular traffic or bicycle traffic is anticipated. Closed section roads can be found in several subdivisions located within the Clarksburg SPA such as Cabin Branch, Clarksburg Village, Garnkirk Farms and Gallery Park.

The roadway paving and lanes will be narrower than they would be without the curb and gutter. Curb and gutter, narrower pavement and on-street parking have been shown to promote reduced vehicular speed, which is safer for both vehicles and pedestrians.

Pedestrian safety is increased, as the curb provides a visual and physical barrier to contain vehicular movement, in addition to the grass panel, which serves as a buffer between pedestrian and vehicular traffic.

e. Anticipated impact on future County maintenance operations.

The proposed curb and gutter will be constructed to county standards, so no impact to county maintenance operation is anticipated. Roadways with curb and gutter tend to require less maintenance than open section roadways.

f. Plan demonstrating the impact of a standard design on the project. Demonstration should be made through plan views, cross sections, engineer's cost estimate, etc. as appropriate.

A plan and cross sections are provided to show the proposed road and how it will function with the development. A second sidewalk and longer driveways per the open section roadway standard will exceed the goal established for impervious area on the site, which, as demonstrated with the modified section is already at 35.0 percent.

g. Anticipated structure life span (structure replacement time frame).

This is not applicable to this case.

h. Impact on the project if MCDOT does not approve the request.

The site plan layout and lot yield would be severely impacted if closed section roadways were not permitted. The increased paving width, driveway lengths and sidewalk on both sides would also result in more impervious area per unit, which would exceed the 35% goal for the property. The resulting impacts would affect the feasibility of developing the property.

i. Perceived benefit to the public and private sectors if modification is permitted.

Closed section roadways contribute to traffic calming. Closed section roads are more marketable to buyers, and more appropriate to development of the designated density of the property.

2. Exception for Modification to Secondary Residential Road 60' Public right-of-way Standard MC-2002.02 to provide a 50-foot public right-of-way, with two 10-foot drive aisles, sidewalk on one side, and 8' wide parallel parking on one side in two segments of approximately 98 feet. (Street A: Station 2+44.15 to Station 3+47.80, and Station 9+40.36 to 10+44.01) and a minimum centerline radius of 100 feet.

a. Written explanation describing the proposed modification(s).

MCDOT Standard Secondary Residential Street 2002.02 is a secondary road with a 60-foot right-of-way, parallel parking on one side and sidewalk on both sides of the street.

The applicant proposes a modification to the standard, to provide sidewalk on one side and parallel parking on one side in two segments of the roadway. The parking will provide guest parking and a sidewalk adjacent to the parking for ease of access from parked automobiles. Parallel parking is provided in two bays along the roadway, not for the entire length of the street. The applicant proposes two 10-foot wide travel lanes, instead of one 10-foot and one 11.5-foot lane, as illustrated in Std. 2002.02 (a reduction of only 1.5 feet of pavement). The parallel parking aisle is 8 feet wide as in the standard section. This 28-foot wide section meets the requirements of the Montgomery County Fire Marshall and Fire Safety Code. A centerline radius of 100 feet is applied to the two curves in the roadway, consistent with a small residential community street and design speed for the road.

b. Rationale for the request.

A tertiary roadway with 50-foot right-of-way was shown on the development plan for this project in the zoning application for Local Map Amendment H-115, approved on February 28, 2017. The proposed plan reflects a secondary road, as requested by MCDOT, with a 50-foot right-of-way, a sidewalk on one side and two bays of four (4) parallel parking spaces, as approved by M-NCPPC and the County Council of the Local Map Amendment.

The proposed cross-section allows for two small bays of guest parking to be provided between the curb and the sidewalk. The sidewalk is provided adjacent to the 8-foot wide parallel parking space to allow for occupants of the vehicle to step onto a paved surface when exiting the vehicle. It also provides for a continuous sidewalk and sight line without the need to jog the walkway. The right-of-way is proposed as a consistent 50-foot width for the length of the roadway. If street trees are planted approximately every 50 feet as recommended in Standard No. MC-700.01, the parking will only break the pattern by eliminating one tree, and sidewalk and the line of trees will not need to shift out of line with the others along the right-of-way. Sidewalk on only one side reduces paving and impervious area to reduce runoff impacts to the watershed and the Special Protection Area (SPA). Limiting the parking to two bays, instead of the entire length of the road, reduces the impervious area of the road, while providing for parking as needed for the development. The narrower right-of-way also reduces imperviousness, by reducing the length of all of the driveways along the road.

The Montgomery County Environmental Guidelines recommend the use of techniques to minimize imperviousness in SPA's, which include the use of narrower street and sidewalk sections and providing sidewalks on only one side of the street. The proposed 100-foot centerline radius is appropriate to a small residential development, and serves to slow traffic on the proposed residential street.

In accordance with Section 4.2 (E)(2)(a)(i) of the Subdivision Regulations, the Board may approve a narrower than standard road right-of-way if it meets minimum fire access requirements and the Board finds that a narrower right-of-way is environmentally preferable, improves compatibility with adjoining properties, or allows better use of the tract under consideration.

The proposed road right of way and cross section meets the minimum requirements for fire access, and is environmentally preferable, by virtue of reducing the impervious area of the site, and allowing for bioswales to treat runoff.

Section 4.2 (E)(2)(a)(ii) states that In determining the width of a less than standard right-of-way, the Board must consider:

- a. *the recommendations of the [[County]] Department of Transportation or other applicable state or municipality transportation permitting agency;*
MCDOT recommends the use of a modified secondary street with a 50-foot right-of-way and pavement section as indicated.
- b. *the amount of traffic expected to use the proposed roads;*
The amount of traffic expected to use the proposed road is minimal. The road only serves 50 homes and has two means of access to Frederick Road
- c. *the maximum road right-of-way or improvement required for the proposed land use; and*
The roadway serves a total of 50 dwelling units. Section 49-31 of the County code designates a tertiary road as a road meant to provide direct access to a residential development with 75 or fewer dwelling units. At the request of MCDOT, the applicant has provided a modification of secondary road Standard 2002.02 to reflect a 50-foot right of way. Standard 2002.02 reflects a 29.5-foot wide paving section, which includes an 8-foot parallel parking lane on one side, a travel lane of 10 feet and a travel lane of 11.5 feet. The proposed road has a 28-foot wide cross section at its widest point, only 1.5 feet less than the standard. The proposed road also provides an 8-foot wide parallel parking, however, the parallel parking is not for the entire length of the street, but rather limited to two segments of the road. This provides additional guest parking as needed but reduces the impervious area by not extending it for the entire length of the road.
- d. *the increased traffic, travel lane, and right-of-way requirements that would be created by maximum use and development of land using the road*
The use of the Standard MC-2002.02 right-of-way would result in wider road pavement and longer driveways which would create greater impervious area in a special protection area. It also would implement a wider cross section that would set houses farther back from the road and farther apart, creating a less of a pedestrian friendly streetscape and community environment.

The proposed modified right of way meets the requirements for a reduction in right-of-way. It is environmentally preferable and creates a more pedestrian friendly community, compatible with surrounding properties. The use of the modified right-of-way allows for better use of the site, allowing for greater areas of open space and forest conservation.

- c. *Measures that were evaluated to avoid the need for the modification(s) and why they were determined unacceptable.*

The applicant studied other right-of-way sections and other possible locations for the visitor parking. In cases of a larger right-of-way, impervious area was increased. The development approved in H-115 is conditioned upon striving for a 35% impervious goal. The development is very close to the goal without longer driveways and sidewalk on both sides of the street. The larger right-of-way and paving section of 2002.02 causes the impervious area to exceed the goal. Other locations for the parking, such as adjacent to the central park, were considered, but they compromised the available usable open space and visually blocked the view of the park from the street. As requested by the M-NCPPC staff in previous discussions, the applicant has provided a central open space and an open area between Frederick Road and the park, to provide a view to the park.

d. Anticipated impact on vehicular, bicycle and pedestrian traffic.

No negative impact on vehicular traffic or bicycle traffic is anticipated. The roadway paving and lane width will be slightly narrower (1.5 feet) than they would be without the modification. Typical tertiary road standards (2001.01 and 2001.02) also use 10-foot travel lanes with a 20-foot wide paving section. Narrower roadways and parallel parking have been shown to promote reduced vehicular speed. Safety to pedestrians is increased as the curb provides a visual and physical barrier to contain vehicular movement in addition to the grass panel. Cars parked in the parallel parking spaces also provide separation and pedestrian protection from moving vehicles.

e. Anticipated impact on future County maintenance operations.

The proposed roadway, curb and gutter and sidewalks will be constructed to county standards, so no impact to county maintenance operations is anticipated.

f. Plan demonstrating the impact of a standard design on the project. Demonstration should be made through plan views, cross sections, engineer's cost estimate, etc. as appropriate.

A plan and cross sections are provided to show the proposed road and how it will function with the development. A second sidewalk and longer driveways will exceed the goal established for impervious area on the site, which, as demonstrated with the modified section, is already at 35.0 percent on site.

g. Anticipated structure life span (structure replacement time frame).

This is not applicable to this case.

h. Impact on the project if MCDOT does not approve the request.

If not approved, the proposed development will not have additional parking for guests beyond their driveways. The design provides at least 2 spaces per household, as required by code, however this does not provide for visitor parking. The lack of visitor parking is often a problem in small developments. Without additional guest parking, guest parking for the development could impact adjacent neighborhood streets. Additionally, a 60-foot right-of-way would increase impervious area within the SPA.

i. Perceived benefit to the public and private sectors if modification is permitted.

The on-street parking will provide clear and accessible parking for visitors and will be beneficial to only to the proposed development but to the surrounding neighborhood, by preventing overflow parking. It will be evidence that the needs of both have been considered in in the design of the project and will promote a better sense of well-being and harmony. The proposed on-street parking, 100-foot centerline radius and 20-foot wide pavement will have the effect of slowing traffic and provide a sense of community by creating a more pedestrian friendly streetscape, bringing front doors closer to the street and to the front doors of neighbors on the other side of the street.

3. Exception for Modification to Secondary Residential Road 60' Public right-of-way Standard MC-2002.02 to provide a bioswale within the right-of-way in two sections of the roadway – from Station 3+64.72 to Station 8+13.24, and Station. 9+95.85 to Sta. 11+89.85.

a. Written explanation describing the proposed modification(s)

The applicant is proposing bioswales within portions of the right-of-way, to treat onsite runoff in two sections of the roadway in the green panel, on the side of the road with no sidewalk or parallel parking. These are provided where conditions such as soil and slope are suitable for infiltration. The bio-swales are required for the project to meet the SWM regulations approved by Montgomery County.

b. Rationale for the request.

The site is located within the Clarksburg Special Protection Area. The county encourages the use of Environmentally Sensitive Design measures to the maximum extent possible to control stormwater within the site, to allow for retention and infiltration, minimizing runoff to protect the watershed. The applicant has proposed dry wells, planter boxes, microbioretention facilities and bioswales to provide the most effective ESD's to the maximum extent possible throughout the site. The use of bioswales within the right-of-way will be an important tool in the management of runoff from driveways and roadways, and will serve to maintain water quality in the watershed.

c. Measures that were evaluated to avoid the need for the modification(s) and why they were determined unacceptable.

The applicant has evaluated the measures available for onsite stormwater management and utilized them to the maximum extent possible where appropriate throughout the development. The bioswales are one measure within the comprehensive design for the management of runoff on the site. Other ESD measures were deemed unacceptable for treating the roadway due to grading and size limitations.

d. Anticipated impact on vehicular, bicycle and pedestrian traffic.

No impact on vehicular traffic or bicycle traffic is anticipated. The bioswales will not interfere with roadways, driveways or sidewalks. The roadway paving and lanes will be the same width as they would be without the bioswales.

e. Anticipated impact on future County maintenance operations.

The proposed bioswales will be constructed to county standards, so no impact to county maintenance operation is anticipated.

f. Plan demonstrating the impact of a standard design on the project. Demonstration should be made through plan views, cross sections, engineer's cost estimate, etc. as appropriate.

A plan and cross sections are provided to show the proposed road and location of the bioswales. A standard section would not have the bioswales and would result in less runoff from development to be treated and slowed to infiltrate the soil.

g. Anticipated structure life span (structure replacement time frame).

This is not applicable to this case.

h. Impact on the project if MCDOT does not approve the request.

The project would result in less of the stormwater on the site being treated and less treatment of impervious surface runoff. The resulting impacts would negatively affect the water quality and the feasibility of developing the property.

i. Perceived benefit to the public and private sectors if modification is permitted.

The proposed bioswales will provide a mechanism to maintain the quality of the Clarksburg Special Protection Area and the Little Seneca Creek watershed.

If you have any further comments or questions, please do not hesitate to contact our office.

Sincerely,

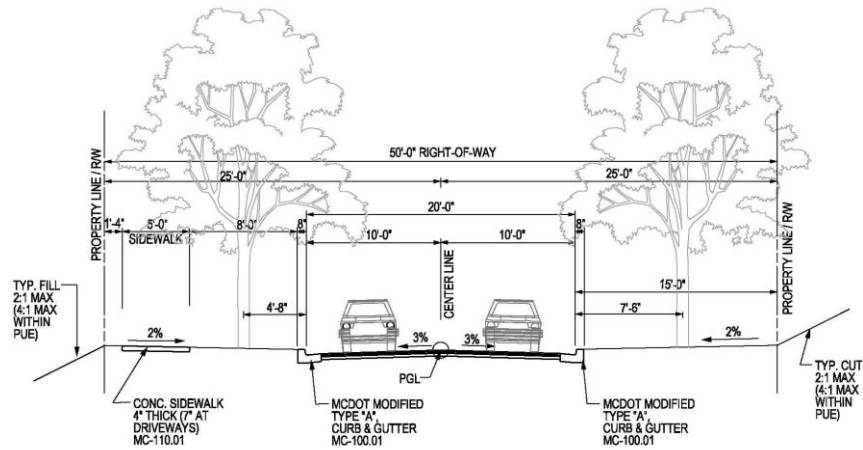
Soltesz, Inc.



Phil R. Isaja
Senior Associate

cc: Jim Soltesz – 3 Sons Avalon

Design Exception #1 and Design Exception #2

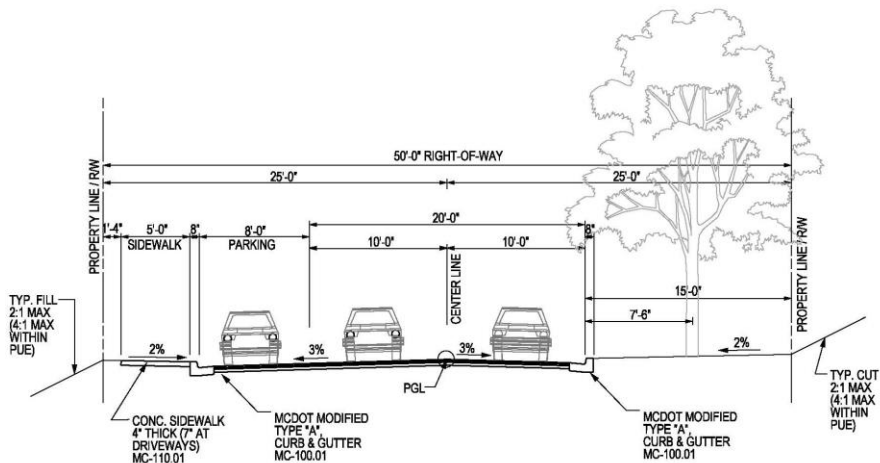


MODIFIED SECONDARY RESIDENTIAL ROAD

STD. MC-2002.02

**PUBLIC 50' RIGHT-OF-WAY
SIDEWALK ON ONE SIDE
(NOT TO SCALE)**

**PUBLIC ROAD 'A' STA. 0+00 TO STA. 2+44.15
PUBLIC ROAD 'A' STA. 3+47.80 TO STA. 9+40.36
PUBLIC ROAD 'A' STA. 10+44.01 TO STA. 12+88.16**



MODIFIED SECONDARY RESIDENTIAL ROAD

STD. MC-2002.02

**PUBLIC 50' RIGHT-OF-WAY
PARKING ON ONE SIDE AND SIDEWALK ADJACENT TO PARKING
(NOT TO SCALE)**

**PUBLIC ROAD 'A' STA. 9+40.36 TO STA. 10+44.01
PUBLIC ROAD 'A' STA. 2+44.15 TO STA. 3+47.80**

Plan View

NOT TO SCALE

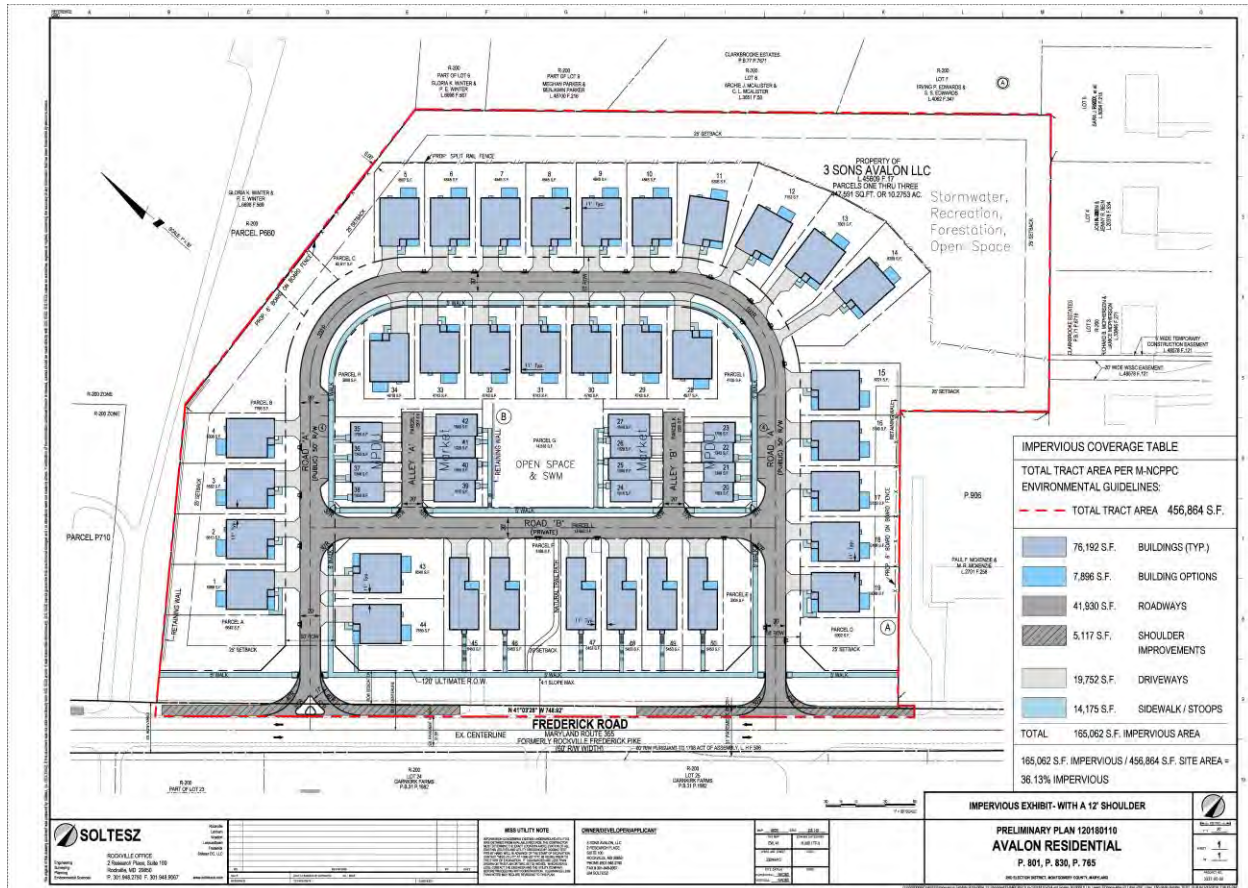
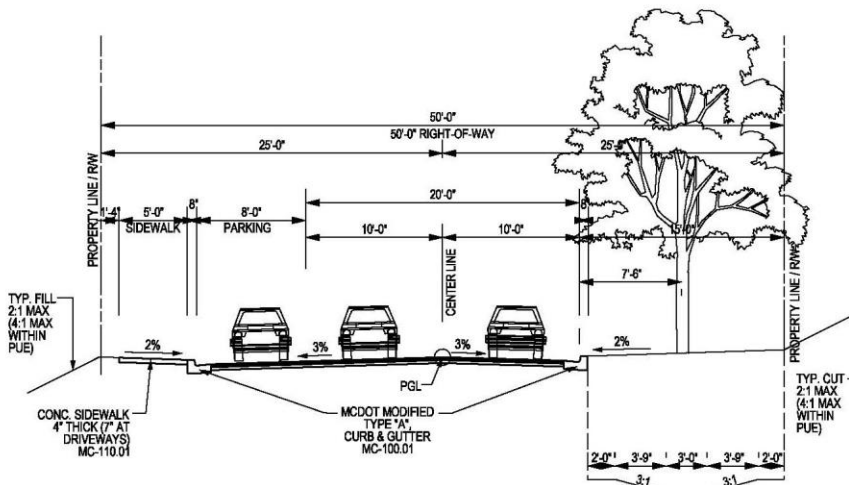


Diagram illustrating the cross-section of a residential street with various dimensions and materials:

- Right-of-Way (ROW):** 50'-0" total width.
- Tree Canopy:** 25'-0" wide on each side of the road.
- Travel Lanes:** 10'-0" wide on each side of the centerline.
- Centerline:** 0'-0" wide.
- Curbs:** 4'-0" wide on each side of the travel lanes.
- Sidewalks:** 4'-0" wide on each side of the curbs.
- Materials:**
 - CONC. SIDEWALK 4" THICK (7" AT DRIVEWAYS) MC-110.01
 - MCDOT MODIFIED TYPE "A" CURB & GUTTER MC-100.01
- Slopes:**
 - 2% slope for the road surface.
 - 3% slope for the curb.
- Typical Fill:** 2:1 MAX (4:1 MAX WITHIN PUE)
- Typical Cut:** 2:1 MAX (4:1 MAX WITHIN PUE)

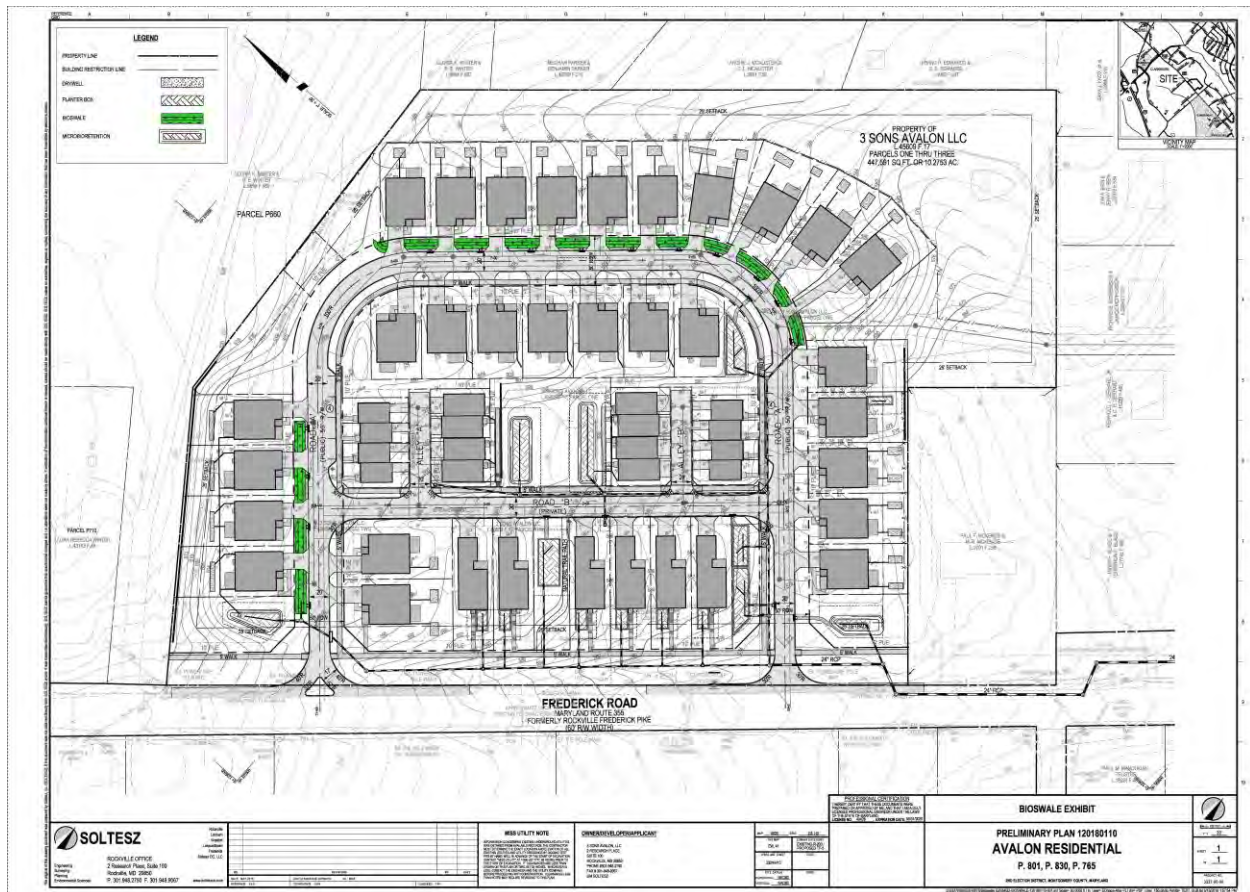
PUBLIC ROAD 'A' - STA. 3+64.72 TO 8+13.24
PUBLIC ROAD 'A' - STA. 10+44.01 TO 11+89.85



PUBLIC ROAD 'A' - STA. 9+95.85 TO 10+44.01

Plan View

NOT TO SCALE



**Statement of Justification
For the Use of Private Residential Roads
AVALON RESIDENTIAL**

Preliminary Plan 120180110

January 8, 2018 (Revised March 27, 2018) Rev.6/7/2018, 2018, Rev.6/14/18

On behalf of 3 Sons Avalon (the Applicant) and in accordance with Subdivision Regulation Amendment 16-01 Section 4.3.E.4.b, this statement is submitted in justification of the use of private roads as part of the development proposal.

I. Introduction

The applicant proposes the development of a 50-unit subdivision along Frederick Road, (MD 355). The subdivision will be served by a public loop road ('Road A') connecting to Frederick Road. The applicant proposes to provide a private road mid-block to serve as access to the six houses fronting on Frederick Road (MD 355). Frederick Road is an arterial road. In order to reinforce the residential character along MD 355 as reflected in the master plan goals, the applicant has provided homes facing 355 and served by rear-loaded garages along private 'Road B'. 'Road B' also will provide access to private alleys A and B, serving the townhouses (8 units on each end of the street) to allow for townhouses that front onto 'Road A' and onto the centrally located open space, with rear-loaded garages. This design provides a more pedestrian-friendly environment, retains accessible open space in the center of the development and provides sidewalks serving the front doorways and park without breaking up the streetscape with numerous driveways. It also provides a safer alternative to multiple driveways along MD 355 and townhouse driveways along 'Road A'.

The private road and alleys will be maintained by the Community's Homeowner Association, funded by association dues and held in an appropriate reserve fund for maintenance and replacement.

II. Requirements for Consideration

In order to be considered for approval, a private road must not be needed to maintain area circulation, provide continuous corridors to serve the general public and quasi- public needs such as communication, utility, and future potential transportation or other systemic needs that serve the public on a long-term basis, and is not needed to be part of the network modeled for area capacity. The proposed private road and alleys are internal to the proposed development. They do not serve area circulation, and are only needed for circulation within the development. They are not part of a continuous corridor and not part of the network modeled for the area capacity. The proposed development is an infill development along the existing 355 corridor.

The development will be served by a public loop road, classified as a modified secondary road. Internal to the loop road, the midblock road and residential alleys are proposed to be private. This will provide full circulation through the project and not create a segmented pattern of road ownership, nor negatively affect the development of other properties. The project requires Site Plan review and approval.

III. Justification

The following are design elements of the proposed private roads that do not meet public road standards for a tertiary street.

1. Road cross-section

- Right-of-way width – The proposed private alleys ‘Alley A’ and ‘Alley B’ are each within a 22-foot wide parcel. ‘Road B’ is within a 32-foot wide parcel, and includes a green panel and sidewalk on one side.
- Cross slope – ‘Road B’ is graded at a cross slope of 3%, with no crown. ‘Alley A’ and ‘Alley B’ are graded with a crown and 3% cross slope to each side, as required by tertiary road standards
- Sidewalk – Sidewalk is provided on one side of the road parcel for ‘Road B’, separated from the roadway by a curb and green panel. The sidewalk along ‘Road B’ provides pedestrian access to the central open space from the sidewalks along public ‘Road A’, and the sidewalks that serve the townhouses facing the open space. A complete sidewalk network provides connection throughout the development. No sidewalks are proposed in alleys A and B, which serve the rear-loaded townhouse garages.

Proposed private ‘Road B’ is similar to MCDOT Standard Tertiary Residential Street 2001.01, with a 20-foot wide paving section, a 5-foot wide green panel and a 5-foot wide sidewalk on one side. It provides a 32-foot wide right-of-way, to maximize usable green space in the development and reduce imperviousness. The right-of-way for Standard 2001.01 is 44 feet. The roadway will be built to MCDOT standards and construction specifications with respect to surface depths and structural design, horizontal and vertical alignments.

The use of the 32’ and 22’ right-of-ways allows for more area to be devoted to open space, green area and stormwater management. The proposed development implements best management practices and environmentally sensitive design, through the use of bioswales, planter boxes, micro-bioretenion facilities and drywells for the treatment of runoff. The site is within the Clarksburg Special Protection Area. The Montgomery County Environmental Guidelines recommend the reduction of impervious area through such methods as sidewalks on one side of the street, and narrower paving and right-of-way sections.



The use of a private streets and alleys is in accordance with the design and intent of the development plan approved with Local Map Amendment H-115 on February 28, 2017. Approval of LMA H-115 included the following binding elements for development of the property:

- Development may not exceed 50 dwelling units.
- To ensure compatibility with the surrounding neighborhood, only single-family detached units may be constructed around the perimeter of the site, as depicted on the Floating Zone plan. This includes units separated from the site boundary by stormwater management, forest, or other buffers.
- Setback from site boundary is a minimum of 25 feet.
- The maximum building height is 40 feet.
- To minimize impervious surfaces on the property, development of the property should pursue an imperviousness goal of 35 percent or less of the tract area as calculated using the Montgomery County Environmental Guidelines.
- Board-on-board fencing of at least 6 feet in height shall be provided along portions of the site's northern and southern boundaries as depicted on the floating zone plan.

The requirements for single family lots around the perimeter, as well as the 25-foot setback from the property boundary constrain development of the townhouses and open space to the center of the property. Development of the property is also constrained by the goal of 35% impervious area. Since the subject property is in a Special Protection Area, special attention is placed on reducing areas of imperviousness while still providing a circulation system that is efficient and fully serves the needs of the community.

The proposed preliminary plan reflects a 20-foot wide pavement as shown in the LMA plan, but adds a sidewalk on one side to improve pedestrian circulation through the development and provide better access to the central open space.

IV. Standards

The parcel width of private 'Road B' is narrower than a standard tertiary road, however specifications for pavement width, surface depth and structural design will be in accordance with public tertiary road standards. The 'Road B',



standards relative to horizontal and vertical alignment, intersection spacing, driveway locations, parking, lighting, landscaping, utilities and turning radii will be in accordance with County standards for public roads. The private drive will not be discernable as different from the public street that it connects to, and will function properly for safe vehicular and pedestrian traffic and emergency access.

'Alley A' and 'Alley B' will also be built to the 20-foot paving width and surface depth, and will serve as secondary access to the rear-loaded townhouses. Specifications for pavement width, surface depth and structural design will be in accordance with public tertiary road standards.

The private road and alleys will each be within its own separate parcel and will be subject to public access and utility easements.

The proposed road and sidewalks will comply with ADA standards.

If not approved, an additional 12 feet of right-of-way would be required for 'Road B', which would increase the length of driveways, increase impervious area in a Special Protection Area (SPA), and reduce the area available to development. It would significantly reduce the applicant's ability to develop the property, reducing the space available for the development of townhomes and open space and stormwater management on the site.

The use of private roads will serve the public good by providing full access while addressing the particular characteristics of the site, conditions of approval and environmental considerations and compatibility with the surrounding neighborhood.

If you have any further comments or questions, please do not hesitate to contact our office.

Sincerely,

Soltesz, Inc.

Jane L. Przygocki
Senior Planner

cc: Jim Soltesz, 3 Sons Avalon

May 23, 2018

Mr. Wes Guckert
Montgomery County Department of Transportation
101 Monroe Street, 10th Floor
Rockville MD 20850

Dear Mr. Guckert:

Thank you for the opportunity to review the **Traffic Impact Study (TIS)** prepared by **The Traffic Group**, dated **April 25th, 2018**, for the **Avalon at Clarksburg** development – **16APMO030XX** located on **MD 355 Frederick Road** (Mile Point **22.07**) in **Montgomery County**, Maryland. The State Highway Administration (SHA) review is complete and we are pleased to respond.

- The project involves the construction of 34 single-family detached dwelling units and 16 townhouse units along the east side of Frederick Road (MD 355) between Cool Brook Lane and Birchcrest Lane.
- All future access is proposed via two (2) full movement points along MD 355.
- The following intersections were analyzed under existing, background and future conditions:
 - MD 355 at MD 121/Stringtown Rd.
 - MD 355 at Foreman Blvd
 - MD 355 at North Site Access
 - MD 355 at South Site Access

Based on the information provided, please address the following comments in a point-by-point response:

District 3 Traffic Comments (Provided by: Mr. Jack Goode):

1. We have reviewed the traffic impact study and offer no comments at this time.

Regional and Intermodal Planning Division (RIPD) Comments (Provided by: Mr. Matt Baker):

1. The State's fiscally constrained FY 2016-2021 Consolidated Transportation Program (CTP) includes projects under construction and/or development and evaluation. The CTP includes the MD 355 (Wisconsin Avenue/Rockville Pike/Hungerford Drive/Frederick Road/Frederick Avenue) bus rapid transit (BRT) planning study, a study of improvements necessary to implement BRT along MD 355 between the Bethesda Metro Station, and Redgrave Place, Clarksburg, which includes this development site. MDOT initiated planning in the summer of 2014. Neither design nor construction is funded. If and when construction is funded, improvements may affect right-of-way of the subject property.
2. The State's fiscally unconstrained Highway Needs Inventory (HNI), the State's long-range plan, includes projects that are critical to Maryland's transportation needs. The HNI includes 3.7-mile MD 355 multilane reconstruction/construction from MD 27 (Ridge Road) to Snowden Farm Parkway. If and when such improvements proceed, they may affect right-of-way.
3. The June 1994 Maryland-National Capital Park and Planning Commission (M-NCPPC) Clarksburg Master Plan and Hyattstown Special Study Area, as amended, in which this development lies, includes no projects affecting SHA facilities analyzed in this TIS.
4. Montgomery County RideOn serves the development site. All roadway improvements to SHA roadway facilities should provide for and maintain full ADA-compliant access to existing and future transit facilities.
5. The March 2005 M-NCPPC Countywide Bikeways Functional Master Plan, as amended, includes no project effecting SHA facilities analyzed in this TIS. Nonetheless, all roadway improvements to SHA roadway facilities should provide for and maintain bicycle facilities as well as full ADA-compliant pedestrian facilities.

Traffic Development & Support Division (TDSD) Comments (Provided by: Mr. Eric Waltman):

1. TDSD concurs with the methodology/findings of the TIA and defers to District Traffic/Access Management with respect to required frontage improvements along MD 355.

Mr. Wes Guckert
SHA Tracking No.: 16APMO030XX
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May 23, 2018

Traffic Forecasting and Analysis Division (TFAD) Comments (Provided by: Mr. Scott Holcomb):

1. The existing traffic volumes for the site access locations should use the MD 355 at Foreman Boulevard intersection count to derive the through volume because the access site is closer to MD 355 at Foreman Boulevard, and the Foreman volumes are heavier and therefore more conservative.
2. The traffic count at the MD 355/Stringtown Road intersection is showing much lower volumes for the northbound left turn and eastbound right turn movements for the AM and PM peaks than the 12/2016 count taken at the same location by SHA on the I-TMS. Please recount these two movements to confirm the lower volumes, or provide a discussion of why the volumes may have changed since late 2016.

District 3 Access Management Comments (Provided by: Mr. Kwesi Woodroffe):

1. Due to the minimal number of peak hour rights into and out of both access points, shoulder improvements, prior to and after each access point, will suffice in lieu of full or partial acceleration/ deceleration lanes.
2. With a speed limit of 30mph, 12-ft wide, 100-ft long shoulder improvements will be required for each access point as stated above. Please refer to section 4.3, 4.4 and 4.6 of the Access Manual for information on shoulder improvements; a link is provided below for your use.
 - a. Access manual (Chapter 4): <http://www.roads.maryland.gov/Index.aspx?PageId=402>

Please submit a CD containing the traffic impact study, all supporting documentation, and a point-by-point response addressing the comments noted above to the Access Management Division. For electronic submissions create an account with our new online system <https://mdotsha.force.com/accesspermit>. Please reference the SHA tracking number on any future submissions. Please keep in mind that you can view the reviewer and project status via SHA Access Management Division web page at <http://www.roads.maryland.gov/pages/amd.aspx>.

Mr. Wes Guckert
SHA Tracking No.: 16APMO030XX
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May 23, 2018

If you have any questions, or require additional information, please contact Mr. Kwesi Woodroffe at 301-513-7347, by using our toll-free number in Maryland only at 1-800-876-4742 (x7347) or via email at kwoodroffe@sha.state.md.us or shaamdpermits@sha.state.md.us.

Sincerely,



Andre Futrell,
District Engineer, District 3, SHA

AF/jrg

cc: Mr. Matt Baker, SHA – RIPD
Ms. Samantha Biddle, SHA – RIPD
Ms. Rola Daher, SHA – TFAD
Mr. Matt Folden, Montgomery County Planning Board
Mr. Jack Goode, SHA District #3 Traffic
Mr. Derek Gunn, SHA District #3 Traffic
Ms. Laura Hodgson, Montgomery County Planning
Mr. Scott Holcomb, SHA – TFAD
Ms. Shadija Maddox, SHA District #3 Traffic
Ms. Erica Rigby, SHA District #3 Assistant District Engineer
Ms. Thomasina Saxon, SHA – RIPD
Mr. Jim Soltesz, Soltesz, Inc.
Mr. Errol Stoute, SHA – TDSD
Mr. William Stroud, SHA – TDSD
Mr. Eric Waltman, SHA – TDSD
Mr. Kwesi Woodroffe, SHA District #3 Regional Engineer
Mr. Oscar Yen, SHA – TDSD

June 26, 2018

Mr. Wes Guckert
Montgomery County Department of Transportation
101 Monroe Street, 10th Floor
Rockville MD 20850

Dear Mr. Guckert:

Thank you for the opportunity to review the **Traffic Impact Study (TIS)** prepared by **The Traffic Group**, dated **April 25th, 2018**, for the **Avalon at Clarksburg** development – **16APMO030XX** located on **MD 355 Frederick Road** (Mile Point **22.07**) in **Montgomery County**, Maryland. The State Highway Administration (SHA) review is complete and we are pleased to respond.

- The project involves the construction of 34 single-family detached dwelling units and 16 townhouse units along the east side of Frederick Road (MD 355) between Cool Brook Lane and Birchcrest Lane.
- All future access is proposed via two (2) full movement points along MD 355.
- The following intersections were analyzed under existing, background and future conditions:
 - MD 355 at MD 121/Stringtown Rd.
 - MD 355 at Foreman Blvd
 - MD 355 at North Site Access
 - MD 355 at South Site Access

Based on the information provided, please address the following comments in a point-by-point response:

District 3 Traffic Comments (Provided by: Mr. Jack Goode):

1. Per the attached Guidelines for Installation of Shoulder Bypass/Left-Turn Lanes, a left turn lane should be installed based upon the number of PM opposing and advancing vehicles at the site access. See attachment titled "Left Turn_Bypass Lane Guidance.pdf".

Regional and Intermodal Planning Division (RIPD) Comments (Provided by: Mr. Matt Baker):

1. RIPD previously submitted the following comments to District 3 Access Management in regard to the Clarksburg at Avalon development:
 - a. 08/22/2016 Avalon at Clarksburg TIS comments.
 - b. 05/07/2018 Avalon at Clarksburg revised TIS commentsThese comments stand and are available upon request.
2. From RIPD's long-range master planning perspective, a left-turn lane at this location fits within the master plan MD 355 (Frederick Road) vision for the corridor, which is, at maximum, a four-lane divided section in a 120-foot right-of-way. RIPD defers to D3 Traffic, TFAD, and TDSD regarding the inclusion, itself, of a left-turn lane.

Traffic Development & Support Division (TDSD) Comments (Provided by: Mr. Eric Waltman):

1. Based on NCHRP Report 279, the projected volumes would meet warrants for a SB left-turn lane at the southern access along MD 355.

Traffic Forecasting and Analysis Division (TFAD) Comments (Provided by: Mr. Scott Holcomb):

1. We have reviewed the responses to TFAD's previous comments on the TIS and are satisfied with them. TFAD would support the inclusion of a left turn lane into the site from MD 355 given the lack of shoulders for thru traffic to safely bypass left turn traffic.

District 3 Access Management Comments (Provided by: Mr. Kwesi Woodroffe):

1. We offer no additional comments at this time as we defer to District 3 Traffic.
2. Note: Please feel to use the Access manual for any further information related to Left Turn Lanes:
 - a. Access manual (Chapter 4, Section 4.5):
<http://www.roads.maryland.gov/Index.aspx?PageId=402>
 - b. Access manual (Chapter 5, Section 5.6):
<http://www.roads.maryland.gov/Index.aspx?PageId=409>

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Page 3 of 4
June 26, 2018

The SHA concurs with the report findings for this project as currently proposed and will not require the submission of any additional traffic analyses. However, an access permit will be required for all construction within the SHA right of way. Please submit one (1) set of the proposed improvement plans (including a set of hydraulic plans and computations) and a CD containing the plans and all supporting documentation to the Access Management Division at 9300 Kenilworth Avenue, Greenbelt, MD 20770, attention of Mr. Kwesi Woodroffe. For electronic submissions create an account with our new online system <https://mdotsha.force.com/accesspermit>. Please reference the SHA tracking number on any future submissions. Please keep in mind that you can view the reviewer and project status via SHA Access Management Division web page at <http://www.roads.maryland.gov/pages/amd.aspx>. Please note, if this project has not obtained an SHA access permit and begun construction of the required improvements within five (5) years of this approval, extension of the permit shall be subject to the submission of an updated traffic impact analysis in order for SHA to determine whether the proposed improvements remain valid or if additional improvements will be required of the development. If you have any questions, or require additional information, please contact Mr. Kwesi Woodroffe at 301-513-7347, by using our toll-free number (in Maryland only) at 1-800-749-0737 (x7347), or via email at kwoodroffe@sha.state.md.us or shaamdpermits@sha.state.md.us.

Sincerely,



Andre Futrell,
District Engineer, District 3, SHA

AF/jrg

Attachments:

"LeftTurn_Bypass Lane Guidance.pdf"

cc: Mr. Matt Baker, SHA – RIPD
Ms. Samantha Biddle, SHA – RIPD
Ms. Rola Daher, SHA – TFAD
Mr. Matt Folden, Montgomery County Planning Board
Mr. Jack Goode, SHA District #3 Traffic
Mr. Derek Gunn, SHA District #3 Traffic
Ms. Laura Hodgson, Montgomery County Planning

Mr. Wes Guckert
SHA Tracking No.: 16APMO030XX
Page 4 of 4
June 26, 2018

Mr. Scott Holcomb, SHA – TFAD
Ms. Shadija Maddox, SHA District #3 Traffic
Ms. Erica Rigby, SHA District #3 Assistant District Engineer
Ms. Thomasina Saxon, SHA – RIPD
Mr. Jim Soltesz, Soltesz, Inc.
Mr. Errol Stoute, SHA – TDSD
Mr. William Stroud, SHA – TDSD
Mr. Eric Waltman, SHA – TDSD
Mr. Kwesi Woodroffe, SHA District #3 Regional Engineer
Mr. Oscar Yen, SHA – TDSD



Isiah Leggett
County Executive

Al R. Roshdieh
Director

DEPARTMENT OF TRANSPORTATION

July 5, 2018

Mr. Jamey Pratt, Senior Planner
Area 3 Planning Division
The Maryland-National Capital
Park & Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910-3760

RE: Preliminary Plan No. 120180110
Design Exception Package
Avalon Residential

Dear Mr. Pratt:

We have completed our review of the revised preliminary plan uploaded on June 18, 2018 and the revised Design Exception Package dated June 13, 2018. A previous plan was reviewed by the Development Review Committee at its February 13, 2018 meeting. We appreciate the cooperation and additional information provided by the applicant and their consultant. We recommend conditional approval of the plan subject to the following comments which are to be resolved prior to Certified Preliminary Plan:

All Planning Board Opinions relating to this plan or any subsequent revision, project plans or site plans should be submitted to the Department of Permitting Services in the package for record plats, storm drain, grading or paving plans, or application for access permit. Include this letter and all other correspondence from this department.

Design Exception Package

The applicant has submitted a design exception request package, dated June 13, 2018, for the following items:

- I. **Exception to Montgomery County Code Section 49-33 (I) (1) B: Curbs and gutters.** The applicant is proposing closed section roadways for a secondary interior road within the Clarksburg Special Protection Area (SPA). The Montgomery County Code states the following:

A person must not install any curb and gutter in any portion of a road that is located in: (B) an area that the Department of Environmental Protection designates an environmentally sensitive, after giving the Department of Transportation and the Planning Board a reasonable opportunity to comment.

The applicant states that installing curbs will allow for reduction of pavement and right-of-way widths. The wider right-of-way for the open roadway section standard will create longer driveways. These

Office of the Director

101 Monroe Street 10th Floor · Rockville Maryland 20850 · 240-777-7170 · 240-777-7178 FAX

www.montgomerycountymd.gov

Located one block west of the Rockville Metro Station

longer driveways will create more impervious area on the site.

MCDOT Response: The Planning Board through its regulatory function, the Department of Permitting Services and the Department of Environmental Protection enforce SPA rules. MCDOT recommends the Planning Board **approve** of the use of curbs and gutters.

2. **Modify MCDOT Standard. No. MC-2002.02 to provide a 50-foot public right-of-way, with two 10-foot wide drive aisles, sidewalk on one side, and 8-foot-wide parallel parking on one side for a portion of the street.** MCDOT Standard Secondary Residential Street 2002.02 is a secondary road with a 60-foot right-of-way, with an 11.5-foot travel lane, a 10-foot travel lane, an eight (8) foot parallel parking and sidewalks on both sides of the street. The applicant proposes a modification to the standard, to reduce the width of the right-of-way to 50 feet that includes two 10-foot travel lanes, an eight (8) foot parking lane in two segments of the roadway and a five (5) foot sidewalk on one side of the street. The intent of these modifications is to reduce the impervious footprint. Montgomery County Environmental Guidelines recommend the use of techniques to minimize imperviousness in SPA's, which include the use of narrower street and sidewalk sections and providing sidewalks on only one side of the street.

MCDOT Response: This request requires a design exception from MCDOT. It also requires a waiver from the Planning Board per Bill 34-16, Ordinance No. 18-19. *"The Board may approve a narrower than standard road right-of-way if it meets minimum fire access requirements and the Board finds that a narrower right-of-way is environmentally preferable...."* MCDOT recommends the Planning Board **approve** the request to modify the County Standard MC-2002.02 to reduce the right-of-way width. MCDOT also **approves** the reduced paving section and provide sidewalk on one side of the street.

3. **Exception for Modification to Secondary Residential Road 60' Public right-of-way Standard MC-2002.02 to provide bioswale within the right-of-way in two sections of the roadway.** The applicant proposes bioswales within portions of the right-of-way, to treat onsite runoff in two sections of the roadway green panel, on the side of the road with no sidewalk or parallel parking.

MCDOT Response: A design exception is not needed to install stormwater management in the County right-of-way for any road. Final details of the stormwater management will be approved at permit stage.

Design Exception Needed but not Requested

4. **Modify MCDOT Standard. No. MC-2002.01 to provide a 50-foot public right-of-way, with two 10-foot wide drive aisles, sidewalk on one side, and no parking:** MCDOT Standard Secondary Residential Street 2002.01 is a secondary road with a 60-foot right-of-way, with two 13-foot wide travel lanes and sidewalks on both sides of the street. The applicant is proposing a 50-foot right-of-way with two 10-foot wide travel lanes and sidewalk on one side of the street.

MCDOT Response: This request requires a design exception from MCDOT. It also requires a waiver from the Planning Board per Bill 34-16, Ordinance No. 18-19. *"The Board may approve a narrower than standard road right-of-way if it meets minimum fire access requirements and the Board finds that a narrower right-of-way is environmentally preferable...."* MCDOT recommends the Planning Board **approve** the request to modify the County Standard MC-2002.01 to reduce the right-of-way width. MCDOT also **approves** the reduced paving section and provide sidewalk on one side of the street.

Significant Preliminary Plan Comments

1. The applicant's street sections shown in the design exception package and on the street section plan are incorrect. Prior to certified preliminary plan, the applicant should revise all street sections to include the curb into the tree lawn. This will allow for a two-foot maintenance strip when a sidewalk is located adjacent to it.
2. The applicant shows a modified Secondary Residential Street Section with no parking labeled as "MC-2002.02." Prior to certified preliminary plan, this standard should be changed to "MC-2002.01."
3. The site is located in the Clarksburg Special Protection Area. In accordance with Section 49-33(l) of the Montgomery County Code, curb and gutter may not be installed in an environmentally sensitive watershed unless certain waiver criteria have been satisfied.
4. Prior to record plat, the Applicant must record in the Land Records of Montgomery County a covenant to provide for a future inter-parcel road, bike, pedestrian, and infrastructure connection for public use between and across the outlot shown on the Preliminary Plan and Parcel P660 to the north of the Subject Property, if such a connection is required by the Planning Board in its review of the future redevelopment of Parcel P660. The covenant must be in a form approved by MCDOT and the M-NCPPC Office of the General Counsel. The outlot is to be dedicated to future County right-of-way but shall be maintained by the HOA.
5. A waiver from the Montgomery County Planning Board is required for a reduction in the minimum centerline radius on a secondary residential classification roadway.
6. The storm drainage study is incomplete. Submit storm drain and/or flood plan studies, with computations, for our review and approval. Analyze the capacity of the existing downstream public storm drain system and the impact on the post-development ten (10) year storm runoff on same. If the proposed subdivision drains to an existing closed section street, include spread computations in the impact analysis.

Preliminary Plan Review Comments

1. We defer to the Maryland State Highway Administration for all access and improvements to Frederick Road (MD 355).
2. Grant necessary slope and drainage easements. Slope easements are to be determined by study or set at the building restriction line.
3. Grade establishments for all new public streets and/or pedestrian paths must be approved prior to submission of the record plat.
4. Show the roadway cross sections, as described in the Design Exceptions above, on the certified preliminary plan.
5. The Traffic Impact Study (TIS) was approved by MCDOT on June 22, 2018.
6. The private street shall be determined through the subdivision process as part of the Planning Board's approval of the preliminary plan. We defer to the Planning Board for the composition, typical section, horizontal alignment, profile, access locations, sight distances, landscaping, lighting, drainage characteristics and maintenance beyond the public right-of-way.

7. The private street is to be built to tertiary roadway structural standards.
8. The owner will be required to submit a recorded covenant for the operation and maintenance of private streets, storm drain systems, and/or open space areas prior to DPS approval of the record plat. The deed reference for this document is to be provided on the record plat.
9. In accordance with Section 49-33(e) of the Montgomery County Code, sidewalks are required to serve the proposed subdivision. Sidewalks are to be provided on both sides of the proposed public streets unless the applicant is able to obtain a waiver from the appropriate government agency.
10. Coordinate with Ms. Joana Conklin regarding the future Bus Rapid Transit (BRT) and future station at Shawnee Lane. Ms. Conklin can be reached at joana.conklin@montgomerycountymd.gov or at 240-777-7195.
11. Coordinate with Ms. Yasamin Esmaili regarding the Frederick Road Bike Path. Ms. Esmaili can be reached at 240-777-7226 or yasamin.esmaili@montgomerycountymd.gov.
12. Coordinate with Mr. John Thomas regarding the future Roberts Tavern Drive configuration. Mr. Thomas can be reached at 240-777-7240 or john.thomas@montgomerycountymd.gov.
13. Coordinate with Ms. Nikkia Carver of our Division of Transit Services to coordinate improvements to the RideOn bus facilities in the vicinity of this project. Ms. Carver can be reached at 240-777-5836 or nikkia.carver@montgomerycountymd.gov.
14. Permit and bond will be required as a prerequisite to DPS approval of the record plat. The permit will include, but not necessarily be limited to, the following improvements:
 - A. Street grading, paving, curbs, gutters, sidewalks, handicap ramps, storm drainage and appurtenances, and street trees along all internal, public streets.

***NOTE: The Public Utilities Easement is to be graded on a side slope not to exceed 4:1.**

- B. Relocation of utilities along existing roads to accommodate the required roadway improvements shall be the responsibility of the applicant.
- C. Storm drain easement(s) are required prior to record plat. No fences will be allowed within the storm drain easement(s) without a revocable permit from the DPS and a recorded Maintenance and Liability Agreement.
- D. Provide permanent monuments and property line markers as required by Section 50-24(e) of the Subdivision Regulations.
- E. Erosion and sediment control measures as required by Section 50-35(j) and on-site stormwater management where applicable shall be provided by the Developer (at no cost to the County) at such locations deemed necessary by the Department of Permitting Services (DPS) and will comply with their specifications. Erosion and sediment control measures are to be built prior to construction of streets, houses and/or site grading and are to remain in operation (including maintenance) as long as deemed necessary by the DPS.
- F. The developer shall ensure final and proper completion and installation of all utility lines

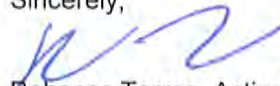
Mr. Jamey Pratt
120180110 Avalon Residential
Preliminary Plan Review
July 5, 2018
Page 5

underground, for all new road construction.

- G. The developer shall provide street lights in accordance with the specifications, requirements, and standards prescribed by the MCDOT Division of Traffic Engineering and Operations.

Thank you for the opportunity to review this preliminary plan. If you have any questions or comments regarding this letter, please contact Mr. William Whelan, our Development Review Engineer for this project, at william.whelan@montgomerycountymd.gov.

Sincerely,



Rebecca Torma, Acting Manager
Development Review Team
Office of Transportation Policy

cc: Jim Soltesz, 3 Sons Avalon, LLC
Phil Isaja, Soltesz
Jane Przygocki, Soltesz
Soo Lee Cho, Miller, Miller & Canby
Preliminary Plan letters notebook

cc-e: Laura Hodgson, MNCP&PC
Kwesi Woodroffe, MDSHA-District 3
Joanna Conklin, MCDOT DO
Yasamin Esmaili, MCDOT DTE
John Thomas, MCDOT DTE
Sam Farhadi, MCDOT RWPR
Nikkia Carver, MCDOT DTS

Mr. Jamey Pratt
120180110 Avalon Residential
Preliminary Plan Review
July 5, 2018
Page 6

MAILING LIST

Jamey Pratt
The Maryland-National Capital
Park & Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910-3760

Laura Hodgson
The Maryland-National Capital
Park & Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910-3760

Jim Soltesz
3 Sons Avalon, LLC
2 Research Place
Suite 100
Rockville, MD 20850

Phil Isaja
Soltesz
2 Research Place
Rockville, MD 20850

Jane Przygocki
Soltesz
2 Research Place
Rockville, MD 20850

Soo Lee Cho
Miller, Miller & Canby
200-B Monroe Street
Rockville, MD 20850



Department of Permitting Services
Fire Department Access and Water Supply Comments

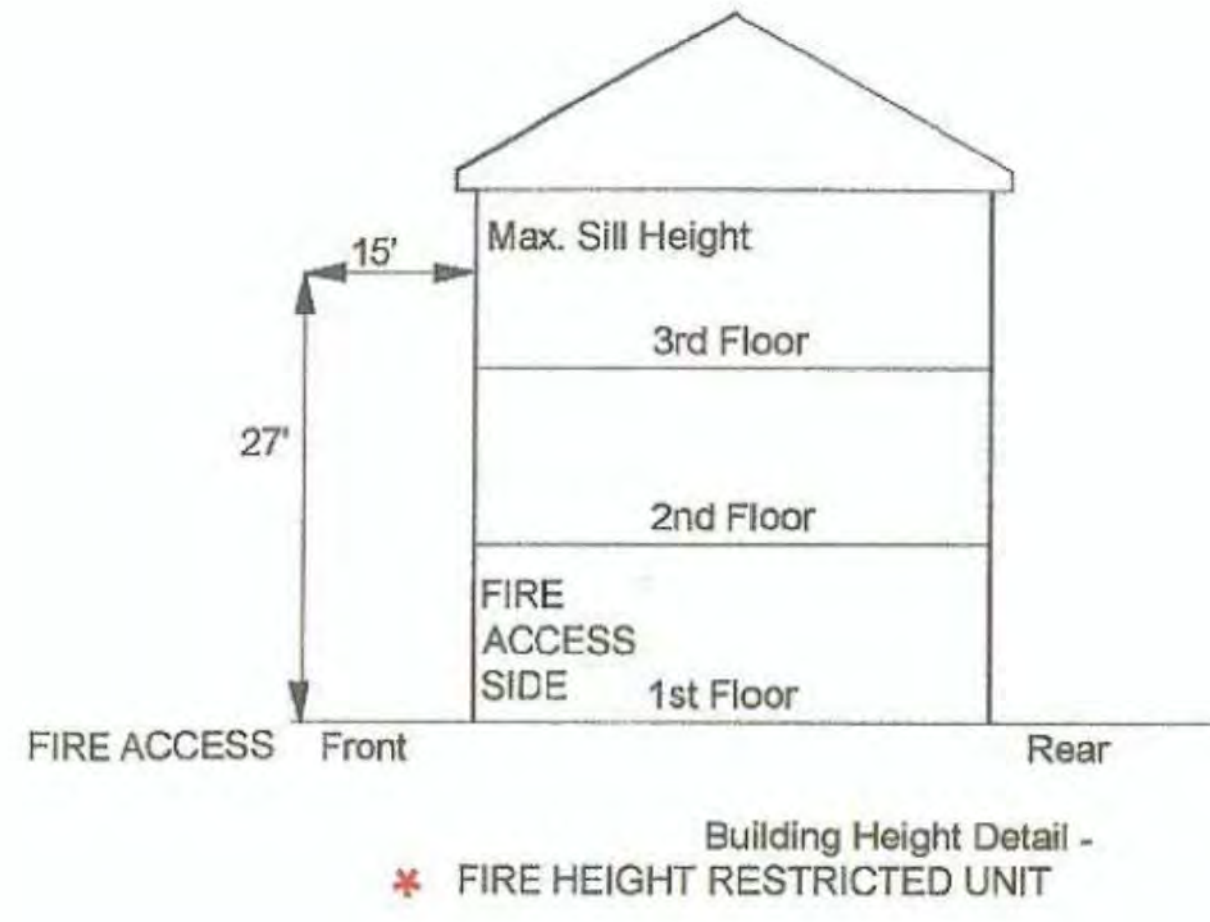
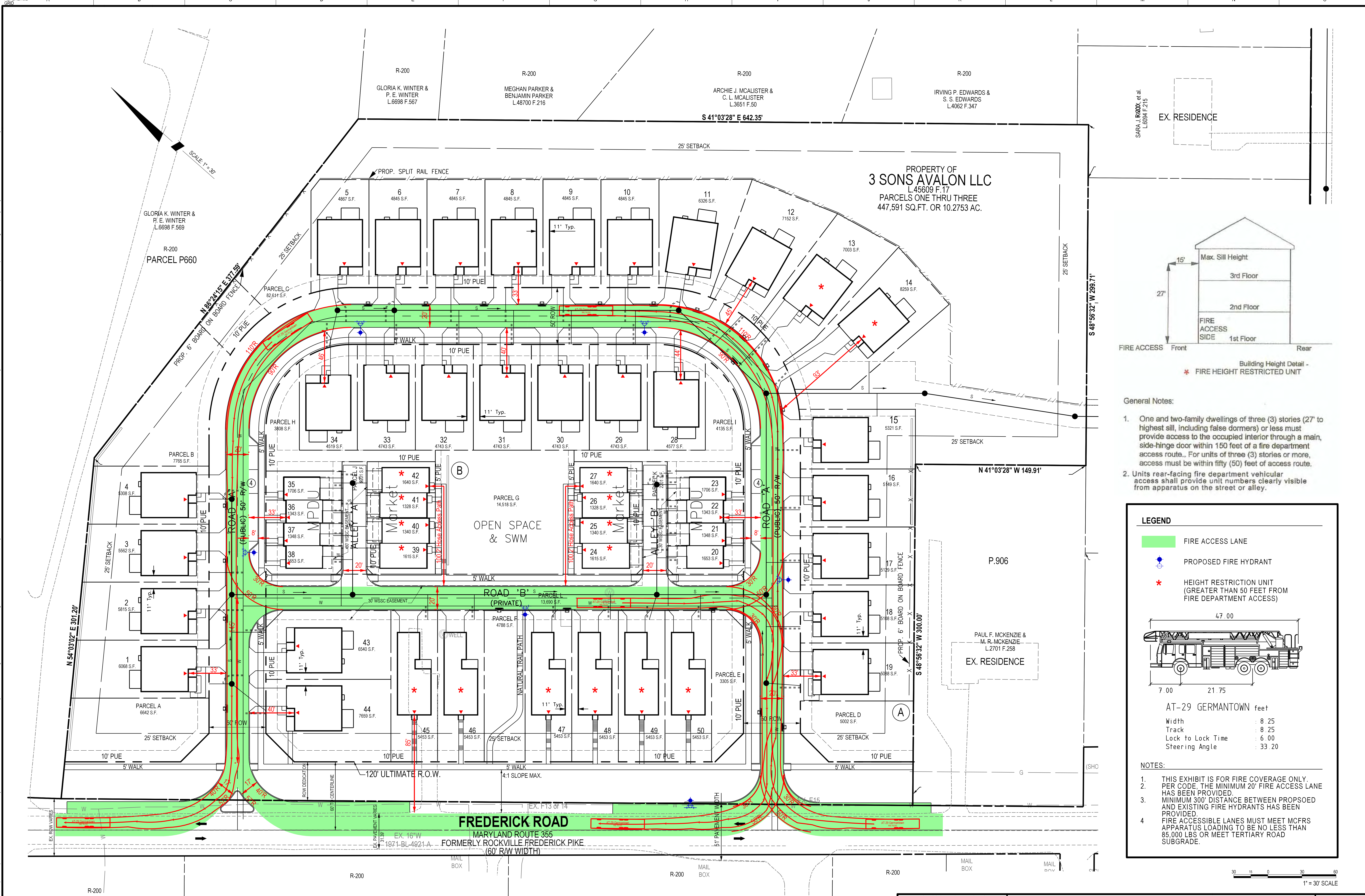
DATE: 05-Apr-18
TO: Jane Przygocki - JPrzygocki@solteszco.com
Soltesz
FROM: Marie LaBaw
RE: Avalon Residential
120180110

PLAN APPROVED

1. Review based only upon information contained on the plan submitted **05-Apr-18** .Review and approval does not cover unsatisfactory installation resulting from errors, omissions, or failure to clearly indicate conditions on this plan.
2. Correction of unsatisfactory installation will be required upon inspection and service of notice of violation to a party responsible for the property.

***** 6/12/2018 Amendment to alter improvements on Frederick Road *****

The original of this drawing document was prepared by Soltesz, Inc. (SOLTESZ). This document was not obtained directly from SOLTESZ and/or it was transmitted electronically. SOLTESZ cannot guarantee that unauthorized changes and/or alterations were not made by others. If verification of the information contained herein is needed, contact should be made directly with SOLTESZ. SOLTESZ makes no warranties, express or implied, concerning the accuracy of any information that has been transmitted by electronic means.



- General Notes:
- One and two-family dwellings of three (3) stories (27' to highest sill, including false dormers) or less must provide access to the occupied interior through a main, side-hinge door within 150 feet of a fire department access route. For units of three (3) stories or more, access must be within fifty (50) feet of access route.
 - Units rear-facing fire department vehicular access shall provide unit numbers clearly visible from apparatus on the street or alley.

LEGEND

- FIRE ACCESS LANE
- PROPOSED FIRE HYDRANT
- HEIGHT RESTRICTION UNIT (GREATER THAN 50 FEET FROM FIRE DEPARTMENT ACCESS)

AT-29 GERMANTOWN feet

Width	8.25
Track	8.25
Lock to Lock Time	6.00
Steering Angle	33.20

NOTES:

- THIS EXHIBIT IS FOR FIRE COVERAGE ONLY.
- PER CODE, THE MINIMUM 20' FIRE ACCESS LANE HAS BEEN PROVIDED.
- MINIMUM 300' DISTANCE BETWEEN PROPOSED AND EXISTING FIRE HYDRANTS HAS BEEN PROVIDED.
- FIRE ACCESSIBLE LANES MUST MEET MCFRS APPARATUS LOADING TO BE NO LESS THAN 85,000 LBS OR MEET TERTIARY ROAD SUBGRADE.

SOLTESZ

Rockville Office
2 Research Place, Suite 100
Rockville, MD 20850
P. 301.946.2750 F. 301.948.9067

Rockville
Lanham
Waldorf
Leonardtown
Frederick
Soltesz DC, LLC
www.solteszco.com

NO.	DATE	DESIGNED	REVISIONS	BY	DATE

NO. _____ DATE _____
DESIGNED _____

CAD STANDARDS VERSION: V5 - 2009
TECHNICIAN: _____

CHECKED: _____

MISS UTILITY NOTE

INFORMATION CONCERNING EXISTING UNDERGROUND UTILITIES WAS OBTAINED FROM AVAILABLE RECORDS. THE CONTRACTOR MUST DETERMINE THE EXACT LOCATION AND ELEVATION OF ALL EXISTING UTILITIES AND UTILITY CROSSINGS BY DIGGING TEST PITS BY HAND, WELL IN ADVANCE OF THE START OF EXCAVATION. CONTACT MISS UTILITY AT 1-800-251-7777 48 HOURS PRIOR TO THE START OF EXCAVATION. IF CLEARANCES ARE LESS THAN SHOWN ON THE PLAN OR TWELVE (12) INCHES, WHICHEVER IS LESS, CONTACT THE ENGINEER AND THE UTILITY COMPANY BEFORE PROCEEDING WITH CONSTRUCTION. CLEARANCES LESS THAN NOTED MAY REQUIRE REVISIONS TO THIS PLAN.

OWNER/DEVELOPER/APPLICANT

3 SONS AVALON LLC
2 RESEARCH PLACE
SUITE 100
ROCKVILLE, MD 20850
PHONE 301-946-2750
FAX 301-948-9067
JIM SOLTESZ

MAP	4928	GRID	G3, H3
TAX MAP	EW, 41	ZONING CATEGORY:	R-200 / TF-5
WSEC 200' SHEET	XXXX		
SITE DATUM			
HORIZONTAL: NAD83			
VERTICAL: NAD83			

PROFESSIONAL CERTIFICATION

I HEREBY CERTIFY THAT THESE DOCUMENTS WERE PREPARED OR APPROVED BY ME, AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MARYLAND.

LICENSE NO. 11194 EXPIRATION DATE: 11-21-2018

FIRE DEPARTMENT ACCESS PLAN

PRELIMINARY PLAN 120180110

AVALON RESIDENTIAL

P. 801, P. 830, P. 765

2ND ELECTION DISTRICT, MONTGOMERY COUNTY, MARYLAND

PROJECT NO. 3337-00-00

SHEET 1 OF 1

1" = 30'



DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Isiah Leggett
County Executive

Clarence J. Snuggs
Director

May 4, 2018

Mr. Jamey Pratt
Area 3 Division
Montgomery County Planning Department
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Avalon Residential
Preliminary Plan No. 120180110

Dear Mr. Pratt:

The Montgomery County Department of Housing and Community Affairs (DHCA) has reviewed the above referenced plan and recommends Approval, with the following comments:

1. While it would be preferable for the MPDUs to be interspersed with the market units, the current configuration is acceptable as long as the dimensions of the MPDU townhouses (20' x 32') are not reduced at site plan. This configuration is better for MPDU purchasers than a longer, narrower townhouse that would require the third bedroom to be located on the ground level.
2. The MPDUs must have at least 3 bedrooms and 1.5 baths, and a full bath must be located within one floor of each level that includes a bedroom.
3. Please ensure that the two parking spaces per MPDU townhouse (one garage and one driveway) are maintained at site plan.

Sincerely,

Lisa S. Schwartz
Senior Planning Specialist

cc: Jane Przygocki, Soltesz

S:\Files\recurring\Housing\MPDU\Developments\Avalon Residential\Avalon Residential DHCA Letter_5-4-2018.docx

Division of Housing

Affordable Housing Common Ownership Communities Landlord-Tenant Affairs Multifamily Housing

1401 Rockville Pike, 4th Floor • Rockville, Maryland 20852 • 240-777-0311 • 240-777-3691 FAX • www.montgomerycountymd.gov/dhca



DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett
County Executive

Diane R. Schwartz Jones
Director

June 9, 2018

Ms. Emily Holmes
Soltesz, Inc.
2 Research Place, Suite 100
Rockville, Maryland 20850

Re: **PRELIMINARY WATER QUALITY PLAN** and
Stormwater Management **CONCEPT** Request
for **Avalon Residential**
Preliminary Plan #: N/A
SM File #: 283564
Tract Size/Zone: 10.3 acres/ R-200/TR-5
Total Concept Area: 10.3 acres
Lots/Block: N/A
Parcel(s): 1-3
Watershed: Little Seneca Creek Clarksburg SPA

Dear Ms. Holmes:

Based on a review by the Department of Permitting Services Review Staff, the Preliminary Water Quality Plan and stormwater management concept for the above mentioned site is **acceptable**. The stormwater management concept proposes to meet required stormwater management goals via dry wells micro bioretention and bio swales.

The following **items** will need to be addressed **prior to** Planning Board approval of the Site Plan:

1. **Prior to Planning Board approval of the Site Plan, this Preliminary Water Quality Plan and stormwater management concept must be formally revised and an approved Final Water Quality Plan and Site Development Plan (SDP) Approval letter must be issued by DPS. If the Site Plan will be approved in stages, the Site Development Plan revision submittal must specifically refer to the appropriate phase.**

This list may not be all-inclusive and may change based on available information at the time.

This concept approval is based on all stormwater management structures being located outside of the Public Utility Easement, the Public Improvement Easement, and the Public Right of Way unless specifically approved on the concept plan. Any divergence from the information provided to this office; or additional information received during the development process; or a change in an applicable Executive Regulation may constitute grounds to rescind or amend any approval actions taken, and to reevaluate the site for additional or amended stormwater management requirements. If there are subsequent additions or modifications to the development, a separate concept request shall be required.

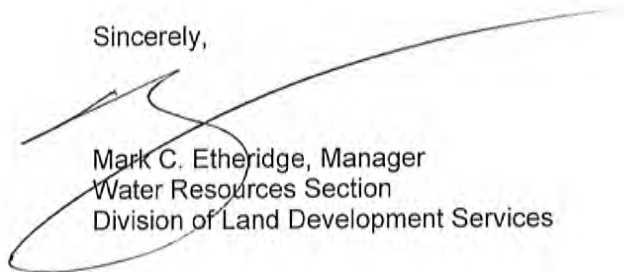


255 Rockville Pike, 2nd Floor, Rockville, Maryland 20850 | 240-777-0311
www.montgomerycountymd.gov/permittingservices

Ms. Emily Holmes
June 11, 2018
Page 2 of 2

If you have any questions regarding these actions, please feel free to contact Leo Galanko at 240-777-6242.

Sincerely,



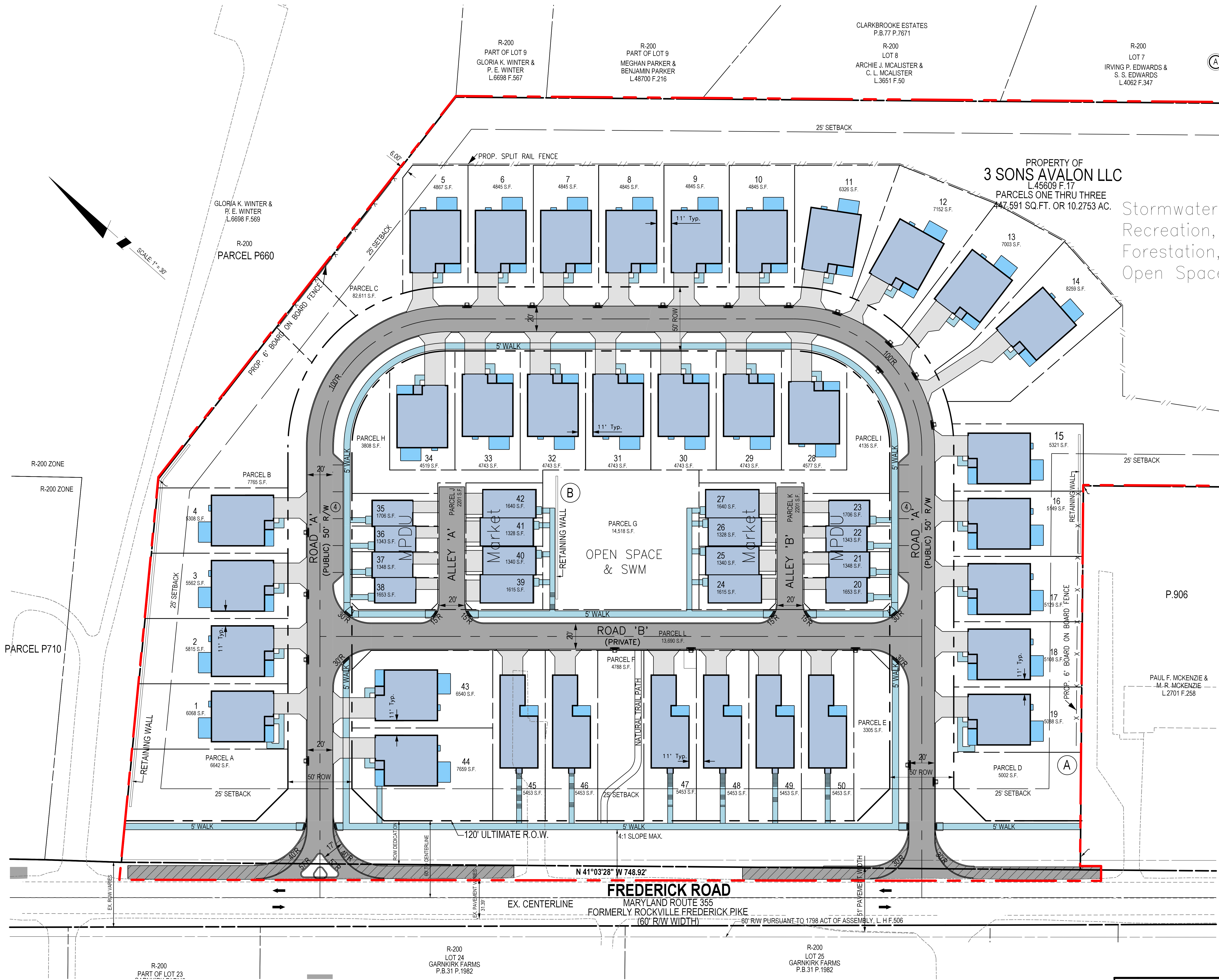
Mark C. Etheridge, Manager
Water Resources Section
Division of Land Development Services

MCE: lmg

cc: N. Braunstein
SM File # 283564

ESD: Required/Provided 24104 cf / 24861 cf
PE: Target/Achieved: 1.75"/1.81"
STRUCTURAL: 0 cf
WAIVED: 0 ac.

The original of this drawing document was prepared by Soltesz, Inc. (SOLTESZ). This document was not obtained directly from SOLTESZ and/or it was transmitted electronically. SOLTESZ cannot guarantee that unauthorized changes and/or alterations were not made by others. If verification of the information contained herein is needed, contact should be made directly with SOLTESZ. SOLTESZ makes no warranties, express or implied, concerning the accuracy of any information that has been transmitted by electronic means.



IMPERVIOUS COVERAGE TABLE		
TOTAL TRACT AREA PER M-NCPPC ENVIRONMENTAL GUIDELINES:		
--- TOTAL TRACT AREA 456,864 S.F.		
	76,192 S.F.	BUILDINGS (TYP.)
	7,896 S.F.	BUILDING OPTIONS
	41,930 S.F.	ROADWAYS
	5,117 S.F.	SHOULDER IMPROVEMENTS
	19,752 S.F.	DRIVEWAYS
	14,175 S.F.	SIDEWALK / STOOPS
TOTAL		165,062 S.F. IMPERVIOUS AREA
165,062 S.F. IMPERVIOUS / 456,864 S.F. SITE AREA = 36.13% IMPERVIOUS		



ROCKVILLE OFFICE
2 Research Place, Suite 100
Rockville, MD 20850
P. 301.946.2750 F. 301.948.9067

Rockville
Lanham
Leondorwn
Frederick
Soltesz DC, LLC

NO.		REVISIONS		BY		DATE	
DESIGNED:		CAD STANDARDS VERSION:		V5 - 2005		CHECKED:	

MISS UTILITY NOTE
INFORMATION CONCERNING EXISTING UNDERGROUND UTILITIES WAS OBTAINED FROM AVAILABLE RECORDS. THE CONTRACTOR MUST DETERMINE THE EXACT LOCATION AND ELEVATION OF ALL EXISTING UTILITIES AND UTILITY CROSSINGS BY DOING AND TEST PITTS BY HAND, WELL IN ADVANCE OF THE START OF EXCAVATION. CONTACT "MISS UTILITY" AT 1-800-251-7777 48 HOURS PRIOR TO THE START OF EXCAVATION. IF CLEARANCES ARE LESS THAN SHOWN ON THIS PLAN OR TWELVE (12) INCHES, WHICHEVER IS LESS, CONTACT THE ENGINEER AND THE UTILITY COMPANY BEFORE PROCEEDING WITH CONSTRUCTION. CLEARANCES LESS THAN NOTED MAY REQUIRE REVISIONS TO THIS PLAN.

OWNER/DEVELOPER/APPLICANT
3 SONS AVALON, LLC
2 RESEARCH PLACE
SUITE 100
ROCKVILLE, MD 20850
PHONE 800-1-846-2750
FAX 301-948-9067
JIM SOLTESZ

MAP 4928 GRID G3, H3	
TAX MAP EW, 41	ZONING CATEGORY: R-200 / TF-5
WISC 200' SHEET XXXX	
232NW13	
SITE DATUM	XXXX
HORIZONTAL: NAD83	
VERTICAL: NAD83	



IMPERVIOUS EXHIBIT- WITH A 12' SHOULDER

PRELIMINARY PLAN 120180110
AVALON RESIDENTIAL
P. 801, P. 830, P. 765

2ND ELECTION DISTRICT, MONTGOMERY COUNTY, MARYLAND

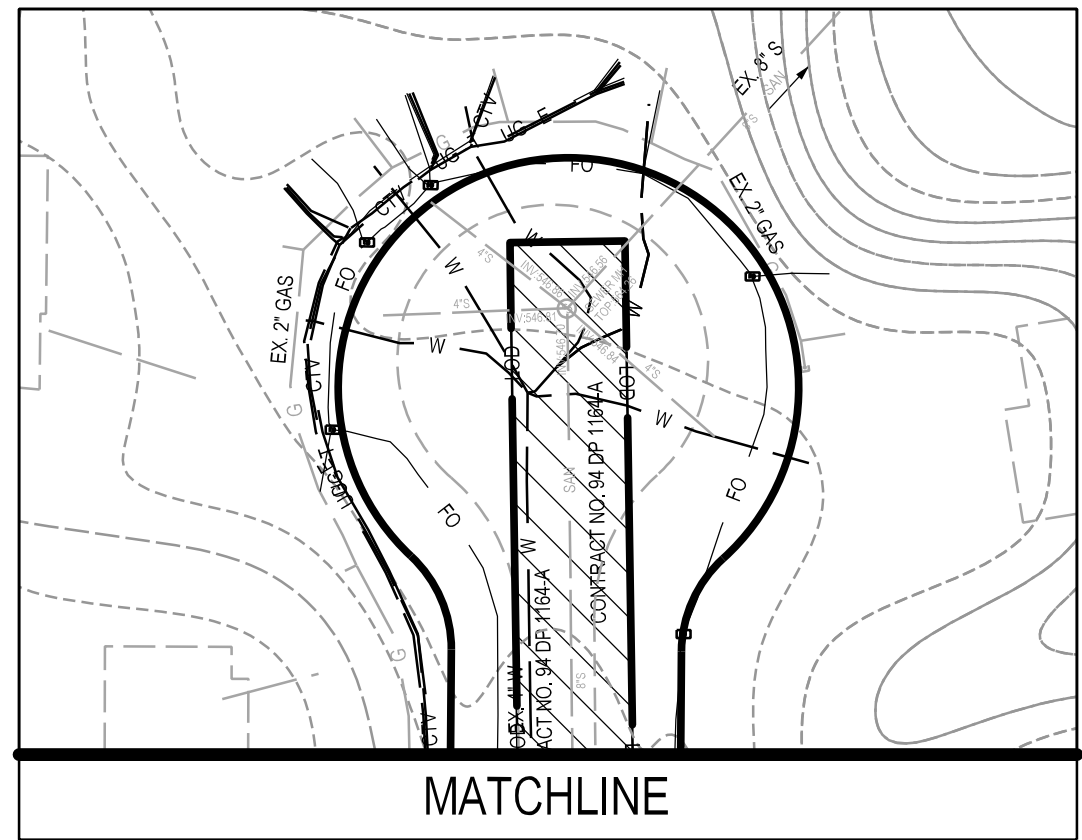
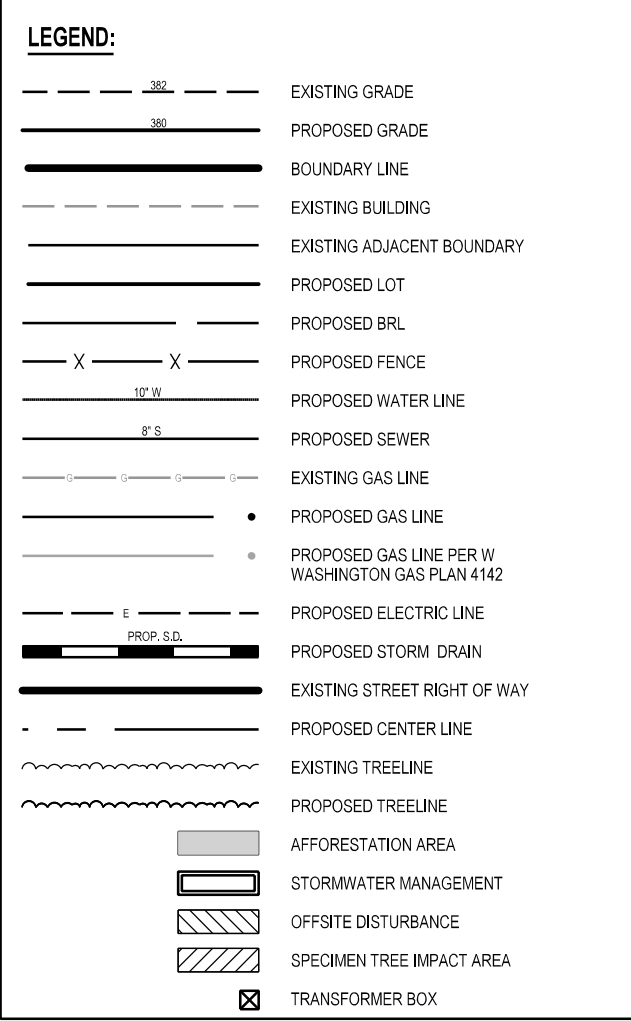
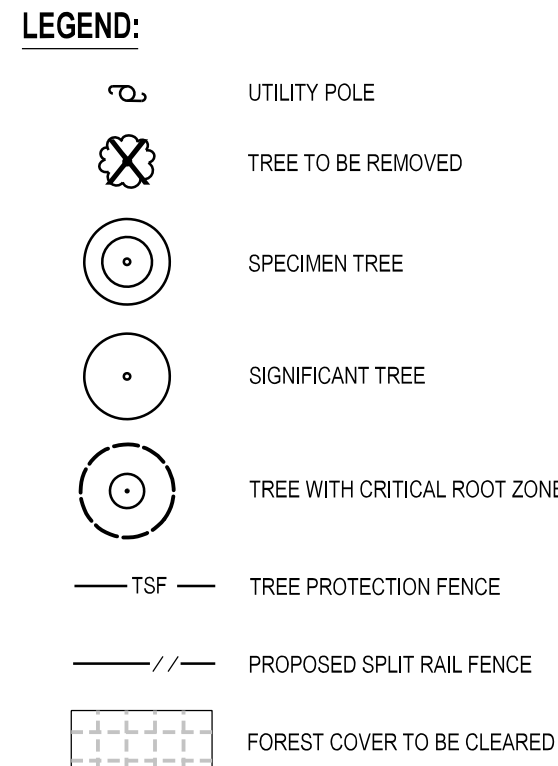
SHEET 1	
OF 1	
PROJECT NO. 3337-00-00	

PRELIMINARY FOREST CONSERVATION PLAN

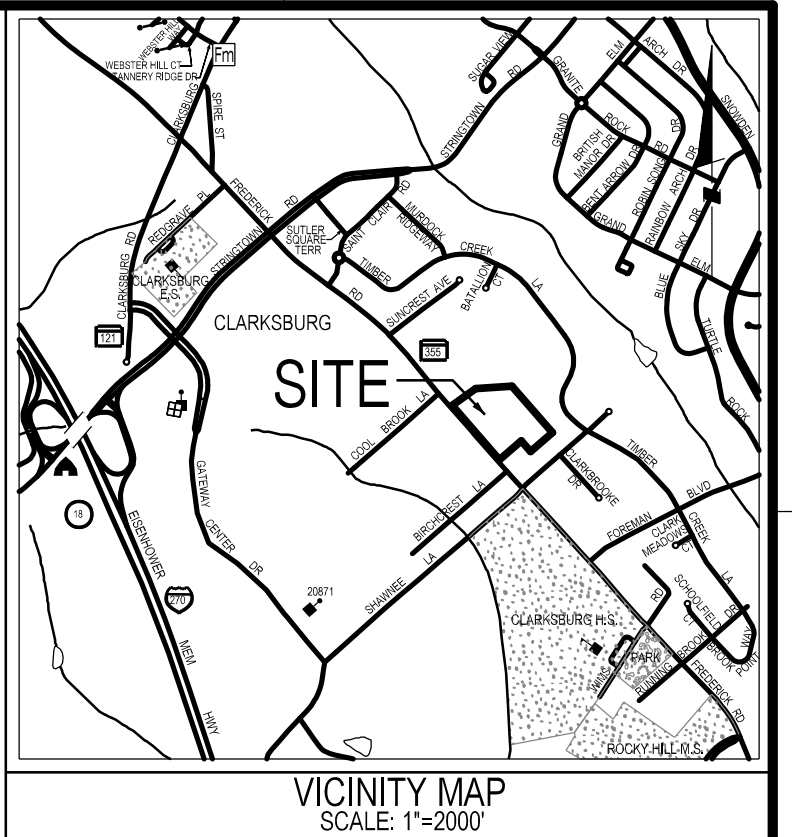
SHEET PFCP.1
SHEET PFCP.2
SHEET PFCP.3

COVER SHEET
PRELIMINARY FOREST CONSERVATION PLAN
FOREST CONSERVATION PLAN DETAILS

PLANNING DEPARTMENT USE ONLY (E-PLANS)



MATCHLINE - SEE INSET 1 ON THIS SHEET



Forest Conservation Data Table

	Number of Acres
Tract	10.3
Remaining in Agricultural Use	-
Road & Utility ROWs ¹	-
Total Existing Forest	2.0
Forest Retention	-
Forest Cleared	2.0

Land Use & Thresholds ²		ARA, MDR, IDA, HDR, MPD, or CIA
Land Use Category	HDR	
Conservation Threshold	20%	percent
Aforestation Threshold	15%	percent

	Total Channel Length (ft.)	Average Buffer Width (ft.) ³
Stream(s)	-	-

	Retained	Cleared	Planted
Acres of Forest in Wetlands	-	-	-
100 Year Floodplain	-	-	-
Stream Buffers	-	-	-
Priority Areas	-	-	-

¹ Only Road or Utility ROWs not to be improved as part of development application.
² Information from FC Land Use Categories & Thresholds document.
³ Measured from stream edge to buffer edge.

FOREST CONSERVATION WORKSHEET

NET TRACT AREA:	Avalon
A. Total tract area	11.69
Site Area	10.28
Offsite Disturbance: Sewer Extension	0.86
Offsite Disturbance: 355 Road Improvements	0.55
B. Land dedication acres (parks, county facility, etc.)	0.00
C. Land dedication for roads or utilities (not being constructed by this plan)	0.00
D. Area to remain in commercial agricultural production/use	0.00
E. Other deductions (specify)	0.00
F. Net Tract Area	11.69

LAND USE CATEGORY: (from Trees Technical Manual)
Input the number "1" under the appropriate land use, limit to only one entry.

	ARA	MDR	IDA	HDR	MPD	CIA
	0	0	0	1	0	0

G. Aforestation Threshold	15%	x F = 1.75
H. Conservation Threshold	20%	x F = 2.34

EXISTING FOREST COVER:	
I. Existing forest cover	2.00
J. Area of forest above aforestation threshold	0.25
K. Area of forest above conservation threshold	0.00

BREAK EVEN POINT:	
L. Forest retention above threshold with no mitigation	0.00
M. Clearing permitted without mitigation	0.00

PROPOSED FOREST CLEARING:	
N. Total area of forest to be cleared	2.00
O. Total area of forest to be retained	0.00

PLANTING REQUIREMENTS:	
P. Reforestation for clearing above conservation threshold	0.00
Q. Reforestation for clearing below conservation threshold	4.00
R. Credit for retention above conservation threshold	0.00
S. Total reforestation required	4.00
T. Total aforestation required	0.00
U. Credit for landscaping (may not exceed 20% of "S")	0.80
V. Total reforestation and aforestation required	3.20
W. Total reforestation and aforestation provided on-site	1.44
X. Total reforestation and aforestation provided off-site	1.76

GENERAL NOTES:

- THE EXISTING ZONE IS TF-5 (TOWNHOUSE FLOATING ZONE).
- GROSS TRACT AREA: 10.28 ACRES.
- THE PROJECT LIES WITHIN THE CLARKSBURG MASTER PLAN AREA.
- THE SUBJECT PROPERTY LIES WITHIN THE LITTLE SENECA CREEK WATERSHED, IT IS WITHIN THE CLARKSBURG SPECIAL PROTECTION AREA.
- UTILITY SERVICE TO BE PROVIDED BY POTOMAC EDISON, VERIZON, WASHINGTON GAS, AND COMCAST.
- PUBLIC WATER AND SEWER SERVICE TO BE PROVIDED BY WASHINGTON SUBURBAN SANITARY COMMISSION (WSSC).
- THE PROPERTY IS IN WATER AND SEWER SERVICE CATEGORIES W-1,S-3, RESPECTIVELY, TIER II FUTURE GROWTH AREAS PLANNED FOR SEWER.
- THE SITE IS LOCATED ON WSSC MAP 232NW13.
- THE SITE IS LOCATED ON TAX MAP GRID EW41.
- BOUNDARY AND TOPOGRAPHIC INFORMATION IS FROM A SURVEY PREPARED BY PENNONI (PHRA) 04/04/2006.
- THE LAYOUT OF ALL SITE ELEMENTS DEPICTED ON THIS PLAN, SUCH AS PARKING, DRIVEWAYS AND UTILITIES AREA APPROXIMATE AND SUBJECT TO CHANGE.
- AN APPROVED NR150 EXIST FOR THIS SITE: PLAN NUMBER 420107780, APPROVED 06/28/2017.
- NO FLOODPLAIN EXISTS ON THE SITE.
- NO WETLANDS AND / OR INTERMITTENT OR PERENNIAL STREAMS EXIST ON OR WITHIN 100 FEET OF THIS PROPERTY.
- THERE ARE NOT KNOWN RARE, THREATENED OR ENDANGERED SPECIES OCCURING ON THIS PROPERTY.
- THERE ARE NO DESIGNATED HISTORIC SITES ASSOCIATED WITH THESE PARCELS.
- UNLESS SPECIFICALLY NOTED ON THIS PLAN DRAWING OR IN THE PLANNING BOARD CONDITIONS OF APPROVAL, THE BUILDING FOOTPRINTS, BUILDING HEIGHTS, DRIVEWAY AND SIDEWALKS SHOWN ON THE PRELIMINARY PLAN ARE ILLUSTRATIVE. THE FINAL LOCATIONS OF BUILDINGS, STRUCTURES AND DRIVEWAYS WILL BE DETERMINED DURING THE BUILDING PERMIT PROCESS. PLEASE REFER TO THE ZONING DATA TABLE FOR DEVELOPMENT STANDARDS, SUCH AS SETBACKS, BUILDING RESTRICTION LINES, BUILDING HEIGHT AND LOT COVERAGE FOR EACH LOT. OTHER LIMITATIONS FOR SITE DEVELOPMENT MAY ALSO BE INCLUDED IN THE CONDITIONS OF THE PLANNING BOARD'S APPROVAL.
- LIMITS OF WORK FOR PROPOSED OFF-SITE WASHINGTON GAS LINE WILL BE DETERMINED PRIOR TO FINAL FOREST CONSERVATION PLAN AND SITE PLAN APPROVAL.



Engineering
Surveying
Planning
Environmental Sciences

ROCKVILLE OFFICE
2 Research Place, Suite 100
Rockville, MD 20850
P. 301.948.2750 F. 301.948.9067

Rockville
Lanham
Waldorf
Leonardtown
Frederick
Soltesz DC, LLC

NO.
DESIGNED:
DATE:

REVISIONS
CAO STANDARDS VERSION: V5 - 2008
TECHNICIAN:

BY
DATE

CHECKED:

MISS UTILITY NOTE

INFORMATION CONCERNING EXISTING UNDERGROUND UTILITIES WAS OBTAINED FROM AVAILABLE RECORDS. THE CONTRACTOR MUST DETERMINE THE EXACT LOCATION AND ELEVATION OF ALL EXISTING UTILITIES AND UTILITIES CROSSINGS BY DIGGING TEST PITS BY HAND, WELL IN ADVANCE OF THE START OF EXCAVATION. CONTACT MISS UTILITY AT 1-800-251-7777 48 HOURS PRIOR TO THE START OF EXCAVATION. IF CLEARANCES ARE LESS THAN SHOWN ON THIS PLAN OR TWELVE (12) INCHES, WHICHEVER IS LESS, CONTACT THE ENGINEER AND THE UTILITY COMPANY BEFORE PROCEEDING WITH CONSTRUCTION. CLEARANCES LESS THAN NOTED MAY REQUIRE REVISIONS TO THIS PLAN.

OWNER/DEVELOPER/APPLICANT

3 SONS AVALON, LLC.
2 RESEARCH PLACE
SUITE 100
ROCKVILLE, MD 20850
PHONE # 301-948-2750
FAX # 301-948-9067
JIM SOLTESZ

MAP: 4928 GRID: G3, H3

TAX MAP: EW, 41 ZONING CATEGORY: R-200/TF-5

WSSC 200' SHEET: 232NW13

SITE DATA: HORIZONTAL: NAD83

VERTICAL: NAD83

PROFESSIONAL CERTIFICATION
I HEREBY CERTIFY THAT THESE DOCUMENTS WERE PREPARED OR APPROVED BY ME, AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MARYLAND.
LICENSE NO. 787 EXPIRATION DATE: 12-27-2017



COVER SHEET

PRELIMINARY FOREST CONSERVATION PLAN
AVALON RESIDENTIAL

P. 801, P. 830, P. 765

2ND ELECTION DISTRICT, MONTGOMERY COUNTY, MARYLAND



SHEET PFCP.1

PROJECT NO.
3337-00-00



June 26, 2018

Ms. Katherine Nelson
Maryland-National Capital Park and Planning Commission
Area 3 Planning Division
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Avalon Residential
Request for Specimen Tree Variance
Preliminary Plan #120180110
Forest Conservation Plan #120180110
NRI/FSD 4-20170780

Dear Ms. Nelson,

On behalf of our client, 3 Sons Avalon, LLC, Soltesz is writing to request a variance for removal of (1) specimen tree pursuant to the provisions under Section 22A-21 of the Montgomery County Forest Conservation Law pertaining to trees having a diameter measured at 4.5 feet above the ground of 30 inches in diameter, or 75% of the current state champion tree of that species. The tree is identified as tree #398 on the approved Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) for the above named development project.

Project Description:

The subject property is located on the north side of Frederick Road (MD 355) approximately 250 feet north of Shawnee Lane in Clarksburg, Maryland. The property is a 10.28 acre site, comprised of Parcels 765, 801, and 770, on Maryland State Tax Map EW41. The property is classified in the TF-5 zone (Townhouse Floating Zone 5 dwelling units per acre). The property is bordered to the west by Frederick Road, to the east and north by residential properties in the R-200 zone. The site is presently undeveloped and consists of open space and weedy vegetated areas. There are 2.0 acres of early succession pioneer growth forest within two distinct tree stands. The site slopes from elevation 620 at the northern end of the site to elevation 570 at the southern end of the site. The property is proposed to be developed with a mix of single family detached homes and townhomes, and associated recreation space and stormwater management facilities.

Variance Request:

There are five specimen trees indicated on the approved NRI/FSD. Two are onsite and the other three are on adjacent properties. Of the five, only one will be impacted by the

proposed development. Tree #398 is on adjacent Lot 2 of Clarkbrooke Estates. The only way that sewer can be extended to the subject property is from the south, via an easement across Lot 3 next to Lot 2. The sewer line will be need to be constructed within 20 feet of the tree, which will impact 37% of the tree's critical root zone (CRZ). Therefore, a variance is requested for removal due to impacts to the CRZ of tree #398.

Tree No.	Scientific Name/ Common Name	DBH (in)	Location	Disposition	CRZ Area (sf)	CRZ Impact (sf)	CRZ Impact (%)	Justification
#398	<i>Ulmus pumila</i> Siberian Elm	35	Offsite, Adjacent to sewer esmt.	Removal with potential to save	8,659	3,203	37	Necessary for sewer connection

Per county and state requirements, applicant for a variance must:

- (1) *Describe the special conditions peculiar to the property which would cause the unwarranted hardship.*

The applicant is providing a public utility needed for the community. The existing site drops in elevation from north to south, and connection to gravity sewer must be to the south within the Shawnee Lane right of way. The proposed development avoids impacts to all but one specimen tree, which is located offsite, but in close proximity to the location of the sewer connection needed to serve the site. Avoiding impacts to the CRZ of tree #398 will make it impossible for sewer to be extended to the property, which would cause an unwarranted hardship to the property being developed.

- (2) *Describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas.*

Similarly zoned properties require community sewer service to develop to the density permitted in the zone. Avoiding impacts to the CRZ of tree #398 would make it impossible for sewer to be extended to the property and would deprive the landowner of rights commonly enjoyed by others in similar areas. The sewer extension will not only provide sewer service to the proposed development, but will also provide for a potential sewer service connection to adjacent parcel P906, which was not included in the development of Clarkbrooke Estates to the east.

- (3) *Verify that state water quality standards will not be violated or that a measurable degradation in water quality will not occur as a result of the granting of the variance.*

Tree #398 is not directly connected to any streams, or part of a riparian buffer system or within any wetland systems. Thus, the disturbance to the root zone will not have a measurable impact on water quality and will not violate State water quality standards. The site will be developed using standard storm water quality and quantity control measures and sediment control methods. The proposed storm water management plan for the project will improve the overall water quality.

(4) Provide any other information appropriate to support the request.

The property is in Growth Tier 2, which is planned for sewer and community sewer service is required for major subdivisions. The below grade installation of infrastructure and necessary on-site grading will impact the CRZ of several trees. Tree preservation and protection measures will be employed to safeguard impacted trees. One specimen tree, tree #398 is likely to be removed because approximately 37 percent of its CRZ will be impacted by sewer construction. Tree #398 is shown on the Forest Conservation Plan to be removed and mitigated. However, prior to construction a certified arborist will evaluate Tree #398. If the certified arborist determines that the tree can be saved through remediation, a tree save plan will be prepared and a licensed tree care expert will perform the work to mitigate the damage to the CRZ. The health of tree #398 will be monitored and if the tree begins to show signs of decline or creates hazardous conditions it will be removed and mitigated per the mitigation table on the Forest Conservation Plan.

Justification for Tree Disturbance

Tree #398 is located offsite to the southeast of the property. In order to serve the site with gravity sewer a connection is required to the existing sewer in the Shawnee Lane right-of-way through an easement in Lot 3. Although the tree is located outside of the required sewer easement approximately 37 percent of the CRZ will be impacted by construction of the sewer.

Minimum Criteria for Variance

As further basis for this variance request, the applicant can demonstrate that it meets the Section 22-21(d) Minimum criteria, which states that a variance must not be granted if granting the request:

(1) Will confer on the applicant a special privilege that would be denied to other applicants.

No special privileges are being granted to the applicant. The applicant has followed all county planning and zoning regulations for this project.

(2) Is based on conditions or circumstances which result from the actions by the applicant.

The applicant has taken no actions leading to the conditions or circumstances that are the subject of this variance request.

(3) Is based on a condition relating to land or building use, either permitted or nonconforming, on a neighboring property.

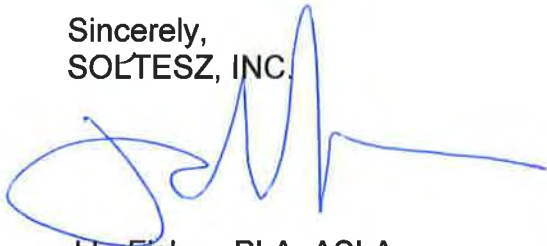
The variance request is not related to any land or building use on a neighboring property.

(4) Will violate State water quality standards or cause measurable degradation in water quality.

The applicant cites the reasoning in the previous response to requirement Sec. 22-12 (c)(3), and restates that granting this variance request will not violate State water quality standards or cause measurable degradation in State water quality standards. The resulting development will implement storm water management practices where currently there are no storm water practices in place, and thus the quality of the water leaving the site will be improved from existing conditions.

For the reasons explained above, it is appropriate to grant this request for a variance. Should you have any further questions or require additional information, please do not hesitate to contact our office.

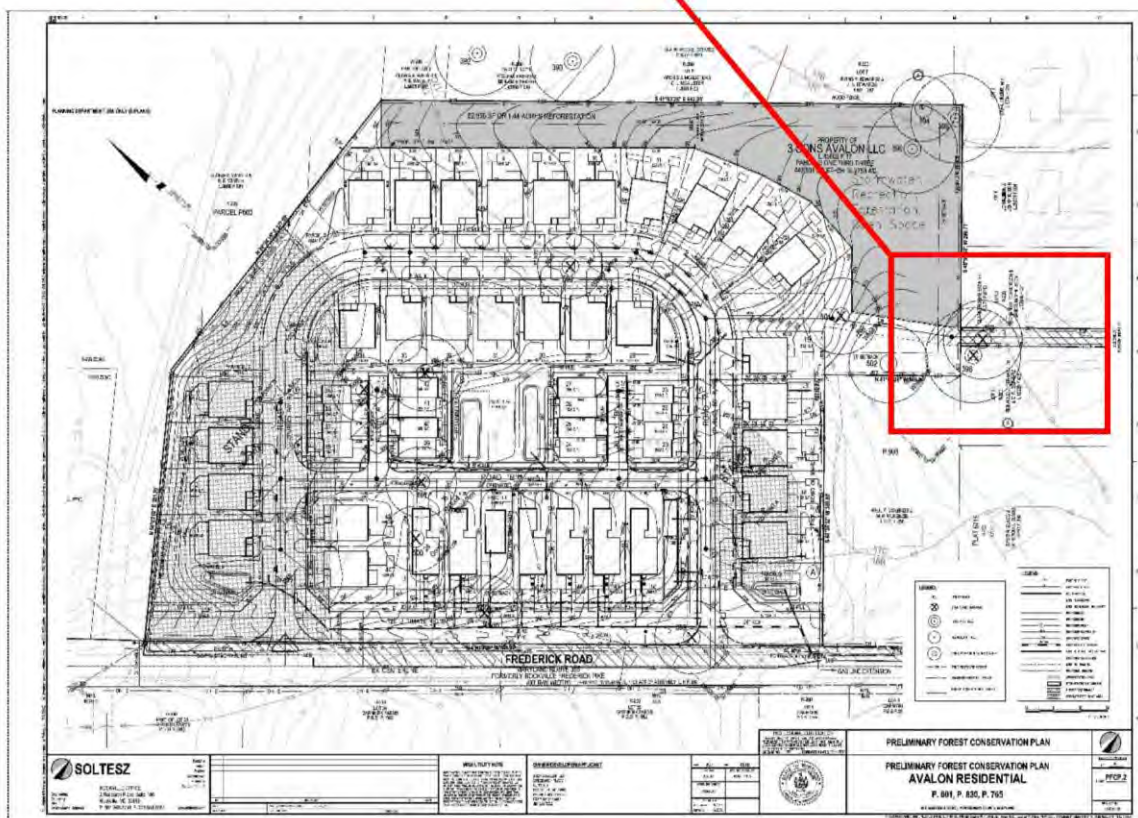
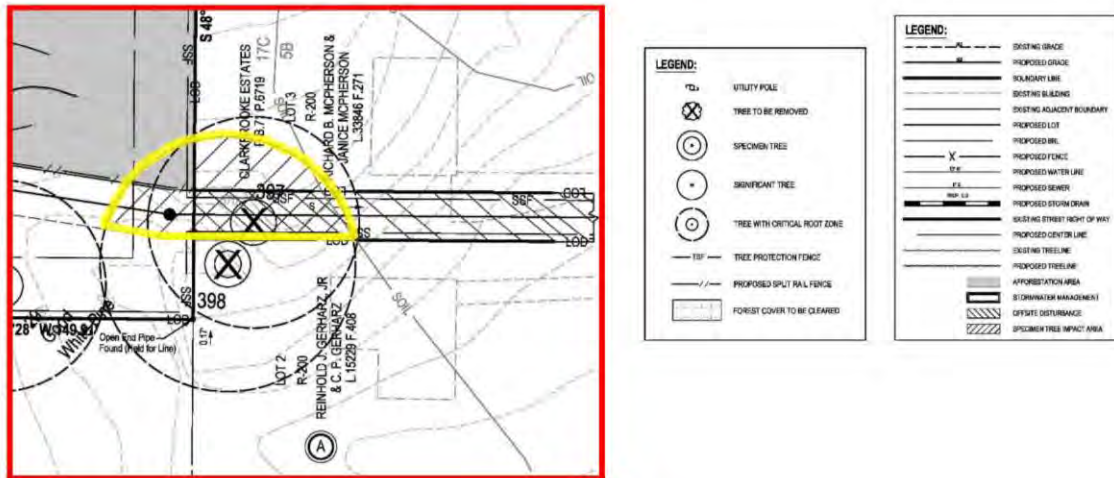
Sincerely,
SOLTESZ, INC.



J.L. Fisher, PLA, ASLA
Senior Landscape Architect

cc: James A. Soltesz
3 Sons Avalon

**AVALON RESIDENTIAL
PRELIMINARY PLAN 120180110
VARIANCE REQUEST FOR IMPACTS TO SPECIMEN**





DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett
County Executive

Patty Bubar
Acting Director

June 28, 2018

Casey Anderson, Chair
Montgomery County Planning Board
Maryland National Capital Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

RE: Avalon Residential - REVISED, ePlan 120180110, NRI/FSD application accepted on 2/6/2017

Dear Mr. Anderson:

All applications for a variance from the requirements of Chapter 22A of the County Code submitted after October 1, 2009 are subject to Section 22A-12(b)(3). Accordingly, given that the application for the above referenced request was submitted after that date and must comply with Chapter 22A, and the Montgomery County Planning Department ("Planning Department") has completed all review required under applicable law, I am providing the following recommendation pertaining to the revised request for a variance (see files in ePlans saved as 10-VAR-120180110.pdf V5, 10-FCP-120180110-001.pdf V7, 10-FCP-120180110-002.pdf V7, and 10-FCP-120180110-003.pdf V5).

Section 22A-21(d) of the Forest Conservation Law states that a variance must not be granted if granting the request:

1. Will confer on the applicant a special privilege that would be denied to other applicants;
2. Is based on conditions or circumstances which are the result of the actions by the applicant;
3. Arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; or
4. Will violate State water quality standards or cause measurable degradation in water quality.

Applying the above conditions to the plan submitted by the applicant, I make the following findings as the result of my review:

1. The granting of a variance in this case would not confer a special privilege on this applicant that would be denied other applicants as long as the same criteria are applied in each case. Therefore, the variance can be granted under this criterion.
2. Based on a discussion on March 19, 2010 between representatives of the County, the Planning Department, and the Maryland Department of Natural Resources Forest Service, the disturbance of trees, or other vegetation, as a result of development activity is not, in and of itself, interpreted as a condition or circumstance that is the result of the actions by the applicant. Therefore, the variance can be granted under this criterion, as long as appropriate mitigation is provided for the resources disturbed.


3. The disturbance of trees, or other vegetation, by the applicant does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property. Therefore, the variance can be granted under this criterion.
4. The disturbance of trees, or other vegetation, by the applicant will not result in a violation of State water quality standards or cause measurable degradation in water quality. Therefore, the variance can be granted under this criterion.

Therefore, I recommend a finding by the Planning Board that this applicant qualifies for a variance conditioned upon meeting all 'conditions of approval' pertaining to variance trees recommended by Planning staff, as well as the applicant mitigating for the loss of resources due to removal or disturbance to trees, and other vegetation, subject to the law based on the limits of disturbance (LOD) recommended during the review by the Planning Department. In the case of removal, the entire area of the critical root zone (CRZ) should be included in mitigation calculations regardless of the location of the CRZ (i.e., even that portion of the CRZ located on an adjacent property). When trees are disturbed, any area within the CRZ where the roots are severed, compacted, etc., such that the roots are not functioning as they were before the disturbance must be mitigated. Exceptions should not be allowed for trees in poor or hazardous condition because the loss of CRZ eliminates the future potential of the area to support a tree or provide stormwater management. Tree protection techniques implemented according to industry standards, such as trimming branches or installing temporary mulch mats to limit soil compaction during construction without permanently reducing the critical root zone, are acceptable mitigation to limit disturbance. Techniques such as root pruning should be used to improve survival rates of impacted trees but they should not be considered mitigation for the permanent loss of critical root zone. I recommend requiring mitigation based on the number of square feet of the critical root zone lost or disturbed. The mitigation can be met using any currently acceptable method under Chapter 22A of the Montgomery County Code.

In the event that minor revisions to the impacts to trees subject to variance provisions are approved by the Planning Department, the mitigation requirements outlined above should apply to the removal or disturbance to the CRZ of all trees subject to the law as a result of the revised LOD.

If you have any questions, please do not hesitate to contact me directly.

Sincerely,

A handwritten signature in black ink, appearing to read 'Laura Miller', written in a cursive style.

Laura Miller
County Arborist

cc: Katherine Nelson, Planner Coordinator