



Avalon Residential: Site Plan 820190070 including Final Water Quality Plan

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Completed: 6/6/19

Description

**Avalon Residential: Site Plan No. 820190070:** Request to construct 16 one-family attached and 34 one-family 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*.

**Applicant:** 3 Sons Avalon, LLC

**Acceptance Date:** November 12, 2018

**Review Basis:** Chapter 22A, Chapter 59



Summary

- Staff recommends **Approval with conditions**.
- The Applicant is requesting an exception to allow a narrower Common Open Space under Section 6.3.5.B.2.
- The increase in the impervious level is due in large part to the roadway improvement requirements by the Maryland State Highway Administration (SHA) for Frederick Road (MD 355).
- Staff has received no correspondence regarding this Application.
- The Applicant has received two extensions to the regulatory review period for the Application.

## SECTION 1 – RECOMMENDATIONS AND CONDITIONS

Staff recommends approval of Site Plan No. 820190070. The development must comply with the binding elements of Local Map Amendment (LMA) H-115 approved as listed in Montgomery County Council Resolution No. 18-739 dated February 28, 2017 and conditions of approval for Preliminary Plan No. 120180110 as listed in the MCPB Resolution No. 18-076 dated September 25, 2018.

All site development elements shown on the latest electronic version as of the date of this Staff Report submitted via ePlans to the M-NCPPC are required except as modified by the following conditions.<sup>1</sup>

### Density, Height & Housing

1. Density

The Site Plan is limited to a maximum of up to 34 one-family detached residential dwelling units and 16 one-family attached residential dwelling units, including a minimum of 16% MPDUs.

2. Height

The development is limited to a maximum height of 40 feet, as measured from the building height measuring point, as illustrated on the Certified Site Plan.

### Environment

3. The Applicant must comply with the conditions of approval for the Final Forest Conservation Plan (FFCP) No. 820190070, approved as part of this Site Plan, including:
- a. Prior to the start of any demolition, clearing, grading or construction on the Subject Property, the Applicant must record a Category I Conservation Easement over the 1.44 acres of reforestation as specified on the approved FFCP. 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 Book/Page for the easement must be referenced on the record plat.
  - b. Prior to any demolition, clearing, grading or construction on the Subject Property, the Applicant must record an M-NCPPC approved Certificate of Compliance in an M-NCPPC approved off-site forest bank within the Clarksburg Special Protection Area or at a minimum, within the Great Seneca Creek watershed, if possible, to satisfy the reforestation requirement for a total of 2.56 acres of mitigation credit. Offsite requirement 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.
  - c. Within the first planting season following the release of the Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for this site, the Applicant must install the plantings shown for the required on-site reforestation of 1.44 acres or as directed by the M-NCPPC Forest Conservation Inspection staff.
  - d. Prior to any demolition, clearing, grading or construction on the Subject Property, the Applicant must provide financial surety to the M-NCPPC Planning Department for the 1.44

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<sup>1</sup> For the purposes of these conditions, the term “Applicant” shall also mean the developer, the owner or any successor (s) in interest to the terms of this approval.

acres of new forest planting and for the landscape trees credited toward meeting the requirements of the FFCP on the project site.

- e. Prior to any demolition, clearing, grading or construction on the project site, the Applicant must submit a five-year Maintenance and Management Agreement (MMA) approved by the M-NCPPC Office of General Counsel. The MMA is required for all forest planting areas and landscape plantings credited toward meeting the requirements of the FFCP.
  - f. Prior to the initial planting acceptance inspection by the M-NCPPC Forest Conservation Inspector, the Applicant must install the permanent split-rail fencing along the border of the Category I Conservation Easement as shown on the approved FFCP.
  - g. Prior to the initial planting acceptance inspection by the M-NCPPC Forest Conservation Inspector, the Applicant must install permanent Conservation Easement signage along the perimeter of the Category I Conservation Easements as shown on the approved FFCP.
  - h. The limits of disturbance on the Final Sediment Control Plan must be no greater than the final limits of disturbance shown on the approved FFCP.
  - i. The Applicant must comply with all tree protection and tree save measures shown on the approved FFCP. Tree save measures not specified on the FFCP may be required by the M-NCPPC forest conservation inspector at the pre-construction meeting.
4. The Applicant must comply with the conditions of approval for the Final Water Quality Plan including:
- a. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Service ("MCDPS") – Water Resources Section in its Combined Final Water Quality Plan/Site Development Stormwater Management Plan letter dated November 23, 2018 and hereby incorporates them as conditions of the Site 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 Site Plan approval.
  - b. Impervious surfaces are limited to no more than 37.34% of the Subject Property within the Clarksburg Special Protection Area as shown on the Impervious Surface Plan dated April 11, 2019 of the approved Final Water Quality Plan.
  - c. Prior to the start of any clearing, grading, or demolition on the Subject Property, the owner of the Subject Property must enter into an agreement with the Planning Board to limit impervious surfaces to no more than 37.34% of the Subject Property within the Clarksburg Special Protection Area and as shown on the Impervious Surface Plan dated April 11, 2019. The agreement must be in a form approved by the M-NCPPC Office of the General Counsel and recorded by deed in the Montgomery County Office of Land Records.
5. Noise Attenuation
- a. Prior to the issuance of the first building permit, the Applicant must provide certification to M-NCPPC Staff from an engineer who specialized in acoustical treatment that:
    - i. The installation of the noise mitigation techniques to attenuate the proposed 20-year future noise levels to no more than 60 dBA Ldn for the exterior ground level living spaces on Block A, Lots 1 & 19 and Block B, Lots 7 & 8 is adequate.
    - ii. The building shell for residential dwelling units affected by exterior noise levels projected at or above 60 dBA Ldn, Block A, Lots 1 & 19; and Block B, Lots 1-8, 17 &

21 will attenuate the projected exterior noise levels to an interior level not to exceed 45 dBA Ldn.

- iii. For all residential dwellings on Block A, Lots 1 & 19; Block B, Lots 1-8; and Parcel F, the Applicant must disclose in writing to all prospective purchasers that those homes are impacted by transportation noise at or above 60 dBA Ldn. Such notification will be accomplished by inclusion of this information and any measures to reduce the impacts in all sales contracts, brochures and promotional documents, including: any illustrative site plan(s) on display within any sales related offices(s); in Homeowner Association documents; with all Deeds of Conveyance; and by inclusion on all signature subdivision and site plans.
- b. Before the final inspection for any residential unit on Block A, Lots 1 & 19; and Block B, Lots 1-8, 17 & 21, the Applicant must certify to M-NCPPC Staff that the noise impacted units have been constructed in accordance with the certification of the engineer that specializes in acoustical treatments.

### **Public Use Space, Facilities and Amenities**

#### **6. Common Open Space, Facilities, and Amenities**

- a. The Applicant must provide a minimum of 116,953 sq. ft. of Common Open Space (26% of net lot area) on-site.
- b. Prior to the final inspection for one-family attached dwelling units on Block B, Lots 17-20 and Lots 13-16 as shown on the Certified Site Plan, the Common Open Space located on Parcel G must be completed.
- c. Prior to the final inspection for one-family detached dwelling units on Block B, Lot 4 and Lot 5, the Common Open Space located on Parcel F must be completed.
- d. Prior to the final inspection for one-family attached dwelling units on Block A, Lots 5-14, the Common Open Space located on Parcel C must be completed.

#### **7. Maintenance of Public Amenities**

The Applicant is responsible for maintaining all publicly accessible amenities constructed as part of this Site Plan including, but not limited to benches, pergola, retaining walls, noise walls, natural surface trails, and landscaping.

#### **8. Common Open Space Covenant**

The record plat must reference the Common Open Space Covenant recorded at Liber 28045 Folio 578 (Covenant).

### **Transportation & Circulation**

#### **9. Pedestrian & Bicycle Circulation**

- a. All internal sidewalks and pedestrian paths must be a minimum of five feet wide except for lead-in sidewalks to individual units.
- b. 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:



- i. The record plat must show the Private Road in a separate parcel.
  - ii. 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.
  - iii. 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.
- c. 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:
- i. 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.
  - ii. The record plat must reflect common ingress/egress and utility easements over all alleys.

## **Density & Housing**

### **10. Moderately Priced Dwelling Units (MPDUs)**

The Planning Board accepts the recommendations of Department of Housing and Community Affairs (DHCA) in its letter dated May 7, 2019, and hereby incorporates them as conditions of the Site Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which DHCA may amend provided that the amendments do not conflict with other conditions of the Site Plan approval.

- a. The development must provide 16 percent MPDUs on-site consistent with the requirements of Chapter 25A and LMA H-115.
- b. Before issuance of any building permit for any residential unit(s), the MPDU agreement to build between the Applicant and the DHCA must be executed.

## Site Plan

### 11. Site Design

- a. Prior to issuance of the first building permit, the Applicant will submit an administrative site plan amendment for approval of detailed architectural plans.
- b. For the high visibility facades identified in the Certified Site Plan, the site plan amendment will provide at a minimum the following building elements:
  - i. All brick, stone, or equivalent masonry material on front facades of Lots 1-6 (Block B);
  - ii. All brick, stone, or equivalent masonry material on side facades with a minimum of 6 windows with shutters, and a prominent architectural element such as a chimney or bay window or front entrance on Lot 7 (Block B), Lots 1 and 19 (Block A).
  - iii. 2/3 brick, stone, or equivalent masonry material on side façade, a minimum of 6 windows with shutters on Lots 9, 21, 28, 34 (Block B).
- c. For all front loaded detached one-family units, the garage façade must be recessed in relation to the front entry door and stoop/porch facade.

### 12. Landscaping

- a. The Applicant must install the site elements as shown on the landscape plans submitted to M-NCPPC or Staff approved equivalent.
- b. The Applicant must install the plantings shown on the landscape plans submitted to M-NCPPC. Any variation in plant species or quantity needs approval of M-NCPPC Staff.

### 13. Lighting

- a. Prior to Certified Site Plan, the Applicant must provide certification to Staff from a qualified professional that the exterior lighting in this Site Plan conforms to the latest Illuminating Engineering Society of North America (IESNA) recommendations (Model Lighting Ordinance-MLO: June 15, 2011, or as superseded) for a development of this type. All onsite exterior area lighting must be in accordance with the latest IESNA outdoor lighting recommendations (Model Lighting Ordinance-MLO: June 15, 2011, or as superseded).
- b. All onsite down-lights must have full cut-off fixtures.
- c. Deflectors will be installed on all fixtures to prevent excess illumination and glare.
- d. Illumination levels generated from on-site lighting must not exceed 0.5 footcandles (fc) at any property line abutting public roads and residentially developed properties.
- e. Streetlights and other pole-mounted lights must not exceed the height illustrated on the Certified Site Plan.
- f. The light pole height must not exceed the height shown on the Certified Plan Site.

### 14. Site Plan Surety and Maintenance Agreement

Prior to issuance of any building permit or Use and Occupancy certificate, the Applicant must enter into a Site Plan Surety and Maintenance Agreement with the Planning Board in a form approved by the M-NCPPC Office of General Counsel that outlines the responsibilities of the Applicant. The Agreement must include a performance bond(s) or other form of surety in

accordance with Section 59.7.3.4.K.4 [59-D-3.5(d)] of the Montgomery County Zoning Ordinance, with the following provisions:

- a. A cost estimate of the materials and facilities, which, upon Staff approval, will establish the surety amount.
- b. The cost estimate must include applicable Site Plan elements, including, but not limited to plant material, on-site lighting, indoor and outdoor recreational facilities, site furniture, mailbox pad sites, trash enclosures, retaining walls, fences, railings, private hydrant systems, private roads and on-site sidewalks/bikeways, storm drainage facilities, street trees and street lights associated with private streets. The surety must be posted before issuance of the any building permit of development and will be tied to the development program.
- c. The bond or surety must be tied to the development program, and completion of all improvements covered by the surety for each phase of development will be followed by a site plan completion inspection. The surety may be reduced based upon inspector recommendation and provided that the remaining surety is sufficient to cover completion of the remaining work.
- d. The bond or surety shall be clearly described within the Site Plan Surety & Maintenance Agreement including all relevant conditions and specific Certified Site Plan sheets depicting the limits of development.

15. Development Program

The Applicant must construct the development in accordance with a development program table that will be reviewed and approved prior to the approval of the Certified Site Plan.

16. Certified Site Plan

Before approval of the Certified Site Plan, the following revisions must be made and/or information provided subject to Staff review and approval:

- a. All on-site sidewalks must be a minimum of 5 feet wide except for lead-in sidewalks to individual units.
- b. Revise the FFCP to show the removal of the street trees within the public rights-of-way proposed for landscape credit.
- c. Revise the FFCP worksheet removing the 0.80 acres of landscape credit and adding it to the acreage being taken offsite to an approved forest bank.
- d. Identify the high visibility facades on the site and landscape sheets.

## SECTION 2 – SITE LOCATION & 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") (**Error! Reference source not found.**) 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.

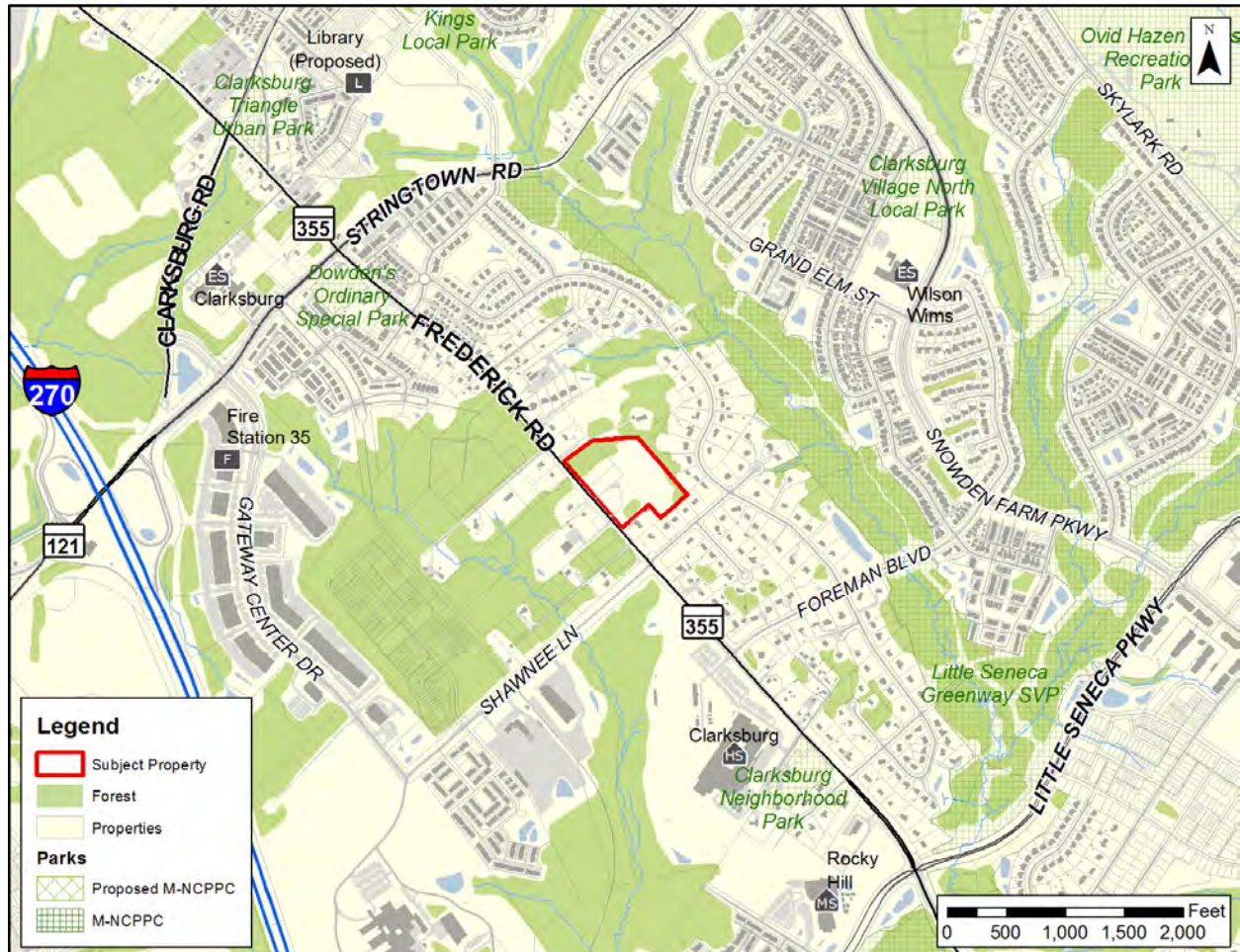


Figure 1 – Vicinity

### 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 1). 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).



## Site Analysis

The Property is currently undeveloped except for an old paved driveway for a home which stood near the center of the Property (Figure 2). 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) which does not provide a limitation of impervious surfaces but does attempt to minimize pervious surface to the extent possible. 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 ( $\geq 30$  inches Diameter at Breast Height (DBH)) on or adjacent to the Property.



Figure 2 - Aerial

## SECTION 3 – APPLICATIONS AND PROPOSAL

### Previous Regulatory Approvals

#### Special Exception S-2685

On October 25, 2007, the Board of Appeals approved Special Exception S-2685 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.

#### Local Map Amendment H-115

The Montgomery County Zoning Hearing Examiner recommended approval of LMA No. H-115 and its associated Floating Zone Plan (Attachment 7) on January 30, 2017. The County Council, sitting as the District Council, approved H-115 on February 28, 2017 (Resolution 18-739) (Attachment 8). 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. 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.

#### Preliminary Plan No. 120180100

On September 25, 2018, the Planning Board approved Preliminary Plan No. 120180110, Avalon Residential to create 50 lots for 34 single-family detached units and 16 single-family attached (townhouse) units (MCPB Resolution No. 18-076, Attachment 9). 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 provided 8 MPDU townhouses in the development, or 16% of the total number of units.

The Preliminary Plan also proposed several parcels for stormwater management, forest conservation, and open space, and 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.

#### **Current Application**

##### Site Plan No. 820190070

Site Plan No. 820190070 ("Application") proposes to construct 34 one-family detached and 16 one-family attached residential dwelling units, including eight MPDU's, with associated common open space, frontage improvements, and stormwater management.





Figure 3 – Proposed Site Plan

The Application utilizes a public street loop which enters and exits to Frederick Road (MD-355). The centralized alleys between the public street loop and providing access to the rear loaded garages are privately owned and maintained.

The Application provides three distinct areas of Common Open Space to create gathering spaces and recreation opportunities for residents with a pergola, seating, and green space. The rear of the Property includes a forest conservation area with a natural surface trail which loops around the Property. The homes along MD-355 will include noise mitigation measures and building treatments to reduce noise impacts to acceptable levels.

## SECTION 4 – ANALYSIS AND FINDINGS - Site Plan No. 820170050

### Findings – Chapter 59

1. *When reviewing an application, the approval findings apply only to the site covered by the application.*

The approval findings only apply to the Property being reviewed as part of this Application.

2. *To approve a site plan, the Planning Board must find that the proposed development:*

- a. satisfies any previous approval that applies to the site;*

The Site Plan conforms to Preliminary Plan No. 120180110 (MCPB Resolution No. 18-076), Preliminary Forest Conservation Plan No. 120180110 and LMA No. H-115 (Resolution 18-739) in terms of conditions of approval; density; land use; and layout of lots, outlots, and easements. The Application is generally consistent with the impervious goals set forth in the LMA H-115. The impervious levels increased slightly due to frontage improvements required by the Maryland State Highway Administration in the MD-355 right-of-way during the review of this Site Plan.

- b. satisfies under Section 7.7.1.B.5 the binding elements of any development plan or schematic development plan in effect on October 29, 2014;*

This section is not applicable as there are no binding elements of an associated development plan or schematic development plan in effect on October 29, 2014.

- c. satisfies under Section 7.7.1.B.5 any green area requirement in effect on October 29, 2014 for a property where the zoning classification on October 29, 2014 was the result of a Local Map Amendment;*

This section is not applicable as the Site's zoning classification on October 29, 2014 was not the result of a Local Map Amendment.

- d. satisfies applicable use standards, development standards, and general requirements under this Chapter;*

#### Division 5.2. Residential Floating Zones

##### *Use and Development Standards*

The Subject Property is approximately 10.28 acres and zoned TF-5 (Townhouse Floating). The following table, Table 1, shows the project's conformance to the development standards of the zone including the development standards of Section 5.2 Residential Floating Zones, and Section 6.2 Parking.



TABLE 1 - Section 5.2 Zoning Data Table: TF-5			
Standard Method	Required by Zoning Ordinance	Approved by Floating Zone H-115	Provided by Application
<b>1. Site</b>			
<b>Dimensions (min)</b>			
Gross Tract Area	N/A	10.28 acres	10.28 acres
<b>Density (max)</b>			
Maximum Allowed Density (R-200)	4.36 DU/Acre or 44.7 DU's	4.87 DU/Acre (with Bonus Density)	4.87 DU/Acre (with Bonus Density)
Master Plan Base Density	4 DU/Acre	4 DU/Acre	4 DU/Acre
Density with MPDU Bonus (22%)	4.88 DU/Acre	4.87 DU/Acre or 50 DUs	4.87 DU/Acre or 50 DUs
MPDUs	12.5%	16%	16% (8 units)
<b>Open Space (min)</b>			
Common Open Space, 1-19 units/acre (59.5.2.5.D)	10% (1.03 acres)	10% (1.03 acres)	25.33% (2.60 acres)
<b>2. Lot (Detached house)</b>			
<b>Dimensions (min)</b>			
Lot Area	Determined at site plan	Determined at site plan	4,500 sq. ft.
Lot width at front building line	Determined at Site Plan	Determined at Site Plan	40 feet
Lot width at front lot line	Determined at Site Plan	Determined at Site Plan	25 feet
Frontage on street or open space	Required	Required	Achieved
Setback from the front lot line	Determined at Site Plan	Determined at Site Plan	10 feet
Min. Side Setback	Determined at Site Plan	Determined at Site Plan	5 feet
Min. Rear Setback	Determined at Site Plan	Determined at Site Plan	7 feet
<b>3. Lot (Townhouse)</b>			
<b>Dimensions (min)</b>			
Lot Area	Determined at site plan	Determined at site plan	1,320 sq. ft.
Lot Area (MPDU)	Determined at site plan	Determined at site plan	1,340 sq. ft.
Lot width at front building line	Determined at Site Plan	Determined at Site Plan	20 feet

<b>TABLE 1 - Section 5.2 Zoning Data Table: TF-5</b>			
<u>Standard Method</u>	<u>Required by Zoning Ordinance</u>	<u>Approved by Floating Zone H-115</u>	<u>Provided by Application</u>
Lot width at front lot line	Determined at Site Plan	Determined at Site Plan	20 feet
Frontage on street or open space	Required	Required	Achieved
Setback from front lot line	Determined at Site Plan	Determined at Site Plan	5 feet
Min. Side Setback, end unit	Determined at Site Plan	Determined at Site Plan	5 feet
Min. Rear Setback	Determined at site plan	Determined at Site Plan	5 feet
<b>Accessory Structure Setbacks (min)</b>			
Front setback	Determined at site plan	Determined at Site Plan	None proposed
Side street setback	Determined at site plan	Determined at Site Plan	None proposed
Side or rear setback	Determined at site plan	Determined at Site Plan	None proposed
Side or rear setback, abutting property not included in application	Determined at site plan	Determined at Site Plan	None proposed
Rear setback alley	Determined at site plan	Determined at Site Plan	None proposed
<b>Height</b>			
Principal Building	Established by Floating Zone Plan	40 ft.	40 ft.
Accessory structure	Must satisfy Section 4.1.8.B	None proposed	None proposed
<b>Section 6.2 Parking</b>			
Detached house	2 sp./unit	68 spaces	68 spaces
Attached house	2 sp./unit	16 spaces	16 spaces
Attached house (MPDU)	1 sp./unit	8 spaces	16 spaces
Visitor Parking	N/A	N/A	8 spaces
Bicycle Parking	N/A	N/A	N/A

*Use Standards 59.3.3.2*

The proposed use of Single-Unit Living and Townhouse Living are identified as a permitted use in TF-5 zone, and is subject to the following specific use standards.

Uses allowed in this zone are based on the units per unit and the corresponding zone based on Section 5.2.3.A. The Application consists of 4.78 units per acre and has 50 total dwelling units. For TF zones with less than 12 units per acre and less than 150 total units, the allowed uses are based on the TLD zone. Under the TLD zone, Single-Unit Living and

Townhouse Living are permitted use in the TLD zone and by extension permitted uses in the TF-5 zone.

A. Density

- a. *If a Floating zone is not recommended in a master plan and the base zone is Residential, the following residential density limits apply, calculated on site area:*

With a pre-existing Euclidean zone of R-200, the maximum allowable density is 4.36 dwelling units per acre, which equals 44 dwelling units. Based on the density bonus allowed in LMA H-115 for providing 16% MPDUs, the total allowed density increases to 4.88 dwelling units per acre or 50 dwelling units.

- b. Commercial Density

*Commercial density, if allowed under Section 5.2.3, is limited to 0.25 FAR, calculated on 25% of the site's land area.*

The Application consists of no commercial density or square footage.

- c. Modifications by Applicant

*An applicant may limit density below the maximum allowed by Section 5.2.5.A to support the necessary findings of approval under Section 7.2.1.*

The Applicant has made no request to limit density.

B. Setback and Height

- b) *If a Floating zone is recommended in a master plan, height must not exceed that recommendation.*

A floating zone is not recommended in the Master Plan. The building height is determined at site plan.

*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.*

- c) *Height must satisfy the compatibility standards for the applicable building type under Section 4.1.8.B.*

C. Lot Size

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

D. 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.*

E. General Requirements

- a. 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.
- b. 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.

#### Division 6 – General Requirements

##### *i. Division 6.1. Site Access*

The access to the development as proposed is adequate for 34 one-family detached residential dwelling units and 16 attached one-family dwelling units. Vehicle, bicycle and pedestrian access to the Subject Property is provided at two locations along Frederick Road (MD 355). The primary access is in the southeast corner of the Property along Frederick Road (MD 355). This access point is unsignalized and allows in ingress and egress from the Property with all turning movements allowed. The second access point, in the northwest corner of the Property, is designed as a right in/right out only due to sight distance issues created by a hill directly to the northwest of the access point. As a result, a left turning out of the Subject Property to go south on Frederick Road (MD 355) will be prohibited.

Pedestrian only access points occur at the same vehicular access point discussed above via a sidewalk at each access point. The Application provides an additional pedestrian access point between the two vehicular access points. This access point connects to a sidewalk running along Frederick Road and proceeds through a Common Open Space area which leads into the centralized open space.

A future access point has been reserved in the northwest corner of the Property to be utilized when the adjacent property is developed. This reserved access will aggregate access points into Frederick Road (MD 355) and better address the sight distance constraints present in this general location.

##### *ii. Division 6.2. Parking, Queuing, and Loading*

The Site Plan provides adequate parking to serve the proposed development. Vehicle Parking in the TF-5 zone requires a minimum of 2 spaces per dwelling unit for a detached one-family house and attached one-family townhouse. Each attached one-family MPDU dwelling unit requires a minimum of 1 parking space (Table 1). The Site Plan provides 68 parking spaces for 34 one-family detached dwelling units. The market rate one-family attached townhouses also provide the required 2 parking spaces per dwelling unit. While each one-family attached MDPU townhouse unit requires 1 parking space per unit, the Site Plan provides 16 parking spaces to allow for 2 parking spaces per unit to match the other housing types included in the Application. The parking spaces are provided within the garage of each unit while a driveway provides visitor parking when necessary. Eight additional visitor parking (4 spaces at two separate locations) spaces are available in parallel parking located in the right-of-way to be constructed as part of this Application.

The Site Plan contains no commercial square footage. As such, no bicycle parking, drive-thru queuing, or loading spaces are provided with the Application.

*iii. Division 6.3. Open Space and Recreation*

The Site Plan meets the requirements of Division 6.3, Open Space and Recreation. The Site Plan provides for more than the required amount of Common Open Space consisting of three different areas. Common Open Space is the type of open space required when constructing one-family attached and detached dwelling unit in the TF-5 zone with a total density of the Property of less than 12 units per acre and less than 150 total units according to Section 59.5.2.3.A of the Zoning Ordinance. Section 59.5.2.3.A refers land use standards to be regulated based on the TLD zone. Therefore, open space requirements in terms of type is governed by the requirements of the TLD zone. Under section 59.6.3.2, the TLD zone requires Common Open Space for one-family detached and attached dwelling units. Common Open Space is intended for recreational use by residents and visitors and should be located in a centralized location bordered by buildings or roads, or located to take advantage of existing natural features. The Applicant must provide a minimum of 10% of the Subject Property as Common Open Space, and at least 50% of the total Common Open Space should be in one contiguous space.

The Site Plan identifies 25.33% (2.06 acres) of the total Subject Property as Common Open Space, which is located into three areas (Figure 4). The Common Open Space area at the rear of the Subject Property is approximately 83,159 sq. ft. or 1.90 acres. This area is covered with a Category I Forest Conservation easement and features a natural surface trail which wraps around the Property from one side to the other. The second area of Common Open Space is located in the middle of the Property and consists of 15,814 square feet. This open space is designed in such a way that the townhouses surrounding it front onto the open space. The open space itself features a pergola, benches, stone steps across the two water features, terraces, and landscaping. The third area of Common Area Space is located adjacent to MD-355 (or Frederick Road) and consists of 4,788 square feet. This Common Area Space consists of a concrete path which links pedestrians on the sidewalk in the MD-355 right-of-way to the Property, benches, stormwater features, and landscaping. This area of Common Open Space is proposed to be 35 feet in width which does not meet the minimum required width of 50 feet. As such, it requires an exception from the Planning Board.

Common Open Space Width Exception under Section 6.3.5.B.2

The minimum width for any Common Open Space is 50 feet according to Section 6.3.5.B.2. The proposed common open space adjacent to the Frederick Road (MD 355) is 35 feet in width and, thus, does not meet the minimum standard. However, Section 6.3.5.B.2 of the Zoning Ordinance allows the Planning Board to grant an exception for a trail easement, a mid-block crossing, or a linear park, by finding that its purpose meets the intent of Division 6.3. This proposed Common Open Space area qualifies for this exception because it provides a mid-block crossing that links the public right-of-way to the central Common Open Space in the middle of the Property. Staff supports the granting of this exception based on the intent of Common Open Space and the connectivity that this Common Open Space provides.

In order to meet the definition of “Common Open Space” under Section 6.3.5(A)(2), the Applicant must provide access to the common open space to give the residents recreation opportunities. As such, the Application proposes a natural surface system starting at the northeast corner of the Property which loops around to connect to the central Common Area Space in the middle of the Property.

The central Common Open Space features multiple connections to the natural trail system, pergola, seating, steps and terracing, and landscaping. The remaining area of Common Open Space which provides a mid-block from MD-355 using a concrete path with benches, stormwater management, and landscaping.

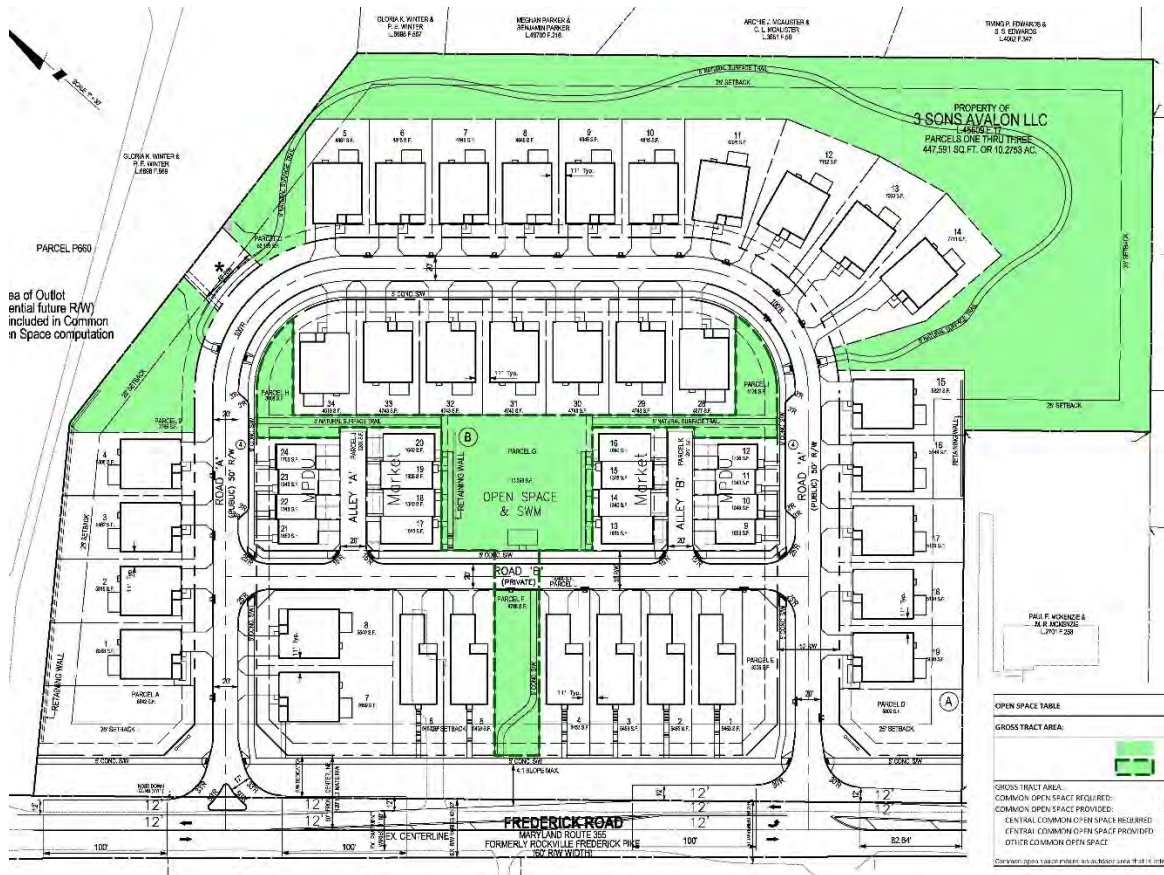


Figure 4 – Common Open Space

The Montgomery County Zoning Ordinance requires the development of property with more than 19 residential units to meet the Montgomery County Recreation Guidelines of 2017. The Site Plan is proposing 50 total units. Therefore, it is subject to the guidelines.

As shown in Attachment 3, the Site Plan provides adequate and efficient recreation amenities at all six age levels. The Applicant’s proposal consists of installing pedestrian connection/trail system, open grass lawn areas, picnic/seating areas, landscaping elements for toddlers and children, as well as stairs, steps, and railings. The Application achieves the maximum offsite points (35% max) due to Wilson Wims Elementary School

and the Greenway Trail near Clarksburg Village provide multiple types of sporting courts, natural areas, trail systems, and natural areas within the capture area based on the Recreation Guidelines.

iv. *Division 6.4. General Landscaping and Outdoor Lighting*

The Site Plan meets the standards for the provision of landscaping and outdoor lighting as required by Division 6.4. The landscaping serves multiple purposes including providing tree canopy coverage within a new residential development and creating visual interest and enjoyment within the proposed open spaces without negatively blocking sight lines or hindering their use. Much of the tree canopy on the Property is in the form of street trees along all the public streets, which are ultimately under the purview of MCDOT. The open spaces include additional plantings as a means of further enhancing tree cover throughout the Common Open Space in a park type setting while still leaving some lawn areas in part or full sun.

The mid-block crossing benefits from additional landscape design to better accomplish amenity and recreation goals. Measures include locating individual plant species to create maximum visual display and effect while interspersing 3-inch caliper trees to enhance the space.

Lastly, the landscape provides canopy coverage and shade for roads, and open spaces. It defines open spaces and amenity areas by creating an edge or boundary and adding interest.

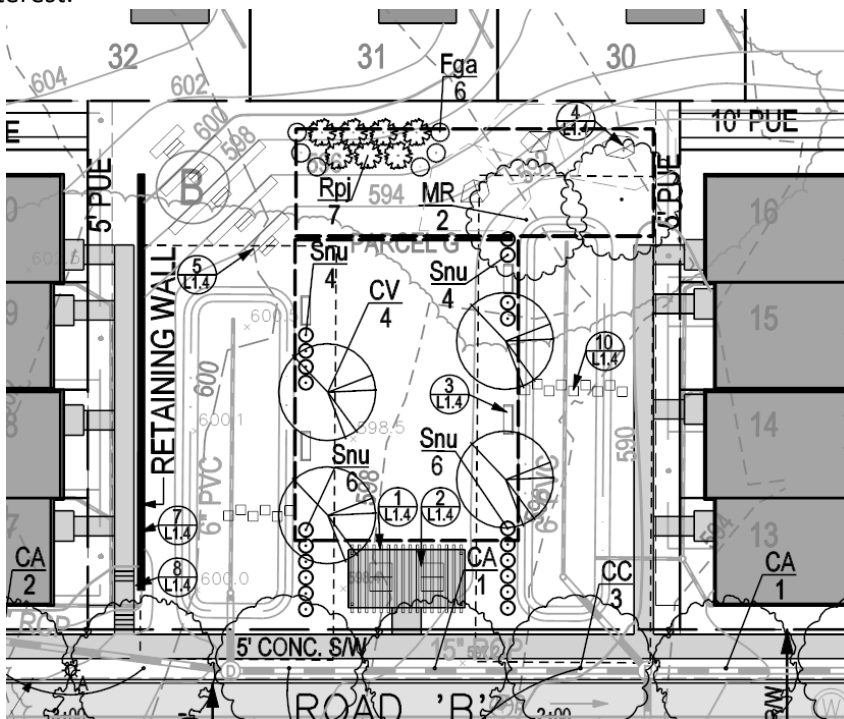


Figure 5 – Landscaping in Outdoor Community Space

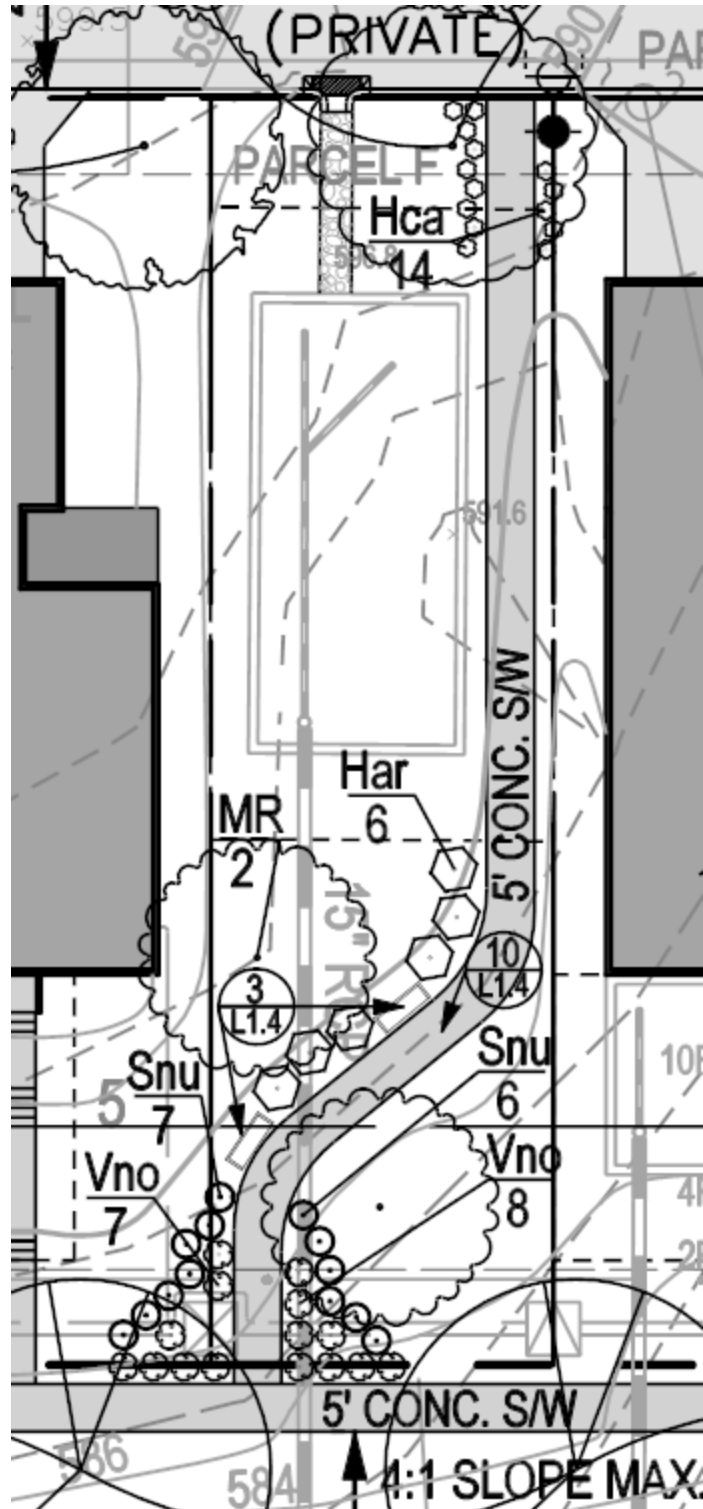


Figure 6 – Mid-block crossing



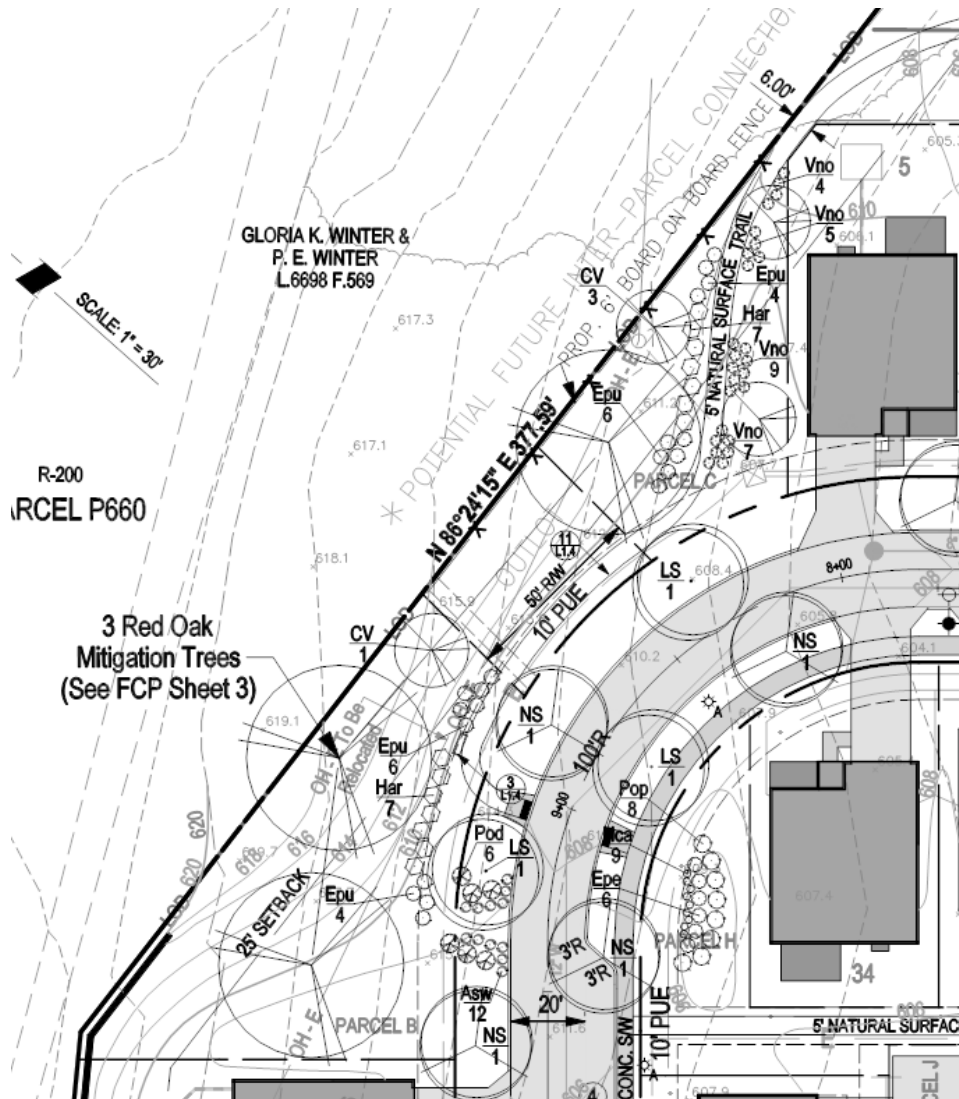


Figure 7 – Landscaping in the northern corner of the Common Open Space

The lighting proposed on the Site Plan is primarily made up of street lighting which is under the final review of MCDOT. As in most residential developments, there is little use for supplemental lighting. The only supplemental lighting is one private light pole located at the mid-point of Road “B” (private). Under Section 59.6.4.4.D, on-site illumination located in the right-of-way is exempt from the 0.5 footcandle requirement.

#### *Division 6.5. Screening Requirements*

The Site Plan proposes detached one-family and attached one-family dwelling units in the TF-5 Zone. While screening is required when townhouse building types abut residential detached buildings, the townhouses are located on the interior of the loop road in the middle of the Application. One-family detached dwelling units are located on the outer edge of the Application which is the housing type which abuts the surrounding properties. According to Section 59.6.5.2.C.2, when detached one-family residential abut other one-family detached residential, no screening is required.

- e. satisfies the applicable requirements of:

- i. Chapter 19, Erosion, Sediment Control, and Stormwater Management; and

**Clarksburg Special Protection Area (SPA Water Quality Plan)**

The entirety of this project is located within the Clarksburg SPA and is therefore required to obtain approval of a water quality plan under Section 19-62 of the Montgomery County Code. This section of the code states:

“(b) Privately owned property. Except as otherwise expressly provided in the Chapter, the requirements for a water quality inventory and a preliminary and final water quality plan apply in any area designated as a special protection area to a person proposing a land disturbing activity on privately owned property:

- (1) who is required by law to obtain approval of a development plan, diagrammatic plan, schematic development plan, project plan, special exception, preliminary plan of subdivision, or site plan; or
- (2) who is seeking approval of an amendment to an approved development plan, diagrammatic plan, schematic development plan, project plan, special exception, preliminary plan of subdivision, or site plan.”

As part of the requirements of the SPA law, a Water Quality Plan should be reviewed in conjunction with a Preliminary Plan and Site Plan. Under Section 19-65 of the Montgomery County Code, the Montgomery County Department of Permitting Services (MCDPS) and the Planning Board have different responsibilities in the review of a Water Quality Plan. MCDPS has reviewed and conditionally approved the elements of the Final Water Quality Plan under its purview. The Planning Board must determine if SPA forest conservation and planting requirements, environmental buffer protection, and limits on impervious surfaces have been satisfied. Sec. 19-65(a)(2)(A) of the Montgomery County Code states that:

“In acting on a preliminary or final water quality plan, the Planning Board has lead agency responsibility for:

- (i) Conformity with all policies in the Planning Board’s Environmental Guidelines which apply to special protection areas;
- (ii) Conformity with any policy or requirement for special protection areas, including limits on impervious area, in a land use plan, watershed plan, or the Comprehensive Water Supply and Sewer System Plan; and
- (iii) Any other element of the plan in which the Planning Board has lead agency design, review, and approval responsibility.”

A Preliminary Water Quality Plan was approved by Planning Board Resolution dated September 25, 2018 during the review and approval of the Preliminary Plan of Subdivision, Plan No. 120180110. The Final Water Quality Plan was submitted as part of this current Application and proposes to protect the areas of planted forest in a Category I Conservation Easement.

#### MCDPS Special Protection Area Review Elements

In a letter dated November 23, 2018, MCDPS has found the Final Water Quality Plan and stormwater management concept for this site plan to be acceptable for their portion of the Final Water Quality Plan under its purview including 1) stormwater management facilities and 2) sediment and erosion control measures. No specific performance goals were established for this site. The Application will meet stormwater management goals through the use of dry wells, micro-biofiltration facilities, and bio swales.

#### Planning Board Special Protection Area Review Elements

Following is an analysis of the Planning Board's responsibilities in the review of the Final Water Quality Plan. Staff recommends approval of the elements of the SPA Water Quality under its purview.

1) Priority Forest Conservation Areas

The Application meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law. The FFCP was submitted with this Application. The forest conservation requirements are described in more detail in the Forest Conservation Plan section of this report. Per SPA requirements outlined in the Environmental Guidelines, forest plantings will occur during the first planting season after issuance of sediment and erosion control permits when possible, and a five-year maintenance program to better ensure forest survival. The planted forest on-site will be protected through a Category I Conservation Easement.

2) SPA Environmental Buffer Protection

There are no streams, wetland, floodplains or other environmentally sensitive areas on or near the project site. The FFCP meets the requirements of the Environmental Guidelines for sensitive area protection.

3) Impervious Surfaces

The Clarksburg SPA does not have a specific numerical limit on impervious surfaces. However, a main goal for development in all SPAs is to reduce or minimize the amount of impervious surface. In this case, the Planning Board Condition of Approval Number 2 for the Preliminary Plan states:

*"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."*

Both the Council Resolution and the Planning Board have stressed an impervious goal of 35% for this project. The Planning Board had previously approved an impervious level of 36.1% for the Preliminary Plan. The Board understood that this target may need to be reevaluated at the time of Site Plan and Final Water Quality Plan review due to additional requirements that may be deemed essential for the Site Plan. The Impervious Surface Exhibit submitted with the Site Plan and the Final Water Quality Plan proposes 3.92 acres (170,817 sq. ft.) of impervious surfaces over the net tract area of 10.52 acres (457,427 sq. ft.) resulting in an impervious surface calculation of 37.34% percent (Table 2).

The increase in the impervious level from 36.1% to 37.34% is due in large part to the roadway improvement requirements by the Maryland State Highway Administration (SHA) for Frederick Road (MD 355). At the time of Site Plan review, SHA required that the Applicant provide expanded roadway shoulder work and acceleration/deceleration lanes for the main access point to the proposed subdivision in addition to what was shown on the Preliminary Plan. At the time of the Preliminary Plan the new impervious surface proposed for MD 355 was approximately 2,665.0 square feet. At the time of Site Plan review this had increased to 6,105.2 square feet resulting in a 130.7% increase in new impervious surface for MD 355.

**Table 2:** Impervious Surfaces Calculations

Net Tract Area:	457,427 sq. ft.
Impervious Surfaces: Net Tract Total	170,817 sq. ft.
% Impervious Area: Net Tract	37.34%

ii. Chapter 22A, Forest Conservation

Natural Resource Inventory/Forest Stand Delineation

The Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) #420170780 for the Subject Property was approved on June 28, 2017. The NRI/FSD identifies the environmental features and forest resources on the Subject Property. The Subject Property is located within the Little Seneca Creek watershed, a Use IV-P stream. The Subject Property is 10.28 acres in size, contains 2.00 acres of forest, but does not contain streams or other environmentally sensitive features.

Forest Conservation Plan

The Application meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law. As required by Chapter 22A, an FFCP was submitted with the Application. The total net tract area for forest conservation purposes is 11.59 acres which includes the Subject Property of 10.28 acres, plus off-site work of 0.76 acres for the sewer line installation and a right-of-way deduction of 0.55 acres. The Property is zoned TF-5 and is classified as High Density Residential as specified in the Trees Technical Manual and Division 5.2 of the Zoning Ordinance. The Subject Property contains 2.00 acres of forest. The Applicant proposes to remove 2.00 acres of forest and retain 0.00 acres of forest. This results in a total reforestation requirement of 3.20 acres. The Applicant proposes to meet this requirement by reforesting 1.44 acres on-site, placing that reforestation in a Category I Conservation Easement and taking the balance of 2.56 acres to an M-NCPPC approved off-site forest bank.

Forest Conservation Variance

As required under Section 22A-12(b)(3) of the Forest Conservation Law, a variance must be approved by the Planning Board if trees 30" DBH or greater are impacted. The Applicant proposes to impact one tree which is 30" diameter breast height (DBH) or greater. As required under Section 22A-21 the Applicant has previously sought and was granted approval of a variance on September 25, 2018 as part of the Preliminary Forest Conservation Plan approval.

iii. Noise Attenuation

Section 2.1 of the Montgomery County “Staff Guidelines for the Consideration of Transportation Noise Impacts in Land Use Planning and Development” (Noise Guidelines) dated 1983 require that a noise analysis be done when a proposed residential structure lies within 300-feet of an arterial road with an average daily traffic (ADT) of 5,000 to 20,000. Most of the proposed development at Avalon Residential is within 300 feet of MD 355, which is classified as an arterial street with an ADT of 18,148 per an October 2011 MD SHA traffic study. 16 of the townhomes and 19 of the one-family homes within the 300-feet zone will be impacted by traffic noise levels above 55 dBA  $L_{dn}$  (Figure 9).

The 1983 Noise Guidelines recommend that 55 dBA  $L_{dn}$  is an appropriate exterior guideline noise level for this development given the location in Montgomery County (Figure 8). The Noise Guidelines recognize that the recommended exterior noise levels shown on Map 2-1 *“should be used for general reference purposes only”* and that noise levels for specific areas in subsequent sector and master plans may differ from Map 2-1 *“due to updated, more detailed traffic information for existing and future conditions”*. The Noise Guidelines note that *“specific recommendations found in subsequent master or sector plans supersede Map 2-1 and could be used to determine specific guidelines for noise levels in specific areas of the County”*. The Clarksburg Masterplan and Hyattstown Special Study Area (Masterplan), dated June 1994, recommended that the zoning for this area, referred to as the Transit Corridor District in the Masterplan, be revised to 2-4 Dwelling Units per Acre. This area was subsequently rezoned to R-200 to comply with the Master Plan recommendations.

As conditioned, to modify the recommended noise guideline for this project from 55 dBA  $L_{dn}$  to 60 dBA  $L_{dn}$ . The Noise Guidelines had envisioned this area of Montgomery County to be remain rural in nature with residential zoning of 5 acres or more per dwelling unit and that background noise is low enough to allow maintenance of the 55 dBA  $L_{dn}$  level. However, since 1983 the Clarksburg area has increased in both the number and density of residential units. The current overall zoning for this area is R-200, in accordance with the 1994 Clarksburg Masterplan, which is almost a ten-fold increase in density over what the 1983 Noise Guidelines recommended. This has resulted in an increase in traffic along Frederick Road to the point of making the 55 dBA  $L_{dn}$  no longer an appropriate standard for this project.

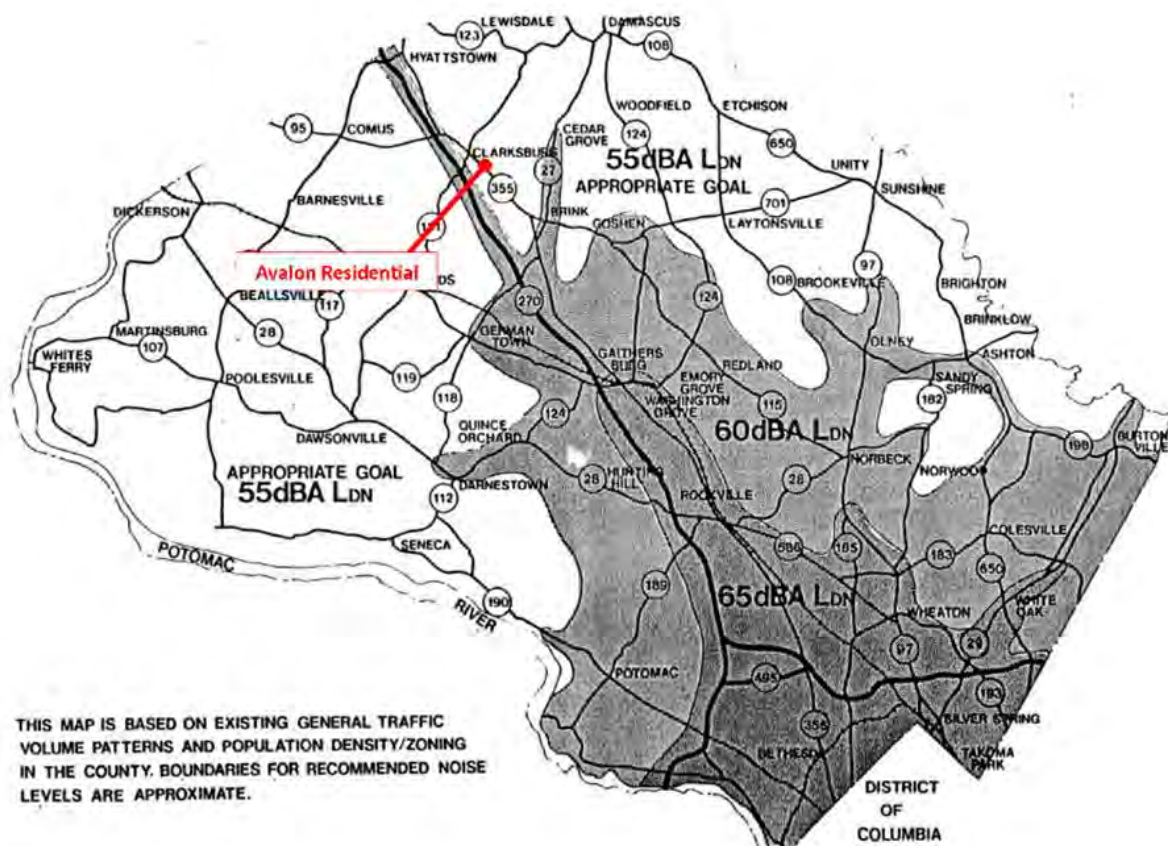


Figure 8 - Recommended noise levels from Noise Guidelines Map 2-1

A Traffic Noise Analysis for MD-355 was prepared for this project by Phoenix Noise and Vibrations, LLC with noise measurements taken on October 9-10, 2018. The analysis indicates the vehicular traffic on MD Route 355 contributes to the noise impact on the proposed residential development (Figure 9). The Noise Guidelines stipulate a day-night average of 55 dBA  $L_{dn}$  maximum noise level for backyards and outdoor recreation areas and a day-night average of 45 dBA  $L_{dn}$  for indoor areas.

The noise analysis identifies both ground level impacts and upper level impacts. The ground level impacts effect the outdoor areas of Block A, Lots 1 and 19; Block B, Lots 1-8; and Parcel F (Figure 10). Since the noise in the outdoor space for these units may not be fully mitigated, Staff recommends that the sales contracts for these units and other documents disclose to the potential buyers that these units outdoor spaces are impacted by noise. The upper level noise impacts effect Block A, Lots 1, 2, 18 & 19; and Block B, Lots 1-9, 17 & 21 (Figure 11). The proposed homes in this development have yet to be designed. After the houses have been designed for the impacted lots, a noise impact analysis for each residence will need to be performed and mitigation requirements will need to be provided for each of those homes in order to achieve interior noise levels that will not exceed 45 dBA  $L_{dn}$ . Since the units on these proposed lots are located within the noise impacted area identified on the 2018 noise analysis, Staff recommends that an engineer that specializes in acoustical treatments certify



that the building shell for these units is designed to attenuate projected exterior noise levels to an interior level not to exceed 45 dBA L<sub>dn</sub> and that the applicant/developer/builder certify that they will construct the noise impacted units in accordance with the recommendations of an engineer that specializes in acoustical treatments.

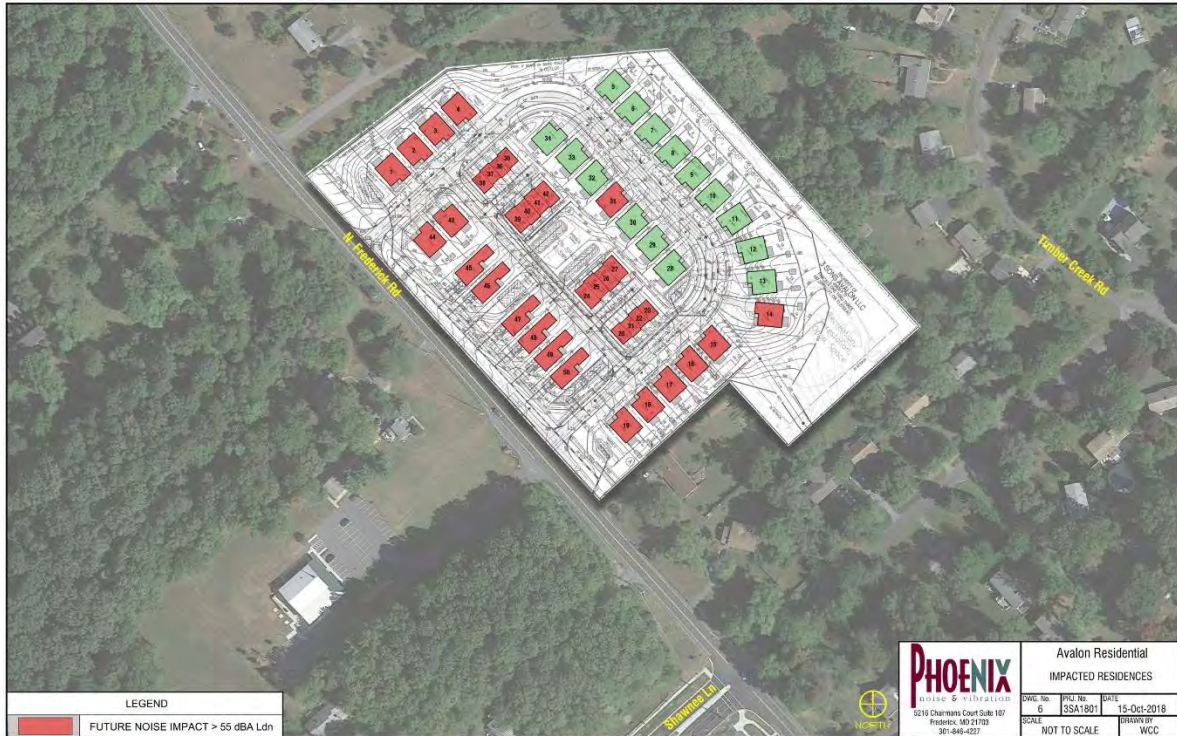


Figure 9 - Housing units impacted by future 20-yr. noise levels above 55 dBA L<sub>dn</sub>





Figure 10 - Projected impacts of future 20-yr. traffic noise levels at Ground Level



Figure 11 - Projected impacts of future 20-yr. traffic noise levels at Upper Level



f. *provides safe, well-integrated parking, circulation patterns, building massing and, where required, open spaces and site amenities;*

i. Parking and circulation

The Site Plan provides for safe and well-integrated parking and circulation patterns on the Subject Property. The Subject Property will have two points of access connecting to MD-355 (Frederick Road). Each dwelling unit has internal garage parking to provide the parking required under the Zoning Ordinance. The one-family detached dwelling unit also include driveway pad spaces to enhance parking availability. The Application provides four visitor parking spaces along the public street on both side sides of the loop road. This allows the visitor parking spaces, eight in total, to be evenly distributed across the Property.

The Application has adequate internal circulation for both vehicles and pedestrians. Both access points are connected by a public loop road. Rear loaded garages for each dwelling unit are accessible via private alley which connect at multiple points to the new public street. The Site Plan provides sidewalks on one side of the new public street. The private alley which connects to the public street on both sides also includes a sidewalk on one side to improve circulation between the Common Open Space. The Subject Property will also be accessible to pedestrian via a sidewalk along MD-355 to be constructed as part of this Application.

The internal circulation is enhanced by the natural surface trails. This trail is publicly accessible from the right-of-way of Road 'A'. This trail loops around the northern side of the Property and connects to Road 'A' again on the other side of the Property. Pedestrians can access the centralized Common Open Space via another natural surface trail on the other side of Road 'A'. Both side of this Common Open Space include short natural surface trails which connect to the longer trail on the north side of the Property. This design creates a complete east/west loop inside the Property boundaries. The Application also includes a pedestrian only connection from the sidewalk on MD-355 between Lot 4 and Lot 5. This provides a north/south connection to the central Common Open Space and, ultimately, the natural surface trail system inside the Property.

Building massing, open space, and site amenities

*Building Massing*

The Site Plan proposes safe and integrated building massing, open space locations and site amenities. The design of the Site Plan establishes distinct sections of higher density townhouses in the center of the Property while lower densities of detached one-family residential are located on the outer ring. This arrangement allows the massing on the buildings on the outside ring to more closely match the massing of building on adjacent properties while the townhouses massing is designed to integrate with the one-family detached units in the outer ring across the street. The massing of the one-family attached dwelling units is designed to help frame the public realm with the front face of the dwelling units facing of the open space the dwelling units front on while rear loaded garages via alley access provides parking.

The larger residential lots on the periphery of the development are located to be better integrated with existing development. The one-family detached dwellings front on the streets and include garages to the front of the house with the driveways facing the street. Driveways

taking access to the street is typical of lower density one-family detached development throughout the County and it efficiently utilizes the transportation infrastructure, minimizes impervious surfaces and delineates a boundary between developed and green area.



Figure 12 – Site Plan

#### Open Spaces and Amenities

The open spaces on the Subject Property are made up of entirely Common Open Space. The Site Plan identifies three areas of Common Open Space; (1) the northern and northeast open space at the edge of the Property, (2) the centralized open space in the middle of the Property, and (3) the mid-block crossing adjacent to MD-355.

The first Common Open Space area on the north and northeast portion of the Subject Property is designed to remain natural with natural surface trails through the Category I Forest Conservation easement.





Figure 13 – Natural Surface Trail Detail

The second Common Open Space area is the centralized open space in the middle of the Property. This space integrates a pergola, stone steps, retaining walls, terracing, and seating.



Figure 14 – Pergola Detail



Figure 15 – Terraced Stairs Detail



Figure 16 – Stone Step Detail

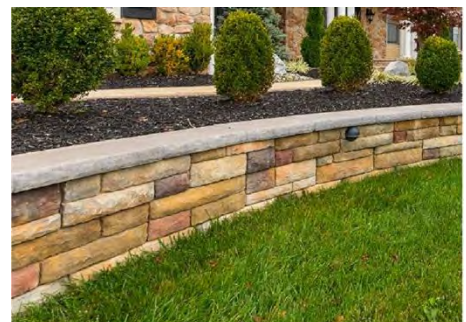


Figure 17 – Retain Wall Detail



Figure 18 – Outdoor Seating under pergola

These elements combine to create a gathering space for residents while the one-family attached dwelling units which front onto the open space provides activation and a unifying transition between public and private space.

The final open space provides a mid-block connection from the MD-355 right-of-way to the centralized open space discuss above. This open space features bench, stormwater management, and landscaping. Given the proximity to MD-355, this space is not designed to be a long term gathering area, it is more of a transitional space to link together other Common Open Spaces.

- g. substantially conforms with the recommendations of the applicable master plan and any guidelines approved by the Planning Board that implement the applicable 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 Site Plan does not include any substantial changes to the lot configuration that was included in the Floating Zone Plan (FZP) approved with the limited map amendment, and so remains in substantial conformance with the approved Preliminary Plan, LMA, and Master Plan. 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 ). The first of the relevant plan objectives for the Transit Corridor District is to “continue the present residential character along MD 355.”

The Site Plan meets the objective of continuing the residential character along MD 355 that was present in 1994

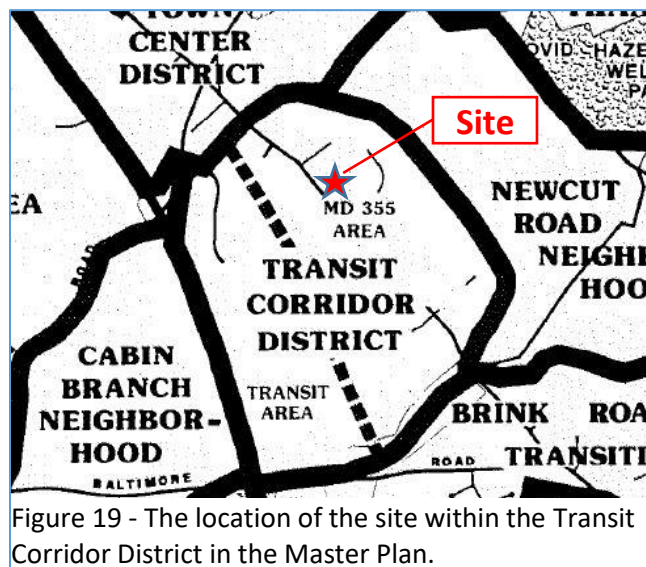


Figure 19 - The location of the site within the Transit Corridor District in the Master Plan.

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 7):

*[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.*

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 Site Plan has reconfigured units along Frederick Road so that only three houses now have their sides oriented towards the road (Lots 1, 7, and 19). As conditioned, these lots will receive enhanced architectural features in order to increase compatibility and heighten design along the MD-355 corridor.

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 Site Plan substantially conforms to the recommendations within the Master Plan.

- h. will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. If an approved adequate public facilities test is currently valid and the impact of the development is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required the Planning Board must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage;*

As discussed in Preliminary Plan No. 120180110 findings, the Site Plan will be served by adequate public facilities (APF), including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. The APF approved as part of Preliminary Plan No. 120180110 remains valid.

- i. on a property in a Rural Residential or Residential zone, is compatible with the character of the residential neighborhood; and*

Not applicable, the Subject Property is located in a Floating zone.

- j. on a property in all other zones, is compatible with existing and approved or pending adjacent development.*

Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development. Several measures improve the compatibility between this development and the surrounding existing development. First, the dwelling type selected for the outer ring of the Application is all one-family detached units which matches the building types and general density of existing, approved, and pending adjacent development. The denser one-family attached dwelling units are located in the middle of the Property. These dwelling types are consistent with the dwelling type in the surrounding communities, which is also mainly one-family detached and attached.

Second, the building height is capped at 40 feet for all units, which is compatible with the range of building heights allowed in the adjacent R-200 zone to the north, east and southwest. The R-200 zone allows a building height between 35 feet and 50 feet depending on the lot size.

3. *To approve a site plan for a Restaurant with a Drive-Thru, the Planning Board must also find that a need exists for the proposed use due to an insufficient number of similar uses presently serving existing population concentrations in the County, and the uses at the location proposed will not result in a multiplicity or saturation of similar uses in the same general neighborhood.*

Not applicable, this Site Plan does not include a restaurant with a drive-thru.

4. *For a property zoned C-1 or C-2 on October 29, 2014 that has not been rezoned by Sectional Map Amendment or Local Map Amendment after October 30, 2014, if the proposed development includes less gross floor area for Retail/Service Establishment uses than the existing development, the Planning Board must consider if the decrease in gross floor area will have an adverse impact on the surrounding area.*

Not applicable, the Subject Property was not zoned C-1 or C-2 on October 29, 2014.

## **SECTION 5: CITIZEN CORRESPONDENCE AND ISSUES**

The Applicant has met all proper signage, noticing and pre-submission meeting requirements for the submitted Application. A pre-submission meeting was held on October 16, 2018 at Clarksburg Cottage located at 23201 Stringtown Road in Clarksburg, Maryland.

As of the posting of this Staff Report, Staff has received no citizen correspondence regarding this Application.

## **SECTION 6: CONCLUSION**

The Application substantially conforms to the recommendations of the 1994 *Clarksburg Master Plan & Hyattstown Special Study Area*. The Application conforms with the requirements of Chapter 59 (Zoning Ordinance), the Final Water Quality Plan requirements of Chapter 19, Article V, and the Forest Conservation Plan and Environmental Guideline Requirements of Chapter 22A of County Code. Furthermore, Application has been reviewed by other applicable county agencies, all of whom have recommended approval of the Application. Therefore, Staff recommends approval of the Application subject to the conditions cited in the Staff Report.

### **ATTACHMENTS**

- Attachment 1 – Statement of Justification
- Attachment 2 – Site Plan Composite
- Attachment 3 – Recreation Guidelines
- Attachment 4 – Final Forest Conservation Plan Sheet 1
- Attachment 5 – Final Forest Conservation Plan Sheet 2
- Attachment 6 – Final Water Quality Plan
- Attachment 7 – Hearing Examiner’s Report, LMA H-115
- Attachment 8 – County Council Resolution No. 18-739
- Attachment 9 – Planning Board, Preliminary Plan Resolution No. 18-076
- Attachment 10 – MCDPS, Fire Department Access and Water Supply Section Approval, April 5, 2018
- Attachment 11 – MCDPS, Right-of-way Conditions Letter, March 4, 2019
- Attachment 12 – MCDPS Stormwater Management Concept/Final Water Quality Plan Approval,  
November 23, 2018
- Attachment 13 – Department of Housing and Community Affairs Approval Letter, May 7, 2019





**AVALON RESIDENTIAL**  
**Site Plan No. 820190070**  
**Statement of Justification**  
October 22, 2018  
Revised February 28, 2019

**A. Project Overview**

The Applicant, 3 Sons Avalon, LLC, requests approval of a Site Plan for 10.2753 acres (447,591 square feet) of land located on the east side of Frederick Road (MD 355) in Clarksburg, at 22821 and 22901 Frederick Road, just north of Shawnee Lane and about one mile from the Clarksburg Town Center. This application is consistent with recently approved Preliminary Plan No. 120180110.

This Site Plan application seeks approval of a total of 50 dwelling units, consisting of 34 single-family detached units and 16 single-family attached units, with 8 of the attached units designated as MPDUs. The project will be served by a U-shaped public road with two access points on Frederick Road, as well an interior private road and two private alleys that will serve the project's rear loaded units.

The project is in accordance with the floating zone plan that was unanimously recommended for approval by the Planning Board and ultimately approved by the District Council in Local Map Amendment H-115, resulting in the reclassification of the property from the R-200 Zone to the current TF-5 (Townhouse Floating) Zone. Under Local Map Amendment H-115, the property is approved for a density of 4.87 dwelling units per acre (TF-5), allowing a maximum of 50 residential dwelling units (34 single-family detached units and 16 townhouses), at least 8 (16%) of which will be affordable as moderately priced dwelling units (MPDUs).

The development density that was approved in Local Map Amendment H-115 for the subject property is less than the maximum allowable under the Zoning Ordinance and is calculated as follows: 4.0 dwelling units per acre x 10.2753 acres, or 41.1 dwelling units, plus a bonus density of 22% or 9 dwelling units (by the provision of at least 15% MPDUs), yielding a proposed total development density of 50 dwelling units.

## **B. Subject Property**

The subject property currently consists of three parcels – known as parcels P765, P770 and P801 of “Garnkirk.” The site is on the east side of Frederick Road (MD 355) in Clarksburg, just north of Shawnee Lane and about one mile from the Clarksburg Town Center. The subject property is irregular in shape, about 600 feet deep, with approximately 749 feet of frontage on Frederick Road. There are two acres of existing forest onsite. The site currently consists of open space areas and weedy vegetated areas. The site slopes downward from the rear of the property to the frontage along Frederick Road, from northwest to southeast. The subject property abuts single-family detached homes in the R-200 Zone on three sides. Across MD 355, it confronts single-family homes and a church also in the R-200 Zone.

The site is located within the Little Seneca Creek Watershed and the Clarksburg Special Protection Area. Per the site’s Natural Resource Inventory/Forest Stand Delineation (approved on June 28, 2017) and site investigations, no rare, threatened, or endangered species were observed on-site. There are also no historical elements associated with the property.

## **C. Zoning History**

The subject property is identified as having existing zoning of Rural-Residential (R-R) in the 1968 Clarksburg and Vicinity Master Plan. In October 1973, Text Amendment 73013 renamed the R-R Zone as the R-200 Zone. The 1994 Clarksburg Master Plan & Hyattstown Special Study Area (“Plan”) retained the subject property’s R-200 zoning. The land use element

of the Plan placed the subject property in the Transit Corridor District with recommended residential development density of 2-4 units per acre, plus any applicable MPDU bonus density as per the Plan's Technical Appendix (p. 9-10). The subject property's zoning was not changed by the District-wide rezoning on October 30, 2014, which resulted from District Map Amendment G-956 (adopted July 15, 2014). The County Council, sitting as the District Council for the Regional District, approved Local Map Amendment H-115 on February 28, 2017, which rezoned the subject property from the R-200 Zone to the TF-5 Zone. (See attached Council Resolution No. 18-739)

### **1. Binding Elements (LMA H-115)**

Approval of Local Map Amendment H-115 included the following five (5) binding elements, with which the proposed Preliminary Plan detailed herein fully complies:

- *No. 1: Development may not exceed 50 dwelling units.*
- *No. 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.*
- *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.*

### **D. Proposed Development**

The Applicant is proposing to create a small community comprised of 50 well-designed detached units and townhomes to be known as Avalon Residential (hereinafter "Avalon" or "Site Plan"). Avalon's proposed site layout reflects a mix of traditional and neo-traditional street design. The development is proposed to be served by two primary access points off Frederick

Road (MD 355) that are located approximately 463 feet apart. The subdivision will be served by a “loop” road connecting to Frederick Road, which will be a public modified secondary road. This “loop” road essentially bisects the property into a “central core” of detached and attached dwellings that is surrounded by an “outer ring” of all detached dwellings. The central core is then further bisected by a mid-block private road that will serve to provide connectivity and vehicular access to both attached and detached dwellings with rear-loaded garages.

Use of the mid-block private road not only provides more flexibility in lot size and site layout, but has the added benefit of resulting in fewer driveways on the main “loop” public road, leaving more space for on-street parking. This design also facilitates 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. The private road will be used not only for vehicular access to rear-loaded garages, but will serve utilitarian functions such as trash storage/collection while freeing the main street system for trees and other plantings.

The front of all the dwellings will provide the main pedestrian realm of the community along with a significant “central village green” that is both accessible and visible from MD 355 which will serve as a gathering space for the Avalon community to further activate the public realm. The dwelling units located in the “outer ring” of the development have been purposefully designed to back into the natural serenity provided by adjacent wooded and future afforestation areas, while those located in the “central core” enjoy closer proximity to the shared public realm of the greater community provided by the “central village green.”

#### **1. Common Open Space – Request for Exception to Minimum Width.**

Pursuant to Section 6.3.5.B.2 of the zoning ordinance, the deciding body may grant an exception for the minimum width of common open space for items such as a trail easement, a mid-block crossing, or a linear park, by finding that its purpose meets the intent of Division 6.3.

The intent of Section 6.3 is described at 6.3.1. “Open space can provided adequate light, air, circulation, and recreation and encourage preservation and enhancement of natural resources, including improvement of water and air quality.” The applicant requests an exception to the width requirement of Common Open Space for the linear park on Parcel F (required by staff at Preliminary Plan), which provides a central connection from the homes facing MD 355 to the central park area, and for the trail connections provided from Public Road A to the central park between the townhomes and the single family homes (located in Parcels H & I). Both provide mid-block connections to the central open space, which provides recreational facilities for the community. Parcel F is 35 feet wide and the trail connection parcels H & I are 10 feet wide. Additional common open space is provided in pockets throughout the community, as well as a large natural area with a natural surface trail which takes advantage of wooded area along the perimeter.

#### **E. Purpose Clause and Development Standards**

As stated in Section 59-5.2.2 of the Zoning Ordinance, the purpose of the Townhouse Floating Zone (TF Zone) is to provide residential development that is compatible with the surrounding neighborhood that allows flexibility in residential development, including site layout, lot size, and lot placement. Per Sections 59-5.2.5.A. and B., residential density, setback from site boundary and maximum building height are established by the floating zone plan (FZP) that was adopted by the Council during the rezoning phase of the project in Local Map Amendment H-115.

1. **Development Standards.** The development standards for the project are shown in the table below:

DEVELOPMENT STANDARDS (Section 59-5.2.5)	Required/Allowed Zoning Ordinance Development Standards	Approved Floating Zone Plan H-115	Proposed Site Plan 820190070
<b>Zoning</b>	TF-5 (Townhouse Floating)	TF-5 (Townhouse Floating)	TF-5 (Townhouse Floating)
<b>Site Area:</b>			
Gross Tract Area:	N/A	10.28 acres	10.28 acres
<b>Density of Development:</b>			
Maximum Allowed Density (R-200)	4.36 D.U./AC or 44.7 D.U.	4.87 D.U./AC (With Bonus Density)	4.87 D.U./AC (With Bonus Density)
Master Plan Base Density	4 DU / AC	4 DU / AC	4 DU / AC
Density with MPDU Bonus (22%)	4.88 DU / AC	4.87 DU / AC or 50 DU	4.87 DU / AC or 50 DU
<b>Unit Types:</b>			
Detached house (front-load)	Permitted	30 D.U.	28 D.U.
Detached house (rear-load)	Permitted	4 D.U.	6 D.U.
Townhouse (Market Rate)	Permitted	8 D.U.	8 D.U.
Townhouse (MPDU)	Permitted	8 D.U.	8 D.U.
<b>Total Number of Dwelling Units</b>		<b>50 D.U.</b>	<b>50 D.U.</b>
MPDU's	12.5% Minimum	16% provided	16% provided
<b>Zoning Standards</b>			
Setback from Site Boundary	Established by Floating Zone Plan	25 ft	25 ft
Detached house			
Min. Lot Area	TBD at Site Plan		4,500 sf
Min Lot Width at front building line	TBD at Site Plan		40 ft
Min. Lot Width at Front lot line	TBD at Site Plan		25 ft
Maximum Building Height	Established by Floating Zone Plan	40 ft	40 ft
Setback from front lot line	TBD at Site Plan		10 ft
Min. Side Setback	TBD at Site Plan		5 ft
Min. Rear Setback	TBD at Site Plan		7 ft
Parking	2 spaces/lot	68 spaces	68 spaces
Townhouse			
Min. Lot Area (Market Rate)	TBD at Site Plan	TBD at Site Plan	1,320 sf
Min. Lot Area (MPDU)	TBD at Site Plan	TBD at Site Plan	1,340 sf
Min. Lot Width at Front Building Line	TBD at Site Plan		N/A
Min. Lot Width at Street	TBD at Site Plan	TBD at Site Plan	TBD at Site Plan
Setback from front lot line	TBD at Site Plan		5 ft
Min Side Setback, end unit	TBD at Site Plan		5 ft
Min. Rear Setback	TBD at Site Plan		5 ft
Maximum Building Height	Established by Floating Zone Plan	40 ft	40 ft
Parking (Market Rate)	2 spaces/lot	16 spaces	16 spaces
Parking (MPDU)	1 space/lot	8 spaces	16 spaces
Parking (visitor)	-	8 spaces	8 spaces
Open Space (59-5.2.5.D)	10% or 1.03 Acres	10% or 1.03 Acres	25.33% or 2.60 Acres

## 2. Binding Element No. 5 in re Imperviousness Goal per LMA H-115

The approval of Local Map Amendment H-115 included Binding Element No. 5 that states *“development of the property should pursue an imperviousness surface goal of 35% or less of the tract area as calculated using the Montgomery County Environmental Guidelines.”*

The basis for the 35% imperviousness surface goal is discussed in more detail in the District Council’s approval resolution (No. 18-739) for LMA H-115 under the “Environment” section of the Opinion on page 2. It was based on a recommendation by M-NCPPC Technical Staff that despite the fact that the Clarksburg Special Protection Area (SPA) specifies no maximum imperviousness cap in the portion of the Clarksburg SPA where the subject property is located, a primary goal for new development in all SPAs is to reduce the area of impervious surfaces. Accordingly, the Applicant was asked to provide an impervious surface estimate of the proposed floating zone plan. Technical Staff acknowledged in their staff report (Exhibit 29 in the record of LMA H-115) that “the proposed floating zone plan does not include all imperviousness likely to be associated with this type of development since it is meant to approximate overall density rather than evaluate detailed site design. Therefore, it does not include road improvements to MD 355, additional parking, and other on-site amenities.” (Technical Staff Report for LMA H-115, p. 17) The Applicant’s imperviousness estimate of 34.5% for the floating zone plan under consideration for approval in LMA H-115 was based only on the amount of imperviousness anticipated within the proposed development on the subject property itself. The Applicant could not have anticipated what additional imperviousness, if any, might be required by SHA for frontage improvements during the next phase of the development approval process for the project. Accordingly, Technical Staff recommended that “establishing 35% as a **target** [would be] appropriate for this site.” (Technical Staff Report for LMA H-115, p. 17, emphasis added). As a result, Binding Element No. 5 characterized the imperviousness percentage as a “goal” and not as a maximum cap.



Since approval of LMA H-115 and during the review of Preliminary Plan No. 120180110, the Applicant worked with SHA to determine what frontage improvements will be required to facilitate the proposed development. SHA has confirmed that while acceleration/deceleration lanes will not be required, a left turn lane and certain shoulder improvements adjacent to the proposed development's two access drives will be necessary that will add 9,283 square feet to the amount of impervious surface attributable to the project as calculated using the Montgomery County Environmental Guidelines. The following table summarizes the project's resulting imperviousness calculations and its compliance with the impervious surface goal set forth in Binding Element No. 5.

<b>AVALON RESIDENTIAL</b>		
<b>IMPERVIOUS CALCULATIONS</b>		
Gross Tract Area per Environmental Guidelines	457,427 SF	10.50 AC
Layout of Proposed Development ONLY*	160,794 SF	35.15%
Layout of Proposed Development WITH Shoulder Improvements and Left Turn Lane Required by SHA*	170,077 SF	37.18%

\* Inclusive of access drive connections to MD 355 / Frederick Road.

Finally, it should be noted that the imperviousness percentage calculated for the layout of the proposed development of 35.15% assumes that ALL of the purchasers of the single-family detached units will choose to include an optional front porch, rear deck/addition, and fireplace, which amounts to a total of 7,896 square feet of potential building options as shown on the Impervious Exhibit provided in support of this Site Plan application. Since as a practical matter it is not likely that all future homeowners will choose to maximize the available building options on their respective lots, it is anticipated that the actual impervious surface figure associated with the layout of the proposed development will be below 35%.

## **F. Findings for Regulatory Approval (Chapter 59, Section 7.3.4.E.2)**

- 1. Satisfies any previous approval that applies to the site;*

This Site Plan application is consistent with recently approved Preliminary Plan No. 120180110 as well as satisfies all requirements of Local Map Amendment H-115, which resulted in the reclassification of the property from the R-200 Zone to the current TF-5 (Townhouse Floating) Zone.

- 2. Satisfies under Section 7.7.1.B.5 the binding elements of any development plan or schematic development plan in effect on October 29, 2014;*

Not applicable.

- 3. Satisfies under Section 7.7.1.B.5 any green area requirement in effect on October 29, 2014 for a property where the zoning classification on October 29, 2014 was the result of a Local Map Amendment;*

Not applicable.

- 4. Satisfies applicable use standards, development standards, and general requirements under Chapter 59;*

The single family detached and attached dwellings proposed are permitted uses in the TF Zone pursuant to Section 5.2.3.A of the Zoning Ordinance.

See Site Plan Development Standards Table under Section E herein for summary of the project's compliance with applicable development standards of Chapter 59.

*5. Satisfies applicable requirements of:*

*a. Chapter 19, Erosion, Sediment Control, and Stormwater Management; and*

All stormwater management, water quality plan and floodplain requirements of Chapter 19 were found to be satisfied by the proposed project in conjunction with the Planning Board's approval of Preliminary Plan 120180110. There are no substantive changes to the project's proposed layout, density of development and/or limits of disturbance that would impact previous approvals.

The project's Preliminary Water Quality Plan was approved by DPS on June 9, 2018. The additional information requested by DPS for the Final Water Quality Plan has been provided and submitted in conjunction with this Site Plan application.

*b. Chapter 22A, Forest Conservation.*

A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) for the subject property was approved on June 28, 2017 (NRI/FSD No. 420170780). A Preliminary Forest Conservation Plan was approved in connection with approval of Preliminary Plan No. 120180110.

A Final Forest Conservation Plan has been submitted for review in conjunction with this Site Plan application.

*6. Provides safe, well-integrated parking, circulation patterns, building massing and, where required, open spaces and site amenities;*

Access to the site will be provided via a public modified secondary road with two entrances on Frederick Road (MD 355) and a mid-block private road, built to tertiary road standards. As shown on the Fire Department Access Plans submitted with this application, vehicular, truck and emergency apparatus circulation on the site will be safe and adequate with the proposed improvements.

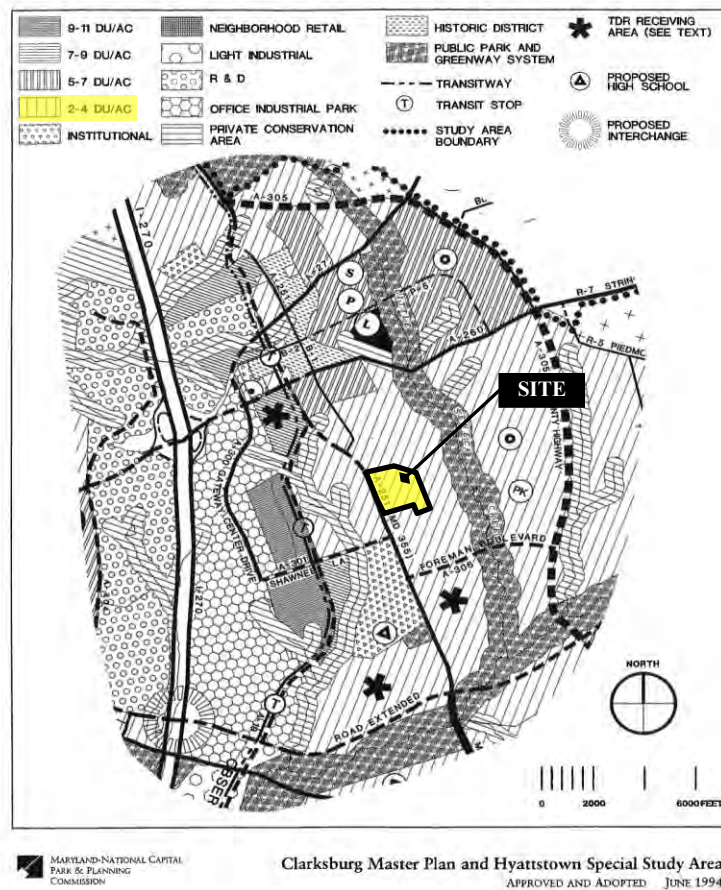
Pedestrian pathways throughout the development provide connectivity and access to open space amenities as well as to Frederick Road. Ample parking is provided, including 2 spaces per dwelling unit as well as 8 additional on-street parallel parking spaces for visitors.

*7. Substantially conforms with the recommendations of the applicable master plan and any guidelines approved by the Planning Board that implement the applicable plan;*

The subject property falls under the land use guidance of the 1994 Clarksburg Master Plan & Hyattstown Special Study Area (“Plan”). The site is located in the Plan’s Transit Corridor District. The Land Use Plan for the Transit Corridor District (Figure 22, on Plan p. 55) reproduced with relevant highlights below, recommends a density of 2-4 dwelling units per acre for the subject property, plus allowance for MDPU bonus density (Technical Appendix to the Plan, p. 9-10).

### Transit Corridor District Land Use Plan

Figure 22



The subject property's maximum base density permitted pursuant to Section 5.2.5.A.1 of the Zoning Ordinance (4 du/acre x 10.2753 acres, or 41.1 dwelling units) is consistent with the Plan's based density recommendation for the property. As stated previously, the project will provide at least 15% MPDUs, resulting in a bonus density of 22% (or 9 dwelling units) pursuant to Chapter 25A-5(c) of the County Code, thereby, yielding a total permitted unit count of 50 dwelling units.

Accordingly under Local Map Amendment H-115, the property was approved for a development density of 4.87 dwelling units per acre (TF-5), allowing a maximum of 50

residential dwelling units (34 single-family detached units and 16 townhouses), at least 8 (16%) of which will be affordable as moderately priced dwelling units (MPDUs).

The proposed development furthers the intent and goals of the 1994 Clarksburg Master Plan & Hyattstown Special Study Area and satisfied the prerequisites, intent statement, and necessary findings to justify its rezoning to the TF-5 zone. The Plan recommends the following land use objectives for the Transit Corridor District (Plan, p. 54-57):

- Continue the present residential character along MD 355.
- Balance the need for increased carrying capacity along portions of MD 355 with the desire to retain a residential character along MD 355.
- Continue the present employment uses along I-270.
- Provide housing at designated areas along the transitway near significant employment uses.
- Allow small amounts of office and retail use at transit stop areas as part of mixed-use development pattern.
- Establish strong pedestrian and bicycle linkages to the greenway.
- Improve east-west roadway connections.
- Provide an open space system, which includes small civic spaces at the transit stops.

The subject development is consistent with the Plan in that it proposes housing in appropriate areas near a planned transit station. It seeks to introduce development that is compatible with existing residential uses while adding to the area's density to support transit.



While the property is not located in the area slated for the highest densities (9-11 units per acre) located nearest the transit stop for the Corridor Cities Transitway, residents of the development on the subject property, which is recommended for 2-4 dwelling units per acre under the Plan, will be able to utilize existing pedestrian connections to easily access the planned transit station at the intersection of Shawnee Lane and the future Observation Drive.

*8. Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. If an approved adequate public facilities test is currently valid and the impact of the development is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required If an adequate public facilities test is required the Planning Board must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage;*

*a. Schools*

The adequacy of school facilities relative to the proposed development was tested at the Preliminary Plan approval phase of the project. Using the FY2019 Annual School Test, both the Cluster Adequacy and the Individual School Adequacy analysis performed concluded that there is adequate school capacity for the amount and type of development proposed by this application.

*b. Police and Fire Protection*

Police and fire protection services for the area are available and will continue to be adequate to serve the proposed development.

*c. Water/Sewer*

The proposed subdivision will be served by public water running along MD 355. Sewer service to the property will outfall through the rear of the site via an easement that has been acquired for this purpose. The easement will connect the subject property to an existing sewer line on Shawnee Lane. The WSSC has accepted the sewer study required to connect the property to this existing line, and is currently providing final review of the Hydraulic Planning Analysis (HPA).

*d. Public Roads*

A Traffic Impact Analysis (“TIA”) (dated April 25, 2018 and prepared in compliance with 2017 LATR requirements/guidelines) was reviewed and approved in conjunction with the project’s recent Preliminary Plan approval (No. 120180110).

*e. Storm Drainage*

All stormwater management, water quality plan and floodplain requirements of Chapter 19 were found to be satisfied by the proposed project in conjunction with the Planning Board’s approval of Preliminary Plan 120180110. There are no substantive changes to the project’s proposed layout, density of development and/or limits of disturbance that would impact previous approvals.

The project's Preliminary Water Quality Plan was approved by DPS on June 9, 2018. The additional information requested by DPS for the Final Water Quality Plan has been provided and submitted in conjunction with this Site Plan application.

*9. On a property in a Rural Residential or Residential zone, is compatible with the character of the residential neighborhood;*

The proposed development maintains the existing character of the area by having single-family detached units facing MD 355, with the higher density townhome units located in the interior of the site.

*10. On a property in all other zones, is compatible with existing and approved or pending adjacent development.*

Not applicable.

## **G. Community Outreach**

The applicant conducted the required pre-submission community meeting on October 16, 2018, at the Clarksburg Cottage Meeting Room located at 23201 Stringtown Road, Clarksburg, MD 20871. Additional details regarding the pre-submission community meeting, including minutes, have been submitted with this application as required by the Zoning Ordinance and by the Planning Department's Manual of Development Review Procedures. Additional community meetings and multiple public hearings were also held during the local map amendment and the

preliminary plan phase of the project, and the applicant has actively engaged the community since the project commenced.

## **H. Conclusion**

The proposed Site Plan for the Avalon Residential community satisfies all the necessary findings for approval by the Planning Board. The project has been designed to balance the subject property's existing natural and adjacent residential surroundings with the need to provide increased housing choice in an area of the County that is in close proximity to major employment and entertainment centers and planned transit infrastructure. The proposed subdivision is not only in harmony with general intent and objectives of the 1994 Clarksburg Master Plan & Hyattstown Special Study Area, but will facilitate implementation of the specific land use patterns envisioned by the Plan for the area.

Based on all the foregoing, the Applicant respectfully requests that the Planning Board approve the Site Plan as proposed.

Respectfully submitted:

**MILLER, MILLER & CANBY**

By:

  
Soo Lee-Cho

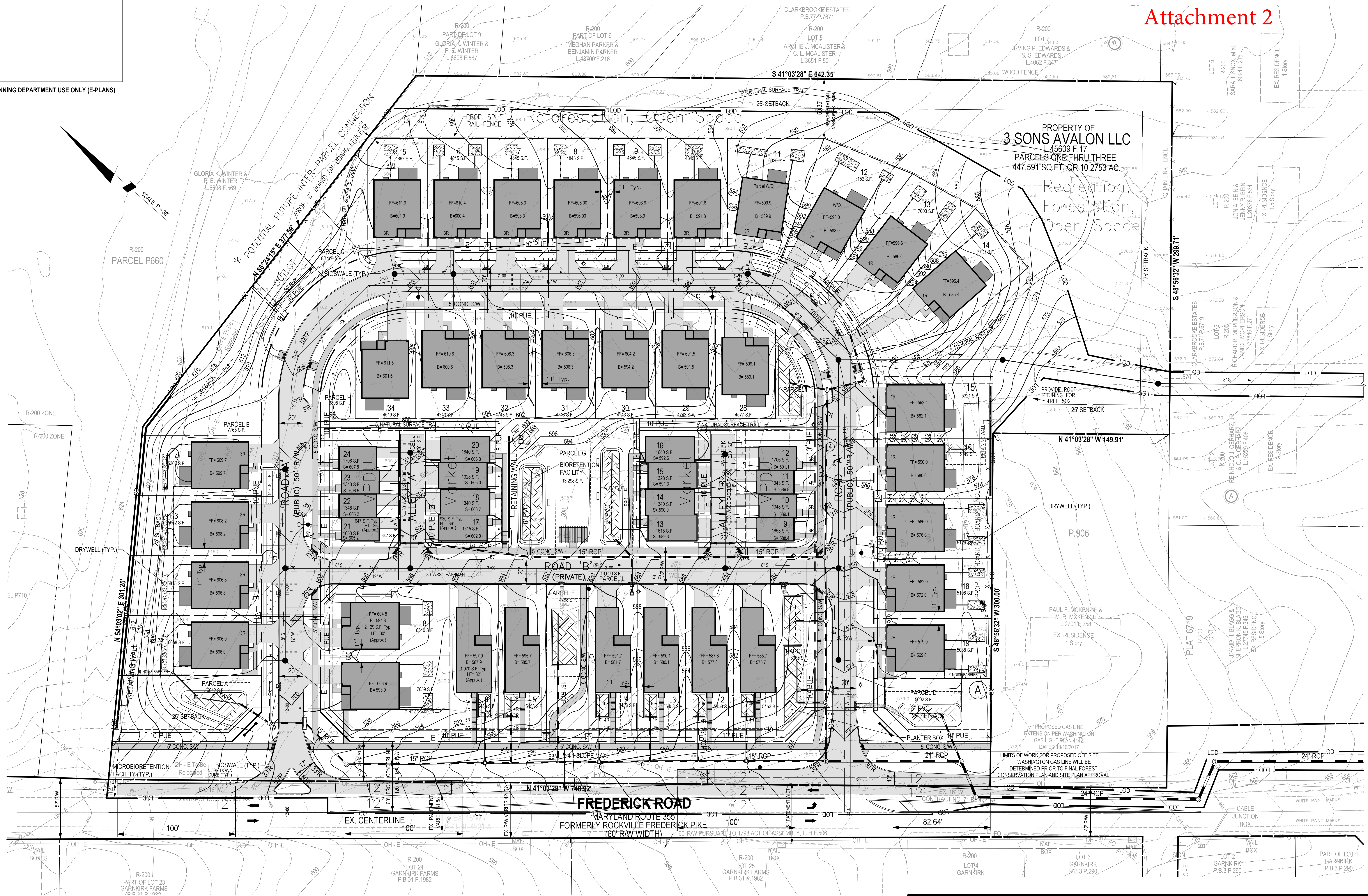
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Attorney for the Applicant



PLANNING DEPARTMENT USE ONLY (E-PLANS)



\*POTENTIAL RIGHT-OF-WAY IMPROVEMENTS TO BE DETERMINED BY SHA. PROPOSED PAVING SHOWN FOR REFERENCE ONLY.

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Waldorf  
Leesburg  
Frederick  
Soltesz DC, LLC

www.soltesz.com

NO.	DATE	DESIGNED: ECO	CAO STANDARDS VERSION: 18 - 2008	TECHNICIAN: ECO	CHECKED: TAH	BY	DATE

## 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 PRIOR TO 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 THE 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  
R-200/TF-5  
WESC 200 SHEET  
XXXX  
232N113  
SITE DATUM  
HORIZONTAL: NAD83  
VERTICAL: NAD83

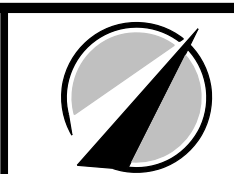
PROFESSIONAL CERTIFICATION  
I HEREBY CERTIFY THAT THESE DOCUMENTS WERE  
PREPARED OR APPROVED BY ME, AND THAT I AM A DULY  
LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS  
OF THE STATE OF MARYLAND.  
LICENSE NO. 49428 EXPIRATION DATE: 05-31-2020



## SITE PLAN

SITE PLAN 820190070  
AVALON RESIDENTIAL  
P. 801, P. 830, P. 765

2ND ELECTION DISTRICT, MONTGOMERY COUNTY, MARYLAND

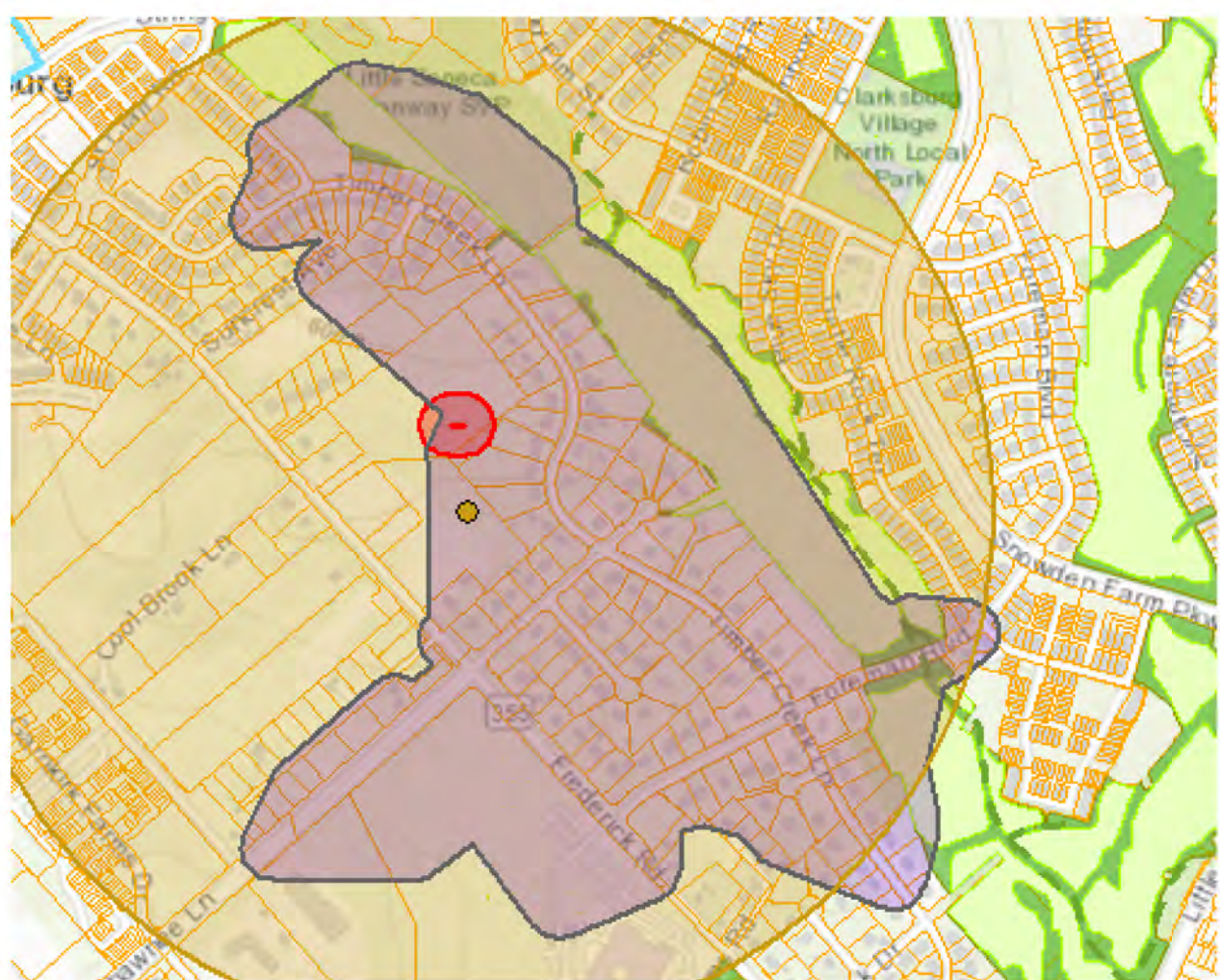


SHEET  
5  
OF  
8  
PROJECT NO.  
3337-00-00



PLANNING DEPARTMENT USE ONLY (E-PLANS)

Project Location is in Master Plan:



### Demand, Supply & Adequacy Report

Project Location Master Plan:



### Proposed Residential Project - Units by Type and their Demand Points

Code	Housing Type	Quantity	Tots	Children	Teens	Young Adults	Adults	Seniors
TH	Townhouses and Single-Family attached	16	2.24	3.52	2.56	8.48	11.68	1.76
Mid-Rise	Multiple-Family, 4 stories or less	0	0	0	0	0	0	0
SFD	Single-Family Detached	34	5.10	11.90	11.90	9.18	24.82	4.76
Hi-Rise	Multiple-Family, 5 stories or more	0	0	0	0	0	0	0
Total Demand Points =		50	7.34	15.42	14.46	17.66	36.50	6.52

### Existing Offsite Park Facilities and their Supply Points

Park Facility	Quantity	Tots	Children	Teens	Young Adults	Adults	Seniors
Outdoor Game Court (Shuffleboard, Horseshoe, Bocce, etc.)	1	0	0	3	3	2	2
Large Rectangular Field (Soccer, Football, LAX, etc.)	1	2	15	20	25	15	2
Trail System	1	0.73	3.08	2.17	2.65	5.48	0.65
Full-size Basketball Court	2	6	20	30	24	12	5
Pedestrian Bridge	2	10	20	24	24	24	24
Meadow (Natural Area)	4	0.37	0.77	1.45	1.77	3.65	0.33
Tennis Court	6	0	30	42	60	36	6
Total Offsite Supply Points:		19.10	88.86	122.62	140.42	98.13	39.98
35% of Total Offsite Supply Points:		6.69	31.10	42.92	49.15	34.34	13.99
Max Allowed Pts (35% of Total Demand Pts):		2.57	5.40	5.06	6.18	12.78	2.28
Actual Assigned Offsite Supply Pts:		2.57	5.40	5.06	6.18	12.78	2.28

Montgomery County Planning Department

ScenarioId: 6187

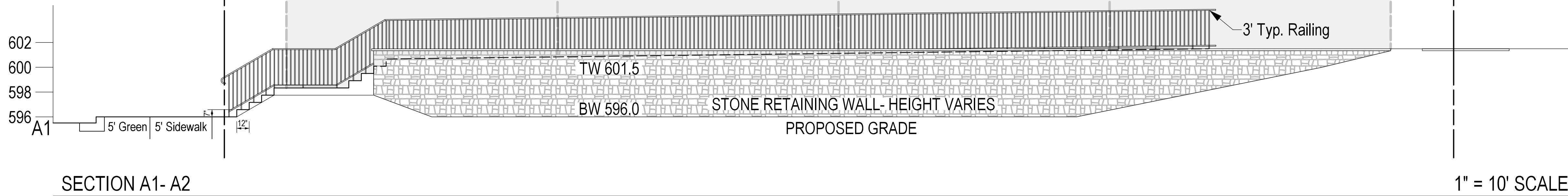
### Proposed Onsite Recreation Facilities and their Supply Points

Recreation Facility	Quantity	% Bonus Points	Tots	Children	Teens	Young Adults	Adults	Seniors
Pedestrian Connection - Trail System	1	0%	0.73	3.08	2.17	2.65	5.48	0.65
Open Grass Area Lawn - Urban (2,000 sf)	1	0%	2	3	5	7	8	3
Picnic/Seating	6	0%	6	6	9	18	18	18
Landscape Elements - Toddlers and Children	1	0%	4	3	3	2	4	4
Terraced Garden Area	1	0%	2	2	2	2	2	2
Stairs, Steps and Railings	1	0%	0	3	4	5	5	4
Total Onsite Supply Points=			14.73	20.08	25.17	36.65	42.48	31.65

### Results: Demand, Supply & Adequacy

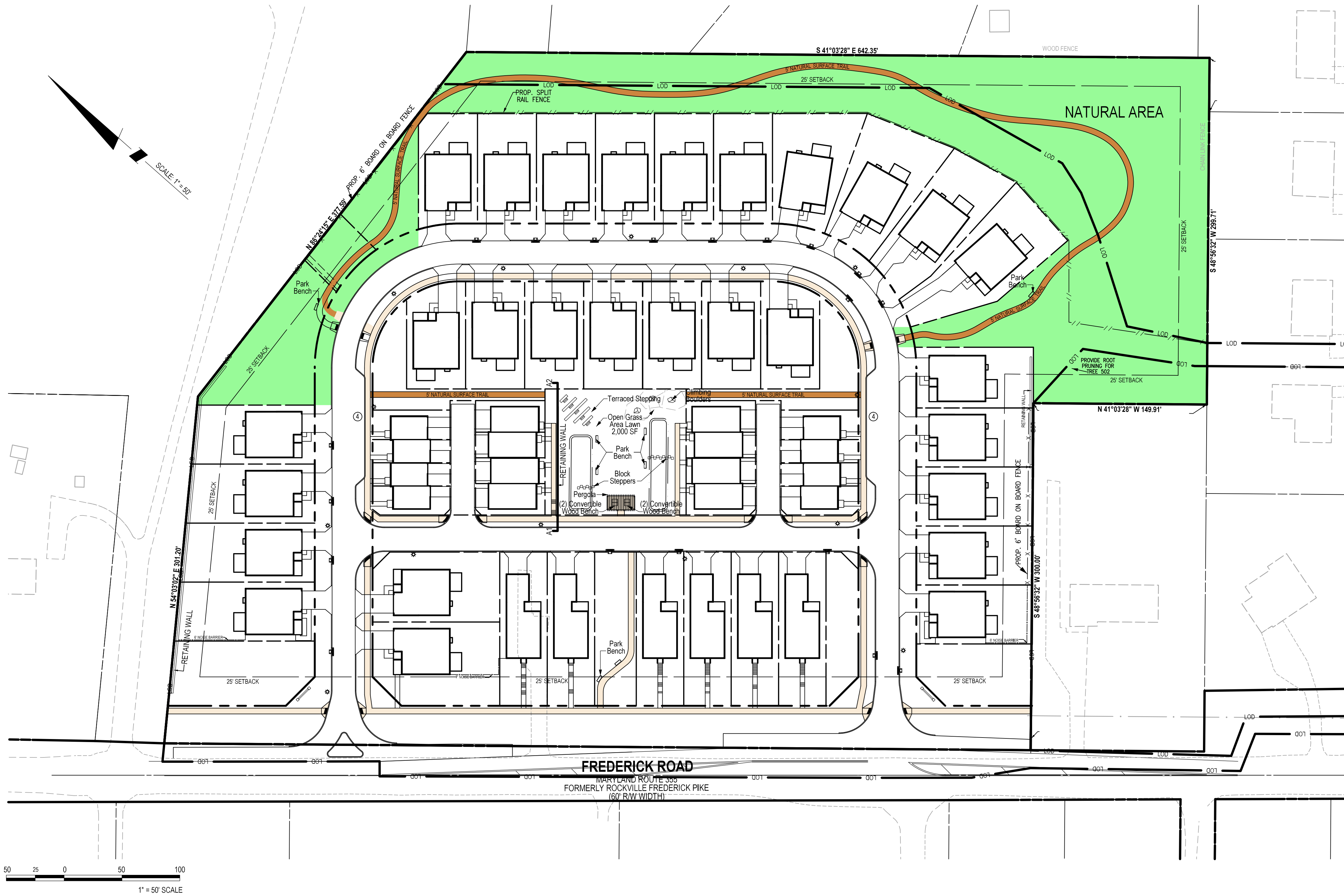
Age Group	Total Demand Points	Offsite Supply Points	Onsite Supply Points	Total Supply Points	Adequacy
Tots	7.34	2.57	14.73	17.30	Adequate
Children	15.42	5.40	20.08	25.48	Adequate
Teens	14.46	5.06	25.17	30.23	Adequate
Young Adults	17.66	6.18	36.65	42.83	Adequate
Adults	36.50	12.78	42.48	55.26	Adequate
Seniors	6.52	2.28	31.65	33.93	Adequate

SECTION A1- A2



Attachment 3

1" = 10' SCALE



### LEGEND:

	SIDEWALKS		BENCHES		CLIMBING BOULDERS
	NATURAL AREAS		CONVERTIBLE BENCH		TERRACE STEPPING
	NATURAL TRAIL PATH		PERGOLA		STEPPING BLOCKS



Engineering  
Surveying  
Planning  
Environmental Sciences

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Rockville  
Lanham  
Waldorf  
Leonardtown  
Frederick  
Soltesz DC, LLC

www.solteszdc.com

NO.	REVISIONS	BY	DATE
DESIGNED: ECO	CAO STANDARDS VERSION: 18 - 2008	TECHNICIAN: ECO	CHECKED: TAH

### 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 1-800-261-7777 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 SONG AVALON, LLC  
2 RESEARCH PLACE  
SUITE 100  
ROCKVILLE, MD 20850  
PHONE 800-948-2750  
FAX 301-948-9067  
JIM SOLTESZ

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

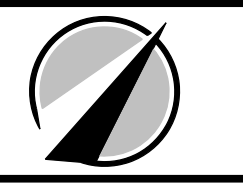
PROFESSIONAL CERTIFICATION  
I HEREBY CERTIFY THAT THESE DOCUMENTS WERE PREPARED OR APPROVED BY ME, AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MARYLAND.  
LICENSE NO. 49428 EXPIRATION DATE: 05-31-2020



### RECREATIONAL FACILITIES

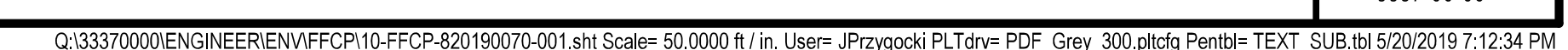
SITE PLAN 820190070  
**AVALON RESIDENTIAL**  
P. 801, P. 830, P. 765  
2ND ELECTION DISTRICT, MONTGOMERY COUNTY, MARYLAND

DEVELOPER'S CERTIFICATE  
The undersigned agrees to execute all the features of the Site Plan Approval No. 820190070, including Approval Conditions, Development Program, and Certified Site Plan.  
Developer's Name: 3 Song Avalon, LLC  
Company: Jim Soltesz  
Contact Person:  
Address: 2 Research Place, Suite 100, Rockville, MD 20850  
Phone: (301) 948-2750  
Signature: \_\_\_\_\_



SHEET	7
OF	8
PROJECT NO.	3337-00-00

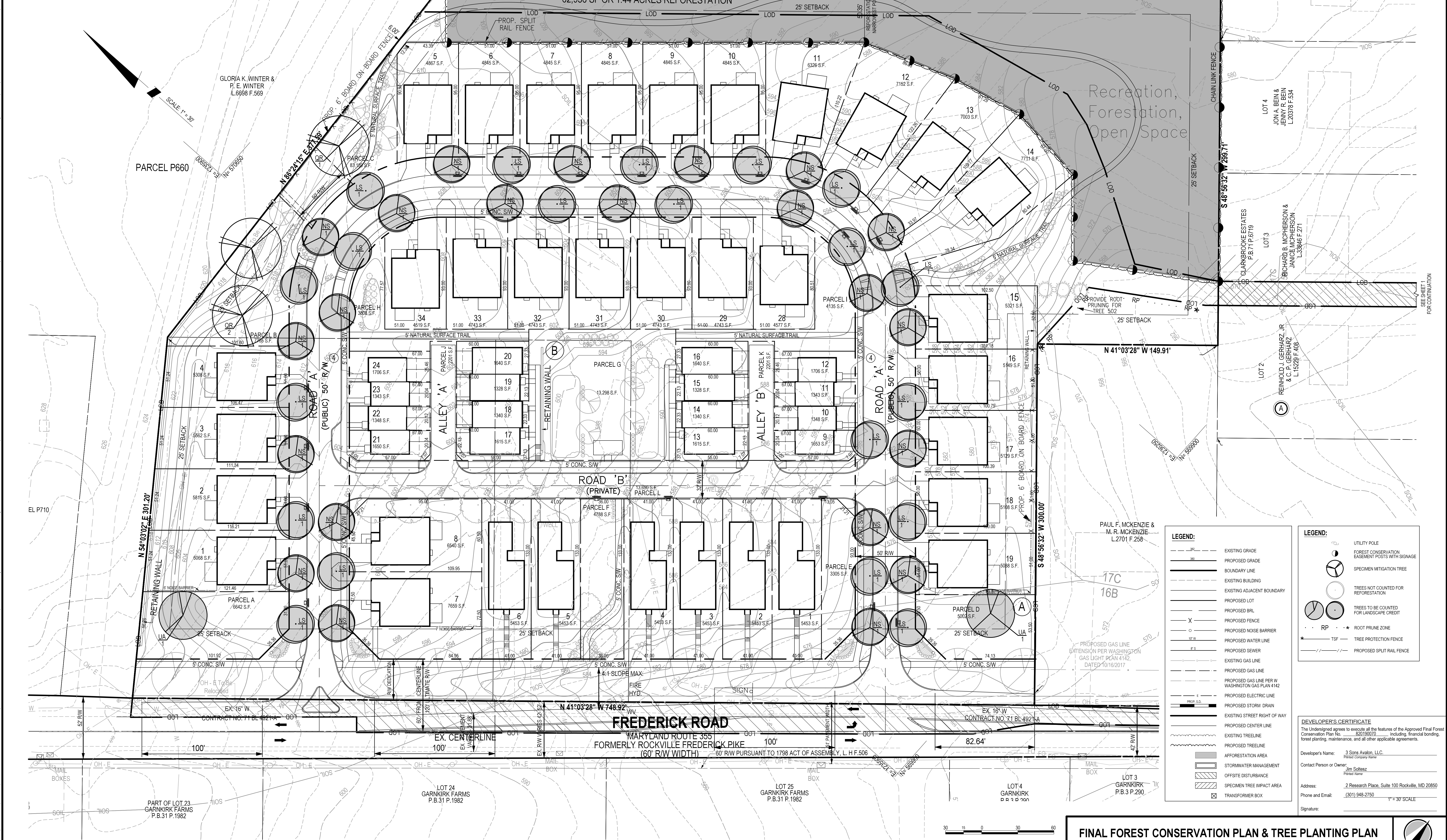






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PLANNING DEPARTMENT USE ONLY (E-PLANS)



**LEGEND:**

- EXISTING GRADE
- PROPOSED GRADE
- BOUNDARY LINE
- EXISTING BUILDING
- EXISTING ADJACENT BOUNDARY
- PROPOSED LOT
- PROPOSED BRL
- PROPOSED FENCE
- PROPOSED NOISE BARRIER
- PROPOSED WATER LINE
- PROPOSED SEWER
- EXISTING GAS LINE
- PROPOSED GAS LINE
- PROPOSED GAS LINE PER WASHINGTON GAS LIGHT PLAN 4142, DATED 10/16/2017
- PROPOSED ELECTRIC LINE
- PROPOSED STORM DRAIN
- EXISTING STREET RIGHT OF WAY
- PROPOSED CENTER LINE
- EXISTING TREELINE
- PROPOSED TREELINE
- AFFORESTATION AREA
- STORMWATER MANAGEMENT
- OFFSITE DISTURBANCE
- SPECIMEN TREE IMPACT AREA
- TRANSFORMER BOX

**LEGEND:**

- UTILITY POLE
- FOREST CONSERVATION EASEMENT POSTS WITH SIGNAGE
- SPECIMEN MITIGATION TREE
- TREES NOT COUNTED FOR REFORESTATION
- TREES TO BE COUNTED FOR LANDSCAPE CREDIT
- RP - ROOT PRUNE ZONE
- TSP - TREE PROTECTION FENCE
- PROPOSED SPLIT RAIL FENCE

**DEVELOPER'S CERTIFICATE**

The Undersigned agrees to execute all the features of the Approved Final Forest Conservation Plan No. 820190070, including financial bonding, forest planning, maintenance, and all other applicable agreements.

Developer's Name: 3 Sons Avalon, LLC  
Contact Person or Owner: Jim Soltesz  
Address: 2 Research Place, Suite 100 Rockville, MD 20850  
Phone and Email: (301) 948-2750  
Signature: \_\_\_\_\_

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

NO. \_\_\_\_\_

DATE: \_\_\_\_\_

DESIGNED: ECO

REVISIONS

NO.	DATE	BY	DATE
1	10-1-2008	ECO	

CAO STANDARDS VERSION: 10-1-2008

TECHNICIAN: ECO

CHECKED: JLF

**MISS UTILITY NOTE**

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**OWNER/DEVELOPER/APPLICANT**

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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

WISC 200 SHEET: XXXX

232NW13

SITE DATUM: XXXX

HORIZONTAL: NAD83

VERTICAL: NAD83

LANDSCAPE ARCHITECT

**FINAL FOREST CONSERVATION PLAN 820190070**

**AVALON RESIDENTIAL**

**P. 801, P. 830, P. 765**

2ND ELECTION DISTRICT, MONTGOMERY COUNTY, MARYLAND

SHEET 2 OF 3

PROJECT NO. 3337-00-00



LEGEND

LIMITS OF DISTURBANCE LOD

PROPERTY LINE

BUILDING RESTRICTION LINE

SOIL LINES / LABELS

SOIL 17B

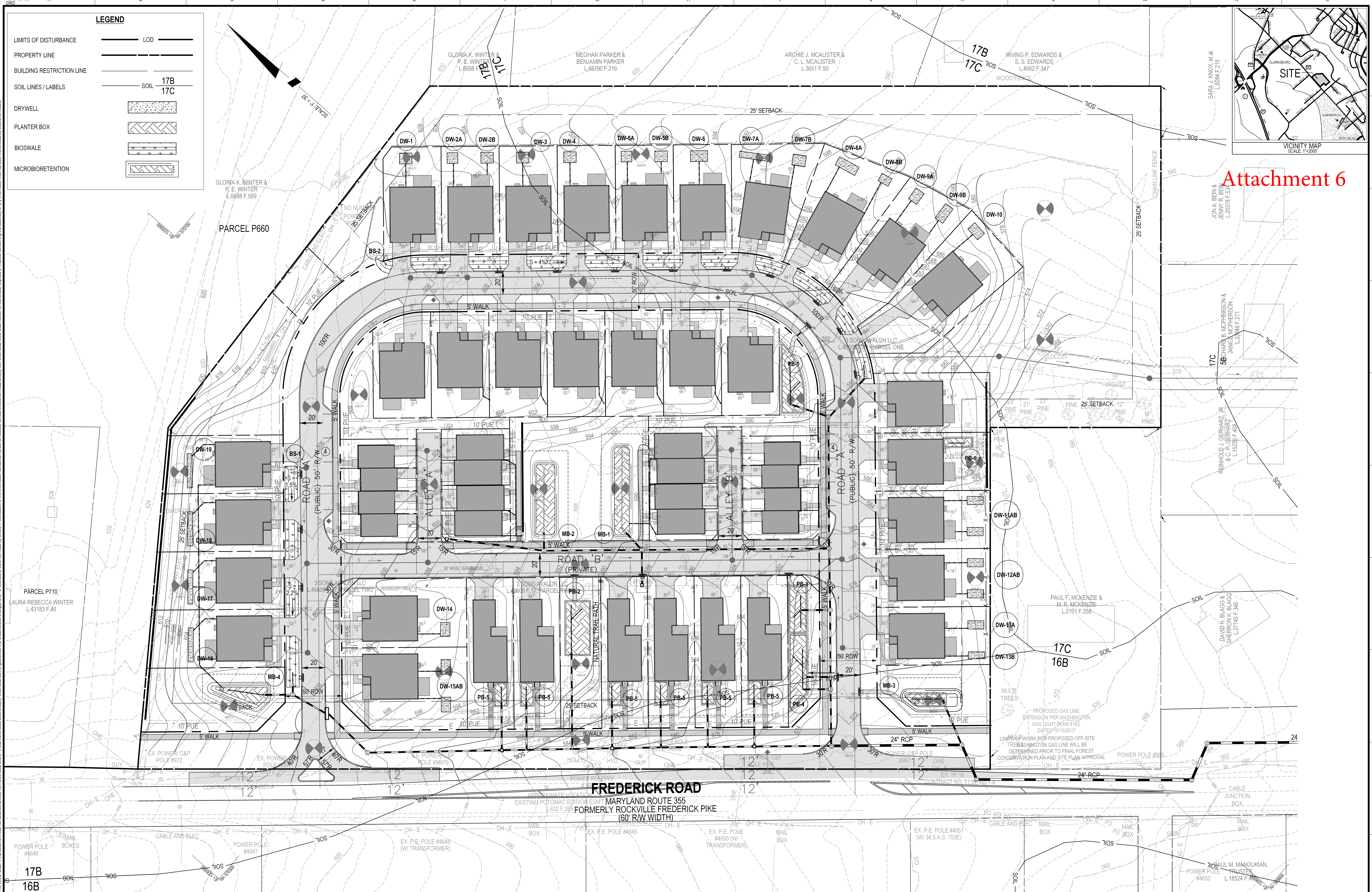
SOIL 17C

DRYWELL

PLANTER BOX

BIOSWALE

MICROBIORETENTION



Attachment 6

**SOLTESZ**

Rockville  
Lanham  
Waldorf  
Leonardtown  
Frederick  
Soltesz DC, LLC

ROCKVILLE OFFICE  
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www.solteszco.com

NO.	DATE	REVISIONS	BY	DATE
1	OCTOBER 2018	DESIGNED: EAH		
2		CAD STANDARDS VERSION: 18 - 2008		
3		TECHNICIAN: EAH		
4		CHECKED: TAH		

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**OWNER/DEVELOPER/APPLICANT**

3 SONS AVALON LLC  
2 RESEARCH PLACE  
SUITE 100  
ROCKVILLE, MD 20850  
PHONE 800-948-2750  
FAX 301-948-9067  
JIM SOLTESZ

MAP 4928	GRID G3, H3
TAX MAP EW, 41	ZONING CATEGORY EXISTING R-200; PROPOSED TF-S
WBC 200 SHEET 232N13	XXXX
SITE DATUM	XXXX
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. 45428 EXPIRATION DATE: 05/31/2020

STATE OF MARYLAND  
PROFESSIONAL ENGINEER

**FINAL WATER QUALITY PLAN**

**FINAL WATER QUALITY PLAN**

**AVALON RESIDENTIAL**

P. 801, P. 830, P. 765

2ND ELECTION DISTRICT, MONTGOMERY COUNTY, MARYLAND

SHEET 4 OF 5

PROJECT NO. 3337-00-00



**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

Soo Lee-Cho, Esquire  
Attorney for the Applicant

\* \* \* \* \*

Patricia McKenzie, Esquire  
(representing Paul and Mary McKenzie)

\* \* \* \* \*

Before: Lynn A. Robeson, Hearing Examiner

# Local Map Amendment Application No. H-115

## HEARING EXAMINER'S REPORT AND RECOMMENDATION

## TABLE OF CONTENTS

## Page No.

<b>I. EXECUTIVE SUMMARY .....</b>	<b>3</b>
<b>II. STATEMENT OF THE CASE.....</b>	<b>5</b>
<b>III. FACTUAL BACKGROUND .....</b>	<b>6</b>
<b>A. SUBJECT PROPERTY.....</b>	<b>6</b>
<b>B. SURROUNDING AREA .....</b>	<b>7</b>
<b>C. PROPOSED DEVELOPMENT AND FLOATING ZONE PLAN .....</b>	<b>10</b>

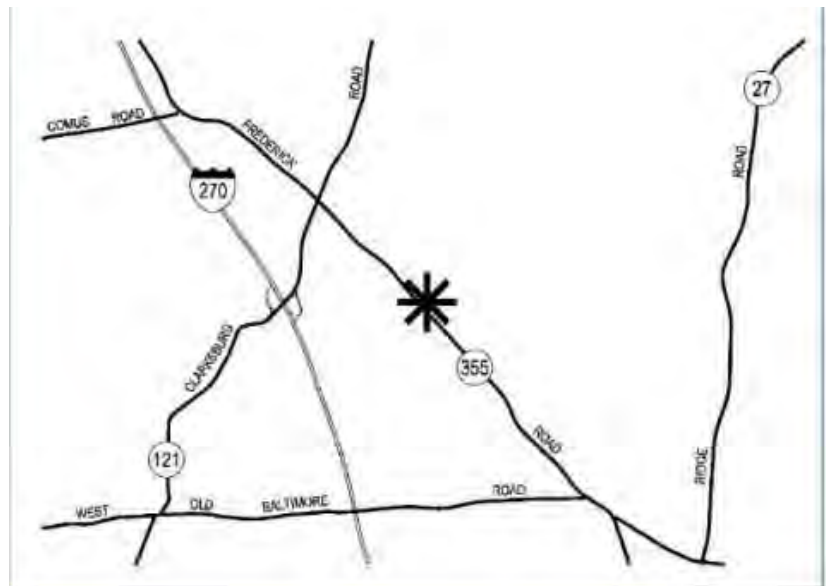
<b>D. MASTER PLAN</b>	<b>12</b>
<b>E. PUBLIC FACILITIES</b>	<b>15</b>
1. Transportation Facilities	17
2. School Facilities	18
3. Water and Sewer	18
4. Other Public Facilities	19
<b>F. ENVIRONMENT</b>	<b>19</b>
1. Impervious Area	20
2. Forest Conservation	21
<b>G. COMMUNITY CONCERNS</b>	<b>21</b>
<b>V. FINDINGS AND CONCLUSIONS</b>	<b>22</b>
A. THE “NECESSARY FINDINGS” REQUIRED (§59.7.2.1.E.2)	23
B. THE INTENT AND STANDARDS OF FLOATING ZONES (§59-5.1.2)	25
C. ELIGIBILITY FOR A FLOATING ZONE (§59.5.1.3)	27
D. COMPLIANCE WITH PURPOSES, USES AND BUILDING TYPES	31
OF RESIDENTIAL FLOATING ZONES (DIVISION 59-5.2)	31
E. COMPLIANCE WITH THE DEVELOPMENT STANDARDS FOR THE TF 5.0 ZONE (§59-5.2.5)	32
<b>VI. CONCLUSION</b>	<b>37</b>
<b>VII. RECOMMENDATION</b>	<b>37</b>



## 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.

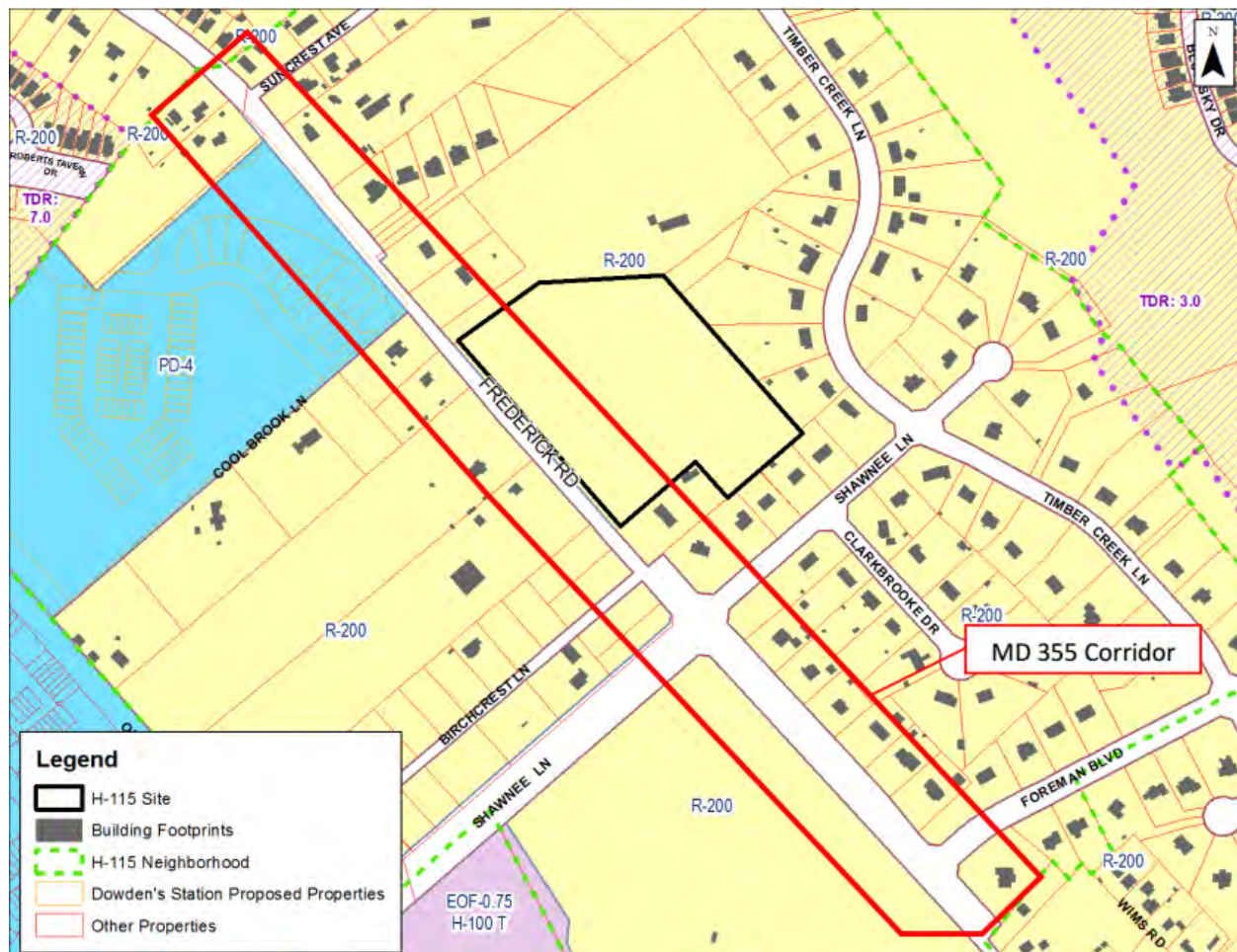
When asked whether the different boundaries affected the characterization of the neighborhood, Mr. Ager testified that the difference was nominal because all properties were still within the R-200 Zone. T. 50-51. The Hearing Examiner finds that Staff's delineation is more persuasive because the project's 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.<sup>1</sup>

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**

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<sup>1</sup>After 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.<sup>2</sup> 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.

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<sup>2</sup> 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;<sup>3</sup> 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.

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<sup>3</sup> 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):

<b>Development</b>	<b>Zone</b>	<b>Dwelling Units</b>	<b>Property Size (acres)</b>	<b>Density (DUs/acre)</b>	<b>Imperviousness Level</b>
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).*<sup>4</sup>

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.

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<sup>4</sup> 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
<b>Transit &amp; Infrastructure</b>	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.	
<b>Vicinity &amp; Facilities</b>	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.	
<b>Environment &amp; Resources</b>	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.”<sup>5</sup> 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

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<sup>5</sup> 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
<b>Minimum Tract Area</b>	20,000 SF	10.2753 acres (447,591 SF)
<b>Maximum Density</b>	-	-
Base Density	4 DUs/acre (per Master Plan)	4 DUs/acre
Final Density with MPDU Bonus	4.88 DUs/acre	4.87 DUs/acre
<b>Number of Units</b>	50	50
Detached Houses	-	34 (no MPDUs)
Townhouses	-	16 (8 MPDUs)
<b>Minimum Building Setbacks from Site Boundary</b>	Established by Floating Zone Plan	25 feet
<b>Maximum Building Height</b>	Established by Floating Zone Plan	40 feet
<b>Lot Area/Lot Widths at Street and Front Building Line/Setbacks</b>	-	TBD at Site Plan
<b>Minimum Open Space</b>	10%	10%
<b>Minimum Parking</b>	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,



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Lynn A. Robeson  
Hearing Examiner

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**

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By: District Council

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**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.)<sup>1</sup>**

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

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<sup>1</sup> 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").<sup>2</sup> 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.

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<sup>2</sup> 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**

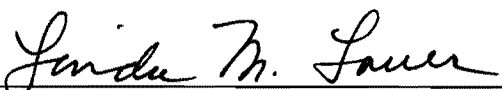
Based on the foregoing analysis, the Hearing Examiner's Report and Recommendation, and a thorough review of the entire record, the District Council concludes that the proposed reclassification and development will meet the standards set forth in *2014 Zoning Ordinance* and that it will be consistent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

  
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Linda M. Lauer, Clerk of the Council



**MONTGOMERY COUNTY PLANNING BOARD**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 18-076  
Preliminary Plan No. 120180110  
Avalon Residential  
Date of Hearing: July 19, 2018

SEP 25 2018

**RESOLUTION**

WHEREAS, under Montgomery County Code Chapter 50, the Montgomery County Planning Board is authorized to review preliminary plan applications; and

WHEREAS, on January 17, 2018, 3 Sons Avalon ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create 50 lots on 10.28 acres of land in the TF-5 zone, located approximately 600 feet north of the intersection of Frederick Road (MD 355) and Shawnee Lane ("Property" or "Subject Property"), in the Clarksburg Policy Area and 1994 Clarksburg Master Plan & Hyattstown Special Study Area ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120180110, Avalon Residential ("Preliminary Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated July 6, 2018, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 19, 2018, the Planning Board held a public hearing on the Application at which it heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on July 19, 2018, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Fani-Gonzalez, seconded by Commissioner Cichy, with a vote of 4-0; Commissioners Anderson, Cichy, Fani-Gonzalez, and Patterson voting in favor, and Commissioner Dreyfuss absent.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120180110 to create fifty (50) lots on the Subject Property, subject to the following conditions:<sup>1</sup>

<sup>1</sup> For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.



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.
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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 dedicate the outlot shown on the Preliminary Plan for use as a future inter-parcel road, bike, pedestrian, and infrastructure connection to Parcel P660 to the north of the Subject Property for public use, 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.

BE IT FURTHER RESOLVED that having considered the recommendations and findings of its Staff as presented at the hearing and as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

1. *The layout of the subdivision, including size, width, shape, orientation and density 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.*

The Preliminary Plan includes one new public road, one new private road, and two alleys. All blocks created by new and existing roads are appropriately designed for the development. The lots were reviewed for compliance with the development standards for the TF-5 Zone as specified in the Zoning Ordinance and the dimensional requirements of the TLD Zone and the Floating Zone Plan. The lots will meet the dimensional requirements for density, area, frontage, width, and setbacks, and are appropriately shaped and oriented for the houses shown on the plan drawing.

The Preliminary Plan also includes several opens space parcels, including two that each provide more than the minimum required common open space area. One of the open space parcels will be planted with forest to provide screening for an adjacent neighborhood, and the other open space parcel will serve as common open space for the development.

Therefore, the Planning Board finds that the layout of the subdivision, including size, width, shape, orientation and density 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.

*2. The Preliminary Plan substantially conforms to the Master Plan.*

The Subject Property falls within the 1994 *Clarksburg Master Plan and Hyattstown Special Study Area* ("Master Plan"). The Master Plan does not make specific recommendations for the Subject Property, but it makes general land use and zoning recommendations for the Transit Corridor District, the area in which the Subject Property is located. The Application 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." Preliminary plans do not determine the orientation of houses, so the necessary treatments for the units with their side lot lines along MD 355 will be reviewed and analyzed during site plan review to ensure these units face or appear to face MD 355.

Other relevant Master Plan objectives are 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.

The Preliminary Plan meets the other Master Plan objectives as follows:

- The base density of 4.0 dwelling units per acre is within the range recommended by the Master Plan. The approved density of 4.87 dwelling units per acre is based on the MPDU bonus, which the Master Plan indicates should be in addition to the base density.
- The Applicant will provide a sidewalk along Frederick Road to support a future pedestrian and bicycle connection to the other trails in the area.
- The Application helps further the goal of a diversified housing mix in the MD 355 Area of the District Transit Corridor District. There are very few other attached houses within the MD 355 Area; the Preliminary Plan will add an additional 16 townhomes.

The Preliminary Plan substantially conforms to the recommendations of the Master Plan.

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

#### Transportation

The Subject Property has frontage on one public road (MD 355). The Application includes a network of public and private streets and alleys to serve the interior of the project.

#### *Design Exceptions*

The Applicant is providing 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'). The Applicant has requested several design exceptions to Public Road 'A', including:

- Narrower right-of-way (50 feet instead of the standard 60 feet);
- A narrower travel lane (10 feet instead of the standard 11.5 feet for one of the two lanes); and
- A sidewalk on only one side of the road instead of on both sides.

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 Planning 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. MCDOT recommended approval to the requested design exceptions. The Planning Board agrees with MCDOT's recommendations that 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.

MCDOT approved the reduced paving section and the provision of the sidewalk on only one side of the road.

The Preliminary Plan also shows 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. The Planning Board finds that the reduced centerline radius helps achieve a better lot layout and can provide additional traffic calming and recommends approval of the reduced radius.

#### *Private Roads*

The Applicant is providing 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. 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 instead of on both sides.

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 on only one side of Private Road 'B' reduce impervious area by reducing driveway lengths and eliminating sidewalks on one side and allow for more area of the Subject 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 Private Road 'B' 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, Private Road 'B' will not be discernable to the public as different from the public road that it connects to and will function properly for safe vehicular and pedestrian traffic and emergency access.

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

#### *Sidewalk on One Side Only*

The Road Construction Requirements of Chapter 49, Streets and Roads, subsection 33.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 Applicant is installing all required items but will only build sidewalks on one side of Public Road 'A' as a way of reducing imperviousness. The Subject Property is in an SPA, an environmentally sensitive area, and therefore the Planning Board must find that the sidewalk is unnecessary for pedestrian movement. The Planning Board finds that having a sidewalk on both sides of the street is unnecessary for pedestrian movement since 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.

#### *Curbs and Gutters*

Subsection 33.1.1.A of Chapter 49 prohibits the installation of any curb or gutter in any portion of a road that is in an environmentally sensitive watershed area. However, subsection 33.1.2 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 will construct curbs and gutters along the roads and alleys shown on the Preliminary Plan. 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 closed-section road allows for shortened driveway lengths to reduce imperviousness when compared to an open section road. And even though the Applicant will provide curbs and gutters, a good portion of the development 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. The Planning Board finds that the use of curbs and gutters shown on the Preliminary Plan will not significantly degrade water quality in the area, helps create a safer environment for pedestrians, and meets the intent of the requirement for an open section road in an environmentally sensitive area by providing bioswales and micro bioretention areas behind the curbs. The Planning Board agrees with MCDOT's recommendation to approve the use of curbs and gutters.

#### *Frontage Improvements*

The Applicant, in coordination with the Maryland State Highway Administration ("MDSHA"), will provide the required access improvements to MD 355 to enable safe movements in and out of the Subject Property. The Preliminary Plan is providing the necessary dedication to provide 60 feet from the centerline of Frederick Road across the entire Subject Property frontage and is also providing a five-foot wide sidewalk along the full frontage. The Applicant is required to provide shoulder improvements prior to and after each access point in lieu of full or partial acceleration/deceleration lanes and must provide a left turn lane for southbound MD 355 at the Subject Property's southern access point. The Planning Board supports the findings of MDSHA. As a condition of approval, the Applicant

must revise all necessary drawings to reflect the required left-turn lane prior to Certified Preliminary Plan.

*Connection to Parcel P660*

As conditioned in this Resolution, the Applicant must record a covenant in the Montgomery County Land Records to dedicate the outlot shown on the Preliminary Plan for a future inter-parcel road, bike, pedestrian, and infrastructure connection to Parcel P660 for the benefit of the public, if such a connection is required by the Planning Board in its review of the future redevelopment of Parcel P660.

Parcel P660 is located to the northwest of the Subject Property. Currently developed with a single-family house but with the potential to redevelop at a similar density to the Subject Property, the Parcel's sole access to Frederick Road is through a narrow pipestem that abuts the Subject Property. When the Subject Property develops as envisioned in the Preliminary Plan, a right-in, right-out access point will be located very near Parcel P660's pipestem. This proximity could result in an unsafe condition on Frederick Road if Parcel 660 is redeveloped at a higher density. Providing a public inter-parcel connection through the Subject Property to Parcel P660 ensures that Frederick Road will remain adequate to serve the Subject Property, even if Parcel P660 redevelops.

Requiring the inter-parcel connection is also consistent with the Technical Review standards in Chapter 50 of the Montgomery County Code. Under Section 50-4.3.E.1.c, "[a] tract in a preliminary plan application must be divided to not preclude future road openings and further logical subdivision of adjacent land." Approval of this Preliminary Plan as conditioned provides for the possibility of a logical future road opening between the Subject Property and Parcel P660. It also helps prevent a scenario in which Parcel P660 could not be subdivided consistent with surrounding development for lack of safe access to Frederick Road.

The provision of a logical network of public roads is an integral part of the subdivision process in Montgomery County. The Montgomery County Code expressly requires the Planning Board, in approving subdivisions, to consider the possible future subdivision of adjacent lands. In this case, an inter-parcel connection will ensure that if Parcel P660 is subdivided for more intense development, Frederick Road will remain adequate to safely serve the Subject Property and Parcel P660. There is a clear nexus between the impacts of the subject Application on the public road network and the requirement to place a covenant on the outlot as required by Condition 15 of this resolution, and the Board concludes that Condition 15 is appropriate and necessary for the approval of this subdivision.

*Local Area Transportation Review*

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.

None of the critical intersections would have a Critical Lane Volume (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.

*Transportation Conclusion*

The public road and the private road and alleys are well designed to accommodate the expected amount of vehicular traffic generated by this project. The provision of a sidewalk on only one side of the roads in the subdivision is sufficient for pedestrian circulation. The use of curbs and gutters, in combination with the use of bioswales and micro bioretention facilities, helps reduce impervious surfaces and meets the intent of the general requirement to use open section roads in an environmentally sensitive area. Providing for the possibility of a future inter-parcel connection to Parcel P660 will ensure that Frederick Road will remain adequate to serve the Subject Property and Parcel P660 in the event Parcel P660 redevelops. The Applicant is providing the necessary frontage improvements along MD 355. No infrastructure improvements are required to satisfy the LATR guidelines. The Planning Board finds that the roads and sidewalks shown on the Preliminary Plan are adequate to support and service the area of the subdivision.

School Capacity

The applicable annual school test for the Application is the FY19 Annual School Test, approved by the Planning Board on June 21, 2018 and effective July 1, 2018. With a net of 34 single family detached and 16 single family attached units, the project is estimated to generate the following number of students: 11 new



elementary school students, 6 new middle school students, and 8 new high school students.

The Subject Property is in the Clarksburg High School Cluster. According to the projected cluster totals for September 2023, there is sufficient capacity at the elementary, middle, and high school cluster levels to accommodate the estimated number of students generated by this project. 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 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.

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.

#### Other Public Facilities

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 development.

The Application has been reviewed by the MCDPS Fire Department Access and Water Supply Section, which determined that the Subject Property has adequate access for fire and rescue vehicles.

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.

The Planning Board finds that the existing and proposed public facilities will be adequate to support and service the area of the subdivision.

4. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code Chapter 22A.*

A. Forest Conservation

As conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

As required by the County Forest Conservation Law, a Preliminary Forest Conservation Plan (PFCP) for the project was submitted with the Preliminary Plan. The net tract area for forest conservation purposes is 11.69 acres. The Applicant is removing the two acres of onsite existing forest, which generates a planting requirement of four acres. Mitigation will take place with 1.44 acres of onsite planting, 0.80 acres of onsite landscape credit and 1.76 acres of off-site mitigation. Offsite mitigation should take place within the Clarksburg Special Protection Area, or at a minimum, within the Seneca Creek watershed, although 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.

B. Forest Conservation Variance

Section 22A-12(b)(3) of the Forest Conservation Law identifies certain individual trees as high priority for retention and protection ("Protected Trees"). Any impact to these Protected Trees, including removal or any disturbance within a Protected Tree's critical root zone ("CRZ"), requires a variance under Section 22A-12(b)(3) ("Variance"). Otherwise such resources must be left in an undisturbed condition.

This Application will require the removal or CRZ impact to one Protected Tree as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant requested a Variance, and the Board agrees that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance. The Protected Tree at issue in this case 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 the Protected Tree will make it impossible for sewer to be extended to the Subject Property.

The Board makes the following findings necessary to grant the Variance:

1. *Granting the Variance will not confer on the Applicant a special privilege that would be denied to other applicants.*

The Subject Property 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 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. *The need for the Variance 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. *The need for the Variance is not based on a condition related 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. *Granting the Variance 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. The Protected Tree requiring a variance (shown as #398 on the FCP) 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 the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Board approves replacement of the Protected Tree at a ratio of approximately 1 caliper inch per 4 inches diameter at breast height removed. This results in a requirement of 8.75 caliper inches or three 3-inch trees.

The Preliminary Forest Conservation Plan No. 120180110 with conditions meets all applicable section of Chapter 22A of the Montgomery County Code.

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

This finding is based upon the determination by MCDPS that the Stormwater Management Concept Plan meets applicable standards.

The Subject 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 LSLS302 currently has an imperviousness 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.

#### 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. 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 will also 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.



Planning Board Special Protection Area Review Elements

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.

*Environmental Guidelines*

A Natural Resources Inventory/Forest Stand Delineation (NRI/FSD #420170780) was approved by Planning Staff on June 28, 2017. The Subject 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."

With this goal in mind, Staff worked with the Applicant to minimize the imperviousness of the site development design. The imperviousness level was shown as 36.1% for the Application, which 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 late addition of the required left turn lane, which will be reviewed further with the site plan, will bring the impervious level to over 36.5%. Staff will investigate other means to minimize imperviousness at the time of site plan.

Although the Planning Board is concerned that imperviousness has exceeded 35 percent, the Board finds that the current level of imperviousness resulting from the development is acceptable because the onsite improvements 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%. 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.

In conclusion, Preliminary Water Quality Plan No. 120180110 as conditioned meets all applicable sections of Chapter 19 of the Montgomery County Code.

BE IT FURTHER RESOLVED that this Preliminary Plan will remain valid for 36 months from its initiation date (as defined in Montgomery County Code Section 50.4.2.G, and that prior to the expiration of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded in the Montgomery County Land Records, or a request for an extension must be filed; and


BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is SEP 25 2018 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

\* \* \* \* \*

**CERTIFICATION**

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Commissioner Cichy, seconded by Commissioner Patterson, with Commissioners Fani-González, Cichy, and Patterson voting in favor, and Chair Anderson and Vice Chair Dreyfuss absent at its regular meeting held on Thursday, September 20, 2018, in Silver Spring, Maryland.

  
\_\_\_\_\_  
Casey Anderson, Chair  
Montgomery County Planning Board

MR. RICHARD BRUSH, MANAGER  
MCDPS-WATER RES. PLAN REVIEW  
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Jim Soltesz  
3 Sons Avalon, LLC  
2 Research Place  
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Rockville, MD 20850

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



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**Department of Permitting Services  
Fire Department Access and Water Supply Comments**

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

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**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 \*\*\***

**\*\*\* 1/24/2019 Amendment to alter improvements on Frederick Road \*\*\***



**DPS-ROW CONDITIONS OF APPROVAL**

**March 4, 2019**

**820190070 Avalon Residential**

Contact: Sam Farhadi at 240 777-6333

We have reviewed site and landscape plans files:

**“07-SITE-820190070-005.pdf V5”** uploaded on/ dated **“2/28/2019”** and  
**“08-LL-820190070-L1.1.pdf V4”** uploaded on/ dated **“2/28/2019”** and

The followings need to be addressed prior to the certification of site plan:

1. Utility companies need to approve the sidewalk/ trail being located inside PUE.
2. Parking areas need to be located at least:
  - a. Twenty (20) feet from crosswalks;
  - b. Thirty (30) feet from signage for/ at an intersection.



DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett  
County Executive

Diane R. Schwartz Jones  
Director

November 23, 2018

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

Re: **COMBINED FINAL WATER QUALITY  
PLAN/SITE DEVELOPMENT STORMWATER  
MANAGEMENT PLAN 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 Final Water Quality Plan and stormwater management concept for the above mentioned site is **acceptable**. The Final Water Quality Plan and stormwater management concept propose to meet required stormwater management goals via dry wells micro bioretention and bio swales.

The following items will need to be addressed during the detailed sediment control/stormwater management plan stage:

1. A detailed review of the stormwater management computations will occur at the time of detailed plan review.
2. Landscaping shown on the approved Landscape Plan as part of the approved Site Plan and within the micro bioretention areas are for illustrative purpose only and may be changed at the time of detailed plan review of the Sediment Control/Storm Water Management plans by the Mont. Co. Department of Permitting Services, Water Resources Section.
3. Provide a safe overflow for the 10 year storm in the two proposed bio swales.

This list may not be all-inclusive and may change based on available information at the time. A stream monitoring fee for the site area and a BMP monitoring fee for the disturbed area in the SPA is required.

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



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DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett  
County Executive

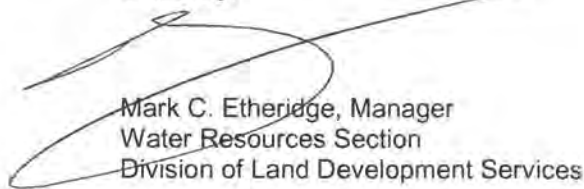
Diane R. Schwartz Jones  
Director

Ms. Emily Holmes  
November 23, 2018  
Page 2 of 2

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.

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 24,646 cf / 24,861 cf  
PE: Target/Achieved: 1.79"/1.81"  
STRUCTURAL: 0 cf  
WAIVED: 0 ac.



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## Attachment 13

### DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Isiah Leggett  
*County Executive*

Clarence J. Snuggs  
*Director*

May 7, 2019

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

Re: Avalon Residential  
Site Plan No. 820190070

Dear Mr. Sigworth:

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

- The MPDUs must have at least 3 bedrooms and 1.5 baths, and every bedroom must be no more than one level away from a full bath.

Sincerely,

Lisa S. Schwartz, Acting Manager  
Affordable Housing Programs Section

cc: Jane Przygocki, Soltesz

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#### Division of Housing

Affordable Housing

Common Ownership Communities

Landlord-Tenant Affairs

Multifamily Housing

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