

Resolution No.: 18-299
Introduced: October 20, 2015
Adopted: October 20, 2015

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

By: District Council

SUBJECT: APPLICATION NO. G-957 FOR AMENDMENT TO THE ZONING ORDINANCE MAP, Jody S. Kline, Esquire, Attorney for Applicant, Clarksburg Mews, LLC; OPINION AND RESOLUTION ON APPLICATION; Tax Account Numbers 02-00016222 and 02-00016211.

OPINION

Application No. G-957, filed on September 3, 2013,¹ by Applicant, Clarksburg Mews, LLC, requests reclassification of a 24.37-acre parcel of unimproved land from the R-200 Zone to the PD-4 Zone. The Property was owned by Sang & B. N. Choi when the application was filed, but now is owned by the Applicant (Exhibits 47(a) and (b)). The site is known as Garnkirk Farms Parcel N780 (Part of Lot 21) and Parcel N888 (Lot 22), on tax map EW31, and it is located on the west side of Frederick Road (MD-355), 1,300 feet north of its intersection with Shawnee Lane and approximately the same distance south of Stringtown Road, in Clarksburg, Maryland.

The Applicant is proposing a 105-unit residential development (originally 140 units), including 21 detached single family houses and 84 townhouses (with 14 Moderately Priced Dwelling Units (MPDUs) among the townhouses). The project is to be known as Dowden's Station. The site is entirely within the Clarksburg Special Protection Area (SPA) and is subject to the 1994 Clarksburg Master Plan and Hyattstown Special Study Area. No commercial uses are proposed.

On June 26, 2015, Technical Staff of the Maryland-National Capital Park and Planning Commission (Technical Staff) issued a report (Exhibit 45) recommending approval. The Montgomery County Planning Board ("Planning Board") considered the application on July 9,

¹ Technical Staff lists the date of filing as July 16, 2013. Though the application was lodged with the Office of Zoning and Administrative Hearings (OZAH) on that date, it was not accepted for filing until September 3, 2013, following supplementation of the application on August 30, 2013, with the then owner's statement of consent (Exhibit 22) and other necessary documents (Exhibits 23 and 24). Nevertheless, because the application was filed prior to May 1, 2014, it must be reviewed under the standards of the old Zoning Ordinance in effect on October 29, 2014, pursuant to §59-7.7.1.B.1. of the new Zoning Ordinance that went into effect on October 30, 2014.

2015 and, by a vote of 5 to 0, also recommended approval, as stated in a memorandum dated July 14, 2015 (Exhibit 46). The Planning Board recommended changes to the proposed number of parking spaces, reducing them to 2.25 spaces per dwelling unit (*i.e.*, a maximum of 236 off-street spaces) to reduce the amount of impervious area. No opposition to this application has been filed.

The hearing proceeded as scheduled on July 17, 2015. Applicant called four witnesses, and no opposition witnesses appeared. The record was held open to allow time for the Applicant to file an amended Development Plan and for review of the changes by Technical Staff. The final revised Development Plan (Land Use Plan) was filed on September 1, 2015. Exhibit 65(a). On September 2, 2015, the Hearing Examiner issued an Order (Exhibit 66) reopening the record to receive the final Development Plan. Since no substantive changes were made in the final Development Plan, no comment period was needed, and the Order closed the record again on September 2, 2015.

The Hearing Examiner's Report and Recommendation was filed on September 29, 2015, and it is incorporated herein by reference. The Hearing Examiner recommended approval on grounds that the proposed development satisfies the intent, purpose and standards of the PD-4 Zone; that it meets the requirements set forth in Section 59-D-1.61 of the Zoning Ordinance; that the application proposes a project that would be compatible with development in the surrounding area; and that the requested reclassification to the PD-4 Zone has been shown to be in the public interest.

This case was complicated by the fact that the state and County have not yet determined the final road alignment along the eastern edge of the subject site and because the site is in a special protection area, with all the environmental concerns generated by that fact. However, after carefully reviewing the entire record, the District Council finds that the application does meet the standards required for approval of the requested rezoning for the reasons set forth by the Hearing Examiner.

The Property, Surrounding Area and Zoning History

The subject property is adjacent to Frederick Road (MD-355), which is to its east, and approximately equidistant between Stringtown Road to the north and Shawnee Lane to south, in Clarksburg, Maryland. The site is also about 2,000 feet east of Interstate 270. As described by Technical Staff (Exhibit 45, p. 6), the property is irregularly shaped and consists of two undeveloped parcels, Part of Lot 21 (Parcel N780) and Lot 22 (Parcel N888), with a total gross area of 24.37 acres. The site's topography is generally sloping, and it contains two streams, several wetland areas and flood plains. Approximately 99 percent (24.19 acres) of the property is covered with forest, and the entire area is within the Clarksburg Special Protection Area (SPA). It is also adjacent to the proposed Corridor Cities Transitway (CCT) to its west, and a Master Plan proposed roadway realignment of MD 355 to its east.

The surrounding area must be identified in a floating zone case so that compatibility can be evaluated properly. The "surrounding area" is defined less rigidly in connection with a floating zone application than in evaluating a Euclidean zone application. In general, the definition of the surrounding area takes into account those areas that would be most directly affected by the

proposed development. In the present case, the surrounding area is bounded on the north by Stringtown Road; on the east by Seneca Creek; on the west by I-270; and on the south by Shawnee Lane and Foreman Boulevard (Exhibit 45, pp. 6-7).

Technical Staff describes the surrounding area as follows (Exhibit 45, pp. 6-7):

The surrounding area ("neighborhood") is predominantly residential within the Gateway Commons, Garnkirk Farms and Clarksbrook Estates subdivisions with a small area of CRT-0.75 zoned properties along Stringtown Road at the northeast corner of the neighborhood. The neighborhood also contains a church located on the west side of MD 355 and a small enclave of employment-office use zoned EOF (the Gateway 270 Corporate Office) located along the western edge adjacent I-270.

Future development plans for the area include the Master Plan-recommended MD 355 Road alignment and a recently approved 392-unit mixed residential development, Garnkirk Farms. A large part of the western portion of the Property is within a stream buffer and the entire neighborhood, as defined by staff, is within the Clarksburg Special Protection Area.

Nearby residential uses immediately outside of the southwest boundary of the neighborhood, across Shawnee Road, include the 250-unit Gallery Park townhomes, a moving company, a Board of Education bus depot and Clarksburg High School.

The zoning in the surrounding area is R-200, TDR 7.0 and R-200 to the north; R-200 to the east; R-200 and PD-11 to the south; PD-11 (10.5 DU/acre) to the west (Garnkirk Farms Development); and further west, EOF.075 H100T in the Gateway 270 Industrial Park, which used to be zoned I-3 (Exhibit 40(j) and Tr. 92-94).

As noted by the Hearing Examiner, the subject site is adjacent to both R-200 development and the significant townhouse development of Garnkirk Farms, which will dominate the area to the southwest of the subject site.

Technical Staff gave the following zoning history for the subject site (Exhibit 45, p. 7):

The Property was zoned to the R-R Zone during the 1958 Countywide Comprehensive Zoning. In October of 1973, Text Amendment 73013 renamed the R-R Zone as the R-200 Zone. The 1994 Clarksburg Master Plan and Hyattstown Special Study Area (G-710) retained the Property's R-200 zoning. The land use element of the Master Plan placed the Property in the Transit Corridor District with recommended residential development density of two to four units per acre.

The site's zoning was not changed by the District-wide rezoning on October 30, 2014, which resulted from the District Map Amendment G-956 (adopted July 15, 2014), as modified by Sectional Map Amendment G-965 and Corrective Map Amendments G-967 through G-973.

Proposed Development

The Applicant is proposing a 105-unit residential development (originally 140 units), including 84 townhouses and 21 detached single-family houses to be known as Dowden's Station. The development will include 14 Moderately Priced Dwelling Units (MPDUs). One of the unusual features of this application is that its final contours will have to await the determination by the state of the alignment of Frederick Road (MD 355) and Roberts Tavern Drive, on the eastern edge of the site. Another important factor is that the site is in a special protection area, with all its accompanying environmental concerns, including protection of the streams running through the western portion of the site. As will be discussed below, the Applicant has proposed solutions to both problems, including a flexible access plan to the east and a dual purpose, elevated culvert to the west, which will carry both pedestrians and a buried sewer line over the streambed. Applicant's vision for the development is stated in its Pre-hearing Statement (Exhibit 40(a), pp. 1-3):

. . . The Applicant is requesting the Planned Development zone to accomplish a coordinated planned development at this location that will provide a mix of housing types for the community, including up to 21 single-family detached homes and up to 84 townhomes (105 total units), with 14 MPDUs integrated throughout the project. The Petitioner is providing 13.3 percent moderately priced dwelling units (MPDUs), above the typical 12.5 percent requirement, to add to the stock of affordable housing in upper Montgomery County.

. . . The Applicant has also proposed a reservation of land intended to address the variable, and as yet undetermined, alignment of future roadways in the transportation network surrounding the subject property, specifically the ultimate alignment of Frederick Road/Robert Tavern Drive.

Once the ultimate alignment of Frederick Road/Roberts Tavern Drive has been determined, a dedication of right-of-way to accommodate the desired alignment will take place and any residual property within the area of reservation will be released to the Applicant for future development. The ultimate development of this residual area, and the number of dwellings provided will be determined by whatever future alignment of Frederick Road is selected by public officials in the future, and will require a revision to the Development Plan.

The Petitioner has designed a site layout that provides single-family detached homes along Frederick Road to continue the existing suburban pattern of detached housing along Maryland Route 355 in this area of the County. Townhomes are provided within the interior of the site, with generous open spaces, recreation areas, and natural surface trails and forests integrated throughout the site, providing amenity spaces and opportunities for residents and pedestrians to enjoy the natural state of the land. The project incorporates a substantial 100-foot setback from any townhouse or attached unit provided on the site to the nearest property line. Additionally, the Petitioner has provided a generous set back that exceeds 300 feet from the future alignment of Observation Drive (as well as a 1.71-acre right-

of-way dedication for Observation Drive and an area of reservation for the future alignment of Frederick Road).

The project will provide a network of sidewalks, bike paths, and pedestrian trails that will serve to increase pedestrian connectivity in Clarksburg. In fact, capitalizing on the tract's close proximity to the future Shawnee Lane Transit Station, (CCT station) the proposal will provide a pedestrian connection that runs throughout the site, along the future alignment of Observation Drive, and to the CCT station to encourage residents to utilize public transportation.

The proposed layout guides development and infrastructure away from environmentally sensitive resources on the property and provides a variety of unit types that provide differing housing opportunities for Clarksburg. A significant portion of the property will be preserved as green space. The proposal balances the Master Plan's recommendations for future density of development on the property with the existing suburban pattern of the area and with the desire to create increased density near a planned Corridors City CC station.

Applicant's vision for the site layout is best seen on the final version of its Development Plan (Land Use Plan), Exhibit 65(a), which is discussed below.

Development Plan & Binding Elements

Pursuant to Code § 59-D-1.11, development under the PD-4 Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the PD-4 Zone. Under Code §59-D-1.3, this development plan must contain several elements, including a land use plan. The Development Plan in this case fulfills these requirements. Illustrative and conceptual elements may be changed during site plan review by the Planning Board, but the binding elements (*i.e.*, those that the District Council will consider in evaluating compatibility and compliance with the zone) cannot be changed without a separate application to the District Council for a development plan amendment.

The final Land Use Plan for the present zoning application is contained in Exhibits 65(a). Although land use plans are technically only a part of the overall development plan, they are usually referred to as the "development plan," and may be so referenced herein. It contains a site layout, a listing of all the binding and non-binding elements and other notations.

The final Development Plan shows the proposed locations of all structures, roadways, open spaces and dedicated areas, as well as additional information regarding the planned development. However, as noted on the Development Plan, the specific property lines, the building locations, the types and footprints of buildings, the proposed concrete abutment depicted in the upper left corner of the development plan and the roadway alignments (depicted on eastern edge of the site) are illustrative and will be refined and finalized during subsequent proceedings (*i.e.*, subdivision, site plan and state proceedings to determine final road alignments).

The Development Plan specifies that Applicant will dedicate 75,795 square feet (*i.e.*, 1.74 acres) to the Observation Drive roadway on the western side of the subject site because that right-of-way alignment has been established and platted in accordance with the Master Plan. Tr. 33-36. However, on the eastern edge of the site, the Development Plan provides that 2.59 acres will be placed "in reservation" pursuant to the subdivision regulations (Code Sections 50-31, *et seq.*) which allow a reservation of land for public use. The Applicant specifies that the dedication of the right-of-way on the eastern edge of the property will take place upon the determination, by the responsible agencies, of the ultimate right-of-way in relation to the property. Technical Staff indicated in its report that it would prefer a dedication commitment on the entire site, but agreed that, "The issue of reservation or dedication will be further analyzed and determined at the Preliminary Plan review stage." Exhibit 45, p. 8. Staff also observed that, "The determination of the ultimate row [*i.e.*, right-of-way] design could trigger a Development Plan Amendment." Exhibit 45, p. 1.

The Applicant also notes that its 30% target for impervious area is not a binding element, and the plan can be amended to allow additional units and uses in the reservation area once the final road alignment on the eastern edge of the site is determined. Substantive elements of the plan that are not designated as illustrative cannot be changed without Council approval. Applicant has specified that it will provide a minimum of 42% green area and 257 parking spaces. By agreement with the Planning Board, off-street parking spaces will be limited to 2.25 spaces per dwelling unit in order to reduce imperviousness. Assuming 105 units are built, as planned, that would result in a total of 236 off-street parking spaces. The remaining 21 spaces would be on the streets.

The base density allowed for a site of this size in the PD-4 Zone is four Dwelling Units per acre. Multiplying that by 24.37 acres yields a maximum base density of 97.48 Dwelling Units. However, the Applicant is entitled to a Bonus Density of 8% because it will provide 14 MPDUs (*i.e.*, 13.33% of the 105 planned dwelling units). Montgomery County Code §25A-5(c). Adding 8% to the standard density in the PD-4 Zone of 4 units per acre, allows the addition of .32 additional units per acre, for a total density of up to 4.32 units per acre. Applying that density to the 24.37 acre property (4.32×24.37) allows up to 105.28 units. As noted, Applicant proposes 105 dwelling units (*i.e.*, within the density permitted).

The District Council agrees with Technical Staff's conclusion regarding the proposed Development Plan (Exhibit 45, p. 9):

The Development Plan in this case fulfills the requirements of Section 59-D-1.3 by showing access points, approximate location of proposed buildings and structures, preliminary classifications of dwellings by number of bedrooms, parking areas, intended right-of-way dedications for MD 355, Roberts Tavern Drive and Observation Drive as well as internal streets (Dowden Station Way, Dowden Park Circle and Dowden Green Way), common use areas (recreation areas, forest conservation and stream buffer areas, playground and seating areas).

Required Findings

Zoning involves two basic types of classifications, Euclidean zones and Floating zones. The term “Euclidean” zoning arose from the seminal United States Supreme Court case upholding the land use authority of local governments, *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). 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.

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 Maryland Land Use Article, Code Ann. (2012), § 21-101(a)(4)(i). The subject application was filed prior to May 1, 2014. Under Section 59-7.7.1.B.1. of the Zoning Ordinance that went into effect on October 30, 2014, rezoning applications filed prior to May 1, 2014, must be reviewed under the standards of the Zoning Ordinance in effect on October 29, 2014 (*i.e.*, under the old Zoning Ordinance).

Montgomery County has many Floating zones, including the PD Zones. The PD-4 Zone contains development standards and a post-zoning review process that generally delegate to the Planning Board the details of site specific issues such as building location, stormwater control, vehicular and pedestrian routes, landscaping and screening. The Council has a broader and more discretionary role in determining whether to approve a rezoning.

Section 59-D-1.61 of the Zoning Ordinance requires the District Council, before it approves any application for re-zoning to the PD-4 Zone, to consider whether the application, including the development plan, fulfills the “purposes and requirements” set forth in Code Section 59-C for the new zone. In making this determination, Zoning Ordinance §59-D-1.61 expressly requires the District Council to make five specific findings, and Maryland law requires that zoning power be exercised in the public interest.

§59-D-1.61(a): Consistency with Master Plan and other County Policies.

The first required finding is consistency with the use and density requirements of the Master Plan and with other County plans and policies.

The subject property is located in the Transit Corridor District of the 1994 Clarksburg Master Plan and Hyattstown Special Study Area. The Land Use Plan for the Transit Corridor District is depicted in Figure 22, on Plan p. 55. It recommends the site for development at two to four dwelling units per acre.

As noted by the Hearing Examiner, the Master Plan impacts this proposal in six major ways:

- a. It limits the density of development to the recommended 2 to 4 dwelling units per acre (Plan p. 55), plus allowance for MPDUs (Technical Appendix to the Plan, pp. 9-10);
- b. It calls for additional housing in the Transit Corridor District (Plan pp. 54-56);
- c. It proposes specific road alignments on the eastern and western edges of the site (Plan p. 57);
- d. It endorses strong environmental controls in the area (Plan pp. 137-154);
- e. It affects the arrangement of the types of dwelling units on the site by calling for maintenance of the residential character along MD 355 (Plan pp. 56-57); and
- f. It advocates strong pedestrian and bicycle linkages (Plan p. 57).

The Clarksburg Master Plan recommendations are well described in the Technical Staff Report (Exhibit 45, pp 14-15):²

The Land Use Plan of the 1994 Clarksburg Master Plan and Hyattstown Special Study Area recommends the site for development at two to four dwelling units per acre. The Master Plan identifies the Property as part of the Transit Corridor District, which encompasses 990 acres of land and includes properties traversed by the future transitway that the Master Plan proposes. The Transit Corridor District includes properties fronting MD 355 that have developed over many decades in accord with traditional patterns—single-family detached lots fronting the road. Maintaining this residential character, while addressing the need for increased traffic capacity along MD 355, is a significant planning challenge in this District.

The Master Plan recommends the following land use objectives for the Transit Corridor District:

- 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 residential character along MD 355;
- Continue the present employment uses along I-270;
- Provide housing at designated areas along the transit-way near significant employment uses;
- Allow small amounts of office and retail uses at transit stop areas as part of a mixed-use development pattern;
- Establish strong pedestrian and bicycle linkages to the greenway;
- Improve east-west roadway connections;
- Provide an open space system that includes small civic spaces at the transit stops.

* * *

The Master Plan also provides guidance in terms of environmental quality. The Master Plan, through the recommendations of environmental studies, deems it essential for stream buffers in the watershed to remain forested for water quality purposes as well as environmental reasons (Master Plan Page 144). In order to

² Some paragraphs in the quoted text have been rearranged for clarity.

achieve these environmental standards, the Master Plan "strongly encourages" stream buffers to be extended to 175 feet which exceeds the 125 feet standard stream buffer used in the majority of the county. This buffer increase is also designed to allow trees to regenerate in areas not presently wooded. . . .

Technical Staff found that the Development Plan proposed by the Applicant conforms to the recommendations of the Master Plan (Exhibit 45, pp. 14-16):

The Application generally attempts to follow the strong guidance of the Master Plan by providing the 175 foot buffer and in some case exceeding this standard. However, there are multiple areas bordering townhouse sites and roads where the standard cannot be implemented due to topographic constraints.

The Application proposes a pedestrian connection and bike path system through the environmental buffer to a future section of Observation Drive which will ultimately provide safe and efficient access to the future Corridor City Transit way (CCT) transit station.

Because the proposed change in zoning furthers these objectives, the proposal is in conformance with the 1994 Clarksburg Master Plan and Hyattstown Special Study Area.

The Development Plan proposes housing in appropriate areas near transit stations. The Application seeks to introduce development that is compatible with existing residential uses while providing enough density to support transit. The Property is not located in the area slated for the highest densities (9-11 units per acre) which are relegated to the [area] around the transit stop for the Corridor Cities Transitway. However, development on the Property, which is recommended for two to four dwelling units per acre (1994 Clarksburg Master Plan and Hyattstown Special Study Area Figure 22, Page 55) could provide pedestrian access to serve the planned transit station at the intersection of Shawnee Lane and the future Observation Drive. An interconnected street system is essential in achieving a walkable and transit serviceable community that can be logically connected to adjacent properties.

Like many of the properties in the Transit District, the Property has frontage on MD 355. To reinforce residential character, the Master Plan seeks to maintain the predominant pattern of homes facing MD 355 (Page 55). This proposed Development Plan conforms to this lot pattern by placing detached homes with frontage along MD 355 and access from the rear through an alley. . . .

It should be noted that the Applicant's original proposal sought to rezone the property to the PD-5 Zone (Exhibit 2), but the proposed Zone category was reduced to PD-4, in accordance with the density recommendation of the Master Plan. The Planning Board, like its Technical Staff, found the proposed development to be in substantial compliance with the Master Plan. Exhibit 46.

Based on the evaluation of the Technical Staff, the Planning Board, and the Hearing Examiner, and on the un rebutted evidence that the proposed development is consistent with the recommendations, guidelines and goals of the Clarksburg Master Plan, the District Council finds that Applicant's Development Plan meets the specified objectives and is in substantial compliance with the Master Plan's use and density recommendations, as "Finding (a)" requires.

Other significant County policies include Subdivision Staging Policy and the Adequate Public Facilities Ordinance. Under the County's Adequate Public Facilities Ordinance ("APFO," Code §50-35(k)), the Planning Board has the responsibility, when it reviews a preliminary plan of subdivision, to assess whether the following public facilities will be adequate to support a proposed development: transportation, schools, water and sewage facilities, and police, fire and health services. The Planning Board's application of the APFO is limited by parameters that the County Council sets in its Subdivision Staging Policy.³ While the ultimate test under the APFO is carried out at subdivision review, evidence concerning adequacy of public facilities is relevant to the District Council's determination in a rezoning case, as spelled out in Zoning Ordinance §59-H-2.4(f).

Section 59-H-2.4(f) requires Applicant to produce "[s]ufficient information to demonstrate a reasonable probability that available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application is submitted." In this case, the application was filed on September 3, 2013, so the 2012-2016 Subdivision Staging Policy, adopted November 13, 2012, in Resolution 17-601, will apply to the rezoning determination.

The 2012-2016 Subdivision Staging Policy provides, at p. 21, "The Planning Board and staff 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 such evidence in this case. The remaining three public facilities – transportation, schools and water and sewer service – were discussed at length in Part III.D.3 of the Hearing Examiner's report, and that discussion is summarized below.

1. Transportation:

a. Roadway Alignments:

The development plan provides that 2.59 acres will be placed "in reservation" pursuant to the subdivision regulations (Code Section 50-31, et seq.), which allow a three-year reservation of land for public use. This need for a reservation area derives from the undecided road alignment on the eastern edge of the site (as distinguished from the western edge, where 1.74 acres will be dedicated along Observation Drive). The Master Plan proposed an alignment on the eastern edge of the site, with a sweeping curve through the subject property running north and re-associating with MD 355 north of the historic district. Developments after 1994 have changed the likely road alignment. What is different today is that there is a new road called Roberts Tavern Drive, which

³ In 2010, the County Council changed the name of the Growth Policy to the Subdivision Staging Policy, but both Zoning Ordinance §59-H-2.4(f) and APFO Code §50-35(k) still refer to the Council's Growth Policy. The 2012-2016 Subdivision Staging Policy was adopted by the Council on November 13, 2012, in Resolution 17-601.

projects the right-of-way through the property, stopping at Observation Drive in a T intersection. Unlike the Robert's Tavern alignment, the Master Plan alignment would continue the road to the north and not end in the T intersection at Observation Drive. Tr. 37-39. The Applicant has designed a Development Plan that takes account of all the possible alignments, with an "interim access" from the site to MD 355, which would be called Dowdens Station Way. That interim access would be removed if a road alignment eventually connects MD 355 to Roberts Tavern Drive, leaving only a stub of Dowdens Station Way internal to the site to service a couple of lots. If the realignment takes place, the connection to the new road from the subject site will be the road labelled "Future Connection" on the Development Plan, which is to the north, on the McCord property. Tr. 45-49. The District Council finds that the reservation proposed is an appropriate vehicle for dealing the road alignment uncertainty at the zoning stage. The Planning Board can determine, at subdivision, how dedication of land on both sides of the site should be handled.

b. New Traffic Burden (LATR and TPAR):

The amount of new traffic that would be generated by the proposed use was evaluated both by Applicant's transportation planner, Carl Wilson, and by Technical Staff. Mr. Wilson's traffic study (Exhibit 24) was completed on July 26, 2013, assuming that the project would have 140 dwelling units (14 detached homes and 126 townhomes), as sought in the original application. The present application is for only 105 dwelling units (21 detached homes and 84 townhomes), and will therefore generate less traffic.

Mr. Wilson testified that he prepared his traffic impact study for the proposed re-zoning in accordance with the Planning Board's Local Area Transportation Review (LATR) guidelines. He noted that the main purpose of the LATR is to study the offsite intersections and the site access point at Maryland 355, looking at the critical lane volumes (CLV) to determine that those are adequate. With respect to LATR, he considered a single point of access for this property along Maryland 355. Using the Montgomery County rates, he projected that the site would produce 75 total trips in the morning and 111 trips in the evening, assuming a development of 140 dwelling units. Using those higher projections, he calculated that the access point would operate at an adequate level of service under the congestion standard for the policy area, which is a CLV of 1425. Thus, at the proposed access point, he found a CLV in the morning of 763, and in the afternoon of 877, during the peak hour of the peak period. A recalculation based on the reduced number of dwelling units would reduce those projections, as well. Mr. Wilson testified that all of the intersections studied met the 1425 CLV standard. As this application proceeds through preliminary plan, Applicant will have to update the LATR to obtain more current counts. Tr. 153-156.

Technical Staff calculated that the original unit mix would generate approximately 12 percent more peak-hour trips than the current unit mix and that the calculated CLV values would not exceed the CLV standard of 1,425 for the Clarksburg Policy Area. Staff provided the following chart of expected CLV levels for the site access to MD 355 (Frederick Road) and for the intersection of MD 355 and Stringtown Road and the intersection of MD 355 and Foreman Boulevard (Exhibit 45, pp. 16-17):

Table A – Critical Lane Volumes A

Studied Intersection	Traffic Condition					
	Existing		Background		Total	
	AM	PM	AM	PM	AM	PM
Frederick Road & Stringtown Road	952	1,075	1,104	1,307	1,156	1,343
Frederick Road & Foreman Boulevard	974	998	1,065	1,143	1,072	1,152
Frederick Road & Site Access	----	----	----	----	763	877

Technical Staff concluded from these results that the LATR test will be satisfied. Thus, both Technical Staff and Mr. Wilson agree that the total critical lane volumes (CLV) will not exceed the CLV standard of 1,425 for the Clarksburg Policy Area at any of the studied intersections. The District Council therefore finds that LATR standards will be satisfied.

As to Transportation Policy Area Review (TPAR), Technical Staff observed that, “according to the 2012-2016 Subdivision Staging Policy (SSP), the Clarksburg Policy Area is inadequate under the transit test; therefore, a TPAR payment of 25 percent of the General District Transportation Impact Tax is required.” Exhibit 45, p. 18.

The District Council agrees with Staff that the adequacy of the roadway and transit will be reanalyzed at the Preliminary Plan review. The timing and amount of the TPAR payment will be determined at that time in accordance with the Montgomery County Code. Based on this record, the District Council finds that it is reasonably probable that transportation facilities and services will be adequate to serve the proposed development.

2. Impacts on School Capacity

The Property is located within the Clarksburg School Cluster, which includes Clarksburg Elementary School, Rocky Hill Middle School, and Clarksburg High School. According to a communication from Zachary Larnard, MCPS Division of Long Range Planning, (Exhibit 45, Attachment C, 2nd Document), “All three schools are projected to exceed capacity within the six year CIP.” Mr. Larnard further described the school capacity situation:

A site for a new elementary school in the Clarksburg Cluster has been approved; an opening date for this school will be determined in a future CIP. A new middle school is needed to address the middle school space deficit in the cluster; the scheduled completion date for the new school is August 2016. A classroom addition at Clarksburg High School is scheduled to open in August 2015. A revitalization/expansion project for Seneca Valley High School is recommended for completion in August 2018; the school will be designed with excess capacity to accommodate students from the Clarksburg cluster. The Seneca Valley High School service area is adjacent to the Clarksburg High School service area.

According to Mr. Larnard's estimate, "The student generation estimated from the 105-unit Clarksburg Mews development will be approximately 29 elementary school students, 12 middle school students, and 14 high school students." He concluded that the Applicant will have to pay a school facility payment for the elementary and high school levels:

The FY2015 Subdivision Staging Policy School Test finds school enrollment in the Clarksburg Cluster to exceed the 105 percent utilization threshold at the elementary school and high school levels requiring a school facility payment. Enrollment at the middle school level in the Clarksburg Cluster is below 105 percent utilization threshold. No school facility payment is required at the middle school level.

Technical Staff noted that such a payment would be required in connection with subdivision, not at the rezoning stage (Exhibit 45, p. 19). As pointed out by Applicant's land planner, the fact that the elementary and high school are below the 120 percent of capacity means that growth is not in a moratorium, but rather the Applicant would have to pay a school facilities payment. Tr. 101-104.

Given these facts, the District Council finds that it is reasonably probable that public school facilities and services will be adequate to serve the proposed development.

3. Water and Sewer Service

The water and sewer categories are W-1 and S-3. Stephen Crum, Applicant's civil engineer, testified that there is adequate sewer and water service available for the property. There is an existing water line in Maryland 355. Applicant is proposing to make a connection to that line, and it will loop through the project. Applicant will make a water line connection to Observation Drive as well, so the property will be served from two directions with public water. Applicant will extend the sanitary sewer from Observation Drive via the pedestrian crossing that Applicant is proposing. This connection will be within an elevated culvert depicted on the Development Plan (Exhibit 65(a)). The Washington Suburban Sanitary Commission (WSSC) has reviewed this proposal and didn't have any objections to the preliminary plans (Exhibit 45, Attachment C, 3rd Document). Mr. Crum's plan would also provide a very direct pedestrian connection to the west of the site, with very little impact to the stream. Tr. 143-149. Technical Staff confirmed the fact that, although the site does not presently have water and sewer service, it is available to the site (Exhibit 45, p. 20).

Given Mr. Crum's testimony, WSSC's memorandum and Technical Staff's conclusion, the District Council finds that Applicant has demonstrated a reasonable probability that available water and sewer facilities and services will be adequate to serve the proposed development under the applicable standards. Moreover, Technical Staff reports that "[t]he proposed development will not conflict with the County's Capital Improvements Program (CIP) or other applicable county plans and policies." Exhibit 45, p. 23. Because there is no contrary evidence in the record, the District Council so finds.

§59-D-1.61(b): purposes, standards and regulations of the zone; safety, convenience and amenity of residents; and compatibility with adjacent development.

The second required finding is:

That the proposed development would comply with the purposes, standards, and regulations of the zone as set forth in article 59-C, would provide for the maximum safety, convenience, and amenity of the residents of the development and would be compatible with adjacent development.

1. Compliance with the Purposes, Standards and Regulations of the Zone

The requirements for the PD-4 Zone are found in Code §59-C-7.1. The PD-4 Zone is a “floating zone,” which is a flexible device that allows a legislative body to establish a district for a particular type of use, with land use 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 that the proposed location is appropriate for the zone, *i.e.*, it satisfies the purpose and regulations of the zone, the development would be compatible with the surrounding area, and it would serve the public interest.

PD (Planned Development) zones are a special variety of floating zone with performance specifications integrated into the requirements of the zone. These zones allow considerable design flexibility if the performance specifications are satisfied. The applicant is not bound to rigid design specifications, but may propose site-specific criteria, within the parameters established for the zone, for elements such as setbacks, building heights and types of buildings.

Section 59-C-7.11, Purpose Clause

The PD Zones have a lengthy purpose clause, Zoning Ordinance §59-C-7.11, which is linked to the goals of the applicable master plan. As discussed above, the proposed development will be in substantial compliance with the 1994 Clarksburg Master Plan. Moreover, as noted by Technical Staff (Exhibit 45, p. 24), the proposed development “provides a mix of unit types with adequate setbacks, shared private streets and alleyways, protection of the environment and amenities that could not be achieved under the existing conventional zoning.” Accordingly, the requested reclassification will comply with the first element of the purpose clause by allowing implementation of applicable Master Plan objectives and by flexibly designing and integrating compatible uses to achieve greater efficiency, convenience and amenity than under conventional zoning categories.

The second paragraph of the purpose clause calls for a design which will facilitate social and community interaction, create a distinctive visual character, and offer a balanced mix of uses. As observed by Technical Staff (Exhibit 45, p. 25),

The proposed development would encourage and facilitate a maximum of social and community interaction and activity. The Application provides for a central community space for social gathering and recreational area, seating areas, a playground, a trail system and open space. The development is located within a walking distance to a future transit station and provides a pedestrian access to the station.

There will be no commercial uses on site because the Master Plan does not envision any on this site, but there will be a mix of residential and recreational uses. The pedestrian connection to Observation Drive and the pedestrian system within the community provide excellent connectivity between the subject property and the Garnkirk Farms community planned and under construction to the southwest in the PD 11 Zone. They will also give excellent pedestrian access to the future CCT station which will be located just north of Shawnee Lane and just east of Observation Drive. Tr. 90-92. Thus, the District Council finds that the second paragraph of the purpose clause has been satisfied.

The third paragraph of the purpose clause encourages "a broad range of housing types." The proposed development will provide for a range of different sized single-family detached homes, and townhouse units on differing sized lots. Over thirteen percent of these units will be MPDUs and 67 percent will be market-rate units. It will thus provide a broad range of housing choices. The District Council agrees with Technical Staff's conclusion that "[g]iven the size of the Property and its location within the immediate neighborhood, the proposed mix of housing types is appropriate and is in accordance to the PD-Zone Category specification." Exhibit 45, p. 26.

The fourth and fifth paragraphs seek to preserve and take aesthetic advantage of trees, minimize grading and provide open space. Technical Staff addressed these issues as follows (Exhibit 45, p. 26):

The Property is entirely covered by forest. The proposed development would preserve approximately 37 percent or 7.67 acres of forest in an area between the proposed development and the adjacent future Observation Drive abutting the property to the west. About 6.9 acres of the forest is retained within the stream valley buffer. The project also provides for open space including green areas, a multi-age playground and a community gathering area. Despite the serious challenges that the slopes throughout the Property present, significant efforts have been made to minimize grading.

The issues of minimizing grading, preserving the environment and the aesthetics of Applicant's proposal were discussed at length in Part III.D.4. of the Hearing Examiner's report. As stated there, the Applicant has demonstrated sensitivity to environmental concerns, as recommended by the Master Plan, and has produced a Preliminary Forest Conservation Plan, a Water Quality Plan, a grading plan, a soil erosion and sediment control plan, a plan for limiting imperviousness and a plan for protecting the stream valley buffer, all of which are sufficient at the rezoning stage. Based on this evaluation and Technical Staff commentary on open space, the District Council concludes that the fourth and fifth paragraphs of the purpose clause have been satisfied.

The sixth paragraph calls for pedestrian circulation networks to minimize reliance upon automobiles. The development plan here provides for a network of pedestrian paths and connectivity to transit and other developments which will clearly reduce reliance upon automobiles, thus satisfying the sixth paragraph of the purpose clause.

The seventh paragraph of the purpose clause encourages, but does not require, "large scale" developments. As observed by Technical Staff (Exhibit 45, pp. 26-27), the proposed development would create a 105-unit community on 24.37 acres, with an appropriate mix of townhouses and single-family detached homes. The District Council agrees with Staff's conclusion that the scale of the proposed development is large enough to provide forested areas, open spaces and play areas, and thus "realizes the purpose of the zone . . ."

The eighth paragraph of the purpose clause calls for a development which provides for safety, convenience, amenity, and compatibility, and the ninth paragraph reiterates the need for a development that will be proper for the comprehensive and systematic development of the County, and consistent with the Master Plan and the Zone. Safety was discussed in connection with transportation facilities in Part III.D.3.a. of the Hearing Examiner's report, and as noted there, the proposed access ways and internal circulation systems will be adequate and safe. Convenience and amenities include the pedestrian networks and park areas which were discussed above in this Opinion.

As to compatibility, all the evidence supports the proposition that the proposed development will fit well with its surroundings. Applicant's land planner, David Ager, testified that the proposal will be compatible with the surrounding development not only from the general density standpoint, but also in the way it transitions the densities of planned development on the site. Specifically, the Applicant will place the single-family units to the east of the property where they will confront single-family units in the R-200 Zone along Frederick Road (MD 355), and the denser dwelling units (*i.e.*, townhouses) will be placed towards the center and west side of the property, closer to the Garnkirk Farms property, the PD-11 property and the future CCT alignment which runs down Observation Drive. Thus, the design of the development plan will result in a project that is compatible with the surrounding neighborhood. Tr. 95.

Technical Staff agrees (Exhibit 45, p. 27):

. . . The provision of single-family detached dwellings along the Property's frontage on MD 355 blends well and is compatible with the existing low density residential character of the area between Stringtown Road to the north and Shawnee Lane to the south, fronting MD 355 (east), which is defined by detached single-family homes. Moreover, the project, which is adjacent to a 392-unit mixed-unit residential development on a PD-11 zoned property (Garnkirk Farms) to the west provides an ideal transition from a more intense PD-11 development to the existing single-family homes on the R-200 TDR and R-200 zoned properties north, south and east (across MD 355) of the Property.

The Planning Board and the Hearing Examiner also adopted Technical Staff's analysis regarding compatibility, and there is no evidence to the contrary in this record. The District Council therefore finds that the proposed development will be compatible with existing and planned surrounding development.

In sum, the proposed development is consistent with the intent and purposes of the PD-4 Zone.

We next look to the “standards and regulations” of the PD-4 Zone, which are spelled out in Code Sections 59-C-7.12 through 7.18.

Section 59-C-7.121, Master Plan

Pursuant to Code §59-C-7.121, “no land can be classified in the planned development zone unless such land is within an area for which there is an existing, duly adopted Master Plan which shows such land for a density of 2 dwelling units per acre or higher.” The 1994 Clarksburg Master Plan recommends that the subject property be developed at a density of two to four dwelling units per acre (Figure 22, on Plan p. 55). That meets the minimum density specified in this section, and the proposed development, at four dwelling units per acre (plus a density bonus for MPDUs), conforms to the Master Plan’s density recommendation. Accordingly, this provision is satisfied.

Section 59-C-7.122, Minimum Area

Code §59-C-7.122 specifies several criteria, any one of which may be satisfied to qualify land for reclassification to the PD Zone. Alternative criterion (a) requires that the site “*contain sufficient gross area to construct 50 or more dwelling units under the density category to be granted.*” The subject property contains 24.37 acres, more than large enough to construct 50 dwelling units at the density proposed, and in fact 105 dwelling units are planned.

Section 59-C-7.13 and 7.131, Residential Uses Permitted

Pursuant to Code §59-C-7.131, single-family attached units (including townhouses) and detached units are permitted in the PD-4 Zone, as well as multiple-family units of 4 stories or less, but the section also specifies that if the minimum percentage would yield a total of 150 multi-family dwelling units or less, this requirement does not apply, and no such multi-family units are required. In a PD-4 development of less than 200 units, a minimum of 10% of the units must be detached and a minimum of 40% must be attached or townhouse. Here, the proposed Development Plan provides for 20% single-family detached units (21 units) and 80% single-family townhouse and/or attached units (84 units), satisfying the statutory requirement.

Section 59-C-7.132, Commercial Uses

There are no commercial uses proposed here. Commercial uses, with specified maximums, are permitted but not required in the PD Zones at the discretion of the District Council upon a finding that they are compatible with the development and are necessary for the service of the residents of the proposed development and adjacent residential developments. In this case, as stated by Technical Staff (Exhibit 45, p. 29), “The fact that the development is exclusively residential is in keeping with the Master Plan’s objectives for the portion of the transit corridor district within which the Property is located.”

Section 59-C-7.133, Other Uses Permitted

Under subsection (a) of this provision of the PD Zone, recreational facilities for the exclusive use of the residents and their guests are permitted. The proposed facilities are compliant.

Section 59-C-7.14, Density of Residential Development

Three subsections – (a), (b) and (c) – apply to this case. Subsection (a) sets forth the available density categories for residential development in a PD Zone and the permitted densities. In this case, the density category specified in the development plan is PD-4, and the density of the development will be the permitted 4 dwelling units per acre, plus a density bonus for MPDUs.

Subsection (b) requires the District Council to determine the propriety of the density category applied for, and Subsection (c) allows the maximum density allowed under subsection (a) to be increased to accommodate the construction of Moderately Priced Dwelling units.

The density category applied for, PD-4, is consistent with the density recommendations of the 1994 Clarksburg Master Plan. The base density allowed for a site of this size in the PD-4 Zone is four Dwelling Units per acre. Multiplying that by 24.37 acres yields a maximum base density of 97.48 Dwelling Units. However, the Applicant is entitled to a Bonus Density of 8% because it will provide 14 MPDUs (*i.e.*, 13.33% of the 105 planned dwelling units). Montgomery County Code §25A-5(c). Adding 8% to the standard density in the PD-4 Zone of 4 units per acre, allows the addition of .32 additional units per acre, for a total density of up to 4.32 units per acre. Applying that density to the 24.37 acre property (4.32 X 24.37) allows up to 105.28 units. As noted, Applicant proposes 105 dwelling units (*i.e.*, within the density permitted). The District Council therefore finds that the proposed development is compliant with these provisions.

Section 59-C-7.15, Compatibility

Section 59-C-7.15 requires a finding of compatibility and specifies that only single-family detached homes may be constructed within 100 feet of any adjoining single-family detached zone. It also prohibits buildings constructed to a height greater than its distance from the adjoining land.

As previously discussed, Technical Staff, the Planning Board and the Hearing Examiner found that the proposed development will be compatible with surrounding development. Moreover, as noted by Technical Staff (Exhibit 45, p. 32),

The proposed development is compatible with existing and future land uses in the area in terms of use, density and bulk. The adjacent properties to the north, and south as well as the confronting properties to the east across MD 355 are recommended for, or developed with, one-family detached homes. Adequate setbacks, existing and future roads, and stream valley buffer areas provide sufficient distance and buffering between the development and the adjoining one-family properties. The Development Plan depicts single-family houses on the periphery of the development with a minimum of 100 feet setback from the adjoining existing and future one-family residences and MD 355. The rear portion of the Property (west) backs on to the future Observation Drive which separates the Property from a 392-unit, PD-11 Zoned, mixed-unit residential community. A forested area, with a depth of over 250 feet, including a stream valley buffer area, lays between the back of the proposed townhouses on the Property and the rear property line that is adjacent to the future Observation Drive.

There will be no buildings other than single-family detached homes within 100 feet of the adjoining single-family detached developments, and no buildings are proposed to a height greater than its distance from such adjoining land. Thus, the District Council finds that all the setbacks proposed for this development are compatible with adjacent development.

Section 59-C-7.16, Green Area

This section of the Ordinance requires 40% green space for the PD-4 Zone, and the Development Plan satisfies that requirement with a proposal for 42% green space. Exhibit 65(a).

Section 59-C-7.17, Dedication of Land for Public Use

This section requires that land necessary for public streets, parks, schools and other public uses must be dedicated in accordance with regulations and the Master Plan, with such dedications shown on all required development plans and site plans. The development plan in this case (Exhibit 65(a)) depicts 1.74 acres of land dedicated to the Observation Drive right-of way on the western side of the site. As has been previously mentioned, due to the uncertainty of the road alignment on the eastern side of the site, 2.59 acres of land would be placed "in reservation," and that land, or a portion of it, may be dedicated to the right-of-way at subdivision or when the road alignment is determined. As stated by Technical Staff, "The Application satisfies all public use dedication requirements." Exhibit 45, p. 33. Since there is no evidence to the contrary, the District Council so finds.

Section 59-C-7.18, Parking Facilities

This section requires that off-street parking be provided in accordance with Zoning Ordinance Article 59-E. Under §59-E-3.7, two parking spaces are required for each single-family dwelling unit. There will be a maximum of 105 single-family dwelling units, and therefore at least 210 parking spaces off of the public streets must be provided. As shown on the Development Plan, Applicant's plan is to provide a total of 257 parking spaces on the site, but in order to satisfy the Planning Board's concern as to imperviousness, off-street parking will be limited to 2.25 spaces per dwelling unit. Exhibit 65(a). Multiplying 2.25 X 105 dwelling units yields a maximum number of off-street parking spaces of 236. Thus, the District Council finds that the Development Plan meets the minimum parking requirements of Sections 59-C-7.18 and 59-E-3.7, while also meeting the maximum set by the Planning Board.

In sum, the District Council concludes that the proposed rezoning and the Development Plan will be consistent with the purpose clause and all applicable standards for the PD-4 Zone.

2. Safety, Convenience and Amenity of Residents

The next part of "Finding (b)" required by Section 59-D-1.61 is a determination that the proposed development would provide the "maximum safety, convenience, and amenity of the residents." Since this required finding is practically identical with one of the purpose clause requirements for the PD-4 Zone, it has been discussed in that context above. The District Council

finds that Applicant has provided the maximum in safety, convenience and amenities for the future residents of this development.

3. Compatibility with Adjacent Development

The final required determination under “Finding (b)” is that the proposed development be compatible with adjacent development. For the reasons discussed above in connection with the Purpose Clause of the PD-4 Zone, the District Council concludes that the proposed residential dwelling units will be compatible with other uses existing or proposed in the vicinity of the planned development.

§59-D-1.61(c): safe, adequate and efficient internal vehicular and pedestrian circulation systems.

The third required finding is “[t]hat the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate, and efficient.” The Applicant first addressed the external access issue – *i.e.*, whether vehicles entering and exiting the subject site will have sufficient time to do so safely, given the proposed access to MD 355. To evaluate this issue, Technical Staff asked Applicant’s transportation planner, Carl Wilson, to prepare “a gap study,” which Mr. Wilson did. Exhibit 60(c).

Mr. Wilson testified that in order to do a gap study, tubes are put out on the road to measure the amount of space that occurs in between vehicles, in effect measuring the time between vehicles passing the site access point. According to Mr. Wilson, there needs to be a gap for the left turn of seven-and-a-half seconds and for the right turn of six-and-a-half seconds. Mr. Wilson indicated that this site itself would not generate enough traffic to warrant a traffic signal; however, he concluded that the gap study showed that there are adequate gaps in both traffic streams, northbound and southbound, for traffic to exit the site and to enter the site during the peak hours. Tr. 157-161.

Technical Staff agreed, stating (Exhibit 45, pp. 17-18):

Thus, the number of acceptable time gaps exceeds the projected traffic volume demand; therefore there are sufficient gaps in traffic to accommodate the estimated vehicle generation associated with the site.

After an exchange of correspondence among the State Highway Administration (SHA), Technical Staff and the Applicant’s transportation planner (Exhibits 60(d) and (e)), SHA also accepted the result of the gap analysis, stating in a letter dated January 20, 2015, “The SHA concurs with the report findings for this project as currently proposed and will not require the submission of any additional traffic analyses.” Exhibit 60(i).

Based on the undisputed evidence, and the evaluation of Technical Staff, SHA and Applicant’s transportation planner, the District Council finds that vehicles entering and exiting the subject site will have sufficient time to do so safely with the proposed access to MD 355.

Finally, Mr. Wilson testified that, in his opinion, the proposed vehicular and pedestrian circulation system within the subject site, as well as the points of external access for the proposed development, are safe, adequate and efficient. According to Mr. Wilson, this proposal is similar to a typical layout for a residential subdivision, and there are adequate intersections for the vehicles to enter and exit within the subdivision streets and onto Maryland 355. Tr. 161-163.

Technical Staff agreed (Exhibit 45, p. 34):

The review and analysis of the Application finds the proposed access to the Property, as shown on the Development Plan, to be safe and adequate. Furthermore, the internal pedestrian circulation and walkways, as shown on the Development Plan, provide for a safe and adequate movement of pedestrian traffic.

In sum, given the record in this case, the District Council finds that the proposed internal vehicular and pedestrian circulation systems and points of external access will be safe, adequate, and efficient.

§59-D-1.61(d): preventing erosion, preserving vegetation, forest conservation and water resources.

The fourth required finding is:

That by its design, by minimizing grading and by other means, the proposed development would tend to prevent erosion of the soil and to preserve natural vegetation and other natural features of the site. Any applicable requirements for forest conservation under Chapter 22A and for water resource protection under Chapter 19 also must be satisfied. The district council may require more detailed findings on these matters by the planning board at the time of site plan approval as provided in division 59-D-3.

The issues of minimizing grading, preserving the environment, and compliance with forest conservation law and water resource protection regulations were discussed at length in Part III.D.4. of the Hearing Examiner's report. As stated there, both Technical Staff and the Hearing Examiner found that the Applicant has demonstrated sensitivity to environmental concerns, as recommended by the Master Plan, and had produced a Preliminary Forest Conservation Plan, a Water Quality Plan, a grading plan, a soil erosion and sediment control plan, a plan for limiting imperviousness and a plan for protecting the stream valley buffer, all of which are sufficient at the rezoning stage. Therefore, the District Council concludes that Applicant has demonstrated the environmental controls called for by the fourth required finding.

§59-D-1.61(e): common area maintenance.

The fifth required finding is:

That any documents showing the ownership and method of assuring perpetual maintenance of any areas intended to be used for recreational or other common or quasi-public purposes are adequate and sufficient.

The Applicant is the owner of the subject site. Exhibits 47(a) and (b). In response to this provision, the Applicant submitted draft "Articles of Incorporation of Dowden's Station Homeowners' Association, Inc." (Exhibit 17); "By-Laws for Dowden's Station Homeowner's Association, Inc." (Exhibit 18); and "Declaration of Covenants, Conditions and Restrictions for Dowden's Station Homeowner's Association, Inc." (Exhibit 19).

These documents describe the proposed ownership and maintenance of common areas by a homeowners association, after development. Specifically Article VII, Section 2 of the By-Laws provides for maintenance of the common areas.

The District Council finds that Applicant has sufficiently demonstrated both its interest in the property and its commitment to perpetual maintenance of all recreational and other common or quasi-public areas.

The Public Interest

The final finding which is required under Maryland law is that the proposed rezoning will be in the public interest so as to promote the comprehensive and systematic development of the County as required by the Maryland Land Use Article, Code Ann. (2012), § 21-101(a)(4)(i). When evaluating the public interest, the District Council normally considers Master Plan conformity, the recommendations of the Planning Board and Technical Staff, any adverse impact on public facilities or the environment, and public benefits such as the provision of affordable housing.

The issue of Master Plan conformance was discussed at length above. As outlined there, Applicant's proposal is consistent with the recommendations, goals and objectives of the 1994 Clarksburg Master Plan. The Planning Board and its Technical Staff both support the proposed rezoning. The impact on public facilities was also discussed above. The evidence indicates that transportation, schools and water and sewer services would not be adversely affected by the proposed development.

There was no opposition to this rezoning application, and there was no evidence of any adverse impacts on the surrounding neighborhood.

The proposed project will offer a mix of housing opportunities, including affordable housing, in a manner which is sensitive to the environment and compatible with the surrounding area.

For the reasons discussed above, the District Council concludes that the proposed development would be in the public interest.

Conclusion

Based on the foregoing analysis and the Hearing Examiner's report, which is incorporated herein, and after a thorough review of the entire record, the District Council concludes that the proposed development satisfies the intent, purpose and standards of the PD-4 Zone; that it meets the requirements set forth in Section 59-D-1.61 of the Zoning Ordinance; that the application proposes a project that would be compatible with development in the surrounding area; and that the requested reclassification to the PD-4 Zone has been shown to be in the public interest. For these reasons and because approval of the instant zoning application will be consistent with the coordinated and systematic development of the regional district, as required by the Maryland Land Use Article, Code Ann. (2012), § 21-101(a)(4)(i), the application will be approved in the manner set forth below.

Action

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

Zoning Application No. G-957, requesting reclassification from the R-200 Zone to the PD-4 Zone, of a 24.37-acre parcel of unimproved land, known as Garnkirk Farms Parcel N780 (Part of Lot 21) and Parcel N888 (Lot 22), on tax map EW31, in Clarksburg, Maryland, is hereby **approved** in the amount requested and subject to the specifications and requirements of the revised Development Plan, Exhibit 65(a). The Applicant must submit to the Hearing Examiner for certification a reproducible original and three copies of the Development Plan approved by the District Council within 10 days of approval, as required under Code §59-D-1.64.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council