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| 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**

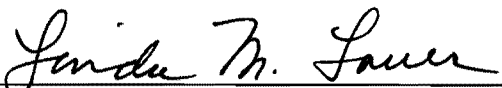
Based on the foregoing analysis, the Hearing Examiner's Report and Recommendation, and a thorough review of the entire record, the District Council concludes that the proposed reclassification and development will meet the standards set forth in *2014 Zoning Ordinance* and that it will be consistent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