

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	*	
	*	Local Map Amendment
For the Application	*	Application No. H-115
	*	
<u>Soo Lee-Cho, Esquire</u>	*	
Attorney for the Applicant	*	
*****	*	
	*	
<u>Patricia McKenzie, Esquire</u>	*	
(representing Paul and Mary McKenzie)	*	
	*	

Before: Lynn A. Robeson, Hearing Examiner		

HEARING EXAMINER’S REPORT AND RECOMMENDATION

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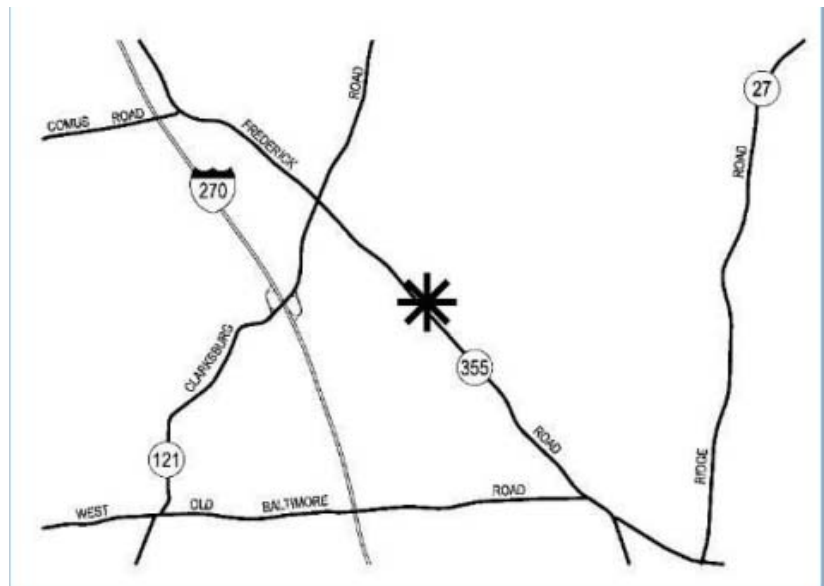
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I. EXECUTIVE SUMMARY

Applicant: 3 Sons Avalon, LLC.

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



Acreage: 10.28 acres

Current Zone and Use: R-200/Vacant Land

Proposed Zoning: TF 5.0 (Townhouse Floating);

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

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

Density Planned: 4.87 dwelling units per acre

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

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

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

II. STATEMENT OF THE CASE

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

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

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

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

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

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

III. FACTUAL BACKGROUND

A. Subject Property

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



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

the property. Exhibit 29, p. 3.

B. Surrounding Area

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

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



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

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

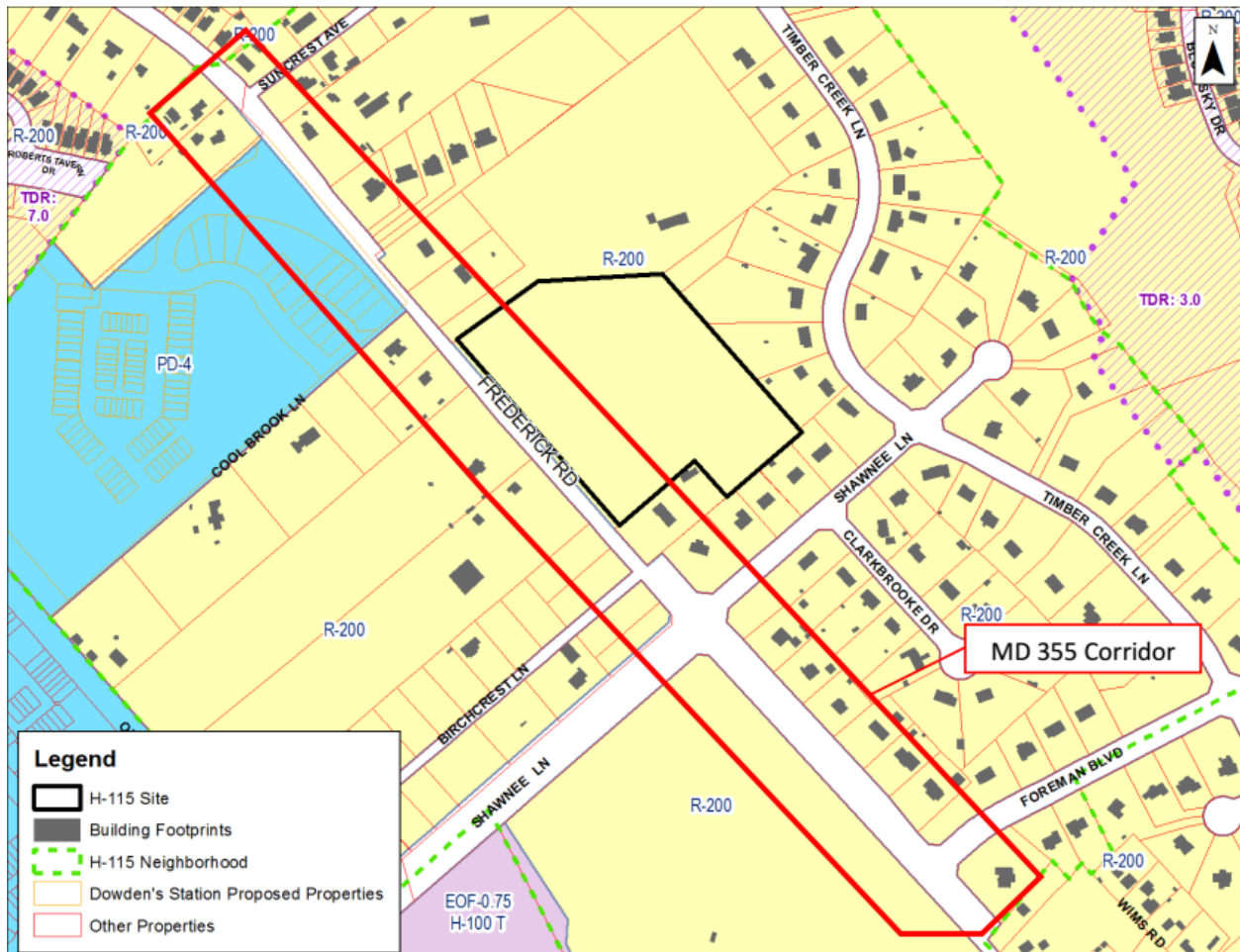
Staff determined that its boundaries were more appropriate because the property was better centered within the area and the Applicant's larger "neighborhood" included "many properties minimally affected by the proposed plan." Exhibit 29, p. 3. The Applicant argues that the areas to the north are properly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

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

Staff characterized the neighborhood as follows:

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

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



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

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

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

C. Proposed Development and Floating Zone Plan

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

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

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

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

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

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



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

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

D. Master Plan

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

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

A. Implement comprehensive planning objectives by:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

E. Public Facilities

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

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

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

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

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

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

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

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

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

1. Transportation Facilities

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

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

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

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

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

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

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

2. School Facilities

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

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

3. Water and Sewer

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

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

4. Other Public Facilities

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

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

F. Environment

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

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

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

1. Impervious Area

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

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

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

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

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

2. Forest Conservation

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

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

G. Community Concerns

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

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

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

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

V. FINDINGS AND CONCLUSIONS

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

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

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

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

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

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

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

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

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

b. further the public interest;

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

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

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

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

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

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

d. be compatible with existing and approved adjacent development;

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

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

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

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

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

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

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

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

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

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

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

the property; and

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Eligibility for a Floating Zone (§59.5.1.3)

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

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

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

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

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

* * *

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

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

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

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

2. Residential Base Zone

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

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

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

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

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

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

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

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

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

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

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

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

Division 5.2. Residential Floating Zones

Section 5.2.2. Purpose

The purpose of Residential Floating Zones is to:

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

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

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

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

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

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

Section 59.5.2.3. Land Uses

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

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

Section 59.5.5.4. Building Types Allowed

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

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

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

A. Density

* * *

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

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

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

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

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

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

B. Setback and Height

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

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

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

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

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

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

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

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

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

C. Lot Size

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

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

D. Minimum Open Space

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

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

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

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

E. General Requirements

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

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

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

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

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

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

VI. CONCLUSION

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

VII. RECOMMENDATION

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

Dated: January 30, 2017

Respectfully submitted,



Lynn A. Robeson
Hearing Examiner