

# OPPOSITION TO H-159 NOTLEY ROAD

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Keith Nusbaum  
Party of Record

# CONTENTS

- Floating Zoning Plan Requirements
- CRNF Requirements
- Summary



# **FLOATING ZONE PLAN REQUIREMENTS**

## SECTION 5.1.3.C.2

- 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](#).

## FRONT OF PROPERTY

Does the property front on a non-residential street both confront or abut property in a commercial, residential, employment, or industrial zone? A Yes, it does. It fronts on New Hampshire Avenue, which is classified as a boulevard.

THE PROPERTY DOES  
NOT FRONT ON  
NEW HAMPSHIRE AVENUE

# FRONT OF PROPERTY

<b>Principal Building Setbacks (min.)</b>		
	<b>Required/Permitted</b>	<b>Proposed</b>
5.3.5.B - Bldg. Setbacks (minimum) from the site boundary	Established by Floating Zone Plan	From Notley Road (south): Front: 20'
Side street setback	Set at Site Plan	From New Hampshire Avenue (east): Front 15'

## FRONT OF PROPERTY

from Notley Road, will read as single-family structures, as opposed to stacks of individual townhome units. Additionally, the front setback along Notley Road has been increased from the 40.5 feet previously proposed (as measured from the back of the curb) to 43.5 feet, to provide a greater buffer and larger “front yards” along the street. Because of fire

## FRONT OF PROPERTY

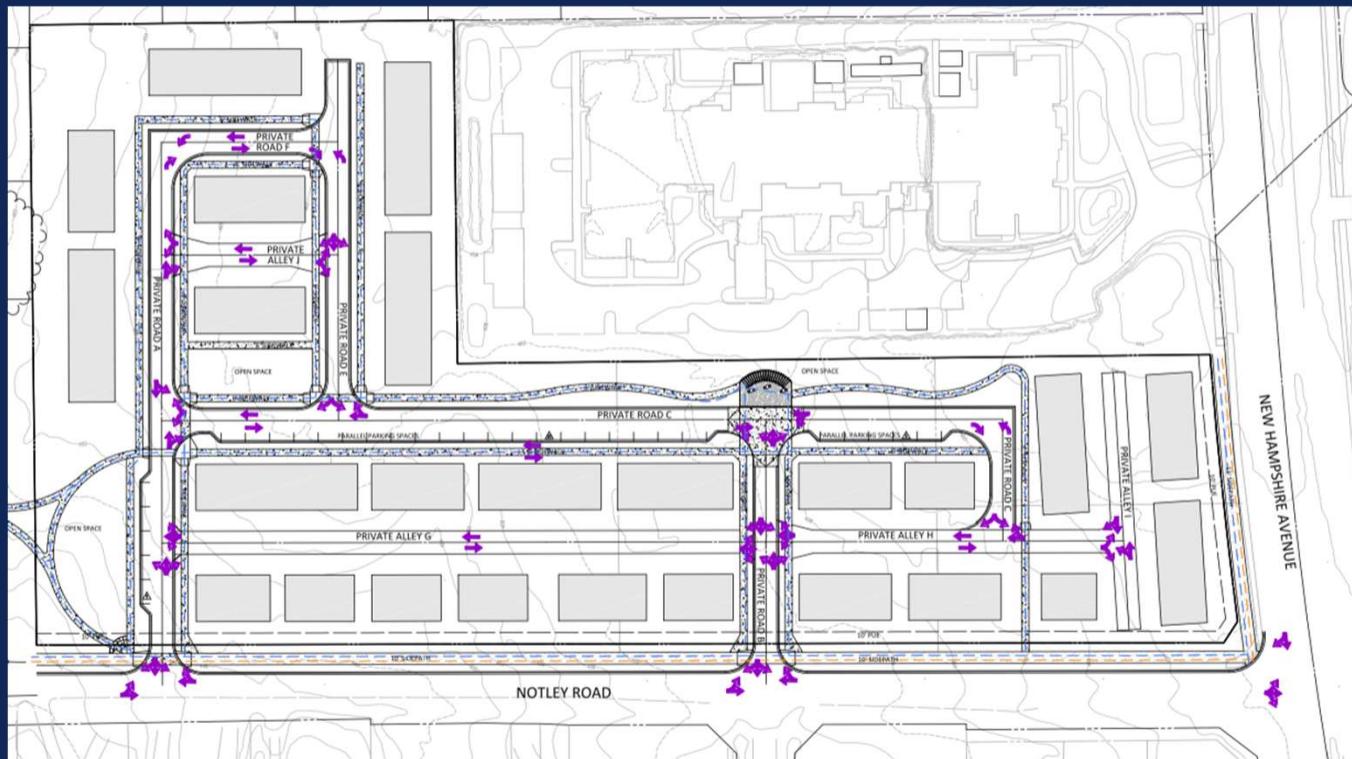
23 Q And the setback along Notley Road, which  
24 I believe you testified to, was more -- was --  
25 well, you could testify to what the dimension is

1 behind the back of curb and how that relates to  
2 the underlying R-200 zone?

3 A Yes. So the R-200 -- let's see if I  
4 could -- which ones? So the R-200 zone --  
5 where's -- sorry. I've gotten ahead of myself a  
6 little bit.

7 Yes. So the R-200 zone, these -- the  
8 setback from the curb to the front of the building  
9 is about 44 feet now, and that is to replicate  
10 what is required under the R-200 zone. We're  
11 abutting R-90 zones, R-200 -- or confronting R-90,  
12 R-200, so there are buildings that set -- that are  
13 set back from the curb for several different  
14 things, from 30 feet to the curb line up to 60  
15 feet on the larger lots, so well within that range  
16 that's around us today, and therefore compatible  
17 in terms of residential design parameters that we  
18 could be looking at.

# CIRCULATION PLAN



## Ex 48

## SECTION 5.1.3

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:

- j. 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.

- o Categories of Section 5.1.3.D
- o Transit & Infrastructure
- o Vicinity & Facilities
- o Environment & Resources

## SECTION 5.1.3 PREREQUISITES NOT MET

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 1/2 mile.
	The site is adjacent to a pedestrian route that provides access to existing public park and recreation facilities that satisfy a minimum of 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 3/4 mile.
	The site is adjacent to a pedestrian route that provides access to an existing grocery store or County-permitted farmer's market within 1/4 mile.

From Ex 38 at page 18-22

## BICYCLIST ROUTE

The site is adjacent to a bicyclist route that provides access to commercial services within 3 miles.

The site has frontage on New Hampshire Avenue, which is planned to have a shared-use path per the County's *Bicycle Master Plan*. The shared-use path will provide access to the Colesville Center, a commercial shopping center located within  $\frac{1}{4}$  mile of the Property.

## BICYCLIST ROUTE

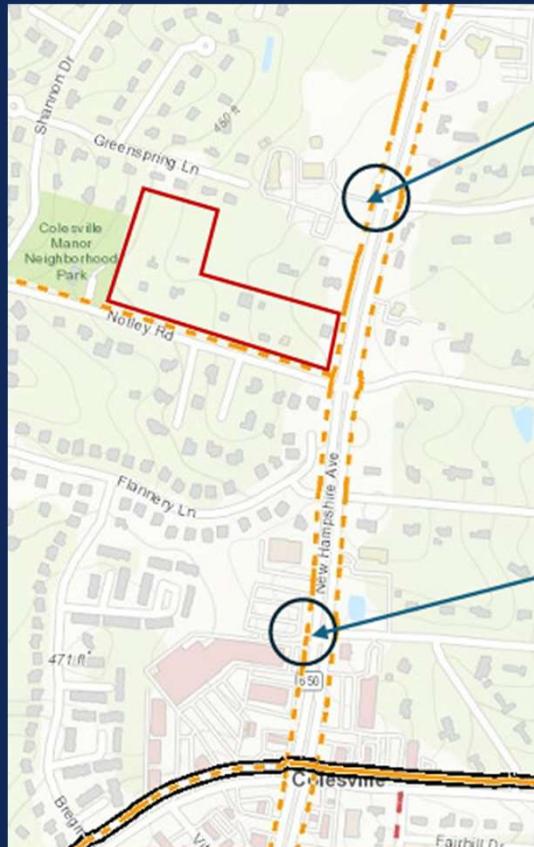
20 Q Correct. So the solid lines that  
21 appear, I believe, in front of the retirement home  
22 -- retirement community, that is where there is a  
23 current side path. And the dashed lines  
24 represent, proposed or master-planned side paths;  
25 is that correct?

1 A Correct.

2 Q Okay. So the -- where the dashed lines  
3 are there is not a side path bike lane at that  
4 point?

5 A There's not a side path bike lane on  
6 those areas that are dashed.

# BICYCLE MASTER PLAN MAP



From Ex 68 at slide 48

Welcome to the recommendations for the Bicycle Master Plan. On this page you will be able to review a brief description of bikeway facility types, learn about bikeway and bicycle parking station recommendations and view bikeway implementation prioritization.

## Existing   Proposed

		Trails
		Sidepaths
		Separated Bike Lanes
		Striped Bikeways
		Bikeable Shoulders
		Shared Roads

Excerpt from Montgomery County  
Bicycle Master Plan Legend

# BICYCLIST ROUTE

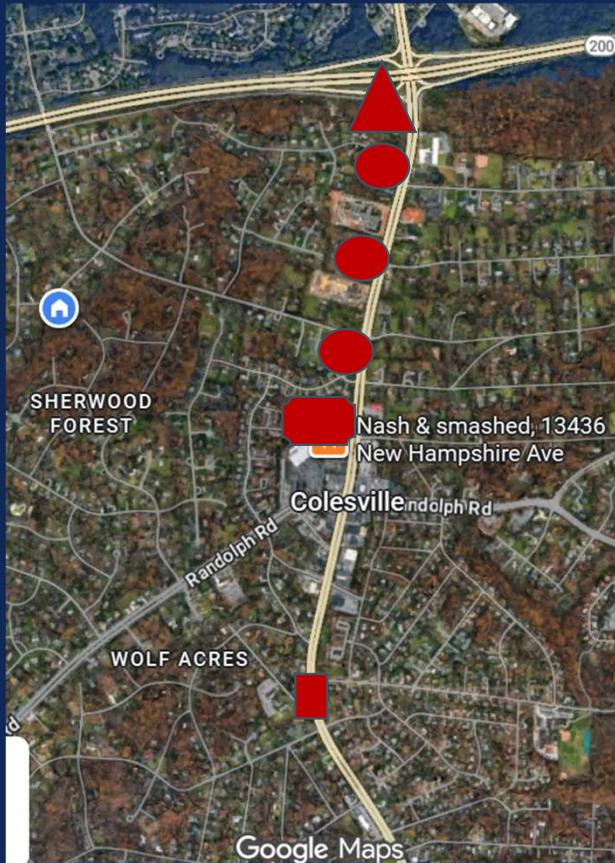
13 Q And, Mr. Sloan, to clarify for the  
14 record, are you -- your professional opinion about  
15 the way that this is worded and has been  
16 interpreted in the past, that the prerequisite is  
17 looking at a snapshot in time as to what the  
18 property has today in order to determine those  
19 properties that are appropriate for rezonings,  
20 irrespective of what the future development would  
21 hold. So to the Hearing Examiner's question, this  
22 prerequisite, in your professional opinion -- is  
23 it intending to look at future development? Or is  
24 it intending to look at the property's conditions  
25 today?

1 A The prerequisite is intended to look at  
2 the property's conditions today. And I agree with  
3 Staff that we meet this prerequisite, that it has  
4 currently the access that it's necessary to  
5 qualify.

6 HEARING EXAMINER SOKONI: So you think  
7 it's assessing the property as it is today,  
8 regardless of what it will be in the future?

9 THE WITNESS: That's correct.

# VICINITY AND FACILITIES



# BIKE LANE PHOTO



Marked Bike Lane



New Ex \_\_\_\_

# BIKE LANE PHOTO

- Signed Bike Lane



New Ex \_\_\_\_

# BIKE LANE PHOTO

- Signed Bike Lane



New Ex \_\_\_\_

# BIKE LANE PHOTO

- Signed Bike Lane



New Ex \_\_\_\_

# BIKE LANE PHOTO



Signed Bike Lane Ends



New Ex \_\_\_\_

# BIKE LANE PHOTO

 Marked and Signed Bike Lane Begins



New Ex \_\_\_\_

# BIKE LANE PHOTO

 Marked and Signed Bike Lane Begins



New Ex \_\_\_\_

## BICYCLIST ROUTE

18 Q So, Mr. Sloan, Mr. Nusbaum had asked you  
19 about what that sign said in the photo, and you  
20 said it says, Bike Lane Ends. But in your  
21 observation, you commented that the bike lane  
22 continued past. But does that spot -- where even  
23 if the bike lane ended there, gets you to the  
24 access to the commercial shopping center?

25 A That's right. There's a sidewalk on the

1 lower-right side that you can see, and you can  
2 take that to the --  
3 Q So in --  
4 A -- shopping center.

## BICYCLIST ROUTE

The site is adjacent to a bicyclist route that provides access to commercial services within 3 miles.

The site is adjacent to a bicyclist route that almost gets you to commercial services but then you can get off your bike and walk it along the sidewalk the rest of the way within 3 miles

## SCHOOL PROXIMITY

The site is adjacent to a route that provides access to an existing or master-planned school within  $\frac{1}{2}$  mile.

- The site is adjacent to a route that provides access to an existing or master-planned school within  $\frac{1}{2}$  mile.
  - The site is a 0.4-mile walk from the Kids MCS Colesville Center offering pre-K – 12 years programming and Casa De Montessori
  - Crossing of New Hampshire will be made safe with installation of new signal

# SCHOOL PROXIMITY



Division of Early Childhood | Office of Child Care  
CHECK CHILD CARE MARYLAND

## Program Detail

**Provider Name:** Casa De Montessori

**Phone:** (301) 384-8404

**E-mail:** jbentley@casademontessori.

**License #:** 130288

**Approved For:** Monday to Friday  
7:30 AM - 6:00 PM  
August to July

**County:** Montgomery County

**Fatalities:** 0

**Provider Status:** Continuing - Full

**Serious Injuries:** 0

**Capacity:** 70

**MARYLAND EXCELS Level:**

2 years

3 years

4 years

5 years

5 years to 15 years

New Ex \_\_\_\_

# SCHOOL PROXIMITY



Division of Early Childhood | Office of Child  
Care

**CHECK CHILD CARE MARYLAND**

## Program Detail

**Provider Name:** Colesville Child  
Care

**Phone:** (301) 384-0575

**E-mail:** gloria@mdchildservices.org

**License #:** 33915

**Approved For:** Monday - Friday

**County:** Montgomery  
County

7:00 AM - 6:30 PM

January - December

**Provider Status:** Continuing -  
Full

**Fatalities:** 0

**Serious Injuries:** 0

**Capacity:** 95  
2 years  
3 years  
4 years  
5 years  
5 years to 15  
years

**MARYLAND EXCELS Level:** 1

New Ex \_\_\_\_

# SCHOOL PROXIMITY

**Centers locations:**

<b>Colesville Center</b> 14015 New Hampshire Ave. Silver Spring, MD 20904	<b>Sherwood Center</b> 1403 Olney-Sandy Spring Road Sandy Spring, MD 20860
<b>Mary Hart Center</b> 13100 Ardennes Ave, Rockville MD 20851	

**Weekly tuition rates:**

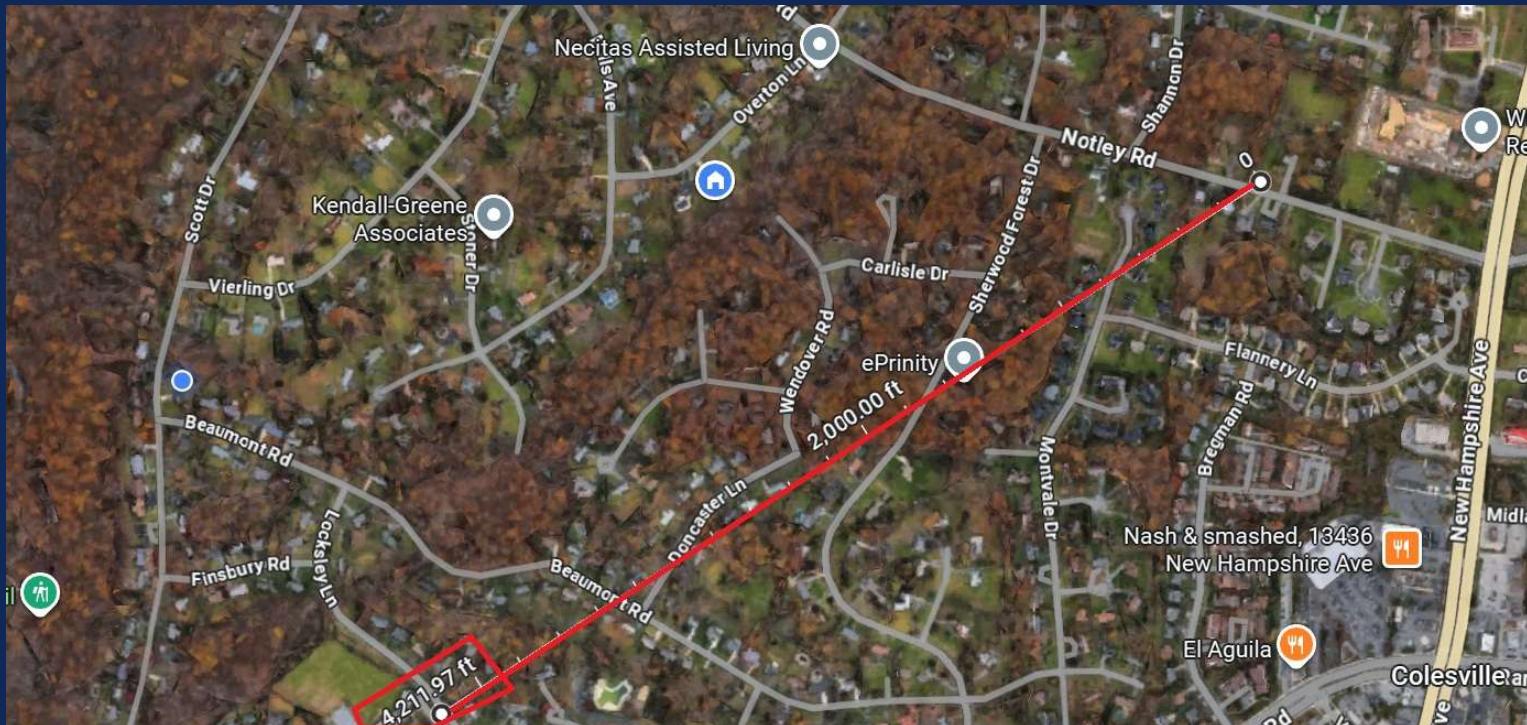
There is a 10% sibling discount

	3 Days	4 Days	5 Days
Preschool Full Time 2 years and Non-Toilet Trained 3 & 4 Years	320	340	355
Preschool Full Time 3 & 4 Years	300	325	340
Preschool Part Time 8:30 am to 12:30 pm	235	255	275
Before School Care	140	150	160
After School Care	155	165	180
Before & After School Care	215	235	250

A non-refundable registration fee of \$75.00 per child is required to reserve a space in any of the centers. If your child is re-enrolling (is coming back for the summer programs or has been enrolled for the fall), the registration fee will be waived, and you will be liable to pay the contracted tuition.

New Ex \_\_\_\_

# SCHOOL PROXIMITY



4211 feet = .8 miles

New Ex \_\_\_\_\_

## PARKS AND RECREATION

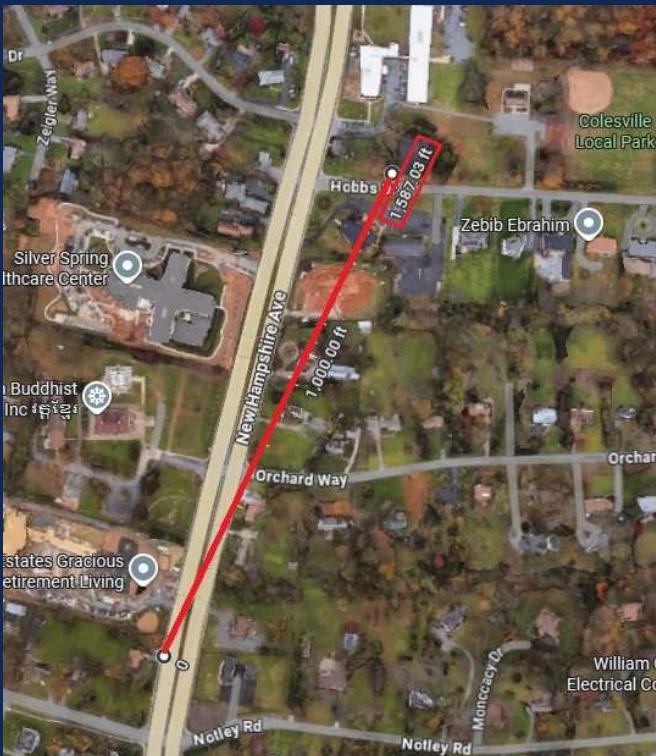
- ii. *The site is adjacent to a pedestrian route that provides access to an existing public park and recreation facilities that satisfy a minimum of 30% of the recreation demand under the Planning Board's Recreation Guidelines, as amended, within  $\frac{3}{4}$  mile.*

The Property abuts Colesville Neighborhood Park. Additionally, Colesville Local Park and Sherwood Forest Park are both within a  $\frac{3}{4}$  mile radius of the Project. These parks fulfill at least 30% of the recreation demand for the Project.

## PARKS AND RECREATION

The Project is adjacent to Colesville Manor Neighborhood Park, which is well within the 3/4-mile requirement. Colesville Local Park is also within a 3/4-mile radius of the Site. These parks satisfy 30% of the recreation demand for the Project.

# RADIUS MAP

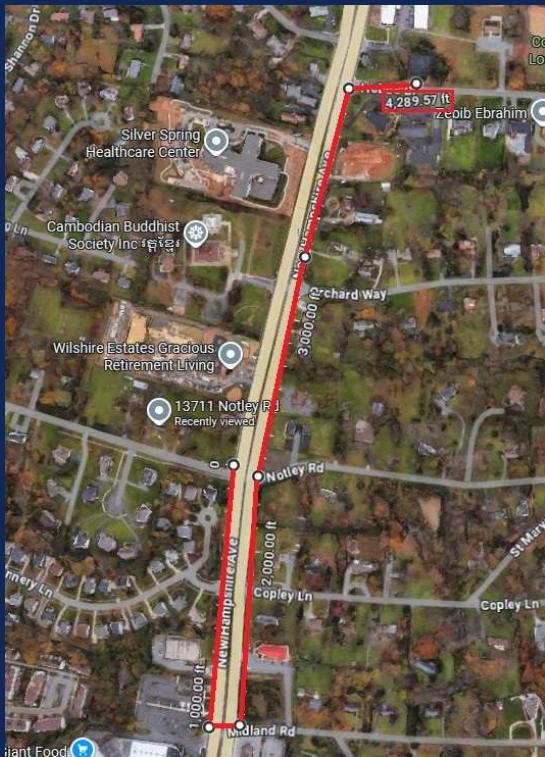


1587 feet = .3 miles

## PARKS AND RECREATION

- ii. *The site is adjacent to a pedestrian route that provides access to an 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  $\frac{3}{4}$  mile.*

# PEDESTRIAN ACCESS MAP



4289 feet = .81 miles

# PARKS AND PLANNING TOOL

## 6.1.3 Supply Credit for Existing Off-Site Public Recreation Facilities in Residential Zones

1. The credit for each off-site facility must not exceed **35 percent** of its supply value for each population category.
2. The total credit for all off-site facilities must not exceed **35 percent** of the required demand points for each population category.
3. The values for those off-site facilities may yield a maximum of **35 percent** of the full facilities values (listed on pages 16-17).

# PARKS AND PLANNING TOOL

**STEP 2 GEO-LOCATION: CLICK ON THE MAP TO CHOOSE THE PROPOSED PROJECT LOCATION**

Master Plans  Parks  Facilities  Trails  Bikeways  Parcels [Draw Trail](#) [Clear Trail](#)

Project is located in Master Plan: WHITE OAK MASTER PLAN

OFF SITE FACILITIES WITHIN HALF MILE RADIUS FROM PROJECT LOCATION

Quantity	Park Facility	Tots	Children	Teens	Young Adults	Adults	Seniors
1	Handball Court *	0	2	10	20	20	2
1	Playground, Multi-age (Teen-fri...	9	11	3	2	4	2
1	Woodland	1	1	2	7	9	1
4	Bench *	0	0	0	0	0	0
Total Offsite Supply Points:		10	14	15	29	33	5
25% of Total Offsite Supply Points		2	5	5	10	12	2
Max Allowed Pts (35% of Total ...		6	10	7	24	33	5
Actual Assigned Offsite Supply ...		3	5	5	10	12	2

**Note:** Handball Court is not applicable, but large open lawn and 2 seating areas are. In combination with the other recreation facilities, the total off-site supply equals:

- Tots = 18
- Children = 23
- Teens = 23
- Young Adults = 35
- Adults = 34
- Seniors = 15

# PARKS AND PLANNING TOOL

Age	Total Supply	Reduction	Actual Supply	Demand	Percent
Tots	18	35%	6	18	33%
Children	23	35%	8	29	28%
Teens	23	35%	8	21	38%
Young Adults	35	35%	12	69	17%
Adults	34	35%	12	95	13%
Seniors	15	35%	5	14	36%
<b>TOTAL</b>	<b>148</b>	<b>35%</b>	<b>51</b>	<b>246</b>	<b>21%</b>

# PARKS AND PLANNING TOOL

## Zoning Rule

ii. *The site is adjacent to a pedestrian route that provides access to an 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  $\frac{3}{4}$  mile.*

## Recreation Guidelines Rule

The existing public facility must be so located as to provide safe pedestrian access to the facility from the proposed project's accessible site boundary and within a 10-minute walk. Safe pedestrian access is provided by neighborhood roads and/or roads that have sidewalks in addition to path and trail systems.

## Web Tool Rule

The Recreation Guidelines Web Tool automatically provides information to meet the above listed requirements. Upon determination of the project site location, the tool identifies the area's existing off-site public recreation facilities within a 10-minute walk, itemizes the applicable off-site recreation facility types and lists the supply values of those facilities.

New Ex \_\_\_\_

# PARKS AND PLANNING TOOL

The guidelines address recreation facilities required under subdivision and site plan applications for all types of residential development, 20 units and greater, including urban, suburban and rural, submitted to the Montgomery County Planning Board.

## VICINITY AND FACILITIES

- iii. *The site is adjacent to a pedestrian route that provides access to an existing grocery store or County farmer's market within ¼ mile.*

The Property is adjacent to a pedestrian route along New Hampshire Avenue that provides access to the Giant Food in the Colesville Center, which is within a ¼ mile walkshed of the Property.

## VICINITY AND FACILITIES

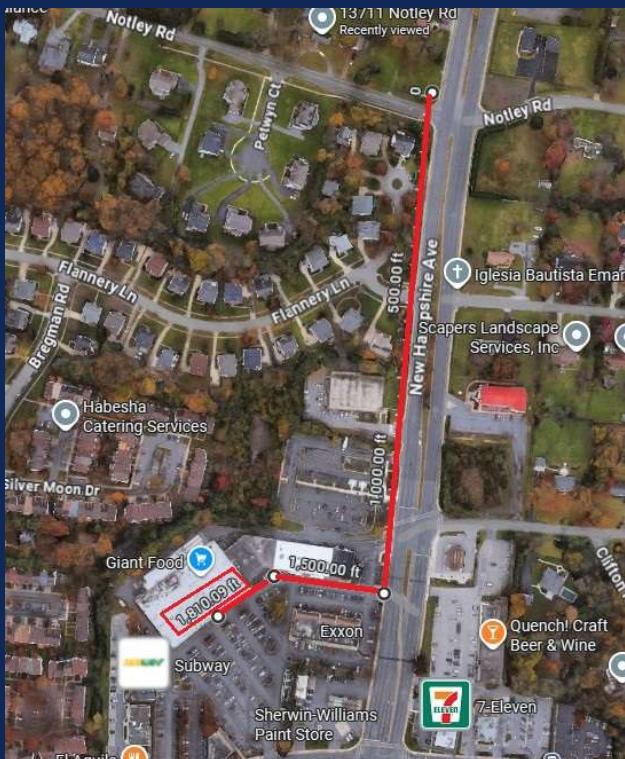
The Property fronts on New Hampshire Avenue with an existing sidewalk that connects to the Colesville Center, a strip shopping center, located just under  $\frac{1}{4}$  mile from the Site. Within the Colesville Center is a Giant Food grocery store and other neighborhood retail stores and restaurants.

# RADIUS MAP



1487 feet = .28 miles

# PEDESTRIAN ACCESS MAP



1810 feet = .34 miles

## PEDESTRIAN ACCESS MAP

- The site is adjacent to a pedestrian route that provides access to an existing grocery store or County-permitted farmer's market within  $\frac{1}{4}$  mile.
  - The Colesville Center is less than  $\frac{1}{4}$  mile (1,320') from the site with a sidewalk along New Hampshire Avenue
  - Within the Colesville Center, along with other retail and restaurants, is a Giant grocery store

The site is adjacent to a pedestrian route that provides access to an existing grocery store or County-permitted farmer's market within  $\frac{1}{4}$  mile.

Applicant Cannot  
Rewrite the Standard

# SHOPPING CENTER PHOTO



Ex 72 at 2

# SHOPPING CENTER PHOTO



Ex 72 at 3

# SHOPPING CENTER PHOTO



# SHOPPING CENTER PHOTO



Ex 72 at 5

# SHOPPING CENTER PHOTO



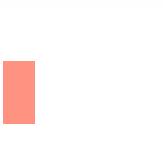
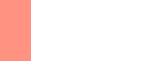
Ex 72 at 6

## GROCERY STORE

- iii. *The site is adjacent to a pedestrian route that provides access to an existing grocery store or County farmer's market within ¼ mile.*

The site is adjacent to a pedestrian route that provides access to a commercial center within ¼ mile that also contains a grocery store further away.

## SECTION 5.1.3 PREREQUISITES NOT MET

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 1/2 mile.	
	The site is adjacent to a pedestrian route that provides access to existing public park and recreation facilities that satisfy a minimum of 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 3/4 mile.	
	The site is adjacent to a pedestrian route that provides access to an existing grocery store or County-permitted farmer's market within 1/4 mile.	

## SECTION 5.1.3

- o Categories of Section 5.1.3.D
- o Transit & Infrastructure - 2 satisfied
- o Vicinity & Facilities – 0 satisfied
- o Environment & Resources – 2 satisfied

FLOATING  
ZONE  
REQUIREMENTS  
TEST  
FAILED



# CRNF REQUIREMENTS

## SECTION 5.3.2

### **Section 5.3.2. Purpose**

The purpose of the Commercial/Residential Floating zones is to:

- A. allow development of mixed-use centers and communities at a range of densities and heights flexible enough to respond to various settings;
- B. allow flexibility in uses for a site; and
- C. provide mixed-use development that is compatible with adjacent development.

## MIXED USE DEFINITION (ICSC, NAIOP, BOMA, NMHC)

Though mixed-use is commonly defined as a project that features the mixing of at least three significant revenue-producing uses, i.e. retail, residential and commercial, today the definition represents a collection of components working together simultaneously—and the project may include a non-revenue-producing—though traffic-generating—element. Thus, as a result of the survey, the new working definition for mixed-use development for these four associations is:

*A mixed-use development is a real estate project with planned integration of some combination of retail, office, residential, hotel, recreation or other functions. It is pedestrian-oriented and contains elements of a live-work-play environment. It maximizes space usage, has amenities and architectural expression and tends to mitigate traffic and sprawl.*

## MIXED USE DEFINITION (MONTGOMERY PLANNING DEPARTMENT)

**How do we define mixed-use?** Typically, a project that provides more than one use or purpose within a shared building - housing, office, retail, commercial, recreational, or another use - is considered "mixed-use." **Traditional mixed-use projects typically have a single primary use paired with ground floor retail.**

**Emerging mixed-use typologies** differ from the primary use/ground floor retail model, often **pairing a typical primary use with a non-retail co-primary, secondary or tertiary use.** Examples of atypical mixed-use include office buildings paired with industrial makerspaces, senior living communities with assisted living services, live-work developments, urban agriculture on building rooftops, and gallery spaces with attached studios.

## APPLICANT'S ARGUMENT

### **C. Section 5.3.2. - Purpose of the CRNF Zone**

The CRNF Zone is an appropriate zoning classification for the Property. The intent of the CRNF Zone is to allow mixed-use development at a range of densities and heights flexible enough to respond to various settings. The CRNF Zone does not require a mix of uses on any individual

property, but rather allows flexibility in uses for a site. Here, the Property is proposing a residential development to promote compatibility with the Surrounding Neighborhood (which is another purpose of the CRNF Zone). The County in approving prior Floating Zones has recognized that the CRNF Zone is appropriate for all-residential developments (*e.g.* H-156).

## APPLICANT'S ARGUMENT

20      And in some cases, we make the planning  
21 determination that horizontal mixed use is as  
22 important as vertical mixed use, where we're  
23 trying to limit and create compatible building  
24 typologies. And so a townhouse development next  
25 to a commercial center, for example, is mix of

1      uses in that community. And the CR zones allow  
2      you to develop under those -- under that scenario.

25      Q    You mentioned during your testimony that

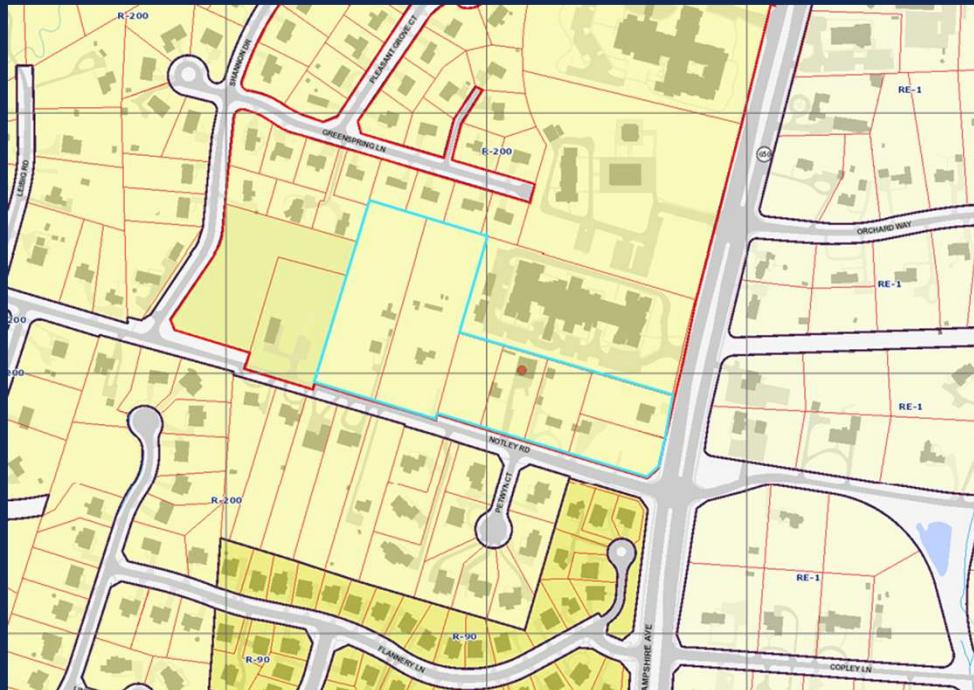
1      this project provided an important mix -- or an  
2      important horizontally-mixed-use opportunity.  
3      Do you remember that?

4      A    I think it was more along the lines of  
5      it is part of a horizontal-mixed-use community.

6      Q    Can you define a horizontal-mixed-use  
7      community for us?

8      A    When a variety of uses are adjacent to  
9      each other, not on top of each other.

# ZONING MAP



## CRNF LAND USE

### Section 5.3.3. Land Uses

- A. The following land uses are allowed in the Commercial/Residential Floating zones:
  - 1. In the CRNF zones, only the uses allowed in the CRN zone are allowed.
  - 2. In the CRTF zones, only the uses allowed in the CRT zone are allowed.
  - 3. In the CRF zones, only the uses allowed in the CR zone are allowed.

# CRN GENERAL INTENT

## A. In General

The CRN, CRT, and CR zones permit a mix of residential and nonresidential uses at varying densities and heights. The zones promote economically, environmentally, and socially sustainable development patterns where people can live, work, recreate, and access services and amenities. The application of the CRN, CRT, and CR zones is appropriate where impacts can be mitigated by co-locating housing, jobs, and services.

# CRN GENERAL INTENT

The intent of the CRN, CRT, and CR zones is to:

1. implement the recommendations of applicable master plans;
2. target opportunities for redevelopment of single-use commercial areas and surface parking lots with a mix of uses;
3. encourage development that integrates a combination of housing types, mobility options, commercial services, and public facilities and amenities, where parking is prohibited between the building and the street;
4. allow a flexible mix of uses, densities, and building heights appropriate to various settings to ensure compatible relationships with adjoining neighborhoods;
5. integrate an appropriate balance of employment and housing opportunities; and
6. standardize optional method development by establishing minimum requirements for the provision of public benefits that will support and accommodate density above the standard method limit.

## CRN SPECIFIC INTENT

### B. Commercial Residential Neighborhood (CRN)

The CRN zone is intended for **pedestrian-scale, neighborhood-serving mixed-use centers** and transitional edges. Retail tenant ground floor footprints are limited to preserve community scale.

## CRNF AS PROPOSED FAILS

- Application cannot satisfy the standards of the proposed zone as required by Section 59.7.2.1.E.2.c
  - Fail to Satisfy the Necessary Prerequisites
  - CRNF Requires Mixed-Use Development

# SUMMARY