

Resolution No. 15-1680
Introduced: October 31, 2006
Adopted: October 31, 2006

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

By: County Council

SUBJECT: APPLICATION NO. G-832 FOR AMENDMENT TO THE ZONING ORDINANCE MAP, Stephen J. Orens, Esq., Attorney for Owner Ralph J. Duffie, Inc., OPINION AND RESOLUTION ON APPLICATION

Tax Account Nos. 02-00017022 and 02-00021225

OPINION

Application No. G-832, filed on November 8, 2004 by Applicant Ralph J. Duffie, Inc., requests reclassification from the R-200 Zone (Residential, one-family, half-acre minimum lot size) to the PD-11 Zone (Planned Development, 11 units per acre) of 37 acres of land located on the north side of Shawnee Lane in Clarksburg, between Gateway Center Drive and MD Rte. 355, in the 2d election district. The property is identified as Lots 27 and 28 of the Garnkirk Farms Subdivision. As required under the PD Zone, the application was accompanied by a Development Plan with detailed specifications related to land use, density, development standards and staging. Pursuant to Code § 59-D-1.11, development under the PD Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the PD Zone.

The Hearing Examiner recommended approval of the proposed rezoning on grounds that the proposed development would be in substantial compliance with the applicable master plan, would comply with the purposes, standards and regulations of the PD-11 Zone, would provide for a form of development that will be compatible with existing and planned land uses in the surrounding area, and would serve the public interest. The Montgomery County Planning Board (the "Planning Board") and its Technical Staff made similar recommendations. The District Council agrees with these

conclusions, and incorporates herein the Hearing Examiner's Report and Recommendation dated October 20, 2006.

The subject property consists of approximately 37.176 acres of undeveloped, wooded land located within the Clarksburg Special Protection Area. It is located on the north side of Shawnee Lane, approximately 400 feet northeast of its intersection with Gateway Center Drive and 1,700 feet west of MD Rte. 355, in Clarksburg, east of I-270. The property is identified as Lot 27 (19.018 acres) and Lot 28 (18.158 acres) in the Garnkirk Farms Subdivision, and is generally rectangular in shape. There is a small area of stream valley buffer in the northern corner of the property (0.61 acres), which is associated with a stream that is off the property, about 40 feet to the north. This area would not be affected by the proposed development. The property has a gently rolling topography, rising about 40 feet from Shawnee Lane, on the south, to a high point in the middle of the site. It then slopes back down towards the stream north of the property.

To the west and northwest, the subject property abuts a series of industrial uses in the I-3 Zone (Technology and Business Park), which straddle Gateway Center Drive and abut I-270 to the west. To the south, the subject property confronts portions of three tracts: (1) the "Eastside" property, which was reclassified to the PD-11 Zone by LMA No. G-824 in 2005, and has an approved preliminary plan for a 285-unit development of single-family attached and multi-family dwellings; (2) a parcel owned by the Montgomery County Board of Education and used as a bus depot; and (3) a property in private ownership that is occupied by a moving company. To the north, the subject property is diagonally adjacent to the "Gateway Commons" property, on which a 292-unit residential development is under construction, in the R-200/TDR Zone, with a mix of single-family detached and attached homes.

The area immediately east of the subject property, between the site and MD 355, is classified under the R-200 Zone and is a wooded area, sparsely developed with single-family detached homes and a church. The portion of this area closest to the subject site is undevelopable stream valley buffer. The development area of the subject property is separated from this sparsely developed area by the future right-of-way proposed for Observation Drive, which is planned as a four-lane road with a

150-foot right-of-way and a wide median down the middle, to accommodate the future Capital Cities Transitway, as proposed in the *1994 Clarksburg Master Plan* (the "Master Plan"). The middle of the proposed right-of-way coincides with the property line of the subject site. The Applicant has agreed to provide the necessary dedication and construct the first two lanes of the road across most of the site frontage, to provide convenient site access. The Master Plan also proposes a transit stop on property immediately across the future Observation Drive from the northeast corner of the subject site. That location would place nearly all of the proposed residential units within one-quarter mile of the transit stop. To facilitate eventual transit, the Applicant has purchased property abutting the northeast corner of the site and agreed to hold it in reservation for a period of five years, to make it available to the County for use in constructing transit-related parking.

The surrounding area for this application consists, roughly, of the area bounded by Clarksburg Road to the north and northwest, I-270 to the west, West Old Baltimore Road to the south and MD 355 to the east and northeast. This area lies within the 900-acre "Transit Corridor District Study Area" identified in the Master Plan. The surrounding area contains a mix of existing uses including businesses in the I-3 Zone along Gateway Center Drive, between the subject site and I-270; the Comsat property, a commercial compound in the I-3 Zone southwest of the subject site; a Board of Education bus depot on a 20-acre parcel in the R-200 Zone, confronting part of the subject site to the south; a moving company in the I-3 Zone, diagonally confronting the subject property to the east; two schools on a large, R-200 tract owned by the Board of Education northeast of the site; residential development farther south, near West Old Baltimore Road; scattered single-family detached residences and a church between the subject site and MD 355 to the east, all in the R-200 Zone; and undeveloped land to the south and north that has been approved for mixed residential development at densities similar to that proposed here ("Eastside" to the south and "Gateway Commons" to the north, the latter currently under construction).

The subject property was classified under the R-R (Rural Residential) Zone in the 1958 County-wide comprehensive rezoning. The R-R Zone was later redesignated the R-200 Zone, and the

subject property's zoning has remained the same since then. The R-200 Zone was reaffirmed most recently by Sectional Map Amendment G-710 in 1994, which followed the adoption of the 1994 *Clarksburg Master Plan*. A previous application for rezoning of the property to the I-3 Zone, LMA No. G-617, was filed in 1988 and subsequently withdrawn.

The Applicant proposes to construct a residential community with 408 residential

units of three types, as follows:	Multi-family units	184 (45 percent)
	Single-family attached	203 (50 percent)
	Single-family detached	21 (5 percent)

The 203 single-family attached units would consist of 141 townhouses (35 percent of the total units) and 62 two-over-two units (15 percent of the total units). The latter would be considered one-family, attached dwellings, as defined in the Zoning Ordinance, because each unit would have its own entrance to the outside, plus a small patio or garden adjacent to its outside entrance for the exclusive use of residents of that unit.

The Development Plan depicts a community with a main road, Street "A," which connects to Shawnee Lane and intersects other internal roads which, in turn, intersect Observation Drive. The streets and sidewalks connect in a grid pattern, with two vehicular entrances from Observation Drive and one from Shawnee Lane (opposite the proposed Eastside entrance). Homes are clustered around recreational facilities and green spaces – two swimming pools, a clubhouse, an outdoor amphitheater and several open play and sitting areas. Except for the multi-family building, each block of homes contains a variety of residential unit types, with single-family detached homes often abutting or confronting townhouses, and townhouses often abutting or confronting detached homes and two-over-two units. The multi-family units are shown in a single building, comprised of several wings surrounding an interior parking structure. This building is to be located in the northeast corner of the site, across from proposed transit stop. Most wings of the building are directly across internal streets from other unit types or a common play area.

The Applicant proposes to construct Observation Drive with one lane in each direction, on land to be dedicated from the subject property, for a distance of 1,700 feet beginning at Shawnee

Lane and ending just past the second entry point into the site. The center line for Observation Drive is proposed to coincide with the property line for the subject site, consistent with the alignment recommended in the Master Plan and on a more detailed map subsequently created by Technical Staff. The Master Plan calls for Observation Drive to ultimately be widened to two travel lanes in each direction, with a median wide enough to accommodate the proposed transitway, and to connect with the portion of Observation Drive being built for the Gateway Commons development to the north. That, in turn, would connect to Stringtown Road extended, providing an easy route from the subject site to I-270. The widening and extension would not, however, be the responsibility of this Applicant. The Applicant's traffic planner opined that if Observation Drive is not extended or widened, the portion to be constructed by the Applicant will be sufficient, as part of the local road network, to provide adequate access to the subject site.

The proposed development would abut roadways to the east and south, confronting a mix of residential uses and non-residential uses with substantial setbacks. To the north and west, an industrial park wraps around two sides of the subject site. The proposed community would be buffered from the noise and activity of the industrial park by retention of a substantial wooded buffer running along the full length of the north side of the development, and along about 75 percent of the western side. The Applicant indicates that a wood-chip trail is proposed through the forested area, and views of the forested area would be available from the roadway shown along the northern and western edges of the development, as well as from homes facing that roadway.¹ Technical Staff describes the forested buffer as about 100 feet deep on the west side and 275 feet at its widest point along the northwestern boundary. Staff recommends that the Applicant improve the quality of the retained forested area by planting suitable hardwood species that will make it more attractive for residents.

A pedestrian network parallel to, but separate from, the street system would ensure pedestrian access and safety. Street parking is provided, in addition to driveways and garages, for greater convenience.

¹ The record suggests that this forested buffer will be subject to a Category One Forest Conservation Easement, which may prohibit a trail.

The Applicant has presented building height as composed of two variables:

1. The "building structure height" as measured from the floor of the first above-grade level to the mid-point of the roof.
2. The grade-dependent height from the centerline of the street to the floor of the first above-grade level.

Together, these two components approximate the standard calculation of building height prescribed in the Zoning Ordinance, which measures height from the street grade to the mean height level between the eaves and ridge (for a sloped roof). The Applicant has taken the unusual approach of splitting these two components so that it can make commitments about the building structure height, without taking into account grading conditions. For each building type proposed on the Development Plan, the Applicant has committed to a number of stories, a maximum "building structure height," and a total height that will not be exceeded, which includes both of the components described above. The "not to exceed" heights were derived by taking the building structure heights and adding 12 feet, which is the maximum grade change anticipated between any lot and any roadway on this site. (Observation Drive would sit about 10 to 12 feet lower than the rest of the subject site.) The Applicant suggests that typically, the total building height will be approximately three feet higher than the building structure height. It has reserved the right, however, to argue at preliminary plan and site plan for the higher "not to exceed" height levels at any point on the site where grading justifies it.

Technical Staff considers it excessive to add 12 feet of height to structures due to grading conditions. Staff and the Planning Board have urged the Applicant to avoid placing taller structures along Observation Drive, where there would be a big grade differential with the street. Staff reports that during the Planning Board's final deliberations on this case, the Applicant indicated that it is bound not to locate the tallest building on the highest elevation. This commitment is not reflected in the text of the Development Plan, but the plan layout, which is a binding representation of the approximate locations of each unit type, shows only townhouse units and the multi-family building along Observation Drive. The townhouses would not be among the tallest structures; they are described as three or four

stories, with a building structure height of 40 feet and a maximum total height of 52 feet. This compares to the two-over-two units, which are described as four stories, with a building structure height of 52 feet and a maximum total height of 63 feet. From a height perspective, then, the townhouses appear to be a reasonable choice along Observation Drive. The multi-family building is described as four stories, with a building structure height of 52 feet and a total maximum height of 64 feet, making it the tallest structure proposed for this site. It is recommended, nevertheless, for the corner of Observation Drive and Shawnee Lane, to place the highest concentration of residents in close proximity to the transit stop proposed for the opposite corner.

Technical Staff recommends that, beyond the commitments the Applicant has already made, specific building heights should be addressed at site plan. The District Council agrees with this approach, finding that the height limitations shown on the Development Plan are sufficient to support a finding of compatibility at the zoning stage.

The Development Plan divides the proposed development into four phases and states that the phases may occur in any order, and may overlap.

Pursuant to Code § 59-D-1.11, development under the PD Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the PD Zone. This development plan must contain several elements; including a land use plan showing site access, proposed buildings and structures, a preliminary classification of dwelling units by type and number of bedrooms, parking areas, land to be dedicated to public use, and land intended for common or quasi-public use but not intended to be in public ownership. Code §59-D-1.3. The Development Plan is binding on the Applicant except where particular elements are identified as illustrative or conceptual. The Development Plan is subject to site plan review by the Planning Board, and changes in details may be made at that time. The principal specifications on the Development Plan – those that the District Council considers in evaluating compatibility and compliance with the zone, for example – may not be changed without further application to the Council to amend the Development Plan.

The principal component of the Development Plan in this case is a two-page document entitled Development Plan, Exhibits 65(a) – (b). Additional elements of the Development Plan include an aerial photograph of the area (Ex. 48(f)), a zoning map indicating the relationship between the subject site and neighboring zoning and land uses (Ex. 54), and a Natural Resources Inventory//Forest Stand Delineation (“NRI/FSD”) (Ex. 31(x)).

Exhibits 65(a) and (b) satisfy the requirements of Code § 59-D-1.3 by showing access points, approximate locations of existing and proposed buildings and structures, preliminary classification of dwellings by number of bedrooms, parking areas, intended right-of-way dedications for Observation Drive, Shawnee Lane and internal Streets A, B and C, and areas intended for common use but not public ownership (recreation areas, clubhouse and forest conservation area).

The Development Plan would be improved by the addition of specific widths for the right-of-way dedications proposed for Observation Drive and Shawnee Lane, consistent with the testimony, Applicant’s written submissions and the Staff Report. The evidence establishes the Applicant’s intent to dedicate a 25-foot-wide strip of land along the southern property line for Shawnee Lane, consistent with a 25-foot dedication that was made for the Eastside development to the south. Together, these dedications would allow Shawnee Lane to be widened to the full 120-foot right-of-way recommended in the Master Plan.

The evidence further establishes the Applicant’s intent to dedicate the land necessary for the construction of two lanes of Observation Drive along the northern property line. This would require a dedication of 75 feet along most of the northern property line, providing half of the 150-foot right-of-way recommended in the Master Plan. At the east end of the northern property line, the Applicant has agreed to dedicate an additional 16 feet of land to provide for a 166-foot right-of-way section, which is the width Technical Staff now believes will be necessary for the transit stop proposed at that location. The Applicant will be required to place the specific dedication widths on the Development Plan when it is submitted for certification.

The Development Plan specifies that the layout and building footprints shown on the plan are approximate. The intent of this language is to allow for minor shifts in lot lines and building locations during preliminary plan and site plan review.

Sheet Two of the Development Plan, Ex. 65(b), specifies (in language that is not described as illustrative, and therefore is binding) the number of units and the setbacks proposed for each housing unit type. Exhibit 65(b) also provides, for each building type, binding limitations for the building structure height and the total "not to exceed height." Implementation of this aspect of the Development Plan will require careful attention by Technical Staff and the Planning Board to ensure that grading issues do not result in building heights that are incompatible with other uses on site, or with surrounding uses.

Sheet Two of the Development Plan also contains an extensive, detailed list of "Binding Design Principles," which were created to ensure that the Development Plan would conform to the purpose clause of the PD Zone. These principles address issues such as the interconnected street system, mix of residential unit types within each block, variety of lot widths and sizes, length of driveways, locations and size of open space, roof design, building design and visual screening of alleys. Many of the Binding Design Principles are too detailed for their implementation to be depicted on the Development Plan. Instead, they link a future site plan submission to the Development Plan by specifying detailed design parameters that the site plan must satisfy.

Because the subject site is in the Clarksburg Special Protection Area, it is subject to specific guidelines found in MNCPPC's Guidelines for Environmental Management of Development in Montgomery County, January 2000. In accordance with these guidelines, the Applicant submitted a Preliminary Water Quality Plan to both the Department of Permitting Services ("DPS") and the Countywide Environmental Planning Division of MNCPPC. The submitted Preliminary Water Quality Plan provided for off-site treatment of the run-off from Observation Drive. This, Environmental Planning Staff and the Applicant agree, is necessary because the right-of-way for Observation Drive is at a lower elevation than the rest of the subject site, and drains away from the site. The Applicant proposes to

use property it has purchased on the east side of the Observation Drive right-of-way, known as the King property, to locate a series of sand filtration facilities and a dry pond.

DPS has approved the portion of the Preliminary Water Quality Plan under its purview, with a number of conditions unrelated to zoning stage review. Environmental Planning Staff agreed to the concept of the proposed off-site stormwater management facilities because they would be located in a natural depression that is unforested, and their construction would involve removing the existing structure and impervious surfaces on the property, leading to an improved stream buffer condition at that location. Staff disagreed, however, with the Applicant's proposal to size the off-site facilities to treat run-off from the entire planned right-of-way, approximately 9.4 acres. Staff prefers that the facilities on the King property serve just the lanes to be built on the Applicant's property (plus, potentially, a half-acre area immediately adjacent to the roadway), which would reduce the run-off area for these facilities to 5.1 acres. The Applicant agreed to revise its plan accordingly, and the Planning Board approved the Preliminary Water Quality Plan at its meeting of July 27, 2006 based on the Applicant's commitment to make that change and three others. These changes are set forth on Sheet Two of the Development Plan as "Water Quality Plan Binding Conditions."

Sheet Two of the Development Plan specifies the number of parking spaces to be provided for each unit type, plus additional parking on the public and private roads. It also contains additional, textual binding elements, including a minimum 20-foot width for alleys (private streets), consistent with other representations that the private streets would be wide enough for emergency vehicles. The Applicant may seek waivers from the Planning Board, during subdivision review, from the requirement that all single-family homes on individual lots must have frontage on a public street. This requirement does not apply to multi-family units or two-over-two units, which do not sit on individual lots. Moreover, all of the single-family detached homes and many of the townhouses shown on the Development Plan would have frontage on a public street – Observation Drive, Shawnee Lane, Street A, Street B or the public portion of Street C. However, Development Plan Sheet One states that approximately 65 townhouses will require a waiver.

Technical Staff explains that the Planning Board is authorized to waive any part of the subdivision regulations based on a finding that practical difficulties or unusual circumstances prevent full compliance. Staff opines that appropriate findings can be made to support the necessary waivers for individually recorded townhouses on private streets at the subject site.

The District Council finds that the Development Plan submitted with this application satisfies all the requirements for a development plan under Code §59-D-1.61(a)-(e). Each of the required findings is addressed below.

§59-D-1.61(a): master plan consistency. In the present case, both the Planning Board and Technical Staff found that the proposed development conforms to the recommendations of the Master Plan. The Hearing Examiner agrees.

The Development Plan would contribute to the Master Plan's vision of Clarksburg as a transit-and-pedestrian oriented community, surrounded by open space, by creating a pedestrian-friendly residential community, with a variety of housing types within each block, interconnected sidewalks, short block lengths, and neighborhoods centered around recreation areas and green space. This community would be in close proximity to a future transit stop, and would add to the critical mass necessary to support transit. The Applicant would further contribute to the Master Plan's vision by holding the Cawood Property in reservation for a period of five years from Preliminary Plan approval, giving the County and other government agencies time to decide whether and how to use the property for transit-related parking. This commitment is stated on the Development Plan.

The proposed development would contribute to all but one of the Master Plan objectives discussed by Technical Staff, which are as follows:

- Continue the present residential character along MD 355.
- Balance the need for increased carrying capacity along portions of MD 355 with the desire to retain a residential character along MD 355.
- Continue the present employment uses along I-270.
- Provide housing at designated areas along the transitway near significant employment uses.

- Allow small amounts of office and retail uses at transit stop areas as part of a mixed-use development pattern.
- Establish strong pedestrian and bicycle linkages to the greenway.
- Improve east-west roadway conditions.
- Provide an open space system, which includes small civic spaces at the transit stops.

The proposed development would be compatible in terms of use, density and buffering with the low-density residential uses to the east, which would support the continuation of the present residential character along MD 355. It would help increase carrying capacity for north/south traffic, while preserving the residential character of MD 355, by constructing part of the Master Plan-recommended alignment for Observation Drive. It would promote the continuation of employment uses along I-270 by increasing the local residential population, some of whom might become employees or customers for business along I-270. The proposed development would provide housing in an area that is designated for residential use and is along the transitway and near significant employment uses, such as the Gateway Center Drive industrial park and the Comcast complex. The development would improve east-west road conditions by contributing needed right-of-way to Shawnee Lane. Finally, it would contribute to the creation of an open space system in the planning area by retaining a large forested area, and by creating green areas of various sizes within the subject site.

The proposed development would be consistent with the site-specific recommendations on the Master Plan's Land Use and Transportation Plan and its Zoning Plan, both of which recommend residential use of the site at a maximum density of 11 dwelling units per acre. It would also be consistent with the Master Plan's recommended housing mix for the Transitway Area, which calls for 30-50 percent multi-family units, 40-60 percent single-family attached units, and 5-10 percent single-family detached homes.

Based on the overwhelming weight of the evidence, the District Council finds that the proposed development would be in substantial compliance with the use, density and other recommendations of the Master Plan. The evidence further supports the conclusion that the

Development Plan does not conflict with any other county plans or policies, or the capital improvement program. It would further county housing policy by creating diverse housing options, including affordable housing. The evidence demonstrates that the proposed development would satisfy the requirements of Local Area Transportation Review, would have no adverse impact on public school capacity and, as a consequence, would not be inconsistent with the county Growth Policy.

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

1. The Purpose Clause

The purpose clause for the PD Zone contains a number of goals and objectives, all of which are satisfied by the instant application. The District Council's findings as to each paragraph of the purpose clause are set forth below.

First paragraph: Master Plan implementation. As discussed under (a) above, the proposed development would substantially comply with the recommendations and objectives of the Master Plan and would implement those objectives more fully than would be possible under other zoning classifications. The intermingled mix of unit types and setbacks, with shared private streets and alleyways, could not be achieved under a conventional zoning category. The evidence also supports a finding that the proposed development would integrate mutually compatible uses and provide better circulation, access, amenities and environmental protection than could be achieved under conventional zoning.

Second paragraph: social and community interaction, distinctive visual character, balanced mixture of uses. The proposed development would encourage a maximum of social and community interaction and activity by including a central community space for social gatherings and recreational activity, as well as smaller facilities at the neighborhood level, all connected by pedestrian walkways separate from roads. The location of homes in neighborhood groups, centered around green areas or recreation areas, would further encourage community interaction, as would the extensive sidewalks and short blocks. The central community space, with a pool, clubhouse, outdoor

amphitheater and open play area, is to be located at the high point of the property, clearly visible from Observation Drive. This would establish a distinctive visual character and sense of place for the community. The subject site would not include commercial uses, but it would contribute to the overall balance of employment and residential uses in the planning area. Compatibility with the adjacent industrial park would be ensured by a substantial forested buffer.

Third paragraph: broad range of housing types. The proposed development would include all the types of residences permitted by the PD Zone's Medium Density Category -- multi-family units, townhouses, two-over-two single family units, and a small number of detached, single-family homes. In addition, 12.5 percent would be MPDUs.

Fourth and fifth paragraphs: trees, grading and open space. The proposed development would preserve more than seven acres of existing forest, in a location that would serve as a buffer between the new community and adjacent employment uses. The forest conservation area would also provide a visual amenity for residents, visitors, workers in nearby businesses, and residents of nearby properties who would also be able to enjoy its visual beauty.

Open space along Observation Drive, and the visibility of the main recreation area, would create a visual openness to the community. The various internal recreation and open space areas are to be distributed throughout the community, putting all residences within easy walking distance of open space and creating extensive physical and aesthetic integration of uses and activities.

Sixth paragraph: pedestrian networks. The District Council agrees with Technical Staff's conclusion that by combining a variety of housing types, streetscapes and street networks that invite pedestrians, a central community facility, small-scale open spaces, and landscaping, the proposed development would create a physical setting that projects a street-oriented and pedestrian friendly community. This setting, plus the proximity to future transit, would tend to encourage pedestrian activity and reduce reliance on the automobile.

Seventh paragraph: scale. The PD Zone encourages, but does not require, development on a large scale. The subject site has enough space to create a community of 408 units

with a variety of housing types, including enough multi-family units for a viable multi-family community. The scale of the development is also large enough to provide both a forested area and meaningful recreation facilities, including two swimming pools, a clubhouse, an outdoor amphitheater and multiple smaller open spaces and play areas.

Eighth paragraph, first part: maximum safety, convenience and amenity. The evidence demonstrates that the proposed development would provide safe and convenient roadways, sidewalks and pathways. The grid street system and homes centered on open space and recreational facilities would create a visual identity for each neighborhood in the community. Internal roads would include private roads, which are designed to slow traffic while still meeting the minimum standards for emergency vehicle access. The extensive, interconnected pedestrian network would ensure safe pedestrian access. The development would provide high levels of convenience and amenity for residents, through all of the features that foster a sense of community and encourage interaction – interconnected streets, interspersed recreation and open space areas, a central community space, intermingled housing types, landscaping and short blocks.

Eighth paragraph, second part: compatibility. The evidence strongly supports the conclusion that the proposed development would be compatible with existing uses and planned future uses in the surrounding area. The 10 to 12 single-family detached homes to the east, between the site and MD 355, would be buffered by the 150-foot right-of-way proposed for Observation Drive, as well as the extensive stream buffer area east of that right-of-way. The right-of-way planned for Observation Drive would be unusually wide for a four-lane road because of the median necessary to accommodate transit. This width makes for a considerable buffer between uses. At present, the closest home to the subject site is roughly 375 feet away, and the stream buffer area would prevent development of new homes in the area closest to the Observation Drive right-of-way. The only existing residence close to the right-of-way is the King residence, which the Applicant has purchased and plans to remove.

To the south/southeast, the subject site confronts a moving company diagonally, and a school bus depot across from the area proposed for multi-family use. By their nature, neither of these

non-residential uses would be adversely affected by the proposed residential community. The residents of the community would be buffered from noise and other effects of the activity level at these two sites by significant setbacks and some landscaping, particularly on the bus depot site. Moreover, the higher intensity of multi-family living would be the most appropriate residential type across from these uses. Both of these properties are recommended in the Master Plan for mixed residential development at densities similar to that proposed here.

Directly south, the subject site confronts the Eastside property, which has an approved preliminary plan of subdivision for a mixed residential community, in the PD-11 Zone, with a density very similar to that proposed here. Technical Staff notes that the three and four-story two-over-two units planned in the southern corner of the subject site would be opposite similar buildings on the Eastside property. To the north, the site abuts the Gateway Commons property, on which a mixed residential development, also with a density similar to that proposed here, is under construction in the R-200/TDR Zone. As Technical Staff noted, the development proposed in this case would be a logical extension of the planned communities proposed for the adjacent properties to the northeast, south and southwest.²

To the west/northwest, the subject site would be buffered from the Gateway Center Drive industrial park, as noted earlier, by a forested area that is about 100 feet wide at its narrowest point. A buffer of that nature makes adverse effects on either use unlikely.

The only unsettled issue that could affect compatibility is building height. Depending on the grading at particular locations, the two-over-two units and multi-family building have potential heights over 60 feet. This could result in a rather imposing multi-family building on Observation Drive, and depending on building heights at the Eastside development, could create a compatibility conflict in the southern corner of the property. The Applicant has committed to maximum building structure heights, however, and it is clear that Technical Staff has every intention of persuading the Applicant to

² The record does not reflect specific development plans for property southwest of the subject site, but testimony and the Staff Report indicate that the Comsat property is recommended in the Master Plan for a very large, mixed-use development, and the bus depot property is recommended for residential density similar to the subject site.

avoid putting the taller structures at locations where the grading will result in unreasonable building heights. Accordingly, the District Council is persuaded that this issue does not undermine the overall compatibility of the project, and can be successfully addressed during site plan review.

For all of the reasons stated above, the District Council concludes that the proposed rezoning and development would be compatible with existing land uses in the surrounding area.

Ninth paragraph: three findings. The purpose clause states that the PD Zone "is in the nature of a special exception," and shall be approved or disapproved based on three findings:

- (1) the application is or is not proper for the comprehensive and systematic development of the county;
- (2) the application is or is not capable of accomplishing the purposes of this zone; and
- (3) the application is or is not in substantial compliance with the duly approved and adopted general plan and master plans.

Based on the preponderance of the evidence and for the reasons stated above, the District Council concludes that present application is proper for the comprehensive and systematic development of the County; is exceptionally successful in accomplishing all of the purposes of the zone; and is in substantial compliance with the Master Plan.

2. Standards and Regulations of the Zone

The standards and regulations of the PD-11 Zone are summarized below, together with the grounds for the District Council's conclusion that the proposed development would satisfy these requirements.

Section 59-C-7.121, Master Plan Density. Pursuant to Code §59-C-7.121, "no land can be classified in the planned development zone unless such land is within an area for which there is an existing, duly adopted master plan which shows such land for a density of 2 dwelling units per acre or higher." The subject property is recommended in the Master Plan for PD-11 zoning, so this requirement is satisfied.

Section 59-C-7.122, Minimum Area. Code §59-C-7.122 specifies several criteria, any one of which may be satisfied to qualify land for reclassification to the PD Zone. The subject application satisfies the first of these criteria, which states the following:

That it contains sufficient gross area to construct 50 or more dwelling units under the density category to be granted.

The subject property contains sufficient gross area to permit the construction of 408 dwelling units.

Section 59-C-7.131, Residential Uses. Pursuant to Code §59-C-7.131, all types of residential uses are permitted, but parameters are established for the unit mix. A PD-11 development with between 200 and 800 units must have at least 20 percent single-family attached units and at least 35 percent multi-family units, in buildings of four stories or less. No maximum or minimum is prescribed for single-family detached units. The proposed Development Plan provides for 50 percent single-family attached units and 45 percent multi-family in four-story buildings, satisfying this requirement.

Section 59-C-7.132, Commercial Uses. Commercial uses are permitted but not required under the PD Zone. The Applicant considered adding a retail component to the site, drawing on its considerable expertise in running retail shopping centers. The decision ultimately was made that the proposed community itself would be too small to sustain a viable retail presence, and that it would be impractical to expect significant traffic from the future transit stop, because any retail on the subject property would be across the street and up ten to twelve feet – not a convenient location for someone heading to the train. Moreover, there is no guarantee of whether, when and where the transit stop recommended in the Master Plan will be built. For all of these reasons, the Development Plan does not propose any commercial uses.

Section 59-C-7.133, Other Uses. Noncommercial community recreational facilities for the use of residents, such as the swimming pools, open play areas and tot lots shown on the Development Plan, are permitted in the PD Zone. No other non-residential uses are proposed.

Section 59-C-7.14, Density of Residential Development. The Zoning Ordinance provides the following direction for the District Council in considering a request for the PD Zone (§ 59-C-7.14(b)):

The District Council must determine whether the density category applied for is appropriate, taking into consideration and being guided by the general plan, the area master or sector plan, the capital-improvements program, the purposes of the planned development zone, the requirement to provide [MPDUs], and such other information as may be relevant.

The Zoning Ordinance classifies the density category applied for, PD-11, as a medium-density planned development zone. It is, moreover, the highest density recommended for the subject site in the Master Plan. The District Council finds that development at the high end of the recommended density range is appropriate for a site in such close proximity to future transit, to help make transit viable.

Section 59-C-7.15, Compatibility. This section requires that a proposed development be compatible internally and with adjacent uses. It also establishes minimum parameters for setbacks and building height that are designed to promote compatibility. As discussed above, the District Council finds that the proposed development would be compatible with existing development in the surrounding area. The application also satisfies the specific setback and building height provisions, as detailed below.

Section 59-C-7.15 of the Zoning Ordinance states that where land classified under the PD Zone adjoins land for which the area master plan recommends a one-family detached zone, no building other than a one-family detached residence may be constructed within 100 feet of such adjoining land, and no building may be constructed at a height greater than its distance from such adjoining land. The only adjacent land that is recommended in the Master Plan for a one-family detached density is the area east of the subject site, between the site and MD 355. The townhouses proposed along Observation Drive, on the subject site, would be separated from the adjacent one-family land by the 75-foot dedication the Applicant has offered for Observation Drive, plus a minimum 25-foot building setback from Observation Drive. The multi-family building along Observation Drive would be separated from adjacent one-family land by the 91-foot dedication the Applicant has offered for that part of Observation Drive, plus a minimum 20-foot building setback from Observation Drive. Thus, the 100-foot limitation is satisfied. Moreover, even taking into account the "not to exceed" height

for the multi-family building of 64 feet, none of the buildings proposed along Observation Drive would be higher than their respective distances from the adjacent R-200 land.

Section 59-C-7.16, Green Area. The PD-11 Zone requires a minimum of 50 percent green area. The Development Plan depicts green space of 18.8 acres, slightly over 50 percent.

Section 59-C-7.17, Dedication of Land for Public Use. This section requires that land necessary for public streets, parks, schools and other public uses must be dedicated to public use, with such dedications shown on all required development plans and site plans. The Development Plan indicates that dedications will be made for Observation Drive, Shawnee Lane, Street A, Street B and part of Street C. For Observation Drive and Shawnee Lane, however, the Development Plan lacks specific numbers for the right-of-way width. The District Council will require that these right-of-way widths be added to the Development Plan submitted for certification, consistent with the evidence of record.

Section 59-C-7.18, Parking Facilities. Off-street parking must be provided in accordance with the requirements of Article 59-E of the Zoning Ordinance. The Development Plan provides for more than the required number of spaces.

The final two elements of finding (b), the maximum safety, convenience and amenity of the residents, and compatibility, have already been addressed.

§59-D-1.61(c): safe, adequate and efficient internal vehicular and pedestrian circulation systems. The evidence supports a finding that the proposed internal vehicular and pedestrian circulation systems and points of external access would be safe, adequate, and efficient. The Development Plan proposes an interconnected system of streets and sidewalks that would provide comprehensive, safe access for both vehicles and pedestrians. The site would have the convenience of two access points on Observation Drive and one on Shawnee Lane, with the Shawnee Lane access located directly across from the access point proposed for the Eastside development, to maximize safety. The private streets within the development would meet Montgomery County Fire and Rescue standards for emergency access.

§59-D-1.61(d): preservation of natural features. The proposed development would preserve 20 percent of the forest that currently covers the site. Preserving more of the existing forest likely would be inconsistent with development of the site at the density recommended in the Master Plan. The evidence establishes that forest conservation requirements under Chapter 22A would be satisfied. The Preliminary Water Quality Plan, which has been approved by the Planning Board and conditionally approved by DPS, provides for comprehensive, environmentally sensitive stormwater management that would prevent erosion, and can be expected to satisfy Chapter 19.

§59-D-1.61(e): common area maintenance. The Applicant has not provided any draft documents of this nature. However, a representative of the Applicant testified under oath, before the Hearing Examiner, that if this development goes forward, a homeowner's association will be created to govern and maintain the common areas and recreational facilities. The District Council considers this adequate.

In addition to the five development plan findings, the District Council also must consider the relationship of the present application to the public interest. When evaluating the public interest, the District Council normally considers master plan conformity, the recommendations of the Planning Board and Technical Staff, and any adverse impact on public facilities or the environment.

For the reasons discussed under finding (a) above, the District Council concludes that the subject application substantially complies with the Master Plan.

The evidence of record indicates that the proposed development would have no adverse effects on traffic conditions, in light of the Applicant's commitment to participate financially in necessary improvements to the intersection of Stringtown Road Extended and Gateway Center Drive. The evidence indicates that public water and sewer are available for extension to the subject site, and that forest conservation and stormwater management regulations would be satisfied. With regard to public schools, the evidence suggests that in light of the intensive school-building activity under way in Clarksburg, capacity in the relevant schools would be adequate to accommodate the proposed development under both the Growth Policy definition and the MCPS definition.

The proposed development's relationship to the public interest should also be considered in light of the Applicant's actions in purchasing the Cawood Property and agreeing to hold it in reservation for five years from the date of preliminary plan approval, to make it available to the County or other government agencies for potential transit parking. Moreover, the proposed development would increase the availability and variety of housing in an area in which employment uses currently predominate. In addition, the Applicant has committed not only to construct two lanes of Observation Drive in accordance with the Master Plan-recommended alignment, but to provide 16 additional feet of right-of-way beyond the Master Plan recommendation, to ensure adequate space for a transit stop.

Accordingly, having carefully weighed the totality of the evidence, the District Council concludes that approval of the requested zoning reclassification would be in the public interest.

For these reasons and because to approve the instant zoning application will aid in the accomplishment of a coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District, the application will be approved in the manner set forth below.

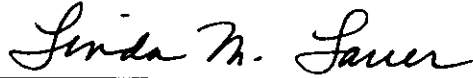
ACTION

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

Zoning Application No. G-832, requesting reclassification from the R-200 Zone to the PD-11 Zone of 37.176 acres of land located on the north side of Shawnee Lane in Clarksburg, between Gateway Center Drive and MD Rte. 355, identified as Lots 27 and 28 of the Garnkirk Farms Subdivision and located in the 2d Election District, is hereby approved in the amount requested. subject to the specifications and requirements of the final Development Plan approved by the District Council, Exhibits 65(a) and (b); provided that, within 10 days of receipt of the District Council's approval resolution, the Applicant must submit to the Hearing Examiner for certification a reproducible original

and three copies of the approved Development Plan, with the right-of-way dedication widths proposed for Observation Drive and Shawnee Lane properly noted, in accordance with §59-D-1.64.

This is a correct copy of Council action.

A handwritten signature in cursive script that reads "Linda M. Lauer". The signature is written in black ink and is positioned above a horizontal line.

Linda M. Lauer, Clerk of the Council