**MEMORANDUM – Local Map Amendment**

DATE: August 24, 2006

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief, Development Review Division *RK*

FROM: Carlton Gilbert, Zoning Supervisor *CG*
(301) 495-4576

SUBJECT: **Application to File a Corrective Map Amendment** in order to correct a technical errors in the official Zoning Map including the mislabeling portions of a rezoned property, and the inaccurate delineation of the property that was rezoned; re: the Cabin Branch Development (G-806) covering an approximately 283.5 acre property in Clarksburg.

STAFF RECOMMENDATION:

The staff recommends that the Planning Board authorize staff to submit an application, pursuant to Code Section 59-H-10.2, to file a Corrective Map Amendment with the District Council in order to correct technical errors that led to an inaccurate depiction of the zoning boundaries and zoning classifications for certain rezoned property on the official Zoning Map. Specifically, the errors on the Zoning Maps examined to be corrected by the requested corrective map amendment are:

1. The technical error in labeling portions of the rezoned property in the RMX zoning classification, instead of the MXPD zoning classification. (See Attachment)
2. The inaccurate delineation of a portion of the rezoned property (specifically, Parcels P204 and P070) as being in the RE-1/TDR zoning classification. Additionally, this portion of the rezoned property is excluded from the current zoning map. (See Attachment)

Note: The attached Development Plan correctly depicts the entire rezoned property, including the excluded portion, in the MXPD (Mixed Use Planned Development) zone.

Introduction

Division 59-H-10 of the Zoning Ordinance sets forth the purpose, process and required contents of an application for a corrective map amendment. Section 59-H-10.1(b) states that the purpose of a corrective map amendment is "to enable the District Council in lieu of a comprehensive sectional amendment to correct technical errors or inaccurate depictions of zoning boundary lines on an adopted map that are known as the result of mapping, surveying, or other technical information." Furthermore, this division of the Ordinance authorizes the Planning Commission to submit an application for a corrective map amendment.

After review of the relevant documents, staff is of the opinion that technical errors were made by staff when revising the zoning map to reflect the approved rezoning (G-806) and approved development plan. A corrective map amendment is the appropriate process to correct the technical errors. Therefore, staff recommends the Planning Board authorize staff to file an application for a Corrective Map Amendment in order to correct technical drafting errors to the certified Zoning Maps for the approved rezoned property and associated development plan related to LMA G-806.

Background / Summary

The subject property was classified under the RR Zone (Rural Residential, now known as R-200) in the 1958 Countywide Comprehensive Zoning. It was rezoned to RE-1/TDR, RMX-1/TDR and I-3 by sectional map amendment G-710 in 1994. On December 16, 2002, application no. G-806 was filed requesting reclassification from the RE-1/TDR, RMX-1/TDR and I-3 zones to the MXP zone of 283.5 acres of land east of Clarksburg Road (MD 121), west of I-270 and north of West Old Baltimore Road in Clarksburg. Following consideration of the rezoning application, including the recommendation of approval by the Planning Board and the Hearing Examiner, the District Council approved the application on September 9, 2003 for MXP zoning for the 283.5-acre subject property as described in the attached (Opinion Resolution No. 15-326). (See Attachment) Subsequently, the Planning Board approved Preliminary Plan No. 1-03110A.

While processing site plans for the Cabin Branch project, the applicant brought to staff's attention that the zoning maps did not reflect the adopted zoning. The zoning maps are incorrect with respect to the boundary of the rezoned area and the MXP zoning designation, currently shown on the Zoning Map as RMX. This designation is clearly wrong because the "RMX" zone does not exist. Also, the current zoning map does not include the portion of the rezoned property north of proposed Maryland Route 121.

Findings

As reflected in the Council Resolution and the Hearing Examiner Report, particularly the illustrations at pages 6, 8, and 17, it is clear that the area previously zoned I-3 and RMX-1/TDR included within the zoning boundary line shown on the current zoning map has been rezoned to MXPDP, not "RMX" as the Zoning Map incorrectly labels it. The Corrective Map Amendment will correct the technical labeling errors and include the entire rezoned property as intended.

CONCLUSION

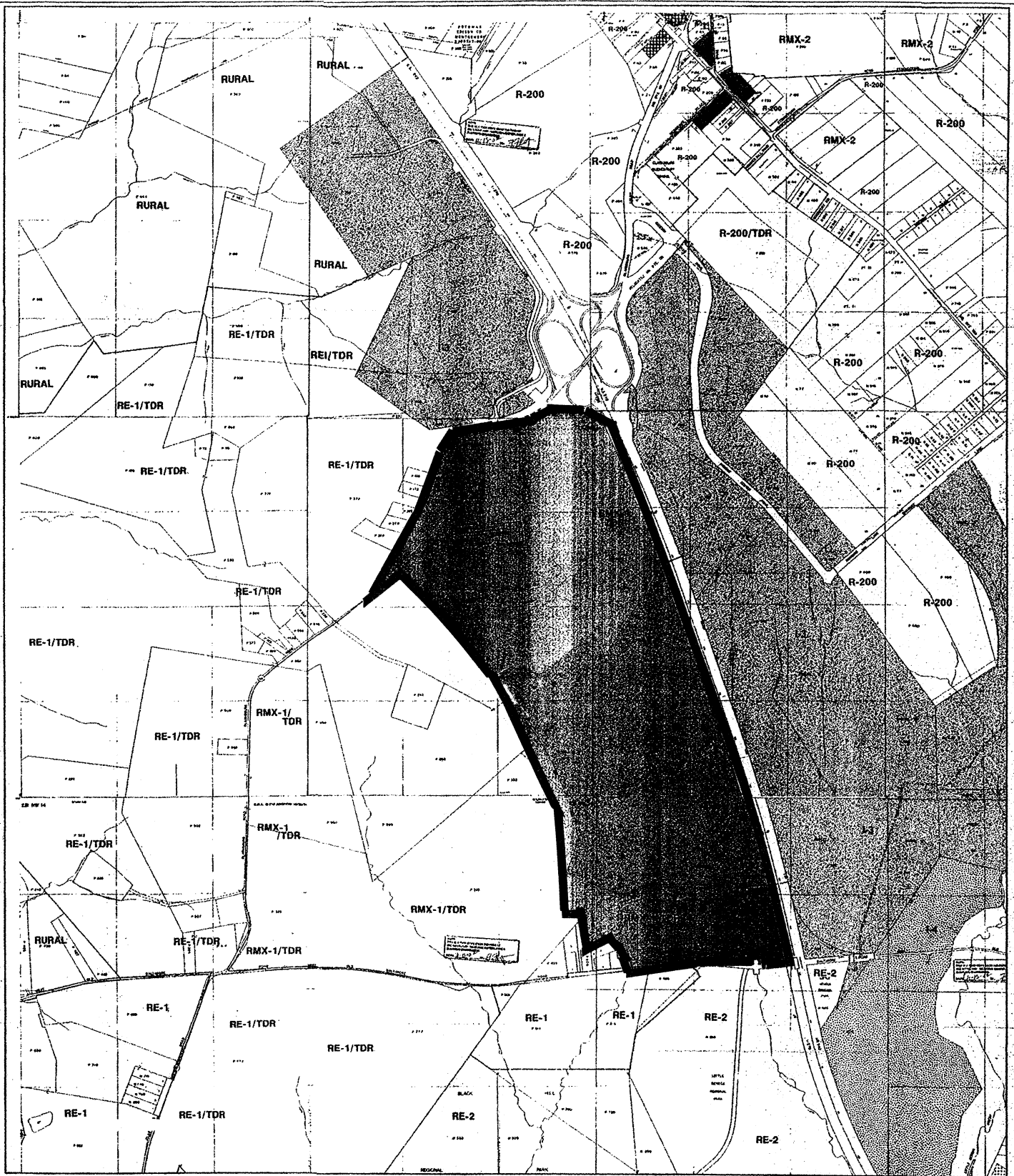
The staff recommends that the Planning Board authorize staff to submit an application for a Corrective Map Amendment with the District Council for the following reasons:

1. The Corrective Map Amendment will correct the technical errors in labeling portions of the Rezoned Property in the RMX zoning classification, instead of the MXPDP zoning classification.
2. The Corrective Map Amendment will accurately depict the entire Rezoned Property, including Parcels P204 and P070 as MXPDP.
3. The proposed technical adjustments to correct technical errors are in accordance with the requirements of Section 59-H-10 of the Montgomery County Zoning Ordinance.

ATTACHMENTS

1. Existing Zoning Map
2. Approved and Adopted Development Plan (G-806)
3. Corrective Zoning Plan
4. Letter from Attorney
5. County Council Opinion (G-806)
6. Hearing Examiner Report (G-806)





CERTIFIED ZONING VICINITY MAP

PROPOSED MXPD



December, 2002



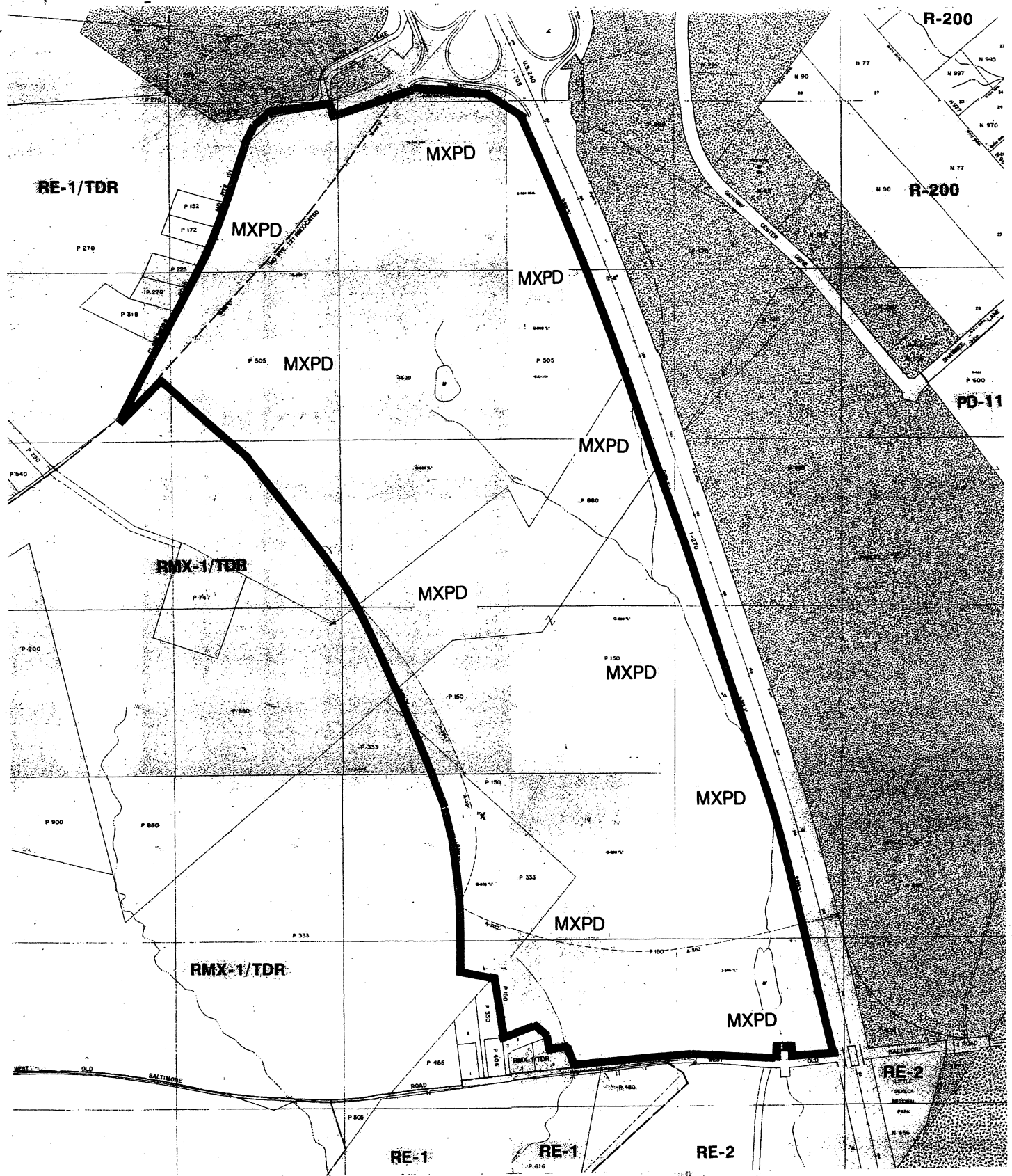
RODGERS
CONSULTING

9260 Caliber Road
Cathartburg, MD 20827
301.948.4700
301.948.6266 (fax)
www.rodgers.com

Enhancing the value of land assets.

APPROVED AND ADOPTED G-806 Development Plan

FIGURE 2



CORRECTIVE PLAN

FIGURE 3

LINOWES
AND BLOCHER LLP
ATTORNEYS AT LAW

July 27, 2006

Stephen P. Elmendorf
301.961.5110
selmendorf@linowes-law.com

Mr. Carlton Gilbert
Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Cabin Branch- Corrective Map Amendment- Zoning Map Amendment No. G-806

Dear Mr. Gilbert:

On behalf of Concordia Clarksburg LLC, Winchester Homes, Inc., Adventist Healthcare, Inc., FFTM I Limited Partnership, SMTM Cabin Branch West, LLC and SMTM Cabin Branch East, LLC, the owners of the 283.5-acre property that was the subject of approved Zoning Map Amendment G-806 (the "Rezoned Property") (collectively, the "Owners"), the purpose of this letter is to request that the Planning Commission submit a corrective map amendment application pursuant to Section 59-H-10 of the Montgomery County Zoning Ordinance (the "Zoning Ordinance") in order to correct technical errors leading to an inaccurate depiction of the zoning boundaries and zoning classifications for the Rezoned Property, as shown on adopted Zoning Maps 230 NW 13, 231 NW 13, 230 NW 14 and 231 NW 14, (the "Zoning Maps"). Specifically, the errors on the Zoning Maps sought to be corrected by the requested corrective map amendment are:

1. The technical error in labeling portions of the Rezoned Property in the "RMX" zoning classification, instead of the MXPD zoning classification. There is no "RMX" zoning classification in the Zoning Ordinance.
2. The inaccurate depiction of a portion of the Rezoned Property (specifically, Parcels P204 and P070, as shown on Montgomery County Tax Map EV23, attached as Exhibit 1, the "Excluded Portion") as being in the RE-1/ TDR zoning classification.

Pursuant to Section 59-H-10.3 of the Zoning Ordinance, an application for a corrective map amendment must include the following:

ATTACHMENT 4

Mr. Carlton Gilbert
July 27, 2006
Page 2

1. A description of each parcel of property proposed for adjustment.

The Rezoned Property consists of approximately 283.5 acres located east of existing Clarksburg Road (MD 121), west of I-270 and north of West Old Baltimore Road in Clarksburg, Maryland, as more particularly described in the legal descriptions attached as Exhibit 2.

2. A map depicting the existing zoning for each property and the proposed zoning adjustment.

Certified copies of the Zoning Maps, inaccurately classifying portions the Rezoned Property in the "RMX" Zone, instead the MXPB Zone, and inaccurately depicting the Excluded Portion in the RE-1/ TDR Zone, are attached as Exhibit 3.

A certified copy of the approved Development Plan, dated September 22, 2003, as approved by the District Council on September 9, 2003 (the "Development Plan"), is attached as Exhibit 4. The Development Plan correctly depicts the entire Rezoned Property, including the Excluded Portion, in the MXPB Zone.

3. A statement describing the rationale in support of the zoning adjustment.

The Rezoned Property consists of the approximately 283.5-acre property that was the subject of Zoning Map Amendment No. G-806, approved by the District Council by Resolution No. 15-326 on September 9, 2003. Resolution No. 15-326 rezoned the Rezoned Property from a combination of the RE-1/ TDR, RMX-1/TDR and I-3 Zones to the MXPB Zone. The District Council's approval Opinion is attached as Exhibit 5.

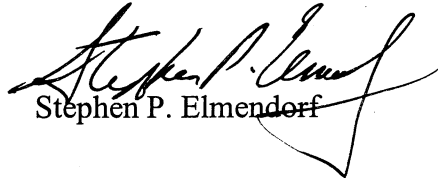
The Development Plan clearly depicts the MXPB rezoning line for G-806 to include the Excluded Portion. The Development Plan also depicts all of the Rezoned Property as being in the MXPB Zone.

Mr. Carlton Gilbert
July 27, 2006
Page 3

We request that these inaccuracies be corrected via a corrective map amendment, initiated by the Planning Commission, as required by Section 59-H-10 of the Zoning Ordinance.

Sincerely yours,

LINOWES AND BLOCHER LLP



Stephen P. Elmendorf

:jpl

cc: Tariq El-Baba, Esq.
Robert R. Harris, Esq.
Joseph P. Lapan, Esq.

Resolution No. 15-326
Introduced: September 9, 2003
Adopted: September 9, 2003

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-806 FOR AMENDMENT TO THE ZONING ORDINANCE MAP,
Robert Harris, Esquire, Jody S. Kline, Esquire and Stephen J. Orens, Esquire, Attorneys
for Purchasers, OPINION AND RESOLUTION ON APPLICATION
Tax Account Nos. 02-00016905; 02-00016916; 02-00022666; 02-00020725

OPINION

Application No. G-806, filed on December 16, 2002 by Applicants Adventist Healthcare, Inc., FFTM I Limited Partnership and King Farm Partnership, LLP, requests reclassification from the RE-1/TDR, RMX-1/TDR and I-3 Zones to the MXPDP Zone of 283.5 acres of land east of Clarksburg Road (MD 121), west of I-270 and north of West Old Baltimore Road in Clarksburg, in the 2nd Election District. As required under Code § 59-D-1.11, the application was accompanied by a Development Plan with binding specifications related to land use, density, development standards and staging. Development under the MXPDP Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the MXPDP Zone.

The Hearing Examiner recommended approval of the application on the basis that (i) the submitted Development Plan satisfies all of the applicable requirements set forth in the Zoning Ordinance; and (ii) the proposed rezoning and development would satisfy the purposes and standards of the MXPDP Zone, would 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 provided similar recommendations. The District Council agrees with these conclusions.

The Applicants seek reclassification of approximately 283.5 acres of land in Clarksburg, which will be referred to as the "subject property." The subject property comprises roughly the eastern

ATTACHMENT
5

half of a 535-acre tract of land that has been assembled by the Applicants and a fourth party, Winchester Homes, Inc. (together, the "Property Owners"). This 535-acre area forms a triangle abutting Clarksburg Road (MD 121) to the west and north, I-270 to the east and West Old Baltimore Road to the south, and will be referred to as the "Cabin Branch Community." The Applicants propose to develop the entire Cabin Branch Community as a single planned development with residential, employment, retail and service uses. The portion of the Cabin Branch Community outside the subject property is intended to be developed under its existing RMX-1/TDR zoning.

While each of the Property Owners retains the right to proceed with the development of its property independently, the development team approached the whole of the Cabin Branch Community as a single project. As a result, all of the graphical exhibits in the record, including the Land Use Plan that is the central component of the Development Plan, cover the entire Cabin Branch Community. Moreover, the Property Owners intend to present to the Planning Board a single application for preliminary plan approval for the entire Cabin Branch Community. For ease of reference, the Cabin Branch Community as a whole will sometimes be referred to as the "site," and the 251.5 acres not included in the subject property will be referred to collectively as the "west side" of the site.

The subject property is comprised of the 127.7-acre Gosnell parcel (also known as the King Farm Limited Partnership parcel), the 13-acre Faller parcel, and the 142.8-acre Adventist HealthCare parcel, for a total of 283.5 acres. It has approximately 4,000 feet of frontage on I-270, 2,100 feet of frontage on Clarksburg Road, and 1,600 feet of frontage on West Old Baltimore Road. The property is dominated by fields in active agricultural use, bordered by hedgerows, and has several abandoned farm buildings. A stream valley for a tributary of Little Seneca Creek flows through the subject property and is partially forested. The majority of the subject property lies within the Clarksburg Special Protection Area.

The west side of the site (outside the subject property) is developed in a similar fashion, with fields in active agricultural use and a small number of abandoned farm buildings. It also contains a small property known as the Magee Property, which is the location of the Byrne-Warfield House,

designated in the 1994 *Clarksburg Master Plan* as a historic site. The Property Owners have contracted to purchase the Magee Property and intend to preserve this historic site as a community amenity. A tributary of Cabin Branch Creek runs through the west side of the site. Most of the stream valley, as well as a sizeable area adjacent to it, is forested. Two small areas in the west side of the site are within the Clarksburg Special Protection Area.

The surrounding area for this application is bounded roughly by I-270 on the east, an undeveloped I-3 zoned parcel adjacent to the new Clarksburg Detention Center on the north, Ten Mile Creek on the west, and Black Hill Regional Park and the Linthicum West Realty property to the south. The surrounding area is dominated by agricultural fields to the north, west and south, classified under the RE-1/TDR Zone, and Black Hill Regional Park to the south. Scattered houses have been and are being developed along Clarksburg Road and West Old Baltimore Road in the RE-1/TDR Zone. Immediately north of the subject property are the Clarksburg Road/I-270 interchange, a rubble excavation area left over from I-270 construction, a recently built Montgomery County Detention Facility, and undeveloped land classified under the I-3 Zone. Immediately south of the Cabin Branch Community, abutting the south side of West Old Baltimore Road, is the Linthicum West Realty property, which is designated in the 1994 *Clarksburg Master Plan* for residential development under the RE-1/TDR Zone. East of I-270 (outside the designated surrounding area) are the Gateway 270 Corporate Office Park and the Lockheed Martin office development.

The subject property was classified under the RR Zone (Rural Residential, now known as R-200, 20,000-square-foot minimum lot size) in the 1958 Countywide Comprehensive Zoning. It was rezoned to a combination of RE-1/TDR, RMX-1/TDR and I-3 by sectional map amendment G-710 in 1994.

The 1994 *Clarksburg Master Plan* (the "Master Plan") was intended to "guide the growth of Clarksburg from a rural settlement to a transit- and pedestrian-oriented town surrounded by open space." Master Plan at 15. It divides the study area into a series of geographic areas including the "Cabin Branch Neighborhood," a 950-acre area that includes the Cabin Branch Community north of

West Old Baltimore Road, plus an additional 415 acres south of West Old Baltimore Road. See Master Plan at 40-41. The Cabin Branch Neighborhood is the only area of Clarksburg west of I-270 that the Master Plan proposes for significant residential development. The Master Plan identified several reasons to designate this area as a "mixed-use neighborhood center," including proximity to the Boyds commuter rail station and the transitway (a dedicated light rail or bus route) proposed east of I-270; access to Clarksburg Road, which has one interchange with I-270 and is planned for a second one; land ownership in several large parcels conducive to an overall planned development concept; close proximity to Black Hill Regional Park offering the opportunity for a strong neighborhood-park relationship; and extensive frontage on I-270, opposite existing high-tech uses. See Master Plan at 64. Relevant Master Plan objectives for the Cabin Branch Neighborhood are outlined below.

- Provide a mix of uses including 1,950 residential dwelling units (45 to 55 percent detached, 35 to 45 percent attached, and 10 to 20 percent multi-family), 2-2.3 million square feet of employment uses, 120,000 square feet of retail space, and public uses including places of worship, child care, a community building, a park and an elementary school.
- Encourage an employment pattern that is supportive of I-270 as a high-technology corridor, with RMX and I-3 as base zoning along I-270 and rezoning to MXPD recommended.
- Create a transit-oriented land use pattern that facilitates bus access and circulation, with a neighborhood core that is linked by bus to the proposed transitway east of I-270 and to the existing MARC station in Boyds, and that is located within one-quarter mile of as many residential units as possible.
- Maximize access to the proposed open space system by locating public uses such as a local park, an elementary school and passive open spaces adjacent to the Cabin Branch stream valley, locating residential streets adjacent to the stream

valleys on at least one side, and connecting the two central stream valleys with public open spaces.

- Provide an interconnected roadway system with site access via a widened Clarksburg Road and an extension of Newcut Road as a four-lane highway from Clarksburg Road, through a new I-270 interchange, to Mid-County Highway; West Old Baltimore Road was also described as an attractive rural road that should not be widened, but was also designated as an Arterial Highway which, if built to County standards, would require a wide corridor and widening of the roadway from the existing 20 feet to 44 feet including shoulders.
- Create a strong neighborhood focal point by concentrating public and retail uses in the same general area.
- Emphasize protection of the west fork of Cabin Branch, which has high water quality and tree cover.

The Development Plan in this case contains adequate information concerning the required elements, including site access, proposed buildings and structures, 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. The Land Use Plan divides the Cabin Branch Community into Areas A, B, C and D, which constitute the subject property, and Area E on the west side. While it does not specifically identify the intended use of each individual structure, the Land Use Plan identifies the type and density of land uses to be built in Areas A through D and specifies, in the tables reproduced on the next page, the maximum total density to be permitted for each type of use in the entire subject property.

The Land Use Plan includes a development program that outlines the phasing for development of structures, open spaces, vehicular and pedestrian circulation systems and recreational facilities. Pursuant to this development program, the first buildings to be constructed on the subject property are required to be office and health care facilities in Area C and office facilities in Area A. The

**Uses and Densities on Subject Property
Excerpted from Land Use Plan, Exhibit 67(g)**

Tables from Page 18 of HE Report

Land Use Plan also identifies planned recreational amenities, including the stream valley buffer areas, in which no construction is to occur except for utilities, road right-of-way and stormwater management.

The Land use Plan also includes "General Notes" that provide important commitments by the Applicants, including the following:

- Note (2) restricts development in Areas A through D to the uses and densities specified in the summary tables.
- To demonstrate compliance with MXPDP requirements, notes (3) and (4) specify, for Areas A through D, maximum residential densities and minimum and maximum square footage and floor area ratio ("FAR") for employment uses.
- In compliance with the MXPDP Zone, note (7) requires at least 50 percent green area in the residential area of the subject property and 40 percent in the commercial area.
- Note (8) underscores the binding nature of the maximum densities specified in the MXPDP Yield Summary table.
- Note (9) memorializes the commitment to dedicate land for road right-of-way as required at preliminary plan review.

The Applicants have specified on the Land Use Plan ~~additional binding elements~~ in textual form, which were developed jointly by the Applicants, Technical Staff and the People's Counsel. Some of the ~~binding elements~~ apply to the west side of the site as well as to the subject property. The ~~first binding element~~ commits the Applicants to acquiring the same number of transferable development rights that would be required if all of the property currently classified under the RMX-1/TDR Zone were developed according to its existing zoning. ~~Other binding elements commit the Applicants to dedicating sites for an elementary school, a local park and a recreation facility; considering trip reduction measures during preliminary plan review; creating a network of interconnected public and private streets in a grid pattern; designing streets with pedestrian-friendly elements; designing the road that leads to Black Hill Regional Park to serve as a park gateway; maintaining the rural character of West Old Baltimore Road by minimizing environmental impacts and providing generous green edges; including in the service/public uses up to 500 dwelling units for seniors or persons with disabilities; and providing on-street parking on streets with retail uses.~~ Binding element number 5 contains a clerical error that should

be corrected, as specified on page 21 of the Hearing Examiner's Report and Recommendation; to correspond more closely to the evidence of record.

The Development Plan includes a Road Hierarchy Plan, Exhibit 47, which shows that the main roadways through the development would be First Avenue and Second Avenue, running north/south from Clarksburg Road to Newcut Road. First and Second Avenues are both numbered A-304 because they represent a reconfiguration of the Master Plan-designated Route A-304, which was recommended to be a four-lane divided highway. To better support the goal of a pedestrian- and transit-friendly development, the Applicants show A-304 as two separate, two-lane roadways that would run roughly parallel to one another. Both would be divided by medians and allow on-street parking.

The Master Plan recommended that Newcut Road be constructed as a four-lane divided highway from Clarksburg Road to Mid-County Highway, with a new interchange at I-270. Newcut Road was to serve as one of the main through points for traffic. To avoid the environmental damage of building Newcut Road through the middle of the Cabin Branch stream valley, and to avoid having a major highway pass through the development, the Applicants propose Newcut Road as a two-lane road (divided by a median) extending from West Old Baltimore Road north to the terminus of Second Avenue, where it would turn east and connect with a new I-270 interchange. Thus, traffic bound for I-270 would need to use West Old Baltimore Road to get from Clarksburg Road to the Newcut Road interchange, or drive up Clarksburg Road to its interchange with I-270 a short distance to the north. The Applicants propose to widen West Old Baltimore Road to accommodate additional traffic.

The Master Plan recommended widening Clarksburg Road to six lanes for a short distance south of its interchange with I-270, then to four lanes from there to its new intersection with Newcut Road, and to two lanes from that point south to Boyds. The Applicants propose to widen Clarksburg Road to six lanes for a short distance south of the I-270 interchange, then to four lanes from that point to Second Avenue, which is considerably north of where Newcut Road would have intersected Clarksburg Road under the Master Plan concept. The Applicants propose to taper Clarksburg Road down to two lanes immediately south of Second Avenue.

The Applicants were supported in their decisions concerning Newcut and Clarksburg Roads by Technical Staff, who testified that the environmental harm attendant to extending Newcut Road to Clarksburg Road through the Cabin Branch stream valley was too great to justify the transportation benefit. Technical Staff also stated that based on current transportation modeling, the full number of lanes recommended for Clarksburg Road in the Master Plan is not needed. See Tr. June 12 at 123-132. Staff opined that replacing the four lane recommended Route A-304 with two two-lane, pedestrian-friendly streets, consistent with a short-block grid pattern, would be valuable in attaining the Master Plan goal of integrating the employment areas into the overall Cabin Branch Community. See Staff Report, Ex. 38 at 17.

The plans for the Cabin Branch Community incorporate principles of traditional neighborhood design such as creating neighborhoods with a pedestrian scale, mixing uses horizontally and vertically, and locating both public and private services and amenities within a five-minute walk of as many residences as possible. These principles were applied in designing the interconnected road system, short blocks, buildings close to the road with parking in the rear, numerous bus stops, and a retail core area along First Avenue, within a five-minute walk for many residents. The Development Plan includes specific efforts to create physical and visual connections to the stream valleys throughout the Cabin Branch Community, including parks, trails, and open spaces between buildings. The design would employ structured parking to reduce the amount of surface parking. Where surface parking is used, the Applicants intend to incorporate bio-retention stormwater management facilities into landscaping areas. This would avoid large, unrelieved paved parking areas and at the same time contribute significantly to protecting groundwater quality and quantity.

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

§59-D-1.61(a): master plan consistency. The proposed development of the subject property is fully consistent with the uses and density indicated by the 1994 Clarksburg Master Plan.

The Master Plan designated the subject property as part of a mixed-use neighborhood with employment, retail, public uses and residential, and the Applicants propose the same mix of uses. The potential number and types of residential units the Applicants propose on the subject property is consistent with the Master Plan's recommendations for the number and type of residential units in the Cabin Branch Neighborhood. The square footage of employment and retail uses proposed by the Applicants also is consistent with the amounts recommended in the Master Plan. Evidence related to the county capital improvements program indicates that the proposed reclassification would not conflict with that program.

§59-D-1.61(b): purposes, standards and regulations of the zone; safety, convenience and amenity of residents; and compatibility with adjacent development The purpose clause for the MXPB Zone contains a number of goals and objectives, all of which are satisfied by this application. The District Council's findings as to each section of the purpose clause are set forth below.

Introductory paragraph and paragraph (a): Master Plan implementation. The proposed rezoning would allow implementation of the Master Plan recommendation to develop the subject property as part of a comprehensively planned, multi-use center. As stated by Technical Staff, "the MXPB Zone will permit an integrated approach to design and development in which land uses are combined, densities are shared, impact on the environment is mitigated, and infrastructure is located in an efficient manner without the constraints of property [or zoning] lines." The proposed reclassification would provide the flexibility needed to allow the Property Owners to cooperate productively in creating a single, comprehensively planned mixed-use center. As a result, the subject property would be developed in a fashion more consistent with the objectives of the Master Plan than would be possible with the current split zoning.

Paragraph (b): concept plan. The Applicants chose not to use the concept plan option.

Paragraph (c): higher density residential uses integrated into overall multi-use center. The Land Use Plan includes higher-density multi-family residential uses as an integral part of the

development. Most of the multi-family uses would be within easy walking distance of the retail core, and all would be in close proximity to employment uses and other types of residential development. The system of interconnected roadways, trails and open space would strengthen the linkages between higher-density uses and lower-density residential, public parks and other recreational amenities.

Paragraph (d): internal compatibility of residential and nonresidential uses. The Land Use Plan presents a development with a high degree of internal compatibility. The density and intensity of uses decrease from the I-270 frontage to the west side of the property, allowing employment uses to provide a noise buffer for most of the residential uses while placing most of the residential units within a five-minute walk of the retail core. Residents would have easy access to commercial, recreational, employment and institutional amenities within the non-residential areas, including shopping, employment opportunities, health services, parks and other open space.

Paragraph (e): ensure compatibility with surrounding uses through higher standards of land planning and site design than under conventional zoning. The Development Plan required in the MXPD Zone serves as an additional, more comprehensive level of review than would be required for the underlying zones. The MXPD Zone also incorporates specific standards, particularly with regard to setbacks, that assure compatibility with adjoining uses. Moreover, the proposed reclassification would permit a comprehensive, integrated approach to developing the subject property which, by its nature, involves higher standards of land planning and site design than could be accomplished under the differing requirements of the existing zoning classifications.

Paragraph (f): open space to benefit community generally, with physical and aesthetic integration of uses and activities within the development, structured parking to minimize surface parking, and landscaping for surface parking. Open space to be provided on the subject property includes the Little Seneca stream valley, the Central Park, additional urban parks and open spaces, and trail connections. Additional open space including the Cabin Branch stream valley would be available on the west side of the site. Many of these elements would be along the edges of the subject property, making them accessible to the general community for relaxation, recreation and social activity. The grid pattern

of the roadways, the attention to maintaining open vistas of the stream valleys and links between the two main stream valleys, the location of the larger recreational amenities abutting a stream valley, and the extensive system of trails, bike paths, parks and other open spaces would result in a high degree of physical and aesthetic integration of uses and activities. The Applicants intend to incorporate on-street parking, structured parking, and extensively landscaped surface parking in the development.

Paragraph (g): comprehensive non-vehicular circulation networks and linkages among different types of uses. The Development Plan incorporates a comprehensive non-vehicular circulation network including an interconnected system of sidewalks, trails and bike paths, with short blocks in a grid pattern to encourage residents to walk within the development. This network would provide extensive linkages among the various uses and open spaces on the subject property and in the Cabin Branch Community as a whole.

Paragraph (h): efficient use of energy resources. The evidence demonstrates that the Applicants are aware of this element of the purpose clause and will explore a variety of measures to satisfy its requirements, including installing energy-efficient appliances, windows and lighting fixtures.

Paragraph (i): preserve and take the greatest possible aesthetic advantage of trees, and minimize grading. The submitted Development Plan includes preservation of higher quality forest as well as reforestation and afforestation in the stream valleys. Applicable forest conservation requirements would be satisfied on site. The comprehensive approach taken to development of the subject property and the Cabin Branch Community as a whole would allow the site design to follow the topography and minimize grading.

Final paragraph: three findings. The purpose clause states that the PD Zone may be approved if three findings are made:

- (1) the application is proper for the comprehensive and systematic development of the county;
- (2) the application is capable of accomplishing the purposes of this zone; and
- (3) the application is compatible with the general plan and applicable master plan.

As explained further in the remainder of this resolution, based on the preponderance of the evidence, the District Council concludes that the proposed reclassification is proper for the comprehensive and systematic development of the county, is capable of accomplishing the purposes of the MXPB zone, and is compatible with the general plan and the applicable master plan.

The MXPB Zone includes a number of standards and regulations, each of which would be satisfied by the proposed development of the subject property. These regulations and the application's compliance with them are summarized below.

59-C-7.51(a): Master Plan. Land cannot be classified under the MXPB Zone unless it is recommended for mixed-use development in an approved and adopted master plan. The 175-acre portion of the subject property fronting on I-270, which corresponds roughly to the area from I-270 to First Avenue, was recommended in the Master Plan for MXPB mixed-use zoning. The remainder of the subject property was recommended in the Master Plan for its current zoning classification, RMX (Residential Mixed Use).

59-C-7.51(b): Minimum area. At 283.5 acres, the subject property substantially exceeds the 20-acre minimum for the zone.

59-C-7.51(c): Adjacent and readily accessible from major highways. The subject property is located adjacent to and has access to I-270, a major limited access freeway.

59-C-7.52(a): All residential uses permitted. The proposed development would include single-family detached, single-family attached and multi-family residential dwellings, as well as housing and related facilities for senior adults or persons with disabilities. The planned development would follow closely the recommendations of the Master Plan. Locations and types of residential units proposed are shown on the Development Plan, with multi-family uses close to both commercial and lower density residential uses. Multi-family uses would be integrated in the overall fabric of the development and would contribute to the mix of uses along the main street in the development, First Avenue.

59-C-7.52(b) and (c): Commercial and Industrial. The submitted Development Plan shows the location and general types of commercial and industrial uses, as required.

The District Council's approval of the Development Plan includes approval of the locations and general types of commercial and industrial uses proposed. Retail uses would occupy roughly ten percent of the commercial floor area, well below the 20 percent limit. Industrial uses would comply with the environmental control provisions of Section 59-C-5.46.

59-C-7.52(d): Transitory use. Transitory uses are permitted; none are proposed.

59-C-7.52(e): Equipment. Any installation of rooftop-mounted antennas and related unmanned equipment will comply with §59-A-6.14, as required.

59-C-7.53(a). The maximum residential density proposed on the subject property is approximately 20 dwelling units per acre, consistent with the recommendations of the Master Plan and well below the limits set for the zone.

59-C-7.53(b). The District Council must determine whether the density applied for is appropriate, taking into consideration the master plan, the purposes of the MXPDP Zone, the requirement to provide MPDUs, and county housing policy. The proposed density is well below the maximum permitted in the zone, so clearly it is not excessive. A moderate overall density is appropriate in light of the Master Plan recommendations specifying a maximum of 1,950 residential units in the entire 950-acre Cabin Branch Neighborhood, and the emphasis in the purpose clause on compatibility. A development with densities approaching the levels permitted in the MXPDP Zone would have difficulty maintaining compatibility with the largely rural, low-density uses in the surrounding area. Accordingly, the District Council finds that the residential density proposed for the subject property is appropriate for the site.

59-C-7.53(c). The Master Plan recommended a comprehensively developed mixed-use center with residential and non-residential components, as proposed here. The residential density proposed on the Development Plan is consistent with the recommendations of the Master Plan.

59-C-7.54: Density of commercial/industrial development. The maximum commercial/industrial density proposed on the Development Plan is a FAR of 0.59, which is compatible with the recommendations of the Master Plan and below the limit established for the zone.

59-C-7.55: Compatibility standards. All uses must conform to the purposes of the MXP Zone and must be compatible with existing or proposed uses in the surrounding area. Three threshold requirements apply, related to setbacks and height limits. The Development Plan would satisfy each of these requirements. Moreover, based on a more general consideration of compatibility, the District Council finds that the proposed development would be compatible with existing and proposed uses in the surrounding area.

The proposed development would be a significant change from the current agricultural use of the subject property, and would be a more intense form of development than the rural, low-density uses prevailing in the surrounding area. However, only small portions of the subject property abut residentially developed property, and for the most part the development facing those residences would be buffered by green space and/or roads. The largest borders of the Cabin Branch Community that abut residential uses would be in the west side of the site, where development is intended to be almost entirely low-density, single-family detached residential. The Linthicum Realty property south of the Cabin Branch Community is expected to be developed for single-family residential use, creating easy compatibility in that portion of the site. Mixed-use development of the subject property would result in employment uses along I-270 that would be much more compatible with a high-speed freeway than the existing agrarian uses. Moreover, the proposed development would implement the principal goals of the Master Plan, including focusing development in identified areas and preserving surrounding green space. Technical Staff testified that they found the proposed development to be compatible because of the layout, including setbacks, and because of the support it garnered among Clarksburg residents. For all of these reasons, based on the preponderance of the evidence, the District Council concludes that the proposed rezoning and development would be compatible with existing and proposed uses in the surrounding area.

59-C-7.56: Minimum green area and amenity requirements. A binding element of the Land Use Plan commits the Applicants to meeting the minimum green area requirements for the zone.

59-C-7.57: Public facilities and utilities. The Development Plan provides for property dedication for roadways and for the principal public facilities recommended in the Master Plan: an elementary school, a recreation center/community building, and a local park. The Applicants have represented that all utility lines would be installed underground.

59-C-7.58: Parking facilities. The Applicants have represented that they would satisfy the requirements of Chapter 59-E and that off-street surface parking areas would be carefully designed and landscaped to comply with this provision and a similar provision in the purpose clause for the zone.

In addition to the purpose and regulations of the zone, the application satisfies the requirement to provide for the maximum safety, convenience and amenity of residents. Residents would enjoy a neighborhood developed with a high level of planning and attention to convenience, making the best use of amenities. Many residences would be within a very short of walk of shopping and employment opportunities, and all would have ready access by foot, bicycle, bus or car. Residents would be able to enjoy the aesthetic benefit of the stream valleys within the Cabin Branch Community, close proximity to Black Hill Regional Park, and the view of the surrounding countryside. The extensive, efficient roadway network with its grid pattern and easy access to neighboring roadways would provide for residents' safety.

§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 are safe, adequate, and efficient, particularly in view of the extensive roadway improvements that the Applicants would be obligated to provide to satisfy Planning Area Transportation Review and Local Area Transportation Review requirements.

§59-D-1.61(d): preservation of natural features. The evidence supports a finding that because of the comprehensive, integrated nature of the proposed development, it would tend to prevent soil erosion, minimize grading and preserve natural vegetation and other natural features of the site considered to have the highest environmental value. The Development Plan demonstrates that the

Applicants would satisfy forest conservation requirements on-site, and the approved Preliminary Water Quality Plan demonstrates compliance with water resource protection requirements.

§59-D-1.61(e): common area maintenance. The Land Use Plan specifies in binding element number 13 that at site plan review, the owners of the property would enter into a Site Plan Review Agreement providing for perpetual maintenance of open space areas and other areas to be used for recreational, common or quasi-public purposes. This statement satisfies this requirement.

The District Council further determines that the proposed zoning bears sufficient relationship to the public interest to justify it. The proposed rezoning and development would be in substantial compliance with the use and density recommended in the Master Plan. The Development Plan would depart from the Master Plan's recommendations for roadway configuration because the Applicants would widen West Old Baltimore Road to serve as the main east-west through road, instead of directing the main flow of traffic through the new development on Newcut Road. The record contains no discussion of the environmental impacts of widening West Old Baltimore Road, although presumably they are less dramatic than the severe impacts of building a new four-lane roadway through a stream valley. Technical Staff and the Planning Board concluded that under today's standards and based on current traffic modeling, the benefits of extending Newcut Road as recommended in the Master Plan are clearly outweighed by the costs. Based on the preponderance of the evidence, the District Council concludes that the proposed rezoning and development would be in substantial compliance with the *Clarksburg Master Plan*.

The District Council further concludes that the proposed development would be adequately served by and would not adversely affect public facilities in the area. A community member presented anecdotal evidence that development of the roadway network as proposed by the Applicants would have adverse effects on area roadways. While frustration with traffic congestion is understandable, the Applicant presented competent, probative and substantial evidence that the proposed development would not adversely affect traffic congestion during the weekday peak periods, which is the commonly accepted measure of traffic impact in this County. To allow such evidence to be

outweighed by contentions that amount to little more than generalized concerns and unsupported allegations would be counter to the dictates of Maryland law. See *Rockville Fuel & Feed Co. v. Board of Appeals*, 257 Md. 183, 192-93 (1970); *Moseman v. County Council of Prince George's County*, 99 Md. App. 258, 265 (Ct. Spec. App. 1994).

Correspondence from Montgomery County Public Schools indicates that school capacity may not be adequate to accommodate the proposed development. However, the Planning Board bases its determination concerning school capacity on the AGP, which currently states that school capacity in the Clarksburg/Damascus school district is considered adequate. Under these circumstances, the evidence does not justify denial of the requested rezoning on the basis of school capacity.

For these reasons and because to approve the instant zoning application would 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-806, for the reclassification from the RE-1/TDR, RMX-1/TDR and I-3 Zones to the MXPD Zone of 283.5 acres of land east of Clarksburg Road (MD 121), west of I-270 and north of West Old Baltimore Road in Clarksburg, in the 2nd Election District, is hereby approved in the amount requested and the Development Plan submitted in conjunction therewith is also approved, subject to the specifications of the Land Use Plan, Ex. 67(g), which forms its central component; provided, however, that within 10 days of receipt of the District Council's approval resolution, the Applicants must submit a reproducible original and three copies of the approved Land Use Plan, Ex. 67(g), with binding element no. 5 revised to read "Area D will be designed with a public or private street connecting First Avenue (Route A-304) and Newcut Road (Route A-302) in a grid pattern

with a particular emphasis on a building line to frame Newcut Road Extended, with parking in the rear"
for certification in accordance with §59-D-1.64 of the Zoning Ordinance.

This is a correct copy of Council action.

Mary A. Edgar

Mary A. Edgar, CMC
Clerk of the Council

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
100 Maryland Avenue, Room 200
Rockville, Maryland 20850
(240) 777-6660
www.montgomerycountymd.gov/mc/council/hearing.html

IN THE MATTER OF:
ADVENTIST HEALTHCARE, INC., FFTM I,
LIMITED PARTNERSHIP, AND KING FARM
PARTNERSHIP, LLP

Applicants

Frank G. Bossong
Griff Gosnell
Steve Johnson
Steve Nardella
Dusty Rood
Christopher Turnbull
Gary F. Unterberg

For the Application

Robert Harris, Esquire
Jody S. Kline, Esquire
Stephen J. Orens, Esquire

Attorneys for the Applicants

Ki Kim
William Landfair

Staff of Maryland-National Capital
Park and Planning Commission

Jamie Haney

Community Participant

Martin Klauber, People's Counsel

In Support of the Application

Before: Françoise M. Carrier, Hearing Examiner

HEARING EXAMINER'S REPORT AND RECOMMENDATION

ATTACHMENT 6

TABLE OF CONTENTS

	Page No..
I. SUMMARY	4
II. STATEMENT OF THE CASE.....	4
III. FINDINGS OF FACT	5
A. Subject Property	5
B. Surrounding Area	8
C. Zoning History	10
D. Master Plan	10
E. Land Use Plan and Binding Elements	16
F. Roadway Configuration.....	23
G. Roadway Capacity	27
H. Design Issues.....	32
I. Environmental Issues	36
J. Density of Development and Types of Units.....	38
K. Schools and Utilities.....	39
1. Schools	39
2. Water and Sewer	41
L. Community Participation.....	41
IV. SUMMARY OF TESTIMONY	42
A. Applicants' Case in Chief	42
B. Technical Staff Testimony.....	58
C. Community	61
D. People's Counsel.....	63

ZONING ISSUES 63

 A. The Development Plan 64

 1. Purposes of the Zone 65

 2. Standards and Regulations of the Zone 69

 3. Maximum safety, convenience and amenity of residents 74

 B. Public Interest..... 76

VI. CONCLUSIONS 77

 A. Development Plan..... 78

 B. Zoning Request..... 78

VII. RECOMMENDATION..... 78

I. SUMMARY

This application requests rezoning of a very large tract of land, approximately 283.5 acres, adjacent to I-270 in Clarksburg. The subject property represents slightly more than half of a larger tract, measuring approximately 535 acres, that has been assembled by four property owners. The property owners propose to develop this 535-acre area as a comprehensively planned, mixed-use community with residential, office, retail, institutional and service uses. The property subject to the present rezoning request is currently split-zoned, permitting mixed uses on almost half the property, office uses on almost half the property, and single-family residential on a very small portion of the property. The proposed reclassification would not change the uses or densities permitted on the subject property. Its effect would be to provide flexibility in locating various uses without regard to current zoning lines.

While this development would be a significant step in the growth of Clarksburg, the record in this case demonstrates that the planned community would be consistent with most of the goals of the *1994 Clarksburg Master Plan*. The proposed rezoning and development would satisfy the purposes and standards of the zone requested (the MXPD Zone), would be compatible with existing and planned land uses in the surrounding area, and would serve the public interest. Moreover, the submitted Development Plan satisfies all of the applicable requirements set forth in the Zoning Ordinance. Accordingly, the Hearing Examiner recommends approval of the requested reclassification and of the Development Plan.

II. STATEMENT OF THE CASE

Application No. G-806, filed on December 16, 2002, requests reclassification from the RE-1/TDR, RMX-1/TDR and I-3 Zones to the MXPD Zone of 283.5 acres of land east of Clarksburg Road (MD 121), west of I-270 and north of West Old Baltimore Road in Clarksburg, in the 2nd Election District.

The application was initially reviewed by Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC) who, in a report dated May 30, 2003,

recommended approval. The Montgomery County Planning Board ("Planning Board") considered the application on June 5, 2003 and, by a vote of 5-to-0, recommended approval. A public hearing was conducted on June 11 and 12, 2003, at which testimony and evidence were presented in support of the application. One community member participated in the hearing, in opposition not to the rezoning per se, but to certain planned roadway improvements. The record was held open for one week to accept post-hearing submissions and closed on June 19, 2003.

III. FINDINGS OF FACT

For the convenience of the reader, the findings of fact are grouped by subject matter.

Where there are conflicts in the evidence, these conflicts are resolved under the preponderance of the evidence test.

A. Subject Property

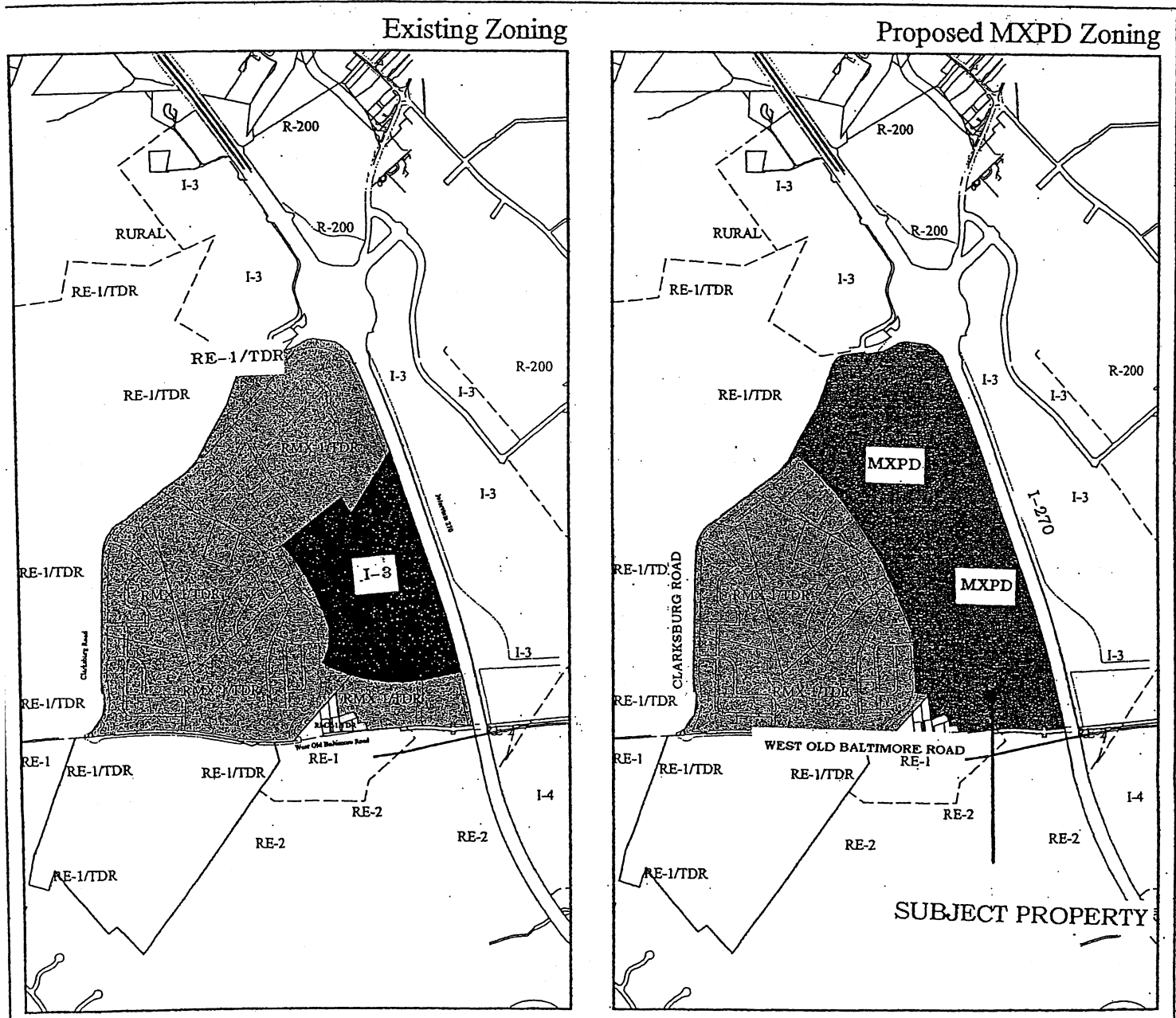
The Applicants, Adventist Healthcare, Inc., FFTM I Limited Partnership and King Farm Partnership, LLP, seek reclassification of approximately 283.5 acres of land in Clarksburg, which will be referred to as the "subject property." The subject property comprises roughly the eastern half of a 535-acre tract of land that has been assembled by the Applicants and a fourth party, Winchester Homes, Inc. (together, the "Property Owners").¹ This 535-acre area forms a triangle abutting Clarksburg Road (MD 121) to the west and north, I-270 to the east and West Old Baltimore Road to the south, and will be referred to as the "Cabin Branch Community." The Applicants propose to develop the entire Cabin Branch Community as a single planned development with residential, employment, retail and service uses. The portion of the Cabin Branch Community outside the subject property is intended to be developed under its existing RMX-1/TDR zoning. The maps

¹ Winchester Homes owns a relatively small tract that is located outside the subject property but within the 535 acres, and is the contract purchaser of substantial additional property in the 535-acre tract, some of which is included in the subject property.

reproduced below show the general location and shape of the subject property, its relationship to the Cabin Branch Community, and the existing and proposed zoning. The subject property consists of the area designated on the right as "MXPD."

Subject Property and Cabin Branch Community

Exhibit 26(a), Figure F



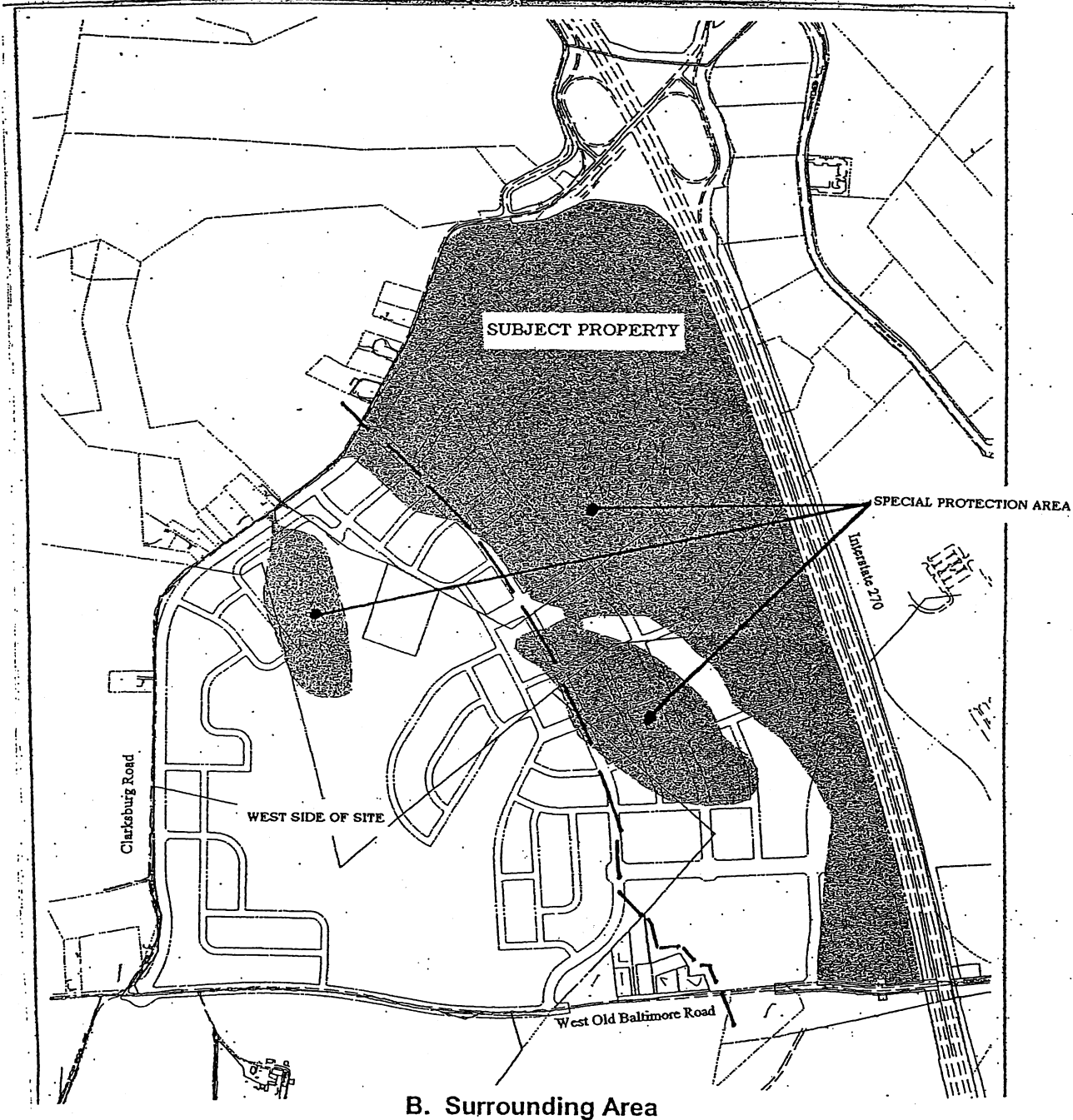
This report will focus primarily on the subject property, which is the subject of the present rezoning application. However, factual information will also be provided concerning the portion of the Cabin Branch Community outside the subject property. While each of the Property Owners retains the right

to proceed with the development of its property independently, the development team approached the whole of the Cabin Branch Community as a single project. As a result, the development plans cannot be properly presented or understood without discussing the entire Cabin Branch Community. The Applicants have provided nearly the same level of information for the land they control outside the subject property as for the subject property itself. ~~All of the graphical exhibits in the record,~~ including the Land Use Plan that is the central component of the Development Plan, cover the entire Cabin Branch Community. Moreover, the Property Owners intend to present to the Planning Board a single application for preliminary plan approval for the entire Cabin Branch Community. For ease of reference, the Cabin Branch Community as a whole will sometimes be referred to as the "site," and the 251.5 acres that are not included in the subject property will be referred to collectively as the "west side" of the site.

The subject property is comprised of the 127.7-acre Gosnell parcel, the 13-acre Faller parcel, and the 142.8-acre Adventist HealthCare parcel, for a total of 283.5 acres. It has approximately 4,000 feet of frontage on I-270, 2,100 feet of frontage on Clarksburg Road, and 1,600 feet of frontage on West Old Baltimore Road. The property is dominated by fields in active agricultural use, bordered by hedgerows, and has several abandoned farm buildings. A stream valley for a tributary of Little Seneca Creek flows through the subject property and is partially forested. The majority of the subject property lies within the Clarksburg Special Protection Area, as shown on the map reproduced on the next page.

The west side of the site (outside the subject property) is developed in a similar fashion, with fields in active agricultural use and a small number of abandoned farm buildings. It also contains a small property known as the Magee Property, which is the location of the Byrne-Warfield House, designated in the *1994 Clarksburg Master Plan* as a historic site. The Property Owners have contracted to purchase the Magee Property and intend to preserve this historic site as a community amenity. A tributary of Cabin Branch Creek runs through the west side of the site. Most of the stream valley, as well as a sizeable area adjacent to it, is forested. Two small areas in the west side of the site are within the Clarksburg Special Protection Area, as shown on the following page.

Figure S of Exhibit 26(a)

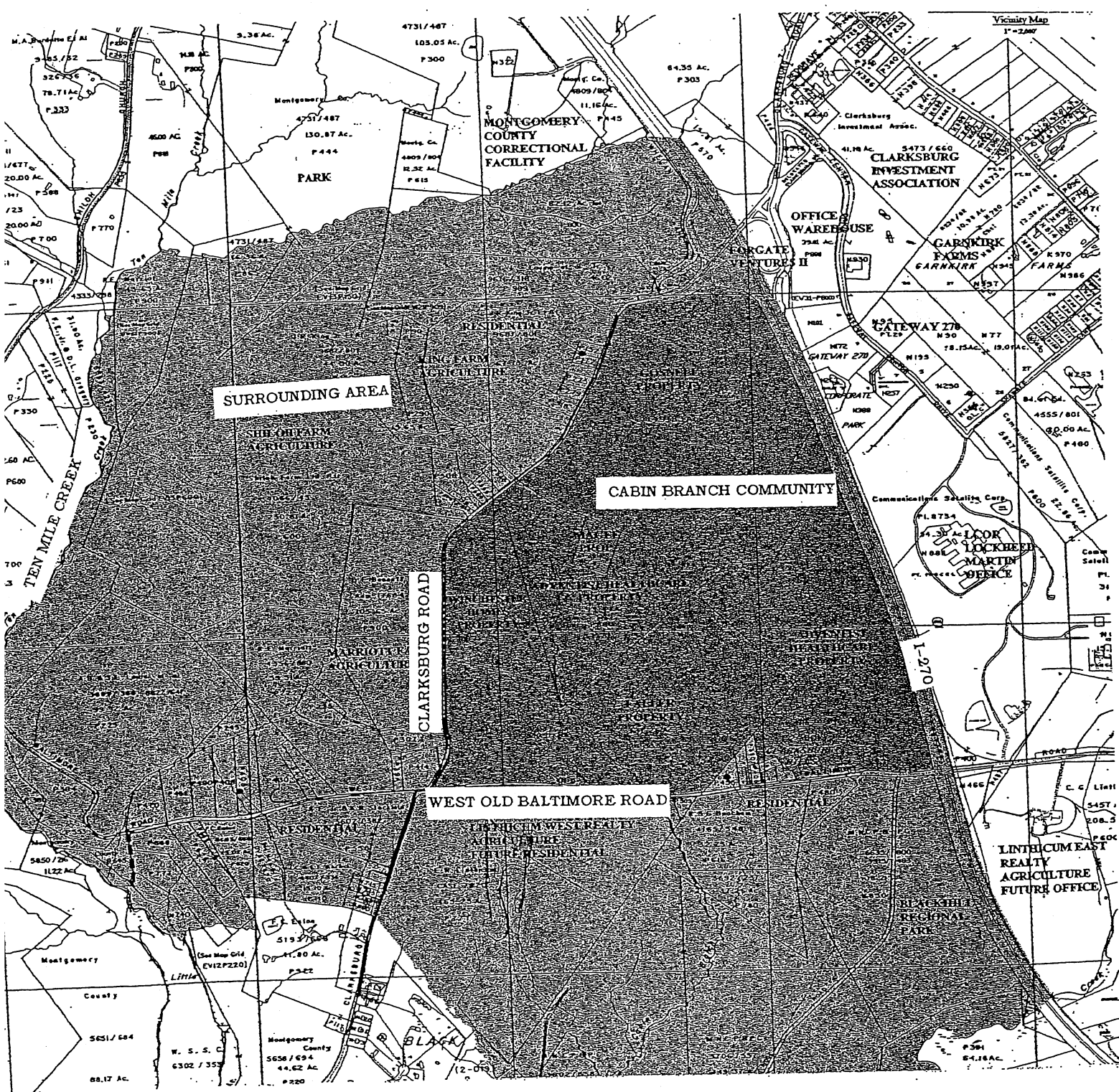


B. Surrounding Area

The surrounding area must be identified in a floating zone case so that compatibility can be evaluated properly. The "surrounding area" is defined less rigidly in connection with a floating zone application than in evaluating a Euclidean zone application. In general, the definition of the surrounding area takes into account those areas that would be most directly affected by the proposed development. In the present case, following the recommendation of both Technical Staff and the Applicants, the Hearing Examiner designates the surrounding area as that area bounded

...inthicum West Realty property to the south. The surrounding area is shown on the map below.

Surrounding Area, Exhibit 14



The surrounding area is dominated by agricultural fields to the north, west and south, classified under the RE-1/TDR Zone, and Black Hill Regional Park to the south. Scattered houses have been and are being developed along Clarksburg Road and West Old Baltimore Road in the RE-1/TDR Zone. Immediately north of the subject property are the Clarksburg Road/I-270 interchange, a rubble excavation area left over from I-270 construction, a recently built Montgomery County Detention Facility, and undeveloped land classified under the I-3 Zone. Immediately south of the Cabin Branch Community, abutting the south side of West Old Baltimore Road, is the Linthicum West Realty property, which is designated in the *1994 Clarksburg Master Plan* for residential development under the RE-1/TDR Zone. East of I-270 (outside the designated surrounding area) are the Gateway 270 Corporate Office Park and the Lockheed Martin office development. Existing and proposed zoning may be seen on the maps shown on page 6 of this report.

C. Zoning History

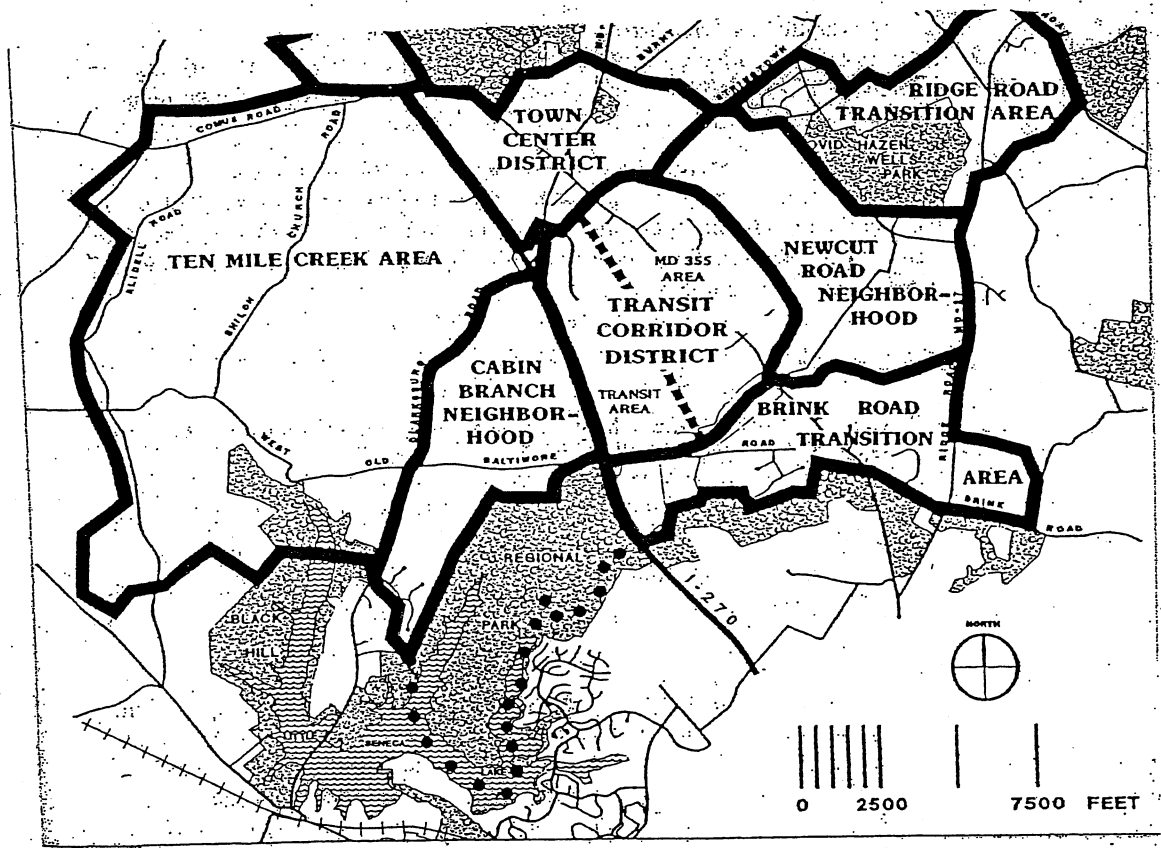
The subject property was classified under the RR Zone (Rural Residential, now known as R-200, 20,000-square-foot minimum lot size) in the 1958 Countywide Comprehensive Zoning. It was rezoned to RE-1/TDR, RMX-1/TDR and I-3 by sectional map amendment G-710 in 1994.

D. Master Plan

The *1994 Clarksburg Master Plan* (the "Master Plan") was intended to "guide the growth of Clarksburg from a rural settlement to a transit- and pedestrian-oriented town surrounded by open space." Master Plan at 15. It divides the study area into a series of geographic areas including the "Cabin Branch Neighborhood," a 950-acre area that includes the Cabin Branch Community north of West Old Baltimore Road, plus an additional 415 acres south of West Old Baltimore Road, between Clarksburg Road on the west and Black Hill Regional Park on the east. See Master Plan at 40-41. The map on the next page shows the limits of the Cabin Branch Neighborhood as defined in the Master Plan.

Clarksburg Master Plan Neighborhoods

Excerpted from Master Plan at 41, Fig. 18.



The Cabin Branch Neighborhood is the only area of Clarksburg west of I-270 that the Master Plan proposes for significant residential development. The Master Plan identified several reasons to designate this area as a "mixed-use neighborhood center," including proximity to the Boyds commuter rail station and the transitway (a dedicated light rail or bus route) proposed east of I-270; access to Clarksburg Road, which has one interchange with I-270 and is planned for a second one; land ownership in several large parcels conducive to an overall planned development concept; close proximity to Black Hill Regional Park offering the opportunity for a strong neighborhood-park relationship; and extensive frontage on I-270, opposite existing high-tech uses. See Master Plan at 64. The Master Plan recognizes that the Cabin Branch Neighborhood lies in the headwaters of the Cabin Branch tributary of Little Seneca Creek, but concludes "that the opportunity to provide a transit-oriented residential neighborhood and to reinforce the I-270 technology corridor concept are the most important public policy objectives." Master Plan at 64. The Master Plan proposed to

address environmental concerns with stream buffers and other mitigation strategies. Relevant Master Plan objectives for the Cabin Branch Neighborhood are outlined below.

Provide a mix of uses including employment.

The Master Plan recommends the following mix of uses:

Residential	1950 dwelling units
Employment	2 -2.3 million square feet
Retail	120,000 square feet
Public Uses	Places of worship, child care, community building, park and elementary school

Technical Staff has concurred with the Property Owners' position that the maximum residential density recommended in the Master Plan represents a base density, and should be increased by 12.5 percent to reflect the addition of moderately priced dwelling units (MPDUs). This would allow a total of 2,094 residential units in the Cabin Branch Neighborhood. See Tr. June 12 at 115. The Master Plan recommends that these units consist of 45 to 55 percent detached units, 35 to 45 percent attached units and 10 to 20 percent multi-family units. See Master Plan at 67.

In addition to the public uses listed above, the Master Plan recommends that adult day care and senior housing be provided in locations throughout Clarksburg that are near public transit, shopping and public facilities. See Master Plan at 167.

Encourage an employment pattern that is supportive of I-270 as a high-technology corridor.

Technical Staff notes that the Master Plan includes many employment sites along I-270 to help implement the vision of I-270 as a high-technology employment corridor. See Ex. 38 at 11. The most significant such area is in the Cabin John Neighborhood, where the plan provides for up to 2.3 million square feet of office-type uses. In particular, the Master Plan singles out 175 acres fronting on I-270 in the Cabin John Neighborhood – 60 percent of the property for which rezoning is currently sought – as an opportunity for a large, comprehensively planned employment center in close proximity to a residential neighborhood and associated retail and support services. The Master Plan recommended a combination of RMX and I-3 as the base Euclidian zoning for this area, stating that rezoning to MXPd (a floating zone) would be appropriate to allow the entire area to be planned

and designed in a comprehensive fashion.² The Master Plan described as one of its major concerns ensuring that "employment uses become an integral part of the overall Cabin Branch Neighborhood and that strong interrelationships be established among residential, employment, retail, and public facility uses." See Master Plan at 67.

Create a transit-oriented land use pattern.

The Master Plan endorses a development pattern that will facilitate bus access and circulation and place all residents within convenient walking distance (one-quarter mile) of a bus stop. It proposes a neighborhood core linked by bus to the transitway proposed east of I-270 and to the existing MARC train station in Boyds. The core is to be located within one-quarter mile of as many residential units as possible, with a vertical mix of uses in three- to four-story buildings, a grocery store, an interconnected street system, a mix of housing types within each block, and street-oriented buildings with parking in the rear. See Master Plan at 67-68.

Maximize access to the proposed open space system.

The Master Plan recommends locating public uses such as a local park, an elementary school and passive open spaces adjacent to the Cabin Branch stream valley; locating residential streets adjacent to the stream valleys on at least one side; and connecting the two central stream valleys with public open spaces. See Master Plan at 68-69.

Provide an interconnected roadway system.

The Master Plan proposed improvements to two roadways to provide access to the Cabin Branch Neighborhood: Clarksburg Road (MD 121) and Newcut Road Extended. Newcut Road was to be built as a four-lane roadway from Clarksburg Road to Mid-County Highway, with a new interchange at I-270, and to continue as a two-lane road from Mid-County Highway to Ridge Road (MD 27). Clarksburg Road was to be widened to six lanes for a short distance south of its interchange with I-270, then to four lanes to its new intersection with Newcut Road, and to two lanes

² It is standard practice in Montgomery County master plans to recommend a base Euclidean zone for all land area covered by the plan. See Master Plan at 95. Appropriate floating zones are recommended as potential rezoning opportunities.

from that point south to Boyds. Clarksburg Road and Newcut Road Extended were to form the boundaries of the mixed-use development area, with other roads within the neighborhood at a scale and character more compatible with pedestrians and buses. The Master Plan specifically noted that West Old Baltimore Road is an attractive rural road providing access to Black Hill Regional Park and should not be widened. See Master Plan at 69-70. At the same time, the Master Plan designated West Old Baltimore Road as an Arterial Highway which, if built to County standards, would require a wide corridor and widening of the roadway from the existing 20 feet to 44 feet including shoulders. See Master Plan at 114; Ex. 38 at 18. The Master Plan recommended removing the "Rustic Road" designation from West Old Baltimore Road between MD 355 and Clarksburg Road because the change was needed for the roadway network. See Master Plan at 130.

Create a strong neighborhood focal point by concentrating public and retail uses in the same general area.

The Master Plan recommends a variety of non-residential uses to create a sense of place, including civic and public places as well as retail. Concentrating these uses in one central area would strengthen the neighborhood center concept. See Master Plan at 70.

Place special emphasis on protection of the west fork of Cabin Branch.

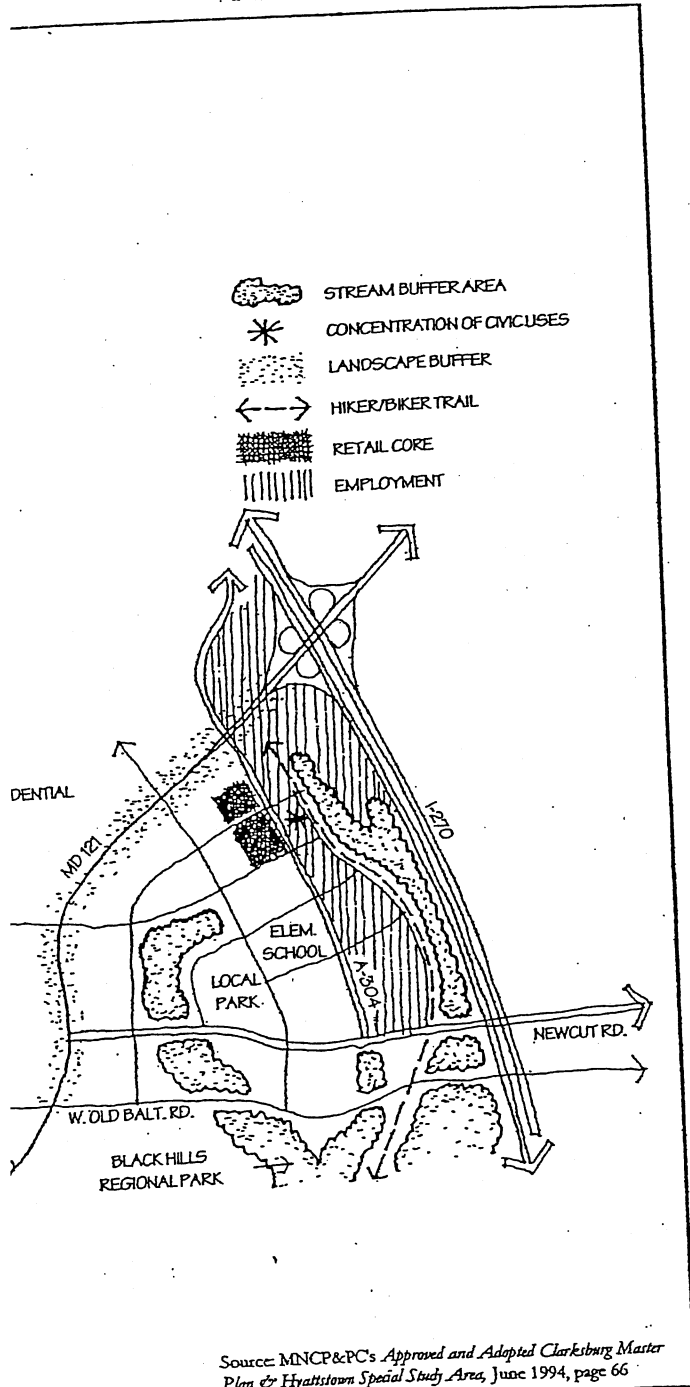
The Master Plan noted that Cabin Branch had high water quality and tree cover that warranted protection, but it concluded that objectives other than environmental protection took precedence in its recommendations for the Cabin Branch Neighborhood. See Master Plan at 70, 64.

The Applicants prepared the exhibit shown on the next page (Figure J of Ex. 26(a)) to compare the Master Plan's concept for the area north of West Old Baltimore Road (the 535-acre Cabin Branch Community) with their development plan for the area. The Applicants' plan has a larger retail core, a somewhat smaller employment area, expanded stream buffers, and public uses in slightly different locations.

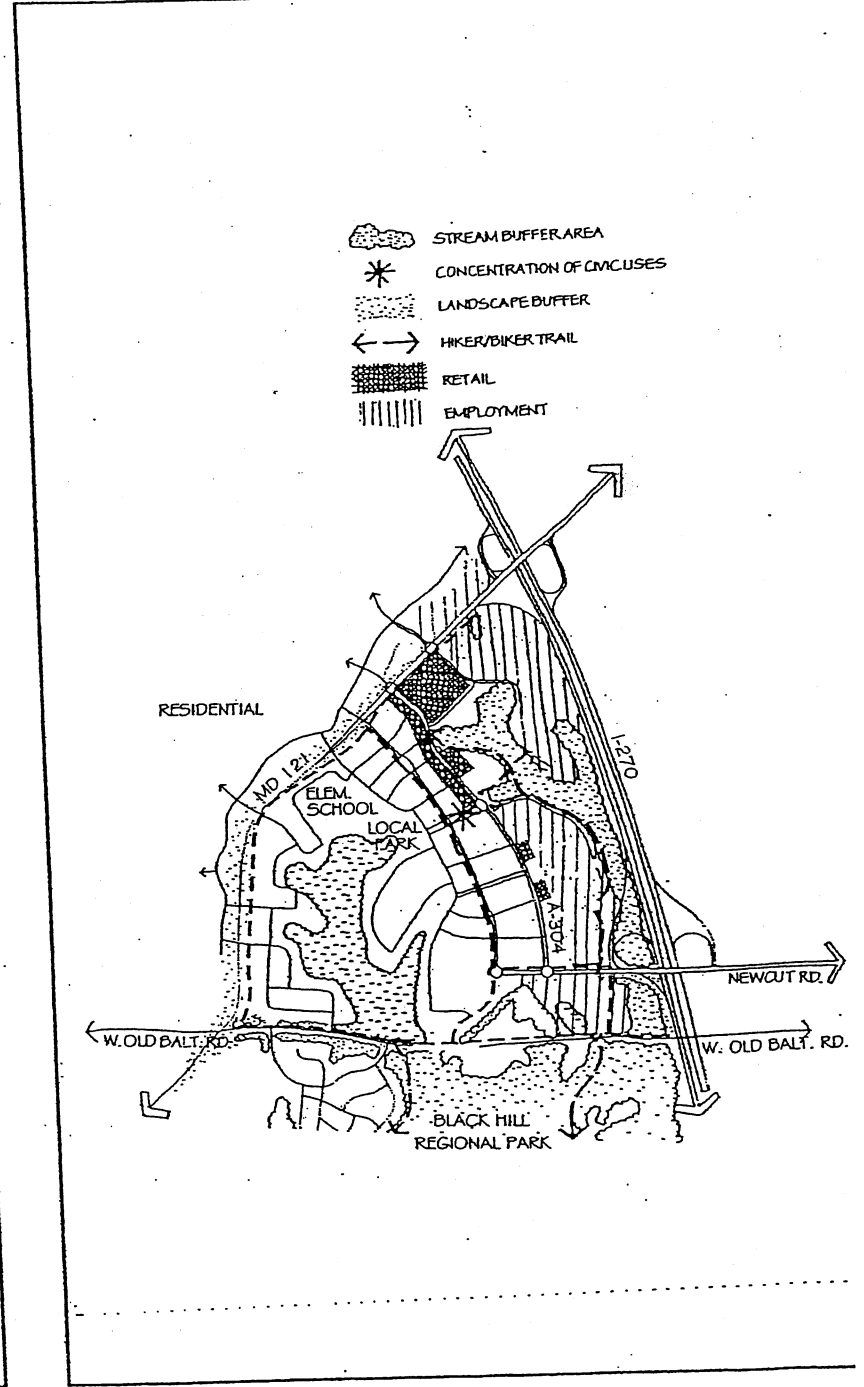
Comparison of Master Plan Concept and Proposed Development

Exhibit 26(a). Figure J

er Plan Concept Diagram



Application Concept Diagram

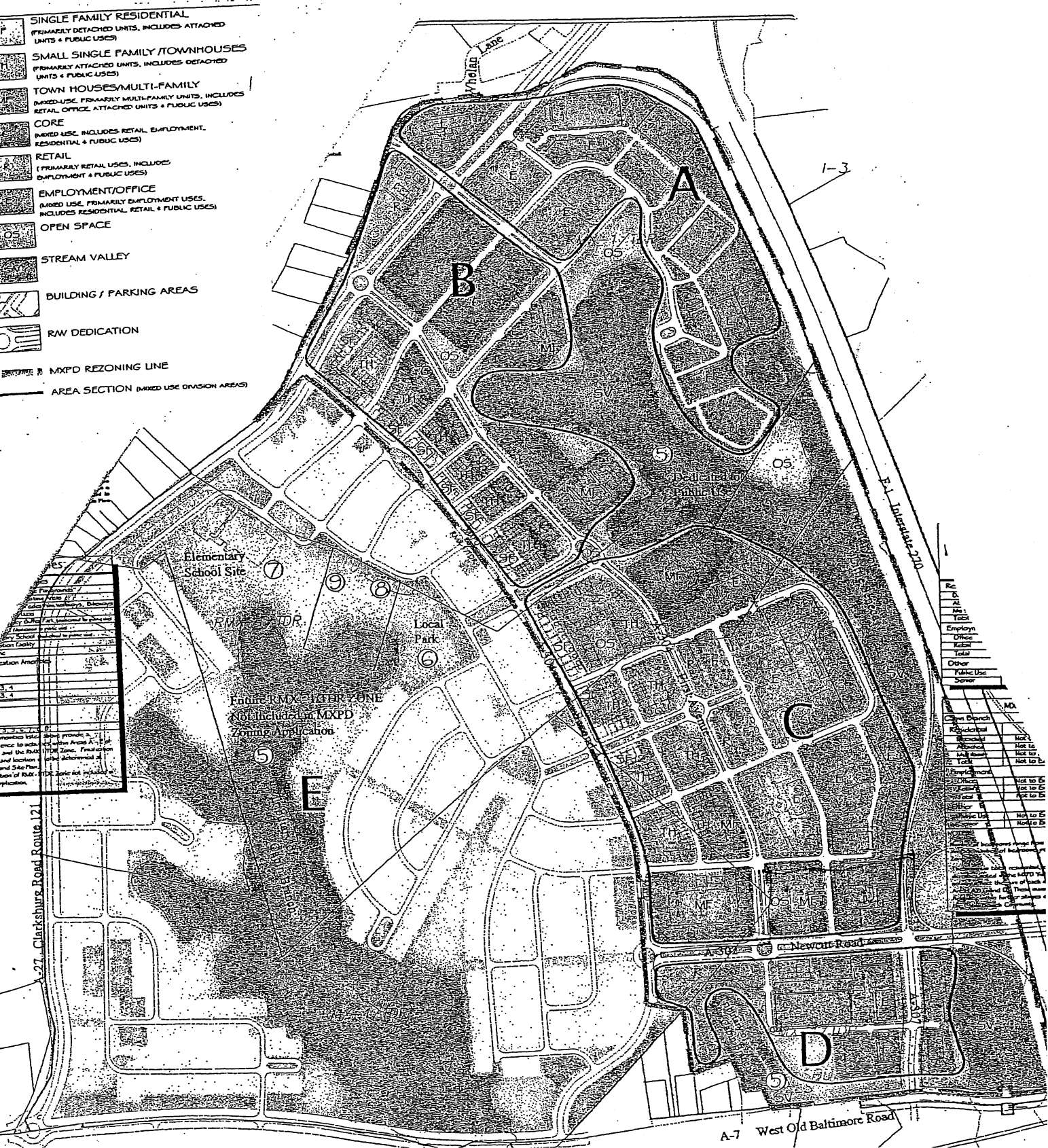


Technical Staff supports the present application because "it implements the Master Plan land use and zoning recommendations and is being planned in a comprehensive fashion." Ex. 38 at 12. Staff notes that the proposed rezoning would facilitate a variety of land uses using flexible development standards, and that the submitted Development Plan incorporates principles of a mixed-use, transit-oriented and pedestrian-friendly neighborhood. These include an interconnected street system, a strong mixed-use core, integration of employment uses, and an emphasis on access to open space. Binding elements developed by Technical Staff and the Applicants would assure continued adherence to these principles. Moreover, the concentration of employment uses along I-270 would allow those uses to be visible from the interstate, while avoiding noise-sensitive uses in that area. The Planning Board also found that the proposed rezoning would be consistent with the Master Plan.

E. Land Use Plan and Binding Elements

Pursuant to Code § 59-D-1.11, development under the MXPDP Zone is permitted only in accordance with a Development Plan that is approved by the District Council when the property is reclassified to the MXPDP Zone. This Development Plan must contain several elements, including a land use plan showing site access, proposed buildings and structures, 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, and the Land Use Plan that constitutes one of its primary elements, are binding on the Applicant except where particular elements are identified as illustrative or conceptual. The Development Plan will be subject to site plan review by the Planning Board, and minor changes may be made at that time. The principal specifications on the Land Use Plan – those that the District Council will consider 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 Land Use Plan for the present zoning application, reproduced on the next page, shows each of the required elements for the subject property, comprised of areas A, B, C and D, and many for the west side of the site, Area E.

Land Use Plan, Exhibit 67(g)
(tables, notes and additional binding elements on following pages)



The Land Use Plan divides the Cabin Branch Community into Areas A, B, C and D, which constitute the subject property, and Area E on the west side. The tables shown below identify the type and density of land uses to be built in Areas A through D, and specify the maximum total density to be permitted for each type of use in the entire subject property.

**Uses and Densities on Subject Property
Excerpted from Land Use Plan, Exhibit 67(g)**

A Predominantly Employment May include Retail, Senior Facilities, And Public Uses Up To 12 Story Height Approximately 38 Acres Area		
Employment	SF	Parking Spaces
Office	700,000 - 1,200,000	2,100 - 4,800
Retail	0 - 10,000	0 - 50
Total	700,000 - 1,210,000	2,100 - 4,850
Other	SF/Units	Parking Spaces
Public Use	0 - 7,500	0 - 25
Senior	0 - 100	0 - 200

B Mixed Use- Includes Retail Employment, Senior Facilities, Public and Residential Uses Up to 6 Story Height Approximately 47 Acres area		
Residential	# Units	Parking Spaces
Detached	0 - 100	0 - 200
Attached	200 - 325	400 - 650
Multifamily	125 - 325	250 - 650
Total	325 - 750	650 - 1500
Employment	SF	Parking Spaces
Office	0 - 75,000	0 - 300
Retail	75,000 - 115,000	375 - 875
Total	75,000 - 190,000	375 - 1,175
Other	SF/Units	Parking Spaces
Public Use	0 - 7,500	0 - 50

C Predominantly Employment Includes Public Uses, Retail and Residential Uses Up To 8 Story Height Approximately 72 Acres area		
Residential	# Units	Parking Spaces
Detached	0 - 100	0 - 200
Attached	300 - 425	600 - 850
Multifamily	175 - 350	350 - 700
Total	475 - 875	950 - 1,750
Employment	SF	Parking Spaces
Office	900,000 - 1,425,000	2,700 - 5,700
Retail	15,000 - 30,000	75 - 150
Total	915,000 - 1,455,000	2,775 - 5,850
Other	SF/Units	Parking Spaces
Public Use	0 - 27,500	0-85
Senior	150 - 500	150 - 1,000

D Predominantly Employment Includes Public Uses, Retail and Residential Uses Up To 8 Story Height Approximately 22 Acres area		
Residential	# Units	Parking Spaces
Detached	0 - 50	0 - 100
Attached	0 - 50	0 - 100
Multifamily	0 - 100	0 - 200
Total	0 - 200	0 - 400
Employment	SF	Parking Spaces
Office	200,000 - 300,000	600 - 1,200
Retail	0 - 10,000	0 - 50
Total	200,000 - 310,000	600 - 1,250
Other	SF/Units	Parking Spaces
Public Use	0 - 20,000	0 - 60
Senior	0 - 100	0 - 200

MXPYD Yield Summary		
Cabin Branch		
Residential		
Detached	Not to Exceed	100 Units
Attached	Not to Exceed	600 Units
Multifamily	Not to Exceed	439 Units
Total	Not to Exceed	1139 Units
Employment		
Office	Not to Exceed	2,300,000 SF
Retail	Not to Exceed	120,000 SF
Total	Not to Exceed	2,420,000 SF
Other		
Public Use	Not to Exceed	75,000 SF
Senior	Not to Exceed	500 Units

NOTES:

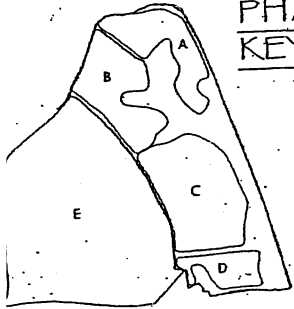
Number of bedrooms range from 1 to 5 bedrooms per unit. The average number of bedrooms per unit is 2.5 in the proposed MXPYD Zone.

The maximum total residential, employment, public use, and retail densities noted in the MXPYD Yield Summary Chart located above, in no way reflect the sum of each maximum density and/or sq. feet in Areas A,B,C and D. These maximum quantities are justified in allowing flexibility within further stages of development in the MXPYD section of the Cabin Branch Community.

A G-806

The Zoning Ordinance requires the Development Plan to include a development program stating "the sequence in which all structures, open spaces, vehicular and pedestrian circulation systems and community recreational facilities are to be developed." Code §59-D-1.3(d).

PHASING KEY



The Applicants have provided this on the Land Use Plan, in the form of the text below and the phasing key to the left. Pursuant to this development program, the first buildings to be constructed on the subject property are required to be office and health care facilities in Area C and office facilities in Area A.

DEVELOPMENT PROGRAM

Subject to further refinement during the Preliminary Plan of Subdivision and Site Plan stages, and to proposed road improvements and related staging capacity, the anticipated sequence of construction within the MXPB area will be as follows:

- mass grading of site;
- installation of common elements (water and sewer lines, public utilities, storm drain, stormwater management, sediment control and primary road access, including related sidewalks and pathways);
- fine grading of initial development area (expected to be in Area A, B and C);
- construction of parks and open space areas in Area B & C;
- construction of initial office and health care facilities in Area C;
- construction of initial office facilities in Area A;
- construction of additional structures, recreational facilities, transportation facilities and open space in all Areas.

Other areas outside of the MXPB area which is the subject of the rezoning but part of the Cabin Branch Community, will be coordinated with the phasing of development in the MXPB area.

The Land Use Plan also includes "General Notes" that provide important commitments by the Applicants. These are shown in full on the next page and highlighted below:

- Note (2) restricts development in Areas A through D to the uses and densities specified in the summary tables.
- To demonstrate compliance with MXPB requirements, notes (3) and (4) specify, for Areas A through D, maximum residential densities and minimum and maximum square footage and floor area ratio ("FAR") for employment uses.
- In compliance with the MXPB Zone, note (7) requires at least 50 percent green area in the residential area of the subject property and 40 percent in the commercial area.
- Note (8) underscores the binding nature of the maximum densities specified in the MXPB Yield Summary table.
- Note (9) memorializes the commitment to dedicate land for road right-of-way as required at preliminary plan review.

General Notes

Excerpted from Land Use Plan, Ex. 67(g)

GENERAL NOTES

The development plan depicts the overall concept for the orderly and staged development of Cabin Branch, a large, mixed use community made up of several interdependent neighborhoods. This development plan depicts that element of the Cabin Branch Community that is to be developed in accordance with provisions of the Zoning Ordinance applicable to the MXPDP Zone. It is anticipated that revisions to the development plan may become necessary as the entire Cabin Branch community evolves. This development plan reflects the proposed Community as it is presently envisioned.

Densities, heights, and the mix of uses are as specified in the appropriate table for areas A, B, C, & D. Building and parking locations will be approximately as shown. Specific building locations, footprints, parking locations and other design details will be refined and finalized during subsequent subdivision and site plan proceedings.

The total area to be rezoned MXPDP is 283.5 Acres including Adventist property 142.8 ac, Fallier property 13.0 ac, Gosnell property 127.7 ac.

The maximum residential density shall not exceed 44 dwelling units per acre for residential areas shown on the development plan. Where residential development is proposed to be located within a proposed commercial area, the maximum residential density for such areas shall not exceed 75 dwelling units per acre.

Residential Yields are as follows:		
# Units	Residential Acreage*	Units Per Acre
0	Varies	Varies
325 - 750	37.0 ac	8.8 - 20.3
475 - 875	60.8 ac	7.8 - 14.4
0 - 200	0 ac	Varies
at 800 - 1825	97.8 ac	8.2 - 18.6

*Note: Residential Acreage may vary based on distribution, mix of uses, and internal/adjacent open space.

NOTES CONTINUED:

5. Develop a commercial/industrial density in the mixed use planned development zone that should be compatible with any gross floor area or floor area ratio recommended in the master plan. The maximum density shall not exceed a floor area ratio of 0.75.

Current Commercial/Industrial Yields are as follows:			
Area	Total SF	Employment Acreage*	Floor Area Ratio
A	700,000 - 1,210,000	59.2 ac	0.27 - 0.47
B	75,000 - 190,000	30.4 ac	0.06 - 0.14
C	915,000 - 1,455,000	57.0 ac	0.37 - 0.59
D	200,000 - 310,000	39.1 ac	0.12 - 0.18
Total	1,890,000 - 3,165,000	185.7 ac	0.23 - 0.39

*Note: Employment acreage may vary based on distribution, mix of uses, and internal/adjacent open space.

6. The maximum population proposed is approximately 3,800 people.

7. The amount of green area required for the residential portion of a mixed-use planned development shall be no less than 50 percent of the total area shown for residential use. The maximum green space requirement for the commercial/industrial portion of a mixed-use planned development shall be 40 percent of the total area devoted to commercial/industrial uses.

8. The maximum total residential, employment, public use, and retail densities are noted in the MXPDP Yield Summary Chart located above. These numbers in no way reflect the sum of each maximum density and/or sq. feet in Areas A, B, C and D. These maximum quantities are justified in allowing flexibility within further stages of development in the MXPDP section of the Cabin Branch Community.

9. Rights of way for the following Master Plan roads will be dedicated as required at Preliminary Plan of subdivision:

A-27 Maryland Route 121

A-307

A-7 West Old Baltimore Road

A-304 First Avenue and Second Avenue

A-302 Newcut Road

F-1 I-270 RW & Newcut Road Interchange RW to be placed in reservation

10. Off-street parking shall be provided in accordance with the requirements of article 59-E.

11. On-street parking shall be provided on master plan roads A-304 (First Avenue and Second Avenue) and local roads.

12. Section E is a portion of RMX-1/TDR Zone that is not included in MXPDP Zoning Application

13. The property, including the open space, will be subject to the site plan review. At the time of site plan review the owner on behalf of itself, or its successors and assigns, will enter into a Site Plan Review Agreement providing for perpetual maintenance of open space areas and other areas used for recreational, common or quasi-public purposes.

In this case, the Applicants have specified on the Land Use Plan additional binding elements in textual form, which were developed jointly by the Applicants, Technical Staff and the People's Counsel. Some of the binding elements apply to the west side of the site as well as to the subject property. The first binding element commits the Applicants to acquiring the same number of transferable development rights that would be required if all of the property currently classified under the RMX-1/TDR Zone were developed according to its existing zoning. Other binding elements commit the Applicants to dedicating sites for an elementary school, a local park and a recreation facility; considering trip reduction measures during preliminary plan review; creating a network of interconnected public and private streets in a grid pattern; designing streets with pedestrian-friendly elements; designing the road that leads to Black Hill Regional Park to serve as a park gateway; maintaining the rural character of West Old Baltimore Road by minimizing environmental impacts and providing generous green edges; including in the service/public uses up to 500 dwelling units for seniors or persons with disabilities; and providing on-street parking on streets with retail uses.

The binding elements are reproduced in full on the next page. Binding element number 5 contains a clerical error that should be corrected if the rezoning is approved. To correspond more closely to the evidence of record, the words "Route A-304 and First Avenue" should be revised to read "First Avenue (Route A-304) and Newcut Road (Route A-302)." The misspelling of Newcut Road should be changed at the same time. With these changes, binding element no. 5 would read "Area D will be designed with a public or private street connecting First Avenue (Route A-304) and Newcut Road (Route A-302) in a grid pattern with a particular emphasis on a building line to frame Newcut Road Extended, with parking in the rear."

Binding Elements Excerpted from Land Use Plan, Ex. 67(g)

Transferable Development Rights and Moderately Priced Dwelling Units

The property that is the subject of this application (283.5 acres) is part of a larger, mixed-use community planned for 535 acres shown on the Development Plan, of which the Applicants are also owners. The portion of the property not being rezoned MXP, is zoned MX-1/TDR and will require the purchase of Transferable Development Rights (TDR's) for the development planned by applicants. Based on calculations developed with M-MCPPC staff, the total Master Plan residential density for the 535-acre community is 1,676 market rate units plus 210 Moderately Priced Dwelling Units. Assuming this density and the mix of unit types called for in the Master Plan for the entire Cabin Branch Neighborhood (including a maximum of 20% multifamily) the 535-acre project will require 635 TDR's. The Preliminary Plan of Subdivision Application(s) for the MXP area and the remaining RMX-1/TDR area shall require the purchase of TDR's in conformance with this calculation.

Off-site Amenities and Features

At the time of issuance of building permits for the 100th dwelling unit in the Cabin Branch Community, which consists of the larger, mixed-use community of 535 acres shown on the Development Plan, the Applicants will dedicate the sites shown on the Development Plan for an elementary school, a local park and a recreation facility. The school site will be rough-graded at a time determined at the earliest Preliminary Plan of Subdivision Application for the Cabin Branch Community, subject to Montgomery County Public School approval.

Trip Reduction Measures

At the time of Preliminary Plan of Subdivision, the Applicants, M-MCPPC Transportation Planning staff, and Department of Public Works and Transportation (DPWT) staff will consider mutually acceptable trip reductions measures. The parking ratios for non-residential uses in the Cabin Branch Community will be determined at Site Plan, considering trip reduction goals.

4. Street Network

A network of public streets shall be provided, supplemented by private streets, in a grid pattern that promotes interconnectivity. Public streets will consist of Master Plan streets and additional business and residential streets to form blocks that, with the exception of Area D defined on the Development Plan, are substantially similar to the street system shown in the Road Hierarchy Plan of the Development Plan and that are subject to MNCPPC and DPWT approvals.

5. Area D Street Network

Area D will be designed with a public or private street connecting ~~Route A-304~~ and First Avenue in a grid pattern with a particular emphasis on a building line to frame Newcutt Road Extended, with parking in the rear. *(Route A - 302)*

6. Street Character

All streets will adhere to a pedestrian-friendly design to the extent practicable, which places particular emphasis on a building line to frame the street, with parking in the rear. Within the core, pedestrian friendly uses including retail, residential, or office will be located on the first floor. The entire MXP area will conform to a Cabin Branch Community Streetscape Plan that is designed to integrate the entire community, which will be submitted at Site Plan and is subject to M-MCPPC and DPWT approvals.

7. Special Roads

A-307 will be designed as an open section arterial road with wide green edges to provide a gateway to Black Hill Regional Park, subject to M-MCPPC and DPWT approvals. The rural character of West Old Baltimore Road will be maintained by minimizing environmental impacts and providing generous green edges.

8. Service/Public Uses

Service/Public uses may include up to 500 units for independent living for Senior Adults or persons with disabilities, assisted living, life care, or continuing care.

9. On-street Parking

Applicants will include on-street parking on streets adjacent to retail facilities.

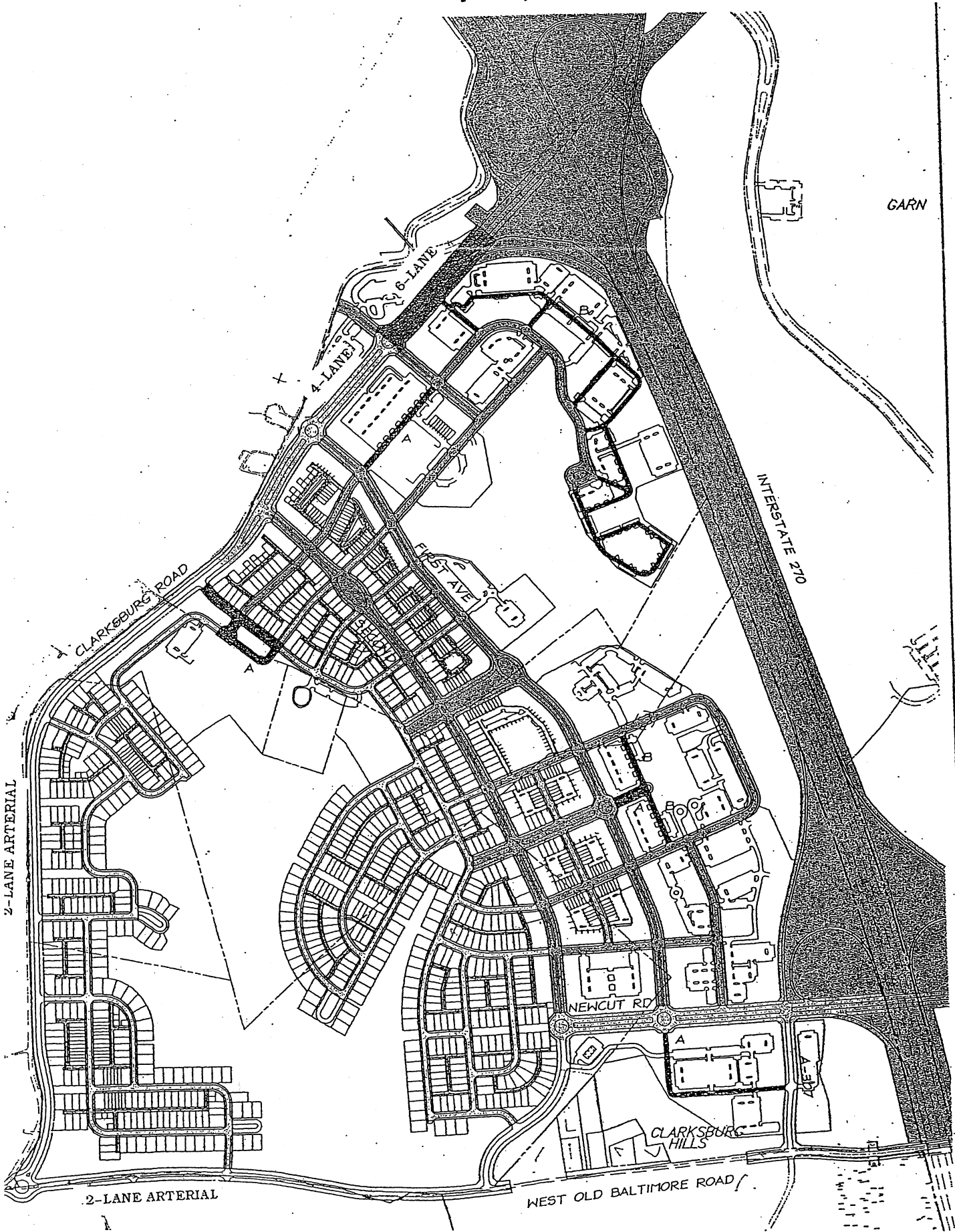
The final element of the Land Use Plan is the "Recreation Amenities" table to the right, which identifies the types of recreational amenities to be provided in Areas A through E. Specific locations are provided only for individual resources with particular significance. The numbers in circles on the table (5 through 9) match up to locations identified in Area E on the Land Use Plan (see page 16 above). One of the resources identified by location consists of the stream valley buffer areas, in which no construction is to occur except as needed for utilities, road right-of-way and stormwater management.

Recreation Amenities:	
Group	Recreation Amenities
1	Tot-Lots, Multi-Age Playgrounds
2	Pocket Parks, Seating Areas
3	Streetscapes, Pedestrian walkways, Bikeways
4	Employment Plazas
5	Stream Valley Buffer Park (dedicated to public use)
6	Local Park (dedicated to public use)
7	Elementary School (dedicated to public use)
8	Recreation Facility
9	Historic
Section MXPd Area	Recreation Amenities
A	3, 4
B	1, 2, 3, 4
C	1, 2, 3, 4
D	3, 4
RMX-1/TDR Area	
E *	1, 2, 3, 5, 6, 7, 8, 9
The recreation amenities listed above provide a conceptual reference to activities within Areas A - E of the MXPd Zone, and the RMX-1/TDR Zone. Finalization of amenity type and location is to be determined at Preliminary Plan and Site Plan. Area E * is a portion of RMX-1/TDR Zone not included in MXPd Zoning Application.	

F. Roadway Configuration

As noted in the textual binding elements on the Land Use Plan, the Applicants are committed to creating a development with an interconnected network of public and private streets in a grid pattern, incorporating pedestrian-friendly elements. As shown on the Road Hierarchy Plan reproduced on the following page, the main roadways through the development would be First Avenue and Second Avenue, running north/south from Clarksburg Road to Newcut Road. First and Second Avenues are both numbered A-304 because they represent a reconfiguration of the Master Plan-designated Route A-304, which was recommended to be a four-lane divided highway. To better support the goal of a pedestrian- and transit-friendly development, the Applicants show A-304 as two separate, two-lane roadways that would run roughly parallel to one another. As shown on the Land

Road Hierarchy Plan, Exhibit 47



Use Plan, Second Avenue demarcates the boundary between the subject property and the west side of the site. Both of these roads would be divided by medians and allow on-street parking.

The only subjects of controversy at the public hearing in this case were the Applicants' decisions not to extend Newcut Road to Clarksburg Road and not to widen Clarksburg Road to the full extent recommended in the Master Plan. The Master Plan recommended that Newcut Road be constructed as a four-lane divided highway from Clarksburg Road to Mid-County Highway, with a new interchange at I-270 and Newcut Road. Newcut Road was to serve as one of the main through points for traffic. The Applicants propose Newcut Road as a two-lane road (divided by a median) extending from West Old Baltimore Road north to the terminus of Second Avenue, where it would turn east and connect with a new I-270 interchange. Thus, traffic bound for I-270 would need to use West Old Baltimore Road to get from Clarksburg Road to the Newcut Road interchange, or drive up Clarksburg Road to its interchange with I-270 a short distance to the north. The Applicants propose to widen West Old Baltimore Road to accommodate additional traffic.

The Master Plan recommended widening Clarksburg Road to six lanes for a short distance south of its interchange with I-270, then to four lanes from there to its new intersection with Newcut Road, and to two lanes from that point south to Boyds. The Applicants propose to widen Clarksburg Road to six lanes for a short distance south of the I-270 interchange, then to four lanes from that point to Second Avenue, which is considerably north of where Newcut Road would have intersected Clarksburg Road under the Master Plan concept. The Applicants propose to taper Clarksburg Road down to two lanes immediately south of Second Avenue.

The Applicants were supported in their decisions concerning Newcut and Clarksburg Roads by Technical Staff, who testified that the environmental harm attendant to extending Newcut Road to Clarksburg Road was too great to justify the transportation benefit, and that based on current transportation modeling, the full number of lanes recommended for Clarksburg Road in the Master Plan is not needed. See Tr. June 12 at 123-132. Staff also opined that replacing the four lane recommended Route A-304 with two two-lane, pedestrian-friendly streets, consistent with a short-block grid pattern, would be valuable in attaining the Master Plan goal of integrating the

employment areas into the overall Cabin Branch Community. Staff Report, Ex. 38 at 17. Technical Staff noted more generally that with the exception of Area D, the proposed road network is designed in a transit-oriented grid pattern, with bus stops at intervals that ensure walking distance for most users, consistent with Master Plan recommendations. Staff described the Master Plan recommendation to preserve the rural character of West Old Baltimore Road, and stated its support for the Applicants' efforts to pursue "innovate solutions that use a narrower corridor and a narrower roadway than required by the [standard specifications for an arterial highway] in order to minimize environmental impacts and preserve the rural character." *Id.* at 17-18. The Hearing Examiner notes that despite the innovative efforts described by Technical Staff, the Road Hierarchy Plan submitted by the Applicants depicts the widening of West Old Baltimore Road from Newcut Road to Clarksburg Road to two-lane arterial standards, with the same width as Clarksburg Road.

Jamie Haney, a Clarksburg resident who lives on West Old Baltimore Road just west of Clarksburg Road, testified at the hearing about her concern that departing from the Master Plan concept for local area roadways would worsen traffic congestion. She stated that without Newcut Road as a through street, West Old Baltimore Road would become the main route for traffic headed from Clarksburg Road to I-270, and would inevitably become a high-speed roadway, losing much of its charm as a rural road. She noted that if the Cabin Branch Community is built as planned, the County will lose the possibility of ever extending Newcut Road. She emphasized that the Master Plan acknowledged the environmental damage that would result from extending Newcut Road through the Cabin Branch stream valley, but concluded that the damage was an unavoidable cost of providing necessary roadway capacity.

Ms. Haney, a 17-year resident of Montgomery County, observed that the County never adequately addresses traffic. Master Plans show roads intended to accommodate traffic increases, but the houses get built before the roads and traffic gets steadily worse. The problem is worsened incrementally each time the County makes concessions to builders, like in this case, so that roads are not widened enough and connections don't happen. Ms. Haney stated that she often has to use Clarksburg Road and other winding, local roads because I-270 is like a parking lot. She

LM

foresees a worsening of traffic congestion in the Clarksburg area if the roadway system in Cabin Branch Community is built as planned.

Ms. Haney also commented that the Boyds MARC station currently has a gravel parking lot with room for 15 to 20 cars. If large numbers of people were to use the station, significant upgrading of the station and parking area would be required.

The Applicants' response to Ms. Haney was two-fold. They testified that based on their traffic study and consultation with Technical Staff, adequate roadway capacity to support the Cabin Branch Community and other planned development can be attained without following the Master Plan recommendations for Newcut and Clarksburg Roads (see "Roadway Capacity" below). They also stated that they would consider it incompatible with the pedestrian-friendly development they seek to build to extend Newcut Road to Clarksburg Road as a four-lane, divided highway. A high-speed roadway passing through the Cabin Branch Community would not be consistent with the environment they seek to foster within the development. Accordingly, they prefer to direct through traffic to Clarksburg Road itself, where an interchange with I-270 already exists, and to West Old Baltimore Road, leaving First and Second Avenues and Newcut Road primarily for traffic local to the Cabin Branch Community.

G. Roadway Capacity

Under the County's Adequate Public Facilities Ordinance ("APFO," Code §50-35(k)), the Planning Board has the responsibility, when it reviews a preliminary plan of subdivision, to assess whether public facilities will be adequate to support a proposed development. Analysis of roadway capacity plays a major role in this determination. The Planning Board's application of the APFO is limited by parameters that the County Council sets each year in the Annual Growth Policy ("AGP"), described further below.³ While the ultimate test under the APFO is carried out at subdivision review, the adequacy of roadway capacity and other public facilities is an important component of the District Council's determination in a rezoning case as to whether the reclassification would serve the public interest. The

³ See *Introduction to the Adequate Public Facilities Ordinance and the Annual Growth Policy*, FY 2003 Annual Growth Policy at 6. The Hearing Examiner hereby takes official notice of the text of the AGP.

AGP prescribes the two tests discussed below, Policy Area Transportation Review ("PATR") and Local Area Transportation Review ("LATR").⁴

1. PATR, Policy Area Transportation Review

PATR divides the County into geographic policy areas for which the adequacy of public facilities is addressed on an area-wide basis. With regard to transportation, a staging ceiling may be established for each policy area, specifying the maximum number of new jobs and housing units that public facilities in that area can support.⁵ In the present case, the subject property is located in the Clarksburg Policy Area for purposes of PATR, which has negative capacity for both jobs and housing (-1,378 jobs and -9,114 housing units as of April 30, 2003). In August 2002, Transportation Planning Staff at the M-NCPPC developed a phasing program for infrastructure improvements that would support certain levels of development in Clarksburg. Staff identified two phases of infrastructure developments, Phase 1 east of I-270 and Phase 2 west of I-270, which can be pursued independently of one another. See letter dated August 23, 2002 from Ronald C. Welke to Terry Miller ("Welke Letter"), final attachment to Staff Report. Each phase was broken down into subphases "A" and "B". The locations of these improvements are shown on the map reproduced on the following page.

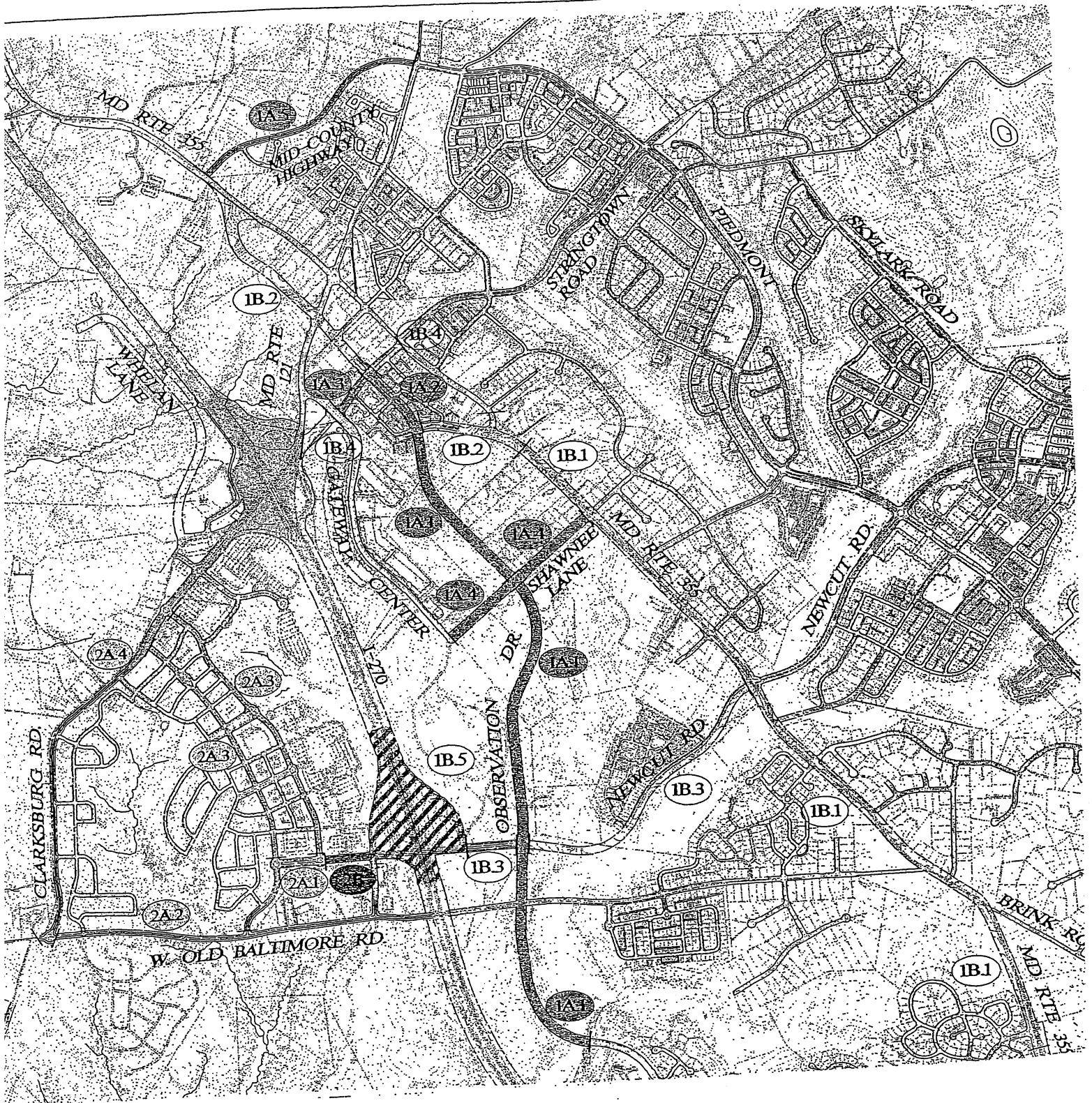
The Property Owners would be solely responsible for the improvements west of I-270, which constitute Phases 2A and 2B as described in the Welke Letter and summarized below:

- 2A.1 Construct Newcut Road as a four-lane divided roadway between West Old Baltimore Road and First Avenue.
- 2A.2 Upgrade West Old Baltimore Road to two-lane arterial roadway standards between Newcut Road and Clarksburg Road.
- 2A.3 Construct two parallel two-lane business district roadways between Newcut Road and Clarksburg Road (First and Second Avenues).
- 2A.4 Upgrade Clarksburg Road to arterial roadway standards between West Old Baltimore Road and I-270, including widening from two to four lanes and then from four to six lanes approaching I-270, and upgrade the interchange ramps of Clarksburg Road with I-270.
- 2B Construct the western approach to the new I-270/Newcut Road interchange.

⁴ See *Local Area Transportation Review Guidelines Approved and Adopted July 2002* ("LATR Guidelines") at 1. The Hearing Examiner hereby takes official notice of the LATR Guidelines adopted by the Planning Board in July 2002.

⁵ LATR Guidelines at 1.

Roadway Improvements Necessary to Create
Staging Ceiling Capacity in Clarksburg (Exhibit 55)



According to the Staff Report and testimony by Technical Staff, carrying out Phases 2A and 2B would create capacity for a total of 8,100 jobs and 2,850 housing units west of I-270, which is enough to support development of the entire Cabin Branch Neighborhood, plus the Ten Mile Creek neighborhood planned nearby. See Staff Report, Ex. 38 at 31, 33; Transcript June 12 at 131-32.

The Property Owners would be partially responsible for improvements east of I-270 that are identified in the Welke Letter as Phases 1A and 1B. These improvements include widening and extending various portions of MD 355, Observation Drive, Shawnee Lane, Stringtown Road and the continuation of Newcut Road, as well as constructing the eastern approach to the new I-270/Newcut Road interchange.

The Property Owners testified that they intend to fund most of the required infrastructure improvements through the creation of a Development District, which would allow the cost of improvements to be financed through the County's bonding process and reimbursed via tax assessments imposed on the eventual owners and users of the property. Any infrastructure improvements not funded through a Development District would be funded through a consortium of the owners. See Tr. June 12 at 150-153.

2. LATR, Local Area Transportation Review

LATR involves a traffic study intended to evaluate whether a proposed development would result in unacceptable congestion during the peak hour of the morning and evening "peak periods" (6:30 to 9:30 a.m. and 4:00 to 7:00 p.m.). The Planning Board specifically recognizes the LATR Guidelines as the standard to be used in connection with applications for rezoning.⁶

The Applicant performed a traffic study as required in this case, taking into account existing roads and traffic, traffic anticipated from nearby development that is approved but unbuilt (referred to as "background" traffic), trips expected to be generated by the proposed development, and roadway improvements deemed necessary by Technical Staff. Technical Staff has identified a series of roadway improvements that the Property Owners must provide or participate in to mitigate the traffic

⁶ LATR Guidelines at 3.

impacts of the Cabin Branch Community. See Staff Report, Ex. 38 at 30-31. These improvements are in addition to those required to create staging ceiling capacity for PATR. The roadway work that the Property Owners must undertake to satisfy LATR review includes improvements to the Clarksburg Road/I-270 access ramps; widening Clarksburg Road as shown on the Road Hierarchy Plan (Ex. 47); building a traffic circle at the intersection of Clarksburg Road and West Old Baltimore Road; participating in improvements at the intersections of Clarksburg Road with Gateway Center Drive and MD 355; participating in improvements at the intersection of MD 355 and West Old Baltimore Road; and participating in widening MD 355 at two locations.

Technical Staff divided the development of the Cabin Branch Community into Phase A, consisting of 1,425 dwelling units⁷ and 1,538,000 square feet of commercial space (comparable to 4,050 jobs) and Phase B, which is full build-out – approximately 1,886 dwelling units⁸ and 2.4 million square feet of commercial space. See Ex. 38 at 31. The improvements required to satisfy LATR are to be constructed simultaneously with the Phase 2A improvements required to create ceiling staging capacity under PATR, and completion of these items would authorize construction of the Phase A units. Phase B build-out would not be authorized until the final PATR improvement, constructing the western approach to the new I-270/Newcut Road interchange, is bonded, under contract, under construction, funded or programmed. See *id.*

The Applicants' LATR study assessed traffic conditions at ten existing intersections and eight future intersections east and west of I-270, as identified by Technical Staff. Technical Staff agrees with the Applicants' conclusion that with the required roadway improvements in place, the proposed development of the Cabin Branch Community would result in all of the intersections examined operating either at a critical lane volume below the applicable congestion standard of 1,500 cars per hour, or at a

⁷ The Applicants described this Phase A in a post-hearing submission as permitting 1,600 mixed dwellings, of which 1,139 would be within the subject property. See Ex. 67(f). The Hearing Examiner assumes that Technical Staff's figure of 1,425 units is correct because it corresponds to the staging ceiling capacity that would be created by Phase 1 of the PATR improvements, which are intended to be built simultaneously with the Phase A LATR improvements.

⁸ Testimony and evidence presented at the hearing indicated that residential units would number no more than 1,886. See Ex. 56 at 1. A post-hearing submission that primarily addressed transportation issues stated that full build-out would include 1,929 residential dwellings. See Ex. 67(f) at 3. This report assumes that the number provided during the hearing was correct.

level better than the background condition, i.e. the proposed development would not worsen congestion levels at any of the key intersections in the area.

H. Design Issues

The planning team for the Cabin Branch Community began by setting aside the stream valleys and special protection area for environmental protection. The team then developed a plan that treated the Cabin Branch Community as one site with 535 acres, ignoring property lines. The team took a Concept Plan to the Planning Board for its review in June 2002, and received favorable comments. That pre-application Concept Plan showed the environmental area set aside, a mix of uses with an employment emphasis along I-270, and the whole community working together designed as a whole.

One of the overriding elements in the planning was to apply principles of traditional neighborhood design, as seen in Kentlands and the King Farm. These principles put an emphasis on creating neighborhoods with a pedestrian scale in the block and street system. They also emphasize what is accessible within a five-minute walk, which is roughly a quarter mile. This includes mixing uses horizontally and vertically, with residential next to employment and in some cases, retail on the ground floor with residential or offices on the second and third floors. The Master Plan in this case also talked about an elementary school site, a local park, and the historic Byrne-Warfield House. The development team incorporated that list of features.

The roadway network was one of the primary design elements, as evidenced by the decision to eschew the Master Plan recommendations for four-lane highways in favor of two-lane roadways with a scale more compatible with pedestrians and buses. The Land Use Plan shows an interconnected network of public and private streets in a grid pattern. Buildings are designed to be up close to the road, with parking in the rear, short blocks and interconnected roads to encourage people to walk within the development. Four possible bus stop locations have been identified on First Avenue, as well as a possible bus loop on Newcut Road, First Avenue, Clarksburg Road, and possibly West Old Baltimore Road. These design elements are meant to encourage people to take the bus to or drive to the Boyds MARC station, which is located just a couple of miles south of the

subject property. They also create the possibility of integrating a bus system with a transit station that has been recommended on the eastern side of I-270, at the Lockheed Martin property, which may serve either rail or bus. The bus stops on-site are planned for locations where there could be some kind of retail use, such as a place to buy a paper and a cup of coffee.

The retail core, described in the Master Plan as "a strong neighborhood focal point," would be in Area B of the Land Use Plan, at the north end of the subject property. The core extends along the northern portion of First Avenue, with a mixed-use Main Street concept. This would be the primary location for vertical integration, with retail, office and residential on the first floor and additional office or residential on the second, third and fourth floors. Buildings would be close to the street line and fronting the street, with parking either in the rear or around the corner in addition to on-street parking. The retail core would include a commons or village green consisting of a triangular area adjacent to First Avenue, which would be designed as an open space with buildings facing it. That open area would provide visual access to the Little Seneca stream valley. The linear design of the retail core increases the number of residential units and employment locations that would be within a five-minute walk (approximately one-quarter mile) of the core. The five-minute walk area extends from the core to the school, the historic site, the local park and a substantial portion of Second Avenue, including roughly the first two blocks shown in area C south of Central Park, and a portion of the third block.

Parking areas would be landscaped to avoid large, unrelieved paved parking areas. Several parking decks would be incorporated to reduce the amount of surface parking. The amount of parking provided would be consistent with the requirements of Article E of the Zoning Ordinance. In addition, all of the non-residential uses within the subject property would be more than 100 feet away from adjoining off-site residential properties, as required in the MXPDP Zone. In Area D, steps are planned to maintain the rural character of West Old Baltimore Road by providing a buffer and landscaping.

Trails and bikeways would provide access to open space and the stream valleys and transition to the rural areas. As recommended in the Master Plan, the two stream valleys would be

linked by a "Central Park", which would connect on the east end to a green oval overlooking the Little Seneca stream valley, and on the west to a local park abutting the Cabin Branch stream valley and adjacent to the proposed recreation facility, the historic site and the elementary school. The Public Domain Plan reproduced on the next page shows the effort to create physical and visual connections to the stream valleys throughout the Cabin Branch Community. Many streets would face the stream valley on at least one side, with openings between buildings and stretches of open road to provide pedestrian and vehicular travelers with a variety of view sheds. The cross streets intersecting First and Second Avenues are designed with terminating points, which in some cases are prominent buildings such as the elementary school or the potential hospital, and in other cases are view sheds to the stream valleys. Other terminating points are the local park and smaller urban parks included at various locations.

Noise impact from I-270 was a major element in planning the development of the east side of the site. The development team laid over the Development Plan a graphic depiction from the *Clarksburg Master Plan* of the area impacted by noise from I-270 at 65 decibels or greater. Noise impacts were one of the main reasons that employment uses are predominant in Area C, in keeping with the Master Plan recommendation to avoid locating residential or other noise-sensitive uses in areas subjected to continuing roadway noise in excess of 55 decibels. No single-family units would be located within the noise-impacted area shown in the Master Plan, although some multi-family and senior units might be in that area. If more detailed noise studies determine that there would be a noise impact, noise attenuation methods would be used in constructing those buildings. More detailed studies would take into account the noise attenuating impact of intervening buildings, however, so they might well show that the employment uses planned along the I-270 frontage would adequately reduce the noise impact on the few residential uses within the current 65-dBa contour.

Public Domain Plan, Ex. 50



LEGEND:
TE FEATURES:

-) : Terminating Buildings
-) : Viewsheds to Greenways
- © : Urban Parks
- D : Local Park

TRANSECTS:

- : First Avenue
- : Second Avenue
- : Mixed-Use Transect
- : Central Park
- : Health Care Boulevard
- : Newcut Road

Open Space

Pocket Parks

MXPD ZONING LINE

I. Environmental Issues

The approved Natural Resources Inventory/Forest Stand Delineation plans for the Cabin Branch Community show approximately 14 acres of wetlands, 32 acres of floodplains, 85 acres of stream valley buffers and 128 acres of forest.⁹ See Composite Natural Resources Inventory, Figure T of Exhibit 26(a). The Property Owners plan to clear approximately 58 acres of forest, mostly in Area E east of the Cabin Branch stream valley. They plan to retain approximately 71 acres of forest, almost entirely within the stream valleys. They also plan to plant approximately 33 acres of additional forest in the stream valleys where the stream buffers lack adequate vegetation. See Preliminary Forest Conservation Composite Plan, Figure R of Exhibit 26(a). Environmental Staff at the M-NCPPC have conceptually approved the deforestation and reforestation plans and found that they would satisfy the appropriate conservation requirements on-site.

The Applicants do not propose any encroachment in the stream valley buffers other than utility connections, stormwater discharge locations and trails that may be built as boardwalks. As a result, no net loss of wetlands is expected. The evidence suggests that construction of the I-270/Newcut Road interchange would encroach on the Little Seneca stream valley buffer, but any effect on wetlands was not discussed. Undisputed testimony at the hearing indicated that soils outside the stream valley buffers are well-drained and suitable for development, and that the Cabin Branch Community is not subject to any predetermined limit on imperviousness. See Tr. July 11 at 182, 185-86.

Much of the subject property and a portion of the west side of the site are located in the Clarksburg Special Protection Area. As a result, the Applicants submitted a preliminary Water Quality Plan, which has been approved by the Planning Board and the Department of Permitting Services. The Water Quality Plan includes measures designed to protect water resources through the imposition of performance goals. These relate to stormwater management, stream valley buffer, reforestation and

⁹ The Staff Report lists 133.84 acres of forest, but the amounts of forest to be cleared and forest to be retained on the Composite Natural Resources Inventory total approximately 128 acres. This minor discrepancy is immaterial at this stage.

protection of springs, seeps and wetlands. Components include stormwater management, identification of soil types with regard to suitability for various uses, and a monitoring plan to assess future impacts.

One benefit of the unified development proposal for the entire Cabin Branch Community is to lessen the impacts of grading. Planning the site as a whole allowed the development team to match the design to the grading as closely as possible and work with the existing topography to minimize grading. For example, water and sewer service would be brought from off site, up along the Little Seneca tributary, which would avoid a mass grading operation to get to the northern section of the property.

The Applicants propose a multi-layered stormwater management plan. The development team decided to treat the entire subject property as though it were in the special protection area for stormwater management and water quality purposes. This requires taking stormwater management to a higher level of design to make sure that the run-off is cleaned and quality control reaches a higher level. One of the fundamental design elements in a special protection area is redundancy, which would be achieved on this site through both larger facilities and a larger number of treatment facilities.

The subject property has five drainage areas, each of which would have a quantity control facility located adjacent to the stream valley buffer and a sediment control plan. Water quality facilities would include bio-retention facilities, forebays, plunge pools, and structured quality treatment such as storm filters and underground sand filters, especially in the commercial areas. The Applicants intend to use space within the parking lots for bio-retention facilities, which are water quality facilities using plants that clean the water and allow it to infiltrate into the ground. The plants can be shrubs or some types of trees, and they are planted in a sand or peat medium that cleans the water and allows it to soak back into the ground to recharge the ground water. In addition to the five quantity control facilities, the subject property would have between 20 and 70 water quality facilities for treatment and infiltration. Mr. Bossong stated that in order for bio-retention facilities in a parking area to work, they have to be sized properly and protected from ground debris or trash to extend their life expectancy. They have to use particular plants that can survive with a great deal of water and some ponding.

J. Density of Development and Types of Units

The ranges provided on the Land Use Plan for square footage of employment uses on the subject property correspond to the floor area ratios ("FARs") shown in the table below. These calculations are necessarily approximate because the final mix of uses and open space allocation would be determined during site plan review.

Area	Square Footage	Employment Acreage	Floor Area Ratio
A	700,000 – 1,210,00	59.2 ac	0.27 - 0.47
B	75,000 – 190,000	30.4 ac	0.06 – 0.14
C	915,000 – 1,455,000	57.0 ac	0.37 – 0.59
D	200,000 – 310,000	39.1 ac	0.12 – 0.18

The ranges provided on the Land Use Plan for the number of residential units in each area of the subject property correspond to the residential densities shown in the table below. These densities are necessarily approximate because the final mix of uses and open space allocation would be determined during site plan review.

Area	Number of Units	Residential Acreage	Dwelling Units per Acre
A	0	Varies	Varies
B	325-750	37.0 ac	8.8-20.3
C	475-875	60.8 ac	7.8-14.4
D	0-200	0 ac	Varies

In the Cabin Branch Community as a whole, the Applicants propose to build a total of 1,886 residential units: 679 detached single-family units, 768 attached single-family units, and 439 multi-family units. Thus, the residential mix in the Cabin Branch Community would be roughly 35% single-family detached, 40% single-family attached, and 25% multi-family.

The Master Plan recommended a total of 1,950 residential units for the entire Cabin Branch Neighborhood, including the Cabin Branch Community plus more than 400 acres of land south of West Old Baltimore Road. With the addition of a 12.5% increase to account for MPDUs, the Master

Plan recommendation reaches 2,194 units. The Master Plan also provided a recommendation for a rough breakdown of unit types:¹⁰

Detached	45 - 55% or 987 - 1,207 units
Attached	35 - 45% or 768 - 987 units
Multi-family	10 - 20% or 219 - 439 units

These percentages apply to the Cabin Branch Neighborhood as a whole, not to the Cabin Branch Community as an individual development area. Accordingly, the Applicants are not expected to match this breakdown.

Technical Staff testified that the distribution of unit types in the Master Plan was very important to Clarksburg citizens who participated in the process of developing the plan. The Applicants' proposal for the Cabin Branch Community would include all of the multi-family units and most of the attached units recommended in the Master Plan for the entire Cabin Branch Neighborhood. Technical Staff testified that this allocation of the higher-density residential uses is appropriate. Moreover, this breakdown is consistent with the zoning originally implemented under the Master Plan, which provides for a more intense land use north of West Old Baltimore Road, in the RMX-1/TDR and I-3 Zones, and a lower-density, less intense use limited to large-lot residential (in the RE-1 and RE-1/TDR Zones) south of West Old Baltimore Road.

K. Schools and Utilities

In addition to examining roadway capacity, the District Council during rezoning and the Planning Board at subdivision must consider whether a proposed development would be adequately served by or would have an adverse impact on schools and public utilities.

1. Schools

Montgomery County Public Schools ("MCPS") estimates that the proposed development of the Cabin Branch Community would generate 548 elementary, 182 middle and 200

¹⁰ Applying percentages recommended in the Master Plan to a total of 2,194 units.

high school students. See Ex. 65. The site is located within the Clarksburg Elementary School, Rocky Hill Middle School and Damascus High School service areas. A new Clarksburg/Damascus elementary school is proposed to open for the 2006-07 school year to relieve anticipated overcrowding at Clarksburg Elementary School. However, as of May 20, 2003 that school had not been funded. Moreover, the new school is expected to reach capacity within a few years after opening. MCPS anticipates that more elementary schools will be needed to keep pace with the development of Clarksburg.

Both Rocky Hill Middle School and Damascus High School are currently over capacity and projected to remain over capacity for the six-year forecast period. Rocky Hill Middle School is to be replaced by a larger middle school that is scheduled to open for the 2004-05 school year. That school is projected to reach capacity by the end of the six-year forecast period. MCPS anticipates that an additional Middle School will be needed as the development of Clarksburg continues.

When the new Rocky Hill Middle School opens, the existing facility is to be converted to a new Clarksburg Area High School, scheduled to open for the 2006-07 school year. MCPS expects this new high school to be adequate to absorb the future build-out of Clarksburg.

As a caveat to the above statements, MCPS notes that its enrollment projections do *not* include the student population to be generated by the proposed development of the Cabin Branch Community – their projections include only projects with preliminary plan approval. Thus, “[a]pproval of Cabin Branch will require increasing enrollment projections and increasing the pace of new school construction to accommodate additional students.” Ex. 65 at 2.

The evidence provided by MCPS suggests that Clarksburg-area schools are overcrowded and that the school construction that has been funded to date will not be sufficient to provide adequate space for the enrollment currently projected, even without the student population expected from the Cabin Branch Community. The Planning Board recommended approval of the subject rezoning application but offered the following remarks with regard to school capacity:

[T]he Planning Board shares the general concerns of MCPS staff with respect to the provision of schools in Clarksburg in the future given the significant growth the area is likely to experience. The Board also

understands the frustrations of citizens who sense how far behind the County is with respect to ensuring adequate school capacity. The issue of providing for adequate public facilities including schools will be further addressed at preliminary plan when the entire 535-acre community will be evaluated. What remains unknown and must be addressed through the county Annual Growth Policy is how school capacity can be provided for other future development in the area.

Ex. 40 at 3.

The Planning Board bases its determination concerning school capacity on the AGP, which currently states that school capacity in the Clarksburg/Damascus school district is considered adequate. Technical Staff testified that the AGP is expected to undergo a substantial revision at the end of the calendar year, but that the Applicants are expected to seek preliminary plan approval before that revision takes place. Accordingly, under the current AGP the Planning Board can be expected to find that adequate school capacity exists to support the proposed development. Under these circumstances, the evidence does not justify denial of the requested rezoning on the basis of school capacity.

2. Water and Sewer

The subject property currently is not served by public water and sewer. However, the County's Capital Improvement Program includes the projects that would be necessary to supply water and sewer to the subject property (see Ex. 62). The Applicants' engineer testified that based on WSSC's timeframe for construction of these improvements, they would be completed in time for the Cabin Branch Community to have water and sewer when needed, beginning in 2006.

L. Community Participation

The Clarksburg Citizens' Association submitted comments to the Planning Board stating that they are "pleased that the proposed Cabin Branch Community appears to follow the Clarksburg Master Plan very well." Ex. 42. The Association raised three issues, all of which have been addressed in the binding elements: (1) whether the public use "senior housing" component would be independent living, which might at some point revert to non-age-restricted housing with attendant traffic and schools impacts [Technical Staff anticipates that the senior component will

consist of services other than independent living]; (2) whether on-street parking would be available in retail areas [on-street parking would be available on the major retail streets]; and (3) that proposed development opposite the entrance to Black Hill Regional Park be redesigned with a more "grid-like" roadway pattern [this area has since been redesigned to provide a grid-like road system].

An additional comment was submitted by Intelsat, which currently leases property south of the Cabin Branch Community, along I-270, known as the "Lockheed Martin/Comsat Site." See Exs. 37, 43. Intelsat does not object to the proposed rezoning, but does object to any condition that would require construction of the proposed Newcut Road/I-270 interchange prior to the year 2013. While the record does not place a specific timeframe on that interchange construction, full build-out of the Cabin Branch Community cannot be achieved without it. The owner of the property occupied by Intelsat, LCOR Clarksburg LLC, supports construction of the proposed Newcut Road/I-270 interchange. See Ex. 39.

IV. SUMMARY OF TESTIMONY

A. Applicants' Case in Chief

1. Gary F. Unterberg, land planner.

Mr. Unterberg was designated an expert in land planning and landscape architecture. He first described the subject property and surrounding area. He outlined the distinction between the "Cabin Branch Neighborhood" as defined in the Master Plan, which extends south of Old Baltimore Road, the "Cabin Branch Community", which is comprised only of property north of Old Baltimore Road, and the subject property, which constitutes a portion of the Cabin Branch Community. He noted that the Cabin Branch Neighborhood contains approximately 950 acres. The Cabin Branch Community contains 535 acres. The subject property contains 283.5 acres. The Cabin Branch Neighborhood as defined in the Master Plan includes the Cabin Branch Community (the 535 acres controlled by Property Owners), the Black Hills Estates subdivision located south of West Old Baltimore Road and east of Clarksburg Road, a portion of the Linthicum West Realty property south of West Old Baltimore Road that is slated for future residential development, and some smaller

properties. The Cabin Branch Neighborhood abuts but does not include any portion of Black Hill Regional Park. See Ex. 26(a), Figure G; aerial photo at Ex. 54.

Mr. Unterberg described existing roadways and uses surrounding the Cabin Branch Community, including office, warehouse and research and development uses east of I-270; a rubble-fill and undeveloped property immediately north of the I-270/Clarksburg Road interchange; and agricultural uses west of Clarksburg Road and south of Old Baltimore Road, together with a small number of individual homes. Mr. Unterberg agreed with the definition of the relevant surrounding area as described by Technical Staff.

Mr. Unterberg described the ownership of the various portions of the subject property and the Cabin Branch Community using Ex. 26(a), Figure A. He noted that the property shown on that exhibit as the Gosnell Property is described on the application as the King Farm Limited Partnership Property. He also pointed out the Magee Property, which is designated as a historic site in the Master Plan and is the location of the Byrne-Warfield House. That property is not currently controlled by the Applicants but has recently been put under contract by the Property Owners for purchase. It is intended to remain as a historic feature and community amenity for the proposed development. Mr. Unterberg stated that most of the subject property is currently being farmed. The subject property has a stream valley on the east side of the property that contains a tributary of Little Seneca Creek. It also has a few abandoned farm buildings. The west side of the site has another stream valley and is also in agricultural use.

Mr. Unterberg stated that three zoning classifications are currently represented on the subject property. A very small portion at the north end is zoned RE-1/TDR, while the rest is roughly evenly divided between RMX-1/TDR and I-3 zoning. The remainder of the Cabin Branch Community property is zoned RMX-1/TDR, and is to be developed consistent with the existing zoning. The existing zoning implemented the recommendations of the *Clarksburg Master Plan*, which envisioned employment uses adjacent to I-270, residential neighborhoods in the western portion of the property, and a mixed use center in between. The development the Applicants currently propose is consistent

with that general concept. The Master Plan, however, recommended continued employment uses north of relocated MD 121 (Clarksburg Road).

Mr. Unterberg testified that the existing zoning on the subject property would allow residential uses with one-acre lots in the RE-1/TDR portion of the property, which is recommended for mixed use or employment use in the Master Plan. The existing RMX zoning allows mixed uses but primarily residential, and does not permit commercial or retail uses. The I-3 Zone is primarily an office zone and does not permit residential uses. Mr. Unterberg stated that the MXPDP Zone would allow the same uses permitted by the current zoning, but with a better mix of those uses and a better implementation of the intent of the Master Plan. The MXPDP Zone would not allow higher density or any uses that would not be permitted in some portion of the subject property with the existing zoning. Mr. Unterberg noted that the Master Plan recommended MXPDP zoning both in the areas zoned RMX along I-270 and in the area zoned I-3 (see Master Plan at 67). The primary reason for the present zoning application is to allow a comprehensively planned, large development with the flexibility to allow a better plan and a better integration of uses without having to follow the current zoning lines. This will allow the creation of a unified development corridor along I-270 with a comprehensively designed plan. Mr. Unterberg reviewed several portions of the Master Plan and opined that the proposed rezoning and development would be consistent with the policy objectives established in the Master Plan.

Mr. Unterberg testified that the planning process for the subject development began by setting aside the stream valleys and special protection area for environmental protection. The development team ignored the property lines of the various owners, treating the Cabin Branch Community as one site with 535 acres. The team took a Concept Plan to the Planning Board for its review in June 2002, and received favorable comments. That pre-application Concept Plan showed the environmental area set aside, a mix of uses with an employment emphasis along I-270, and the whole community working together designed as a whole. As shown on the current Land Use Plan, Ex. 67(g), the subject property was divided into four areas – A, B, C and D. The portion of the Cabin Branch Community that is not included in the subject property was designated as Area E. Each of

These areas were then designated for various uses. Binding elements were developed to present in textual form certain of the Applicants' commitments regarding the nature of the development, and some of these binding elements were made applicable not only to the subject property but also to Area E. In particular, one of the binding elements requires the purchase of TDRs with respect to Area E, and the elementary school and park site specified in the binding elements are located in Area E. Mr. Unterberg noted that the Applicants are committed to purchasing the same number of TDRs that would be required if all the TDR property involved were developed according to its current zoning.

Mr. Unterberg stated that one of the overriding principles for this development was to apply traditional neighborhood design principles. Communities using those principles in Montgomery County include Kentlands and the King Farm. These principles put an emphasis on creating neighborhoods with a pedestrian scale in the block and street system. They also emphasize what is accessible within a five-minute walk, which is roughly a quarter mile. This includes mixing uses horizontally and vertically, with residential next to employment and in some cases, retail on the ground floor with residential or offices on the second and third floors. The Master Plan also talked about an elementary school site, a local park, and the historic Byrne-Warfield House. The team in this case took that whole list and applied the traditional neighborhood design principles in creating their plan.

The road network was one of the primary components of the design. Newcut Road is located in the southeast corner of the Cabin Branch Community, at the southern end of the subject property. It runs east/west, roughly parallel with West Old Baltimore Road. The Master Plan called for Newcut Road to cross I-270 and continue all the way through the Cabin Branch Community to intersect Clarksburg Road. In conjunction with Technical Staff, the Applicants' team determined that the environmental impact of continuing Newcut Road all the way to Clarksburg Road would be too great to warrant constructing the whole roadway. Crossing the stream valley would require taking down a number of trees, as well as wetlands, and also doing major grading activity in a sensitive stream valley. Accordingly, the Applicants' plan brings Newcut Road only to the western edge of the subject property, well before the beginning of the Cabin Branch stream valley.

The Master Plan calls for roadway A-304 to be constructed as a four-lane, divided highway from Newcut Road north up to Clarksburg Road, which curves around the western edge of the Cabin Branch Community. The Applicants split up that four-lane highway into two two-lane roads. This preserves the lane capacity while scaling down a four-lane highway to two-lane roads with on-street parking, which are more pedestrian-friendly and would better implement the Master Plan. These two roads are labeled respectively First Avenue and Second Avenue.

Mr. Unterberg testified that the design has buildings up close to the road and short blocks, with all the roads interconnected, to encourage people to walk within the development. They have identified four possible bus stop locations on First Avenue, as well as a possible bus loop on Newcut Road, First Avenue, Clarksburg Road, and possibly West Old Baltimore Road. These design elements are meant to encourage people to take the bus to or drive to the Boyds MARC station, which is located just a couple of miles south of the subject property. They also create the possibility of integrating a bus system with a transit station that has been recommended on the eastern side of I-270 at the Lockheed Martin property. Bus stops on site are planned for locations where there could be some kind of retail use, such as a place to buy a paper and a cup of coffee. The transit station on the east side of I-270 is intended to be either a rail or bus station but those decisions have not been made.

Mr. Unterberg discussed differences between the Master Plan recommendations and the Applicants' plans for Clarksburg Road, which the Applicants plan to build as a narrower road in some sections than the Master Plan anticipated. He also discussed West Old Baltimore Road, where the Applicants are showing a two-lane, arterial road with an 80-foot right-of-way and green landscaping. The Applicants propose a traffic circle to clean up the irregular geometry of the intersection between West Old Baltimore Road and Clarksburg Road. Mr. Unterberg opined that the road network proposed by the Applicants would implement the road recommendations of the Master Plan and provide adequate functionality.

In response to questioning by a community member concerning the decision not to extend Newcut Road to MD Route 121, Mr. Unterberg stated that the Applicants expressly did not

MA G-806

want to create a high-speed thoroughfare connecting traffic from east of I-270 or I-270 to Clarksburg Road through the Cabin Branch Community. The roadway plan is designed to disperse traffic along First and Second Avenues heading north and send it through Newcut Road to West Old Baltimore Road, Clarksburg Road and then north.

Mr. Unterberg explained in somewhat more detail the mix of uses intended for each of Areas A, B, C and D. He also noted that the Development Plan includes ranges of units and square footages for the various uses, as well as associated parking spaces. It also has a yield summary showing maximum densities for the various types of uses. He compared this to recommendations in the Master Plan for various types of uses including residential, employment and community uses. He noted that the existing zoning on the subject property could actually support a higher number of residential units than is proposed. With regard to the Master Plan recommendations, Mr. Unterberg noted that the numbers in the Master Plan were for market-rate units. He stated that with the agreement of Technical Staff, they increased the number of recommended units by 12% to reflect the addition of MPDUs. The Applicants' plan for the Cabin Branch Community would include all of the multi-family and attached units that the Master Plan recommended for the Cabin Branch Neighborhood as a whole. Mr. Unterberg represented that this allocation is consistent with where the Master Plan intended the higher density units to be located. This allocation is also roughly consistent with the existing zoning, which shows the southern portion of the Cabin Branch Neighborhood in low density, RE-1 zoning, while the Cabin Branch Community is zoned almost entirely for mixed use and office. Mr. Unterberg noted that the proposed development of the subject property would conform with the maximum residential density specified in the MXPD Zone. In addition, the commercial uses proposed are below the maximum FAR ratios for the MXPD Zone. The subject property would also include the full 2,300,000 square feet of employment uses and the full 120,000 square feet of retail that were recommended in the Master Plan for the Cabin Branch Neighborhood.

Mr. Unterberg testified that senior housing would constitute an additional component of the mix of uses. By agreement with Technical Staff, the Applicants intend to classify senior housing as part of the public use component for the proposed development, not residential units. Therefore,

any units that are designated for senior housing would not be considered in calculating residential densities.

Mr. Unterberg testified that trails and bikeways would provide access to open space and the greenway and transition to the rural areas. The Master Plan also discusses connecting the two stream valleys on the east and west side of the Cabin Branch Community with green space. This connection would be provided by what the Applicants call "Central Park", which would connect on the east end to the oval overlooking the Little Seneca Stream Valley, and on the west to a local park abutting the Cabin Branch Stream Valley and adjacent to the proposed recreation facility, the historic site and the elementary school. Mr. Unterberg referenced Ex. 50, the Public Domain Plan, which shows the connection created by roadways and vistas, including the creation of open space windows to provide pedestrian and vehicular travelers with various view sheds. The street plan was designed with First and Second Avenues as the main north/south roadways, intersected by a series of streets that create a grid. Those transect streets have terminating points, which in some cases are prominent buildings such as the elementary school or the potential hospital, and in other cases are view sheds to the stream valleys. Other terminating points are the local park and smaller urban parks included at various points in the development. In addition to these terminating points, certain roads are designed to be single-loaded, with buildings on one side of the road and the other side largely open to the vistas of one of the stream valleys. Other roads are designed with open areas to provide vistas of the stream valleys from various points. Mr. Unterberg opined that the physical pathways, roadways and visual access to open space provided on the Land Use Plan are consistent with the relevant recommendations of the *Clarksburg Master Plan*.

Mr. Unterberg also opined that the Land Use Plan would conform to the recommendations of the Master Plan for the establishment of a retail core as a strong neighborhood focal point. The retail core in this case would be in Area B of the Land Use Plan, at the north end of the subject property. The core extends along the northern portion of First Avenue, with a mixed-use Main Street concept. This portion of First Avenue would be the primary location for vertical integration, with retail, office and residential on the first floor and additional office or residential on the

second, third and fourth floors. The intent is to have buildings close to the street line and fronting the street, with parking either in the rear or around the corner, in addition to on-street parking. The retail core also would include a commons or village green consisting of a triangular area adjacent to First Avenue, which would be designed as a plaza or other type of open space with buildings facing it. That open area would provide visual access to the Little Seneca stream valley. One of the reasons that the retail core is designed in a linear fashion is to increase the number of residential units and employment locations that would be within a five-minute walk, approximately one-quarter mile, of the core. That five-minute walk area extends from the core to the school, the historic site, the local park and a substantial portion of Second Avenue, including approximately the first two blocks shown in area C south of Central Park, and a portion of the third block.

Mr. Unterberg noted that the parking areas would be landscaped in compliance with the requirements for the MXPD Zone to avoid large, unrelieved paved parking areas. He noted that several parking decks would be incorporated to reduce the amount of surface parking. In addition, all of the non-residential uses within the subject property would be more than 100 feet away from adjoining residential properties located off-site. In Area D, additional steps were taken to maintain the rural character of West Old Baltimore Road by providing a buffer and landscaping:

Mr. Unterberg testified that noise impact was a major element in planning for the development of Area C. The development team laid over the Development Plan a graphic depiction from the *Clarksburg Master Plan* of the area impacted by noise from I-270 at 65 decibels or greater. Noise impacts were one of the main reasons that employment uses are predominant in Area C, in keeping with the Master Plan recommendation to avoid locating residential or other noise-sensitive uses in areas subjected to continuing roadway noise in excess of 55 decibels. No single-family units would be located within the noise-impacted area shown in the Master Plan, although some multi-family units might be noise-impacted. If more detailed noise studies determine that there would be a noise impact, noise attenuation methods would be used in constructing those buildings. In addition, some of the senior housing might be located in a noise-impacted area. Most of Area C that is designated for employment uses is within the noise-impacted area. Mr. Unterberg noted that the

noise-impact area shown in the Master Plan was estimated without taking into consideration the noise attenuating impact of intervening buildings that are now shown on the Land Use Plan.

Mr. Unterberg testified that he agrees with the analysis and conclusions in the Technical Staff report concerning the proposed development's compliance with the objectives and purposes of the MXPB Zone, the specific standards of the MXPB Zone, public facilities requirements and parking requirements.

With regard to potential easements and dedications, Mr. Unterberg stated that there have been discussions regarding potential dedication of both stream valleys to the Parks Department or the County. Those discussions are at a preliminary stage.

Under questioning by the People's Counsel, Mr. Unterberg testified that there would be additional dedication of right-of-way along the eastern edge of the subject property for I-270. That dedication would be made at preliminary plan review. He also discussed the compatibility of uses proposed on the east side of Second Avenue, in Areas B and C, with those on the west side of Second Avenue in Area E. Mr. Unterberg stated that the Applicants intend to file a single preliminary plan application for the entire Cabin Branch Community. At that time the uses on the east and west sides of Second Avenue would be planned in a comprehensive manner. He stated that the uses on both sides of Second Avenue, which is the dividing line between the proposed MXPB area and the RMX area, are residential with a variety of detached and attached units. The only area with a commercial or retail use would be east of Second Avenue and south of Newcut Road, near a proposed bus stop. Area E is proposed to be primarily single-family development with some attached units. Densities would step up from Area E to the subject property, with higher densities closer to I-270 and in the retail core. Area E along Second Avenue would have primarily single-family detached units with some attached units and small single-family or townhouses. Uses on the east side of Second Avenue would be divided roughly evenly among single-family detached and attached units and a small single family/townhouse classification, with a small area of multi-family uses and one site designated for retail. Mr. Unterberg opined that the uses proposed on the subject property would be compatible with the development proposed in Area E.

In response to testimony by a community member, Mr. Unterberg offered a justification for the Applicants' decision not to widen Clarksburg Road to the extent recommended in the Master Plan. He stated that although the Master Plan called for widening Clarksburg Road to four lanes all the way down to the intersection with Newcut Road, that intersection is not going to be built under the current plans. He stated that the Applicants' traffic studies suggested that the anticipated traffic would not require having the additional lane widths on Clarksburg Road. Further, most of the residential development planned for Clarksburg would be to the north and west of the Cabin Branch Community rather than being to the southwest, where Old Baltimore Road would be a logical choice of roadways. He stated that directing traffic onto First and Second Avenues within the planned development would serve the same function as the Master Plan called for, with the added benefit of avoiding the stream crossing. They felt that most traffic would go from First and Second Avenues onto Clarksburg Road heading north towards I-270, so only two lanes would be needed south of First and Second Avenues.

2. Dusty Rood, environmental planner.

Mr. Rood was designated an expert in environmental planning, natural resource protection and forest conservation. He testified that the Seneca Creek tributary in the eastern portion of the site has been designated a use Class IV stream and joins the main stem of Little Seneca Creek south of the subject property within Black Hill Regional Park. He stated that the tributary of Cabin Branch Creek located in the southwestern area of the Cabin Branch Community joins the west fork of the Cabin Branch Creek south of the Cabin Branch Community, also in Black Hill Regional Park. The site is dominated by active agriculture. The area adjacent to the Little Seneca tributary is heavily forested. The soils outside the stream valley buffers are well-drained and suitable for development. Highly erodible soils located along the slopes of the stream valleys are included within the stream valley buffers and not designated for development. Mr. Rood stated that trails would be a combination of hard surface where possible or boardwalks in wetlands or wetland buffers. A crossing shown for pedestrian access would follow the utility crossing to limit environmental impacts.

Mr. Rood testified that portions of the Cabin Branch Community are located in the Cabin Branch Special Protection Area. As shown on Figure S of Ex. 26(a), the special protection area

includes a large contiguous portion of the subject property, as well as two discontinuous pods located partially within the subject property and partially in the west side of the site. Development within a special protection area requires submission of a preliminary Water Quality Plan as part of the development process, which includes a Natural Resources Inventory and a description of performance goals designed to protect water resources. These relate to stormwater management, stream valley buffer, reforestation and protection of springs, seeps and wetlands. The preliminary Water Quality Plan for the proposed development was approved by the Planning Board in conjunction with its recommendation of approval for the rezoning. The Water Quality Plan includes stormwater management, identification of soil types and their suitability for various uses, and a monitoring plan to assess future impacts.

Mr. Rood testified that he participated in the decision-making process regarding the decision not to extend Newcut Road through the Cabin Branch Stream Valley. He indicated that early field studies found the presence of mature stream valley forests, wetlands and floodplain that would have been permanently impacted by extension of Newcut Road through the stream valley. He indicated that there are no imperviousness caps applicable to the subject property. The Master Plan does refer to imperviousness caps in parts of the Clarksburg planning area, but none applicable to the subject property. (See Master Plan's Figure 36, page 93.)

Mr. Rood testified that development of the proposed Cabin Branch Community would not result in any net loss of wetlands. The only impact to the stream valleys would be utility crossings and the Newcut Road interchange with I-270, which would impact the Little Seneca Stream Valley. In response to questioning by the Hearing Examiner, Mr. Rood stated that while the Newcut Road interchange with I-270 is still in the plans, there are ongoing discussions among members of the regulatory community including the Army Corps of Engineers and the Maryland Department of the Environment with regard to minimizing impacts on the Little Seneca Stream Valley. There have been discussions with regard to the configuration of ramps, construction materials, use of piers and the placement of dirt fill. It was his sense that the transportation elements related to that interchange were considered too important to eliminate the interchange altogether.

Mr. Rood noted that the Master Plan recommends attention to site layout and integration of water treatment facilities and construction practices within stream valleys. He stated that the preliminary Water Quality Plan addresses these issues through the integration of bio-retention and stormwater quality facilities, as well as the protection of tributaries, wetlands and springs with existing forest and reforestation.

Mr. Rood testified that the proposed development would comply with forest conservation requirements. Reforestation would be conducted within the stream valleys in compliance with requirements of the Environmental Guidelines for a Special Protection Area and required forest conservation would be achieved on-site. Mr. Rood stated that he agrees with the findings in the Technical Staff report and a related May 15 letter that the proposed Land Use Plan would satisfy applicable environmental guidelines. He also opined that the proposed development would satisfy the Master Plan's recommendations with regard to environmental issues.

3. Frank G. Bossong, engineer.

Mr. Bossong was designated an expert in civil engineering. He testified that one of the benefits of the proposed development of the Cabin Branch Community as a single development is to lessen the impacts of grading. Taking the site as a whole, they were able to block out all of the environmentally-sensitive areas before even beginning the design. They were also able to match the design to the grading as closely as possible to work with the existing topography and minimize the amount of grading necessary. They will be able to bring water and sewer service from off site up along the Little Seneca tributary, avoiding a mass grading operation to get to the northern section of the property. Using Figure U from Ex. 26(a), Mr. Bossong identified the five drainage areas on the subject property, each of which would have a stormwater management quantity control facility. These facilities would be located adjacent to but outside of the stream buffers. Because much of the subject property is within the special protection area, they treated the entire subject property like a special protection area for stormwater management and water quality purposes. This requires taking stormwater management to a higher level of design to make sure that the run-off is cleaned and quality control reaches a higher level. One of the fundamental design elements in a special protection

area is redundancy, which can be either doubling the size of stormwater management facilities or having multiple facilities. This site would have both larger facilities and a larger number of treatment facilities. Water quality facilities would include bio-retention facilities, forebays, plunge pools, and structured quality treatment such as storm filters and underground sand filters, especially in the commercial areas. The Applicants intend to use space within the parking lots for bio-retention facilities, which are basically water quality facilities using plants that clean the water and allow it to infiltrate into the ground. The plants can be shrubs or some types of trees, and they are planted in a sand or peat medium that cleans the water and allows it to soak back into the ground to recharge the ground water. In addition to the five quantity control facilities, the subject property would have between 20 and 70 water quality facilities for treatment and infiltration. Mr. Bossong stated that in order for bio-retention facilities in a parking area to work, they have to be sized properly and protected from ground debris or trash to extend their life expectancy. They have to use particular plants that can survive with a great deal of water and some ponding. Each of the drainage areas would also have a sediment control plan.

Mr. Bossong stated that the preliminary Water Quality Plan has been approved both by the Planning Board and by the Department of Permitting Services. The Water Quality Plan is separate from the Stormwater Management Plan, but relies on it to carry out water quality protection.

The subject property currently is not served by public water and sewer. However, the County's Capital Improvement Program already includes the projects that would be necessary to supply water and sewer to the subject property (see Ex. 62). Mr. Bossong testified that the County's planned time frame for WSSC construction of the necessary capital improvements would put them in place in time for the Cabin Branch Community to have water and sewer when needed, beginning in 2006.

Mr. Bossong also addressed the provision of the MXP Zone requiring the efficient use of energy resources. He stated that one of the ways that the proposed project would conserve energy would be the neo-traditional pedestrian-friendly design, which would encourage people to walk rather than using their cars. In addition, creating easy access to bus routes and future transit on the east

side of I-270 would reduce automobile usage. With regard to building methods and materials, Mr. Bossong stated that since the enactment of the MXPDP Zone in the early 1980s, the building code has been revised to require a very high level of energy efficiency in building materials, such as HVAC systems and window treatments. Energy efficiency is basically built in at this point in the permitting process. In response to questioning by the Hearing Examiner, Mr. Bossong acknowledged Technical Staff's statement that the Applicants should implement additional architectural and design features including next generation HVAC, high mass masonry construction, energy auditing systems and energy-efficient windows, overhangs and sunshades. He stated that he believes the Applicants are willing to follow these procedures, as well as taking advantage of the Federal government's energy star program to choose high-efficiency appliances, because the long run cost for users is lower, although the upfront costs are slightly higher.

Mr. Bossong confirmed Mr. Unterberg's testimony concerning noise. He stated that based on the current noise contour, the Applicants would be required to install noise-blocking building materials in one multi-family building that would fall within the 65 dBA contour. He also stated that Technical Staff sometimes requests an applicant to prepare more detailed noise contours that would take into account the effect of intervening structures in blocking noise. In Mr. Bossong's opinion, such noise contours would show that all of the residential units planned for the development would be outside the 65 dBA line.

Mr. Bossong testified that new utilities on the subject property would be placed underground, as required under the MXPDP Zone. He opined that water and sewer service with the CIP projects currently planned would be adequate to serve the proposed development. He opined that the Water Quality and Stormwater Management Concept Plans would adequately control run-off and protect water quality in the area, as well as meeting the requirements of the State of Maryland and Montgomery County. He stated that the Applicants have agreed to the conditions of approval of the Stormwater Management Concept Plan and the preliminary Water Quality Plan established by the Department of Permitting Services (see Ex. 60). He further opined that the Development Plan would preserve and take the greatest possible aesthetic advantage of existing trees, minimize the amount of

grading necessary for construction, preserve natural features and prevent soil erosion, meet the development goals of energy conservation requirements in the Zoning Ordinance, and satisfy the requirement for forest conservation under Chapter 22A and for water resource protection under Chapter 19.

In response to questioning by the Hearing Examiner, Mr. Bossong testified that the placement of water lines in the Little Seneca Stream Valley would be done with the utmost effort to protect the environment and create the least disturbance possible. He stated that the disturbance would be temporary and most of the areas would regenerate. He also pointed out that certain areas of the stream valley are not very heavily vegetated, but rather are open fields, so putting in the water lines would not require wholesale removal of vegetation in those areas. The reforestation planned for the stream valley would take place at the same time as the placement of utility lines.

4. Christopher Turnbull, transportation planner.

Mr. Turnbull was designated an expert in transportation planning. He testified that his firm prepared an LATR study as part of the APFO test for the entire Cabin Branch Community, which was submitted in support of the subject property as well. They held various meetings and workshops with Technical Staff to review the scope and elements of the study and underlying assumptions.

Mr. Turnbull testified that the proposed reclassification would not result in any transportation impact beyond that associated with the current zoning, because the level of development would not change as a result of the rezoning. Mr. Turnbull explained that his LATR analysis included intersections identified by Technical Staff both west and east of I-270. He explained that the summary table in his LATR report (Ex. 33(a) at 26) shows different intersections than those identified in the Technical Staff report (Ex. 38 at 12) because Staff focused on the 10 intersections they felt were most critical, without regard to whether they were east or west of I-270. In his summary, Mr. Turnbull covered only the intersections he had studied west of I-270 within the Cabin Branch Community. His report provides raw data for intersections east of I-270 in an appendix, but not in the body of the report. Mr. Turnbull stated that he agrees with Technical Staff's conclusions that with the roadway improvements identified for LATR, local traffic impacts would be mitigated and

_MA G-806

adequate transportation facilities provided. Mr. Turnbull described the improvements that Technical Staff has stated are required to satisfy LATR review.

Mr. Turnbull testified that in order to satisfy PATR, given that the Clarksburg Policy Area has a negative capacity for both jobs and housing, additional infrastructure improvements would be required. These are identified in a letter from Mr. Ron Welke of Transportation Planning staff attached to the Technical Staff report. Mr. Turnbull identified on Ex. 55 the roadway improvements required to create staging ceiling capacity. Finally, Mr. Turnbull stated his agreement with testimony by Technical Staff and the conclusions in the Staff Report.

Mr. Turnbull also provided some background information concerning the decision not to follow the Master Plan recommendation with regard to the widening of Clarksburg Road and the extension of Newcut Road. Referring to a Technical Appendix to the Master Plan that was used as background in preparing the Master Plan, he noted that it included a study that anticipated development of the area west of Clarksburg Road at a rate of two to four dwelling units per acre. In fact, in the final master plan that area was recommended in part for agricultural preserve and in part for development at the two-to-four units per acre level. That change was reflected in the Master Plan by showing Newcut Road ending at MD 121 rather than continuing further west to Slidell Road. The Master Plan showed the area between Newcut Road Extended and Clarksburg Road with a density of five to seven dwelling units per acre. The area south of Newcut Road Extended was shown with two to four dwelling units per acre. As currently planned, the western portion of Area E would be developed at a density of two to three units per acre, and the eastern portion of Area E at three to five units per acre. The proposed plan would concentrate the higher density in the eastern portion of the site closer to I-270. Mr. Turnbull stated that as a result of decreased development west of Clarksburg Road and lower density east of it, the need no longer exists to extend Newcut Road to Clarksburg Road.

5. Steve Nardella, Winchester Homes.

Mr. Nardella represents Winchester Homes, owner of part of Area E and contract purchaser of an additional portion of Area E and the residential portion of the subject property that is

Adventist Health Care. Mr. Nardella stated that discussions are on-going among the owners concerning the mechanisms and procedures for funding the required infrastructure improvements. They are aware of the phasing proposed by the Planning Board's Technical Staff for the initial phase of development, that being approximately 70% of the residential and approximately one-half of the employment uses. That includes all the improvements identified west of I-270 plus participation in some of the improvements to MD 355 east of I-270. He stated that the Applicants also understand that full build-out of the project would require funding or bonding of the funding for construction of the Newcut Road interchange. They propose to fund most of these improvements through a development district that would involve tax assessments imposed on the eventual owners and users of the property to reimburse the County for bond funding. The remainder of the major infrastructure would be funded by a consortium of the property owners.

6. Griff Gosnell.

Mr. Gosnell represents the Gosnell family, which owns the 149 acres identified in the application as the King Farm Limited LLP Property. Mr. Gosnell adopted the testimony of Mr. Nardella. He also added that there are additional off-site improvements, particularly on Clarksburg Road, that the Applicants intend to participate in funding.

7. Steve Johnson.

Mr. Johnson represents Adventist Health Care. He adopted Mr. Nardella's testimony.

B. Technical Staff Testimony

1. William Landfair, zoning analyst.

Mr. Landfair testified that the discussion in the Technical Staff report concerning the effect on public schools was extracted from two letters Technical Staff received from Montgomery County Public Schools (see Exs. 64 and 65). He stated that if the rezoning is successful, at the time of preliminary plan review Montgomery County Public Schools will make a determination as to the current capacity in the school district based on the Annual Growth Policy. Currently the AGP states that school capacity is judged adequate at all three levels – elementary, middle and high school.

Mr. Landfair explained that development districts are essentially special taxing areas that are funded by a special category of bonds. They are set up by the County to assist developers in financing infrastructure needs. The public benefit of allowing these districts is that they typically result in a higher level of infrastructure delivered more quickly than would otherwise be possible.

Mr. Landfair also provided additional explanation for a table regarding residential density and unit mix found on page 15 of the Staff Report. The import of the table is that Technical Staff acknowledges that the proposed Cabin Branch Community would include all the multi-family units that the Master Plan recommends for the entire Cabin Branch Neighborhood. Technical Staff is in agreement with using up all of the multi-family capacity within the Cabin Branch Community, as that is consistent with the zoning in the rest of the Cabin Branch Neighborhood.

Mr. Landfair confirmed that Technical Staff has made positive findings with regard to each element of the purpose clause for the MXPD Zone, and has determined that the access and internal vehicular circulation system as shown on the Land Use Plan would be safe, adequate and efficient. He confirmed that the Planning Board made no changes to the textual binding elements recommended by Technical Staff. He also confirmed that Technical Staff interprets the Master Plan density recommendations to be base densities that may appropriately be increased to account for MPDUs. He also confirmed that Technical Staff was not adverse to the Applicants' decision to treat senior units as a service/public use rather than part of the residential mix for density purposes. Staff felt that the use was such that it could readily be classified as a service or public use, particularly because the nature of the use has not yet been clearly defined. The only thing they know is that it would relate to elderly housing and services for the elderly. Staff does not expect the senior component to be just independent living. They expect that it may provide a wide variety of services.

With regard to the Master Plan recommendation to extend Newcut Road, Mr. Landfair testified that there has been considerable discussion about whether or not to hold to the Master Plan recommendation. Technical Staff has concluded that at this point, environmental concerns must take precedence with respect to that road. Very early on it was the consensus among Technical Staff that the road should not continue through the stream valley area.

Finally, Mr. Landfair testified that the evidence in the file supports affirmative findings with regard to all five of the findings that the District Council is required to make under §59-D-1.61 of the Zoning Ordinance before approving the Development Plan. He stated in particular that Technical Staff does not have any real concerns about compatibility with the surrounding area, which is generally lower density and more rural in nature than the proposed development. Their conclusions are based on the proposed layout including factors such as setbacks, as well as interaction with area residents and the Clarksburg Civic Association who support the proposed development.

2. Ki Kim, transportation planner.

Mr. Kim clarified that the roadway improvements required for LATR review are the same for Phase A of the development and for the final Phase B build-out. He stated that the build-out described is just for the Cabin Branch Community, not the entirety of the Cabin John Neighborhood as suggested in earlier testimony. He stated that all of the roadway improvements required by staff would be required to support the Phase A development, with the exception of the Newcut Road interchange with I-270, which is the only additional element required for the Phase B build-out.

Mr. Kim testified that he did not find it problematic that the Applicants chose to summarize in their traffic report a different set of intersections from those summarized in the Technical Staff report. He stated that the two work together in an acceptable fashion. Mr. Kim confirmed that the major study area for the subject property is west of I-270 in the area immediately surrounding the subject property. He stated that the Applicants are responsible for carrying out all of the improvements identified in that area, and east of I-270 the Applicants will be required to participate in improvements in some fashion.

With regard to the decision not to extend Newcut Road to MD 121, Mr. Kim stated that the preliminary plan concept reviewed by the Planning Board a year ago included the Newcut Road issue. Transportation Planning Staff looked at the traffic capacity to be provided under the Master Plan recommendation with the extension of Newcut Road to Clarksburg Road and the widening of Clarksburg Road from Newcut Road up to I-270. The Applicants propose to bring Newcut Road down to join West Old Baltimore Road, and to widen West Old Baltimore Road to the standards of a two

ane County road. Staff found that traffic capacity would be the same with either the Master Plan recommendation or the Applicants' proposal. Staff supported the Applicants' proposal as a way of avoiding an environmentally sensitive area without sacrificing traffic capacity. He stated that their conclusion was based on a transportation model that is more complex than simply adding up the number of lanes involved. Based on the transportation modeling that Staff performed, they found that the level of roadway improvements proposed by the Applicants would be adequate to support the amount of traffic expected.

Mr. Kim further testified that with regard to policy area review, Technical Staff analysis and findings pertained not only to the Cabin Branch Community but to the entire Cabin Branch Neighborhood and properties in the Ten Mile Creek neighborhood, all of which would be served by the improvements required at the interchange between Newcut Road and I-270. Mr. Kim noted that as stated in Mr. Welke's letter, the infrastructure improvements required to satisfy policy area review would provide for more development than is planned in the Cabin Branch Community. They would also allow for the Ten Mile Creek development and development south of West Old Baltimore Road.

C. Community

Jamie Haney testified as a 17-year resident of Montgomery County who currently resides on West Old Baltimore Road, roughly one-quarter mile west of its intersection with Clarksburg Road. Ms. Haney's primary concern is the Applicants' proposal not to extend Newcut Road to Clarksburg Road as called for in the Master Plan. She noted that the Master Plan did not intend West Old Baltimore Road to be the only east/west connection at that location between I-270 and Clarksburg Road. The Master Plan described West Old Baltimore Road as an attractive, rural road providing access to Black Hill Regional Park. The Master Plan proposed extending Newcut Road to provide a route from Clarksburg Road all the way to Mid-County Highway. Ms. Haney noted that if the Cabin Branch Community is built as proposed, the County will lose the possibility of ever completing Newcut Road. She said that when the Master Plan was written it mentioned on page 24 that the Newcut Road extension would have environmental impact. It said that careful siting would be necessary to

minimize environmental impacts, but that the extension of Newcut Road was necessary for the road system. Ms. Haney believes that people will want a high-speed connection between Clarksburg Road and I-270 and that if Newcut Road is not extended they will use West Old Baltimore Road and convert it into a high-speed roadway.

Ms. Haney testified that the Master Plan recommended widening Clarksburg Road significantly more than is shown on the Applicants' plans. The Master Plan calls for widening Clarksburg Road to six lanes at its intersection with I-270, then having it at four lanes all the way down to the intersection with Newcut Road. The Applicants show Clarksburg Road as starting with six lanes near the junction with I-270, then narrowing to four lanes only for a very short distance before returning to the current two-lane condition. Ms. Haney believes that these roadway plans are not adequate to handle the traffic in the area.

Ms. Haney also noted that there was testimony concerning residents of the new community using the Boyds railroad station. She said that the Boyds station currently has a gravel parking lot with room for 15 to 20 cars. If large numbers of people were going to use that train station there would need to be lots of upgrading of the station and the parking area. Right now, taking the train from that station is not a very good option.

Ms. Haney emphasized that over the years she has observed that traffic in Montgomery County is never adequately addressed. The County constantly has plans on paper to build roads according to the master plans, but they never get built. The houses get built before the roads and it has become a real quality of life issue. She often has to use Clarksburg Road and other winding local roads because I-270 looks like a parking lot. The problems have been incremental because of concessions to the builders, just like in this case, so the roads are never widened enough and the connections never happen. She stated that people don't travel just to work, they travel for all sorts of reasons. People don't want to travel to town centers and they are not going to want to travel through all those intersections on First and Second Avenues. They are going to want to drive down West Old Baltimore Road and up Clarksburg Road and to go from Clarksburg Road all the way to Mid-County Highway.

D. People's Counsel

Martin Klauber, the People's Counsel, testified that he participated in the first MXPDP Zone case in Montgomery County in the 1980s. He stated that there was one MXPDP Zone during the 1990s and this may be only the third MXPDP Zone case. He stated that the language of the zone should be revised to be a more useful zoning tool and it should be easier to use than it is currently. He stated that the Applicants have been extremely forthcoming during the planning process, and have held very candid conversations about the binding elements. He stated that the Applicants, as recognized by the local community association, have put forth a comprehensively planned proposal that would bring a quality of environment and development that hasn't been there before and should be. Mr. Klauber recommended that the proposed zoning reclassification be approved.

V. ZONING ISSUES

Zoning involves two basic types of classifications: Euclidean zones and floating zones. The term "Euclidean" zoning arose from the seminal United States Supreme Court case upholding the land use authority of local governments, *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). Euclidean zoning divides the territory of a local jurisdiction into zoning districts with set boundaries and specific regulations governing aspects of land development such as permitted uses, lot sizes, setbacks, and building height. In the State of Maryland, a property owner seeking to reclassify his or her property from one Euclidean zone to another bears a heavy burden to prove either a change in circumstances or a mistake in the original zoning. See *Stratakis v. Beauchamp*, 268 Md. 643, 652-53 (1973).

A floating zone is a more flexible device that allows a legislative body to establish a district for a particular type of use, with land use regulations specific to that use, without attaching that district to particular pieces of property. Individual property owners may seek to have property reclassified to a floating zone by demonstrating that the proposed location is appropriate for the zone, i.e., it satisfies the purpose clause for the zone, the development would be compatible with the surrounding area, and it would serve the public interest.

The MXPD (Mixed Use Planned Development) Zone is a special variety of floating zone with performance specifications integrated into the requirements of the zone. This zone allows considerable design flexibility if the performance specifications are satisfied. The applicant is not bound to rigid design specifications, but may propose site-specific specifications, within the parameters established for the zone, for elements such as setbacks, building heights and types of buildings. These specifications must be specified on a development plan, however, to assure appropriate zoning oversight by the District Council. Pursuant to Code §59-D-1.11, development under the MXPD Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the MXPD Zone. Once it is approved, the development plan provides the design specifications for the site, much as the Zoning Ordinance provides design specifications for more rigidly applied zones. Accordingly, the evaluation of zoning issues must begin with the development plan and proceed to the requirements of the zone itself.

A. The Development Plan

Before approving a development plan, the District Council must make five specific findings set forth in Code § 59-D-1.61. These findings relate to consistency with the master plan and the requirements of the zone, compatibility with surrounding development, circulation and access, preservation of natural features, and perpetual maintenance of common areas. The required findings are set forth below in the order in which they appear in the Zoning Code, together with the grounds for the hearing examiner's conclusion that each of the required findings can be made.

- (a) ***That the zone applied for is in substantial compliance with the use and density indicated by the master plan or sector plan, and that it does not conflict with the general plan, the county capital improvements program or other applicable county plans and policies.***

The proposed development of the subject property is fully consistent with the uses and density indicated by the Master Plan. The Master Plan designated the subject property as part of a mixed-use neighborhood with employment, retail, public uses and residential, and the Applicants propose the same mix of uses. The potential number and types of residential units the Applicants

propose on the subject property is consistent with the Master Plan's recommendations for the number and type of residential units in the Cabin Branch Neighborhood, as summarized on pages 37-38 above. The square footage of employment and retail uses proposed by the Applicants also is consistent with the amounts recommended in the Master Plan. See *id.* Evidence related to the county capital improvements program indicates that that the proposed reclassification would not conflict with that program. See Ex. 13.

Based on the evidence of record, the Hearing Examiner concludes that the submitted Development Plan would be in substantial compliance with the use and density indicated in the Master Plan and would not conflict with any other applicable county plan or policy.

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

1. Purposes of the Zone

The purpose clause of the MXPD Zone is set forth in full below, together with the Hearing Examiner's analysis of relevant provisions. Key elements of the purpose clause are in bold.

59-C-7.50. Objectives and purpose.

It is the objective of this zone to establish **procedures and standards for the implementation of master or sector plan land use recommendations for comprehensively planned, multi-use centers** located outside central business districts and transit station development areas. It is also intended that this zone provide a more flexible approach to the comprehensive design and development of multi-use centers than the procedures and regulations applicable under the various conventional zoning categories and other planned development zones. In so doing, it is intended that this zoning category be utilized to implement existing public plans and pertinent county policies in a manner and to a degree more closely compatible with said county plans and policies than may be possible under other zoning categories. The specific purposes of this zone are:

- (a) To establish standards and procedures through which the **land use objectives and guidelines of approved and adopted master or sector plans** can serve as the basis for evaluating an individual multi-use center development proposal.

The proposed rezoning would allow implementation of the Master Plan recommendation to develop the subject property as part of a comprehensively planned, multi-use

center to be implemented. As stated by Technical Staff, "the MXPD Zone will permit an integrated approach to design and development in which land uses are combined, densities are shared, impact on the environment is mitigated, and infrastructure is located in an efficient manner without the constraints of property [or zoning] lines." The proposed reclassification would provide the flexibility needed to allow the Property Owners to cooperate productively in creating a single, comprehensively planned mixed-use center. As a result, the subject property would be developed in a fashion more consistent with the objectives of the Master Plan than would be possible with the current split zoning.

- (b) To encourage orderly, staged development of large-scale, comprehensively planned, multi-use centers by providing procedures for the submission of a concept plan for an entire site and subsequent development plans for each stage of development, as identified on the concept plan.

The Applicants chose not to make use of the concept plan option.

- (c) To provide, where appropriate, **higher density residential uses integrated into the overall multi-use center.**

The Land Use Plan includes higher-density multi-family residential uses as an integral part of the development. Most of the multi-family uses would be within easy walking distance of the retail core, and all would be in close proximity to employment uses and other types of residential development. The system of interconnected roadways, trails and open space would strengthen the linkages between higher-density uses and lower-density residential, public parks and other recreational amenities.

- (d) To ensure internal compatibility of residential and nonresidential uses by providing a suitable residential environment that is enhanced by the commercial, recreational, employment and institutional amenities within commercial and industrial components of the multi-use center.

The Land Use Plan presents a development with a high degree of internal compatibility. The density and intensity of uses decreases from the I-270 frontage to the west side of the property, allowing employment uses to provide a noise buffer for most of the residential uses while placing most of the residential units within a five-minute walk of the retail core. Residents would have easy access

to commercial, recreational, employment and institutional amenities within the non-residential areas, including shopping, employment opportunities, health services, parks and other open space.

- (e) **To assure compatibility of the proposed land uses with surrounding uses by incorporating higher standards of land planning and site design than could be accomplished under conventional zoning categories.**

The Development Plan required in the MXPDP Zone serves as an additional, more comprehensive level of review than would be required for the underlying zones. The MXPDP Zone also incorporates specific standards, particularly with regard to setbacks, that assure compatibility with adjoining uses. Moreover, the proposed reclassification would permit a comprehensive, integrated approach to developing the subject property which, by its nature, involves higher standards of land planning and site design than could be accomplished under the differing requirements of the existing zoning classifications.

- (f) **To encourage and provide for open space not only for use as setbacks and yards surrounding structures and related walkways, but also conveniently located with respect to points of residential and commercial/industrial concentration so as to function for the general benefit of the community and public at large as places for relaxation, recreation, and social activity. It is also intended that open space and amenities be located so as to achieve the physical and aesthetic integration of the uses and activities within each development. In addition, structured parking within mixed-use planned developments is encouraged to help achieve the open space and amenities objectives of the zone. Where surface parking is necessary, the purposes of this zone may be achieved by the provision of additional landscaping.**

Open space to be provided on the subject property includes the Little Seneca stream valley, the Central Park, additional urban parks and open spaces, and trail connections. Many of these elements would be along the edges of the subject property, making them accessible to the general community for relaxation, recreation and social activity. The grid pattern of the roadways, the attention to maintaining open vistas of the stream valleys and links between the two main stream valleys, the location of the larger recreational amenities abutting a stream valley, and the extensive system of trails, bike paths, parks and other open spaces would result in a high degree of physical and

aesthetic integration of uses and activities. The Applicants intend to incorporate on-street parking, structured parking, and extensively landscaped surface parking in the development.

- (g) To encourage and provide for the development of **comprehensive non-vehicular circulation networks**, separated from vehicular roadways, which constitute a **system of linkages among residential areas, open spaces, recreational areas, commercial and industrial areas and public facilities**.

The Development Plan includes a comprehensive non-vehicular circulation network including an interconnected system of sidewalks, trails and bike paths, with short blocks in a grid pattern to encourage residents to walk within the development. This network would provide extensive linkages among the various uses and open spaces on the subject property and in the Cabin Branch Community as a whole.

- (h) To encourage and provide for **efficient use of energy resources** through shared facilities or other economies of scale or technology, including innovative fuels and district heating, etc.

The evidence demonstrates that the Applicants are aware of this element of the purpose clause and will explore a variety of measures to satisfy its requirements, including installing energy-efficient appliances, windows and lighting fixtures.

- (i) To **preserve and take the greatest possible aesthetic advantage of existing trees and to minimize** the amount of **grading** necessary for construction of a development.

The submitted Development Plan includes preservation of higher quality forest as well as reforestation and afforestation in the stream valleys. Applicable forest conservation requirements would be satisfied on site. The comprehensive approach taken to development of the subject property and the Cabin Branch Community as a whole would allow the site design to follow the topography and minimize grading.

This floating zone may be approved upon findings that the application is proper for the comprehensive and systematic development of the county, is capable of accomplishing the purposes of this zone, and is compatible with the general plan and the applicable master or sector plan. In order to enable the council to evaluate the accomplishment of the purposes set forth herein, a specific set of plans, submitted in accordance with division 59-D-1, is required for each mixed-use planned development, and the district council is empowered to approve such plans if they find them to be capable of accomplishing the above purposes and in compliance with the requirements of this zone.

As explained further in the remainder of this report, based on the preponderance of the evidence, the Hearing Examiner concludes that the proposed reclassification is proper for the comprehensive and systematic development of the county, is capable of accomplishing the purposes of the MXP zone, and is compatible with the general plan and the applicable master plan.

2. Standards and Regulations of the Zone

The standards and regulations of the MXP Zone are summarized below, together with grounds for the Hearing Examiner's conclusion that the proposed development of the subject property would satisfy each of these requirements.

59-C-7.51(a): Master Plan. Land cannot be classified under the MXP Zone unless it is recommended for mixed-use development in an approved and adopted master plan. The 175-acre portion of the subject property fronting on I-270, which corresponds roughly to the area from I-270 to First Avenue, was recommended in the Master Plan for MXP mixed-use zoning. The remainder of the subject property was recommended in the Master Plan for its current zoning classification, RMX (Residential Mixed Use).

59-C-7.51(b): Minimum area. Classification under the MXP Zone requires a minimum of 20 acres of land; the subject property contains 283.5 acres.

59-C-7.51(c): Location. Land to be classified under the MXP Zone must be adjacent to and readily accessible from existing or planned major highways or limited access freeways, so that traffic does not have an adverse impact on the surrounding area. The subject property is located adjacent to I-270, a major limited access freeway. It currently has one major point of access to I-270 at the Clarksburg Road interchange, and a second would be constructed as part of the traffic mitigation requirements for the development.

59-C-7.52(a): Residential. All types of residential uses are permitted, including accessory uses, group homes, embassies, housing and related facilities for senior adults or persons with disabilities and life care facilities (nursing homes). The proposed development would include

single-family detached, single-family attached and multi-family residential dwellings, as well as housing and related facilities for senior adults or persons with disabilities.

59-C-7.52(a)(1). Residential housing should be planned and constructed in accordance with master plan recommendations and guidelines; the residential development proposed for the subject property would follow closely the recommendations of the Master Plan.

59-C-7.52(a)(2). The locations and types of all proposed residential units must be shown on the Development Plan, as they are in this case.

59-C-7.52(a)(3). Residential uses should be included if recommended in the master plan as an integral component. The proposed development includes residential uses, as recommended in the Master Plan.

59-C-7.52(a)(4). Exclusively residential uses must not be located on more than 40 percent of the site unless so recommended in the specific land use recommendations of the master plan. The residential component of the Development Plan is consistent with the specific land use recommendations of the Master Plan.

59-C-7.52(a)(5). Multi-family dwellings may be located within commercial or industrial areas if the District Council finds that combining residential and non-residential uses at one location would not adversely affect the overall development proposal. The Development Plan proposes multi-family uses in locations that are proximate to both commercial and lower density residential uses. Multi-family uses would be integrated in the overall fabric of the development and would contribute to the mix of uses along the main street in the development, First Avenue.

59-C-7.52(b): Commercial. All permitted and special exception uses allowed in the C-2 (General commercial) and H-M (Hotel-motel) Zones are allowed in the MXPDP Zone.

59-C-7.52(b)(1). The location and general type of commercial uses proposed must be shown on the development plan and approved by the District Council. The submitted Development Plan shows the location and general types of commercial uses. The District

Council's approval of the Development Plan, if granted, will include approval of the locations and general types of commercial uses proposed.

59-C-7.52(b)(2). To establish a dominant employment character within the commercial area of an MXP Zone, retail uses should not exceed 20 percent of the gross commercial floor area proposed. In the present case, the Land Use Plan indicates that retail uses would occupy roughly ten percent of the commercial floor area.

59-C-7.52(c): Industrial. All industrial uses allowed in the I-3 Zone (Technology and business park) are permitted in the MXP Zone.

59-C-7.52(c)(1). The location and general type of industrial uses proposed must be shown on the development plan and approved by the District Council. The submitted Development Plan shows the location and general types of industrial uses. The District Council's approval of the Development Plan, if granted, will include approval of the locations and general types of industrial uses proposed.

59-C-7.52(c)(2). Industrial uses must meet the environmental control provisions of Section 59-C-5.46, which apply to all industrial zones. The Applicants have stated their intention to comply with these provisions.

59-C-7.52(d): Transitory use. Transitory uses are permitted; none are proposed.

59-C-7.52(e): Equipment. Rooftop-mounted antennas and related unmanned equipment may be installed per §59-A-6.14. The Applicants have stated that any such installation will comply with the cited provision.

59-C-7.53(a). Residential density should be compatible with master plan recommendations, and may not exceed 44 dwelling units per acre for residential areas, or 75 dwelling units per acre for residential development proposed within a commercial or industrial area. The maximum residential density proposed on the subject property is approximately 20 dwelling units per acre, and is consistent with the recommendations of the Master Plan.

59-C-7.53(b). The District Council must determine whether the density applied for is appropriate, taking into consideration the master plan, the purposes of the MXP Zone, the

requirement to provide MPDUs, and county housing policy. The proposed density is well below the maximum permitted in the zone, so clearly it is not excessive. A moderate overall density is appropriate in light of the Master Plan recommendations specifying a maximum of 1,950 residential units in the entire 950-acre Cabin Branch Neighborhood, and the emphasis in the purpose clause on compatibility. A development with densities approaching the levels permitted in the MXPB Zone would have difficulty maintaining compatibility with the largely rural, low-density uses in the surrounding area. Accordingly, the Hearing Examiner concludes that the residential density proposed for the subject property is appropriate for the site. The District Council's approval of the Development Plan, if granted, will include a finding that the density sought is appropriate.

59-C-7.53(c). Residential density must be based on the area shown for residential use in the master plan and be compatible with the plan's density recommendations, but may be increased to account for MPDUs. The Master Plan recommended a comprehensively developed mixed-use center with residential and non-residential components, as proposed here. The residential density proposed on the Development Plan is consistent with the recommendations of the Master Plan.

59-C-7.54: Density of commercial/industrial development. The density should be compatible with any gross floor area or floor area ratio recommended in the master plan, and must not exceed a FAR of 0.75. The maximum commercial/industrial density proposed on the Development Plan is a FAR of 0.59 and is compatible with the recommendations of the Master Plan, although the Master Plan did not recommend particular ratios.

59-C-7.55: Compatibility standards. All uses must conform to the purposes of the MXPB Zone and must be compatible with existing or proposed uses in the surrounding area. Three specific requirements apply:

- (a) no buildings other than one-family detached dwellings may be constructed within 100 feet of adjoining single-family detached development unless topographical features permit a lesser setback;
- (b) no building proposed for commercial/industrial use may be constructed less than 100 feet from any adjoining property recommended for residential zoning on the master plan; and

- (c) no building may be built at a height greater than its distance from any adjoining property recommended for residential zoning on the applicable master plan, unless the District Council finds that a waiver of this requirement will not adversely affect adjacent property.

The Development Plan would satisfy each of these requirements. However, the Zoning Ordinance specifically states that compliance with these requirements "shall not in and of itself be deemed to create a presumption of compatibility." Accordingly, a more general consideration of compatibility is necessary.

The proposed development would be a significant change from the current agricultural use of the subject property, and would be a more intense form of development than the rural, low-density uses prevailing in the surrounding area. Only small portions of the subject property abut residentially developed property, and for the most part the development facing those residences would be buffered by green space and/or roads. The largest borders of the Cabin Branch Community that abut residential uses would be in the west side of the site, where development is intended to be almost entirely low-density, single-family detached residential. The Linthicum Realty property south of the Cabin Branch Community is expected to be developed for single-family residential use, creating easy compatibility in that portion of the site. Mixed-use development of the subject property would result in employment uses along I-270 that would be much more compatible with a high-speed freeway than the existing agrarian uses. Moreover, the proposed development would implement the principal goals of the Master Plan, including focusing development in identified areas and preserving surrounding green space. Technical Staff testified that they found the proposed development to be compatible because of the layout, including setbacks, and because of the support it garnered among Clarksburg residents. For all of these reasons, based on the preponderance of the evidence, the Hearing Examiner concludes that the proposed rezoning and development would be compatible with existing and proposed uses in the surrounding area.

59-C-7.56: Minimum green area and amenity requirements. Green area must comprise not less than 50 percent of the total area shown for residential use and 40 percent of the total area shown for commercial/industrial use, except that comparable amenities may be provided in lieu of

green area if the District Council finds them to be sufficient to accomplish the purposes of the Zone and more beneficial to the proposed development. This requirement is restated as a binding element on the Land Use Plan. Nonetheless, as observed by Technical Staff, due to the integrated nature of the Development Plan, the subject property does not have distinct "residential" and "commercial/industrial" areas. Accordingly, Technical Staff anticipates that an average of 45 percent green area would be provided throughout the property. The Land Use Plan as shown suggests that compliance with the minimum percentages would be readily achieved.

59-C-7.57: Public facilities and utilities. Development must conform to the facilities recommended in the master plan, including necessary easements or dedications, and utility lines must be placed underground. The Development Plan in this case provides for property dedication for roadways and for the principal public facilities recommended in the Master Plan: an elementary school, a recreation center/community building, and a local park. The Applicants have represented that all utility lines would be installed underground.

59-C-7.58: Parking facilities. Off-street parking must be provided in accordance with Chapter 59-E of the Zoning Ordinance, and off-street surface parking areas must be appropriately sized and landscaped so as to avoid large, unrelieved, paved parking areas. The Applicants have represented that they would satisfy the requirements of Chapter 59-E and that off-street surface parking areas would be carefully designed and landscaped to comply with this provision and a similar provision in the purpose clause for the zone.

3. Maximum safety, convenience and amenity of residents

The evidence supports a finding that the proposed development of the subject property would provide for the maximum safety, convenience and amenity of residents. Residents would enjoy a neighborhood developed with a high level of planning and attention to convenience, making the best use of amenities. Many residences would be within a very short of walk of shopping and employment opportunities, and all would have ready access by foot, bicycle, bus or car. Residents would be able to enjoy the aesthetic benefit of the stream valleys within the Cabin Branch Community, close proximity to Black Hill Regional Park, and the view of the surrounding countryside. The extensive,

efficient roadway network with its grid pattern and easy access to neighboring roadways would provide for the safety of residents.

Based on the preponderance of the evidence, the Hearing Examiner concludes that the proposed development would comply with the purposes, standards and regulations of the zone, would provide for the maximum safety, convenience and amenity of the residents of the development, and would be compatible with adjacent development.

- (c) ***That the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate, and efficient.***

The evidence supports a finding that the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate, and efficient, particularly in view of the extensive roadway improvements that the Applicants would be obligated to provide to satisfy PATR and LATR requirements.

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

The evidence supports a finding that because of the comprehensive, integrated nature of the proposed development, it would tend to prevent soil erosion, minimize grading and preserve natural vegetation and other natural features of the site considered to have the highest environmental value. The Development Plan demonstrates that the Applicants would satisfy forest conservation requirements on-site, and the approved Preliminary Water Quality Plan demonstrates compliance with water resource protection requirements.

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

The Land Use Plan specifies in binding element number 13 that at site plan review, the owners of the property would enter into a Site Plan Review Agreement providing for perpetual maintenance of open space areas and other areas to be used for recreational, common or quasi-public purposes. This statement satisfies this requirement.

B. Public Interest

The applicant must show that the proposed reclassification bears sufficient relationship to the public interest to justify its approval. The State Zoning Enabling Act applicable to Montgomery County requires that all zoning power must be exercised:

“ . . . with the purposes of guiding and accomplishing a coordinated, comprehensive, adjusted, and systematic development of the regional district, . . . and [for] the protection and promotion of the health, safety, morals, comfort, and welfare of the inhabitants of the regional district.” [*Regional District Act*, Maryland-National Capital Park and Planning Commission Article (Art. 28), Md. Code Ann., § 7-110].

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. In this case, both the the Planning Board and Technical Staff found that the rezoning would be in conformance with the *Clarksburg Master Plan*, would satisfy the requirements of the MXPB Zone, and would be compatible with existing and planned land uses in the surrounding area.

As discussed in Part V.A. above, the Hearing Examiner finds that the proposed development would be in substantial compliance with the use and density recommended in the Master Plan. The proposed development would constitute a departure from the Master Plan's recommendations for roadway configuration because the Applicants would widen West Old Baltimore Road to serve as the main east-west through road, instead of directing the main flow of traffic through the new development on Newcut Road. The record contains no discussion of the environmental impacts of widening West Old Baltimore Road, although presumably they are less dramatic than the severe impacts of building a new four-lane roadway through a stream valley. Technical Staff and the Planning Board concluded that under today's standards and based on current traffic modeling, the

Benefits of extending Newcut Road as recommended in the Master Plan are clearly outweighed by the costs. Based on the preponderance of the evidence, the Hearing Examiner concludes that the proposed rezoning and development would be in substantial compliance with the *Clarksburg Master Plan*.

As set forth in Parts III.G and K above, the preponderance of the evidence indicates that the proposed development would be adequately served by and would not adversely affect public facilities in the area. A community member presented anecdotal evidence that development of the roadway network as proposed by the Applicants would have adverse effects on area roadways. While frustration with traffic congestion is understandable, the Applicant presented competent, probative and substantial evidence that the proposed development would not adversely affect traffic congestion during the weekday peak periods, which is the commonly accepted measure of traffic impact in this County. To allow such evidence to be outweighed by contentions that amount to little more than generalized concerns and unsupported allegations would be counter to the dictates of Maryland law. See *Rockville Fuel & Feed Co. v. Board of Appeals*, 257 Md. 183, 192-93 (1970); *Moseman v. County Council of Prince George's County*, 99 Md. App. 258, 265 (Ct. Spec. App. 1994).

Correspondence from Montgomery County Public Schools indicates that school capacity may not be adequate to accommodate the proposed development. However, the Planning Board bases its determination concerning school capacity on the AGP, which currently states that school capacity in the Clarksburg/Damascus school district is considered adequate. Under these circumstances, the evidence does not justify denial of the requested rezoning on the basis of school capacity.

VI. CONCLUSIONS

Based on the foregoing analysis and after a thorough review of the entire record, I make the following conclusions:

A. Development Plan

1. The requested reclassification to the MXPDP Zone substantially complies with the recommendations contained in the *Clarksburg Master Plan* and does not conflict with the general plan, the county capital improvements program, or other county plans or policies.
2. The development plan would comply with the purposes, standards and regulations of the MXPDP Zone, would provide for the maximum safety, convenience, and amenity of the residents of the development, and would be compatible with adjacent development.
3. The Development Plan proposes a vehicular and pedestrian circulation system and points of external access that would be safe, adequate and efficient.
4. By its design, by minimizing grading by other means including preserving stream valleys, the proposed development would tend to prevent soil erosion and preserve natural features of the site. The proposed development would comply with forest conservation and water quality protection requirements.
5. The documentation provided on the Land Use Plan concerning perpetual maintenance of common or quasi-public areas is adequate and sufficient.

B. Zoning Request

Application of the MXPDP Zone at the proposed location would be proper for the comprehensive and systematic development of the County because the proposed development would serve the public interest, would be in substantial compliance with the *Clarksburg Master Plan*, and would satisfy the purposes, standards and regulations of the zone.

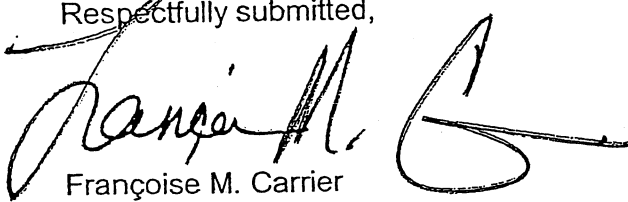
VII. RECOMMENDATION

I, therefore, recommend that Zoning Application No. G-806, seeking reclassification from the RE-1/TDR, RMX-1/TDR and I-3 Zones to the MXPDP Zone of 283.5 acres of land east of Clarksburg Road (MD 121), west of I-270 and north of West Old Baltimore Road in Clarksburg, in the 2nd Election District, be **granted** in the amount requested and the Development Plan be approved, subject to the specifications of the Land Use Plan, Ex. 67(g), which forms its central component,

provided, however, that within 10 days of receipt of the District Council's approval resolution, the Applicants must submit a reproducible original and three copies of the approved Land Use Plan, Ex. 67(g), with the revision to binding element no. 5 specified on page 20 of this report, for certification in accordance with §59-D-1.64 of the Zoning Ordinance.

Dated: August 4, 2003

Respectfully submitted,



Françoise M. Carrier
Hearing Examiner