



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
Item #
2/10/11

January 31, 2011

MEMORANDUM

TO: Montgomery County Planning Board

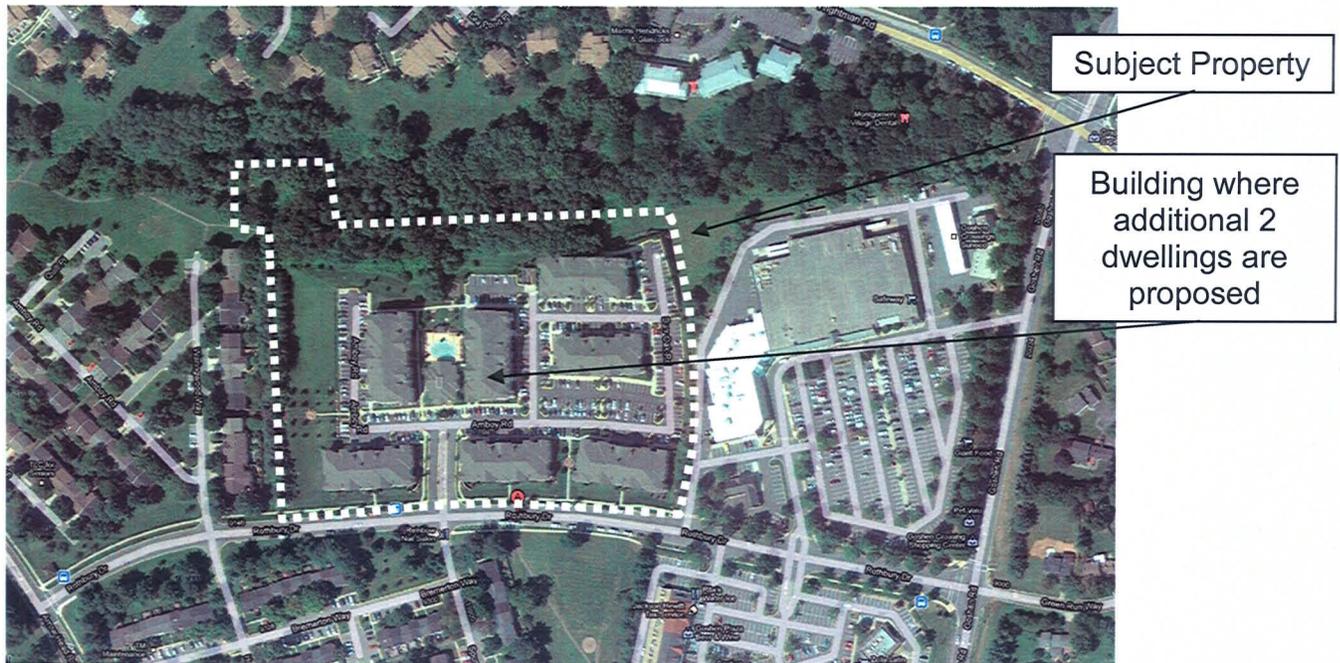
FROM: Damon B. Orobona *DAMON*

VIA: Rose Krasnow, Chief *RK*
Robert Kronenberg, Supervisor *RAK*

SUBJECT: Development Plan Amendment 11-2: An amendment to a development plan approved in 2003 to allow two additional dwelling units.

Overview. The applicant, Avalon II Maryland Value I, L.P., seeks an amendment to an approved 2003 development plan. The proposed amendment will allow two additional dwelling units to be constructed. The prior DPA, approved in 2003, included a binding element limiting the number of units to 203 apartments spread amongst seven buildings on an 11.76 acre site under the Town Sector (T-S) Zone. The applicant seeks to convert an underutilized business center and model unit into rentable dwellings. The proposed amendment is relatively minor, calling for no physical construction and requiring no additional parking spaces. Moreover, all community correspondence has been supportive of the amendment. Therefore, Staff recommends approval of the Development Plan Amendment and an expedited hearing process that forgoes a Hearing Examiner proceeding. If the Development Plan Amendment is approved by the Council, the applicant must also submit a limited preliminary plan and site plan amendment to the Planning Board.

Site Location. The subject property is located on Rothbury Drive in Montgomery Village between Arrowhead Road and Goshen Road, just southwest of the intersection of Snouffer School Road and Goshen Road. The property is within the Gaithersburg Vicinity Master Plan. The property is surrounded by a mix of uses. A stream valley is immediately north of the site, followed by a fourplex residential development. To the east is the Goshen Crossing Shopping Center, which is anchored by a Safeway grocery store. A townhouse development is across Rothbury Drive to the south of the subject property, and another townhouse community is to the west of the site. The entire surrounding area is zoned T-S. An aerial photo of the surrounding area is shown on the next page.



Background. The existing development on the subject property was constructed under Development Plan Amendment 02-2, approved in 2003, which amended an original development plan for Montgomery Village under the T-S Zone. The 2003 DPA changed the designation for the 11.76 acre subject property, removing a school designation and allowing the now-existing 203-dwelling unit apartment complex to proceed. The apartment complex is comprised of four 3-story buildings, three 4-story buildings, and a freestanding clubhouse building and pool. The 2003 DPA had 10 associated textual binding elements, the first of which is the subject of the present Development Plan Amendment request. The relevant binding element is reproduced in its entirety below:

The project shall be limited to 203 multi-family dwelling units, consisting of three three-story apartment buildings, plus loft space, fronting along Rothbury Drive, two four-story buildings, plus loft space, located in the center of the subject property (to the east and west of a swimming pool), a freestanding clubhouse (providing amenity and management office space), located immediately to the south of the swimming pool, a three-story building, plus loft space, located along the eastern half of the property, and a four-story apartment building, plus loft space, located in the northeast corner of the subject property (the "Project"). The Project shall also provide the greater of 1 parking space per bedroom, the number of parking spaces required by Article 59-E of the Montgomery County Code or 1.9 parking spaces per unit.

Proposal. The applicant wishes to amend the binding element shown above to state "[t]he project shall be limited to 205 multi-family dwelling units..." so an underutilized business center and model unit can be converted to rentable dwellings.

Both proposed dwellings are in the building directly east of the clubhouse. No external physical changes are necessary to convert these two spaces to dwellings.

Findings. To allow this relatively minor amendment, the proposal must meet required zoning standards under §59-D-1.61 for development plan amendments. As these same findings were made in the 2003 DPA case, Staff only revisits those standards that will be impacted by an additional two dwelling units on the site.

- (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 property is within the geographic region covered by the 1985 Gaithersburg Master Plan. In 2003, the Council found the now-existing 203-unit apartment complex in substantial compliance with the use and density indicated by the Master Plan. The Plan indicated the subject property was appropriate for a base density of 15 dwelling units per acre, and eligible for bonus density of up to 18.3 dwellings per acre if MPDUs are provided. In approving the 2003 DPA, the Council found that the provided 17.2 dwellings per acre was consistent with the Master Plan recommendations for the site because the development provided MPDUs. In the subject amendment, with an additional two dwelling units, the density figure rises to 17.4 dwellings per acre. This density is still equivalent to 15 dwellings per acre with a bonus density for MPDUs, and is still less than the maximum permitted density of 18.3 dwellings per acre with the MPDU bonus. Therefore, the proposal is still in compliance with the Master Plan use and density recommendations for the site.

- (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.*

In 2003, the Council established that the proposal complies with the purposes and standards of the T-S Zone, provides for the maximum safety, convenience, and amenity of residents, and is compatible with adjacent development. However, before allowing an additional two dwellings at the subject property, it must be verified that the proposal (with two more units) still meets the required parking and density standards of the T-S Zone.

The T-S Zone is unusual in that it actually caps density within the geographic zoned area. §59-C-7.25 states that population in the T-S Zone must not exceed an average of 15 persons per acre spread out among the entire zoned area. Today, there are 2,434.8 acres zoned T-S. Therefore, the total theoretical population for the zone is 36,522

people (2,434.8 acres x 15 people per acre = 36,522 people). According to the last Site Plan approved under T-S zoning, the remaining population allowable for all T-S zoned land is 238 people.¹ The ordinance also sets forth the formula for calculating population density for multi-family dwelling units by stating “[m]ultiple-family dwellings less than 5 stories in height shall be assumed to have an average occupancy of 3 persons per dwelling unit.” The current population for the apartment complex is 609 persons (3 persons per dwelling x 203 units = 609), which was already included in the population count given in the latest Site Plan. The proposed addition of two dwellings will increase the population for the project by 6 persons (3 persons per dwelling x 2 units = 6) for a total of 615 persons. Given that there are 238 remaining spots under the geographic area of T-S zoning, the slight increase of 6 persons is permissible. If the instant application is approved, then the remaining population for the zone will be 232 people. Accordingly, the proposed amendment still complies with the density standards of the T-S Zone.

In regard to parking, the project must provide the greater of 1 parking space per bedroom, the number of parking spaces required by the zoning ordinance, or 1.9 parking spaces per unit as per the binding element reproduced above. Although the ordinance required only 304 total parking spaces for the apartment complex in 2003, the finished development was required to have at least 386 spaces because 1.9 spaces per unit was greater than code requirements (1.9 spaces x 203 units = 386). Therefore, if two additional units are provided, the required parking count will rise to 390 spaces.

There are a total of 428 parking spaces for the apartment complex in existence today: 282 standard spaces, 48 garage spaces, 8 handicapped spaces, and 48 tandem spaces that equate to 90 regular spaces. Although the tandem spaces are not striped as two spaces, most are deep enough to accommodate two vehicles and can be used to satisfy parking requirements. Therefore, the provision of 428 parking spaces on the site satisfies the 390-space requirement.

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

The Council found the project’s circulation systems to be safe, adequate, and efficient. As no external changes to the site are proposed, the circulation systems remain safe, adequate, and efficient.

(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

¹ Montgomery Village Plaza Site Plan No. 8-20060400.

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.

Again, the Council has already made this finding on the site's development. Water resource protection requirements have been satisfied for the site through the approval of a stormwater management plan by DPS in 2003. The property is exempt from forest conservation requirements.²

(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.

No new finding necessary if an additional two dwellings are allowed on the subject property.

Conclusion. Staff does not anticipate that allowing two additional dwelling units on the site will have any substantive impact on the residential development objectives for the area. The application is consistent with the Gaithersburg Master Plan. The amendment does not alter the compatibility of the project with surrounding development or compliance with the purposes of the T-S Zone. The proposed development plan amendment is consistent with the findings made by the District Council at the time of the 2003 development plan approval and still satisfies all applicable standards with the addition of two dwelling units. Unless there is public opposition, staff does not recommend that the Hearing Examiner conduct a public hearing on the proposed development plan amendment.

Attachments:

1. Environmental Planning Email
2. Proposed Amended Development Plan Language
3. 2003 DPA Council Resolution
4. Letter supporting the amendment from Montgomery Village Foundation

² See Environmental Planning email at attachment 1.

ATTACHMENT 1

Cheng, Yum Yu - YYC

From: Pfefferle, Mark [Mark.Pfefferle@mncppc-mc.org]
Sent: Friday, September 24, 2010 2:24 PM
To: Cheng, Yum Yu - YYC
Cc: Kronenberg, Robert; Sang Park (E-mail); Elmendorf, Stephen P. - SPE
Subject: RE: Avalon Rothbury: DPA Application Requirements

Yum Yu

The exemption from submitting a forest conservation plan for this property does not expire and is therefore still valid. An NRI/FSD, new exemption, or forest conservation plan is not necessary and you should submit the exemption confirmation letter of 2002 with your application.

Mark Pfefferle
Acting-Chief, Environmental Planning
Forest Conservation Program Manager
Montgomery County Planning Department
8787 Georgia Avenue
Silver Spring, MD 20910

Phone: 301.495.4730
Fax: 301.495.1303
mark.pfefferle@montgomeryplanning.org

<http://www.montgomeryplanning.org>

click here text (compressed)3

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From: Cheng, Yum Yu - YYC [mailto:YCheng@linowes-law.com]
Sent: Friday, September 24, 2010 2:16 PM
To: Pfefferle, Mark
Cc: Kronenberg, Robert; Sang Park (E-mail); Elmendorf, Stephen P. - SPE

Exhibit 10

9/24/2010

DPA _____; AVALON ROTHBURY (FORMERLY CALLED ROTHBURY SQUARE)
(AVALON II MARYLAND VALUE I LP, APPLICANT)
BINDING ELEMENT

1. The project shall be limited to 205 multi-family dwelling units, consisting of three three-story apartment buildings, plus loft space, fronting along Rothbury Drive, two four-story buildings, plus loft space, located in the center of the subject property (to the east and west of a swimming pool), a freestanding clubhouse (providing amenity and management office space), located immediately to the south of the swimming pool, a three-story building, plus loft space, located along the eastern half of the property, and a four-story apartment building, plus loft space, located in the northeast corner of the subject property (the "Project"). The Project shall also provide the greater of 1 parking space per bedroom, the number of parking spaces required by Article 59-E of the Montgomery County Code or 1.9 parking spaces per unit.
2. The Applicant shall provide landscape and buffering to the perimeter edges of all parking facilities serving the Project, with particular attention to the provision of adequate plantings, berms, buffering and other screening techniques to screen the parking facilities on the southern and western boundaries of the property. Foundation input shall be provided in the development of the screening plans at the time of site plan approval.
3. The Applicant shall join and be a participating member of the Foundation.
4. The Project will be subject to the commercial architectural review process of the Foundation in accordance with the adopted guidelines of the Commercial Architectural Committee.
5. Maintenance standards for maintenance of the project shall be equivalent to or more stringent than the building maintenance standards of the Patton Ridge Homes Corporation and the adopted landscape maintenance guidelines of the Foundation

NOTE: Binding Element No. 1 above revises Binding Element No. 1 in DPA 02-02 by replacing "203" with "205" to allow conversion of existing space (model unit and business center) into two multi-family dwelling units. Binding Element No. 4, 6, 7, and 8 in DPA 02-02, which are still applicable, are repeated above. All other binding elements in DPA 02-02 not repeated above have been satisfied and are no longer applicable.

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS

CERTIFICATION

This is a true copy of the Development Plan Amendment (Exhibit No. _____) approved by the District Council on _____, 20____, in Application No. DPA _____.

Hearing Examiner

Date: _____

Resolution No: 15-257Introduced: June 10, 2003Adopted: July 1, 2003

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

By: District Council

SUBJECT: Development Plan Amendment Application 02-2 for Amendment of Montgomery Village Town Sector Plan, Area III-F, Gables Residential, Inc., Applicant

BACKGROUND

Development Plan Amendment ("DPA") No. 02-2, filed April 18, 2002, seeks to amend the approved land use plan for Montgomery Village in the Town Sector Zone to remove a school designation for an 11.76-acre parcel of undeveloped land and allow construction of a five-building multi-family rental apartment complex on the site, to be known as Rothbury Square. The subject site is located on Rothbury Drive in Montgomery Village between Arrowhead Road and Goshen Road, southwest of the intersection of Snouffers School Road and Goshen Road.

In a Report and Recommendation issued on January 3, 2003, the Hearing Examiner recommended a remand of the application on the basis that while the proposed development satisfied all the requirements of the Town Sector Zone and some of the findings required to approve a DPA, not all of the required findings were fully supported by the evidence. Technical Staff of the Maryland-National Capital Park and Planning Commission ("M-NCPPC") reviewed the application initially and, in a report dated October 11, 2002, recommended denial of the DPA and accompanying Supplementary Plan. Four members of the Montgomery County Planning Board ("Planning Board") considered the matter and, in a memorandum dated October 8, 2001, unanimously approved the Supplementary Plan and recommended approval of the DPA. After considering the recommendations of the Hearing Examiner, the Planning Board and Technical Staff, the District Council voted to remand the matter to the Hearing Examiner for further proceedings and additional Planning Board review.

The Applicant submitted supplemental exhibits to the Hearing Examiner on February 7 and 14, 2003. Technical Staff submitted a supplemental memorandum on February

21, 2003 stating that Staff remained opposed to the proposal due to concerns about Master Plan compliance and compatibility. Staff recommended, however, that the Planning Board continue to support the DPA and the amended Supplementary Plan because none of the features that had led the Planning Board to recommend approval of the earlier proposal had changed. The Planning Board considered the matter on February 27, 2003 and voted, 3-to-1, to approve the Supplementary Plan and to recommend approval of the DPA. After conducting a supplemental public hearing, on April 16, 2003 the Hearing Examiner recommended denial of the application on the basis that the proposed development would not be in substantial compliance with the use and density indicated by the applicable Master Plan and would not be compatible with adjacent development.

The District Council agrees with the Planning Board's conclusions.

The subject property is located on Rothbury Drive in Montgomery Village between Arrowhead Road and Goshen Road, southwest of the intersection of Snouffers School Road and Goshen Road and southeast of the intersection of Montgomery Village Avenue and Arrowhead Road. This location is in North Village, in Area III-F of the Montgomery Village Town Sector Plan. The irregularly shaped property is comprised of 11.76 acres of land and has approximately 760 feet of frontage along Rothbury Drive. The site is dominated by tall grass, with approximately 1.77 acres of forest in a single contiguous tree stand. There are no specimen trees on the property. An unnamed tributary to Great Seneca Creek runs through the northernmost portion of the site for a distance of approximately 140 feet. There are no wetlands on the site. Steep slopes exist only along the stream valley buffer abutting the tributary.

The surrounding area is zoned Town Sector and contains a mixture of residential and commercial land uses. Adjacent land uses consist of the Ruxton Place townhouse development to the west (also known as Greentae II), a stream valley buffer to the north, with the Overlea townhouse development north of the buffer, and a retail commercial center anchored by a Giant grocery store to the east (Goshen Crossing Shopping Center). Rothbury Drive forms the southern boundary of the site. South of the site, immediately across Rothbury Drive, are the Partridge Place North townhouse development and, slightly to the east across from Goshen Crossing, a retail center (Goshen Plaza Shopping Center).

The *Gaithersburg Vicinity Master Plan* (the "Master Plan") designates the subject property as a future elementary school site. However, the Master Plan anticipates the possibility that property reserved for school use may ultimately become available for other development. In 1996, Montgomery County Public Schools determined that the subject property was no longer needed as a potential school site and relinquished its future claim on the property in writing, releasing the property for development.

Town Sector zoning was applied to Montgomery Village, consistent with the master plan, in 1968. The Town Sector Zone is intended to apply to planned communities, to allow development of towns that contain residential, commercial, community and industrial facilities. All uses authorized in any zone, by right or special exception, may be similarly authorized in the Town Sector Zone.

The Applicant proposes to build and manage a luxury multi-family rental community with seven buildings containing a total of 203 units, each with one, two or three bedrooms. Market rental rates are expected to be roughly in the vicinity of \$1,000 to \$1,800 per month. Twenty percent of the units would be rented at lower rates to families at or below 50 percent of the area median income, in compliance with the requirements of the Housing Opportunities Commission and Montgomery County requirements for Moderately Priced Dwelling Units ("MPDUs"). This would allow the Applicant to take advantage of the special ceiling allocation for affordable housing under the County's Annual Growth Policy ("AGP"). The Applicant intends the MPDUs to be physically indistinguishable from the market-rate units, including the square footage, finishes, and parking. The Applicant does not intend to make use of a Zoning Ordinance provision permitting 50% fewer parking spaces for MPDUs than for market-rate units.

The development would include three three-story buildings facing Rothbury Drive, each approximately 175 feet long and containing 26 units. Behind those buildings in the middle of the site would be two four-story buildings, roughly 160 feet in length, with 33 and 32 units respectively. These two buildings would face one another across an open area containing a free-standing clubhouse, a swimming pool and a picnic area, with a tot lot nearby. Two additional buildings would be located on the east side of the site, one with four stories and 36 units and the other with three stories and 24 units. The Applicant proposes a single monumental entrance off of Rothbury Drive.

A two-acre area running along the western boundary of the site is to be reserved for green space, with appropriate landscaping. The rear of the site contains 2.4 acres of stream valley buffer that would be preserved. To the west of the subject site, this stream valley is bordered by a pedestrian path that ends at the edge of the subject site. The Applicant proposes to continue this path along the edge of the stream valley buffer through the subject site and along the rear of the adjacent shopping center, which would bring the path to the intersection of Goshen and Snouffer School Roads.

The Applicant proposes a number of binding elements intended to respond to concerns voiced by Technical Staff and the community. The binding elements include the following commitments: the project will be limited to 203 multi-family dwelling units with the

seven buildings described earlier; on-site parking will be provided equal to the greater of one parking space per bedroom, the number of parking spaces required by the Zoning Ordinance (1½ spaces for a one-bedroom unit, 1½ for two bedrooms, 2 for a three-bedroom or larger, with 50% fewer parking spaces for moderately-priced dwelling units), or 1.9 parking spaces per unit; the Applicant will deed to the Montgomery Village Foundation ("MVF") the 2+ acres of stream valley on the north side of the proposed project after installing a path along the stream valley connected to the existing path to the west; the Applicant will remove invasive species throughout the stream valley buffer on the property, limit grading (aside from unavoidable stormwater management outfalls) to outside the stream valley buffer, and grant a conservation easement for the stream valley on the property to the M-NCPPC; the Applicant will record a restrictive covenant to protect the two-acre area along the western property line as perpetual open space; and parking facilities shall have landscaping, buffering and screening. The binding elements also contain the Applicant's commitment to conduct a traffic signal warrant analysis for the intersection of Rothbury Drive and Goshen Road. If the study indicates that a signal is warranted, the Applicant will design, permit and construct the signal. If the study indicates that a traffic signal is not warranted, the Applicant will pay to the MVF or Patton Ridge Homes Foundation (the community association for much of the area surrounding the subject site) the sum of \$75,000 to be used for evaluation and improvement of on-site parking conditions in Patton Ridge.

The District Council finds that the current proposal satisfies all the requirements for a development plan amendment under Code §59-D-1.61(a)-(e). Each of the required findings is addressed below.

§59-D-1.61(a). The proposed DPA would be in substantial compliance with the use and density indicated by the Master Plan. The Master Plan states that if the subject property is not used as a public school site, "It is important that at least a portion of [the site] be transferred to the [MVF] for field sport recreation. . . ." See Master Plan at 95. Rigid adherence to the recommendation for a field sport recreation area is not necessary to substantially comply with the Master Plan, and the evidence reflects that the MVF does not desire a field sport recreation area at this location. The DPA includes a two-acre area of landscaped open space, providing an aesthetic amenity and an open space buffer, in keeping with the general intent of the Master Plan. Moreover, the Planning Board has specifically stated its support for the amount of open space shown on the Supplementary Plan. For these reasons, the District Council concludes that the open space as proposed would substantially comply with the Master Plan.

The residential density proposed in this case, 17.2 dwelling units per acre of the entire site, is consistent with the upper limit of the base densities recommended for adjacent properties in the Master Plan (5 to 7 d.u./acre on property to the west and 8 to 15 d.u./acre to the north and south). A density of 17.2 d.u./acre is the equivalent of 15 d.u./acre with a density bonus for MPDUs, as provide for in the Master Plan. For all of these reasons, the District Council concludes that the DPA would substantially comply with the Master Plan.

§59-D-1.61(b). The proposed development would comply with the purposes, standards, and regulations of the Town Sector Zone. The DPA would comply with the purpose clause of the Town Sector Zone by providing a multi-family residential project that adds to the variety of housing types available, contributing to the self-sufficiency of Montgomery Village. The development would add both market rate and affordable housing units, enhancing the mix of housing types and pricing available in the Town Sector Zone. The Supplementary Plan provides for a layout with an efficient and orderly relationship among the proposed buildings and a safe, orderly traffic circulation plan. The open-space element of the purpose clause is satisfied by the two-acre open space along the western border of the property. The proposed units would be within walking distance of nearby employment and commercial centers, and would be served by adequate transportation facilities. Rothbury Drive provides access to Goshen Road and Snouffer School Road; which in turn provide access to the rest of Montgomery Village and the County. Mass transit is available from a bus stop located adjacent to the site. Public utilities, including water and sewer, also are available. In addition, this DPA would add to the recreational facilities available to all the residents of Montgomery Village by extending the existing system of pedestrian paths along the rear of the subject parcel and the adjacent commercial center.

The DPA would comply with parameters set in the Town Sector Zone for minimum open space in the zone, population density, building height, and utilities. See Code §§ 59-C-7.24 through 7.27.

The proposed development would provide for the maximum safety, convenience, and amenity of the residents of the development by providing well-designed buildings in an attractive setting, convenient access to public roads and shopping, substantial on-site amenities, adequate parking, and pedestrian and vehicular circulation systems that are safe, adequate and efficient.

The District Council finds that the proposed development would also be compatible with adjacent development. The Planning Board, Technical Staff and the Hearing Examiner all agree, as does the District Council, that multi-family residential development is an appropriate use for the subject site. Rental apartments serve as transitions between

covenant has been submitted into the record, with the Applicant's oral commitment during the hearing to record the covenant as written, with the final dates and other remaining details, at the appropriate time. This covenant adequately and sufficiently memorializes the ownership and method of assuring perpetual maintenance of the area in question.

The Applicant also has committed as a binding element to transfer title to the stream valley buffer to the MVF. The binding elements specify, in an adequate and sufficient manner, that the MVF shall assume maintenance responsibility for the stream valley after accepting title.

In examining the relationship between the DPA and the public interest, the District Council notes that the proposed development would substantially comply with the recommendations of the Master Plan, would serve the important public policy of adding to the County's housing stock, including 41 affordable units, and would enhance recreational opportunities for area residents by extending the existing pedestrian pathway system. The evidence indicates no adverse effect on public facilities. Accordingly, the District Council concludes that approval of the proposed DPA would be in the public interest.

The District Council notes that the proposed DPA contains textual binding elements that are made contingent on the Applicant's receipt of all required approvals for the project. To avoid a potential, unintended ambiguity, this contingency should be removed from the DPA prior to certification. This change will be consistent with the Applicant's intent as expressed in the public hearing.

For these reasons, the application will be approved in the manner set forth below.

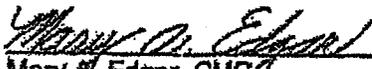
ACTION

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, approves the following resolution.

DPA 02-2, which requests an amendment to the approved land use plan for Montgomery Village in the Town Sector Zone to remove a school designation for an 11.76-acre parcel of undeveloped land and allow construction of a multi-family rental apartment complex on the site, located on Rothbury Drive in Montgomery Village between Arrowhead Road and Goshen Road, southwest of the intersection of Snouffers School Road and Goshen Road in the 1st Election District, is approved subject to the specifications and requirements of the amended DPA, Ex. 142, provided that the applicant submits the DPA for certification by the hearing examiner under the provisions of §59-D-1.64 within 10 days of the District Council action. (1) with the word "Proposed" deleted from the heading above the binding elements applicable to

this DPA 02-2; and (2) with the following language deleted from the binding elements: "These proposed Binding Elements are contingent upon the Applicant receiving all final approvals for the Project including 20% of the dwelling units being approved and reserved for affordable housing, pursuant to the Special Ceiling Allocation Element for Affordable Housing as outlined in the Montgomery County Annual Growth Policy."

This is a correct copy of Council action.



Mary A. Edgar, CMC
Clerk of the Council

AUG 15 2003



MONTGOMERY VILLAGE FOUNDATION, INC.

10120 APPLE RIDGE ROAD
MONTGOMERY VILLAGE, MARYLAND 20886-1000

(301) 948-0110 FAX (301) 990-7071 www.mvf.org

September 24, 2010

Mr. Sang Park
Avalon II Maryland Value I LP
c/o Avalon Bay Communities, Inc.
2900 Eisenhower Avenue, Floor 3
Alexandria, VA 22314

Re: Consent of Montgomery Village Foundation (the "Foundation") to Include Parcel B on Plat No. 22919 in the Development Plan Amendment Application to Amend the Approved Development Plan in DPA No. 02-02 and in the Limited Preliminary Plan Amendment and Limited Site Plan Amendment Applications

Dear Mr. Sang:

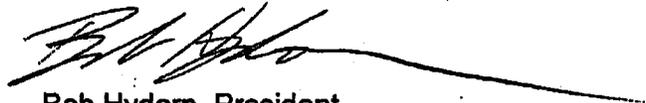
The purpose of this letter is to provide the Foundation's consent to Avalon II Maryland Value I LP ("Avalon") to include Parcel B, consisting of approximately 2.5 acres of land, on Plat No. 22919 in the Development Plan Amendment ("DPA") Application to Amend the Approved Development Plan in DPA No. 02-02 and in the Limited Preliminary Plan Amendment and Limited Site Plan Amendment Applications. This consent is provided for the limited purpose of changing the number of multi-family dwelling units from 203 to 205 in Binding Element No. 1 of DPA No. 02-02 and in the applicable conditions of approval in the approved Preliminary Plan and Site Plan for the Rothbury project in order to allow the conversion of the existing model unit and business center into two multi-family dwelling units. The Foundation is providing this consent based on the following information:

- Avalon purchased the Rothbury project from the previous owner (Gables Rothbury LLC) in 2009. Since the purchase, Avalon determined that the model unit and the business center are underutilized. Avalon desires to convert these two existing spaces into two multi-family dwelling units. Avalon is not proposing any external physical changes to the Rothbury project.
- In order for the conversion to be permitted, Avalon must submit a DPA Application to Amend the Approved Development Plan in DPA No. 02-02 to change the number of multi-family dwelling units from 203 to 205 in Binding Element No. 1 of DPA No. 02-02. If the requested change in the DPA is approved, the Limited Preliminary Plan Amendment and Limited Site Plan Amendment Applications must also be submitted to change the applicable conditions of approval on the number of multi-family dwelling units from 203 to 205.

- The land area of the Approved Development Plan in DPA No. 02-02, Preliminary Plan, and Site Plan for the Rothbury project consisted of approximately 11.76 acres of land. Binding Element No. 2 of DPA No. 02-02 required the applicant at the time to deed 2± acres containing a stream valley located north of the apartment buildings to the Foundation. Pursuant to a "No Consideration Deed", dated July 23, 2004, Gables Rothbury LLC deeded to the Foundation Parcel B, consisting of approximately 2.5 acres of land, on Plat No. 22919. Although the Foundation now owns Parcel B, Parcel B remains part of and subject to the Approved Development Plan in DPA No. 02-02, which Avalon now wants to Amend.

The Montgomery Village Foundation supports the proposed change from 203 to 205 multi-family units.

Sincerely,



Bob Hydorn, President
MVF Board of Directors