



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

MCPB
Item # ___ & ___
7/14/11

June 29, 2011



MEMORANDUM:

TO: Montgomery County Planning Board

VIA: Glenn Kreger, Acting Chief *GK*
Area 2 Planning Division

FROM: Patrick Butler, Planner *P.B.*
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SUBJECT: A. Limited Preliminary Plan Amendment 12004016A:
Gables Rothbury Square
B. Site Plan Amendment 82004005A: Gables Rothbury Square

**APPLICATION
DESCRIPTION:**

Limited Preliminary Plan Amendment and Site Plan Amendment to increase the maximum permitted number of multi-family dwelling units from 203 to 205 on a recorded parcel approximately 11.75 acres in size, in the T-S Zone; located on the north side of Rothbury Drive approximately 500 feet west of the intersection with Goshen Road within the Gaithersburg Vicinity Master Plan area.

APPLICANT: Avalon II Maryland Value I LP

FILING DATE: May 12, 2011
Preliminary Plan Amendment and Site Plan Amendment to reflect Development Plan Amendment DPA 11-2 Approved March 29, 2011

RECOMMENDATION: Approval with conditions

**EXECUTIVE
SUMMARY:**

The proposed development would increase the maximum permitted number of multi-family dwelling units from 203 to 205 in order to allow the conversion of two existing spaces (a model unit and a business center) into two multi-family dwelling units. Additionally, four outdoor grills and a trash receptacle would be added as site amenities. A Development Plan Amendment (DPA 11-2) for the requested increase in multi-family units was approved on March 29, 2011. There are no modifications required to the existing development onsite other than interior renovations.

SECTION 1: CONTEXT AND PROPOSAL

SITE DESCRIPTION

Vicinity

The Subject Property is located on the north side of Rothbury Drive, approximately 500 feet west of the intersection with Goshen Road, within the Gaithersburg Vicinity Master Plan area. The site abuts the Goshen Crossing Shopping Center to the east, the Goshen Plaza Shopping Center to the southeast, and the Patton Ridge townhome development to the west. A forest runs along and through the north end of the property. The Subject Property is known as Parcels A and B of Gables Rothbury Square Montgomery Village. The surrounding area is zoned T-S and R-200, and consists of a mix of single-family detached units, one-family attached units, multi-family units, and some commercial development.



Vicinity Map

Site Description

The subject property consists of two recorded parcels (Parcels A and B, Gables Rothbury Square Montgomery Village) totaling 11.75 acres per Plat 22919. The site is completely built out with 203 multi-family units in seven (7) buildings, a clubhouse, a pool, and a playground. There is a forested Category 1 Conservation Easement over the entirety of Parcel B, which runs along the north side of the property.



Aerial Photo

PROJECT DESCRIPTION

Previous Approvals

In August 1968 Zoning Application No. E-858 was approved, reclassifying approximately 2,434.8 acres, known as Montgomery Village, to the T-S Zone. The Subject Property makes up approximately 11.75 acres, within Area III-F of the North Village, as shown on the original development plan. Although the Subject Property was originally designated for a school, the Montgomery County School Board determined in 1996 that the property was no longer needed for a school. On July 1, 2003, the Montgomery County Council adopted Resolution No. 15-257, approving DPA 02-2, which amended the approved land use plan for Montgomery Village. The DPA removed the school designation on the Subject Property and allowed a multi-family rental

apartment complex consisting of 203 units, with 20% of the units (41) to be rented to households at or below 50% of the area median income. Preliminary Plan 120040160 and Site Plan 820040050 were both approved by the Planning Board on November 20, 2003 (Attachment A).

The current property owner purchased the Subject Property in 2009. Since then, the Applicant has determined that the model unit and business center located in the building to the east of the pool and clubhouse are underutilized. The Applicant proposes converting those two spaces into two multi-family dwelling units. In order to convert the two spaces, binding element No. 1 in DPA 02-2 and the applicable conditions of approval of the Preliminary and Site Plan would need to be amended. The Applicant obtained approval of the change to the binding element through DPA 11-2 (Attachment B), which was recommended for approval by the Planning Board on February 10, 2001, and granted by the County Council in Resolution No. 17-79 on March 29, 2011. The only language change to binding element No. 1 was changing the number of permitted dwelling units from 203 to 205.

A preliminary plan amendment and site plan amendment are required to reflect the approved development plan and increase the number of multi-family units from 203 to 205. Except for minor amenity upgrades and interior construction, no modifications to the Subject Property are necessary, and all other previous approvals apply.

COMMUNITY OUTREACH

The Applicant has met all proper signage, noticing, and pre-submission meeting requirements. Staff has received a letter from the Montgomery Village Foundation in support of the proposed amendment.

SECTION 2: PRELIMINARY PLAN REVIEW

Local Area Transportation Review (LATR)

An LATR study scope was requested in 2002, to prepare a traffic study. The subsequent study analyzed the traffic impacts of 203 garden apartments for Preliminary Plan No. 1-20040160, Gables Rothbury Square, which was approved on November 20, 2003.

The existing model apartment and underutilized business center are proposed to be converted into rental apartment units. The existing uses of these spaces, in themselves, do not generate any weekday peak-hour trips within the weekday morning peak period (6:30 to 9:30 a.m.) and the evening peak period (4:00 to 7:00 p.m.). The table below shows the number of peak-hour trips generated by the proposed two additional garden apartments within the weekday morning and evening peak periods:

	Number of Units	Weekday Peak Period	
		Morning	Evening
Proposed	205	85	97
Original 2003	203	84	96
Increase	2	1	1

A new traffic study is typically required when total existing and proposed additional non-residential development generates 50 or more total (i.e., existing and new) peak-hour trips within the weekday morning and evening peak periods. Section II.A. (page 13 – Attachment C) of the *Local Area Transportation Review and Policy Area Mobility Review Guidelines* covers one instance where a new study is not required. It states, “If use and occupancy permits for at least 75 percent of the originally approved development were issued more than 12 years before the LATR study scope request, the number of signalized intersections in the study will be based on the increased number of peak hour trips rather than the total number of peak hour trips. In these cases, an LATR study is not required for any expansion that generates five or fewer additional peak hour trips.” In this case, all 203 apartments have been constructed since 2002, which is less than twelve years ago. Therefore, according to the LATR guidelines, a new traffic study would typically be required to satisfy the LATR test. However, based on information provided by the Applicant’s traffic consultant and traffic data available to staff, staff did not find it necessary to require a new traffic study for the following reasons:

1. The two new apartment units generate only one new weekday peak-hour trip.
2. If a new traffic study was submitted to satisfy the LATR test, the resulting congestion levels at the nearby analyzed intersections are not likely to exceed the current congestion standard based on the available traffic volumes along nearby roadways.

A traffic study was submitted in 2003 for the originally approved Preliminary Plan No. 1-20040160 that analyzed the following intersections:

1. Montgomery Village Avenue and Arrowhead Road-Shadow Oak Drive
2. Arrowhead Road and Rothbury Drive
3. Rothbury Drive and Site Driveway-Spur Hill Drive
4. Goshen Road and Rothbury Drive-Green Run Way

Based on the results of that traffic study, the critical lane volume (CLV) values at all four analyzed intersections were below 1,015 in the existing, background, and total traffic conditions. The LATR test was satisfied in 2003 because these CLV values were below the applicable congestion standard of 1,500 for intersections within the Montgomery Village/Airpark Policy Area.

If a new traffic study were to be submitted, the current applicable congestion standard of 1,425 CLV will be lower than the 1,500 CLV standard used in 2003, and the LATR test should be satisfied if the current CLV increase is less than 410 (i.e., 1,425 minus 1,015) or 27%.

Updated intersection traffic counts are not available at the four analyzed intersections in our traffic count database, but in lieu of updated intersection counts, Average Annual Daily Traffic (AADT) data was obtained from the Maryland State Highway Administration (SHA). AADT is two-way, 24-hour traffic volume for a typical weekday along roadway segments collected for a given year. AADT data were available on 11 nearby roadway segments that are located within 2 miles from the subject site. Comparing historic AADT data with 2010 data, the average AADT increased only 7.7% or less. The 7.7% increase in traffic volume is significantly less than an increase of 27%. Based on this, staff determined that if reanalyzed today, the CLVs at the previously analyzed intersections are not likely to exceed the current congestion standard of 1,425.

Based on the analysis above, staff finds the proposed development meets the LATR requirements of the APF review.

Policy Area Mobility Review (PAMR)

Under the current *Growth Policy*, PAMR mitigation would not be required because the two additional apartment units would generate 3 or fewer new peak-hour trips and, thus, be considered de minimus. Therefore, staff finds the plan meets the PAMR requirements of the APF review.

RECOMMENDATION AND CONDITIONS

Staff recommends approval of the Limited Preliminary Plan Amendment No. 12004016A, Gables Rothbury Square for 205 multi-family units subject to the following conditions:

1. Approval under this Preliminary Plan is limited to a maximum of 205 garden apartments (including 41 MPDUs).
2. All other applicable terms, conditions, and findings of the previous preliminary plan approval, as contained in the Planning Board Opinion dated December 3, 2003, remain in full force and effect.

SECTION 3: SITE PLAN REVIEW

PROPOSED AMENDMENT

The site plan amendment proposes two modifications:

- Conversion of a model unit and business office to two multi-family units;
- Addition of 4 grills and a trash receptacle.

ANALYSIS

Development Standards

The only development standard affected by this amendment is the population density, which is increased by six persons according to the formula established in the Zoning Ordinance. As of the most recently approved site plan in the T-S zone, there is capacity of 238 persons under the 15-person per acre standard of the zone that applies to all T-S-zoned property. Further, for the subject site, the addition of 2 units would increase the density on site to 17.4 units per acre, which is less than the 18.3 units per acre prescribed for this site by the Gaithersburg Vicinity Master Plan.

Finally, the number of existing parking spaces (428) exceeds the number required by the proposed total of 205 units (390).

Site Amenities

The proposed addition of 4 grills and a trash receptacle will increase the amenities for residents and increase social interaction within the community.

FINDINGS

The proposed amendments to site plan 820040050 are minor in nature and do not impact the findings made by the previous approval. DPA 02-02, which originally limited development to 203 units, was amended by DPA 11-2 on March 29, 2011 allowing the development of 2 additional units; this site plan amendment is consistent with the approved development plan amendment. All other findings of the original approval remain valid and unchanged.

RECOMMENDATION AND CONDITIONS

Staff recommends approval of Site Plan No. 82004005A, Gables Rothbury Square for 205 multi-family units and the additional site amenities subject to the following conditions:

1. Development Plan Conformance

The site plan must conform to the binding elements of DPA 11-2, dated March 29, 2011.

2. Transportation

Original site plan approval condition 1.a. is modified to read, "Twenty percent of the proposed ~~203~~ 205 units, or 41 units, are to be rented to households at or below 50 percent of the area median income in accordance with Section TP3, "Special Ceiling Allocation for Affordable Housing Facilities" of the FY 04 AGP and requirements of the Housing Opportunities Commission".

3. All other conditions of the previous site plan approval, as contained in the Planning Board Opinion dated December 1, 2003, remain in full force and effect.

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Attachments:

- A. Previous Preliminary Plan and Site Plan Opinions
- B. DPA 11-2 Resolution
- C. LATR Guidelines
- D. Applicant Correspondence

Attachment A: 120040160 and 820040050 Opinions



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Date Mailed: December 3, 2003

Action: Approved Staff Recommendation
Motion of Comm. Bryant, seconded by
Comm. Robinson with a vote of 4-0;
Comms. Berlage, Bryant, Robinson and
Wellington voting in favor
Comms. Perdue absent

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-04016

NAME OF PLAN: GABLES ROTHBURY SQUARE

On 09/03/03, GABLE RESIDENTIAL INC. submitted an application for the approval of a preliminary plan of subdivision of property in the TS zone. The application proposed to create 2 lots on 11.75 acres of land. The application was designated Preliminary Plan 1-04016. On 11/20/03, Preliminary Plan 1-04016 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application. Based upon the testimony and evidence presented by staff and on the information on the Preliminary Subdivision Plan Application Form, attached hereto and made a part hereof, the Montgomery County Planning Board finds Preliminary Plan 1-04016 to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) and approves Preliminary Plan 1-04016.

Approval, pursuant to the "Special Ceiling Allocation" provisions of the FY 2004 Annual Growth Policy, and subject to the following conditions:

- 1) Applicant is bound by all binding elements associated with Development Plan Amendment (DPA) 02-02
- 2) Approval under this preliminary plan is limited to 203 garden apartments (including 41 MPDU's)
- 3) Design and install a traffic signal at the intersection of Goshen Road and Rothbury Drive/Green Run Way as found to be warranted by the Montgomery County Department of Public Works and Transportation (DPWT) in their report dated, November 19, 2003 based upon their review of the submitted traffic study
- 4) Prior to issuance of any building permit for the proposed development, the applicant shall develop and implement an invasive plant control program to control invasive and non-native plants located within the stream valley buffer as identified in binding element #2 of DPA 02-02
- 5) Record plat to reflect dedication of 35 feet from centerline for Rothbury Drive
- 6) Record plat to reflect conveyance to Montgomery Village Foundation, the approximately 2.0 acres identified in binding element # 2 of DPA 02-02
- 7) Record Plat to reflect Category I conservation easement over all areas of forest conservation and stream valley buffers

- 8) Record plat to reflect recordation of restrictive covenant over the 2.0 acres of land on the western side of the property as identified in binding element #3 of DPA 02-02
- 9) Record Plat to reflect all areas under Homeowners Association ownership and stormwater management areas
- 10) Compliance with the conditions of approval of the MCDPS stormwater management approval dated July 30, 2003
- 11) Access and improvements as required by MCDPWT prior to recordation of plats
- 12) No clearing, grading or recording of plats prior to site plan enforcement agreement approval
- 13) Final approval of the number and location of buildings, dwelling units, on-site parking, site circulation, sidewalks (including a 5 foot lead in sidewalk from Rothbury Drive), and bikepaths will be determined at site plan
- 14) Final number and location of MPDU's to be determined at site plan
- 15) A landscape and lighting plan must be submitted as part of the site plan application for review and approval by technical staff
- 16) This preliminary plan will remain valid for thirty-seven (37) months from the date of mailing of the Planning Board opinion. Prior to this date, a final record plat must be recorded for all property delineated on the approved preliminary plan, or a request for an extension must be filed
- 17) The Adequate Public Facility (APF) review for the preliminary plan will remain valid for sixty-one (61) months from the date of mailing of the Planning Board opinion
- 18) Other necessary easements



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MONTGOMERY COUNTY PLANNING BOARD

OPINION

DATE MAILED: December 1, 2003
SITE PLAN REVIEW #: 8-04005
PROJECT NAME: Gables Rothbury Square

Action: Approval subject to conditions. Motion was made by Commissioner Bryant, seconded by Commissioner Robinson, with a vote of 4-0, Commissioners Bryant, Robinson, Berlage, and Wellington voting for. Commissioner Perdue was necessarily absent.

The date of this written opinion is December 1, 2003, (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal, as provided in the Maryland Rules of Procedure, on or before January 1, 2004 (which is thirty days from the date of this written opinion. If no administrative appeal is timely filed, this Site Plan shall remain valid for as long as Preliminary Plan #1-04016 is valid, as provided in Section 59-D-3.8.

On November 20, 2003, Site Plan Review #8-04005 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and evidence submitted in the record on the application. Based on the testimony and evidence presented and on the staff report, which is made a part hereof, the Montgomery County Planning Board finds:

1. *The Site Plan is consistent with approved development plan DPA 02-2;*
2. *The Site Plan meets all of the requirement of the Town Sector zone;*
3. *The location of the buildings and structures, the open spaces, the landscaping, and the pedestrians and vehicular circulation systems are adequate, safe, and efficient;*
4. *Each structure and use is compatible with other uses and other Site Plans and with existing and proposed adjacent development;*
5. *The Site Plan meets all applicable requirements of Chapter 22A regarding forest conservation;*

Therefore, the Montgomery County Planning Board **APPROVES** Site Plan #8-04005, which consists of 203 multifamily dwelling units, including 41 MPDUs, and Approval of a waiver of parking standards to reduce the length of the parking space from 18 to 16.5 feet for 19 parking spaces with the following conditions:

1. Transportation

- a. Twenty percent of the proposed 203 apartment units, or 41 units, are to be rented to households at or below 50 percent of the area median income in accordance with Section TP3, "Special Ceiling Allocation for Affordable Housing Facilities" of the *FY 04 AGP* and requirements of the Housing Opportunities Commission.
- b. The proposed development shall provide road right-of-way dedication for 35 feet from the centerline of Rothbury Drive as a primary residential street, P-20.
- c. The applicant shall construct a pedestrian pathway connection to the Montgomery Village Foundation's pathway within the stream valley along the northern edge of property.
- d. Bike racks for bicycles for each building and a bicycle storage room in Building No. 7 shall be provided.

2. Environmental Planning

- a. The entire stream valley buffer within the subject property shall be placed into a Category I forest conservation easement.
- b. Prior to issuance of any building permit for the proposed development, the applicant shall develop and implement an invasive plant control program to control invasive and non-native plants located within the stream valley buffer.

3. Department of Permitting Services

The proposed development is subject to Stormwater Management Concept approval conditions dated July 30, 2003.

4. Recreation Facility

- a. Provide 1,000 square feet minimum area for the proposed tot lot.
- b. Provide benches and shade trees within the tot lot area.
- c. Provide adequate buffer between the proposed tot lot and adjacent parking area.

5. Open Space Covenant and Dedication

- a. At the time of recordation of a subdivision plat, the applicant shall subdivide and deed to Montgomery Village Foundation 2.5 acres of stream valley (Parcel B) on the north side of the proposed project. Prior to deeding of the stream valley, the Applicant shall install within the property limits a natural surface pedestrian path (with minimal grading) along the stream valley connecting to the existing path to the west.
- b. At the time of recordation of a subdivision plat, the applicant shall record a restrictive covenant over 2 acres of land on the western side of the subject property, between Patton Ridge Townhomes and the proposed parking areas. This two-acre land shall be maintained by the applicant as open space.

6. Site Plan Enforcement Agreement

Submit a Site Plan Enforcement Agreement including Development Program and Homeowner Association Documents for review and approval prior to approval of the signature set as follows:

Development Program to include a phasing schedule as follows:

- a. Streets tree planting shall progress as street construction is completed, but no later than six months after completion of the buildings adjacent to those streets.

- b. Community-wide pedestrian pathways and recreation facilities shall be completed prior to seventy percent occupancy of each phase of the development.
- c. Landscaping associated with each parking area and building shall be completed as construction of each facility is completed.
- d. Clearing and grading to correspond to the construction phasing, to minimize soil erosion.
- e. Coordination of each section of the development and roads.
- f. Phasing of dedications, stormwater management, sediment/erosion control, recreation facilities, and community paths.

7. Clearing and Grading

No clearing or grading prior to M-NCPPC approval of signature set of plans.

8. Signature Set

Prior to signature set approval of site and landscape/lighting plans the following revisions shall be included and/or information provided, subject to staff review and approval:

- a. Limits of disturbance.
- b. Methods and locations of tree protection.
- c. Forest Conservation easement areas.
- d. Note stating the M-NCPPC staff must inspect tree-save areas and protection devices prior to clearing and grading.
- e. The development program inspection schedule and Site Plan Opinion.
- f. Road right-of-way dedication for 35 feet from the centerline of Rothbury Drive.
- g. A pedestrian pathway connection to the Montgomery Village Foundation's pathway within the stream valley along the northern property line.
- h. Bike racks for each building and a bicycle storage room in Building No. 7.
- i. Additional plant materials between the proposed parking area and east property line.
- j. MPDU distribution.
- k. Footcandle information and deflectors on outdoor lighting fixtures on lighting plan.
- l. Correct numbers for all unit types.
- m. An access easement to be granted to Montgomery Village Foundation for maintenance access from Rothbury Drive to Parcel B.
- n. Details for the proposed tot lot.

Attachment B: DPA 11-2 Resolution No. 17-79

Resolution No.: 17-79
Introduced: March 29, 2011
Adopted: March 29, 2011

**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: Approval of Development Plan Amendment (DPA) 11-2


OPINION

The application for Development Plan Amendment (“DPA”) No. 11-2 was filed by Avalon II Maryland Value I LP, on November 1, 2010. It seeks to amend the previously approved development plan for a portion of Montgomery Village in Gaithersburg to increase the maximum permitted number of dwelling units from 203 to 205 units. The property consists of approximately 11.76 Acres in the Town Sector (T-S) Zone, located on Rothbury Drive between Arrowhead and Goshen Roads, just southwest of the intersection of Snouffer School Road and Goshen Road. It is currently improved with a 203-unit multi-family complex developed in four 3-story buildings, three 4-story buildings, and a freestanding clubhouse building and pool. Also included within the existing complex is a business center and model sales unit which the applicant proposes to convert to the two residential units proposed.

Zoning Application E858, approved in August, 1968, reclassified approximately 2,434.8 acres, known as “Montgomery Village” to the Town Sector Zone. The subject property comprises 11.76 acres within Area III-F of the North Village, as shown the original development plan. Designated as a potential elementary school site on the original development plan, the Montgomery County Public School System determined in 1996 that the property was no longer needed for a school, thereby releasing it for development. While there have been several amendments to the original development plan for Montgomery Village since its approval in 1968, the Technical Staff Report does not indicate that any of these affected the site until the approval of DPA 02-02 on July 1, 2003. This DPA removed the public school designation and approved the development of multi-family residential units.

The 2003 development plan amendment contained a binding element limiting the total number of units to 203 units. Forty-one units approved were to be affordable units. A binding element of the DPA also required the developer to 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 spaces per unit.” Applying the highest formula at the time, the property in 2003 was required to have 1.9 parking spaces per dwelling unit or 386 spaces.

 This DPA amendment proposes a single change to the 2003 DPA: it would increase the maximum number of units permitted from 203 units to 205 units. The only textual change to the binding elements would delete the numeral “203” and replace it with “205”. No new external construction or site alterations are required. As proposed by the applicant, DPA 11-2 does not involve a change in the area zoned or the proposed uses.

Technical Staff of the Maryland-National Capital Park and Planning Commission recommended approval of the application, finding that the proposed amendment was minor in nature, consistent with the 1985 Gaithersburg Master Plan and in compliance with the standards and purposes of the Town Sector Zone. For the subject property, the Gaithersburg Master Plan recommends a base density of 15 dwelling units per acre with a maximum density of 18.3 dwellings per acre if affordable units are included. As the project did include MPDUs, the maximum allowable density for the subject site is 18.3 units per acre.¹ Existing density (203 units) is 17.2 dwelling units per acre; the addition of two proposed units will bring the density to 17.4 dwelling units per acre, under the maximum prescribed.

Technical Staff also concluded that the application met the requirements of T-S Zone, set forth in §59-C-7.2 of the Montgomery County Code. Because the District Council had already found that the development met the standards and requirements of the zone in the 2003 DPA, Technical Staff reviewed only those requirements affected by the addition of two dwelling units. Technical Staff examined whether the proposed amendment met the population limit for the T-S Zone established in §59-C-7.25 of the Zoning Ordinance. This section limits the average population of all T-S zoned property to 15 persons per acre. Based on the existing population established by the most recent approved site plan for T-S zoned property, Technical Staff advised that there remains capacity for development generating 238 persons. Applying the formula prescribed by the Zoning Ordinance for calculating population for this type of development, the additional two proposed units will add 6 persons to the existing T-S Zone population, leaving a balance of 232 persons for future development. In addition, Technical Staff found that the existing number of parking spaces within the development exceeded that required by the 2003 DPA and the amendment now proposed. The required parking for the existing units is 386 spaces. The additional two units would bring the required parking to 390 spaces. As the property is currently approved with 428 spaces, the amendment will require no additional parking spaces.

At its regular scheduled meeting on February 10, 2011, the Planning Board voted unanimously to recommend approval of DPA 11-2 as submitted. The Planning Board found that the application “will not have any substantive impact on the residential development objectives for the area.” Exhibit 25. The Board found the proposal to be consistent with the Gaithersburg Master Plan, compatible with surrounding development, consistent with the findings made by the District Council in the 2003 DPA, and in compliance with the purposes and standards of the T-S Zone.

¹Under the 2003 DPA, MPDUs comprised 20.197% of the total project. With the additional two units, MPDUs will constitute 20% of the residential units.

The Planning Board further determined that a public hearing by the Hearing Examiner would not be necessary unless there was opposition to the amendment and the case should be sent directly to the Council for final decision.

There has been no opposition to DPA 11-2, and no request has been made for a hearing. Therefore, under the provisions of Zoning Ordinance §59-D-1.74(c)(3), "the office of zoning and administrative hearings [OZAH] must forward the planning board's report and recommendation directly to the council," without a hearing by OZAH. In these kinds of cases, a draft resolution is prepared by OZAH based solely on the record prepared by Technical Staff, the Planning Board's transmittal letter and Applicant's compliance therewith.

The record is now complete, and the matter can be considered directly by the District Council without the need for a hearing or recommendation by the Hearing Examiner.

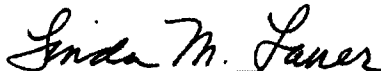
The District Council has reviewed DPA 11-2 and concluded that the DPA meets the requirements of the Zoning Ordinance, and its approval would be in the public interest. Based on this record, the District Council takes the following action.

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 No. 11-2, which requests an amendment to the Development Plan approved June 10, 2003, in DPA No. 02-02, to increase the maximum density permitted to 205 dwelling units, is hereby approved, provided that the DPA (Exhibit 19(a)) is submitted to the Hearing Examiner for certification within 10 days of the District Council's action, pursuant to the provisions of Zoning Ordinance §59-D-1.64.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council

For any subdivision that would generate 30-49 weekday peak hour vehicle trips, the Planning Board, after receiving a traffic study, must require that either all LATR requirements are met or the applicant must make an additional payment equal to 50 percent of the applicable transportation impact tax before it receives any building permit in the subdivision.


In certain circumstances, Transportation planning staff may, in consultation with the applicant, require analysis of traffic conditions during a different three-hour weekday peak period for example, 6 a.m. to 9 a.m. or 3:30 p.m. to 6:30 p.m., to reflect the location or trip-generation characteristics of the site, existing conditions, or background development as generators of traffic.

The number of trips shall be calculated using the following sources:

1. For all land uses in the Silver Spring, Bethesda, or Friendship Heights CBD Policy Areas, use the trip generation rates in Appendix C, Tables C-1 or C-2.
2. For all other parts of the county:
 - a. For general office, general retail, residential, fast food restaurant, private school, child day-care center, automobile filling station, senior/elderly housing, or mini-warehouse, use the formulas provided in Appendix A and the tables provided in Appendix B.
 - b. For other land uses, use the latest edition of the *Trip Generation Report* published by the Institute of Transportation Engineers (ITE).

For some specialized land uses, appropriate published trip-generation rates may not be available. In such cases, staff may request that determining rates for these land uses be a part of the traffic study. If special rates are to be used, staff must approve them prior to submission of the traffic study.

An applicant shall not avoid the intent of this requirement by submitting piecemeal applications or approval requests for zoning, subdivision, special exception, mandatory referral, or building permits. However, an applicant may submit a preliminary plan of subdivision for less than 30 peak hour trips at any one time provided the applicant agrees in writing that, upon filing future applications, the applicant will comply with the requirements of the LATR Guidelines when the total number of site-generated peak hour vehicle trips at one location has reached 30 or more. Then, a traffic study will be required to evaluate the impact of the total number of site-generated trips in accordance with the LATR Guidelines.

 If use and occupancy permits for at least 75 percent of the originally approved development were issued more than 12 years before the LATR study scope request, the number of signalized intersections in the study will be based on the increased number of peak hour trips rather than the total number of peak hour trips. In these cases, an LATR study is not required for any expansion that generates five or fewer additional peak hour trips.

Transportation Planning staff may elect to waive these criteria if the development results in no net increase in weekday peak-hour trips.

B. Congestion Standards

Critical lane volume standards adopted by policy area in the most recent Growth Policy are shown in Table 2. Transportation Planning staff maintains an inventory of intersection traffic data

Attachment D: Applicant Correspondence

**JUSTIFICATION STATEMENT IN SUPPORT OF
LIMITED PRELIMINARY PLAN AMENDMENT NO. 12004016A
AVALON ROTHBURY**

I. INTRODUCTION

Avalon II Maryland Value I LP (the "Applicant") submits this Limited Preliminary Plan Amendment Application for approval in accordance with the applicable provisions of Chapter 50 of the Montgomery County Code, 2004, as amended (the "Subdivision Regulations"). The subject property consists of approximately 11.76 acres of land located on Rothbury Drive in Montgomery Village between Arrowhead Road and Goshen Road in the Gaithersburg Planning Area (the "Property"). The Property is classified in the Town Sector (T-S) Zone and is subject to the recommendations of the Gaithersburg Vicinity Master Plan (the "Master Plan"). (This Limited Preliminary Plan Amendment requests approval of a change to Condition No. 2 of Preliminary Plan No. 1-04016 to increase the maximum permitted number of multi-family dwelling units from 203 to 205 in order to allow the conversion of two existing spaces (a model unit and a business center) into two multi-family dwelling units. This Limited Preliminary Plan Amendment is not proposing any external physical changes and is consistent with the District Council's recent approval of DPA 11-2 (by adoption of Resolution No. 17-79 on March 29, 2011; a copy of the Resolution and approved development plan are attached hereto as Exhibit 1 and Exhibit 2, respectively) which requested the same change on the maximum permitted number of dwelling units contained in a binding element on the approved development plan. A Limited Site Plan Amendment Application is also being submitted for concurrent review and requests the same change in a similar condition of approval. Accordingly, much of the information provided below will be repeated in the justification statement for the Limited Site Plan Amendment Application.

II. HISTORY OF APPROVALS

Zoning Application No. E-858, approved in August 1968, reclassified approximately 2,434.8 acres, known as Montgomery Village, to the T-S Zone. The subject property comprises approximately 11.76 acres within Area III-F of the North

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Village, as shown on the original development plan. Designated as a potential elementary school site on the original development plan, the Montgomery County Public School system determined in 1996 that the subject property was no longer needed for a school, thereby releasing it for development.

On July 1, 2003, the County Council for Montgomery County, Maryland sitting as a District Council for that portion of the Maryland-Washington Regional District within Montgomery County, Maryland (the "District Council") adopted Resolution No. 15-257, approving DPA 02-2. DPA 02-2 amended the approved land use plan for Montgomery Village to remove the school designation on the subject property and construct a multi-family rental apartment complex consisting of 203 units, with 20% of the units or 41 units to be rented to households at or below 50% of the area median income. The proposed development included four 3-story apartment buildings, three 4-story apartment buildings, a free-standing clubhouse, and a pool (the "Project"). DPA 02-2 was approved with ten binding elements. Binding Element No. 1 (the only item proposed for change and approved in DPA 11-2) states:

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.

Following the approval of DPA 02-2, the Preliminary Plan (No. 1-04016) and Site Plan (No. 8-04005) for the Project were both approved by the Planning Board on November 20, 2003. A copy of the Planning Board Opinion with a mailing date of December 3, 2003, approving the Preliminary Plan subject to eighteen conditions, is attached hereto as Exhibit 3. Condition No. 2 of the Planning Board Opinion states:

"Approval under this preliminary plan is limited to 203 garden apartments (including 41 MPDU's)"

Prior to the approval of DPA 02-2, a Natural Resources Inventory/Forest Stand Delineation (“NRI/FSD”) for the Property was filed with the Maryland-National Capital Park and Planning Commission (“M-NCPPC”) on August 1, 2002. An exemption from the Forest Conservation Law for the Property was granted by M-NCPPC on August 16, 2002. A copy of the exemption is attached hereto as Exhibit 4. Also attached hereto as Exhibit 5 is an e-mail, dated September 24, 2010, from Mark Pfefferle, Acting Chief of the Environmental Planning Division, stating that the exemption does not expire and is, therefore, still valid. Mr. Pfefferle stated that “[a]n NRI/FSD, new exemption, or forest conservation plan is not necessary”.

Since the purchase of the Project from the previous owner (Gables Rothbury, LLC) in 2009, the Applicant has determined that the model unit and business center located in the building east of the clubhouse are underutilized. The Applicant desires to convert these two existing spaces into two multi-family dwelling units. In order for the conversion to be permitted, the number of multi-family dwelling units set forth in Binding Element No. 1 in DPA 02-2 and in the applicable conditions of approval of the Preliminary Plan and Site Plan must be increased from “203” to “205”. The Applicant sought approval of this change in DPA 11-2, which was granted by the District Council by adoption of Resolution No. 17-79 on March 29, 2011. The Applicant is currently seeking the same change in this Limited Preliminary Plan Amendment and the Limited Site Plan Amendment being submitted for concurrent review.

III. PROPERTY DESCRIPTION

As described above, the Property consists of approximately 11.76 acres of land located on Rothbury Drive in Montgomery Village between Arrowhead Road and Goshen Road in the Gaithersburg Planning Area. The Property is zoned T-S Zone and identified as Parcels A and B on a record plat entitled “Parcels ‘A’ and ‘B’ Gables Rothbury Square Montgomery Village” recorded among the Land Records of Montgomery County, Maryland on July 20, 2004 as Plat No. 22919 (a copy of which is attached hereto as Exhibit 6). Parcel A is owned by the Applicant and Parcel B was conveyed to the Montgomery Village Foundation (the “Foundation”) by the Applicant’s predecessor by a No Consideration Deed, dated, July 23, 2004, pursuant to Binding

Element No. 2¹ of DPA 02-2. Attached hereto as Exhibit 7 is a letter from the Foundation, dated September 24, 2010, providing its consent to the Applicant to include Parcel B in both the Limited Preliminary Plan Amendment and Limited Site Plan Amendment Applications, and expressing its support for the proposed change of the number of multi-family dwelling units from 203 to 205.

IV. SURROUNDING AREA

The surrounding area, also located in Montgomery Village and in the T-S Zone, offers a mix of uses ranging from open space to townhouses and fourplex residential communities to commercial centers. To the north of the Property is a stream valley and a fourplex development; to the east is the Goshen Crossing Shopping Center; to the south is Rothbury Drive, a townhouse development and Goshen Plaza Shopping Center; and to the west is the Patton Ridge townhouse community.

V. THE LIMITED PRELIMINARY PLAN AMENDMENT PROPOSAL

As mentioned above, this Limited Preliminary Plan Amendment requests to change only Condition No. 2 of the Planning Board Opinion to increase the maximum permitted number of units from “203” to “205”. Condition No. 2 currently states:

“Approval under this preliminary plan is limited to 203 garden apartments (including 41 MPDU’s)”

This Limited Preliminary Plan Amendment proposes to convert two existing spaces (a model unit and a business center) into two multi-family dwelling units. This Limited Preliminary Plan Amendment is not proposing any external physical changes. Approval of this requested change would be consistent with the District Council’s recent approval of DPA 11-2, which requested the same change on the maximum permitted number of dwelling units contained in a binding element on the approved development plan.

¹The relevant part of Binding Element No. 2 states, “At the time of recordation of a subdivision plat, the Applicant shall subdivide and deed to Montgomery Village Foundation (the “Foundation”), the 2+- acres of stream valley on the north side of the proposed project (as shown on the supplemental plan).”

VI. FINDINGS REQUIRED FOR PRELIMINARY PLAN AMENDMENT APPROVAL

- A. The proposed density on the subject property is limited to approximately 17.4 units per acre, which is less than the maximum allowable density of 18.3 units per acre under the T-S Zone if affordable units are provided, as calculated on the gross tract area of the subject property.**

The maximum allowable density for the subject property is 18.3 units per acre under the T-S Zone if affordable units are provided. This Limited Preliminary Plan Amendment proposes to increase the number of units by 2 units from 203 to 205 on approximately 11.76 acres of land, which equates to approximately 17.4 units per acre. Approximately 20% of the total number of units or 41 units are affordable units. Accordingly, the proposed density of 17.4 units per acre is less than the maximum allowable density of 18.3 units per acre under the T-S Zone if affordable units are provided, as calculated on the gross tract area of the subject property.

- B. The Limited Preliminary Plan Amendment substantially conforms to the Gaithersburg Master Plan.**

The Property is located within the boundaries of the 1985 Gaithersburg Master Plan (the "Master Plan"). As mentioned above, the Property is located in Montgomery Village, which is in the T-S Zone where land use is guided by a Development Plan. The Property was designated for a public elementary school site on both the 1985 Master Plan land use map and Development Plan. By 1996, Montgomery County Public Schools determined that the Property would not be needed for a public school. The Master Plan states that if the Property is not used as a public school site, "it is important that at least a portion of [the Property] be transferred to the [Foundation] for field sport recreation". Master Plan at 95.

In approving DPA 02-2, the District Council approved to change the land use designation from public school use to residential use and found DPA 02-2 "would be in substantial compliance with the use and density indicated by the Master Plan". The District Council stated that "[r]igid adherence to the

recommendation for a field sport recreation area is not necessary to substantially comply with the Master Plan” and found evidence reflected that the Foundation did not desire a field sport recreation area on the Property. The District Council also found the two-acre area of landscaped open space (Parcel B) was “in keeping with the general intent of the Master Plan”.

The Master Plan explains that the densities recommended on the Land Use Plan are base densities, which may be exceeded by applying a MPDU bonus where appropriate:

The densities indicated in the text and on the land use and zoning recommendations are the maximum permissible without the bonus for inclusion of moderately-priced dwelling units (MPDUs). The recommended base density is that zone which represents the best use of the land if no increased optional density is desired or sought by the owner. The recommended optional densities represent the upper limit that appears to be appropriate for the parcel, taking into account the environmental considerations, overall transportation capacity, and relationship to adjacent properties.

Master Plan at 9-10.

The District Council found the proposed residential density in DPA 02-2 (17.2 dwelling units per acre of the entire site) “consistent with the upper limit of the base densities recommended for adjacent properties in the Master Plan”. The District Council stated “[a] density of 17.2 d.u./ acre is the equivalent of 15 d.u./ acre with a density bonus for MPDUs, as provide[d] for in the Master Plan”.

In the recently approved DPA 11-2, the Applicant’s proposal for two additional dwelling units brings the total number of units to 205 over 11.76 acres, which yields a density of 17.4 dwelling units per acre. This density is still the equivalent of 15 dwelling units per acre with a density bonus for MPDUs, which is less than the maximum permitted density of 18.3 units per acre with density bonus for MPDUs. The increase density of 0.2 dwelling units per acre is not significant and is still consistent with the upper limit of

the base densities recommended for adjacent properties in the Master Plan. Accordingly, the Project with the additional two units is still in substantial compliance with the Master Plan.

C. The Limited Preliminary Plan Amendment satisfies the written binding elements contained in Resolution No. 17-79 adopted by the District Council on March 29, 2011, approving DPA No. 11-2.

The only textual change made to the written binding elements in DPA No. 11-2, as approved by the District Council in Resolution No. 17-79, is the replacement of the maximum permitted number of units from “203” to “205”, so that Binding Element No. 1 now states the following:

“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.”

This Limited Preliminary Plan Amendment proposes to change Condition No. 2 of the original Preliminary Plan approval to increase the maximum permitted number of units from “203” to “205”, so that it is consistent with this binding element and to permit conversion of existing spaces into two dwelling units.

In regard to the parking requirement, the required number of parking spaces with the additional two units is 390 (1.9 parking spaces per unit x 205 units). The Project is currently approved with 428 parking spaces. Accordingly, no additional parking spaces will be required.

In addition, as noted on the approved Development Plan for DPA No. 11-2, the binding elements from DPA 02-2 that are still applicable are repeated

on the plan and those that were not repeated have been satisfied and are no longer applicable.

Therefore, this Limited Preliminary Plan Amendment satisfies the written elements contained in Resolution No. 17-79 adopted by the District Council.

D. Public facilities will continue to be adequate to support and serve the area of the proposed subdivision.

The Planning Board had previously found that public facilities would be adequate to support and serve the Project in the original approved Preliminary Plan. The proposed change by this Limited Preliminary Plan Amendment is considered minor and the Project will continue to be adequately served by the public facilities.

E. The size, width, shape, and orientation of the parcels have not been changed by this Limited Preliminary Plan Amendment and will continue to be appropriate for the location of the subdivision.

The size, width, shape and orientation of the parcels will not be changed by this Limited Preliminary Plan Amendment and will continue to be appropriate as previously found in the original approved Preliminary Plan. In addition, this Project continues to meet all the other standards and requirements of the T-S Zone, pursuant to Section 59-C-7.2 of the Zoning Ordinance.

F. The Project satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A by the exemption granted on August 16, 2002.

As mentioned earlier, a NRI/FSD for the Property was filed with M-NCPPC on August 1, 2002 and an exemption from the Forest Conservation Law for the Property was granted by M-NCPPC on August 16, 2002 (see Exhibit 4). An e-mail, dated September 24, 2010, from Mark Pfefferle, Acting Chief of the Environmental Planning Division, stated that the exemption does not expire and is, therefore, still valid (see Exhibit 5). Mr.

Pfefferle also stated that “[a]n NRI/FSD, new exemption, or forest conservation plan is not necessary”. Accordingly, this Project satisfies all the applicable requirements of the Forest Conservation Law.

G. The Project will continue to meet all applicable stormwater management requirements and provide adequate control of stormwater runoff from the site.

A Stormwater Management Plan was previously approved for the Project. The proposed change by this Limited Preliminary Plan Amendment is considered minor and will not change the Stormwater Management Plan. Accordingly, the Project will continue to meet all applicable stormwater management requirements and provide adequate control of stormwater runoff from the site, as previously approved..

VII. CONCLUSION

The proposed increase of two dwelling units in this Limited Preliminary Plan Amendment is in substantial conformance with the Master Plan and satisfies the purposes and requirements of the T-S Zone as set forth in the Zoning Ordinance. The Project with the addition of two dwelling units and no external physical changes will continue to be served by adequate public facilities and satisfy all applicable forest conservation and stormwater management requirements. Accordingly, the Applicant respectfully requests approval of this Limited Preliminary Plan Amendment.