

**MEMORANDUM**

DATE: February 15, 2006
 TO: Montgomery County Planning Board
 VIA: Rose Krasnow, Chief *RK*
 Development Review Division
 FROM: Kathleen Mitchell *KM*
 Development Review Division
 (301) 495-4588



REVIEW TYPE: **Limited Site Plan Amendment**
 CASE #: **82005002A (Formerly 8-05002A)**
 PROJECT NAME: Avalon at Decoverly
 APPLYING FOR: Approval to modify development program staging requirements for pedestrian paths and recreational facilities.
 REVIEW BASIS: Div. 59-D-3 of Montgomery County Zoning Ordinance

ZONE: O-M Zone
 LOCATION: Northeast quadrant of the intersection of Diamondback Drive and Decoverly Drive, Gaithersburg.
 MASTER PLAN: Shady Grove Study Area Master Plan
 APPLICANT: Avalon Bay Communities, Inc.
 Alexandria, VA
 FILING DATE: July 8, 2005
 HEARING DATE: March 2, 2006

STAFF RECOMMENDATION:

Staff recommends **Approval** of the Limited Site Plan Amendment 8005002A (formerly 8-05002A) to provide for changes to certain requirements related to the construction sequence schedule as defined in the approved Development Program, specifically condition 13(b) of Approved Site Plan 8-050020 which states: "Community-wide pedestrian pathways and recreation facilities, as noted in the Recreation chart, shall be completed prior to issuance of the 6th building permit."

Staff recommends that Condition 13(b) of Site Plan Approval 8-050020 be amended (amended language appears in bold) as follows:

Community-wide pedestrian pathways and recreation facilities, as noted in the Recreation chart, shall be completed prior to issuance of the 6th building permit; **or, as an alternative, bonds must be posted in an amount that is no less than the full and actual cost of the community-wide pedestrian pathways and recreational features as determined with staff agreement and with the further agreement that construction of those bonded features will be completed by the applicant as soon as practicable and absolutely prior to 70% occupancy of the residential units in each construction sequence as defined in the approved Development Program.**

The terms and conditions of all applicable prior regulatory approvals and agreements, including but not limited to the approved Site Plan [No. 8-05002], remain in full force and effect, except for these changes to the Development Program schedule and requirements.

SUMMARY

Plan Approval

Site Plan #8-05002 for Avalon at Decoverly was brought to the Planning Board on October 28, 2004 for approval of 196 multifamily units, on 10.81 acres. Of these, 69 units are Productivity Housing Units. The request was approved subject to conditions, and the Planning Board Opinion was issued on January 10, 2005. (Appendix A) The new units represented on the approved site plan is the second stage of a two stage rental apartment rehabilitation and development project. The first stage included the rehabilitation and upgrade of existing apartments, the new construction of a fitness center and renovation of a club house and residential game room. Stage I has been completed.

Applicant Request for Modification

On July 8, 2005, Avalon Bay Communities Inc. filed an application for a minor amendment to Site Plan #8-05002 in order to address a problem with the sequence of construction as required by Condition 13(b) of the original Planning Board approval.

Analysis of the Request for Limited Amendment

Condition 13(b) requires completion of community-wide pedestrian pathways and recreational facilities prior to issuance of the 6th building permit for Stage II of the development project. The applicant contends that prior to the Planning Board hearing, they made the staff aware of the potential conflict between the restrictive approach represented in the condition and the construction sequence dictated by field realities. It was thought at the time that those conflicts could be resolved through staff approved agreements on the Development Program, a process which takes place after the Board approval. However, the Construction Sequence Plan (Appendix B) approved as part of the Development Program cannot be implemented without amending condition 13(b) of the Planning Board's site plan approval.

Briefly, the site is designed with the pathways and recreational amenities interspersed in spaces between the buildings throughout the entire development. Completion of these amenities cannot take place prior to completion of the first stages of construction of the buildings, the foundations and shells, because there would be no way for construction vehicles and heavy equipment used for the apartment building construction to access the construction sites without damaging or removing those amenities.

The applicant has stated that it is as important to the success of their project as it is to the community and future residents of their apartments that the features protected by Condition 13(b) be completed and operational by the time the buildings are occupied. Without these features their apartments will not be competitive; and, as the landlords of this rental complex, they will be the first target of the complaints if they do not deliver what has been promised.

The only construction sequence that results in the near-synchronized completion of the buildings and the amenities is the following. Allow foundation and building permits for all the apartment buildings. Once the foundations and building shells have been constructed, the heavy equipment can be removed. Then, the pathways and recreational features can be installed while the interior work on the apartment buildings is being completed.

The problem with allowing building permits to be let before the amenities are completed is that it eliminates the most effective compliance tool available to ensure that the promised amenities are actually provided and are available to residents of the units as close as possible to occupancy. This was the intent of Condition 13(b) when it was imposed by the Planning Board. Use and Occupancy Permits, the last possible stopping point in the development process, are not within the purview of the Planning Commission or its administrative staff; therefore, they are not an effective tool for ensuring compliance with conditions imposed by the Planning Board.

As an alternative, the applicant is proposing to post bonds for the components defined in Condition 13(b), rather than meet the strict phasing requirements of the condition for completing the pedestrian pathways and recreational facilities prior to construction of the last building. In the proposed new construction phasing sequence, construction of the pedestrian pathways and recreational facilities will begin after the start of construction on the final building and will be completed before occupancy of the residential units reaches 70% in each Construction Sequence Stage. The bonds and bond agreement will provide leverage, if needed, to ensure that all facilities and development components protected by condition 13(b) will be provided within the required occupancy timeframe or before. In the worst case scenario, the bonds would be pulled and used to complete the construction of the amenities.

The applicant's request was initially determined to be eligible for consideration as a Minor Site Plan Amendment; therefore, the applicant filed under that process. After further consideration by staff, it was determined that, as an amendment to a condition imposed by the Planning Board at site plan approval, it should be considered by the Planning Board after public notification had been issued; therefore, it is being brought before the Board as a Limited Site Plan Amendment.

Recommendation

Staff is recommending approval of the proposal to post bonds as an alternative to implementing the strict construction sequence required by Condition 13(b) of the site plan approval. The goal of that condition is to ensure that the new pedestrian pathways and recreational facilities are constructed and operational at a pace consistent with occupancy of the units. This goal can be achieved in other ways than the one represented in Condition 13(b).

Use of bonding for the purpose proposed will have no practical effect on the outcome. All the amenities approved by the Board and further defined by condition 13(b) – pedestrian pathways and recreational facilities – will be provided and available for use by all the residents before the apartments in any construction sequence stage reach 70% occupancy. These requirements and other deemed appropriate to fully achieve the intent of Condition 13(b) will be enforceable through the bond agreement, which will be negotiated and approved prior to release of the remaining building permits for the project.

Information provided by the applicant includes the following estimated delivery schedule for the six residential buildings of Phase II.

- Building 1 (28 apartments) 06/14/06
- Building 2 (28 apartments) 10/27/06
- Building 4 (28 apartments) 11/10/06
- Building 3 (32 apartments) 12/01/06
- Building 5 (32 apartments) 01/12/07
- Building 6 (48 apartments) 02/05/07

The proposed sequence of construction for the buildings has not varied since the original application for site plan approval. However, the requirement for completion of the supporting amenities that surround the apartment buildings (Condition 13(b)), cannot be implemented because of the constraints of the site design. There is no staff level, administrative venue to address the construction-sequencing problem inadvertently created by Condition 13(b); and, resolution of the conflict inherent in the requirements of Condition 13(b) is essential to provide the amenities and development components the condition was imposed to ensure. Therefore, it is the staff opinion that the proposed alternative is a reasonable response to this unanticipated obstacle.

Bond Posting Implementation Considerations

Bonds are required as standard operating procedure for infrastructure and public facilities necessitated by new development. The Forest Conservation Bond program is just one of many administered by this agency or other County agencies involved in development. Procedures are already in place to negotiate and manage bonds for the pedestrian pathways and recreation facilities required as part of the Decoverly project; therefore, if approved, the bond alternative can be quickly implemented allowing the now-stalled project to move forward.

It is important to note that permits have been pulled for five of the six buildings and construction of the foundations and shells has begun. The schedule for delivery has been outlined in a

previous section of this report. The applicant's intent is to begin leasing within the next few months. If the construction sequence cannot be re-ordered as recommended herein, early residents of the first buildings will not only be deprived of full package of amenities, but also be impacted by the construction activities that could have been completed had this sequencing conflict not occurred. Negotiation of the bond agreement and posting of bonds is the fastest, most efficient way to correct the problem while still ensuring compliance with the intent of Condition 13(b).

At staff request, the applicant has provided a list of the components to be bonded and their costs. (See Appendix C). The bond amount will be based on those costs after verification by staff, adding costs associated with administering the bonds and other eventualities based on the formula used for setting Forest Conservation bonds. The amount, details and conditions of the bond agreement will be negotiated.

**APPENDIX A: MONTGOMERY COUNTY PLANNING BOARD OPINION, SITE
PLAN NO. 8-05002 – AVALON AT DECOVERLY**



JAN 10 2005

Date of Mailing: _____

MONTGOMERY COUNTY PLANNING BOARD OPINION

Site Plan No.: 8-05002
Project: Avalon at Decoverly
Date of Hearing: October 28, 2004

Action: *APPROVAL SUBJECT TO CONDITIONS. (Motion to approve was made by Commissioner Wellington; duly seconded by Commissioner Bryant; with a vote of 5-0, Commissioners Berlage, Perdue, Bryant, Wellington, and Robinson voting in favor.)*

The date of this written opinion is JAN 10 2005 (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, thirty days from the date of this written opinion. This site plan shall remain valid as provided in Section 59-D-3.8.

INTRODUCTION

On October 28, 2004, Site Plan Review #8-05002 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.

THE SUBJECT PROPERTY

This location is approximately 500 feet north of the intersection of Diamondback Drive and Key West Avenue (MD28). The property is comprised of two recorded parcels (Parcel MM and Parcel NN), which form an area that in plan resembles a "bow-tie" shaped land area of 10.81 acres, the 6.86-acre Parcel MM on the north, and 3.95-acre Parcel NN on the south. The site provides approximately 250 feet of frontage on Diamondback Drive and 900 feet of frontage on Decoverly Drive.

The site's environmental features include a substantial wooded area of 7.85 acres of forest found in three distinct tree stands and 1.6 acres of wetlands. The forests consist of hardwoods such as Tulip Poplar, Black Locust, Black Cherry, and Red Maple in the stream valley buffers.

The Natural Resources Inventory/Forest Stand Delineation drawings identify a 100-foot stream valley buffer on either side of the perennial stream, a small tributary to the Shady Branch Stream, which bisects the property, roughly coincident to the common boundary of Parcel MM and Parcel NN. The stream connects to the Key West Regional Stormwater Management facility sited between the property and the Decoverly Office Park.

The site's topography corresponds to its plan form, that is, with grade elevations of about 436 feet at both ends of the "bow-tie" which drop somewhat steeply to the center "knot," the 406 foot elevation point the defines the stream bed, surrounded by 1.6 acres of wetlands.

BACKGROUND

Vicinity

The subject property (Parcel MM and Parcel NN) is located in the northeast quadrant of the intersection of Diamondback Drive and Decoverly Drive, Gaithersburg. The surrounding neighborhood is encompassed by Key West Avenue on the south, Omega Drive to the east, Great Seneca Highway on the west and the undeveloped Crown Farm on the north (R-200 and R-60 (TDR Zones). Decoverly Office Park (O-M Zone), which adjoins the property on the east and south, is comprised of 6 buildings (including the NASDAQ Facility). The multifamily housing sited on the west side of Decoverly Road (Site Plan 8-88015A) consist of 528 units: Key West Condominiums (160 units) and Shady Grove Gable, 368 rental apartments owned and managed by Avalon Bay Communities, Inc, as the "Avalon Phase 1 Apartments." The proposed plan, Avalon at Decoverly, will comprise "Phase 2."

Prior Approvals

Prior approvals for the subject property (Parcel MM and Parcel NN) include various sequential approvals, including Preliminary and Site Plan approvals dating from the 1980's with the development of the Life Sciences Campus to the present. Master Plan recommendations for the properties have included single family house, as per the R-60 zoning of the 1970-80's to moderate office intensity, as envisioned with the re-zoning to O-M Zone.

Special Exception S-2597, June 23, 2004 [Parcels MM and NN]

The Special Exception constitutes the most recent approval for this property, per the Board of Appeals Opinion, dated June 23, 2004. The proposal was presented to the Planning Board on March 11, 2004. Avalon Bay Communities sought the approval to permit the construction of 196 residential dwelling units located on Parcels MM and NN. The Zoning Ordinance permits residential dwellings in the O-M Zone by special exception. The applicant's proposal for Special Exception was approved with conditions, including the requirement for 35% Productivity Housing Units.

Zoning Map Amendment, G-577, March 1, 1988

The District Council, per Resolution 11-697, adopted March 1, 1988, approved the reclassification of Parcel NN (4.47 acres known as the Ostwald Property and the Whipp Property) from the R-60 Zone to the O-M Zone.

Preliminary Plan Approvals

Decoverly Hall Office Park (formerly known as the Ostwald-Whipp Properties), including Parcel NN, the southernmost of the two lots, was approved by the Planning Board on June 22, 1989 (1-85264); the plan was amended per administrative amendment 1-86264A. The current application, 1-86264B has been filed for Parcel NN only, to fulfill the conditions of approval imposed by the Board of Appeals for the recent Special Exception.

Parcel MM, the northernmost of the two subject lots, was originally approved per Preliminary Plan 1-85245 on October 2, 1986, as proposed for seven lots and one outlet on 44.27 acres.

Site Plan Approvals

The subject parcels received a number of previous, sequential site plan approvals. Parcel MM was approved most recently under 8-88015A at the Planning Board hearing for an extension of its validity period on February 25, 2003 (8-88015B) after one previous extension granted by the board on November 19, 1998. The proposal provided for a 7th office building that formed a part of the Decoverly Hall Office Park, bounded by Key West Avenue, Decoverly Drive, Omega Drive and the southern property line of the adjoining Crown Farm; however, the approval excluded Parcel NN. Site Plan 8-88015 was proposed as a revision of Site Plan 8-05034A which expired.

Parcel NN was previously approved as Site Plan 8-90017 for 110,000 square feet of commercial/office use. The Planning Board approved the extension of this plan's validity period on February 6, 1992.

PROPOSED DEVELOPMENT

Project Description

The plan for Avalon at Decoverly. The majority of development is located within Parcel MM to the north. The five buildings are sited to preserve the stream buffer, accommodate the Corridor City Transitway Reservation, and to offer attractive views of formal landscaping and natural forests. Building I, located on Parcel NN, is sited to define the street edge of Diamondback Drive, while preserving the stream buffer as well. The stream buffers are shown in red, the streambed in blue; pedestrian circulation is shown in yellow; the bike path is shown in orange, along Decoverly Drive.

Supply of Productivity Housing Units

Avalon at Decoverly ("Avalon Phase 2") will provide 196 multifamily rental units within the Shady Grove Study Area Master Plan. Of these, 35% or 69 units will be Productivity Housing Units, intended to serve families or individuals who demonstrate income at or below 75% area median income. The six buildings are designed to generously accommodate a mixture of unit sizes and types, with the PHUs distributed evenly among the buildings according to a unit type mix that matches exactly the mix of market rate rental units offered.

Affordable Housing Analysis

The proposed plan provides 69 Productivity Housing Units that constitute 35% of all dwelling units. Productivity Housing Units are reserved for households with incomes at or below 75% of the area-wide median income, as provided for in Chapter 25, Article IV of the Montgomery County Code and Executive Regulation 19-98.

The chart below shows the distribution of PHU apartment type by parcel location. The unit-type mix of the Productivity Housing Units (PHUs) matches the unit-type mix of the market rate rental apartments, and the PHUs are evenly distributed throughout the development.

Pedestrian Access

The proposed design offers clear and efficient pedestrian access within the development itself, and with the surrounding public streets, including Decoverly Drive and Diamondback Drive. Formal north-south pedestrian connections are not proposed across the stream valley buffer to protect sensitive wetlands areas. The conservation areas are open for passive recreation, however.

The 8-foot sidewalk/bike path with street trees along the east side of Decoverly Drive offers an adequate, safe, and efficient connection between the two parts of the development and to the bus stops further south. In addition, extension of this bike path/sidewalk northward will provide connection to community facilities, including a public school planned for the Crown Farm tract and the future Corridor Cities Transitway station. It should be noted that the 50-foot Transitway reservation has been placed along the west property boundary of the site, adjoining the Decoverly Drive right-of-way, per the Master Plan recommendation.

Staff has included several conditions that recommend the addition of striped crosswalks within the parking areas to enhance the visibility and safety of pedestrians.

Vehicular Access

Each portion of the development, Parcel MM and Parcel NN has a dedicated vehicular entrance from Decoverly Drive. The entrance as proposed for Parcel MM, serving Buildings 1-5 features a 60-foot lead driveway with planted median separating ingress and egress traffic. As proposed the driveway provides adequate, safe and efficient passage for vehicles and accommodates the safe passage for pedestrians.

Vehicular access to Parcel NN is accommodated by a lead driveway more than 120 feet in length. This driveway, flanked by shade trees and one sidewalk proposes safe, adequate and efficient passage for vehicles and pedestrians.

Staff recommends that the applicant submit for review plan revisions for the driveway entrances that will be necessary to accommodate the construction of the Transitway.

Conformance to Master Plan

The 1990 Shady Grove Study Area Master Plan does not include a specific, written recommendation for this property. On the Plan's land use map, the parcel is identified for employment or office use, attributable to the site O-M zoning for moderate intensity office building.

While the Master Plan indicates office-building use for this site, the Zoning Ordinance permits dwellings in the O-M Zone by special exception if certain standards are met, including compatibility with surrounding development. Staff review of the Special Exception Application S-2597, made the finding that housing is compatible for this site, with both the surrounding development as well as for future development anticipated for the Crown Farm site, which adjoins the property on the north. Additional housing is needed in this area to balance the jobs that are available at the Life Sciences Center and provide residential options in close proximity to this employment and education center.

The Master Plan includes the Corridor Cities Transitway along Decoverly Drive and recommends 50 feet of right-of-way (ROW) for transitway use. A declaration of covenants for future dedication of the 50-foot ROW along the site frontage was required as a condition of approval for Preliminary Plan

Local Area Transportation Review

Three local intersections were identified as critical intersections to be affected by the development of the site and were examined in the traffic analysis for the Special Exception to determine whether they meet the applicable congestion standard of 1,525 Critical Lane Volume (CLV) for the R&D Village Policy Area. The CLV impacts of the proposed development on these intersections were analyzed and are summarized below.

Intersection Capacity Analysis with CLV Under Various Development Schemes During the Peak Hour						
	Existing		Background		Total	
	AM	PM	AM	PM	AM	PM
MD 28/MD 119	1,345	1,001	1,368	1,099	1,369	1,102
MD 28/Diamondback Drive	1,064	1,032	1,216	1,267	1,268	1,295
MD 119/Decoverly Drive	1,049	1,217	1,186	1,477	1,189	1,482

As shown in the above table, all existing intersections analyzed are currently operating at acceptable CLVs (standard equal to 1,525) during both the morning and evening peak hours and these acceptable traffic conditions are projected to be maintained under the background and total development conditions.

Forest Conservation

The site area of 10.81 acres (12.2 acres including the Corridor City Transitway Reservation Area) contains 7.85 acres of forest. The plan proposes to remove 5.69 acres of forest, while preserving all of the forest within the stream buffer except where the extension of Decoverly Drive is constructed. The Environmental Planning staff recommends a planting requirement of 1.9 acres to compensate for the removal of existing forest, to be placed within the stream valley buffer. Under the forest conservation law, the first priority for forest conservation planting is enhancement of existing forest through on-site selective clearing and supplemental planting.

SUMMARY OF TESTIMONY AND EVIDENCE IN RECORD

Planning staff provided a description of the proposed plan, including a review of zoning conformance, prior approvals, existing structures, and development data. Exhibits, including extensive aerial photography, both orthographic and oblique views were provided, in addition to analytical planimetric drawings explaining the existing and future development of the surrounding vicinity. Staff addressed the uses, siting, and design of the proposed ancillary structure, presenting a rendered site plan and architectural drawings that included floor plans and numerous building elevations, as well as rendered plans and street elevations. Staff made a specific finding for the adequacy of Recreation amenities and the off-site parks available to residents. Staff also advised the Board as to the difference between Productivity Housing and Moderately Priced Dwelling Units. The record contains evidence of applicant's community outreach efforts and describes the applicant's responses to community concerns regarding a number of issues, including uncertainty concerning the Productivity Housing Program. There was no public testimony and the applicant agreed with all of the conditions presented by staff.

FINDINGS

Based on all of 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 the approved development plan or a project plan for the optional method of development, if required.

Not applicable.

- 2. The Site Plan meets all of the requirements of the zone in which it is located.

Avalon at Decoverly Phase 2 Site Plan 8-05002		O-M Zone	
Development Standard	Total Areas	Permitted/Reqd	Proposed
Gross/Net Site Area	10.81 acres		
Gross/Net Site Area Parcel MM	6.86 acres [299,055 sf]		
Gross/Net Site Area Parcel NN	3.95 acres [171,794 sf]		

Dedication Discoverly Drive Dedication Diamondback Dr. Reservation for Future Dedication	Previous Dedication Previous Dedication Corridor Cities Transit	-	1.1 Acres
Density Base Density Total Allowable Density/Acre ² Total Residential Units Total Productivity Housing Units Floor Area [59-C-4.312] Parcel MM Bldg Coverage Parcel MM Residential Parcel MM Residential Parcel MM Parcel NN Bldg Coverage Parcel NN Residential Parcel NN Residential Parcel NN		6.0 units/acre max 21.5 units/acre ³ max 232 units 35% (69 units) min 1.5 FAR max 60% max (179,433 sf) 148 units 21.5 units/acre 60% max (103,076 sf) 83 units 21.5 units/acre	18.1 units/acre ¹ 18.1 units/acre ¹ 196 units ¹ 35% (69 units) 0.08 16% (48,000 sf) 168 units 24.49 units/acre ² 6% (9,400 sf) 28 units 7.09 units/acre ²
Building Limits [59-C-4.311] Building Height Model 4 stories Model 5 stories		5 stories (60 feet) max 60 feet max 60 feet max	5 stories (60 feet) max 42' midpoint, 52' ridge 50' midpoint, 60' ridge
Green Area 59-C-10.3.3 Category I Conservation Easement Wetlands Green Space Parcel MM Stream Valley Parcel MM Parking Green Space MM Green Space Parcel NN Stream Valley Parcel NN Parking Green Space NN		N/A N/A 10% (29,906 sf) min N/A 5% (3,996 sf) 10% (17,180 sf) min N/A 5% (956 sf)	2.2 acres 1.6 acres 54.8% (163,770 sf) 0.9 acres 9.1% (7,285 sf) 80.7% (138,575 sf) 2.2 acres 14.7% (2,800 sf)
Setbacks Street ROW on Master Plan Street ROW on Master Plan Any other lot line (garages) Residential Zone (3-4 story bldgs.) Corridor City Transit ROW	Diamondback Drive Discoverly Drive (Crown Farm) (Crown Farm) (Discoverly Drive)	15 feet min 15 feet min 1' per 3' bldg ht ⁴ [5 ft] 1' per 3' bldg ht ⁵ [18-20 ft] No Setback Required	30 feet min 33 feet min 12 feet min 20 feet min 8 feet min
1 Per Opinion of the Board of Appeals, S-2597, dated June 24, 2004, development with 35% units provided as Productivity Housing Units may achieve a maximum density of 21.5 units/acre.			
2 The Board of Appeals, per its Opinion S-2597 dated June 23, 2004, grants the Special Exception based on the average density for the entire development, comprised of Parcel MM and Parcel NN.			
3 M-NCPPC Staff Memorandum, dated March 5, 2004, re: Special Exception S-2597, page 15, reference Chapter 25B, Article IV Montgomery County Code (Productivity Housing).			

4 Per § 59-C-1.313 (b)(1) Applicable setback if the building has windows or apertures providing light, access, or ventilation to a space intended to be occupied for commercial or residential purposes that face that lot line.

5 Per § 59-C-1.313 (b)(2) Applicable setback if the adjoining lot in in a residential zone and is not recommended for commercial or industrial zoning on a master plan.

Parking Distribution - Phase 2		Site Plan 8-05002	
Development Phase	Parking ratio	Required spaces	Proposed spaces
Parcel MM- residential			
1 Bedroom	92 units @ 1.25 space/unit	115 spaces	
2 Bedroom	76 units @ 1.50space/unit	114 spaces	
Parcel MM - residential parking		229 spaces	230 spaces
Parcel NN- residential			
1 Bedroom	14 units @ 1.25 space/unit	18 spaces	
2 Bedroom	14 units @ 1.50 space/unit	21 Spaces	
Parcel NN - residential parking		39 spaces	44 spaces
Total auto parking spaces		268 spaces	274 spaces
Compact Spaces (Not included in total auto parking spaces listed above)			53 spaces
Garage Spaces (Included in total auto parking spaces listed above)			20 spaces
Bicycle Parking			
Parcel MM		14 spaces	21 spaces
Parcel NN		3 spaces	5 spaces
Motorcycle Parking			
Parcel MM		6 spaces	6 spaces
Parcel NN		2 spaces	2 spaces

Residential Unit Distribution and Productivity Housing Units			
Development Phase	Total units	PHUs Required	PHUs Proposed
Parcel MM - residential			
1 Bedroom PHUs	92 units	35% (32 units)	37 units
2 Bedroom PHUs	76 units	35% (27 units)	24 units
Parcel NN - residential			
1 Bedroom PHUs	14 units	35% (5 units)	0 units
2 Bedroom PHUs	14 units	35% (5 units)	8 units
Total units Parcels MM & NN: 196 units		35% (69 PHUs)	69 PHUs
Total Unit Mix:			
1 Bedroom Units total	106 units	*-	35% of 1-BR Units [37 PHUs]
2 Bedroom Units total	90 units	*-	35% of 2-BR Units [32 PHUs]

3. The locations of the buildings and structures, the open spaces, the landscaping, the recreation facilities, and the pedestrian and vehicular circulation systems are adequate, safe, and efficient.

a. **Buildings**

The development clusters and building locations for the Avalon at Decoverly Site Plan are organized into two sections that correspond to the shape and topography of the site, and to the parcel delineation as well: This "bow-tie" shaped property logically distributes its primary density of five buildings within the northern "half" of the form (Parcel MM), while placing a single building within the smaller, southern parcel, which defines the street edge of Diamondback Drive. The conservation easement area forms the central "knot" of the bow tie.

The proposed plan incorporates five building plan-types that offer distinct advantages for the overall site plan:

- The five different building types create variety in the scale and size of the buildings, and effectively distribute the functional program requirements of amenity space, pedestrian circulation and parking;
- The assortment of building types allow more varied combinations of apartment units, facilitating an even distribution of PHUs across the development and allowing significantly more two-bedroom PHUs;
- The buildings are customized per structure type to better accommodate the site's topography, optimizing the compatible building placement for attractive interior and exterior views;
- The varied building footprints and their placement offers more flexibility to the site plan to protect the stream valley buffers and wetlands areas;
- The site plan accommodates the Corridor Cities Transitway reservation and its future construction adjoining Decoverly Drive;

Within the northern parcel itself, the five buildings are oriented in two groups: a central cluster of three buildings (2,3,and 4) flanked by the Buildings 5 and 6, arranged in linear form along the rear stream buffer. The northern boundary is articulated by even the evenly spaced, small garage structures and its accompanying line of shade trees. An efficient lead pedestrian walk, articulated by a double row of shade trees, provides a connection to the internal, formal green space. The view as well as the pedestrian connection extends from this oasis to the stream buffer by the well-articulated break between the flanking rear buildings.

b. **Open Spaces**

The plan proposed 6.94 acres of open space, or 64% percent of the property's area. The largest single area of green space is comprised of the 3.1-acre stream valley buffer occupies the center of the property. The stream valley and its forest stand forms the "heart" of this development's open space; preservation of these

wetlands and forest will provide visual amenities for residents, bikers, pedestrians, and even drivers and future transit riders, with the generous views of this natural area offered from Decoverly Drive.

A formal open space for the northern parcel is provided as an elliptical grass panel bounded by sidewalks with garden areas at each end defined by special paving and picnic tables with seating. The space, aligned along a gentle "bending" axis generated from the main pedestrian walk, is extended visually, and physically, by its connection to its subordinate sister space across the vehicular driveway, finally terminating with the contrasting natural form of the stream valley forest.

Open space provided for Building 1 (Parcel NN) consists of informal seating and picnic areas in proximity to the stream buffer, in addition to tot lot and tennis court.

Formal open space, such as gardens, seating areas, and "street front" green areas are minimal in dimension and placement, sacrificed to the functional requirements for surface parking. The generous forest conservation area, however, serves to ameliorate this aspect of the plan, by providing generous, wide views of the stream buffer. It can be hoped that, perhaps, with the construction of the Transitway, the future need for surface parking in this location may be reduced.

The stormwater management concept consists of on-site channel protection and water quality measures for Decoverly Drive provided via a retrofit of the existing off-site Decoverly Pond. On-site water quality control is provided via structural sand filters and biofiltration facilities for parcels MM&NN, and, onsite recharge via specifically designed trenches. Channel protection volume is NOT required for parcels MM and NN because the one-year post developed peak discharge is less than 2 cfs.

c. Landscaping and Lighting.

Landscaping for the project includes a comprehensive, varied streetscape design including sidewalks, street trees and lighting, that effectively integrates the internal streets and parking areas. Landscaping within the open spaces includes flowering trees for accents; and detailed shrub beds within the green spaces. Seating areas are well placed throughout the site to encourage views and greater contact with the landscaped areas. Foundation plantings are provided for each unit that will increase the attractiveness of the view from the street as well as of each unit. The landscaping is designed to create attractive views that promoting adequate, safe, and efficient pedestrian passage through the site and use of the amenity areas.

Within the private drives, the applicant has included landscaping islands and added planting where possible and feasible to soften the views of the paving. Substantial screening is provided along the common boundary shared with Decoverly Office Park at Parcel NN. The lighting proposed include 12-foot high "acorn-type" fixtures

that will create a refined streetscape, encourage pedestrian activity, and enhance safe and efficient pedestrian activity.

d. Recreation

Recreation demand is satisfied as shown in the recreation calculations table above. The recreation provided meets the requirements for on-site facilities. Recreation facilities for the development include the following: tennis court, sitting areas, pedestrian system, natural area, bike path, and tot lot. The development provides a variety of passive and active recreation types, all of which are conveniently located with safe and adequate pedestrian access. The new bike path/sidewalk along Decoverly Drive links the two Parcels, MM and NN, providing safe and efficient connections.

Green Park, located in Gaithersburg, provides attractive, off site public recreation facilities, including tennis courts, tot lots, picnic areas, open play areas, and a multi-purpose court. The park is located within 1.1 miles of Avalon at Decoverly, accessible on foot or by car.

e. Vehicular and Pedestrian Circulation

Vehicular access is provided via two access points, one for each land parcel, from Decoverly Drive. Each parcel features a loop driveway pattern to facilitate pick-up/drop off and turns. An eight-foot-wide shared use path (Class I bikeway) along Decoverly Drive provides public pedestrian access to the development. An extensive internal sidewalks network will also be provided to facilitate pedestrian circulation throughout the development.

4. Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development.

The units are compatible in their type of use, scale and density to the residential and uses that exist to the west and with the Decoverly Office Park to the east and south. The building locations provide adequate setbacks and compatible orientations to the surrounding development patterns, particularly the Avalon Housing Development across Decoverly Drive. The buildings themselves are carefully placed to provide compatible relationships between the housing structures and create usable, attractive open space. In addition, the thoughtful placement of the core housing blocks demonstrates consideration of compatible relationships between the housing structures, the open spaces, and the units themselves.

The activity associated with the proposed residential uses will not cause any negative effect on the surrounding residential and commercial uses.

5. The site plan meets all applicable requirements of Chapter 22A regarding forest conservation.

A final forest conservation plan has been prepared for the entire tract. The site plan meets the requirements of Chapter 22A

6. The Record of this application does not contain any contested issues; and, therefore, the Planning Board finds that any future objection, which may be raised concerning a substantive issue in this application, is waived.

PLANNING BOARD ACTION AND CONDITIONS

The Montgomery County Planning Board APPROVES Site Plan Review #8-05002 for Approval of 196 multifamily residential units, on 10.81 acres, of which 69 residential units are Productivity Housing Units provided on site, on 10.81 acres, with the following conditions:

1. Special Exception Conformance
The proposed development shall comply with the conditions of approval for Special Exception S-2597, as noted in the Opinion, Board of Appeals for Montgomery County, dated June 2, 2004.
2. Preliminary Plan Conformance
The proposed development shall comply with the conditions of approval for Preliminary Plans 1-88264B and 1-85245A.
3. Site Plan
Provide the following Site Plan information:
 - a. Label the Corridor City Transitway Reservation Area on all site, landscape and lighting plans, including partial plans and pedestrian use plans;
 - b. Provide details, including dimensions and materials for all accessory buildings, including dumpster screens, compactor housing, garages, gazebos, and signage, retaining walls, etc.; details and materials subject to staff review and approval;
 - c. Provide final dimensions and location for the lead sidewalk to Building 1 from Decoverly Drive;
4. Landscape Plan
Prior to signature approval of the landscape plans the following revisions shall be made and/or information provided, subject to staff review and approval:
 - a. Indicate on the plans replacement street trees for any missing or diseased street trees along the site frontage east side of Decoverly Drive and along Diamondback Drive; replacement species and location subject to staff review and coordination, subject to seasonal considerations;
 - b. Provide additional trees as follows:

- i. Shade trees along both sides of the entire length of the vehicular entry driveway to Building 1;
- ii. One additional street tree on the east side of Decoverly Drive;
- iii. Three additional shade trees for the Decoverly Drive median, subject to coordination with MNCPPC staff and DPS;
- iv. Ornamental trees for the median of the driveway entrance to Parcel MM;
- c. Provide additional evergreen screening for the following: garage and parking visible from Diamondback Drive; dumpsters; parking facing the stream buffer; screening to be provided at 4-6 feet in height at the time of installation for the dumpsters and garage;
- d. Provide detailed planting plan for all site planting, including foundation plantings, showing plant size, species and spacing subject to staff review and approval;
- e. Provide spot elevations for building entryways and adjoining sidewalk.

5. Lighting

- a. Provide a lighting distribution and photometric plan with summary report and tabulations to conform to IESNA standards for residential development; provide average maximum/average minimum ratios;
All light fixtures shall be full cut-off fixtures;
- b. Deflectors shall be installed on all fixtures causing potential glare or excess illumination, specifically on the perimeter fixtures abutting the adjacent residential properties.
- c. Illumination levels shall not exceed 0.5 foot-candles (fc) at any property line abutting county roads or adjacent residential properties.
- d. Provide for the lighting schedule the following: mounted height and wattage.

6. Pedestrian and Bicycle Circulation

- a. Provide, prior to signature set, plans showing the design and placement for bike path signage to announce the path's presence from adjoining roads;
- b. Provide the following enhancements to increase pedestrian safety:
 - i. A painted, striped crosswalk with handicapped ramps across Decoverly Drive on the north side of Diamondback Drive to enhance safe pedestrian passage; coordinate with MNCPPC staff, DPS and DPWT regarding the placement and specifications for the crosswalk;
 - ii. A painted, striped crosswalk across the vehicular travel lanes to connect the north side of Building 1 to the recreational sitting area near the stream buffer;
 - iii. A painted, striped crosswalk across the vehicular travel lanes to connect the open space amenity area between Building 3 and Building 4 to the path between Building 5 and Building 6;
 - iv. A connecting sidewalk at the west side of Building 3 to enhance safe pedestrian passage.
- c. Provide details at 1:10, including spot elevations for the stair and pedestrian walkways at the southeast corner of Building 1;

7. Productivity Housing Units

The proposed development shall provide 69 (or 35% percent) PHUs on-site in accordance with the Opinion of the Board of Appeals dated June 23, 2004. The applicant is receiving a density bonus for providing 35% percent PHUs on-site, (increased from the base density of 6.0 units/acre to 18.1 unit/acre averaged across the site; the proposed density is less than the maximum density bonus of 21.5 units/acre).

8. Transportation

The applicant shall comply with the following conditions of approval from M-NCPPC-Transportation Planning revised memorandum, dated October 22, 2004:

- a. Total development under the subject site plan is limited to 196 multifamily residential dwelling units, of which 69 are Productivity Housing Units;
- b. The applicant shall provide the physical improvements as shown on the approved site plan:
 - i. Grading of the full width of four lanes of Decoverly Drive along the site frontage;
 - ii. Construction of two lanes of Decoverly from the end of the existing pavement through the property, to include a median with street trees;
 - iii. Prior to issuance of building permit, applicant to record a declaration of covenants ("Declaration") for future dedication of a 50-foot wide right-of-way for the Corridor Cities Transitway contiguous to the eastern boundary of the Decoverly Drive right-of-way along the entire frontage of the two parcels. Declaration language to be reviewed and approved by M-NCPPC legal staff prior to recordation.

9. Forest Conservation

The applicant shall comply with the following conditions of approval from M-NCPPC-Environmental Planning in the memorandum dated October 12, 2004:

- a. The proposed development shall comply with the conditions of the final forest conservation plan. The applicant shall satisfy all conditions prior to recording of plat(s) or Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permits;
- b. Site plan and landscape plan shall reflect a Category One Conservation Easement over all areas of stream buffers and forest conservation. Applicant shall record the Category I Conservation Easement among the land records of Montgomery County.

10. Noise Attenuation

The applicant shall comply with the following conditions of approval from M-NCPPC-Environmental Planning per communication dated October 18, 2004 to attenuate noise from Decoverly Drive:

- a. Certification from an engineering firm that specializes in acoustical analysis, that the building shell for residential dwelling units to be constructed within the unmitigated 65 dBA Ldn noise contour is designed to attenuate projected exterior noise levels to an interior level not to exceed 45 dBA Ldn. The certification from the acoustical engineer shall be reviewed and approved by M-NCPPC Environmental Planning

staff prior to issuance of building permits. Any changes that may affect acoustical performance shall be approved by the acoustical engineer in advance of installation and M-NCPPC Environmental Planning staff prior to their implementation.

- b. Applicant shall conduct an outdoor-to-indoor noise analysis of constructed units in Building I, Parcel NN to ensure the 45 dBA Ldn interior noise level is achieved within the unmitigated 65 dBA Ldn contour after construction and shall present verification of noise levels to M-NCPPC Environmental Planning staff prior to occupancy of the residential units.
- c. For all residential dwelling units to be constructed within the 65 dBA Ldn unmitigated noise contour, the applicant/developer/builder shall disclose in writing to all prospective purchasers that those homes are impacted by existing and future highway/transitway noise. Such notification will be accomplished by inclusion of this information in all sales contracts, brochures and promotional documents, including the Illustrative Site Plan(s) on display within any sales related office(s), as well as in Homeowner Association Documents, and by inclusion on all subdivision and site plans, and with all Deeds of Conveyance. Notification shall be provided to M-NCPPC staff prior to issuance of any building permit.

11. Stormwater Management

The proposed development is subject to Montgomery County Department of Permitting Services Stormwater Management Concept approval conditions dated July 19, 2004.

12. Occupancy Provisions

Occupancy of Productivity Housing Units shall be limited to households that satisfy the applicable income restrictions established pursuant to Montgomery County Code Chapter 25B, Article IV (Productivity Housing Program), and any regulations duly adopted thereunder, as such Article or regulations may be amended from time to time.

13. Development Program

Applicant shall construct the proposed development in accordance with Development Program. A Development Program shall be reviewed and approved by M-NCPPC staff prior to approval of signature set of site plan. Development Program shall include a phasing schedule as follows:

- a. Streets tree planting, including trees for the roadway median, shall progress as street construction is completed, but no later than six months after completion of the units adjacent to those streets;
- b. Community-wide pedestrian pathways and recreation facilities, as noted in the Recreation Chart, shall be completed prior to issuance of the 6th building permit;
- c. Landscaping associated with each parking lot and building shall be completed as construction of each facility is completed;
- d. Pedestrian pathways [different than the community-wide pedestrian pathway listed in condition b. above] and seating areas associated with each facility shall be completed as construction of each facility is completed;

- e. Clearing and grading shall correspond to the construction phasing, to minimize soil erosion;
- f. Coordination of each section of the development and roads;
- g. Phasing of dedications, stormwater management, sediment/erosion control, recreation, forestation, community paths, trip mitigation or other features.

14. Clearing and Grading

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

15. 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. Development program, inspection schedule, and Site Plan Opinion;
- b. Undisturbed stream buffers as shown on the final Forest Conservation Plan;
- c. Limits of disturbance;
- d. Methods and locations of tree protection;
- e. Forest Conservation easement areas;
- f. Productivity Housing Unit calculations and recreation facility calculations;
- g. Note stating the M-NCPPC staff must inspect tree-save areas and protection devices prior to clearing and grading;
- h. Centralized, screened trash areas for all multi-family units;
- i. Location of outfalls away from tree preservation areas;
- j. Label the ROWs, centerlines, PUEs on all site plan sheets; show dimensions of the future CCT right-of-way;
- k. Label the top and bottom elevations for all retaining walls.

16. Site Plan Amendments

Any application for a site plan amendment may not limit the scope of the review to any individual parcel or portion of the site. A site plan amendment application shall require an analysis of the entire 10.81-acre site to ensure compliance with applicable conditions of approval of the preliminary plan and the special exception.

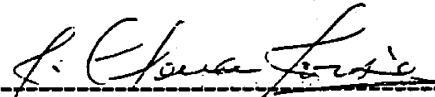
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APPROVED AS TO LEGAL SUFFICIENCY
 I AB
 M-NCPPC LEGAL DEPARTMENT
 DATE 1/2/05

[CERTIFICATION OF BOARD VOTE ADOPTING OPINION ON FOLLOWING PAGE]

CERTIFICATION OF BOARD VOTE ADOPTING OPINION

At its regular meeting, held on **Thursday January 6, 2005**, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, on the motion of **Commissioner Robinson, seconded by Commissioner Bryant, with Chairman Berlage, and Commissioners Bryant, and Robinson** voting in favor of the motion, **ADOPTED** the above Opinion which constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law for **Site Plan No. 8-05002, Avalon at Decoverly.**



Certification As To Vote of Adoption
M. Clara Moise, Technical Writer

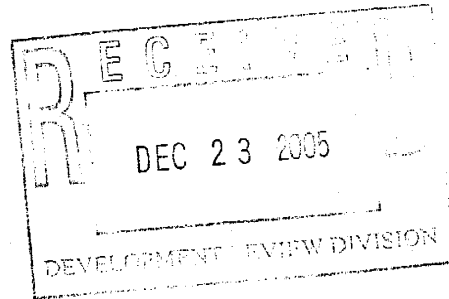


APPENDIX B: CONSTRUCTION SEQUENCE PLAN

**APPENDIX C: BOND ESTIMATE FOR RECREATIONAL FACILITIES AND
SIDEWALKS – AVALON AT DECOVERLY PHASE II**

November 16, 2005

Ms. Rose Krasnow
Chief of Development Review Division
Maryland-National Capital Park and
Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20902



RE: Bond Estimate for Recreational Facilities and Sidewalks – Avalon at Decoverly
Phase 2 (Site Plan 8-05002)

Dear Rose:

In follow-up to the conversations you have had with Yum Yu Cheng at Linowes & Blocher regarding AvalonBay's pending Minor Site Plan Amendment for Avalon at Decoverly Phase 2 (Site Plan 8-05002) and the potential for AvalonBay to post a bond in an amount sufficient to cover all of the on-site recreational facilities and sidewalks that are part of the Signature Set Site Plan, the following is an estimate of the costs associated with these amenities:

Site Furnishings:	\$ 31,558.45
Tot Lot:	18,573.00
Tennis Court:	34,236.00
Sidewalks:	78,560.00
Hiker/Biker Trail:	45,000.00
Pavers:	34,000.00

TOTAL COSTS: \$241,927.45

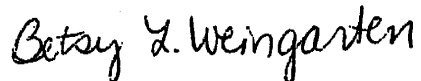
We are prepared to post a bond in this amount at your request in order for Park & Planning to approve our Minor Site Plan Amendment so that we can pull our building permit for our final residential building without further delay. If it would be helpful, we can also provide you with back-up to verify the amounts outlined above.

As detailed in our Minor Site Plan Amendment request, due to the close proximity of the proposed buildings, delaying the building permit for the final residential building until all recreational facilities and sidewalks are in place would be disruptive and dangerous to the residents living in the community. It would also have significant negative financial implications for this Productivity Housing community.

Through the approved Development Program, AvalonBay is required to complete all community-wide pedestrian pathways and recreation facilities for each of the three construction sequences that are identified prior to 70% occupancy of units in that respective sequence. The bond, in the amount shown above, will serve as further assurance that the recreational facilities and sidewalks will be completed per the Signature Set Site Plan.

Please let me know if you have any questions or if you need any additional information. I can be reached at 703-317-4611. We greatly appreciate your help with this issue.

Sincerely,



Betsy L. Weingarten
Senior Development Director

cc: Mary Beth O'Quinn (Park & Planning)
Michael Ma (Park & Planning)
Yum Yu Cheng (Linowes & Blocher)
Steve Elmendorf (Linowes & Blocher)