**MEMORANDUM**

**DATE:** May 27, 2006

**TO:** Montgomery County Planning Board

**VIA:** Rose Krasnow, Chief *RAK*  
Catherine Conlon, Supervisor *CC*  
Development Review Division

**FROM:** Dolores M. Kinney, Senior Planner (301) 495-1321  
Development Review Division *DMK*

**REVIEW TYPE:** Preliminary and Water Quality Plan Review

**APPLYING FOR:** Subdivision of Parcel 600

**PROJECT NAME:** Eastside

**CASE #:** 120051010 (Previously 1-05101)

**REVIEW BASIS:** Chapter 50, Montgomery County Subdivision Regulations

**ZONE:** PD-11

**LOCATION:** Located on the southeast side of Shawnee Lane, at the southern terminus of Gateway Center

**MASTER PLAN:** Clarksburg

**APPLICANT:** Miller and Smith at Eastside, LLC

**ENGINEER:** Loiderman Soltesz Associates, Inc.

**ATTORNEY:** Schulman Rogers, Gandal, Pordy & Ecker

**FILING DATE:** March 25, 2006

**HEARING DATE:** June 22, 2006

**STAFF RECOMMENDATION:** Approval, including approval of the preliminary water quality plan, and a waiver of Section 50-29(a)(2) of the Subdivision Regulations pursuant to Section 50-38 for Lots 152-155, subject to the following conditions:

- 1) Approval under this preliminary plan is limited to 81 lots and 2 parcels for 285 residential dwelling units, including 39 MPDUs.
- 2) Compliance with the conditions of approval for the preliminary forest conservation plan. The applicant must satisfy all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permits, as applicable.
- 3) Record plat to reflect a Category I easement over all areas of stream valley buffers and forest conservation.
- 4) Compliance with conditions of approval for Rezoning Case G-824.
- 5) The applicant shall dedicate and/or acquire 120 feet of right-of-way for Shawnee Lane from Gateway Center Drive to Frederick Road (MD 355), and construct Shawnee Lane to a four-lane divided arterial roadway. Any additional right-of-way or associated easements necessary for construction of Shawnee Lane will be acquired or funded by the applicant. The applicant must acquire or fund the cost of condemnation by Montgomery County Department of Public Works and Transportation (DPWT) for all necessary right-of-way for the entire length of Shawnee Lane prior to issuance of the building permit for the 91<sup>st</sup> dwelling unit. Construction of Shawnee Lane shall be complete and open to traffic prior to issuance of building permit for the 201<sup>st</sup> dwelling unit.
- 6) The applicant shall provide the following improvements at the intersection of Stringtown Road Extended and Gateway Center Drive prior to the issuance of the building permit for the 91<sup>st</sup> dwelling unit:
  - a. Exclusive dual northbound left turn lanes on Gateway Center Drive, by redesignating one exclusive northbound through lane as an exclusive left turn lane with particular design requirements to be approved by DPWT.
  - b. The third lane on the northbound movement on Gateway Center Drive will be designated as a shared through and right turn lane.
  - c. The Applicant is responsible for all changes required to the traffic signal system as a result of the change in lane configuration at this location.
- 7) The Applicant shall widen the northeastern site access points from Shawnee Lane to a total of 52 feet wide to provide for 22-foot wide in-bound and out-bound lanes and an eight-foot median, prior to redevelopment of the adjoining MCPS property. The egress lanes will be further widened to 26 feet when development of the adjoining school bus depot occurs. The landscaping on the east side of the driveway shall be replaced if the widening of the outbound lanes to 26 feet results in changes in the landscaping at this location.
- 8) The Applicant shall provide a five-foot wide lead-in sidewalk from Shawnee Lane at or near the northwestern site access point.
- 9) The Applicant shall provide a Class I, shared-use path along the south side of Shawnee Lane and extend it to the future intersection with Gateway Center Drive.

This improvement shall be complete prior to issuance of building permit for the 201<sup>st</sup> dwelling unit.

- 10) The Applicant shall provide crosswalks at the following locations:
  - a. Perpendicular across the internal roadway at the two locations of the three-way handicapped ramps for Phase I, Areas A and C, and for Phase 3, Areas A and B.
  - b. Across the temporary northwestern site access point parallel to Shawnee Lane
- 11) Final approval of the number and location of buildings, dwelling units, MPDUs, on-site parking, site circulation, sidewalks, and bikepaths will be determined at site plan.
- 12) No clearing, grading or recording of plats prior to certified site plan approval.
- 13) The site plan shall reflect the following design standards with respect to proposed roads, including the alleys/driveways:
  - a. All roads shall be built to the structural standards of a tertiary road.
  - b. All roads must have a paved surface a minimum of 20 feet wide, exclusive of parking.
  - c. On-street parallel parking must be 8 feet wide and protected by bump-outs, especially at all intersections.
  - d. The radii at intersections for through streets to adjacent properties must be at least 30 feet.
  - e. The radii at intersections for interior streets and alleys/driveways that serve as fire access must be at least 25 feet.
  - f. All sidewalks shall be 4 feet wide with a 6-foot minimum tree panel.
- 14) Record plat to reflect public use, common ingress/egress and utility easements over all roads and alleys/driveways.
- 15) Record plat shall reflect all areas under Homeowners Association and stormwater management parcels.
- 16) Record plat to reference the Common Open Space Covenant recorded at Liber 28045 Folio 578 ("Covenant"). Applicant shall provide verification to Commission staff prior to release of final building permit that Applicant's recorded HOA Documents incorporate by reference the Covenant.
- 17) Access and improvements as required to be approved by MDSHA prior to issuance of access permits.
- 18) Compliance with conditions of MCDPWT letter dated May 9, 2006, unless otherwise amended.
- 19) Compliance with the conditions of the MCDPS stormwater management and preliminary water quality approval dated October 15, 2004.
- 20) The Adequate Public Facility (APF) review for the preliminary plan will remain valid for seventy-two (72) months from the date of mailing of the Planning Board opinion.
- 21) This preliminary plan will remain valid for 72 months from the date of mailing of the Planning Board opinion. Record plats shall be recorded in phases based on the following schedule:

Phase 1:	90 dwelling units within 36 months (3 years) from the date of mailing of the Planning Board opinion;
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- Phase 2: 119 additional dwelling units within 60 months (5 years) from the date of mailing of the Planning Board opinion
- Phase 3: the remaining 76 dwelling units within 72 months (6 years) from the date of mailing of the Planning Board opinion.

22) Other necessary easements.

### **SITE DESCRIPTION:**

Parcel 600 ("Subject Property") is located on the southeast side of Shawnee Lane, at the southern terminus of Gateway Center Drive (Attachment A). The Subject Property contains 23.82 acres and is zoned PD-11. The property is located within the Clarksburg Special Protection Area (SPA) and contains a major stream valley and associated stream valley buffer which drains to Little Seneca Creek. The site is adjacent to the Montgomery County Public Schools Clarksburg Bus Depot on the north and the LCOR/Comsat site on the south. On the west side of Shawnee Lane are a stormwater management facility, the Clarksburg Post Office, and the Garnkirk Property.

### **PREVIOUS ZONING APPROVAL:**

Rezoning Application No. G-824 was adopted on February 1, 2005 to rezone the Subject Property from the R-200 zone to PD-11 for a maximum of 290 residential dwelling units. The rezoning approval contained binding elements which required moderately priced dwelling units; improvements to Shawnee Lane, currently a County Road, to an arterial standard from Gateway Center Drive to Frederick Road (MD 355); connections to Shawnee Lane and adjoining properties; provision of recreational facilities; preservation of the stream valley; provision of stormwater management; and compliance with local area traffic review (LATR).

### **PROJECT DESCRIPTION:**

This is a preliminary plan of subdivision to create 81 lots and two (2) parcels for the construction of 285 residential dwelling units, including 39 moderately priced dwelling units (MPDUs). The dwellings are a combination of townhouses and multi-family, two-over-two units (Attachment B). The proposed lots will be served by public water and public sewer. Access to the property will be via private streets from Shawnee Lane.

The plan includes preservation of the onsite stream and associated buffer in a green space that encompasses the southeastern portion of the site. The stormwater management facility, which includes an extended-detention pond and several pre-treatment structures, abuts the green space.

The proposed layout and unit mix reflects the approved development plan and provides various open spaces and amenities which will be further reviewed as part of the required site plan.

## **DISCUSSION OF ISSUES**

### **Master Plan Compliance**

The Clarksburg Master Plan recommends residential uses in designated areas near employment uses and along the transitway. The preliminary plan for Eastside is consistent with the master plan in that it proposes housing adjacent to existing employment uses and property which is the future site for transit services. The plan also reflects the master plan's goals to maximize density, including MPDUs; improve east-west connections and provide an interconnected street system that facilitates pedestrian and transit usage; and provide open space that accommodates recreational needs. As discussed in detail in Community-Based Planning staff's memorandum in Attachment D, the proposed unit mix does not include the diversity which would be ideal, but in staff's opinion, there are sufficient opportunities on adjacent properties to achieve a more extensive range of unit types.

### **Transportation**

#### Site Access, Vehicular, and Pedestrian Circulation

The proposed Eastside development will gain access via two points on Shawnee Lane, one full access and one right-in/right-out only. The full access point is to be located at the northeastern corner of the property. It is proposed to be three lanes, one entering, and two exiting the site. This access will be reconstructed in the future to have four lanes, two egress and two ingress lanes, when the adjoining school bus depot property is developed. The new entrance will be shared between this development and the adjoining property.

Staff finds the proposed access to the site as shown on the development plan to be safe and adequate. Staff also finds that the internal pedestrian circulation and walkways will provide for a safe and adequate movement of pedestrian traffic.

#### Local Area Transportation Review

Four local intersections were identified as critical intersections for analysis to determine whether they meet the applicable congestion standard of 1,450 Critical Lane Volume (CLV) for the Clarksburg Policy Area. The proposed development trips were added to the existing and the background traffic (trips generated from approved but unbuilt developments) to determine the total future traffic. The total future traffic was assigned to the critical intersections to calculate the total future CLVs. The result of CLV calculation is shown in the following table.

**Table I**

<b>Intersection Capacity Analysis with CLV                      Under Various Development Schemes                      During the Peak Hour</b>								
	Existing		Background		Total*		Total**	
	AM	PM	AM	PM	AM	PM	AM	PM
MD 121/Gateway Center Drive	905	848	1,196	1,509	1,279	1,547	1,160	1,236
MD 355/Stringtown Road	1,438	1,309	*** 1,429	1,382	1,429	1,382	1,429	1,382
MD 355/Shawnee Lane	1,039	1,205	1,186	1,324	1,229	1,379	1,108	1,242
Gateway Center Drive/Shawnee Lane	88	228	159	310	241	388	241	388

- \* Total development conditions without proposed roadway improvements
- \*\* Total development conditions with proposed roadway improvements
- \*\*\* The CLV for AM background and AM Total future traffic conditions are lower than existing condition because other developments in the area are required to improve this intersection.

As shown in the above table, all existing intersections analyzed are currently operating at acceptable 1,450 CLVs. Under the background development condition, the intersection of Clarksburg Road (MD 121) and Gateway Center Drive (becomes Gateway Center Drive/Stringtown Road Extended under the background and total development conditions), exceeds the acceptable congestion standard of 1,450 CLV during the PM peak hour. Under the total development condition, the congestion at this intersection further deteriorates and must be improved. The applicant has proposed to reconfigure the exclusive northbound through lane on Gateway Center Drive as a second exclusive northbound left-turn lane. The through volumes would then share the right-turn lane. This intersection improvement results in mitigating the site-generated trips. Upon implementation of the roadway improvements conditioned in this memorandum, the Gateway Center Drive/Stringtown Road Extended (MD 121) intersection will operate within the acceptable level of congestion, which is 1,450 CLV.

The improvements proposed with this preliminary plan application are less than what was identified (but not required) in the zoning application. However, as a result of the refined background development and with the improvements identified, the Eastside subdivision application satisfies LATR congestion standard of 1,450 CLV with the above-referenced improvements at identified locations.

## Policy Area Transportation Review

The zoning application for this property was submitted and reviewed prior to changes in the Annual Growth Policy laws requiring the developments to satisfy staging ceiling capacity. Based on the FY 2004 Annual Growth Policy staging ceiling capacity, there was insufficient capacity available for the housing development (-5,028 housing units as of May 31, 2004, the date this zoning application was filed) in the Clarksburg Policy Area. The applicant had proposed to widen Shawnee Lane to a four-lane divided arterial roadway from Gateway Center Drive to Frederick Road (MD 355) to satisfy staging ceiling capacity and therefore, the applicant is bound by those requirements. Staff finds that the proposed roadway improvements will provide sufficient staging ceiling capacity to accommodate the proposed development.

## Access Via Private Streets

Section 50-29(a)(2) of the Subdivision Regulations states that individually recorded lots shall abut on a street or road which has been dedicated to public use, or which has acquired the status of a public road. Multifamily and condominium units which are not located on individually recorded lots, may abut a private street or right-of-way. The proposed subdivision includes a combination of streets and alleys/driveways, none of which will be dedicated to public use. Therefore, a finding needs to be made that all the individually recorded lots abut at least one street that can otherwise attain the status of a public road. In staff's opinion, this finding must be based upon the proposed roads being: fully accessible to the public; accessible to fire and rescue vehicles, as needed; and designed to minimum public road standards, except for right-of-way and pavement widths.

In this subdivision, it is staff's opinion that, with one exception, the proposed streets which provide frontage to individually recorded lots can meet the minimum standards necessary to make the finding that they have the status of a public road. These standards include: minimum pavement widths and turning radii; appropriate circulation pattern and terminus; adequate parking design; and sidewalks with minimum tree panels. Recommended Condition #13 includes the standards for roads that should be reflected on the site plan. Staff recommends these standards also apply to proposed alleys/driveways since they provide fire access and the only frontage for some of the proposed condominium lots. A public use easement should be recorded over all the roads, including alleys/driveways.

Proposed townhouse Lots 152-155 abut an alley/driveway which in staff's opinion cannot attain the status of a public road since it does not provide appropriate circulation or terminus. Since this alley/driveway is the only frontage provided for the lots, it is staff's opinion that a waiver of Section 50-29(a)(2) is needed to permit the proposed configuration. Section 50-38(a) authorizes the Planning Board to grant waivers of any part of the Subdivision Regulations based upon a finding that practical difficulties or unusual circumstances exist which prevent full compliance with the requirements.

The applicant's proposed plan reflects the general layout and road network that was reviewed by the Planning Board and the District Council as part of the development plan approved with the rezoning of the subject property. The layout was designed to meet master plan goals for density near proposed transit, and creation of a neighborhood that incorporates the general principles of neo-traditional design such as, a hierarchy of streets, including a series of alleyways, with a mix of housing types and densities, and green areas dispersed throughout. The configuration of the lots for which this waiver is necessary does facilitate the creation of internal green spaces between the units.

As discussed during Planning Board review of similar types of projects, staff supports waiver of the lot frontage requirement where it can be found that it supports the desired design principles for the subdivision. In staff's opinion, the waiver is justified since the subdivision regulations amendment that should be completed to incorporate flexibility to permit such design, cannot practically be done in a timely manner. Staff believes the proposed neo-traditional neighborhood design best implements the intent of the Clarksburg Master Plan, particularly with regard to integrating green spaces throughout the development. The requested waiver facilitates the replacement of certain roads with green spaces that reduces the amount of paving in the development, and creates visible open areas and gathering spaces for the community. MCFRS has reviewed the proposed alley for fire access to the lots and determined that all the houses will be adequately served.

Based on these findings, staff recommends waiver of the frontage requirement for proposed Lots 152-155. In staff's opinion, the waiver is the minimum needed, is not contrary to the recommendations of the General Plan, and is not adverse to the public interest.

It should be noted that staff generally prefers that proposed streets which will connect to adjacent properties be dedicated to public use. In particular, this is usually staff's opinion if these roads are the only connection to these properties, since the connecting private road pre-determines that road continuations will not be accepted for public dedication and maintenance. In general, we believe adjacent property owners should not be precluded from dedicating roads.

In this instance staff could not reach agreement with the Department of Public Works and Transportation (DPWT) on a design for the through-roads which would meet their standards without significantly altering the proposed layout, unit mix and density. Since the layout was approved as part of the rezoning of the property, a development plan amendment would be needed. In lieu of such an amendment, staff has worked with the applicant and DPWT to achieve a road network that will function like public roads, and provide safe and adequate access. Both the adjacent properties have opportunities to connect directly with an existing public road, and therefore, they could choose to dedicate some of their future internal streets.



## **Environmental**

### Special Protection Area Requirement

The site is subject to the Forest Conservation Law, and a preliminary forest conservation plan was submitted with the preliminary plan of subdivision. Since the site is in the Clarksburg SPA, development of the property is subject to the Special Protection Area Law and a water quality plan is required. Under the SPA law, Montgomery County Department of Permitting Services (MCDPS) and the Planning Board have different responsibilities in the review of the water quality plan. MCDPS reviewed and conditionally approved the elements of the preliminary water quality plan under their purview in October 2004. The Planning Board responsibility is to determine if the environmental guidelines for special protection areas, forest conservation requirements, and site imperviousness requirements are satisfied.

### Environmental Guidelines

The applicant submitted a Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) to M-NCPPC for review and approval. Environmental Planning staff approved NRI/FSD 4-05096 on October 28, 2004. The NRI/FSD indicates 6.43 acres of existing forest, 5.4 acres of environmental buffers, and no wetlands or floodplains. The only slopes greater than 15 percent are located within the environmental buffers. A first order stream diagonally crosses the back quarter of the property. The forest is concentrated in the back third of the property. The environmental buffers are forested except for 0.22-acres, which will be forested per the environmental guidelines. The only encroachment into the environmental buffers is for a natural surface trail and necessary stormwater management conveyances. There are no stormwater management facilities or drywells proposed for the environmental buffer. All environmental buffers will be included in a category I forest conservation easement.

### Forest Conservation

The applicant submitted a preliminary forest conservation plan with the preliminary plan of subdivision. There is 6.43 acres of existing forest on the property. The applicant is proposing to remove 0.95 acres, retain 5.48 acres, and plant 0.22 acres of unforested stream buffer. Since the applicant proposes to develop this property as a planned unit development it must comply with Section 22A-12(f) of the Montgomery County code. This section requires planned unit developments to meet the appropriate forest conservation threshold on site. The applicant will meet the requirements of Section 22A-12(f) and all forest conservation requirements through forest retention on the Subject Property. In addition, the applicant will plant the unforested portion of the site, as per the Environmental Guidelines.

### Site Imperviousness

The subject site is located within the Clarksburg Special Protection Area (SPA). There are no impervious limits in this SPA. The total amount of impervious surfaces proposed, based on the water quality plan, is 8.77 acres. This is an overall impervious amount of approximately 37 percent over the entire 23.8-acre property. The overall imperviousness for this development is comparable with other developments in Montgomery County using PD 11 standards.

### Stormwater Management/Water Quality Plan

As part of the water quality plan the following site performance goals were established:

1. Maintain the natural on-site stream channels.
2. Minimize storm flow run off increases.
3. Minimize increases to ambient water temperatures.
4. Minimize sediment loading.
5. Maintain stream base flows.
6. Protect springs, seeps, and wetlands.
7. Identify and protect stream banks prone to erosion and slumping.
8. Minimize nutrient loading and control insecticides, pesticides and toxic substances.

To help meet the performance goals, the water quality control for this site will be provided via an extended detention pond. This structure will provide channel protection volume for the one-year storm with a maximum detention time of 12 hours, per state standards. Quality control will be provided via a combination of structural and non-structural measures that include dry wells, surface sand filters, dry swales and water quality inlets. Since open section roadways are not feasible, the water quality structures must be sized to compensate for loss of the roadside swales.

### **Adequate Public Facilities Validity Period**

Pursuant to Section 50-20( c)(3) of the Subdivision Regulations, a determination of adequate public facilities made under this section of the regulations is timely and remains valid for no less than 5 and no more than 12 years, as determined by the Planning Board at the time of subdivision, for projects approved on or after October 19, 1999. The applicant has requested a 6-year adequate public facilities (APF) validity period (Attachment E).

The project proposes 285 one-family attached dwelling units. Pursuant to the binding elements of the development plan, the Applicant is required to acquire or fund

the County acquisition of right-of-way from 19 properties for the widening of Shawnee Lane. The Applicant is required to make a good faith effort to acquire right-of-way and temporary easements from property owners prior to the County exercising its condemnation authority. Although the Applicant has contacted the property owners and begun discussions, the Applicant does not have the legal authority to force a sale at fair market value if a property owner desires a higher price. The condemnation process would be required where the property owner either desires not to sell to the Applicant or will not accept fair market value for the property. The additional time required for the Applicant to attempt acquisition, and the County to go through the condemnation process, supports the request for a six-year APF validity. Therefore, Staff recommends granting the Applicant's request.

### **Preliminary Plan Phasing**

The Applicant has also requested permission to record the proposed lots in phases which correspond to the extended validity period for the APF. Section 50-35(h)(2)(b) of the Subdivision Regulations gives the Board authority to establish such phasing at the time of the preliminary plan approval. Staff recommends approval of the Applicant's proposed phasing schedule as established in Condition #21, above.

### **Community Outreach**

Miller and Smith attended meetings with the Clarksburg Development Workgroup on April 5, 2006 and April 18, 2006. The following outlines the issues of discussion:

#### April 5, 2006

Bob Spalding of Miller and Smith attended a meeting of the Clarksburg Development Workgroup at which time the Shawnee Lane widening, impact of road widening on wetlands, density, and multi-family residences were discussed.

#### April 18, 2006

Chuck Ellison of Miller and Smith met with the Clarksburg Civic Association Planning Committee. The issues raised were construction materials and mixture of unit types on a block.

### **ANALYSIS**

Staff's review of Preliminary Plan #120065101 (Formerly 1-05101) Eastside, indicates that the plan conforms to the recommendations of the Clarksburg Master Plan. The proposed preliminary plan is consistent with the master plan goal to provide residential uses accessible to employment and transit. Staff also finds that the proposed preliminary plan complies with Chapter 50 of the Montgomery County Code, Subdivision Regulations, in that public facilities will be adequate to support and service the proposed lots as demonstrated on the Data Table shown in Attachment C. Staff

further finds that the size, width, shape, and orientation of the proposed and future lots are appropriate for the location of the subdivision.

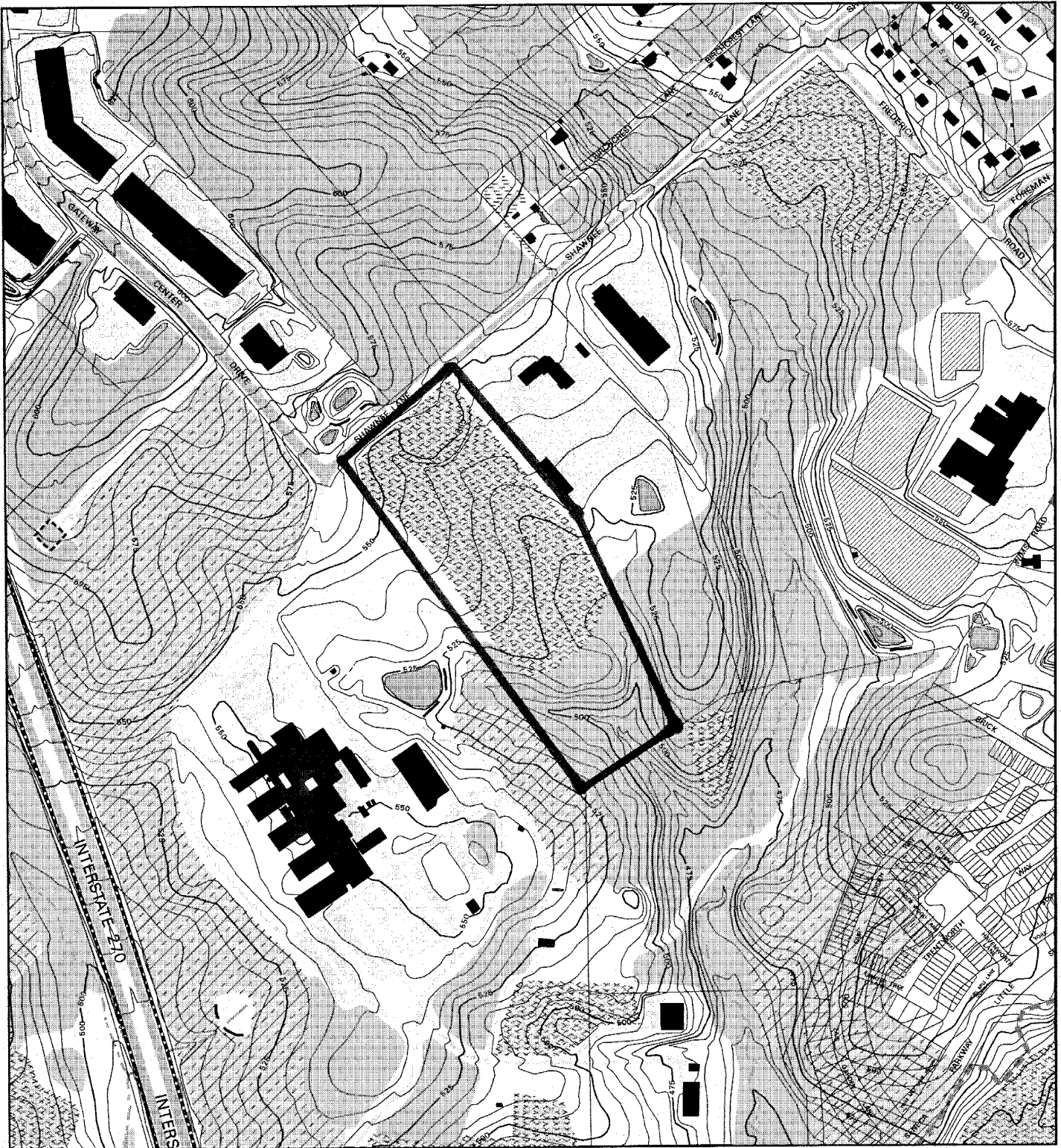
**CONCLUSION:**

Staff finds that Preliminary Plan #120061010, (Formerly 1-05101) Eastside, conforms to the Clarksburg Master Plan and meets all necessary requirements of the Subdivision Regulations. As such, Staff recommends approval of the preliminary plan, subject to the above conditions.

**Attachments**

- Attachment A Vicinity Development Map
- Attachment B Proposed Development Plan
- Attachment C Preliminary Plan Data Table
- Attachment D Agency Correspondence
- Attachment E Request for APF Extension

# EASTSIDE (1-05101)



Map compiled on June 28, 2005 at 9:31 AM | Site located on base sheet no - 231NW13

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