



September 20, 2023

Revised at Avanti's request solely to add new footnote 2.

Mr. Andrew Brown, Chairman
Frederick County Board of Appeals
c/o Department of Planning
30 North Market St.
Frederick MD 21701

RE: Appeal of Gordon Mill Preliminary Plan B275398.
 Appeal of Gordon Mill Site Plan B275399
 Request for Consolidation of Appeals

Dear Chairman Brown and Board Members:

On behalf of Cleanwater Linganore, Inc., Betsy Smith, and the remaining appellants in the two above-referenced appeals, please accept this request to consolidate the two appeals into one case (with Case No. B275398 the lead case number).

This request is based on the following reasons:

1. All parties concur that, in accordance with §1-20-22(A) of the Adequate Public Facilities Ordinance ("APFO Approval"), issues arising from the preliminary and site plan approvals are not subject to BOA review but instead are subject to review by the Circuit Court.
2. The APFO Approval is pending review in the Frederick County Circuit Court.¹
3. Given the Circuit Court's jurisdiction over the APFO Approval, the appellants hereby withdraw their APFO-related challenges to the Preliminary and Site Plan appeals now pending before the BOA. Appellants specifically **withdraw** the following two issues noted in their appeal:
 - (a) The Preliminary Plan fails to satisfy the 2014 APFO code standards with respect to school capacity (the 2014 APFO school standard was established as the APFO standard for the property because the property is subject to the terms of a 2014 Developer Rights and Responsibilities Agreement ("DRRA"); and

¹ The Planning Commission's APFO approval in connection with the Gordon Mill preliminary and site plans is pending review in the Frederick County Circuit Court, *i.e.*, Civil Action No. C-10-CV-23-000319 (preliminary plan) and Civil Action No. C-10-CV-23-000320 (site plan). The Circuit Court consolidated these two cases into one, with Civil Action No. C-10-CV-23-000319 being the lead case.

- (b) The Preliminary Plan fails to satisfy the Adequate Public Facilities Ordinance (Frederick County Code Chapter 20) with respect to road adequacy.
- 4. There are, however, other issues subject to BOA review in both appeals.²
- 5. The Planning Commission voted to approve the Gordon Mill Preliminary Plan immediately followed by consideration of -- and a vote to approve -- the Project's Site Plan.
- 6. During the Site Plan hearing before the Planning Commission, appellants asked the Planning Commission to incorporate the record of the Preliminary Plan proceedings into the record of the Site Plan proceedings, and the Planning Commission agreed.

Therefore, the same record will serve as the basis for the Board's review in both the Preliminary Plan and Site Plan appeals.

- 7. The County, through its counsel ("Respondent County"), and the Gordon Mill applicants NEW MARKET 279 (D.C.) ASLI VIII, LLC, its affiliated companies, Avanti Strategic Land Investors VIII, L.L.L.P., APG ASLI VIII GP, LLC, Avanti Properties Group III, L.L.L.P., APG III GP, LLC, Avanti Management Corporation and JNP Capital Management, its development manager ("Respondent Avanti"), by and through its legal counsel, Bregman, Berbert, Schwartz & Gilday, LLC, consent to this motion.³

Additionally, Appellants, with the consent of Respondent County and Respondent Avanti, further request as follows:

That the Board grant this request without a hearing, as all parties formally entered in this appeal have consented.

Respectfully Submitted,

Michele McDaniel Rosenfeld

Michele McDaniel Rosenfeld

Cc: Kathy Mitchell, Senior Assist. County Attorney, Counsel for Respondent Planning Commission
Soo Lee-Cho, Esq., Counsel for Respondent Avanti

² Respondent Avanti's consent to the relief requested herein shall in no way be construed as or deemed to be evidence of an admission, concession, or waiver of any kind regarding its rights, claims, and/or defenses related to these appeals. All rights are reserved.

³ Respondent Avanti's consent to the relief requested herein shall in no way be construed as or deemed to be evidence of an admission, concession, or waiver of any kind regarding its rights, claims, and/or defenses related to these appeals. All rights are reserved.

**BEFORE THE BOARD OF APPEALS
OF FREDERICK COUNTY, MARYLAND**

IN RE:

* * * * *

APPEAL OF GORDON MILL
PRELIMINARY PLAN CASE NO. S-1170
(AP# PP257753)
AND
SITE PLAN CASE NO. SP20-02
(AP# SP257755)

Consolidated Appeal No. B-23-19

CO-RESPONDENT NEW MARKET 279 (DC) ASLI VIII, LLC, ET AL.'S REPLY MATERIAL AND MEMORANDA IN OPPOSITION TO THE ADMINISTRATIVE APPEAL FILED BY CLEANWATER LINGANORE, INC., BETSY SMITH, ET AL.

Pursuant to Section III.H of the Bylaws of the Frederick County Board of Appeals (“Board”), Co-Respondent New Market 279 (DC) ASLI VIII, LLC, its affiliated companies, Avanti Strategic Land Investors VIII, L.L.L.P., APG ASLI VIII GP, LLC, Avanti Properties Group III, L.L.L.P., APG III GP, LLC, Avanti Management Corporation and JNP Capital Management, its development manager (collectively, “Avanti”), the Owner/Applicant in Gordon Mill Preliminary Plan Case No. S-1170 (AP# PP257753) and Site Plan Case No. SP20-02 (AP# SP257755), by and through undersigned counsel, submits the following Reply Material and Memoranda in Opposition¹ to the consolidated appeals filed by Cleanwater Linganore, Inc., Betsy Smith, et al., (collectively, “Cleanwater”).

The subject appeal concerns the Preliminary Plan and Site Plan applications for the development of a +279.2 acre parcel of land (formerly the Blentlinger property) located on the east side of Boyers Mill Road, directly across from Finn Drive, with 610 residential units, consisting

¹ Avanti hereby adopts and incorporates by this reference the arguments set forth in the October 16, 2023 Memorandum submitted by Frederick County to the Board in connection with the above-referenced appeals.

of 435 single-family detached units and 175 townhome units (“Project”). Both applications were conditionally approved by the Frederick County Planning Commission (“FCPC”) on April 12, 2023, in accordance with a Development Rights and Responsibilities Agreement (“Blentlinger DRRA”) executed on November 24, 2014 and a Phase I Planned Unit Development (PUD) rezoning granted to the property on November 24, 2014 by adoption of Ordinance No. 14-27-682 (“PUD Ordinance”). A copy of the PUD Ordinance, which was submitted by Cleanwater to the Board on October 5, 2023, is attached hereto as Exhibit A.

In conjunction with the Project’s Preliminary Plan and Site Plan approvals, the FCPC also approved an Adequate Public Facilities Ordinance Letter of Understanding (“APFO LOU”) for the Project in compliance with the Frederick County APFO that was in effect on November 24, 2014 as required by the Blentlinger DRRA. However, as indicated in the Consent Motion to Consolidate Appeals (dated September 20, 2023) granted in this matter, all parties concur that, in accordance with §1-20-22(A) of the APFO, issues related to the adequacy of public facilities arising from the Preliminary Plan and Site Plan approvals are *not* subject to the Board’s review but instead are subject to review by the Circuit Court for Frederick County (“Circuit Court”). Accordingly, Cleanwater’s contentions related to the Project’s alleged non-compliance with applicable APFO standards with respect to schools and road adequacy were formally withdrawn from the present appeal.²

Cleanwater’s remaining two contentions – the Project’s alleged noncompliance with 1) the PUD Ordinance’s bypass guarantee provision and 2) stormwater management laws – are not only

² Cleanwater’s contention regarding the interpretation of the term “guarantee” as set forth in the PUD Ordinance is a non-APFO issue that is presently pending before the Board and, therefore, Cleanwater is barred from raising this issue before the Circuit Court in the pending appeal regarding FCPC’s APFO approval (i.e., Civil Action No. C-10-CV-23-000319 (preliminary plan) and Civil Action No. C-10-CV-23-000320 (site plan), which cases were consolidated with Civil Action No. C-10-CV-23-000319 being the lead case).

lacking in any legal merit, but wholly unsubstantiated by the overwhelming evidence of record presented to the FCPC in support of the Project's approval and must be rejected by the Board.

I. **Cleanwater's assertion that Avanti's financial guarantee of the New Market Parkway (to be provided prior to the Project's first record plat under the APFO LOU) fails to meet the "guarantee" requirement of the PUD Ordinance constitutes a baseless attempt to obfuscate the clear intent of the PUD Ordinance and must be rejected.**

Condition No. 3 of the PUD Ordinance states as follows:

No residential plat may be recorded until one of the following conditions is met:

Either;

The planned arterial through the Blentlinger PUD and the adjoining Casey PUD, as well as the improvements to MD75 from the Casey project entrance to just north of the MD75/MD144 intersection is guaranteed,

Or;

The planned New Market Parkway, as well as the improvements to MD75 from the Bypass to just north of the MD75/MD144 intersection is guaranteed.

Exhibit A at 22-23. Further, Section 3.1 Road Improvements of the Blentlinger DRRA states in relevant part as follows:

In satisfaction of APFO requirements for the Project, which will be approved as part of Phase II of development (site plan, subdivision plat), Developer will be required to ***either construct or fund the construction*** of certain road improvements or contribute to escrow funds for road improvements, all as will be comprehensively set forth in an Adequate Public Facilities Ordinance Letter of Understanding ("APFO LOU").

R. 000291-000332, Blentlinger DRRA at R000295 (emphasis added).

Avanti has chosen the second option listed above and in that regard is required under the now approved APFO LOU, in compliance with the PUD Ordinance, to provide a ***financial guarantee*** (i.e., performance bond/surety) for the full cost of constructing the New Market Parkway prior to the recordation of the Project's first residential plat. The provision of such a financial guarantee is routinely accepted by the County on development projects as exemplified

by Resolution No. 14-01 regarding “Acceptance of Surety Bonds to **Guarantee Developer** Funded and Constructed Public Improvements.” R. 001310-001313. (Emphasis added).

Cleanwater erroneously seeks to apply a broader concept of ‘guarantee’ never intended by the PUD Ordinance and employs a ‘lack of certainty’ (i.e., guarantee is no guarantee) basis for challenging the legitimacy of the Project’s approvals. Specifically, Cleanwater erroneously contends that because of various factors (i.e., the amount of the financial guarantee is currently unknown, the New Market Parkway does not need to open prior to the recordation of the 500th building permit, and the New Market Parkway requires the acquisition of certain rights-of way not yet acquired), Avanti cannot guarantee the New Market Parkway will be **constructed** as required by the PUD Ordinance. This line of argument is just plain wrong and, as summarized below, has been tried before by Cleanwater, albeit unsuccessfully.

In a lawsuit challenging the Blentlinger DRRA, Cleanwater had argued, among other things, that since the middle school site proffered by the Project was subject to Board of Education approval, it was uncertain, and did not amount to an enhanced public benefit because “[t]here is **no guarantee** that the school site will be dedicated.” *Lillian C. Blentlinger, LLC v. Cleanwater Linganore, Inc.*, 456 Md. 272, 290 (2017) (emphasis added). The Supreme Court of Maryland³ not only rejected Cleanwater’s claim that an enhanced public benefit is required for a DRRA to be valid, but held that the Blentlinger DRRA is supported by more than sufficient consideration. In so holding, the Court stated in relevant part as follows:

As an initial matter, contrary to Cleanwater’s... contentions, we know of no statute or case law requiring a DRRA’s requirements to exceed requirements of a related PUD ordinance. ***In our view, a PUD ordinance and a DRRA are often a ‘package deal,’ so it would seem commonsensical that the requirements of the two would largely mirror one another.*** And, we know of nothing that dictates that a DRRA’s requirements must somehow exceed that of a PUD ordinance, or of any other regulation or

³ The Supreme Court of Maryland was formerly known as the Court of Appeals.

local law. Simply put, we are unpersuaded by the argument that the Blentlinger DRRA is somehow void for lack of consideration on the basis that the Blentlinger DRRA's requirements are also required by the PUD Ordinance and other regulations and local laws, such as the APFO.

Id. at 323 (emphasis added). The Court then proceeds to list the “plethora of binding promises” included in the Blentlinger DRRA evidencing sufficient consideration. *Id.* at 325. The Court’s summary of relevant DRRA provisions in the previous case serves to also effectively counter Cleanwater’s ‘lack of certainty’ arguments being posited here relative to the interpretation of the term ‘guarantee.’ As observed by the Supreme Court in Maryland above, it is evident that the Blentlinger DRRA and PUD Ordinance were adopted as a “package deal” that contemplated certain road improvements would be *either constructed or funded*, all to be comprehensively set forth in an APFO LOU:

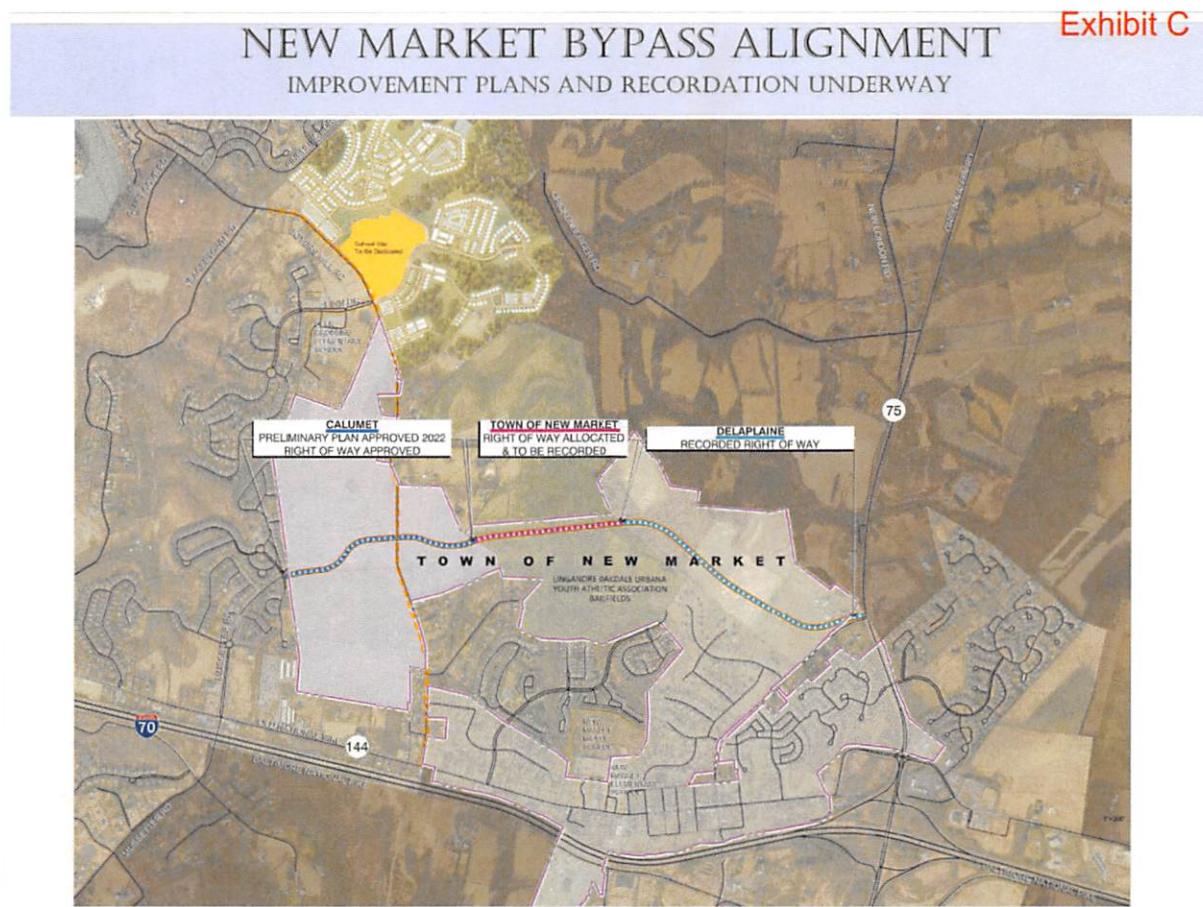
For example, in Section 3.1 of the Blentlinger DRRA, to satisfy APFO requirements for the project, [Avanti] agrees “to *either construct or fund* the construction of certain road improvements or contribute to escrow funds for road improvements, all as will be comprehensively set forth in an [APFO] Letter of Understanding.

* * *

As to property acquisition for public infrastructure, in Section 3.5A, [Avanti] agrees to ‘*exercise commercially reasonable efforts to secure [a third party’s] right-of-way without the assistance of [Frederick] County*, in the event that such acquisition is necessary. In Section 3.5B, [Avanti] agrees that, *if they demonstrate that they are unable to secure a public right-of-way through commercially reasonable efforts*, then they may request that the County or the State Highway Administration assist in such acquisition at their ‘sole cost and expense.’ And, in Section 3.5C, [Avanti] agrees that, *if the County decides not to acquire the right-of-way, or the two-year time period of assistance has passed*, then [Avanti] ‘may be permitted to make a *contribution to the County* equal to the entire anticipated project development costs, which shall include but not be limited to costs for: design, engineering, right-of-way acquisition, management, inspection, etc. in lieu of constructing the public infrastructure improvements[,]’ unless the applicable APFO letter of understanding provides otherwise.

Id. at 325-326 (emphasis added).

Consistent with the above, Avanti presented evidence before the FCPC confirming that the alignment/right-of-way for the New Market Parkway has in fact been fixed and that Avanti had undertaken “commercially reasonable efforts” to acquire necessary right-of-way, with the Calumet Property presently under contract for purchase by Avanti. The below excerpt was included with Avanti’s March 10, 2023 supplemental submission to the FCPC. R.001307, 001315.



Clearly, the PUD Ordinance's reference to "guarantee," when read in conjunction with the DRRA, required Avanti to *fund not construct* the New Market Parkway prior to the recordation of the Project's first residential plat. Therefore, if the PUD Ordinance intended for Avanti to construct the New Market Parkway (i.e., guarantee it would be built) prior to the recordation of the Project's first residential plat, then it would have used the term "constructed" not "guaranteed." Cleanwater's interpretation of the term "guarantee" is impractical, nonsensical, and was clearly not intended by the language set forth in either the PUD Ordinance or Blentlinger DRRA. Accordingly, the APFO LOU executed between the FCPC and Avanti complies with the 'guarantee' requirement of the PUD Ordinance in all respects and Cleanwater's appeal in this regard must be rejected by the Board.

II. Cleanwater's sediment control and stormwater management related bases of appeal should be dismissed.

The Board is not authorized to consider the sediment control and stormwater management ("SWM") issues raised by Cleanwater in this administrative appeal because the FCPC, as a matter of Maryland law, lacks subject matter jurisdiction to determine these issues as part of its approval or denial of a preliminary subdivision plan and/or site development plan application.⁴

Here, Cleanwater wrongfully claims that the FCPC erred in approving the Preliminary Plan, and hence the Site Plan, alleging that the Preliminary Plan failed to comply with Frederick County's Grading, Erosion and Sediment Control law (Chapter 1-10 of the Frederick County Code

⁴ Sections 1-16-29 and 1-19-2.150(D)(1) of the Frederick County Code grants the Board the power to hear and decide appeals where it is alleged that the FCPC erred in approving a preliminary plan application and/or a site plan application respectively (subject to certain exceptions like APFO issues which are directly appealed to the Circuit Court). Because the FCPC lacked subject matter jurisdiction to approve or deny a preliminary subdivision plan or site plan application based upon sediment control and SWM compliance issues, the Board, likewise lacks appellate jurisdiction over the same subject areas.

(“FCC”)) and its Stormwater Management law (Chapter 1-15.2 of the FCC) because it relied on outdated rainfall data. Not only does Cleanwater fail to cite to *any* authority authorizing the FCPC to determine such issues, but as correctly expressed by Kathy L. Mitchell, Senior Assistant County Attorney, in her March 10, 2023 Memorandum to the FCPC, these issues are outside the authority of the FCPC under Maryland law. R. 001322-001326; *see also* March 15, 2023 Transcript pp. 207-210.

The State of Maryland, through the Maryland Department of the Environment (“MDE”), controls and establishes the criteria developers need to satisfy to comply with sediment control and SWM regulations and neither MDE nor Frederick County (“County”) has delegated to the FCPC the authority to evaluate whether preliminary subdivision plan applications comply with such criteria. Accordingly, the sediment control and SWM issues raised in Item No. 4 of Cleanwater’s May 12, 2023 Justification Letters in Support of their Administrative Appeal of the FCPC’s April 12, 2023 Decision to approve the Gordon Mill (formerly Blentlinger) Preliminary Plan and Site Plan (collectively, “Justification Letter”) should be dismissed.⁵

A. The authority to enforce sediment control and SWM issues is derived from the State.

Enforcement of sediment control and SWM regulations are not a matter of County authority, but State-delegated authority. In accordance with the Annotated Code of Maryland, Environment Article (“EN”), §§ 4-202 and 4-203(b)(1), the MDE requires the County to enact ordinances that adopt the “rules and regulations [established by MDE] which establish [the]

⁵ Alternatively, if the BOA is inclined to exercise subject matter jurisdiction (which it should not) over these issues, then Avanti reserve all rights to address these issues at the hearing on October 26, 2023.

criteria and procedures for stormwater management in Maryland.”⁶ These rules and regulations adopted by the MDE, among other things, “[s]pecify the minimum content of the local ordinances or the rules and regulations of the affected county governing body to be adopted which may be done by inclusion of a model ordinance or model rules and regulations” and “[e]stablish a comprehensive process for approving grading and sediment control plans and stormwater management plans.” EN § 4-203 (b)(2)(v) & (ix). In compliance with EN § 4-203, the County adopted Chapter 1-15.2: Stormwater Management of the FCC. FCC §1-15.2-1.0 (A). Moreover, at least once every three years, MDE (not the County) inspects and reviews the County’s SWM plan set forth in Chapter 1-15.2 of the FCC and its field implementation of it. EN § 4-206. Thus, the authority to determine the sufficiency or relevancy of the rainfall data used to implement the County’s SWM ordinance rests with the MDE, *not* the FCPC. R. 001325.

In addition, the FCC expressly states that the Frederick County Community Development Division [now the Division of Planning and Permitting] (“Division”) – not the FCPC – “shall be responsible for the coordination and enforcement of the provisions of this chapter.” F.C.C. §1-15.2-1.0(B).⁷ Thus, the Division’s authority to determine and enforce SWM compliance issues stems from the MDE, and MDE is required to provide the Division with the “technical assistance, training, research, and coordination in [SWM] technology” to implement the County’s stormwater ordinances. EN § 4-203(e). Thus, the language of FCC §1-15.2-1.0(B) and EN §4-203 makes clear that the Division is solely equipped with the power and the technical knowledge to determine

⁶ Similarly, the MDE adopts criteria and procedures for the County to implement erosion and sediment control programs. EN §§ 4-101 & 4-103(b); see also FCC §1-10-1.

⁷ Similarly, the Frederick or Catoctin soil conservation district, through its powers delegated by MDE, reviews erosion and sediment control plans to determine compliance with these laws. FCC §1-10-16(B).

sediment control and SWM compliance issues.⁸ Clearly, the Division, and not the FCPC is empowered with the authority to evaluate sediment control and SWM compliance issues. Accordingly, the FCPC lacks subject matter jurisdiction to determine these issues and Cleanwater's administrative appeal of the Preliminary Plan and Site Plan applications in this regard should be dismissed.

B. The FCPC lacks the statutory authority to determine sediment control and SWM compliance issues.

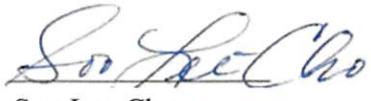
The County established the FCPC under FCC § 1-13-16 pursuant to the authority granted to it by the State of Maryland under Section 2-101 of the Land Use Article of the Annotated Code of Maryland (“LU”). Pursuant to FCC §1-13-21, the powers and duties of the FCPC are enumerated in LU “§2-105 [miscellaneous powers and duties of Planning Commission] and §3-101 [adoption of the comprehensive plan] and following.” FCC §1-13-21. However, neither the Land Use Article nor the FCC authorizes the FCPC to determine whether sediment control or SWM regulations have been satisfied let alone permit the FCPC to approve or deny a preliminary plan and/or site plan application based upon such compliance issues. Indeed, as set forth above, the Division has the sole authority to enforce these issues and Cleanwater has cited *zero* authority to the contrary. Moreover, the FCPC’s lack of authority over such issues is further evidenced by the fact that the SWM development plan and final SWM plan, including a final erosion and sediment control plan, do not have to be submitted until *after* Preliminary Plan approval. *See* FCC §1-15.2-5.2(B) and (C). Thus, approvals of the foregoing plans are not a basis to approve or deny a preliminary subdivision plan and/or site development plan application. Clearly, the FCPC has no authority to evaluate sediment control and SWM compliance issues.

⁸ Notably, the Division’s sole authority to approve SWM plans is also evidenced in FCC §1-16-107(A), which expressly states that “[n]o final plat of subdivision shall be approved unless a plan for stormwater management is submitted by the developer and approved by the *Division*

Accordingly, for the foregoing reasons, the sediment control and SWM issues raised in the Justification Letters should be dismissed.

Dated: October 16, 2023

Respectfully Submitted,


Soo Lee-Cho

Christine E. Sindall

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*Counsel for Co-Respondent,
Avanti Properties Group*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of October, 2023, a copy of the foregoing *Co-Respondent Avanti Properties Group's Reply Material and Memoranda in Opposition to the Administrative Appeal filed by Cleanwater Linganore, Inc., Betsy Smith, et al.* was served via electronic mail to:

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*Counsel for Co-Respondent,
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EXHIBIT A

THE EFFECTIVE DATE OF THIS ORDINANCE IS November 24, 2014

ORDINANCE NO. 14-27-1682

**OPINION, FINDINGS AND ORDINANCE
OF
THE BOARD OF COUNTY COMMISSIONERS
OF
FREDERICK COUNTY, MARYLAND**

**RE: APPLICATION OF LILLIAN C. BLENTLINGER, LLC
AND WILLIAM L. BLENTLINGER, LLC**

REZONING CASE NO. R-14-03 (BLENTLINGER PUD)

OPINION/FINDINGS

A. BACKGROUND

The Site is currently zoned A-Agricultural and has been zoned Agricultural since 1959.

The current Comprehensive Plan land use designation is Low Density Residential with the Natural Resources land use designation within the extent of the existing FEMA floodplain designation along Hazelnut Run. Hazelnut Run flows from north to south along the eastern boundary of the Site.

The Low Density Residential land use designation was originally applied to the Site during the 2006 New Market Region Plan, at which time the Site was also included in the Linganore Community Growth Area. During the 2008 update of the New Market Region Plan, the Linganore Community Growth Area was retracted and the Low Density Residential land use designation on the Site was replaced with the Agricultural/Rural designation. This land use designation was continued on the 2010 Comprehensive Plan update. The 2012 Comprehensive Plan changed the land use plan designation to Low Density Residential and included the property in the Linganore Community Growth Area.

A public hearing was held before the Frederick County Planning Commission on July 30, 2014. The Frederick County Planning Commission recommended approval of the requested rezoning. A public hearing was held before the Board of County Commissioners on November 6, 2014.

B. APPLICANT'S PROPOSAL

Land Use Proposal

Total Site Area	± 279 acres
Total Proposed PUD Zone Area	± 279 acres
<u>Proposed Land Use</u>	
Residential Area	165.2 acres
School Site Area (middle school)	25 acres
Floodplain Area	13.8 acres
Non Floodplain Open Space Area	75 acres
TOTAL	279 acres
Total Proposed Dwellings	720 dwellings*
*mix of single family, townhouse, and 2 over 2's	
Gross Project Density	720/279 = 2.6 dwellings per acre
Net Project Density (Residential Land Only)	720/165.2 = 4.4 dwellings per acre

Concept Plan

The overall plan for the development delineates four distinct residential land bays, a school site, and an open space corridor. Areas planned for development are located on land with minimal environmental and physical obstructions. The lands outside of these areas include stream corridors, forested land, steep slopes, and floodplains. The concept for development of this property is to allow the existing environmental features of the property establish the basic layout.

A central stream valley corridor includes a trail network, and dwellings surrounding this corridor are situated with their fronts toward the open space. This configuration can create the perception that the open space is freely available for community use.

A proposed arterial road runs west/east continuously through the site, connecting the various land bays. Frontage along this central spine road alternates between development bays and natural open space areas, creating a system of access that intertwines the natural environment and the built environment.

The middle school site is centrally located on the Site, and is situated at the corner of Boyers Mill Rd. and the proposed main entrance road, making the school site highly accessible. The school site can serve a dual function as active recreational space for the community. Pocket park features are located in areas of the Site that are surrounded by higher density dwelling types. This configuration creates public open space in areas where private yards are minimized, and serve to balance the availability of open space between single family detached dwellings and townhouse or two over two dwellings.

Phasing Plan

The Applicant anticipates the timeframe for build out is a period of ten to fifteen years incorporating up to ten (10) phases. The time frames for build out will be subject to the APFO reviews as well as to market demand.

C. FINDINGS PURSUANT TO MARYLAND ANNOTATED CODE, LAND USE ARTICLE

Based on the entire record in this case, including but not limited to the Application, the Staff Report, and the other documentary and testimonial evidence presented at the public hearing(s), the BOCC makes the following specific findings of fact in accordance with §4-204(b) of the Land Use Article of the Maryland Code (“LU Article”) and §1-19-3.110.4(A) of the Frederick County Zoning Ordinance (“ZO”), *Approval Criteria for Zoning Map Amendments*:

Proposed Land Use Mix and Density

The proposed land use within the project is residential, with a 25-acre middle school site.

The concept plan proposed a total of 720 dwellings, composed of the following dwelling type mix:

Single-Family – 324 dwellings (45%)
Townhouses – 192 dwellings (27%)
2 over 2's – 204 dwellings (28%)

On November 6, 2014, the Board of County Commissioners of Frederick County, Maryland ("BOCC") approved the plan for a total of 675 dwellings, composed of a maximum of 175 Townhouses and the balance Single-Family detached dwellings.

§ 1-19-10.500.6 (B) of the Zoning Ordinance states: "*Residential land use mixture within the PUD District.* A goal of the PUD district is to provide an optimal mixture of housing types, including single family dwellings, townhouses, and multifamily dwellings."

The development proposal provides a mix of single family, townhouses, and 2 over 2's which is an appropriate mix given the size of the project. The approved plan provides an appropriate mix of single family and townhouses.

"§ 1-19-10.500.6(H)(1)(a) Gross density of a proposed PUD development shall comply with the following table.

County Comprehensive Plan Land Use Designation	Dwelling Units per Acre
Low Density Residential	3-6 du/ac
Medium Density Residential	6-12 du/ac
High Density Residential	12-20 du/ac

The gross density may not exceed the maximum density specified by the County Comprehensive Plan residential land use designation of the subject property.”

Land Use Designation:	Low Density Residential (LDR) (3-6 du/ac)
Land Area Designated LDR:	266 acres (subtracts 13 ac. of Natural Resources designation)
Proposed Development Area with LDR:	218 acres
Total Number of Proposed Dwellings:	720 dwellings
Gross LDR Density:	720/266 = 2.7 dwellings/acre
Development Area LDR Density:	720/218 = 3.3 dwellings/acre

1. Consistency with Comprehensive Plan

The Site is within the Linganore Community Growth Area as designated on the County Comprehensive Plan and has a land use plan designation of Low Density Residential, with the stream valley designated Natural Resources.

With its Low Density Residential designation (3-6 dwellings/acre) and its location within a Growth Area, it is identified as an area that has been targeted for growth and development and is therefore consistent with the general policy in the Comprehensive Plan that supports the location of growth within growth areas.

Consistency with Community and/or Corridor Plans

There has not been a specific Community or Corridor Plan developed for the vicinity of the Project Site. However, the County Comprehensive Plan outlines overall community development principles such as encouraging higher density development, a mix of land uses, providing distinctive design that contributes to a distinctive community character, efficiency of layout relative to public infrastructure, and general accessibility through multiple modes of transport as well as interconnectedness of the transportation network. The proposal is generally consistent with these guidelines.

2. Compatibility with Adjoining Zoning and Land Uses

Adjoining the Site on the northwest boundary is the Pinehurst section of the Linganore PUD which is developed with mostly single-family detached dwellings and some townhouses. To the west across Boyers Mill Rd. is Summerfield, also part of the Linganore PUD and is developed with single-family and townhouse dwellings. Immediately adjoining the site to the east is the Casey property, which has recently been approved for PUD zoning for 1,010 dwellings including single-family and townhouses.

The Audubon Society of Central Maryland maintains a wildlife sanctuary adjacent to the Site on the southern boundary. The sanctuary adjacent to the Site is 141 acres and contains fields, forest stands, and several streams. The PUD Concept Plan proposes open space/green area for the land adjoining the Audubon site.

To the southeast of the Site and adjacent to the Town of New Market is the Delaplaine Property, a 135 acre parcel that has been annexed into the Town of New Market with an Economic Development Flex zoning district, which would permit a mix of employment, industrial, or residential uses.

Directly to the south of the Site are the Smith and Cline properties, which have been annexed into the Town of New Market and comprising 262 acres and proposing 925 dwellings.

3. Natural Features

The Site is largely composed of cleared agricultural land but is intermittently forested. The 100 year FEMA floodplain crosses the Site from the north to south along Hazelnut Run, which is a tributary to Linganore Creek.

The topography of the Site is hilly, but with slopes predominantly under 15%, with some slopes greater than 25% at the stream valley. There are some flooding soils and some restricted

soils on the Site. Flooding soils are limited to areas within the stream corridors, with the majority of the Site evenly split between Restricted and Lower 1/3 Restricted soils, with a smaller portion of Non-Restricted soils. All areas of floodplain and steep slopes are included in the proposed open space for the development.

The Audubon property, which adjoins the site to the south, is 141 acres and is encumbered by a perpetual conservation easement co-held by the Maryland Environmental Trust (MET) and the Catoctin Land Trust.

4. Population Change

Current Neighborhood Population:

Census Tract 7518.01	4,201
Census Tract 7519.01	4,272
<hr/>	
TOTAL	8,473

2010 U.S. Census

Potential Additional Population:

The potential additional population change as a result of the proposed 720 units equates to 1,944 persons, based on 2.7 persons per household. (As a result of the approved 675 units, 1,822 persons).

Potential Total Neighborhood Population: 10,417 persons (10,295, for the approved plan)

5. Availability of Public Facilities and Services.

Public Schools

Proposed Dwellings: 324 Single Family Detached, 192 Townhouse, 204 Two Over Two

School Level	2013 Equated Enrollment ¹ /State Rated Capacity ¹	% of State Rated Capacity	Single Family Detached	Total Projected Pupils ²			TOTAL
				Townhouses	Multifamily (Two Over Two)		
Deer Crossing Elementary School	690/641	108%	111	37	15		163
Oakdale Middle School	636/600	106%	49	22	7		78
Oakdale High School	1200/1603	75%	59	25	5		89
		Total	219	84	27		330

1. Board of Education (BOE) Quarterly Enrollment Report – 3/31/2014
 2. 2007 Pupil Yield Rates (BOE Educational Facilities Master Plan – 9/2013)

	SFD	TH	MF
Deer Crossing ES	.34	.19	.07
Oakdale MS	.15	.11	.03
Oakdale HS	.18	.13	.02

The approved density and unit mix results in lower pupil generations than what is shown above.

Programmed Improvements (FY 2015-2020 CIP)

East County Area Elementary School – New 725-seat school. Educational Facilities Master Plan (Sept. 2013) identifies projected opening in 2021. Funding for design in FY 2019. This school is currently planned to be located either at the Landsdale PUD (Ed McClain Road) or in the Hampton section of the Linganore PUD.

Planned Improvements

Elementary School – New 725-seat school is planned to be located on the Casey property.

Elementary School – New 725-seat school to be located on the other site not selected under the East County Area Elementary CIP project would be available for longer term school needs.

Middle School – New 900-seat school. The Comprehensive Plan identifies a planned middle school site on the Blentlinger property.

Oakdale Middle School – 300-seat addition, which would take the school to its maximum size of 900 seats.

High School – New 1,600-seat school. The Comprehensive Plan identifies a planned high school site in the Monrovia community growth area that is proposed to be dedicated and conveyed to the BOE as part of the Monrovia Town Center PUD project.

Water and Sewer

The Site is classified Planned Service (PS) for water and sewer in the County Water and Sewerage Plan, indicating property planned to be serviced within an 11 to 20 year timeframe.

Public water will be provided through the New Design water system, which withdraws water from the Potomac River. The New Design Water Treatment Plant has a permitted capacity of 25 million gallons/day (MGD) and has a current average daily use of approximately 16 MGD. Sewer service/treatment will be provided by the Ballenger-McKinney wastewater treatment plant (WWTP). The current Ballenger WWTP has a treatment capacity of 7 MGD. With the McKinney expansion, which is under construction, capacity will be expanded to 15 MGD. The expansion project is expected to be completed in the fall 2014. Current average daily treatment

flows at the Ballenger WWTP is 5.7 MGD, so with the McKinney expansion there will be approximately 9.3 MGD of available capacity. The Applicant is responsible for extensions and connections to the public water and sewer lines to serve the project site.

Based on the proposed 720 dwellings, and assuming 250 gallons/day/dwelling, this project would need approximately 180,000 gallons/day of water and sewer capacity (for the approved 675 dwellings, approximately 168,750 gallons/day). Water and sewer supply is evaluated at multiple points in the development review process, and recordation of lots or issuance of building permits cannot proceed unless capacity is determined to be adequate.

Programmed Improvements (FY 2014-2019 CIP)

Linganore Interceptor (Lower and Upper Segments) – replacement to address design issues and expand to accommodate build out flows. Estimated completion beyond 2020. Both water and sewer infrastructure improvements will be tied to the development of the Casey property. For both of these projects there will be the need for distribution and transmission lines to feed into the Linganore network. There will also be water tank and sewage pump station projects to serve the Blentlinger and Casey projects.

Public Safety

The nearest fire station is the New Market Fire Station, located approximately 2 miles from the site. Police protection for the Site is provided by the Frederick County Sheriff's Office.

Programmed Improvements (FY 2015-2020 CIP)

New Market Fire Station – Replacement of the existing station is proposed on a different site. To be funded beyond 2020.

Planned Improvements

Linganore Fire Station – A new fire station planned on a site in the Hamptons West area of the Linganore PUD on Gas House Pike.

Libraries

The Frederick County C. Burr Artz Public Library is in downtown Frederick City serves this area. There are no libraries programmed in the FY2015-2020 CIP.

Planned Improvements

Linganore Regional Library – the Comprehensive Plan identifies a planned library site that would be located in the Town Center area (adjacent to Oakdale High School) of the Linganore PUD.

Parks

There are two existing parks in the vicinity of the site. The County's Old National Pike Park is a 155 acre regional park located on Old National Pike approximately 3 miles to the east. The other is the Town of New Market's Nature Park located at Royal Oak Drive along the northern boundary of the Town of New Market. This is a 107 acre community park, which has recently been developed with various types of playing fields.

Programmed Improvements (FY 2015-2020 CIP)

Old National Pike Park – Phase 2 construction of new athletic fields, picnic facilities projected to be completed in 2023.

Kemptown Community Park – Rehabilitation of existing park projected to be completed in 2017.

Planned Improvements

Community Park – The Comprehensive Plan identifies a community park (30-100 acres) symbol along Bens Branch that would be a potential stream valley park.

Regional Park – The Comprehensive Plan identifies two symbols, one on the Smith/Cline properties, which are currently seeking annexation into the Town of New Market and a second adjacent to Linganore High School on Old Annapolis Rd. Regional parks may be 100 + acres.

Transportation

Existing Site Access Characteristics

The site has approximately 3,100 feet of frontage along Boyers Mill Road and proposes its primary access point on this road. The site also has approximately 1,140 feet of frontage along Pinehurst Dr., which serves as the primary access to Boyers Mill Road for the Pinehurst subdivision. The Concept Plan proposes an arterial spine road from Boyers Mill Road through the Site, which would continue through the Casey property and then is planned to connect to MD75. An additional access point to Boyers Mill is also proposed.

Two local road connections to Pinehurst Drive are proposed at the north of the Site connecting to the Pinehurst subdivision of the Lake Linganore community.

Existing Traffic Volumes and Capacity on Adjoining Roads

Location	AADT: 2012 Annual Average Daily Traffic
Boyers Mill Road - .1 mile north MD144	7,000
MD75 - .3 mile north of MD144	10,800
MD144 – just west of MD75	8,700

A measure of additional capacity of a roadway can be generally determined through the calculation of the Volume/Capacity (V/C) ratio, which can be obtained by dividing the daily capacity of the road as designed (supply) by the average daily use, AADT (demand).

Boyers Mill Road and MD 75 at the location identified above is a two lane road, which has a theoretical design capacity (Level of Service E) of 16,900 daily trips (source: Guidelines for Preparation of Traffic Impact Analyses for Development Applications – Frederick County).

Therefore:

Boyers Mill Rd. - .1 miles north of MD 144	7,000 daily volume / 16,900 daily capacity = .41
MD 75 - .3 mile north of MD 144	10,800 daily volume / 16,900 daily capacity = .64
MD 144 – just west of MD 75	8,700 daily volume / 14,800 daily capacity = .59

A V/C ratio below 1.0 indicates that capacity is available.

The main point of egress from the Blentlinger property to the regional transportation network is the MD75/I-70 interchange. In other words, the majority of trips originating from the Blentlinger PUD will be heading toward the MD75/I-70 interchange on the eastern end of New Market. Currently, the only route available to access this interchange is to head south along Boyers Mill Road, and east along MD 144/Main St. through the Town of New Market.

Traffic volumes along MD144 through the Town of New Market are currently in excess of adequacy as generally perceived by the public. Any additional load along this route would exacerbate this problem. Therefore, concurrent with the initial development of the Blentlinger PUD, an alternative route to the MD 75/I-70 interchange must be provided.

This can be accomplished in one of two ways. The first is if the planned arterial through the Blentlinger PUD as well as the adjoining Casey PUD is guaranteed, as well as the required improvements to MD 75 between the Casey property and the MD 75/I-70 interchange.

Alternatively, a route to the interchange can be provided if the planned New Market Parkway is guaranteed along with the improvements along MD 75 from Old New Market Rd. to the MD 75/I-70 interchange.

Comprehensive Plan Designations for Adjoining Roads

Boyers Mill Road – Minor Arterial (80 foot right-of-way)

A proposed Collector (60 foot right of way) is shown on the Comprehensive Plan identifying a connection from the Pinehurst section of the Linganore PUD to the planned arterial road. A proposed Minor Arterial is shown on the Comprehensive Plan connecting Boyers Mill Road and MD75.

Programmed Improvements (FY 2015-2020 CIP)

Old National Pike – Upgrade Old National Pike from MD 144 to New Market (2.2 miles) to serve projected traffic growth in the New Market Region. Old National Pike will be designed and constructed to minor arterial standards. Estimated completion in 2021.

Old National Pike Phase 2 – MD 75 to Mt. Airy (4.6 miles). This project will upgrade as a 2-lane roadway to serve future traffic growth in the New Market Region. Old National Pike will be designed and constructed to minor arterial standards. Estimated completion in 2024.

Boyers Mill Road – Upgrade existing two-lane road with shoulders from Gas House Pike to Old National Pike (4 miles). A separate project to construct a new 2-lane bridge over Lake Linganore is underway. The project is projected to be completed in 2018.

Yeagertown Road – Upgrade the existing tar and chip surface. A portion of this road may be incorporated into the planned Town Center Connector (minor arterial), which will connect Boyers Mill Rd. to the I-70/Meadow Rd. interchange. Remaining portion to be upgraded to a Local road standard. Estimated completion in 2024.

Planned Improvements

New Market Parkway – Identified on the Comprehensive Plan as a Collector/Arterial roadway to connect Boyers Mill Rd. to Old New Market Rd. through the Town of New Market.

The 2-lane road is expected to be constructed by the developers of the Smith/Cline property which has recently been annexed into the Town of New Market. A specific schedule for the construction of this road has not been determined.

D. FINDINGS PURSUANT TO FREDERICK COUNTY CODE SECTION 1-19-10.500.3

Based on the entire record in this case, including but not limited to the Application, the Staff report, and the other documentary and testimonial evidence presented at the public hearing(s), the BOCC makes the following specific findings of fact under Frederick County Code § 1-19-10.500.3:

1-19-10.500.3, Approval Criteria for Planned Development Districts

(A) The proposed development is compact, employing design principles that result in efficient consumption of land, efficient extension of public infrastructure, and efficient provision of public facilities;

The 720 dwellings result in a net density of approximately 4.4 dwellings per acre (675 dwellings result in 4.1 dwellings per acre). The project site is adjacent to developed land and is located in the Linganore Community Growth Area. Therefore, the project does not intensify the outward spread of urbanized land into rural areas, and employs an efficient development pattern.

(B) The proposed development design and building siting are in accordance with the County Comprehensive Plan, and any applicable community and corridor plans;

There is no Community and Corridor Plan for this area.

(C) The proposed development is compatible with existing or anticipated surrounding land uses with regard to size, building scale, intensity, setbacks, and landscaping, or the proposal provides for mitigation of differences in appearance or scale through such means as setbacks, screening, landscaping; or other design features in accordance with the County Comprehensive Plan, and any applicable community or corridor plans;

The surrounding existing residential development in the adjoining Linganore PUD villages is similar to the proposed project with respect to density and dwelling types provided.

The Pinehurst section of the Lake Linganore community to the north of the Site also contains a combination of single family and townhomes arranged in a similar fashion and at comparable densities. Also, the Summerfield subdivision to the west of the Site is composed of a combination of townhouses and single family dwellings arranged in a similar fashion and at comparable densities. These subdivisions are but a portion of a much larger development of comparable density and arrangement of land uses in the Linganore PUD.

Proposed land uses for the Casey PUD development to the east of the Site and is comparable to the Blentlinger PUD in density, arrangement of land uses, and mix of dwellings proposed. Additionally, the Town of New Market to the south of the Site anticipates residential development on the Smith/Cline properties along Boyers Mill Rd. and employment development on the Delaplaine property.

(D) The proposed development provides a safe and efficient arrangement of land use, buildings, infrastructure, and transportation circulation systems. Factors to be evaluated include: connections between existing and proposed community development patterns, extension of the street network; pedestrian connections to, from, and between buildings, parking areas, recreation, and open space;

The site has approximately 3,100 feet of frontage along Boyers Mill Road and proposes its primary access point on this road across from Finn Dr.. The Concept Plan proposes an arterial spine road from Boyers Mill Road through the Site which would continue to the Casey property, which then is planned to connect to MD75. An additional access point to Boyers Mill is also proposed.

Two local road connections to Pinehurst Drive are proposed at the north of the Site connecting to the Pinehurst subdivision of the Lake Linganore community.

An interconnected local street network is proposed with sidewalks that would provide access to the school and park/open space areas. Trails are also proposed as part of the open space corridors.

(E) *The transportation system is or will be made adequate to serve the proposed development in addition to existing uses in the area. Factors to be evaluated include: roadway capacity and level of service, on-street parking impacts, access requirements, neighborhood impacts, projected construction schedule of planned improvements, pedestrian safety, and travel demand modeling;*

From the perspective of the Comprehensive Plan, Boyers Mill Road currently has some available capacity to handle additional development. The proposed arterial road through this project intersecting Boyers Mill Rd., continuing through the adjoining Casey property, and connecting to MD75, will also provide road capacity for this area. In the near term, additional capacity from the project to the MD 75/I-70 Interchange will need to be created as the existing transportation network is not adequate to accommodate this development. These improvements would include either a new eastward connection through the Casey project to MD 75 or the construction of the New Market Bypass, as well as improved capacity along MD 75, north of MD 144.

(F) *The proposed development provides design and building placement that optimizes walking, biking, and use of public transit. Factors to be evaluated include: extension of the street network; existing and proposed community development patterns; and pedestrian connections to, from, and between buildings, parking areas, recreation, and open space;*

One of the main features of the layout is a central open space corridor with a trail system that runs through the Site. In some areas of the plan, rear loaded townhouse dwellings are proposed, which would eliminate or reduce driveways and curb cuts along the fronts of these buildings and can potentially create a streetscape that has favorable design features such as on-street parking, uninterrupted sidewalks for pedestrian convenience and safety, and buildings with

architectural features (windows, front doors, bay windows, porches, landscaping) that are sized and configured to relate to the physical dimensions of pedestrians rather than automobiles (as would be the case with an overabundance of garage doors and driveways).

(G) Existing fire and emergency medical service facilities are or will be made adequate to serve the increased demand from the proposed development in addition to existing uses in the area. Factors to be evaluated include: response time, projected schedule of providing planned improvements, bridges, roads, and nature and type of available response apparatus;

The nearest public safety facility is the New Market Fire Station, located approximately 2 miles from the site. The Project Site is located within a 4 minute travel time radius from the fire station.

(H) Natural features of the site have been adequately considered and utilized in the design of the proposed development. Factors to be evaluated include: the relationship of existing natural features to man-made features both on-site and in the immediate vicinity, natural features connectivity, energy efficient site design, use of environmental site design or low impact development techniques in accordance with Chapter 1-15.2 of the Frederick County Code;

Natural corridors have been identified on the concept plan along stream valleys throughout the proposed Site. These areas are excluded from development and will protect natural features such as stream corridors, floodplains, and steep slopes. Trails and open space are planned along the central circulation corridor and within some of the stream valleys.

(I) The proposed mixture of land uses is consistent with the purpose and intent of the underlying County Comprehensive Plan land use designation(s), and any applicable community or corridor plans;

The applicant proposed a mix of single-family detached, townhouse, and two over two dwellings which are consistent with the Comprehensive Plan land use plan designation of Low Density Residential. The approved mix of single-family detached and townhouse dwellings is also consistent with the Comprehensive Plan land use plan designation of Low Density Residential.

(J) *Planned developments shall be served adequately by public facilities and services. Additionally, increased demand for public facilities, services, and utilities created by the proposed development (including without limitation water, sewer, transportation, parks and recreation, schools, fire and emergency services, libraries, and law enforcement) shall be evaluated as adequate or to be made adequate within established county standards.*

Water and sewer service is currently adequate to accommodate the proposed development. There are existing parks including the Old National Pike Park and New Markets community park within the surrounding vicinity. Public safety facilities and services are adequate. Two of the three schools serving the Site are currently under capacity. The proposed development would be providing a middle school site.

E. FINDINGS PURSUANT TO FREDERICK COUNTY CODE SECTION 1-19-3.110.4(A)

§ 1-19-3.110.4 (A) (Approval Criteria for Zoning Map Amendments)

(1) Consistency with the comprehensive plan;

The proposed PUD is located in an area with an appropriate land use plan designation of Low Density Residential (3-6 dwellings/acre) and is within a Community Growth Area. The PUD zone is designed to enhance the opportunities for integrated uses and densities in the County by allowing a greater variety of mutually reinforcing dwelling types and land uses to occur within a single development. Both the PUD floating zone and the Low Density Residential land use plan designation emphasize residential uses, and are therefore essentially compatible in application and intent. The proposed net density of the Project is 4.4 dwellings per acre (approved net density is 4.1 dwellings per acre).

(2) Availability of public facilities;

Water is supplied by the New Design Water system and sewer is treated by the Ballenger McKinney WWTP, both of which have adequate capacity to serve this development. Two of the

three schools serving the Site are currently over capacity; Deer Crossing Elementary School at 108%, and Oakdale Middle School at 106%. A new elementary school site is proposed on the adjacent Casey PUD, and a middle school site is being proffered with this application. There is adequate availability of park and fire/rescue facilities.

(3) Adequacy of existing and future transportation systems;

The Project Site abuts a minor arterial (Boyers Mill Road) to the west, and is approximately three (3) miles from the I-70/MD 75 interchange. Based on current traffic volumes on Boyers Mill Road there is some available capacity to accommodate additional development. The project also proposes to construct a portion of an arterial that will connect Boyers Mill Rd. and MD 75.

(4) Compatibility with existing and proposed development;

The surrounding residential development, including single-family and townhouse dwellings, in the Linganore PUD is similar to the proposed project with respect to density and dwelling types provided. The Pinehurst section of the Lake Linganore community to the north of the Site and the Summerfield section to the west also contain a combination of single family and townhomes arranged in a similar fashion and at comparable densities.

The Casey PUD is a proposed development to the east of the Site and is comparable to the Blentlinger PUD in density and mix of dwellings proposed. Additionally, the Town of New Market to the south of the Site has a mix of residential, commercial, and institutional uses.

(5) Population change; and

The potential additional population change as a result of the proposed 720 units equates to 1,944 persons, based on 2.7 persons per household (approved 675 units equates to 1,822

persons). The potential total neighborhood population is 10,417 persons for the proposed plan (10,295 for the approved plan).

(6) The timing of development and facilities.

Mitigation of impacts that development will have on public facilities are required to be satisfied as development proceeds through the development review process including the Zoning Ordinance and the Adequate Public Facilities Ordinance. Mitigation measures are accordingly required to be satisfied at development milestones, such as the recordation of plats, or the issuance of building permits. The Water and Sewer Plan dictates an amendment process that requires studies of adequacy and an appropriate design of infrastructure at several points during the development review process. Preliminary Plan approval is granted for a period of five years, so failing an application for an extension, mitigation requirements tied to plat recordation such as the School Construction Fee, must be satisfied within that time period. Site Plan approval is granted for a period of three years. Therefore mitigation requirements tied to issuance of a building permit, such as payment of impact fees for water, sewer, libraries, and schools, or payment into escrow accounts for road improvements, must be satisfied within that time period unless an extension is granted.

Therefore, based on all of the findings discussed above, and the evidence submitted in this matter, including but not limited to the entire records of the Planning Commission and BOCC meetings and hearings, the staff reports, and other documentary and testimonial evidence, the Board of County Commissioners determines that:

A. The Applicant has satisfied the requirements of §4-204(b) of the Land Use Article; Frederick County Code §§1-19-3.110.4 and 1-19-10.500.3.

B. The requested rezoning of the property is both feasible, desirable and in the public interest;

C. The approved Phase I plan complies with the purposes of the PUD classification and will further these purposes;

D. The approved Phase I plan is compatible with adjoining land uses and, with the imposition of the conditions stated below, will have no significant adverse impacts;

E. The required conditions are related both in nature and extent to the impact of the proposed development;

F. The approved Phase I plan meets the objectives and requirements set forth in the Frederick County Code, as described above, and the applicable requirements of the Land Use Article.

Therefore, the Applicant's request for application of the PUD Floating Zone to the property is hereby granted subject to the conditions stated below.

ORDINANCE

BE IT ENACTED AND ORDAINED BY THE BOARD OF COUNTY
COMMISSIONERS OF FREDERICK COUNTY, MARYLAND, that for the reasons set forth in this Ordinance, Rezoning Case No. R-14-03 (Blentlinger PUD) is hereby approved and the Phase I plan is approved subject to the following conditions:

1. A maximum of 675 dwelling units may be constructed, comprised of no more than 175 townhomes, and the remaining units being single-family detached.
2. Phasing of the project shall permit 200 lots to be recorded per year with a previous year's unused allocation permitted to be carried into the following year.
3. No residential plat may be recorded until one of the following conditions is met:

Either;

The planned arterial through the Blentlinger PUD and the adjoining Casey PUD, as well as the improvements to MD75 from the Casey project entrance to just north of the MD 75/MD 144 intersection is guaranteed,

Or;

The planned New Market Parkway, as well as the improvements to MD75 from the Bypass to just north of the MD 75/MD 144 intersection is guaranteed.

4. The developer shall design the project in conformance with the approved Community Design Guidelines and Development Principles Manual.
5. The developer shall dedicate and convey to the County a 24.5+- acre middle school site to the BOE, in fee simple, upon
 - i) the recordation of the subdivision plat for the 100th lot in the Project or within two (2) years of the recordation of the subdivision plat for the 1st lot in the Project, whichever occurs first; and
 - ii) BOE's acceptance of the conveyance of land for the Public School Site. The Applicant and BOE shall enter into a Memorandum of Understanding ("MOU"), which shall set forth the rights and responsibilities of the parties in connection with development of the school site, prior to final, unconditional approval of the Phase II (Execution) Plan for the portion of the Project that contains the school site.
6. Provide two (2) neighborhood parks of at least 20,000 square feet each to be centrally located, with one in the northern land bay, and the other in the central land bay.
7. Provide a diversity of single family lot sizes.
8. With the exception of structures on the Public School Site and models for the Project, neither Frederick County, nor any agency, department, division and/or branch thereof shall issue any structural building permits, prior to January 1, 2020.

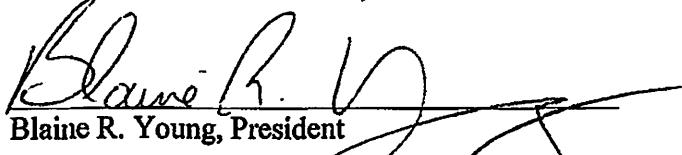
The conditions included as part of the granting of this Planned Unit Development PUD floating zone Phase I request is deemed necessary for the health, safety and welfare of the community; is imposed as an integral part of this approval; and is not separable from the decision to grant the requested floating zone classification. If, for any reason, a court of competent jurisdiction finds that any material portion of these conditions are substantially invalid

or unenforceable, the property shall revert to the previously approved Agricultural zoning classification.

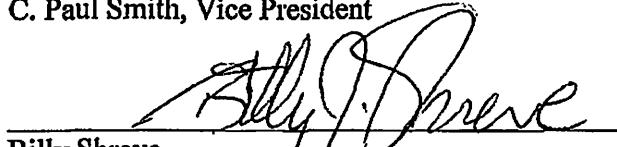
AND BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND, that the Zoning Administrator is hereby authorized and directed to make the appropriate change on the Zoning Map showing this zoning classification as indicated above.

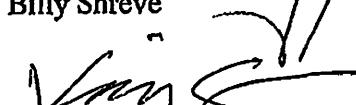
The undersigned hereby certify that this Ordinance was approved and adopted on the _____ day of November, 2014.

BOARD OF COUNTY COMMISSIONERS
OF FREDERICK COUNTY, MARYLAND


Blaine R. Young, President


C. Paul Smith, Vice President


Billy Shreve


Kirby Delauter

ATTEST:


Michael G. Marschner
Acting County Manager

Commissioner David P. Gray voted against approval of this PUD floating zone classification.