

The following represents staff responses (in blue) to feedback provided by Mr. Berne on May 19, 2022

Historic Resources Inventory

The applicant partially justifies the TDR by stating that the sending site (The Haven) is on the County's 2011 [Historic Resources Inventory](#). Page 9 of the Inventory lists The Haven (formerly Tyrol Hills Apartments) at 701 South Florida Street as "Notable".

"Notable" is the third highest category on the Inventory, below "Essential" and "Important". Page 1 of the Inventory ranks 11 garden apartments as "Essential", pages 2-5 rank 67 apartments as "Important", and pages 9-10 rank 31 apartments as "Notable". These are not small numbers. **It is noteworthy that The Haven is one of a total of 109 garden apartments that the Inventory ranks as "Notable" or higher.**

The Inventory ranks Fillmore Gardens and Barcroft apartments as "Essential". The Barcroft Apartments has 1,092 units and covers 43.2 acres. Fillmore Gardens has 448 units and covers 17.6 acres. In contrast, The Haven is much smaller, as it has only 118 units and covers only 4.5 acres. This is a significant difference.

Transfer of Development Rights

The applicant proposes a TDR of 118 units from the Haven site (one to two blocks north of Columbia Pike) to the Ballston Macy's site (701 N. Glebe Road) on a 2:1 ratio (236 units). The transfer would enable the applicant to construct on the Ballston Macy's site a 16-story residential building with ground level retail. The building would contain 555 total residential units, **none of which would be committed affordable housing (CAF) units.** **RESPONSE:** [The applicant is now actively exploring providing on-site affordable units as part of the Ballston Macy's site plan proposal.](#)

This is not a suitable use of a TDR. Page 6 of the County's [2007 TDR Policy Document](#) states that the eligible receiving sites for TDRs are located within the Rosslyn-Ballston Corridor and the Jefferson Davis Corridor. However, the proposed TDR transfer does **not** comply with Objective 3.2 (**Promote affordable housing near transit**) that page 30 of the more recent [2015 Affordable Housing Master Plan](#) describes. **RESPONSE:** [The 2007 version does not represent the most current TDR Policy Document as it has been updated several times since 2007 \(most current version can be found in Appendix 1 of the General Land Use Plan Booklet\).](#) Columbia Pike represents the most utilized bus corridor in the entire Commonwealth, benefiting from multiple WMATA and ART bus routes connecting it to other parts of the County and its surrounding jurisdictions. It would therefore be inaccurate to state that the Haven property is "not located near transit". Further, the Neighborhoods Area Plan and N-FBC set the expectation that density may be transferred from Columbia Pike sending sites to receiving sites elsewhere in the County where site plan applications may be approved by the County Board, such as sites in the R-B Corridor. In this context, staff considers this a suitable use of a TDR.

The proposed TDR would not add any affordable housing units to the Rosslyn-Ballston Corridor, which contains Metro stations and many bus lines. **There can be no justification for awarding a TDR that will not provide any new affordable housing near transit at the receiving site.** **RESPONSE:** [See note above regarding affordability in the Ballston Macy's site plan project.](#) [The presence of affordable units at the Ballston site plan is not the sole justification for considering or supporting this TDR, given the other components involved between the two sites.](#)

The Columbia Pike area has fewer bus lines than does the Rosslyn-Ballston Corridor. Further, unlike the Rosslyn-Ballston Corridor, the Columbia Pike area lacks any type of rail service. Therefore, the TDR would not promote affordable housing near transit at either the sending site or the receiving site. **RESPONSE:** [See response above.](#)

Further, the TDR would replace Market-Rate Affordable Units (MARKs) at a TDR sending site by adding new covenants that would re-designate the MARKs as CAFs. However, Objective 1.1.3 on page 19 of the Affordable Housing Master Plan states: **Make every reasonable effort to prevent the loss of market-rate affordable rental housing.** **RESPONSE:** This statement is incomplete and does not fully represent the affordable housing goal in this document. The Columbia Pike Neighborhoods Area Plan states in multiple instances “retain or replace current market rate affordable units (MARKs).” Converting Market Rate Affordable Units (MARKs) to Committed Affordable Units (CAFs) meets this goal. The phrase “loss of market-rate affordable housing” is generally attributed to instances where the existing units are demolished as part of a larger redevelopment or to make room for by-right townhomes (in which both scenarios would displace existing residents and significantly increase rents for those looking to return to the site following construction).

The proposed TDR would result in the loss of 118 MARKs. **The TDR would therefore contradict Objective 1.1.3. of the Master Plan.** **RESPONSE:** That is incorrect. Please see earlier response capturing the Neighborhoods Area Plan goals.

The covenants converting the MARKs to CAFs will result in the eviction of those tenants whose incomes are higher than those permissible for occupancy of CAFs. The applicant cannot permit those tenants to remain in their units after the applicant issues those covenants, as this would reduce the number of CAFs available for the TDR. This may create a hardship to those tenants because the shortage of MARKs and “Missing Middle” housing within Arlington County may force them to leave the county. (For information about “Missing Middle” housing, see the County’s webpage entitled “[What is Missing Middle?](#)”). **RESPONSE:** The Neighborhoods Area Plan associated the goal of “preserving or replacing” existing MARKs to renters earning both 60% and 80% of the AMI. Staff continues to work with the applicant to develop an accurate inventory of existing tenant incomes to confirm the appropriate AMI levels for purposes of establishing CAFs on this site. This will help address any potential threat of displacement that could be associated with the proposed conversion, one in which the County Board has the authority to modify some of the AMI levels prescribed by the N-FBC based on the site’s location.

It is important to recognize that the income limitations of CAF units provide disincentives for their residents to increase their incomes. In contrast, MARK units have no income limitations and therefore have no such disincentives for their residents. **RESPONSE:** CAFs offer housing stability, predictable rent levels, and come with income limitations given the tax credit restrictions and/or County Board conditions of approval so that the neediest of Arlington residents can find good housing. If a renter prices out of a CAF (at up to 60% or up to 80% AMI) it may mean the renter/household can qualify for market rate housing. MARKs in contrast offer housing by private owners based on market pricing with no predictability to rent costs. While MARKs may have rents that are more affordable or attainable to lower wage earners and there are no set maximum income levels to rent, there is no predictability that the rent level will remain affordable in the future or that these units become overcrowded with no limitations on occupancy.

TDRs to receiving sites that are far from sending sites, while permitted by the Affordable Housing Master Plan, can be undesirable for receiving sites that are located in densely developed areas. When near an interstate highway (as I-66 is in Ballston), the increased densities resulting from such TDRs serve to increase traffic congestion on the highway, on arterial streets such as Wilson Boulevard and Glebe Road, and on neighborhood streets. **RESPONSE:** County policy allows for the transfer of density from sending sites that meet specific purposes (public facility, open space, historic preservation, affordable housing, or other as determined by County Board) to receiving sites that are approved by site plan. Consistent with this policy, sites in the Rosslyn-Ballston Corridor represent potential receiving sites and are appropriate to consider additional density through the TDR mechanism. It has been well documented that the mixed use development corridor creates high demand for multimodal travel and traffic congestion has continued to decline for multiple decades.

This is especially relevant to Ballston. The Virginia Department of Transportation (VDOT) recently needed to add two traffic lanes to I-66 immediately west of Ballston because of the excessive traffic congestion that development within the Rosslyn-Ballston corridor had created. TDRs that add density to Ballston would serve to add even more traffic to I-66, thus helping to fill the two lanes that VDOT recently added to the highway. **RESPONSE:** See note above.

A TDR for The Haven would do little or nothing to accomplish any significant goal of a TDR or of a designation as a Neighborhood FBC Conservation Area related to historic preservation. Page 12 of the staff presentation for the May 11, 2022, meeting of the FBC-AWG states that the Monterey Apartments is on the inventory of historically significant complexes contributing positively to the Columbia Pike corridor, as shown on page 4.17-4.18 of the Columbia Pike Neighborhoods Area Plan. **RESPONSE:** As sites found on the HRI listings continue to redevelop (either by-right or through the Neighborhoods FBC), staff will continue to identify opportunities where a willing property owner is interested in preserving existing open space, affordability, and/or historic character of garden-style apartments within the Columbia Pike corridor. As previously noted in staff's presentations, the Haven apartments, while smaller in overall unit count or site area, still share many of the characteristics found in the Barcroft and Fillmore Garden complexes. It is for those open space, affordability, and architectural character reasons why staff supports the conservation area designation.

The proposed TDR does not include the Monterey Apartments. That garden apartment complex is on the opposite side of S. Florida Street from The Haven. Monterey Apartments closely resembles The Haven, as it was part of the same development, had the same architect, and was constructed during the same period (1949-1950) as The Haven. To have provide a significant benefit for the historic preservation of the County's garden apartments, **the TDR, an accompanying TDR, or a designation as a Neighborhood FBC Conservation Area must also include the property that contains the Monterey Apartments.** **RESPONSE:** See above response regarding staff seeking opportunities to partner with a willing property owner. The Monterey Apartments are under separate ownership and also controlled by a separate Site Plan approval. Staff's assessment of the current proposal on the Haven site is not dependent on, or otherwise influenced by, what may or may not occur across S. Florida Street. The specific interest by the Monterey property owner in either redeveloping or preserving their property should have no bearing on how staff evaluates the specific Haven request.

The TDR recipient site, the Ballston-Macy's site, contains the last intact remnant of the Parkington Shopping Center, except for its County-owned garage. Page 14 of the Historic Resources Inventory identifies Parkington as a historic resource. **The site plan proposes the demolition of this last building remnant of the Shopping Center,** which was historically one of the most important features of the Ballston sector. **RESPONSE:** The Parkington Shopping Center is ranked in the Minor category within the HRI because of the building's substantial alterations completed over time (this is the fourth HRI category below "Notable"). These alterations support staff's recommendations to focus on the interpretation of the site's history, particularly its commercial history. HALRB representatives are also in support of this approach of honoring the Parkington Shopping Center rather than attempting to preserve the altered structure. Additionally, staff considers the "combined community benefits derived from the sending and receiving sites outweigh the loss of the receiving site's historic resource and address valuable County initiatives."

The County strongly discourages a TDR for a transfer such as this one by stating in page 2 of its web page entitled "[Phase 1 Historic Resources Inventory \(HRI\) Goals and Property Objectives](#)", which the County Board adopted on October 18, 2011: "The County will actively promote Transfer of Development Rights (TDR) in exchange for building preservation. **However, a TDR received from an historic site for purposes of historic preservation by a receiving site plan that proposes demolition of a listed historic resource is strongly discouraged unless the combined community benefits derived from the sending and receiving sites are determined by the County Board to outweigh the loss of the receiving site's historic resource and address valuable County initiatives.**" **RESPONSE:** See response above. As noted, the County Board can evaluate all factors as it deliberates and considers approval of the proposed TDR density certification.

The receiving site contains Parkington's last surviving building remnant. The Havens is one of 31 "Notable" garden apartments in the Inventory. The combined community benefits derived from the sending and receiving sites therefore cannot outweigh the loss of the receiving site's historic resource. **RESPONSE:** Staff disagrees.

Designation of The Haven as a Historic Preservation Overlay District

The County does not need to grant a TDR to assure the preservation of The Haven. I have therefore nominated The Haven for designation as a Historic Preservation Overlay District in accordance with Section 11.3 of the Arlington County Zoning Ordinance (ACZO). This designation would provide a greater protection to “The Haven” than a TDR would, as it would require that the Historical Affairs and Landmark Review Board (HALRB) or the County Board approve a Certificate of Appropriateness (CoA) for any changes to the exteriors of the buildings that a property owner may propose.

It is important to recognize that the County Board has designated at least one such District despite the objections of the property owner. The County Board has also established at least one such District after the property owner objected to the designation and the HALRB reduced the proposed area that the District would cover. RESPONSE: Staff disagrees with this assessment. In most instances, the County Board has established a practice of designating sites in this manner only with the property owner’s support and consent. The last instance of an exception to this practice dates to 1989. The distinction between the two processes is inaccurate as the HALRB plays a key role in reviewing the current proposal and any subsequent changes that may be proposed in the future once the historic preservation easement is established on the site (see references to the N-FBC provided at the end of this document). Conditions reinforcing this review will likely be included in the easement when it is recorded. It is also important to note that a historic preservation easement provides the strongest protection for a historic property by preventing demolition.

On October 18, 1989, the HALRB held a public hearing to consider the historical significance of the Travers Family Graveyard, which is located at 1309 South Monroe Street (see [HALRB letter dated January 19, 1990](#)). The Graveyard is located in the Douglas Park neighborhood, two blocks south of Columbia Pike.

The Arlington Historical Commission had previously identified the Graveyard in 1975 to be one of 18 burial grounds in the County. The Graveyard had been placed on County’s Inventory of Historic Resources as a result of this identification. The graveyard was in jeopardy in 1989 because the owners, who were planning to redevelop the property, had petitioned the Circuit Court for permission to disinter the graves and move the remains to another location.

The HALRB’s Survey Committee reported at the hearing that the Graveyard met the County’s criteria for historical significance. **The attorney representing the property owners at the hearing did not concur with the Survey Committee’s evaluation** (see HALRB letter dated January 19, 1990, page 2).

On January 19, 1990, the HALRB sent a letter to the County Board that recommended that the Board designate the Graveyard as a historic district. The Board designated the Graveyard as a Local Historic District on February 10, 1990 (see [County webpage for Travers Family Graveyard](#)).

More recently, the HALRB held a public hearing on October 19, 2016, to consider the designation of the Robert Ball Sr. Family Burial Ground at 4201 Fairfax Drive in Ballston as a Local Historic District (see [agenda for October 19, 2016, HALRB meeting](#)). A representative of the property owner (the Central United Methodist Church), who had submitted a site plan application for the property’s redevelopment, expressed its opposition to the designation at the hearing. The representative stated that the designation would prevent the property’s redevelopment.

After hearing the owner’s objections, the HALRB voted to recommend to the County Board the Historic District designation of a smaller portion of the property than its Survey Committee and the Historic Preservation Program staff had recommended. The property owner then revised its site plan in December 2016 to preserve the reduced area for which the HALRB had voted to recommend designation.(see [County Manager’s report dated February 24, 2017](#), pages 3-4). **RESPONSE: Staff is recommending the preservation of the entire Haven site via a historic preservation easement. The property owner is not supportive of only preserving a portion of the site, which would reduce the total amount of units eligible to be transferred to the Ballston site plan.**

In February 2017, Historic Preservation Program staff updated the proposed designation (see [Robert Ball Sr. Family Graveyard Historic District Designation Form, October 2016, updated February 2017](#)). The property owner supported the updated designation (see County Manager's report dated February 24, 2017, page 2). The County Board then approved the updated designation during a public hearing on February 28, 2017 (see [February 27, 2017, recessed County Board meeting minutes](#), agenda item no. 31.E.). **RESPONSE:** Designating the Haven Apartments as a Local Historic District is not a viable path forward given the role TDR plays in this process and the property owner's willingness and support for full-site preservation via a historic preservation easement. Although both a Local Historic District and a historic preservation easement remain as available options, preserving the Haven Apartments via a historic preservation easement provides stronger preservation protections and more combined community benefits.

During the May 11, 2022, FBC-AWC meeting, a County staff member and a member of the Planning Commission expressed their concerns that the County Board will not designate a property as a Historic District Overlay District if a property owner opposes the designation. As the above examples show, **this is not a valid concern.** **RESPONSE:** Staff is supportive of utilizing a historic preservation easement because it achieves multiple community benefits. As noted above, while the County Board can and has designated historic district overlays when an owner dissents, this is not common practice for the County Board to use the overlay tool particularly in the presence of other tools to support preservation and affordability as proposed here.

The Historic Preservation Program has a backlog for requests for designation of properties as Historic Preservation Overlay Districts. The backlog may delay for several years the Program's processing of The Haven for such designation. However, the Program often assigns high priorities to the processing of designation requests when the demolition or destruction of a historic property becomes imminent (for example, see the historic designation of the Robert Ball Sr. Family Burial Ground, above). **RESPONSE:** In this case, demolition or redevelopment of the Haven site is not considered imminent and therefore the recently submitted request would not rise to a high level of prioritization over other applications that have been submitted earlier but which are yet to be fully evaluated. There is a higher chance that the implementation of a historic preservation easement would be completed faster than otherwise achieving a Local Historic District designation on this site.

Historic Preservation Easement

Slide 13 of the staff presentation for the May 11, 2022, meeting of the FBC-AWG states that a Historic Preservation Easement is required to document the density transfer. Neither the County's websites for the TDR nor for the Ballston Macy's project contain any documents that the applicant may have submitted that propose or describe any such Easement.

There is presently no assurance that the applicant will submit an application for a Historic Preservation Easement or will receive any such Easement. Further, the terms of any such Easement are presently unknown. **The County should defer any further consideration of the applicant's TDR request until it receives from the applicant information about any such Easement and permits the public to review the terms of that Easement.** **RESPONSE:** The Neighborhoods FBC is silent on the specific mechanism by which historic preservation of Conservation Areas must occur (other than specifying a use permit must be approved by the County Board). Staff and the applicant will continue to discuss, and the County Manager will make a recommendation to the County Board on the mechanisms to ensure building preservation and affordability terms are met. Staff may consider preservation easements, which is a tool used under the Commercial FBC. The applicant submitted a statement of justification letter for the use permit that would certify the Haven Apartments as a TDR sending site and indicates establishing the property as a conservation site within the Neighborhoods FBC. The application specifically states: "With respect to historic preservation, the buildings, by virtue of the Haven Site's inclusion within a Conservation Area, would henceforth be subject to the CPN-FBC's architectural preservation requirements including the Conservation Area standards set forth in Part 7 of the CPN-FBC."

During the May 11 FBC-AWG meeting, County staff stated that the HALRB must approve any proposed changes that properties that Historic Preservation Easements cover. **This is not correct.**

The [HALRB's web page](#) states:

“The Historical Affairs and Landmark Review Board (HALRB) advises the County Board on historic preservation matters. The HALRB nominates properties for local and national designation and reviews plans for exterior alterations, demolition, and new construction in locally designated Arlington historic districts through a Certificate of Appropriateness (CoA) process.

The web page contains no information that suggests that the HALRB reviews or approves applications for Historic Preservation Easements or reviews or approves plans for alterations, demolition, or new construction on properties that such easements cover. The CoA process only involves locally designated historic districts. The process is not applicable to properties that preservation easements cover unless the County Board has also designated those properties as local historic districts.

The HALRB will therefore be unable to review or approve any proposed changes to the property containing The Haven unless the property also becomes a designated local historic district. A Historic Preservation Easement does not provide any such designation. **RESPONSE:** Content presented by staff on May 11 comes from the following N-FBC sections:

Section 205.E:

D. Review by Historical Affairs and Landmarks Review Board (HALRB)

DEVELOPMENT PROJECTS within areas designated as CONSERVATION AREAS and areas designated ADJACENT TO CONSERVATION AREAS on the REGULATING PLAN shall be subject to review by the HALRB, as follows:

1. As part of the preliminary application phase, an applicant shall submit its DEVELOPMENT PROJECT to the HALRB for two meetings (or more, if necessary) for review and comment (HALRB and/or DRC meetings in one month shall count as one meeting). The HALRB, and/or its Design Review Committee (DRC), shall review the proposed architectural design to assess whether the application complies with *Part 7. Conservation Area Standards* of this Code.
2. Upon completion of its preliminary review, the HALRB will provide, in writing, its comments to the applicants stating how the project does or does not comply with *Part 7*.
3. The applicant shall address the HALRB comments and return to the HALRB for one additional meeting for final review and comment.
4. HALRB shall prepare a written recommendation as to whether the DEVELOPMENT PROJECT complies with *Part 7*, for consideration by the County Board. The County Board will consider the HALRB recommendation in approving a use permit pursuant to *Section 206.C.2.d*.

Section 702.D:

D. Role of the Historical Affairs and Landmark Review Board

The County’s Historical Affairs and Landmark Review Board (HALRB) shall review all Development Projects within areas identified as Conservation Areas and Adjacent to Conservation Areas on the Regulating Plan. The HALRB shall review proposals in accordance with *Part 206.D* and shall forward a written recommendation to the County Board as to whether the Development Project complies with the standards in this *Part 7*.