

1. Agenda

Documents:

[BOMC-6-11-18-SCWS-AGENDA.PDF](#)

2. Meeting Called To Order/Adoption Of Agenda

3. Presentation Of Hobbs-Wells Street Townhomes

- 3.I. Zoning Review

Documents:

[ZONING REVIEW HOBBS.WELLS F REV.PDF](#)

- 3.II. Draft Development Agreement

Documents:

[AVONDALE RESIDENTIAL DEVELOPMENT AGREEMENT 041318 REVISED V3.PDF](#)

4. Public Comment

5. Adjournment



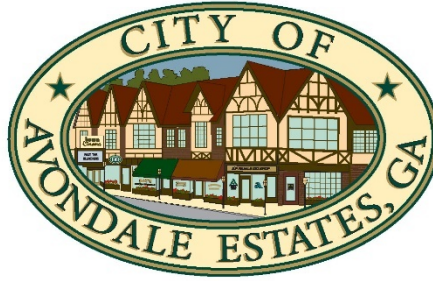
**BOARD OF MAYOR AND COMMISSIONERS  
SPECIAL CALLED WORK SESSION**

**June 11, 2018**

**4:30 p.m.**

**AGENDA**

- Item No. 1            Meeting Called to Order
- Item No. 2            Adoption of Agenda
- Item No. 3            **Presentation of Hobbs-Wells Street Townhomes**  
Icon Residential will informally present their plan for townhomes at Hobbs and Wells Streets to members of the Board of Mayor and Commissioners.
- Item No. 4            Public Comment
- Item No. 5            Adjournment



## Memo

**To: Planning and Zoning Board**

**From: City Staff**

**Date: April 13, 2018 -REV. May 22**

**RE: Avondale Residential, LLC-0 Wells Street (Hobbs Street/Wells Street)**

**Current Zoning: Central Business District (CBD) Area 2**

**Proposed Zoning: Central Business District Planned Development (CBD-PD)**

**Overview:** The proposed project, located at the intersection of Wells Street and Hobbs Street known as parcel #18 009 11 002, is located within the Northern Gateway Subarea (Area 2). The applicant and owner, Avondale Residential, LLC, proposes 34 fee simple townhomes (15.90 units per acre) on 2.138 acres. The applicant has proposed a land swap, .116 acres, as illustrated on the Right of Way Exhibit which would allocate a portion of a cul de sac to the applicant and convey an almost equal amount of greenspace to the City.

The applicant submitted an application for CBD-PD (Central Business District Planned Development). A Development Agreement has been drafted by the City Attorney and is included. Exhibits L and M are legal descriptions which will be provided later, so they are not included in your packet.

**Variance List:** The following is a list of the sections from the Zoning Ordinance that the proposed plans do not meet or are not addressed. A detailed explanation of each has also been provided below.

Sec. 1113.03. I. A. 4. - Density

Sec. 1113.04. I. A. 1. - Height

Sec. 1113.04. I. C. 2. - Setback Use

Sec. 1113.05. I. A. 2. a) and b) - Park/Open Space

Sec. 1113.06. I. A. - Street Furniture and Tree Planting Zone

Sec. 1113.06. I. B. - Clear zone requirements

Sec. 1113.06. I. C. 1. - Street Trees

Sec. 1113.06. I. C. 3 - Street Trees

Sec. 1113.08. I. F. 1. /3. - Access/Building

Sec. 1206. - Buffers

**Details for each variance and other notes:**

**Sec. 1113.03. I. A. 4.** Maximum gross density for single family detached dwellings shall be five (5) units per acre: maximum gross density for single- family attached dwellings shall be ten (10) units per acre and maximum gross density for multi-family dwellings shall be forty (40) units per acre.

Staff Notes: Single-Family Attached: 15.90 units per acre proposed instead of the permitted 10 units per acre. 13 additional units.

**Sec. 1113.04. I. A. 1.** Every structure must comply with the maximum building height limits provided for herein on each side of the building. For each side of a building, building height shall be measured vertically from the average grade of the curb elevation adjacent to the lot to the highest point of the façade on that side of the building.

Staff Notes: The ordinance has 36' as the maximum height (without bonuses). The building elevations indicate 40'. Applicant indicated that there is a 4' parapet wall concealing mechanical equipment.

**Sec. 1113.04 I. C. 2.** (Side and rear yards) - Shall be used only for passive landscape, outdoor dining and patios.

Staff Notes: Wells Street is technically the side based on the definition of side. There are sidewalks and walkways in the setback. There are also walkways to the south side of the property adjacent to the PATH Trail.

**Sec. 1113.05. I. A. 2. a) and b)**

Newly created parks or open spaces shall conform to the following:

- a) A minimum of fifty percent (50%) of the park or open space's perimeter shall abut a public right-of-way.

Staff Notes: Not met on the interior open space if the streets are private. Not met on other proposed open space.

- b) The front façade of adjacent buildings shall be oriented to face onto the park or open space. Rear elevations shall be prohibited from abutting the park or open space and shall be substantially consistent with the front elevation as to architectural style, building materials and exterior finishes.

Staff Notes: Not met.

**Sec. 1113.05. I.B. 1. /2.** Open space implementation and maintenance.

Staff Notes: Needs to be addressed at time of permitting.

**Sec. 1113.06. I. A.** Street furniture and tree planting zone requirements. The zone shall be located immediately adjacent to the curb and shall be continuous. The zone shall meet the tree planting requirements listed below. In addition to the required planting of trees, this zone may also be used for the placement of street furniture, trash receptacles, newspaper vending boxes, bus shelters, bicycle racks and similar elements.

Staff Notes: Not met along Hobbs Street. There is no street furniture and tree planting zone. The requirement is for 7'.

**Sec. 1113.06 I. B.** Clear zone requirements.

Staff Notes: The 5' requirement is not met on the south east side past the curb cut along Hobbs Street towards North Clarendon Avenue.

**Sec. 1113.06. I. C. 1.** Street trees are required and shall be planted on center within the street furniture and tree planting zone in the ground at thirty (30) foot intervals and, wherever possible, spaced an equal distance between street lights.

Staff Notes: The proposed trees along Hobbs Street do not meet this requirement. There is parking along this street. Street lights not shown.

**Sec. 1113.06. I. C. 2.** All newly planted trees shall have a minimum diameter of four (4) inches measured four and one-half feet above finished grade, shall have a minimum mature height of forty (40) feet, and shall be pruned to a minimum height of eight (8) feet.

Staff Notes: Mature height not noted.

**Sec. 1113.06. I. C. 3** Trees shall have a minimum planting area of thirty-two (32) square feet.

Staff Notes: Not noted or shown.

**Sec. 1113.06. I. E.** Utilities shall be placed underground.

Staff Notes: Not shown. Confirmed but not noted on the plans.

**Sec. 1113.08. I. B.** Building materials. New development or renovation on any exterior portions of the building shall utilize building materials as approved by the Architectural Review Board.

Staff Notes: Must be submitted.

**Sec. 1113.08 I. F. 1. /3.**

1. All primary pedestrian entrances not adjacent to a public sidewalk shall be linked to the public sidewalk with a pedestrian walkway a minimum of five (5) feet wide.

Staff Notes: Some walkways are 4'.

3. Such buildings shall have windows at sidewalk-level on each street frontage façade that are substantially similar in size to the sidewalk level front facade windows.

Staff Notes: The corner units do not meet this requirement.

**Sec. 1113.08 II. Loading and Screening**

Staff Notes: None proposed.

**Sec. 1206-Buffers** O-I, NS, GC, LI and MD, CBD District Developments - A planted buffer having a minimum width of 10 feet shall be provided along any public right-of-way. Upon a determination by the Building Official that the buffer alone will not provide adequate screening, a six-foot fence or wall may be required to supplement the **buffer**. **However**, no fence or wall may be installed in such a way that construction of the fence or wall would destroy existing vegetation that, in itself, provides visual screening between the nonresidential or multi-family use and the residential district. Such fencing shall be located on a minimum setback of 20 feet from the common property boundary to afford the residential use the benefit of landscaping.

Staff Notes: No buffers are provided.

Correction: The applicant will correct the label on Z1 which list the PATH as a City Trail.

**DEVELOPMENT AGREEMENT**

**THIS DEVELOPMENT AGREEMENT** (the “Agreement”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2018 between **AVONDALE RESIDENTIAL, LLC**, a Georgia Limited Liability Company (hereinafter referred to as “**Icon Residential**”), and the **CITY OF AVONDALE ESTATES, GEORGIA**, a Georgia Municipal Corporation (hereinafter referred to as the “**City**”). Icon Residential and the City may hereinafter be referred to collectively as the “Parties” and individually as a “Party.”

**WITNESSETH**

**WHEREAS**, Icon Residential owns or has contracted to acquire certain real property comprised of 2.138 acres located in Land Lot 9 of the 18th District of DeKalb County, the City of Avondale Estates, Georgia and as more particularly described by **Exhibit “A”** and incorporated herein and by this reference made a part hereof (referred to herein as the “**Subject Property**” but note the subsequent change to the definition of “Subject Property” per Section 12(C) of this Agreement); and

**WHEREAS**, in keeping with that certain Downtown Master Plan for the City of Avondale Estates updated March 20, 2014, and adopted by the City as a planning document (the “**Downtown Master Plan**”), Icon Residential intends to develop the Subject Property as a townhome development in conformance with the terms of this Agreement and in material conformance with **Exhibits “B” through “K”** attached hereto (collectively, the “**Project Plans**”), such Exhibits “B” through “K” being incorporated herein and by this reference made a part hereof (the “**Project**”); and

**WHEREAS**, Icon Residential may desire to sell or convey a portion of the Subject Property to a third party or parties and the Parties agree that, unless this Agreement is terminated or amended in accordance with the terms hereof, any subsequent owner of any portion of the Subject Property will be bound by the terms hereof; and

**WHEREAS**, the City has adopted that certain Ordinance Number 0605 (the “**Zoning Ordinance**”) which establishes certain zoning requirements with respect to the City’s Central Business District (as defined in the Zoning Ordinance); and

**WHEREAS**, the Subject Property lies within the City’s Central Business District; and

**WHEREAS**, the Parties desire to agree on certain site-specific development controls that will apply to the Project and those agreements are set forth herein.

**NOW, THEREFORE**, in consideration of ten dollars in hand paid, other valuable consideration, and the mutual promises and agreements herein set forth, the parties hereto agree as follows:

City \_\_\_\_\_  
Icon Residential \_\_\_\_\_

1. **Recitals.** The above stated recitals are hereby incorporated into and made a part of this Agreement.
2. **Exemption of Project from Certain City Zoning Ordinance Provisions.**

The Project Plans include certain improvements that may not strictly comply with those certain articles and sections of the Zoning Ordinance identified below in Part B of this Section 2 (collectively, the “**Exempt Zoning Requirements**”). The Parties agree that, subject to Section 9(g) below, so long as the Project is developed in material conformance with the Project Plans, attached hereto as Exhibits “B” through “K” and listed below in Part A of this Section 2, the Subject Property is exempt from and is not required to comply with the Exempt Zoning Requirements. The City represents and warrants to Icon Residential that it has full power and authority to enter into this Agreement and enforce all the terms and provisions set forth herein. Furthermore, the City represents and warrants to Icon Residential that it has complied with all public processes, public hearings, and other applicable laws, regulations, and requirements necessary to authorize the City to enter into this Agreement, exempt the Subject Property from the Exempt Zoning Requirements, and enforce all the terms and provisions set forth herein.

A. Project Plans for the Project:

**Exhibit B** – Conceptual Site Plan (Sheet Z-1)

**Exhibit C** – Right of Way Exhibit (Sheet RW)

**Exhibit D** – Parking Exhibit (Sheet PE)

**Exhibit E** – Schematic Building Elevations: The Hobbs-Building 1

**Exhibit F**– Schematic Building Elevations: The Hobbs Buildings 2 & 4

**Exhibit G** – Schematic Building Elevations: The Hobbs-Buildings 3 & 5

**Exhibit H** – Elevations: The Hobbs-Building 6

**Exhibit I** – Project Material Board

**Exhibit J** – Conceptual Landscape Plan (LI.00)

**Exhibit K** – Tree Plan (TPR.1, TPR.2)

B. Exempt Zoning Requirements:

- i. **Article 7** (“General Provisions”). Subject to Section 9(g) below, so long as the Project is developed in material conformance with the Project Plans, the



Project is exempt from and is not required to comply with Article 7 of the Zoning Ordinance in its entirety.

- ii. **Article 11** (“District Development Standards”). Subject to Section 9(g) below, so long as the Project is developed in material conformance with the Project Plans, the Project is exempt from and is not required to comply with Article 11 of the Zoning Ordinance, except the following Sections of Article 11, which shall apply to the Project:
  - a. Article 11, Section 1113.05(I)(B)(1 and 2) regarding Open Space implementation and maintenance,
  - b. Article 11, Section 1113.06(I)(E) regarding placing utilities underground, and
  - c. Article 11, Section 1113.08(II) regarding loading and screening, and
- iii. **Article 12** (“Development Standards”). Subject to Section 9(g) below, so long as the Project is developed in material conformance with the Project Plans, the Project is exempt from and is not required to comply with Article 12 of the Zoning Ordinance except the following Sections of Article 12, which shall apply to the Project:
  - a. Article 12, Section 1201(VIII) regarding fire safety,
  - b. Article 12, Section 1201(IX) regarding outdoor storage, and
  - c. Article 12, Section 1204 (I and II) regarding parking areas.

### **3. Applicability of City Ordinances to the Project.**

The Parties expressly agree that, except as otherwise expressly provided herein, all applicable City ordinances shall remain in full force and effect and the Project and Subject Property shall be governed by all such applicable City ordinances including, but not limited to, various permitting requirements. Notwithstanding anything set forth in this Agreement or in any ordinance that is applicable to the Subject Property to the contrary, so long as the Project is developed materially in accordance with the terms of this Agreement, the zoning conformance status of the Project shall be deemed to be legally conforming in all respects.

### **4. Casualty or Condemnation.**

In the event that all or any portion of the improvements to the Subject Property are substantially damaged by fire or other casualty or condemned, the owner of the Subject Property shall have the right to rebuild a new development on the Subject Property, and the improvements to be re-built (the “**New Project**”) shall be exempt from the Exempt Zoning Requirements and shall be deemed to be legally conforming in all respects so long as (a) the number of units in the

New Project is the same or fewer than the number of units set forth in the Project Plans, (b) the building height of the New Project is the same or lower than the building height set forth in the Project Plans, and (c) the unit size of the New Project is the same or similar to the unit size set forth in the Project Plans. Provided however, that the plans and specifications related to the exterior design aesthetic of the New Project must be submitted to the City’s Architectural Review Board and approved before building permits for the New Project will be issued.

**5. Special Provisions.**

In consideration of the mutual promises and covenants set forth herein, subject to Section 9(g) below, Icon Residential agrees to develop the Project in material conformance with the following:

- A. Single Family Attached units: The Subject Property is permitted to include no more than 34 residential units.
- B. Private Drives: The paved drives shown on the Project Plans will be developed in conformance with such Plans. Such paved drives will be developed and maintained as private ways and will not be dedicated to nor accepted by the City.

**6. Permitted Use for the Project.**

The Parties recognize and acknowledge that (i) Article 9 of the Zoning Ordinance requires conditional use approval by the City for single family attached uses in the Central Business District Area 2 Zone and (ii) the Subject Property is within the Central Business District Area 2 Zone. Execution of this Agreement by the City is intended to and hereby does constitute the City’s conditional use approval for the Project as required under Article 9 of the Zoning Ordinance, pursuant to Section 1115.03 of the Zoning Ordinance.

**7. Notices.**

All notices, requests, demands or other communications hereunder shall be in writing and deemed given (a) when delivered personally (including by courier), or (b) on the third (3rd) day after said communication is deposited in the U.S. Mail, by registered or certified mail, return receipt requested, postage prepaid, or (c) on the next business day after said communication is delivered to a nationally recognized overnight courier (e.g. FedEx), addressed as set forth below:

If to Icon Residential: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

City \_\_\_\_\_

Icon Residential \_\_\_\_\_

If to the City: City of Avondale Estates  
Attention: Ken Turner, Interim City Manager  
21 North Avondale Plaza  
Avondale Estates, Georgia 30002

With a copy to: Bob Wilson, Esq.  
Two Decatur TownCenter  
125 Clairemont Ave, Suite 420  
Decatur, Georgia 30030

**8. Insurance.**

Icon Residential, or its general contractor, shall at all times maintain, at its sole expense, comprehensive general liability insurance with a single limit amount of not less than \$1,000,000.00 and an aggregate of \$2,000,000.00 against claims for personal injury and damage to property.

**9. Miscellaneous Provisions.**

a. The Parties hereby mutually represent that all necessary approvals for such Parties to enter into this Agreement have been detailed and that by virtue of the signatures herein below, the Parties acknowledge that they are authorized to execute this Agreement.

b. The Parties intend for this Agreement to be severable, and if any provisions shall be construed to be illegal or invalid for any reason, such illegal or invalid part of this Agreement shall not affect the legality or validity of the other provisions set forth herein, provided that the Project remains practicable in the absence of such invalid or illegal provision.

c. The Parties represent and acknowledge that in executing this Agreement they do not rely upon, and have not relied upon, any representation or statement made by any other Party by any other Party's agents, representatives, or attorneys with regard to the subject matter, basis or effect of this Agreement except as specifically provided herein.

d. This Agreement shall be binding upon each of the Parties hereto and their heirs, administrators, representatives, executors, successors and assigns, and upon any corporations, partnerships, or business entities owned or operated by any of the Parties.

e. This Agreement may be executed in multiple counterparts, and all such counterparts shall be taken together so that they may constitute a completely executed Agreement between the Parties.

f. This Agreement may not be assigned by Icon Residential to any other party except that upon completion of development of the Project and issuance of all required certificates of occupancy, Icon Residential may assign this Agreement to one or more individuals or entities, in connection with a sale of the Project and the Subject Property, or a portion thereof, to such individuals or entities.

g. This writing represents the entire Agreement between the Parties. No amendment to this Agreement shall be effective unless consented to in writing by all Parties hereto. Notwithstanding anything in this Agreement to the contrary, minor modifications to the Project Plans may be approved by the City Manager on behalf of the City without the specific approval of the governing body, the City or any other party and without an amendment to this Agreement.

h. Upon completion of development of the Project, so long as the Project has been developed in material accordance with this Agreement (subject to Section 9(g)), if requested by Icon Residential, the City shall deliver to Icon Residential an estoppel certificate confirming that the Project is in compliance with all terms of this Agreement and that Icon Residential is in compliance with all terms of this Agreement.

i. The parties recognize that O.C.G.A. § 13-10-90, et seq., regarding illegal immigrants, and related state regulations may apply to the performance of certain work required for the Project whether performed by Icon Residential, or their agents, employees, contractors, subcontractors or assigns.

j. To the extent compliance with O.C.G.A. § 13-10-90, et seq. is required, Icon Residential agrees that it will be solely responsible for ensuring such compliance and agrees to indemnify, defend and hold harmless the City, its elected officials, administrators, other employees, and agents, for any fine or other penalty incurred by the City for a violation by Icon Residential of such act.

## **10. Property Exchange**

- A. The City owns certain property adjacent to the Subject Property. Such City-owned property consists of 5,055.07 SF and is more particularly described by **Exhibit "L"** hereto.
- B. Icon Residential has designated a portion of the Subject Property, consisting of a total of 5,057 SF, for conveyance to the City in exchange for the property identified in subsection A of this Section. A legal description of such property, is attached hereto as **Exhibit "M"**.
- C. The parties agree to exchange the property identified in subsection A and the property identified in subsection B. Such conveyances shall be made by quitclaim deeds. Further details concerning this exchange are set forth in Section 12 below.

**11. Mandatory Homeowners Association**

- A. Prior to conveying any portion of the Subject Property to any third party, Icon Residential shall record a covenant running with the land on the property records for the Subject Property. Such covenant shall require that any owner of any portion of the Subject Property be a member of a mandatory homeowner’s association for the Subject Property. Such recorded covenant shall require such homeowners’ association to upkeep and maintain in good repair in perpetuity the following:
  - 1.) all common areas;
  - 2.) all building exteriors and roofs;
  - 3.) all streets, roads, driveways, sidewalks or similar paved spaces; and
  - 4.) the property that is identified in Section 10(B) of this Agreement that will be owned by the City.
- B. A copy of the recorded covenant described in Subsection A of this Section shall be provided to the City Manager as a pre-condition to the issuance of any certificate of occupancy for the Subject Property.
- C. The City, at its sole discretion may assume control and maintenance of the property identified in Section 10(B) of this Agreement by giving written notice to Icon Residential.

**12. Lot Reconfiguration and Subdivision**

- A. As a precondition to the issuance of a land disturbance permit for the Project, Icon Residential shall perform the necessary steps for lot reconfiguration as follows:
  - 1.) Icon Residential will record a lot split separating the Subject Property into two lots: one lot being the property identified in Section 10(B) and the other being the remainder of the Subject Property;
  - 2.) Icon Residential will then convey the tract identified in Section 10(B) to the City;
  - 3.) within fifteen days of receiving the quitclaim deed conveying the property identified in Section 10(B) to the City, the City will convey the property identified in Section 10(A) to Icon Residential; and
  - 4.) Icon Residential shall then record a lot combination combining the Subject Property, minus the property identified in Section 10(B), and the property identified in Section 10(A) into a single lot.
- B. Once the lot combination contemplated by Section 12(A)(4) is complete, the term “Subject Property” as used herein shall thenceforth refer to the area encompassed by

the lot combination described in Section 12(A)(4) and Exhibit "A" shall be replaced with a legal description of such Subject Property.

C. Icon Residential may then wish to subdivide the Subject Property. This Agreement shall constitute the City's final approval of the zoning aspects of a subdivision within conformance the Project Plans pursuant to Section 1115.07 of the Zoning Ordinance. Icon Residential shall be required to comply with the substance and procedure of City Code Appendix B, except such requirements may be modified pursuant to § 20-4 thereof.

**IN WITNESS WHEREOF**, the parties hereto have signed this Agreement under seal the day and year first above written.

Attest: **City of Avondale Estates, Georgia**  
a Georgia Municipal Corporation

\_\_\_\_\_  
Gina Hill, City Clerk

\_\_\_\_\_  
Mayor Jonathan Elmore

[Municipal Seal]

Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Robert E. Wilson, City Attorney

**AVONDALE RESIDENTIAL, LLC,**  
a Georgia limited liability company

By: \_\_\_\_\_  
Its Authorized Representative  
Printed Name: \_\_\_\_\_  
Date: \_\_\_\_\_

Witness:

\_\_\_\_\_  
Notary Public