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## I. EXECUTIVE SUMMARY

Applicant:	Washington Property Company
LMA No. & Date of Filing:	G-876, filed May 27, 2008
Current Zone and Use:	The property consists of three lots (P754, P758 & N760) totaling 1.76 acres which are improved by the First Baptist Church of Wheaton and associated parking. The property is zoned R-60.
Zoning and Use Sought:	LMA G-876 proposes to rezone all lots to the TS-R Zone, in order to develop a maximum of 245 residential units with subsurface parking and possibly an unspecified amount of non-residential uses.
Location:	West side of Georgia Avenue just south of its intersection with Viers Mill Road; adjacent to Westfield Wheaton Shopping Center to the immediate northwest and within 1,500 feet of the Wheaton Metro Station.
Density Permitted in TS-R Zone:	2.5 FAR.
Density Planned:	Not to exceed 2.5 FAR, 245 Dwelling Units, Max., including 31 MPDUs (12.5%). Total Gross Floor Area: 230,250 sq.ft.
Public Use Space Proposed:	Proposed 10.3% (10% Required).
Active & Passive Recreation Space:	Proposed: 30.2% (25% Required).
Parking Required/Planned:	256 spaces (Required); 222 planned; proposes waiver of parking requirements pursuant to Code Section 59-E-4.5
Height Planned:	70 feet, maximum.
Zoning History:	Zoned R-60 since 1958; a special exception for private educational institution for 36 children approved in 1976.
Traffic & Environmental Issues:	No LATR traffic improvements required due to proximity to Wheaton Metro Station; intrusion into stream buffer along western boundary to be mitigated by stream restoration improvements off-site.
Zoning Issues:	Parking waiver required.
Consistency with Master Plan:	Rezoning to the TS-R Zone is consistent with the recommendation of the 1990 Wheaton CBD and Vicinity Sector Plan as well Public Hearing Draft of

the Amendment to the Wheaton Central Business District and Vicinity Sector Plan.

Neighborhood Response: No opposition; two letters of support.

Planning Board Recommends: Approval

Technical Staff Recommends: Approval

Hearing Examiner Recommends: Approval

## II. STATEMENT OF THE CASE

Application No. G-876, filed on May 27, 2008, by Washington Property Company, requests reclassification of approximately 1.76 acres (not including proposed dedications) of land from the R-60 to the TS-R Zone (Transit Station-Residential). The subject site is immediately south of the intersection of Georgia Avenue and Viers Mill Road. The applicant seeks to rezone three lots, all of which are within the 1990 Wheaton Central Business District and Vicinity Sector Plan.

The application for rezoning was reviewed by the Technical Staff, and in a report dated July 12, 2010, Staff recommended approval of the application. Exhibit 34.<sup>2</sup> The Planning Board also recommended approval with the condition that the applicant add to the binding textual elements: (1) the maximum number of dwelling units, (2) the maximum building height, (3) a minimum 10-foot setback along the southern property line, and (4) landscaping of the southern property line to screen the project (to the extent practical) from the southern boundary adjoining a town home community. Exhibit 35.

The public hearing (originally set for July 30, 2010) was rescheduled to October 15, 2010 and proceeded as rescheduled. Exhibit 36. No one appeared opposing the application. The Wheaton Redevelopment Advisory Committee and Mr. David Weiss, owner of adjacent property in the town home community, both submitted letters supporting the application. Exhibits 34, 30. After issuance of the Planning Board's recommendation, the applicant revised its development plan to increase the maximum number of units from 221 to 245 and to add the potential for limited commercial uses on the property. The hearing in this case concluded on October 15, 2010, and the record was held open until November 8, 2010, to allow the applicant the

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<sup>2</sup> The Technical Staff Report is quoted and paraphrased frequently herein.

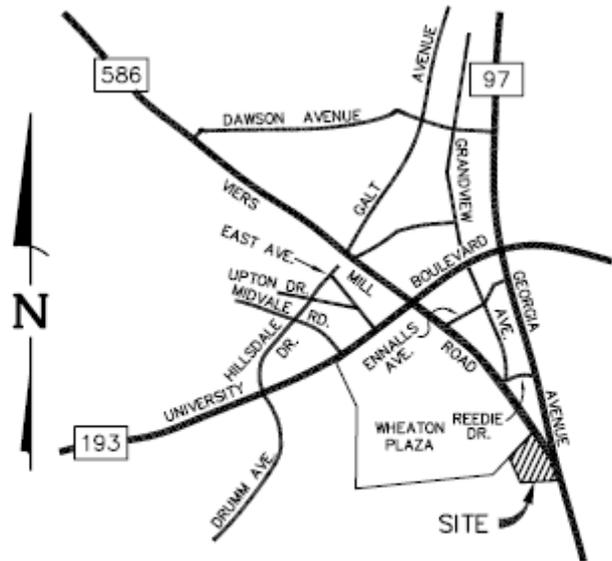
opportunity to file additional documentation partially as a result of its amendment increasing the maximum number of units. Exhibits 58-60.

### III. FACTUAL BACKGROUND

#### A. Subject Property

The First Baptist Church of Wheaton and its associated parking currently occupy the majority of R-60 zoned site. Exhibit 34, p. 3. The property is located adjacent to and southwest of Westfield Wheaton Shopping Center, just east of the intersection of Viers Mill Road and Georgia Avenue. A vicinity map showing the location of the subject property is set forth below:

VICINITY MAP, PHOTO ILLUSTRATION OF SURROUNDING AREA, EXHIBIT 58(C)



The entrance to the church fronts on Georgia Avenue:

**PHOTO ILLUSTRATION OF  
SURROUNDING AREA, EXHIBIT  
58(c)**



Sloping gently from the southwest corner, the property is adjacent to an off-site perennial stream immediately to the west (shown below). Approximately .20 acres on the western portion of the site are within an environmental buffer, much of which is already paved with parking. As described in Section III.E.1 of this Report, the applicant proposes to locate the new development on the area covered by the existing paving and take other measures to restore the off-site stream. The relationship between the existing improvements and the stream and environmental buffer area illustrated in the aerial view shown on page 8 (Exhibit 58(c)).

**OFF-SITE STREAM CHANNEL, TECHNICAL  
STAFF REPORT, EXHIBIT 34.**



### **B. Surrounding Area and Adjacent Development**

Technical Staff advises that the subject property is a “key location in downtown Wheaton” because it is extremely close to the intersection of Viers Mill Road and Georgia Avenue on the northeast, adjoins the Westfield Wheaton Shopping Center to the northwest, and is within one-quarter mile of the Wheaton Metro Station. Exhibit 34, p. 3. A six-story multifamily residential building, an automotive dealership and a one to two-story retail center lie to the east across Georgia Avenue. A two-story townhouse community, the Plaza Gardens at Moonrise, borders the southern side of the property. The Stephen Knolls Elementary Schools is

directly to the southwest of the site. Exhibit 34. Views of the adjacent and confronting properties are shown below and on page 10:

**VIEW OF TOWN HOME COMMUNITY TO THE SOUTH, PHOTO ILLUSTRATION, EX. 58(C)**



**VIEW FACING EAST ACROSS GEORGIA AVENUE, PHOTO ILLUSTRATION OF SURROUNDING AREA, EXHIBIT 58(C)**



**VIEW FACING WEST TOWARD STEPHEN KNOLLS  
ELEMENTARY SCHOOL, PHOTO ILLUSTRATION  
OF SURROUNDING AREA, EX. 58(C)**



The surrounding area must be identified in a floating zone case so that compatibility can be evaluated properly. The “surrounding area” is defined less rigidly in connection with a floating zone application than in evaluating a Euclidean zone application. In general, the definition of the surrounding area takes into account those areas that would be most directly affected by the proposed development.

Technical Staff defined the surrounding area by University Boulevard to the north, Amherst Avenue to the east, McComas and Douglas Avenues to the south, and the Westfield Wheaton Shopping Center Ring Road to the west. The surrounding area recommended by Technical Staff is shown in the photograph (Exhibit 34, p. 5) on page 11. Technical Staff reasoned that the boundaries should capture the varied land use patterns and zoning classification of the area and therefore included all of the CBD. Exhibit 34. Technical Staff’s definition of the

area differed slightly from the applicant's, however, the applicant accepted Technical Staff's position and, having no evidence to the contrary, the Hearing Examiner does as well. T. 15, 104.

**SURROUNDING AREA, TECHNICAL  
STAFF REPORT, EXHIBIT 34**



The property is located within 1,100 feet (less than  $\frac{1}{4}$  mile) from the Wheaton Metro Station. The proximity to the Metro Station is shown on page 12.

**PROXIMITY TO METRO RAIL, TECHNICAL  
STAFF REPORT, EXHIBIT 34**



### **C. Proposed Development**

#### **1. Development Concept and Applicant's Vision for the Project**

Architecturally designed to create an “inviting urban edge” to the Wheaton Central Business District, the development is intended to meet the purpose of the TS-R zone by providing “density-appropriate affordable residential uses that permit the effective use of transit station development, [and] innovative design” in a manner that “enhances the diversity of the area.” T. 94, 107, 114. The land use element of the plan is shown on the next page.

**REVISED DEVELOPMENT PLAN, EXHIBIT 58(A)**



The applicant initially proposed 221 dwelling units, but later amended the application to request a maximum of 245 units, including both market rate and 31 (12.5%) moderately priced dwelling units. Exhibit 58(a). While the number of units will increase, the increase is not intended to affect the exterior bulk and mass of the building; rather, the increase provides

flexibility in the mix of unit types (i.e., one or two-bedroom units). In order to ensure that the bulk and mass of the building remain the same, the Planning Board requested the applicant to include textual binding elements limiting the building height to seventy feet (as proposed) and imposing a 10-foot setback at the southern property line. Exhibit 35. The Planning Board also recommended that the applicant preserve the ability to develop commercial uses on the site by adding a binding element allowing for this at the time of site plan review. Exhibit 35. While the applicant is not currently proposing to develop the site with non-residential uses, it did include the binding element requested in the development plan. T. 45; Exhibit 58(a).

Occupying approximately 30.2% (21,625 square feet) of the project, active and passive recreation uses proposed include an outdoor open-air courtyard containing a pool and landscaped deck area, and interior space which may be devoted to market-driven recreational uses such as a “cyber café” or a fitness center. T. 41. The applicant proposes to dedicate land to be used for additional sidewalk width along Georgia Avenue as “public use” space. Exhibit 58(a). Streetscape amenities, such as benches and landscaping, will be included within the public use area.

Parking for the development will be underground structured parking screened by dwelling units wrapping around the perimeter of the building. The parking will not be visible from Georgia Avenue. T. 54; Exhibit 58(a). Two hundred twenty-two (222) of the required 256 spaces are proposed, prompting the applicant to request a “concept waiver” of the required amount based on the development’s proximity to the Wheaton Metro Station. Exhibit 31(f). The floor plan depicting the parking layout is shown on page 15.

**PARKING LEVEL FLOOR PLAN, EX. 47(B)**



The applicant's request for the conceptual waiver of the required parking at the rezoning stage is premised on the project's proximity to Metro and its urban location:

Pursuant to Section 59-E-4 of the Zoning Ordinance, a parking waiver is typically granted by the Planning Board as part of site plan review. However, because of the need to file a Development Plan in conjunction with the TS-R rezoning [a]pplication that shows buildings and parking, the Applicant is seeking a Planning Board concept waiver at this early time in order to ascertain how much flexibility the Applicant will have moving forward through the entitlement process to address on-site parking responsive to market conditions and good urban planning rather than the rigidity of the Zoning Ordinance. At the time of site plan review and should the parking waiver still be required and relevant, the Applicant will renew the parking waiver request based upon the final number of dwelling units and parking spaces being requested, consistent with the arguments supporting a waiver as set forth herein and responsive to the totality of circumstances that will exist.

Exhibit 31(f), p. 15; T. 135. Technical Staff recommended approval of the “conceptual” parking waiver because of the proximity to Metro and its urban location with “many shops, restaurants, and services within walking distance.” Exhibit 34, p. 21. Technical Staff also mentioned that Montgomery County’s parking standards may not be the most current relative to areas with transit, citing to Washington, D.C.’s recommended revision to its standards to permit a 50 percent reduction in parking spaces for developments near metro stations. Exhibit 34, p. 21. The applicant’s land planner, Ms. Victoria Bryant, echoed this sentiment and testified that the CR zoning for the property recommended in the draft Sector Plan amendment (see Section III.D. of this Report), would significantly reduce the parking requirements for the property. T. 135.

Access to the parking garage is by a single lane right-in, right out drive aisle at the southern end of the property’s frontage on Georgia Avenue. Exhibit 34, Attachment 3. A “pork-chop” island is located at the entrance to the drive aisle to ensure right-in, right out only movements. The M-NCPPC Transportation Division recommended that the island be removed because the Georgia Avenue median will prevent left turns exiting from the building, but does not state the basis for this request. Exhibit 34, Attachment 34. The applicant proposes several measures to reduce conflicts between pedestrians and residents utilizing the drive access. The driveway grade is flat at the entrance of the building to enable sufficient sight distance of the sidewalk prior existing and entering parking drive aisle. T. 151. Sight distance is also enhanced because the sidewalk is not immediately adjacent to the parking entrance, providing additional time to see pedestrians at the entrance. T. 151. Finally, there is a change in the pavement along the entrance, alerting drivers when they have reached the side walk. T. 151. Technical Staff advises that the circulation systems are safe and efficient. Exhibit 34, p. 12.

The illustrative floor plans for the residential units depict them wrapping around the perimeter of the east, north, west, and a portion of the south sides of the building, in a “U” shape overlooking the interior courtyard/pool area. The building is set back 10 feet from the town home community at the southern end of the property and buffered there with additional landscaping. The southern end terraces back, “wedding cake” style, from the 10-foot setback for a total of 20 feet (over several levels) to the interior courtyard, which is open toward the southern property line. At its furthest point, the residential units on the interior of the “U” will be set back “hundreds of feet” from the southern property line (shown on the illustrative floor plans below. T. 66, Exhibit 49(d).

Illustrative floor plans for levels two through six are shown on pages 18 and 19.

According to the applicant’s land planning expert, the architecture was designed to create an “inviting urban edge” to the Wheaton Central Business District and therefore be compatible with the surrounding area. T. 113. While architectural details are conceptual at the rezoning stage of development, the applicant provided architectural drawings of the facades. Anchored by a one to two-story concrete level or “podium” with five wood-framed stories above, the height of the proposed building will not exceed seventy (70) feet. Exhibit 58(a). Rising six stories along the Georgia Avenue façade, the first two levels are brick with hardi-plank along the upper stories. T. 62. The brick extends above the lower stories at the main entrance. Exhibit 49(a); T. 62. In order to integrate the multi-family building with the adjacent townhouses, the Georgia Avenue façade includes “walk-up style town home stoops” with landscaping and gardens. T. 62. Above the first floor, inset balconies are designed to create architectural interest by adding shadow lines and different planes to the facade. T. 63.

**Floor Plan for Second Floor, Exhibit 47(c)**



ALL ROOM PLANS ARE FOR ILLUSTRATIVE PURPOSES

**SECOND FLOOR**  
SCALE: 1" = 20'

**FLOOR PLANS , THIRD THROUGH SIXTH FLOORS,  
EXHIBIT 47(D)**



The brick massing along the Georgia Avenue façade serves to connect it to the north façade by wrapping around a turned circular corner tower feature. Like the Georgia Avenue façade, the upper stories will be of a hardi-plank system with varying balconies, shown on page 20. T. 64. The west façade will be similar, with brick on the lower stories, hardi-plank on the upper stories, and balconies to provide variability to the façade (also on page 18). Exhibit 49; T. 65. The Georgia Avenue façade is depicted on Exhibit 50, shown on page 20. The remaining elevations are shown on pages 20-21 of this Report.

**GEORGIA AVENUE FAÇADE  
EXHIBIT 50**



**NORTH ELEVATION, EXHIBIT 49(B)**



**WEST ELEVATION, EXHIBIT 49(C)**



As noted, the southern facade (fronting the townhouse community) is “U” shaped and opens to an outdoor landscaped deck. The front (Georgia Avenue) façade of brick and hardi-plank wraps to the south side as well which is set back 10 feet from the property line and landscaped.

**SOUTH ELEVATION, EXHIBIT 49(D)**



## 2. Development Plan & Binding Elements in LMA G-876

Pursuant to Code § 59-D-1.1, development in the TS-R Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the TS-R Zone. Under Code §59-D-1.3, this development plan must contain several elements:

- (a) A natural resources inventory;
- (b) A surrounding area map, showing the relationship to the site and use of the adjacent land;
- (c) A land use plan showing site access; locations and uses of all buildings and structures; a preliminary classification of dwelling units; locations of parking areas, including number of parking spaces; location of land to be dedicated to public use; location of land intended for common or quasi-public use but not intended to be in public ownership; and a preliminary forest conservation plan;
- (d) A development program stating the sequence of proposed development;
- (e) The relationship, if any, to the County's capital improvements program;
- (f) & (g) [Inapplicable to the TS-R Zone];
- (h) A diagram showing general build and height of principal buildings, their relationship to each other and adjacent areas; and
- (i) [Inapplicable because the property does not lie within a special protection area]

The Development Plan consists of several components which are binding on the applicant except where particular elements are identified as illustrative or conceptual. Illustrative elements

may be changed during site plan review by the Planning Board, but the binding elements cannot be changed without a separate application to the District Council for a development plan amendment.

The land use plan for the present zoning application, Exhibit 58(a), is titled “Development Plan and Land Use Elements” and will be referred to as the “Development Plan” in this Report. In order to ensure that the bulk and mass of the development would stay the same if the number of units were increased, the Planning Board recommended that the applicant include textual binding elements on the development plan stating (1) the maximum number of units (or equivalent FAR), (2) the maximum height, and (3) a minimum 10-foot setback and landscaping along the southern property line. Exhibit 35, 59. The applicant has revised the development plan to provide those textual binding elements (Exhibit 58(a)), shown on page 24. Technical Staff advises that the above textual binding elements satisfy the Planning Board’s recommendation. Exhibit 59.

The Land Use Plan element of the Development Plan depicts the layout of the proposed development including the location of proposed structures, as shown in Section III.C.2 (on page 13 of this Report).

The Development Plan also includes a series of tables, the first describing legal information, showing right-of-way dedications, and comparing the minimum zoning standards to those proposed by the development, and the second table comparing the parking spaces required to those provided. Both tables are shown on the page 25 (from Exhibit 58(a)).

**BINDING ELEMENTS, DEVELOPMENT  
PLAN, EXHIBIT 58(A)**

**Wheaton Baptist Church**

**Local Map Amendment Application No. G-876**

**Applicant's Proposed Binding Elements**

1. Because the Planning Staff has determined that the proposed building improvements will encroach upon stream valley buffer, the Applicant must provide stream valley buffer mitigation as generally provided for in the exhibit labeled "Conceptual Stream Valley Buffer Encroachment Mitigation Exhibit" made part of the record for this case or as otherwise approved by the Planning Board in conjunction with 59-D-3 site plan approval for this project.
2. The Applicant may pursue any uses permitted in the TS-R Zone at the time of site plan, at the Applicant's option.
3. The project will not exceed a maximum of 245 multi-family dwelling units, including 12.5% Moderately Priced Dwelling Units, with final unit count, unit mix, and parking requirements to be addressed at site plan.
4. The project will not exceed 70 feet in building height (measured from the building height measuring point of 410.3 feet as shown on the Development Plan), with final building height, not to exceed 70 feet, to be determined at the time of site plan.
5. The project will be set back a minimum of 10 feet from the southern property line adjacent to the townhouses.
6. The 10-foot setback along the southern property line will be landscaped to the extent practical to provide additional screening and buffering from the adjacent townhouses.

**DEVELOPMENT SUMMARY TABLE, DEVELOPMENT PLAN,  
EXHIBIT 58(A)**

<b>DEVELOPMENT SUMMARY</b>		
<b>Current Zone</b>	R-60	
<b>Proposed Zone</b>	TS-R	
<b>STANDARDS: Sec-59-C-8.4</b>	<b>REQUIRED/PERMITTED - TS-R ZONE</b>	<b>PROVIDED</b>
<b>Minimum Area: Sec-59-C-8.41</b>		
Minimum Area:	18,000 s.f.	
	Site Area	78,548 sf, or (1.757 AC.) P754, P758 & N
	Prior R/W Dedication	8,831 sf, or (0.203 AC.) L-1612 F-
	Prior R/W Dedication	17,235 sf, or (0.396 AC.) L-855 F-
	Gross Tract	<b>102,612 sf, or (2.356 AC.)</b>
	Proposed R/W Dedication	5,000 sf, or (0.115 AC.)
	Net Tract: (Gross Area less R/W Dedications)	<b>71,525 sf, or (1.642 AC.)</b>
<b>Density: Sec-59-C-8.42</b>		
Density may not exceed the following:		
a) Floor Area Ratio – F.A.R. (1)	2.5 F.A.R.* gross tract (102,612 sf)	Not to exceed 2.5 FAR Maximum
b) Dwelling Units per Acre	150 Dwelling Units, per Acre (354 du max.)	104 Dwelling Units/Acre Maximum (3)
> Estimated Residential Dwelling Units		245 Units (193 Market) Maximum (3)
> MPDU's	12.5 % of total number of Units	31 Units (2) Maximum (3)
<b>Setbacks:</b>		
Front (in feet):	N/A	20' Final to be determined at Site Plan
Back (in feet):	N/A	15' Final to be determined at Site Plan
Side (in feet):	N/A	10' Final to be determined at Site Plan
Building Coverage (percent):	N/A	54,700 S.F. Final to be determined at Site Plan
<b>Open Space: Sec-59-C-8.43</b>		
a) Minimum percentage of net area devoted to public use space	10% 7,153 S.F.	10.3% 7,392 S.F. (4)
b) Minimum percentage of net area devoted to active and passive recreational purposes:	25% 17,881 S.F.	30.2% 21,625 S.F. (4)
Total minimum open space requirement %	35% 25,035 S.F.	40.6% 29,017 S.F. (4)
Off Site Public Improvements	0% 0 S.F.	5.9% 4,200 S.F. (4)
<b>Building Height: Sec-59-C-8.51</b>		
The maximum height permitted for any building shall be determined in the process of Site Plan Review	TBD	Maximum height 70', measured from the building height measuring point of 410.3 feet as shown on Development Plan. Final building height, not to exceed 70', to be determined at the time of Site Plan.
<b>Notes:</b>		
1. Inclusion of street level ancillary commercial uses if any, to be determined at Site Plan. 2. MPDU unit number to be based upon total units approved at Site Plan. 3. Final unit count, unit mix, and parking requirements to be determined at the time of Site Plan. 4. Exact areas to be refined at Site Plan.		

<b>FAR Calculation Chart</b>	
<b>Floor</b>	<b>Residential s.f.</b>
6	41,140 (1)
5	41,140 (1)
4	41,140 (1)
3	41,140 (1)
2	41,140 (1)
1	24,550 (1)
<b>Total =</b>	<b>230,250</b>
Gross Tract Area =	102,612 s.f. (2)
Gross Floor Area =	230,250 s.f. (1)
FAR =	<b>2.24</b>
<b>Notes:</b>	
1. Building areas provided by project architect. 2. Site area determined from available deeds and plats of record	

#### **D. Conformance with the Master Plan**

The property is located in the area subject to the *1990 Wheaton Central Business District and Vicinity Sector Plan*. The Sector Plan recommends retention of the then-existing R-60 zoning for the property. Stated goals of the Sector Plan include encouraging “new mixed use development to concentrate around the Metro station and in other areas of greater transit accessibility...new housing to help reinforce Wheaton as a lively area, especially during evenings.” Exhibit 34, p. 9. Technical Staff found that the application substantially complied with the 1990 Sector Plan, pointing to the following language:

[T]he Plan “attempts to build upon the existing retail advantages and the potential of the Metro transit station in Wheaton. In attempting to capitalize on these assets, the Plan recommends the development of a strong supporting population base. A variety of housing types in close proximity to the Central Business District and the Metro station would meet the needs of the residential housing market, would provide built-in purchasing power for the local retail Marketplace, would provide for an increase in the potential ridership on the Glenmont Transit Route, and should not contribute to the demand for commuter parking in the station since it would be within walking or short bus-ride distance.”

Exhibit 34, pp. 9-10.

Technical Staff reasoned that the proposed development fulfilled the Plan’s goals of providing more housing proximate to retail and Metrorail, and diversifying the mix of housing choices in Wheaton. Exhibit 34, p. 10. The applicant’s land planning expert, Ms. Victoria Bryant, also testified that the TS-R zoning for the subject property substantially conformed to the existing Sector Plan. In her opinion, the church’s use of the property was the basis for the Sector Plan’s recommendation that the R-60 zoning be retained on the site. She based this opinion on established principles of land use planning. Planners generally strive for a “tent effect” when distributing density—a core area contains the highest density which then slopes down in height and density around the core. T. 123. The Sector Plan recommended confronting properties to the east (across Georgia Avenue) for the TS-R Zone which would accord with this planning

principle. T. 123. Planners also would have “bookended” this entrance to the Central Business District (CBD) by placing the TS-R zone on each side of the street to create a balanced effect. T. 123.

In addition, the existing zoning to the south also supported her opinion that the R-60 zone was placed on the property because of the church’s use. Much of the development south of the property is zoned PD 9, PD 11, R-20, and RT 12.5, all more intense zones than the R-60 zone on the subject property. Schools were typically zoned R-60 and were anomalies in zoning that are expected in master plans to preserve the existing use. T. 124.

An amendment to the 1990 Sector Plan (a public hearing draft) is now pending. T. 125. Ms. Bryant testified that the draft Sector Plan amendment implements the “tent-effect” and balanced streetscape principles she believed formed the basis for the land use recommendations in the existing Master Plan. T. 131-133. Under the draft amendment, the subject property falls within the “Westfield” district of the amendment to the Sector Plan which is the area within the shopping center loop road, University View and Viers Mill. T. 131-132. The areas abutting Viers Mill Road will be the most intense (and highest) development, which will step down in height approaching single family development. T. 132. Development on the Bally’s Fitness site is recommended to be a maximum of 150 feet in height. The draft Sector Plan proposes “CR-4” zoning for the subject property, with a 100-foot maximum height. T. 131. The confronting properties across Georgia Avenue are also zoned CR-4, thus implementing the “bookend” or balanced entrance to the Wheaton CBD. T. 132-133.

Ms. Bryant testified that the proposed development could be built under the CR-4 Zone. T. 131. Because the proposed development is well under the recommended Floor Area Ratio (FAR) and has a maximum 70-foot height limit, it comports with both the recommendations of

the Sector Plan's draft amendment and is capable of being developed in the CR zone itself. T. 131-134.

### **E. Public Facilities (Transportation, School Capacity and Water & Sewer Service)**

The County's Growth Policy and the Adequate Public Facilities Ordinance (APFO) require a review of the availability of adequate public facilities for any proposed development. The applicant provided testimony and exhibits with regard to transportation, schools, water and sewer service and other utilities.

1. LATR/PAMR Review: Because the development will generate more than 30 new trips, it must pass both Local Area Transportation Review (LATR) and Policy Area Transportation Review (PAMR). The applicant initially submitted a traffic study for development of 221 dwelling units on the site. That study estimated the project to generate approximately 75-total trips during the weekday morning peak-hour and 86 total trips during the weekday evening peak-hour. The Critical Lane Volume (CLV) analysis based on the estimated trip generation for 221 dwelling units yielded volumes below the Wheaton CBD Policy Area congestion standard of 1,800 CLV, as shown on page 29(Exhibit 34, p. 32).

A revised study was submitted after the public hearing to reflect the increased density (245 dwelling units) requested at the hearing before the Hearing Examiner. Exhibit 58(i). The revised study showed that while CLV volumes at some of the study intersections increased slightly, all intersections were still well below the 1,800 CLV standard. Results of both studies are shown on page 29 of this Report.

With regard to commercial use of the site, the revised traffic study concluded:

It is evident that if a modest amount of non-residential space (for example, 10,000 square feet) were added, there would be a negligible impact on CLV totals. The area intersections would continue to operate well within the congestion standard.

Exhibit 58(i), p. 7.

**TRAFFIC STUDY (221 UNITS)  
EXHIBIT40(A)**

<b>Table 5 Intersection Capacity Analysis Results</b>						
Intersection	Existing Traffic Volumes		Background Traffic Volumes		Total Future Traffic Volumes	
	AM	PM	AM	PM	AM	PM
Georgia Avenue (MD 97) and Reddie Drive	945	918	1007	1001	1012	1003
Georgia Avenue (MD 197) and Veirs Mill Road (MD 586)/Prichard Road	929	866	957	887	972	909
Georgia Avenue (MD 97) and Windham Lane	1109	1140	1137	1168	1148	1192
Veirs Mill Road (MD 586) and WMATA/mall entrance	573	701	573	701	577	710
Georgia Avenue (MD 97) and Site Driveway	NA	NA	NA	NA	989	710

**SUPPLEMENTAL TRAFFIC ANALYSIS  
(245 UNITS), EXHIBIT 58(I)**

<b>Table 3: Intersection Capacity Analysis Results</b>								
Intersection	Existing Traffic Volumes		Background Traffic Volumes		Total Future Traffic Volumes			
					221 Units		245 Units	
	AM	PM	AM	PM	AM	PM	AM	PM
Georgia Avenue and Reddie Drive	945	918	1007	1001	1012	1003	1013	1003
Georgia Avenue and Veirs Mill Road/Prichard Road	929	866	957	887	972	909	973	911
Georgia Avenue and Windham Lane	1109	1140	1137	1168	1148	1192	1149	1195
Veirs Mill Road and WMATA/Mall Entrance	573	701	573	701	577	710	578	711
Georgia Avenue and Site Driveway	NA	NA	NA	NA	989	710	996	715

Policy Area Mobility Review (PAMR) requires the proposed development to mitigate 10% of the trips generated. Based on its review of 221 units, Technical Staff advised that the 18% trip generation credit for developments within the Wheaton Metro Station Policy Area satisfies PAMR. The supplemental traffic report (based on 245 residential units) concludes, and Technical Staff agreed, that the amended development plan will also meet PAMR. Exhibit 58(i); Exhibit 59. Neither Technical Staff nor the applicant addressed the potential of commercial uses in its PAMR analysis.

2. School Capacity: Montgomery County Public Schools (MCPS) reports that the school capacity is adequate to support the proposed development. The 221-unit development will generate approximately thirty-six elementary, seventeen middle, and eighteen high school students. Exhibit 34, p. 34. Impacted attendance areas include the Oakland Terrace Elementary School, Newport Mill Middle School, and Albert Einstein High School attendance areas. Exhibit 34, p. 34. Enrollment at the elementary school is currently over capacity; however, a new school is scheduled to open in August 2012. Both the middle and high schools are currently within capacity although they are predicted to exceed capacity slightly in year six (6) of the 2015-2016 forecast period. The impacted high school is part of the Downcounty Consortium (DCC) in which students may attend either their base area school or one of four other high schools in the consortium. Exhibit 34, p. 34.

3. Water and Sewer Service and Other Utilities

The subject site is served by public water and sewer systems. In an e-mail attached to the Technical Staff report, staff at the Washington Suburban Sanitary Commission (WSSC) indicated that changing the zoning category from the R-60 and to the TS-R Zone would not have any significant any impact to the water or sewer systems. Exhibit 34, Attachment 2.

## F. Environmental Issues

### 1. Environmental Buffer Encroachment:

Approximately .20 acres of the site are within an environmental buffer originating from a perennial stream adjacent (to the west) of the property. The location of the stream is depicted in Section III.A on page 8 of this Report. The church's existing asphalt parking lot already encroaches on this buffer as will the proposed development, which will be built over the existing paved area. Exhibit 34, Attachment 5. Technical Staff advises that the stream's quality is poor (i.e., a "degraded urban stream"). While Staff found no evidence of biological life in the channel, it did find numerous illegal discharges. The stream banks are severely eroded due to high water volume and velocity, prompting the townhouse community directly to the south to install gabions (wire boxes filled with stones) to stabilize the banks. Past erosion undermined trees along the banks, causing them to fall into the stream and resulting in accumulation of brush and debris blocking the stream flow. T. 87. The stream outfalls from the shopping center, and runs 800 feet south to a concrete pipe which drains into a regional stormwater management facility. Exhibit 34, Attachment 5.

The applicant proposes to mitigate the encroachment into the environmental buffer through several measures to restore the adjacent stream. The mitigation plan (included as a binding element in the development plan) proposes (1) clearing the stream channel, (2) providing outfall extensions, and (3) stabilizing the banks for the entire 800-foot length of the stream. Exhibit 34, Attachment 5; T. 86-89.

Technical Staff recommended approval of the mitigation plan and the proposed development, finding that the mitigation proposed would be a "significant step forward" in

restoring the stream. Exhibit 34, p. 22. An illustration of the conceptual plan for mitigation is set forth on the next page.

2. Stormwater Management and Sediment Control:

Mr. Scott Roser, applicant's civil engineer, testified that because (1) this application is for redevelopment of an existing site and (2) a regional stormwater management facility is located downstream of the property, no stormwater quantity control is required for the proposed redevelopment of the property. T. 80. For quality control, a series of building drains will channel stormwater into microbio-retention planters. T. 81. These planters are large, concrete boxes filled with approximately 2 to 3 feet of soil. T. 81. Above that area is a 12- to 18-inch space available for water storage. T. 82. Vegetation is planted in the boxes, which uptakes the pollutants collected by the soil. Stormwater collected will then be allowed to flow out of the planter boxes and directed to a recharge trench along the rear property line. T. 81. Any excess will flow to another drainage area to a different location in the rear of the site.

The Department of Permitting Services approved the applicant's conceptual stormwater management plan on August 2, 2010, subject to several conditions that must be met at site development plan review. Exhibit 53. Technical Staff concurred that the conceptual plan could meet all stormwater management regulations pertaining to the development. Exhibit 34, Attachment 5.

3. Forest Conservation:

According to Technical Staff, the preliminary forest conservation plan (proposing that all forest conservation requirements be met off-site) was conceptually acceptable. Reforestation requirements could be met through either a forest conservation bank or through payment of a fee-in-lieu. Exhibit 34, Attachment 5.



#### 4. Noise Impacts:

Technical Staff recommended that a noise analysis be performed at the preliminary plan stage to determine the current and projected noise levels, because it is so near to the intersection at Viers Mill Road and Georgia Avenue. This will permit a determination of the amount of architectural treatment needed to meet the interior noise levels required by the Montgomery County Environmental Planning publication, *Staff Guidelines for the Consideration of Transportation Noise Impacts in Land Use Planning and Development*. Noting that the deck area will be screened from street noise by the residential units, interior noise will have to be attenuated by architectural means as major design changes are not feasible. Exhibit 34, Attachment 5.

### **G. Community Outreach and Reaction to the Project**

In November, 2007, the applicant met with a representative(s) of Westfield Wheaton Shopping Center and members of the community at Canaan Christian Church. During 2007 and 2008, the applicant and the Montgomery County Public Schools held a series of meetings. On March 17, 2010, a presentation was made to the Wheaton Redevelopment Advisory Committee, and on March 25, 2010, another presentation made to the Advisory Committee's Economic Development Sub-Committee. The applicant held further meetings with the surrounding community (after notice to adjoining and confronting property owners and registered associations) on April 28, 2010. In May, 2010, the applicant presented the proposed development to the Wheaton Urban District. Exhibit 32.

The only evidence received from the community supports approval of the TS-R Zoning for the site. Specifically, the Wheaton Redevelopment Advisory Committee supported the application because "it will benefit Wheaton by bringing needed density to support our

commercial center... will enhance the architectural fabric of Georgia Avenue and [will] create a pleasant streetscape along one of the main arteries into our town center.” Mr. David Weiss, owner of three townhouse properties immediately to the south of the site, submitted letters of support both to the Planning Board and the Hearing Examiner supporting the application because the existing R-60 zoning was not the best use of land so proximate to a metro station and the urban area. Exhibit 34, Attachment 6; Exhibit 30.

#### **IV. SUMMARY OF THE HEARING**

Five witnesses, all called by Washington Property Company, appeared at the hearing. The salient elements of their testimony are included in the preceding and following sections and therefore will not be repeated here. In order, however, to make a summary available if a reader is interested, a summary of each witness’s testimony is attached as Appendix A to this report.

Mr. Daryl South, vice president of development for Washington Property Company, testified on behalf of the applicant as to basis for the amendment increasing the density of the development, the community outreach that had been performed, the recreational uses proposed and ownership and maintenance of the proposed development. T. 37-49. The other four witnesses, all called by Washington Property Company, testified as experts in their respective fields. Mr. Joseph Schneider, an architect, presented architectural facades and floor plans for the development and testified as to the development’s compatibility with adjacent developments as well as whether the project provided the maximum safety, convenience and amenities to the residents. T. 49-69. Mr. Scott Roser, qualified as an expert in civil engineering, presented the conceptual plans for stormwater management, mitigation of the encroachment into the environmental buffer, forest conservation and the NRI/FSD. T. 70-94. Ms. Victoria Bryant, an expert in land planning, addressed conformance with the existing and draft amendment to the

Sector Plan, the definition of and compatibility with the surrounding area, and compliance with the requirements of the TS-R Zone. T. 95-138. Finally, Mr. Edward Papazian, a traffic engineer, addressed site circulation and safety and whether the development met both LATR and PAMR standards. T. 139-158.

## V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Section 59-D-1.61 of the Zoning Ordinance requires the District Council, before it approves any application for reclassification to the TS-R Zone, to consider whether the application, including the development plan, fulfils the “purposes and requirements” set forth in Code Section 59-C for the new zone. In making this determination, the law expressly requires the District Council to make five specific findings, “in addition to any other findings which may be necessary and appropriate to the evaluation of the proposed reclassification.” Therefore, these findings are an essential part of the Hearing Examiner’s Report and Recommendation.

The five specific findings required by §59-D-1.61 of the Zoning Ordinance are:

(a) *[That t]he proposed development plan substantially complies with the use and density indicated by the master plan or sector plan, and does not conflict with the general plan, the county capital improvements program, or other applicable county plans and policies...*

(b) *That the proposed development would comply with the purposes, standards, and regulations of the zone as set forth in article 59-C, would provide for the maximum safety, convenience, and amenity of the residents of the development and would be compatible with adjacent development.*

(c) *That the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate, and efficient.*

(d) *That by its design, by minimizing grading and by other means, the proposed development would tend to prevent erosion of the soil and to preserve natural vegetation and other natural features of the site. Any applicable requirements for forest conservation under Chapter 22A and for water resource protection under Chapter 19 also must be satisfied. The district council may require more detailed findings on these matters by the planning board at the time of site plan approval as provided in division 59-D-3.*

*(e) That any documents showing the ownership and method of assuring perpetual maintenance of any areas intended to be used for recreational or other common or quasi-public purposes are adequate and sufficient.*

Because the general requirement of the law – that the application must fulfill the “purposes and requirements” of the new zone – is subsumed in the language of the five specific required findings (especially in subsection (b)), a determination that the five findings have been satisfied would satisfy the Montgomery County Zoning Ordinance. However, in addition to these five findings, Maryland law also requires that the proposed rezoning be in the public interest. As stated in the State Zoning Enabling Act applicable to Montgomery County, all zoning power must be exercised:

*“. . . with the purposes of guiding and accomplishing a coordinated, comprehensive, adjusted, and systematic development of the regional district, . . . and [for] the protection and promotion of the health, safety, morals, comfort, and welfare of the inhabitants of the regional district.” [Regional District Act, Maryland-National Capital Park and Planning Commission Article (Art. 28), Md. Code Ann., § 7-110].*

In sum, there are six findings required (§59-D-1.61(a) through (e) and the public interest). The “Required Findings” in the next part of this report are organized in the order set forth in the statute to facilitate review.

### **A. Substantial Compliance with County Plans and Policies**

The first required finding is that:

*The zone applied for substantially complies with the use and density indicated by the master plan or sector plan, and does not conflict with the general plan, the county capital improvements program, or other applicable county plans and policies. . .*

### **1. The Applicable Master Plan or Sector Plan**

As discussed at length in Section III.D of this Report, the textual goals of the 1990 *Wheaton Central Business District and Vicinity Sector Plan* appear on the surface somewhat at odds with the land use and zoning recommendations for this property in the current Sector Plan. The map entitled “Existing Use Plan” in the current Sector Plan depicts both the existing church and adjoining elementary school as “religious and other” uses. The Land Use Plan recommends “semi-public” land use for the subject property (“public use” for the adjoining school property) and retained the R-60 Zoning imposed on the property since 1958. Other than those designations on the two land use maps, the evidence in this case discloses no specific reference to the site in the Sector Plan.

The 1990 Sector Plan also makes clear, however, that attraction of a larger residential population base to the Wheaton CBD was a key goal of the plan. Exhibit 34. The Plan envisioned that new residential population would capitalize on two of Wheaton’s major assets: a strong existing retail component and its proximity to a metrorail station and achieve numerous Plan goals. Specifically, the Plan states a larger population base would strengthen the existing retail uses, promote transit ridership, reduce the need for commuter parking, and reinforce Wheaton as a lively area, both during the day and in the evenings. Exhibit 34.

There is little evidence in the record as to why the 1990 Sector Plan recommended that the property retain its then-existing R-60 Zoning. Ms. Bryant’s testimony suggests that, but for the existing church, the 1990 Sector Plan would have recommended higher density residential zoning for the subject property. This conclusion is reinforced by the preliminary recommendations contained in the draft amendment to the Sector Plan which recommends the CR-4 zone for this site as well as the confronting property on the other side of Georgia Avenue.

Although it is the existing Master Plan, not the proposed one that must be applied, that does not mean that we should ignore the considerations of the planners that resulted in the new proposed plan.

The Hearing Examiner finds it unnecessary to decide the exact basis for the R-60 zoning recommended in the 1990 Sector Plan. A master plan is only a guide where, as here, the Zoning Ordinance does not make it mandatory. See *Richmarr Holly Hills, Inc. v. American PCS, L.P.*, 117 Md. App. 607, 635-636, 701 A.2d 879, 893, n.22 (1997). As such, the Sector Plan should be interpreted to give effect to its underlying intent for the area, and not strictly in accordance with its R-60 recommendation for this property. This is especially true where the applicable master plan is twenty years old. With the passage of time, some specific recommendations lose their currency, and it becomes more important to carry out the general goals and visions of the Plan. Because a clear goal of the existing Sector plan was to establish a residential base in Wheaton, the Hearing Examiner concludes that the proposed development is consistent with the goals and objectives of the *1990 Wheaton Central Business District and Vicinity Sector Plan*, and though not consistent with the zoning recommendations on the Sector Plan's Land Use Plan map, those recommendations should not be dispositive of this case.

## **2. The General Plan and the County Capital Improvements Program**

Technical Staff found that the proposed development will promote the County's housing and smart growth policies by creating additional housing within walking distance of Metro. Exhibit 34, p. 11. Ms. Bryant testified that the proposed development will not conflict with the General Plan or the County's Capital Improvements Program. T. 136. Based on this evidence, the Hearing Examiner concludes that this standard has been met.

### **3. Other County Policies (Annual Growth Policy and Adequate Public Facilities Ordinance)**

Under the County's Adequate Public Facilities Ordinance ("APFO," Code §50-35(k)), the Planning Board has the responsibility, when it reviews a preliminary plan of subdivision, to assess whether the following public facilities will be adequate to support a proposed development: transportation, schools, water and sewage facilities, and police, fire and health services. The Planning Board's application of the APFO is limited by parameters that the County Council sets in its Growth Policy. While the final approval of a development under the APFO is carried out at subdivision review, evidence concerning adequacy of public facilities is relevant to the District Council's determination in a rezoning case as to whether the reclassification would serve the public interest. At the rezoning stage, an applicant must demonstrate that there is a "reasonable probability that available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application is submitted." *Montgomery County Code*, §59-H-2.4(f).

Under the 2009-2011 Growth Policy, "[t]he Planning Board and staff must consider the programmed services to be adequate for facilities such as police stations, firehouses, and health clinics unless there is evidence that a local area problem will be generated." Council Resolution 16-1187, p. 24. There is no such evidence in this case. We therefore turn to the remaining three public facilities, transportation, schools and water and sewer service.

#### **a. Transportation**

Subdivision applications are subject to Local Area Transportation Review (LATR) and Policy Area Mobility Review (PAMR) requirements. PAMR in general measures both arterial road congestion levels and the relative speed by which commutes between home and work may be made by transit versus roadways. The Growth Policy establishes adequacy by comparing

Relative Arterial Mobility and Relative Transit Mobility and adopting trip mitigation requirements for each policy area. The subject property is located in the Kensington/Wheaton Policy Area and the Wheaton CBD Metro Station Policy Area, both of which have a trip mitigation requirement of 10% of the new peak hour trips to be generated by the proposed development. Exhibit 34, p. 20-21. A credit of 18% toward peak-hour trip mitigation is permitted in certain Metro Station Policy Areas, including that applicable to the subject property. Both Technical Staff and the applicant's traffic engineer state that the 10% mitigation required by PAMR had been met through the credit given to properties within a Metro Station Policy Area. Exhibit 34, pp. 20-21. T. 146-148. The supplemental traffic study submitted by the applicant (analyzing the impact of 245 units) concluded, as did Technical Staff, that the additional units had negligible impact on PAMR. Exhibit 58(i).

There was no explicit mention of the impact of commercial uses on PAMR. However, the testimony and evidence indicates that the applicant does not intend to develop any nonresidential uses on-site and that any proposed commercial use will be nominal. Exhibit 58(i); T. 154-155. In light of the Zoning Ordinance's direction that the applicant show only a "reasonable probability" that the proposed project will meet the requisite traffic standards, and given the somewhat speculative and negligible amount of nonresidential use proposed, the Hearing Examiner finds that the development proposed has a reasonable probability of meeting the requirements of PAMR at the time of preliminary plan.

As opposed to PAMR, LATR generally involves a traffic study intended to evaluate whether a proposed development would cause unacceptable congestion at specific intersections during the peak hour of the morning and evening peak periods. Congestion is defined by the County in terms of "critical lane volume" (CLV) above specified limits. Because the subject property is within the Wheaton CBD Policy Area, the CLV standard for the relevant study

intersections is 1800. As discussed in Section III.E.1 of this Report, the applicant submitted a revised traffic study showing CLV volumes if the developed with 245 units. The study showed, and Technical Staff agreed, that CLV volumes for relevant intersections are well under the required standard even with the amended density of 245 dwelling units. Exhibit 58(i); Exhibit 59.

The applicant, at the request of the Planning Board, amended the development plan to permit the possibility of nonresidential uses. The applicant did submit some analysis of the traffic impact commercial uses might have on adequacy of facilities. The report concluded that a very small (i.e., 10,000 square feet) of nonresidential would have an insignificant impact on LATR requirements. Because the applicant need only show a “reasonable probability” that APFO standards may be met at the rezoning stage, the Hearing Examiner finds that the applicant has met the required standard.

In sum, the Hearing Examiner finds that Applicant’s development plan demonstrates a reasonable probability that the development will comply with both the PAMR and the LATR standards and other transportation requirements at the time of preliminary plan review.

b. School Capacity:

MCPS reported that the proposed development will generate approximately thirty-six elementary, seventeen middle, and eighteen high school students. Exhibit 34, p. 34. Impacted attendance areas include the Oakland Terrace Elementary School, Newport Mill Middle School, and Albert Einstein High School attendance areas. Exhibit 34, p. 34. Enrollment at the elementary school is currently over capacity, however, a new school is scheduled to open in August 2012. Both the middle and high schools are currently within capacity although they are predicted to exceed capacity slightly in year six (6) of the 2015-2016 forecast period. The

impacted high school is part of the Downcounty Consortium (DCC) in which students may attend either their base area school or one of four other high schools in the consortium. Exhibit 34, p. 34. The MCPS reports that the current growth policy school test for fiscal year 2011 finds capacity adequate in the Einstein Cluster. Based on this evidence, and there being nothing to the contrary submitted, the Hearing Examiner finds that there will be adequate school capacity for the proposed development. While the record in this case does not reveal that MCPS reviewed the potential for 245 units, the small increase (i.e., approximately 10%) from that reviewed is nominal, and may be addressed at preliminary plan review, either by changing the mix of units or reducing the number of units. As a result, the Hearing Examiner finds that the applicant has met this standard.

c. Water and Sewer Service:

Under the FY 2009-2011 Annual Growth Policy, applications must be considered adequately served by water and sewerage if the subdivision is located in an area in which water and sewer service is presently available. Council Resolution No. 16-1187. p. 24.

According to Scott Roser, applicant's expert in civil engineering (T. 169-187), the subject site is already served by public water and sewer systems and those systems will be adequate to serve the proposed development. T. 74, 78. The WSSC advises that an 8-inch sewer main abuts the property and that interceptor capacity is adequate. Both Technical Staff and the WSSC report, and the Hearing Examiner concludes, that both water and sewer systems are available to support the proposed development. T. 34, p. 19, Attachment 2.

Based on this record, the Hearing Examiner finds that the requested rezoning does not conflict with "other applicable County plans and policies."

**B. Zone Requirements, Safety, Amenities and Compatibility**

The second required finding is:

*That the proposed development would comply with the purposes, standards, and regulations of the zone as set forth in article 59-C, would provide for the maximum safety, convenience, and amenity of the residents of the development and would be compatible with adjacent development.*

**1. Compliance with Zone Purposes, Standards and Regulations****a. Compliance with the Purposes of the TS-R Zone**

The TS-R Zone is a “floating zone,” intended to be used in transit station development areas or on property adjacent to a Central Business District provided that it is within 1,500 feet of a metro transit Station.” *Montgomery County Code*, §59-C-8.21(a). In addition, the TS-R Zone is intended to be placed in areas either where multi-family residential already exists or where it is recommended on an approved and adopted master plan. *Id.*, §59-C-8.21(b).

The subject property is located adjacent to the Wheaton Central Business District and within 1,100 feet of the Wheaton Metro Station. Confronting properties to the east, and other properties within the surrounding area to the south and west are also improved with multi-family residential developments. Therefore, the Hearing Examiner finds that this zoning requirement has been met.

Section 59-D-1.3 requires that the development plan “clearly indicate” how the proposed development meets the purposes of the applicable zone. The purposes of the TS-R Zone are set forth in Code §59-C-8.22:

*(a) To promote the effective use of the transit station development areas and access thereto;*

Technical Staff advises that the location of residential units within walking distance of the Wheaton Metro Station will promote the effective use of the transit station development area. A key goal of the Sector Plan, i.e., to attract additional residential population, was also based on this premise. In addition to the location of residential units close to the Wheaton Metro Station, the development plan also dedicates additional width and amenities to the pedestrian sidewalk, thereby enhancing pedestrian access to the CBD and the metro station. For these reasons, the Hearing Examiner finds that this development plan fulfills the purpose set forth in Section 8.22(a) (above).

*(b) To provide residential uses and certain compatible non-residential uses within walking distance of the transit stations;*

The development proposes multi-family housing within 1,100 feet of the Wheaton Metro Rail station. The Hearing Examiner finds that this purpose has been fulfilled.

*(c) To provide a range of densities that will afford planning choices to match the diverse characteristics of the several transit station development areas within the county; and*

The evidence set forth in Section III.B demonstrates that there is a wide variety of housing types in the surrounding area, including six-story multi-family projects as well as developments in the PD-9, PD-11, RT 12.5, and R-60 zones. This five to six-story multi-family development adds to these mix of uses. Based on this evidence, the Hearing Examiner finds that it meets the requirements of §59-C-8.22(c) above.

*(d) To provide the maximum amount of freedom possible in the design of buildings and their grouping and layout within the areas classified in this zone; to stimulate the coordinated, harmonious and systematic development of the area within the zone, the area surrounding the zone and the regional district as a whole; to prevent detrimental effects to the use or development of adjacent properties or the surrounding neighborhood; to provide housing for persons of all economic levels; and*

*to promote the health, safety, morals and welfare of the present and future inhabitants of the regional district and the county as a whole.*

The applicant's development plan is discussed at length in Section III.C. of this report. The innovative design of the project to buffer the proposed development from the town homes to the rear of the property, the provision of housing (including MPDUs) in very close proximity to a metro station, and the findings of compatibility throughout this Section all support a finding that this criteria has been met. The Hearing Examiner finds the development plan to be consistent with this requirement of the Zoning Ordinance.

**b. Compliance with the Standards and Regulations of the TS-R Zone**

A chart from the development plan (revised to include 245 units) comparing the proposed development with the standards required by the TS-R Zone is set forth in Section III.C.2 (on page 25). The chart demonstrates, and Technical Staff agrees, that the applicant has met development standards contained in Section 59-C-8 of the Zoning Ordinance.

As part of this development plan application, the applicant requests a "conceptual waiver" of the parking requirements set forth Section 59-E of the Zoning Ordinance. While the Hearing Examiner finds no statutory basis for the grant of such a waiver at the rezoning stage, I also conclude that a waiver is unnecessary at development plan approval. The Code requires a finding of compliance with the standards and regulations of the zone "*as set forth in article 59-C*" (emphasis supplied). The only standard relating to parking set forth in that article of the Code is §59-C-8.52, requiring that off-street parking be located to avoid significant impacts on adjoining residential properties (which is discussed below). As a result, the Hearing Examiner finds that the conceptual waiver is not legally required at this stage, but an actual waiver must be considered at the site plan stage, if still necessary.

Section 59-C-8.52 of the TS-R Zone requires that parking be located “as to have a minimal impact on any adjoining residential properties.” The development plan shows that all parking will be located on-site. The driveway access to the parking is located at the southern end of the site (further from Viers Mill Road and Georgia Avenue) and the development plan shows that it is entirely within the property’s boundaries. There being no evidence to the contrary, the Hearing Examiner finds that this standard has been met.

Section 59-C-8.54 of the Zoning Ordinance requires that all ancillary commercial uses must be located at street level (or possibly a penthouse restaurant) within the TS-R Zone. As described above, the applicant has indicated that any commercial uses proposed would be ancillary to the proposed development and conform to the requirements of the Zone. Tr. 32-34; Tr. 155-157.

Because the remaining evidence supports a finding that all standards set forth in §59-C-8 applicable to the TS-R zone have been met by the development plan submitted, the Hearing Examiner finds that the applicant’s development plans meets this requirement.<sup>3</sup>

## **2. Safety, Convenience and Amenity of Residents**

The next part of “Finding (b)” required by Section 59-D-1.61 is a determination that the proposed development would provide the “maximum safety, convenience, and amenity of the residents.” Technical Staff found that “sheer location” alone would satisfy both the required convenience and amenities due to the plethora of transportation options, services, and shopping destinations within walking distance of the development. Exhibit 34. While the evidence does support that finding, the Hearing Examiner believes that the standard should also be applied to the on-site circulation as well as to its location in the surrounding area. Outdoor recreational

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<sup>3</sup> Section 59-C-8.51, of the Zoning Ordinance is not applicable at the rezoning stage. Section 59-C-8.53 is inapplicable to the subject property as there are no internal streets in the proposed development.

amenities proposed include a “resort” designed interior courtyard, landscaped and containing an architecturally designed pool with other aesthetic features. T. 107-108. Indoor amenities will also be provided, as ultimately determined by the market. T. 108. An enhanced streetscape and expanded sidewalk width along Georgia Avenue serve as public use space, but also operates to the convenience of residents by providing locations for benches and additional landscaping. This enhances pedestrian access to the Central Business District. T. 104-105, 111. Based on these on-site features, in combination with the site’s proximity to transit and other uses in the Wheaton Central Business District, the Hearing Examiner concludes that the proposed development does offer sufficient convenience and amenities to its residents.

### **3. Compatibility with Adjacent Development**

The final required determination under “Finding (b)” is that the proposed development be compatible with adjacent development. The issue of compatibility was touched upon in Parts III.C and D of this report in connection with the applicant’s “vision” for the development and Sector Plan compliance. The applicant’s land planner testified that the project was compatible because it was designed to create an “inviting urban edge” along Georgia Avenue as an entrance to the Wheaton Central Business District. T. 107. She testified that the use is compatible with the land uses in the surrounding area due to the proximity of other, more intense, multi-family developments within the area. The TS-R zoning for the subject property would “balance” the entrance to the CBD because the confronting property to the east (across Georgia Avenue) was also zoned TS-R. Technical Staff also found the development compatible with the surrounding area due to the number of multifamily residential buildings that had been constructed or recently approved (some at heights higher than the five stories requested here) and that the height was an appropriate step-up in density because the site was so close to Metro. Exhibit 34, p. 11. Based

on the evidence in this case, the Hearing Examiner finds that the development plan is compatible with uses in the surrounding area.

With regard to immediately adjacent properties, the Hearing Examiner finds that the break in massing created by the terraced levels and landscaped setback along the southern property line renders the development compatible with the town home community to the south. The higher residential elevations (rising above the deck level) are further removed from the town homes, and at its furthest point, are several hundred yards from the property line. T. 65-66. Based on these features, the Hearing Examiner finds that this standard has been met.

### **C. Internal Vehicular and Pedestrian Circulation Systems and Site Access**

The third required finding is:

*That the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate, and efficient.*

Technical Staff advised that internal vehicular and pedestrian circulation systems were safe and efficient because of the measures taken to distinguish the drive aisle from pedestrian sidewalk and ensure sight distance for drivers exiting and entering the building. Exhibit 34, p. 12. The applicant's traffic expert testified that the driveway to the parking garage had been designed to have a flat grade at the entrance (rather than a steep grade immediately before the entrance), and that the building entrance had been setback from the sidewalk in order to provide adequate sight distance for drivers entering and exiting the parking garage. T. 151. The sidewalk pavement at the driveway differs texturally from the drive aisle also to alert residents of the approaching sidewalk. T. 151. Technical Staff suggests that the "pork chop" island is unnecessary to the median within Georgia Avenue and recommended that it be removed. Exhibit 34, Attachment 3. This, however, will require the approval of the Maryland State

Highway Administration. T. 151. While this may be an issue to be addressed at site plan review, there is no evidence at this rezoning stage that the existing “pork chop” design is unsafe. The applicant’s traffic engineer testified that pedestrian activity surrounding the site was safe because all intersections have signals with crosswalks and because of the additional sidewalk width along Georgia Avenue. T. 143. For these reasons, the Hearing Examiner concludes that internal and pedestrian circulation systems shown on the development plan are safe, adequate, and efficient.

#### **D. Preventing Erosion, Preserving Vegetation, Forest Conservation and Water Resources**

The fourth required finding is:

*That by its design, by minimizing grading and by other means, the proposed development would tend to prevent erosion of the soil and to preserve natural vegetation and other natural features of the site. Any applicable requirements for forest conservation under Chapter 22A and for water resource protection under Chapter 19 also must be satisfied. The district council may require more detailed findings on these matters by the planning board at the time of site plan approval as provided in division 59-D-3.*

The evidence is uncontroverted that there are no significant natural features on the site and that the existing development already encroaches significantly into the environmental buffer for the off-site stream. Exhibit 34, p. 12, Attachment 5. In addition, the evidence demonstrates that the quality of the off-site stream is poor, having been degraded by erosion caused by large volumes of stormwater. The eroded stream channel has adversely impacted properties to the south including the town home community. To mitigate the encroachment on the subject property, the applicant proposes to stabilize 800 feet of the stream’s bank immediately west and south of the property as a binding element on the development plan. Other binding measures to improve the stream’s quality include clearing debris from the stream channel and creating new outfall extensions. Exhibit 34, Attachment 5; Exhibit (mitigation plan), T. 54. Because the

existing development has already encroached on the environmental buffer, the Hearing Examiner finds that mitigation plan proposed in conjunction with this application may go further to restore stream quality than denying the application based on the encroachment.

The evidence in this case also demonstrates that only stormwater quality will need to be treated on the site. Quantity control requirements have been met due to the regional stormwater management facility downstream of the subject property. Stormwater quality will be controlled by a drainage system which will funnel stormwater through bio-retention planters, as described in Section III.E.2 above. Any excess stormwater will be channeled to outfalls at the rear of the site. Technical Staff advises that it believes that stormwater management regulations can be satisfied on the site under the system proposed. Exhibit 34, Attachment 5. Technical Staff also reports that the applicant may meet all forest conservation requirements off-site either by land banking or payment of a fee in lieu.

Based on this evidence and the for the reasons set forth above, the Hearing Examiner finds that the applicant has demonstrated the environmental controls required by “Finding (d).”

### **E. Ownership and Perpetual Maintenance**

The fifth required finding is:

*That any documents showing the ownership and method of assuring perpetual maintenance of any areas intended to be used for recreational or other common or quasi-public purposes are adequate and sufficient.*

Mr. Daryl South, vice president of development for the applicant, testified that the Washington Property Company intended to own the building after construction and manage the property itself or through a third-party management company. T. 42. All management of the

property would comply with the development plan including its binding elements. T. 42. The applicant submitted a copy of its purchase contract for the property to evidence ownership.

The applicant also stated in its Land Planning Report, Exhibit 31(f), p. 14, that:

Because of the small nature of the Project and its intended use as rental multi-family dwelling units, a single owner will likely continue to control all areas intended to be used for recreational or other common or quasi-public purposes. Through this single ownership entity, all such areas will continue to be maintained in an adequate and sufficient manner necessary to attract quality residential tenants to this Project and the Wheaton area.

Having no evidence to the contrary, the Hearing Examiner finds that the applicant has sufficiently demonstrated both ownership of the property and its commitment to perpetual maintenance of all recreational and other common or quasi-public areas.

#### **F. The Public Interest**

The applicant must show that the proposed reclassification is sufficiently in the public interest to justify its approval. The State Zoning Enabling Act applicable to Montgomery County requires that all zoning power must be exercised:

*“ . . . with the purposes of guiding and accomplishing a coordinated, comprehensive, adjusted, and systematic development of the regional district, . . . and [for] the protection and promotion of the health, safety, morals, comfort, and welfare of the inhabitants of the regional district.” [Regional District Act, Maryland-National Capital Park and Planning Commission Article (Art. 28), Md. Code Ann., § 7-110].*

When evaluating the public interest, the District Council normally considers master plan conformity, the recommendations of the Planning Board and Technical Staff, any adverse impact on public facilities, the environment, and public benefits such as the provision of affordable housing and the location of residences near a Metro station.

The issue of Sector Plan conformance was considered in Section V.A.1 of this report. As outlined therein, the Hearing Examiner finds that applicant's proposal is consistent with goals of the Sector Plan, as did both the Planning Board and Technical Staff. Additionally, the only evidence presented supports a finding that the proposed development is capable of conforming not only with the existing Sector Plan, but also with the draft amendment to the Sector Plan. The development conforms both in terms of proposed use, height and density, and also to the requirements of the recommended CR-4 zoning for the site.

The impact on public facilities was discussed in Section.V.A.3 of this report. The evidence indicates that, in general, transportation, schools and water and sewer services would not be adversely affected by the proposed development.

There has been no opposition to this project, and two letters indicating support for the development, one from the Wheaton Redevelopment Advisory Committee. Moreover, it is clear that the proposed development will provide the public benefit of additional affordable housing located in proximity to a Metro station.

For the reasons discussed at length in this report, the Hearing Examiner concludes that the proposed development would be in the public interest.

### **G. Conclusion**

Based on the foregoing analysis, and after a thorough review of the entire record, I reach the following conclusions:

1. The proposed development satisfies the intent, purpose and standards of the TS-R Zone, and meets the requirements set forth in Section 59-D-1.61 of the Zoning Ordinance;

2. The application proposes a project that would be compatible with development in the surrounding area; and
3. The requested reclassification to the TS-R Zone has been shown to be in the public interest.

## **VI. RECOMMENDATION**

I, therefore, recommend that Zoning Application No. G-876, requesting reclassification from the R-60 Zone to the TS-R Zone of approximately 1.76 acres on the southwest of the intersection of Viers Mill Road and Georgia Avenue, be approved in the amount requested and subject to the specifications and requirements of the revised Development Plan, Exhibit 58(a), provided that the applicant submits to the Hearing Examiner for certification a reproducible original and three copies of the Development Plan approved by the District Council within 10 days of approval, as required under Code §59-D-1.64.

Dated December 16, 2010

Respectfully submitted,

Lynn A. Robeson  
Hearing Examiner