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I. EXECUTIVE SUMMARY

Applicant: ArtSpace Projects, Inc.
 LMA No. & Date of Filing: H-110, filed September 10, 2016
 Zoning and Use Sought: Zone: CRNF 1.25, C-0.25, R-1.0, H-65
 Current Zone and Use: Zone: R-60; Former Silver Spring Police Station
 Location: 801 Sligo Avenue, Silver Spring, Maryland



Applicable Master Plan: *2000 East Silver Spring Master Plan*

Acreage to be Rezoned: Approximately 2.31 acres

CRNF Density Permitted: Total: 1.25 FAR (149,987 square feet)
 Residential: 1.0 FAR (119,990 square feet)
 Commercial: 0.25 FAR (29,997 square feet)

CRNF Density Planned: Total: 1.16 FAR (139,000 square feet)
 Residential: 0.92 FAR (110,000 square feet)
 Commercial: 0.24 FAR (29,000 square feet)

Open Space Required/Planned: 20% Common Open Space/10% public open space required; 20% Common Open Space and 10% public open space proposed

Parking Spaces Required/Planned: To be determined at site plan; will meet all parking requirements on-site

Building Height Required/Planned: Established by Floating Zone Plan/65 feet

Storm Water Management: Will meet current State regulations; details is to be addressed at Site Plan

Affordable Housing: 68 multi-family units for incomes at 30%, 40%, 50% and 60% of the adjusted median income (AMI) for the area; 4 workforce townhouse units; 7 market rate townhouses

Environmental Issues: None

Consistency with Master Plan: The project is consistent with the *East Silver Spring Master Plan*

Neighborhood Response: Supported by the East Silver Spring Civic Association

Other Factors: Responds to Request for Proposal issued by the County and developed in conjunction with citizens; development will have artist studios and residences and a public plaza where art may be displayed

Planning Board Recommends: Approval

Technical Staff Recommends: Approval

Hearing Examiner Recommends: Approval

II. STATEMENT OF THE CASE

Application No. H-110, filed on September 10, 2015, by ArtSpace Projects, Inc. (Applicant or ArtSpace), requests reclassification from the R-60 Zone to the Commercial Residential Neighborhood Floating Zone (CRNF) 1.25, C-0.25, R-1.0, H-65.¹ Located at 801 Sligo Avenue, Silver Spring, Maryland, it is further described as Lots 5-11, Block J of the Easley Subdivision. Exhibit 1. ArtSpace seeks to develop up to 68 multi-family affordable units, four workforce townhouse units, 7 market rate townhouse units, 30 artist studios, and 1,500 square feet of retail.

The Office of Zoning and Administrative Hearings (OZAH) noticed a public hearing for January 8, 2016. Exhibit 17. Staff of the Montgomery County Planning Department (Technical Staff or Staff) recommended approval on December 7, 2015. Exhibit 21. The Montgomery County Planning Board (“Planning Board”) considered the application on December 17, 2015, and unanimously recommended approval as well. Exhibit 22.

Prior to the public hearing, the Applicant revised the Floating Zone Plan (FZP) to add binding elements limiting the number of residential units and retail uses on the site and to commit to have 10 of the studios occupied by resident artists. Exhibit 39(c).

The public hearing proceeded as scheduled, at which time the Applicant presented evidence and called four witnesses in support of the application. Ms. Karen Roper, who is on the Board of Directors of the East Silver Spring Citizen Association, testified as an individual in support of the project.

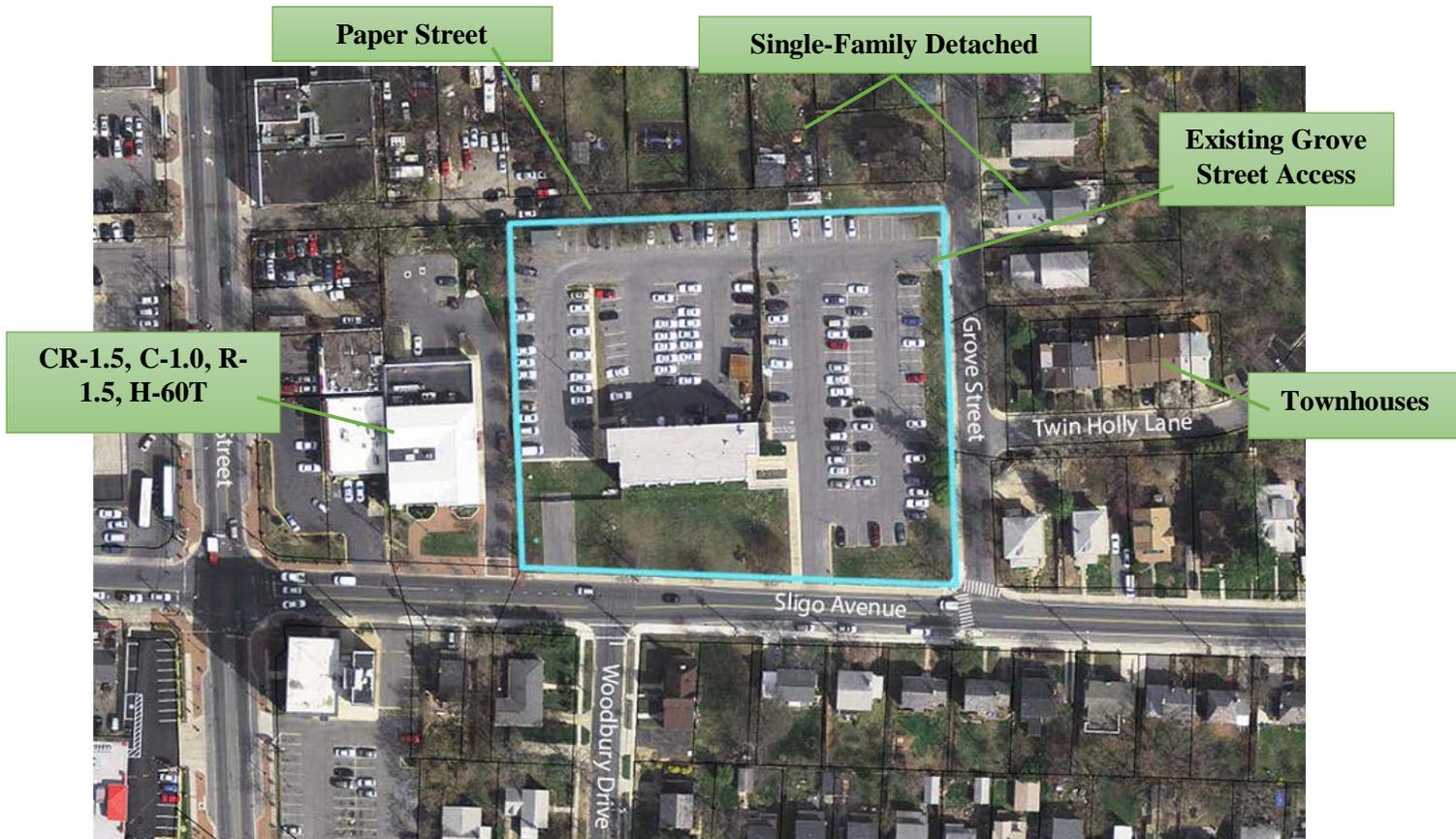
Based on the entire record of this case, the Hearing Examiner finds that the requirements for the requested rezoning have been met, and that the application should be granted.

¹ The first number listed after the acronym “CRNF” (i.e., 1.25) reflects the total floor area ratio (FAR) permitted in the zone. “C-0.25” indicates the maximum FAR permitted for commercial uses, and “R-1.00” means maximum FAR for residential uses is 1.00. “H-65” indicates that the maximum height permitted is 65 feet. *Zoning Ordinance*, §59.5.3.1.

III. FACTUAL BACKGROUND

A. Subject Property

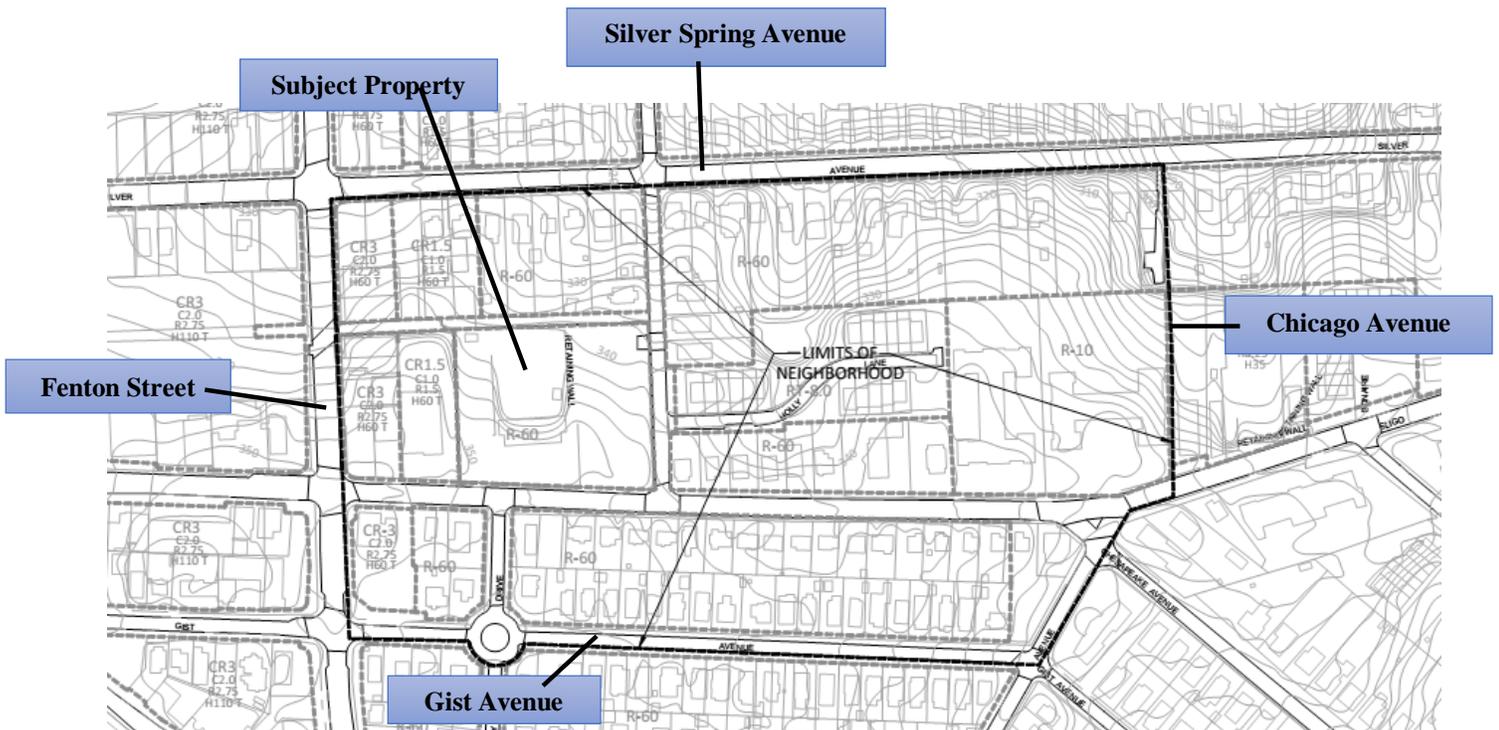
Located just outside of the eastern edge of the Silver Spring Central Business District (CBD) in the northwest quadrant of the intersection of Sligo Avenue and Grove Street, the subject property consists of about 2.31 acres (a tract area of 119,990 square feet). Improvements include a building formerly used as the District 3 police station (that has since moved) and relative large areas of paved parking lot. Exhibit 21, p. 2. Mr. Joshua Sloan, the Applicant's expert land planner and landscape architect, testified that the property generally slopes from southwest to northeast and is predominantly cleared. T. 28. The site currently has three access points: one on Grove Street and two on Sligo Avenue. A paper street is located immediately to the north of the property. An aerial photograph of existing site conditions, included in the Staff Report, is shown below (*Id.*):



Both Mr. Sloan and Staff agree that there is at least one tree on-site and several trees off-site that will need variances from the Montgomery County Forest Conservation Law (Chapter 22 of the Montgomery County Code), which will be decided at site plan. The site currently has no stormwater management. Exhibit 7, p. 2.

B. Surrounding Area

The surrounding area must be identified in a floating zone case so that compatibility can be evaluated properly. Generally, the definition of the surrounding area takes into account those areas that would be most directly affected by the proposed development. Staff defined the boundaries of the surrounding area as Fenton Street to the west, Silver Spring Avenue to the north, Chicago Avenue to the east, and Gist Avenue to the south, as shown on a map prepared by the Applicant (Exhibit 31, below):



To the north and the south, the neighborhood consists primarily of single-family homes on narrow lots. Fenton Village, which consists of low- to mid-rise mixed use development, is to the

west, and a mixture of predominantly residential uses including townhouses on Twin Holly Lane and single-family and low-rise multi-family apartment buildings along Sligo Avenue, with a small amount of commercial uses near Chicago Avenue are to the east. Exhibit 23. Mr. Sloan characterized the area as an “edge condition” to an urban area, primarily residential with single-family, multi-family and townhouse units and neighborhood serving retail. Exhibit 25-26.

The Hearing Examiner accepts Staff’s delineation and Mr. Sloan’s characterization of the surrounding area. She finds that the surrounding area consists of a mix of residential uses transitioning to commercial and other non-residential uses to the west, closer to the CBD.

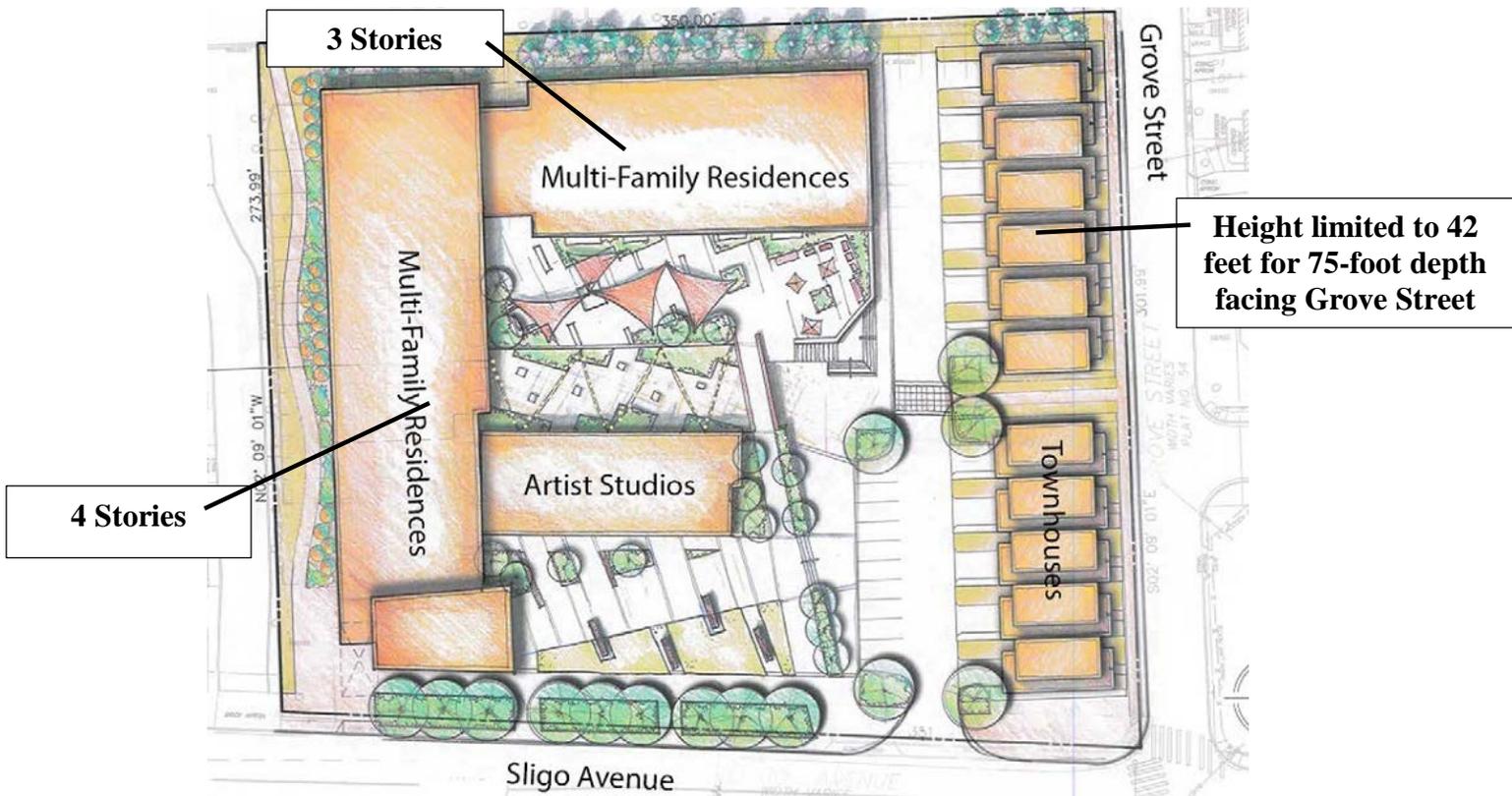
C. Proposed Development

This project results from a Request for Qualifications and Development Proposals (RFQADP), issued by the Montgomery County Department of Housing and Community Affairs (DHCA) in consultation with the surrounding community, to redevelop the former site of the District 3 Police Station. The RFQADP sought “creative, feasible proposals for transforming the Site into a mixed-income housing development including artist live/work multi-family rental and for-sale housing that is compatible with the surrounding residential neighborhood and the goals of the RFQADP.” Exhibit 28, p. 3. ArtSpace was selected to develop the site. Exhibit 30.

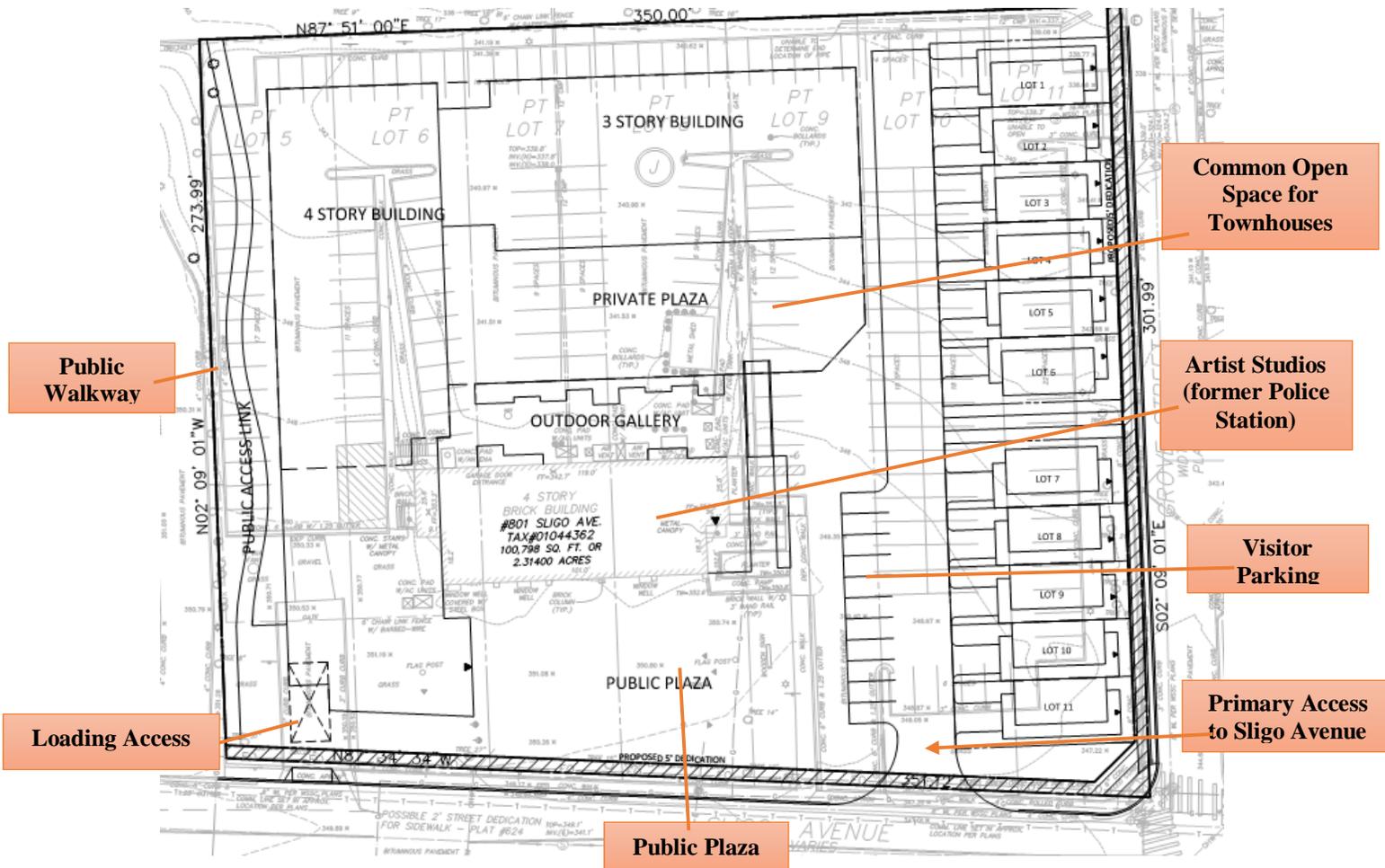
ArtSpace’s representative, Mr. Stacey Mickelson, testified that ArtSpace is the largest real estate developer in the nation that specifically designs spaces for artists and art organizations. Their projects are unique because their buildings use an “artist work model,” which allows a larger volume of space within each residence to facilitate creative activity. They also design extra wide corridors and elevators to facilitate movement of large art pieces. T. 14. It is financed by federal, state and local sources, usually by housing and economic development agencies, and low-income tax credit investors. Financing requirements mandate that ArtSpace obtain all of its land development approvals (through site plan) by August 1, 2016. T. 12-16.

ArtSpace proposes to construct up to 68 multi-family units, 11 townhomes (four workforce housing and 7 market rate), 30 artist studios and 1,500 square feet of retail. The multi-family units will serve residents at different levels (i.e., 30%, 40%, 50% and 60%) of the adjusted median income (AMI) for the area. Four of the townhomes will be workforce housing and the balance (i.e., 7 houses) will be market rate units. T. 17-18; Exhibit 21, p. 3.

The improvements are designed to create a transition from the single-family dwellings adjoining and confronting the property to the east and north to the higher intensity uses in the Silver Spring CBD, immediately to the west. The townhouse units face the single-family dwellings and townhouses across Grove Street. The multi-family buildings step up to three stories along the northern boundary (adjacent to single-family homes) and then four stories on the western end of the site. Binding elements in the FZP reinforce these height limits. A rendered version of the FZP, from Staff's report, best demonstrates the transition in heights from east to west (Exhibit 21, p. 5, shown below):



The former police station will be used for artist studios. A private plaza in the middle of the site serves as common open space for the townhouse units and a public plaza fronts Sligo Avenue. Another public pathway runs along the western border and connects to a planned pathway to the north. *Id.* at 5. The site plan (Exhibit 39(c)), shows the location of the public and private open space and site access:



Staff found that the project’s design “displays particular sensitivity to the single-family residential homes confronting the Property” because the multi-family units will incorporate first-floor access with patios to “provide a more appropriate and gentle transition to the confronting single-family homes.” Exhibit 21, p. 4. The public plaza will be used for artists to display work as well as a place where the community may gather. *Id.*

Mr. John Maisto, ArtSpace's expert in architecture, testified that all of the required parking will be provided on-site. The parking required for the multi-unit buildings will be in a garage underneath those units. The exact parking requirements will not be determined until site plan when the unit mix (i.e., the number of one-, two-, and three-bedroom units) is known. The townhouses will have individual garages and possibly room for one additional space in each driveway. A small surface parking lot located to the rear of the townhouses will accommodate visitor parking. T. 53-55; Exhibit 21, pp. 5-6.

As a result of community input, the FZP prohibits access from Grove Street or a paper street existing along the northern boundary of the site. Exhibit 39(c). The primary access will be from Sligo Avenue on the eastern part of the site. A secondary access from Sligo Avenue, near the site's western boundary, will be used for loading, although the Applicant is working with the neighborhood to have the loading access moved to a less conspicuous location. T. 55.

Mr. Charles Irish, ArtSpace's expert in civil engineering, opined that the site access and circulation shown on the FPZ will be safe and efficient, although MCDOT has not finally approved the access shown. According to Mr. Irish, MCDOT generally requires a minimum of 100 feet between the access drive and an intersection to avoid conflicting turning movements, particularly at high-volume intersections. Left turns out of the access proposed here potentially conflict with vehicles turning right onto Sligo Avenue from Grove Street. However, MCDOT measures distance from the tangent of the road (the place where the fill-in meets the curb) to the tangent of the access drive. The existing site access has a very small radius (i.e., approximately a 5- to 7-foot taper to the curb). When measured from tangent to tangent, the distance between the existing access and Grove Street is 75 feet. The proposed access has a much larger radius, causing the tangent to be closer to Grove Street. Mr. Irish opined that, even though the larger radius of the proposed driveway will cause the tangents to be spaced more closely, the access shown will be safe and efficient

because the tangent to tangent distance doesn't have a significant effect on the distance between vehicles making turn movements in and out of the site in this case. He testified that access for many sites in urban areas have access points less than 100 feet from intersections, and that MCDOT has granted requests to modify its standards for these reasons. Mr. Irish believes that the modification would be granted in this instance because both Grove Street and Sligo Avenue are low volume roads and topography is level so that sight distances is adequate. While the Applicant could modify the access to meet the distance requirements, in his opinion, this wouldn't be desirable because it would reduce the size of the public plaza. T. 62-68. Mr. Craig Hedberg, the Applicant's traffic expert, opined that the number of conflicting movements (i.e., left turns out of the access drive) will be low because of the projected trip distribution, which shows that most traffic will be turning right out of the site toward the CBD. T. 76.

The Applicant imposes certain "binding elements" on the FZP limiting access, building heights, and density, shown below (Exhibit 39(c)):

BINDING ELEMENTS

1. VEHICULAR ACCESS FROM GROVE STREET SHALL BE PROHIBITED.
2. VEHICULAR ACCESS FROM THE ALLEY LOCATED TO THE NORTH OF THE PROPERTY IS PROHIBITED.
3. THE MAXIMUM BUILDING HEIGHT OF ANY STRUCTURE WITH FRONTAGE ON GROVE STREET SHALL NOT EXCEED 42 FEET FOR A DEPTH OF 75 FEET, AS MEASURED FROM THE CURB AT GROVE STREET.
4. THE MAXIMUM BUILDING HEIGHT OF THE 3 STORY BUILDING LOCATED PARALLEL TO THE ALLEY SHALL NOT EXCEED 50 FEET, AS MEASURED FROM THE CURB AT SLIGO AVENUE.
5. THE MAXIMUM BUILDING HEIGHT ALONG SLIGO AVENUE SHALL NOT EXCEED 60 FEET, AS MEASURED FROM THE CURB AT SLIGO AVENUE.
6. A PUBLIC PLAZA, AT LEAST 3,750 SQUARE FEET IN SIZE, WILL BE LOCATED ALONG SLIGO AVENUE.
7. A MINIMUM OF 3,500 SQUARE FEET OF COMMON OPEN SPACE WILL BE LOCATED IN AN INTERIOR COURTYARD FOR USE BY RESIDENTS OF THE SITE.
8. THE MINIMUM BUILDING OFFSETS FROM THE PROPOSED RIGHT OF WAY FROM GROVE STREET WILL BE 5 FEET AND FROM SLIGO AVENUE WILL BE 15 FEET.
9. FINAL DEVELOPMENT/UNIT MIX SHALL NOT EXCEED:
 - 68 MULTIFAMILY UNITS
 - 11 TOWNHOMES
 - 30 ARTISTS STUDIOS
 - 1,500 SF COMMERCIAL/RETAIL
10. A MINIMUM OF 10 OF THE ARTIST STUDIOS WILL BE LEASED TO RESIDENTS OF THE DEVELOPMENT.
11. FINAL DEVELOPMENT WILL INCLUDE A MINIMUM OF 12.5% MPDUS.
12. TOTAL SQUARE FOOTAGE OF DEVELOPMENT WILL NOT EXCEED 1.16 FAR OR 139,000 SQUARE FEET.

D. Community Response

Ms. Roper testified that this project is truly a grassroots effort. Five years ago, the East Silver Spring Citizens Association developed a process they called “micro to macro” to engage all property owners and residents around the property in a discussion with the County Executive to develop a project with an art component, including art studios. Association members worked very closely with Staff to identify what zones and binding elements were appropriate. After being selected, ArtSpace followed through with that and their design was so sensitive to the neighborhood that it didn’t take much for the community to support it. More than 40 neighbors worked with ArtSpace on the design, and her Association voted to support it. T. 10-11.

IV. FINDINGS AND CONCLUSIONS

A floating zone is a flexible device that allows the Council to establish a zoning district for a particular category of land use without attaching that district to particular pieces of property. Individual property owners may seek to have property reclassified to a floating zone by demonstrating that the proposed development will meet the standards set forth in the Zoning Ordinance and that it will be consistent with a coordinated and systematic development of the Regional District, as required by State law.² *Md. Land Use Code Ann.*, § 21-101(a)(4)(i). A simple majority of the District Council must approve the re-zoning where, as here, the Planning Board has recommended approval as well.

The CRNF 1.25, C-0.25, R-1.0, H-65 Zone contains development standards and a post-zoning review process that generally delegates to the Planning Board the details of site specific issues such as exact building location, stormwater control, vehicular and pedestrian routes, landscaping and screening. The Council’s role is broader and more discretionary: It must make

² Effective October 1, 2012, the Regional District Act, Article 28, Md. Code Ann., was re-codified, without a change in substance, into a new “Land Use Article.” Section § 21-101(a)(4)(i) of the Land Use Article contains the rough equivalent of the previous language in Article 28, Md. Code Ann., § 7-110.

“Necessary Findings” set out in the Zoning Ordinance, some of which incorporate more detailed standards in other sections of the Zoning Ordinance. These necessary findings, and the Hearing Examiner’s conclusions as to whether these standards have been met, are set forth individually below.

A. “Necessary Findings” Required by Zoning Ordinance §59-7.2.1.E.2.

For a Floating zone application the District Council must find that the floating zone plan will:

a. substantially conform with the recommendations of the applicable master plan, general plan, and other applicable County plans;

This property lies within the geographic area covered by the *2000 East Silver Spring Master Plan* (Master Plan or Plan). According to Staff, the major theme of the Plan is to “support stable residential neighborhoods and to assure linkages to commercial centers and public facilities.” *Plan*, p. 21. To implement this goal, the Plan makes the following recommendations (*Plan*, pp. 26-27) :

- Confirm the existing residential zoning throughout East Silver Spring, except as recommended in this Plan
- Retain the existing single-family detached character throughout most of East Silver Spring, the existing mix and distribution of apartment uses, and the rights to develop existing properties and replace existing residential structures.
- Amend the appropriate zones to allow low and medium density apartment areas to continue or be replaced at the current density.
- Increase the range of the housing stock by recommending the site currently occupied by the police department on Sligo Avenue for townhouses, if it becomes available for private development.

As indicated by the last bullet above, the Plan reconfirmed the then-existing R-60 Zone for the subject property, but recommended rezoning to the RT-8 floating zone in order to increase the range of housing stock in the area. *Plan*, p. 27. The 2014 Zoning Ordinance phases out the R-T Zone by prohibiting property owners from filing a new Local Map Amendment requesting that zone. *Zoning Ordinance*, §59-8.1.1. Thus, while the Master Plan recommends the property for a

floating zone, the Applicant cannot utilize the particular floating zone recommended.³

Staff concluded that the CRNF Zone generally furthered Plan's goal in recommending the property for a floating zone (Exhibit 21, p. 7):

After the police station relocated from the Property to White Oak in 2014, the County issued a request for proposal for a public-private partnership to redevelop the site. In partnership with the surrounding community, the County selected the Applicant's proposal for redevelopment of the site. The proposed development will both enhance the public use of the site...by creating inviting uses and public spaces. In addition, construction of townhouses and multi-family units will increase the types of housing stock available in Silver Spring.

Staff also concluded that the project will further the Plan's goal to stabilize and enhance residential neighborhoods and commercial centers because it will (1) increase the affordable housing stock in the area, (2) serve as a transitional buffer between lower density residential uses and the CBD, (3) enhance the adjoining Fenton Village by providing an arts attraction, (4) secure additional public areas and pathways, and (5) bring the site up to today's environmental standards. Exhibit 21, p. 7.

Conclusion: The Hearing Examiner agrees with Staff's recommendations and finds that the proposed use comports with the Plan's goal for the specific property by providing housing for a mix of incomes in a manner compatible with the site's transitional role in the surrounding area. She finds that it also conforms to the Plan's goals to enhance existing residential neighborhoods by providing public space and pathways that connect to other areas within Silver Spring.

b. further the public interest.

The Council has interpreted the "public interest" in conformance with State law, i.e., that the plan is appropriate for the systematic development of the County by complying with different County plans and policies. This includes a review of whether public facilities are adequate to serve

³ The Applicant could apply for a Residential Townhouse Floating Zone under the 2014 Zoning Ordinance, but this would not permit the artist studios and retail space requested. *Zoning Ordinance*, §§59.5.1.3, 59.3.1.6.

the use, including adequate roadway capacity, utilities, stormwater, and public services. As there is a separate standard requiring the Council to make a preliminary determination of the adequacy of road facilities, this is discussed under Section 7.2.1.E.2.e, below.

1. *Stormwater Management.* The applicant submitted a Land Use Report (Exhibit 7) stating that stormwater management on the property will meet current state regulations requiring environmental site design to the maximum extent practicable through the use of a green roof and bio-retention facilities. Exhibit 7, p. 9.

2. *Water and Sewer.* The same Land Use Report advises that public water and sewer are available to serve the property. *Id.* Staff advises that the property may use the existing lines without the need to install a pump station. Exhibit 21, p. 8.

3. *Schools.* This development will feed to the public schools within the Blair Cluster, which includes the East Silver Spring Elementary School, the Takoma Park Middle School, and Blair High School. The FY 2016 School Test under the Subdivision Staging Policy requirements schools exceeding 105% of utilization to pay an impact tax at the time of preliminary plan. Presently, the middle school and high school are at 117.1% and 110% utilization levels, although the public school system is conducting a feasibility study for an expansion to the middle school. If either the middle or high school remain over the 105% utilization at the time of preliminary plan, the Applicant will pay an impact fee.

4. *Public Services.* Staff advises that several fire stations are within 2 miles of the site. Nearby facilities include Montgomery County Fire Station 1 at 8110 Georgia Avenue, Silver Spring, the Takoma Park Volunteer Fire Department 2, at 7201 Carroll Avenue in Takoma Park, and the Silver Spring Fire Department at 1945 Seminary Road. The nearest police station, 1002 Milestone Drive, Silver Spring, is about four miles from the property.

The Applicant adds that the property conforms to the *2012 Draft Housing Policy*, which

recommends increasing the number of affordable housing units, and in particular, rental housing units in the County. While this policy is labeled as a “draft,” the *2011 Housing Element of the General Plan* has been adopted and recognizes the same need for affordable units in all areas of the County. *Housing Element*, p. 14.

Conclusion: Based on this evidence and testimony, the Hearing Examiner finds that the proposed use will be in balance with and supported by the existing and planned infrastructure in the general plan, applicable master plan, functional master plan staging, and applicable public facilities requirements.

d. be compatible with existing and approved adjacent development;

Mr. Sloan testified that the proposed development will be compatible with the surrounding area because it contributes to the existing mix of housing, which includes single-family detached and attached homes and multi-family developments. The lower density (i.e., townhouse units) along Grove Street and stepped up heights foster a compatible transition of scale between the single-family detached and attached homes across Grove Street to the edge of the CBD with more retail and office uses. T. 44. Mr. Maisto opined that ArtSpace has used contextual site design, (i.e., one that fits well with existing conditions), which increases building massing from east to west to respond to the different uses on either side of the site and provide an appropriate transition from the residential neighborhoods to the east and the CBD to the west. The architecture of the buildings will be contextual modern, not overtly traditional, but respectful architecture within the area. T. 49-50, 56. The multi-family units along the northern edge of the property will be first-floor accessible with patios to transition to the single-family homes immediately to the north. T. 55; Exhibit 7, p. 5. The townhomes located on the eastern portion of the property bring the project down to a residential scale where it faces the single-family detached homes and townhouses across Grove Street.

Staff concluded that that density and scale of the project, as well as the binding elements requiring stepped up heights from east to west, established compatible relationships with surrounding uses. Staff concluded (Exhibit 21, p. 12):

The proposed development standards and binding elements will protect the established residential character of the neighborhoods to the north, south and east through comparable building heights and setbacks. The height and massing of the proposed townhouses will establish a residential scale and feel with the existing townhouses to the east across Grove Street. The 4-story multi-family building proposed along the property's western edge will provide a gradual transition to the abutting CBD properties.

Conclusion: The Hearing Examiner agrees with Staff and the Applicant that the massing and scale of this project is particularly sensitive to the existing character of the neighborhood, which has a variety of residential uses to the east transitioning to more intense uses in the Silver Spring CBD. The development will inject new housing types into the area without significantly altering the neighborhood's existing character. It also provides pedestrian connections to other areas and adds public space where none currently exists.

e. generate traffic that does not exceed the critical lane volume or volume/capacity ratio standard as applicable under the Planning Board's LATR Guidelines, or, if traffic exceeds the applicable standard, that the applicant demonstrate an ability to mitigate such adverse impacts . . ."

The principal tool used by the County to evaluate the capacity of transportation facilities to handle a proposed development is the Local Area Transportation Review ("LATR"). For properties estimated to generate more than 30 new trips on area roadways, LATR requires a traffic study to evaluate whether a proposed development would result in unacceptable congestion during the morning and evening peak hours. Developments that will generate fewer than 30 peak-hour trips are exempt from LATR review and require only a traffic statement demonstrating the basis for the exemption.⁴ See Exhibit 24(b).

⁴ Planning Department's *LATR and TPAR Guidelines* (2013), p. 6.

The Applicant’s traffic expert, Mr. Craig Hedberg, opined that the use would generate 26 morning peak hour trips and 25 evening peak hour trips, and is therefore exempt from LATR review. T. 72-74. His calculations include a credit for the trips generated by the former police station, a 15% credit from trips for artists who will live and work in the development. A binding element ensures that a minimum of 10 of the studios will be rented to resident artists. A summary of the trips estimated by Mr. Hedberg (Exhibit 9) is shown below:

Trip Generation	Morning Peak-Hour			Evening Peak-Hour		
	In	Out	Total	In	Out	Total
Proposed						
11 Proposed Townhouses	1	4	5	6	3	9
68 Garden Apartments	6	24	30	22	11	33
30 Artist Studios ¹	15	0	15	0	15	15
1,500 SF Ancillary Retail	1	1	2	2	2	4
Total Proposed	23	29	52	30	31	61
Credits						
15% Reduction for resident artists (10 Dwelling Units)	1	3	4	3	2	5
15% Reduction for Resident Artists (10 Studio Units)	5	0	5	0	5	5
Former Third District Police Station ²	11	6	17	6	20	26
Total Credit	17	9	26	9	27	36
Total Net New Peak Hour Trips	6	20	26	21	4	25

Conclusion: Based on uncontroverted evidence in this case, the Hearing Examiner finds that the development is exempt from LATR and that roadway capacity is sufficient to serve the proposed use.

B. The Intent of Floating Zones (Section 59-5.1.2)

Next, the Council must decide whether the proposed development will satisfy the intent and purpose of the CRNF Zone. These standards are set forth in **Zoning Ordinance §59-5.1.2:**

The Residential Floating, Commercial/Residential Floating, Employment Floating, and Industrial Floating zones are intended to provide an alternative to development under the restrictions of the Euclidean zones mapped by Sectional Map Amendment (the Agricultural, Rural Residential, Residential, Commercial/Residential, Employment, Industrial, and Overlay zones). To obtain a Floating zone, an applicant must obtain approval of a Local Map Amendment under Section 7.2.1. The intent of the Floating zones is to:

A. Implement comprehensive planning objectives by:

- 1. furthering the goals of the general plan, applicable master plan, and functional master plans;**
- 2. ensuring that the proposed uses are in balance with and supported by the existing and planned infrastructure in the general plan, applicable master plan, functional master plan staging, and applicable public facilities requirements; and**
- 3. allowing design flexibility to integrate development into circulation networks, land use patterns, and natural features within and connected to the property; and**

Conclusion: As already discussed, the Hearing Examiner concludes that the FZP furthers the goals of the Master Plan. The *2005 Approved and Adopted Bikeways Functional Master Plan* calls for an on-road bike lane along Sligo Avenue. Staff advises that the proposed development will not preclude implementation of this bikeway. Exhibit 21, p. 8.

The capacity of roadways and other County infrastructure have also been discussed previously. Staff advises that nearby transit facilities include the Silver Spring Metro Station and a proposed Purple Line station, which are approximately .47 miles west of the property and less than 1/3 of a mile south property, respectively. A bus stop for Montgomery County Ride-On is adjacent to the site on Sligo Avenue and runs between Silver Spring and Langley Park/Takoma. Additional Ride On and WMATA bus routes are accessible from stops located on Fenton Street. Exhibit 21, p. 2. A shared roadway lane provides runs in front of the property on Sligo Avenue.

Based on the evidence and testimony above, the Hearing Examiner finds that the application meets this intent of the zone. The Hearing Examiner adds that the project utilizes the flexibility allowed by the CRNF Zone to integrate pedestrian connections to other public pathways and provide public open space along Sligo Avenue.

B. Encourage the appropriate use of land by:

- 1. providing flexible applicability to respond to changing economic, demographic, and planning trends that occur between comprehensive District or Sectional Map Amendments;**
- 2. allowing various uses, building types, and densities as determined by a**

- property's size and base zone to serve a diverse and evolving population; and*
- 3. ensuring that development satisfies basic sustainability requirements including:**
- a. locational criteria,*
 - b. connections to circulation networks,*
 - c. density and use limitations,*
 - d. open space standards,*
 - e. environmental protection and mitigation; and*

Conclusion: As already described, this project is the result of an RFQADA issued by DHCA working with the community for re-use of the former police station. It provides a mix of affordable units and housing types on the site, and fosters the development of artists that contribute to the local neighborhood.

Staff found that the project satisfies the sustainability requirements listed above because of its location near mass transit and connections to bus networks, the provision of pedestrian linkages through a public path on the west end of the site, and improvement of the streetscape along Sligo Avenue. Exhibit 21, p. 12. It provides both common open space for the townhouse units and public open space for the plaza and pedestrian walkway. Stormwater management will be installed at current standards. Mr. Sloan testified that the property will meet all requirements of the Montgomery County's Forest Conservation Law (*Montgomery County Code*, Chapter 22A). The Hearing Examiner concludes from this evidence and testimony that the proposed development meets this intent of the CRNF Zone.

- C. Ensure protection of established neighborhoods by:**
- 1. establishing compatible relationships between new development and existing neighborhoods through limits on applicability, density, and uses;*
 - 2. providing development standards and general compatibility standards to protect the character of adjacent neighborhoods; and*
 - 3. allowing design flexibility to provide mitigation of any negative impacts found to be caused by the new use.*

Conclusion: The compatibility requirements of this section are repetitive of the compatibility findings required in §59-7.2.1.E.2.d, above. As was stated there, the Hearing Examiner finds that the proposed development will be compatible with existing and approved adjacent development.

C. Prerequisites for Floating Zone (Section 59-5.1.3)

Section 59-5.1.3 of the new Zoning Ordinance sets up a series of tests to determine whether the requested floating zone may be applied to a particular site. Each applicable subsection is listed separately below, followed by the Hearing Examiner's finding on each:⁵

C. If a Floating zone is not recommended in a master plan, the following apply:

1. The maximum allowed density is based on the base zone and on the size of the tract as stated in Division 5.2 through Division 5.5. Any density bonus requested under Chapter 25A may be added to the density allowed under Division 5.2 through Division 5.5 and included in the units per acre or FAR of the zone requested.

Conclusion: A comparison of the density permitted and proposed is shown in a table from the Staff Report, on page 24 of this Report. Exhibit 21. The density proposed here falls within the maximum permitted in the Zone and this requirement has been met.

b. When requesting a Townhouse Floating (TF) zone, Apartment Floating (AF) zone, or Commercial Residential Neighborhood Floating (CRNF) zone for a property with a Residential base zone:

i. The property must front on a nonresidential street or must confront or abut a property that is in a Residential Townhouse, Residential Multi-Unit, Commercial/Residential, Employment, or Industrial zone; and

ii. The application must satisfy a minimum of 2 prerequisites for each of the categories under Section [5.1.3.D](#).

Conclusion: Staff advises that the Master Plan classifies Sligo Avenue as a non-residential street. The property confronts townhomes across Grove Street in the RT-8.0 Zone and abuts property zoned CR-1.5, C-1.0, R-1.5, H60T to the west. Therefore, the property meets the prerequisites listed in §59.5.1.3.D.b.i. The second set of prerequisites (contained in §59.5.1.3.D) is discussed below.

Section 5.1.3.D. Prerequisites

⁵ To shorten this Report, the Hearing Examiner does not repeat inapplicable sections of the Zoning Ordinance. For the record, the following sections are inapplicable for the reasons that follow. Section 59.5.1.3.A prohibits floating zone applications for properties with Agricultural or Rural Residential base zones. As this property is in neither, it is not applicable. Section 59.5.1.3.B would permit the applicant to file an application for a Townhouse Floating (TF) Zone under the new ordinance, but this would not permit retail, multi-family or artist studios. *Zoning Ordinance*, §59.3.1.6. Section 59.5.1.3.C.2 applies only to LMAs for Residential Detached Zones.

A table from the Staff Report lists the prerequisites for a floating zone application and marks which prerequisites are met with an “X” (Ex. 21, p. 15):

Category	Prerequisite Choices	Met
Transit & Infrastructure	At least 75% of the site is within ¼ mile of a Level 3, ½ mile of a Level 2, or ¾ mile of a Level 1 transit station/stop.	X
	The site has frontage on and vehicular, bicycle, and pedestrian access to at least 2 roads, at least one of which is nonresidential.	
	The site is served by existing water and sewer infrastructure that will not require either an upgrade to the service line or installation of a pump station due to the proposed development.	X
	All signalized intersections within ¼ mile of the site boundary are operating below the applicable congestion standard.	X
	The Project is age-restricted or senior housing, or if proposing development that may generate students, the site must not be in an area that is under moratorium due to school capacity or result in a school utilization rate greater than 120% because of the proposed development. For any site within 2 school clusters, only the portions of the site that satisfy this requirement can proceed.	
Vicinity & Facilities	The site is in a transitional location between Property in an existing Residential Multi-Unit, Residential Townhouse, or non-Residential Zone and Property in a Residential Multi-Unit, Residential Townhouse, or Residential Detached Zone.	X
	The site is adjacent to a bicyclist route that provides access to commercial services within 3 miles.	
	The site is adjacent to a route that provides access to an existing or master-planned school within ½ mile.	X
	The site is adjacent to a pedestrian route that provides access to existing public park and recreation facilities that satisfy a minimum of existing public park and recreation facilities that satisfy a minimum of 30% of the recreation demand under the Planning Board’s Recreation Guidelines, as amended, within ¼ mile.	
	The site is adjacent to a pedestrian route that provides access to an existing grocery store or County-permitted farmer’s market within ¼ mile.	
Environment & Resources	The limits of disturbance for the development will not overlap any stream, floodplain, wetland, or environmental buffer or any slopes greater than 25% or slopes greater than 15% where erodible soils are present.	X
	The site does not contain any forest or, if forest is present, the limits of disturbance for the development will not reduce the forest cover to less than an area of 10,000 square feet and width of 35 feet at any point.	X
	The site does not contain any rare, threatened, or endangered species or critical habitats listed by the Maryland Department of Natural Resources.	X
	The site is on land containing contaminated soils and is developed in conjunction with an environmental Voluntary Cleanup Program under the Maryland Department of Environmental Protection.	
	The site is currently developed with more than 75% impermeable surfaces, including paving and roofed-structures, and does not currently provide stormwater management meeting the standards applicable on the date of filing.	

Staff concluded that the checked prerequisites are met for the following reasons (Exhibit 21, pp. 15-16):

Transit & Infrastructure: As noted, the property is within 0.47 miles of the Silver Spring Metro Station and existing water and sewer facilities may serve the site without an upgrade.

Vicinity & Facilities: The site serves as a transition between residential townhomes to the east and more intensive uses within the Silver Spring CBD to the west. The East Silver Spring Elementary School is within ½ mile from the property.

Environment & Resources: The property does not contain any of the described environmental features or any forested areas.

Conclusion: Based on this undisputed record, the Hearing Examiner finds that the application meets all the prerequisites for the CRNF floating zone.

D. Purpose, Land Uses, and Building Types Permitted by the CRNF Zone (Section 59.3.2)

Zoning Ordinance §59.5.3.2 establishes the Commercial Residential Neighborhood Floating Zone, describes its purpose, and permitted uses and building types. It also proscribes minimum and maximum development standards, which are addressed in the next section.)

Section 5.3.2. Purpose

The purpose of the Commercial/Residential Floating zones is to:

- A. allow development of mixed-use centers and communities at a range of densities and heights flexible enough to respond to various settings;*
- B. allow flexibility in uses for a site; and*
- C. provide mixed-use development that is compatible with adjacent development.*

Conclusion: This development has utilized the flexibility of the zone to design a mixed use development that will be compatible with the surrounding community, as previously discussed. Based on the undisputed record, the Hearing Examiner finds that the subject Floating zone application satisfies this purpose of the CRNF Zone.

Section 5.3.3. Land Uses

A. The following land uses are allowed in the Commercial/Residential Floating zones:

- 1. In the CRNF zones, only the uses allowed in the CRN zone are allowed.**

Conclusion: The application proposes a mix of multi-unit and townhouse living units, retail, and

artisan manufacturing and production, all of which are permitted by right in the CRNF Zone.

Section 5.3.4. Building Types Allowed

A. Any building type is allowed in the Commercial/Residential Floating zones.

B. An applicant may voluntarily prohibit specific building types or establish binding elements that restrict specific building types to support the necessary findings of approval under Section 7.2.1.

Conclusion: Any building type is allowed in the CRNF Zone, however, the Applicant has limited the number units, building types, and building heights in its FZP. Based on this undisputed record, the Hearing Examiner finds that this application satisfies all the requirements set forth in Section 59.5.3 for the purpose, permitted uses and allowed building types in the requested CRNF Zone.

E. Development Standards for the Zone (Section 59.5.3.5)

The bulk regulations for the CRNF Zone are included in Section 59.5.3.5.a-c of the Zoning Ordinance. Staff compared the minimum/maximum required development standards, as well as the maximum permitted density, to the proposed development in a table from the Staff Report, (Exhibit 21, p. 17, below):

Commercial Residential Floating Neighborhood Zone Standards

Development Standards	Required	Provided
Tract Area		119,990 sf
Prior Dedications	NA	19,192 sf
New Dedication	NA	3,365 sf
Site	NA	97,433 sf
Density		
Total FAR/GFA	1.25 (149,987 sf)	1.16 (139,000 sf)
Commercial	0.25 (29,997 sf)	0.24 (29,000 sf)
Residential	1.00 (119,990)	0.92 (110,000 sf)
Building Height		
Townhouses	Established by Plan	42 ft
Multi-Unit	Established by Plan	60 ft
Building Setbacks		
Public Street	Established by Plan	0 ft
Adjoining Lot		
Side	Established by Plan	15 ft
Rear	Established by Plan	0 ft
Open Space	10% of site	9,743 sq ft
Lot Size (for townhouses)	Established by Plan	800 ft

Conclusion: The chart above does not include the common open space requirements for the townhomes. For standard method applications, like the one here, the CRNF Zone requires 10% public open space for the portion of the site development with multi-family units and 20% common open space for the portion of the site devoted to the townhomes. *Zoning Ordinance*, §4.5.3. The 5,666-square foot plaza shown in the FZP meets the minimum common open space required for the portion of the site dedicated to the townhomes (i.e., 28,328 square feet). At least 10% of the residual lot area (i.e., 72,469 square feet) must be devoted to public open space. ArtSpace meets this requirement with a total of 7,247 square feet of public open space consisting of the public plaza and walkway. Exhibit 7, p. 6. With this additional information, the above table demonstrates that the application meets all development standards of the zone requested.

In addition to the standards shown above, Section 59.5.3.5.B requires building heights to meet the “compatibility” standards of Section 59.4.1.8.B. This section states:

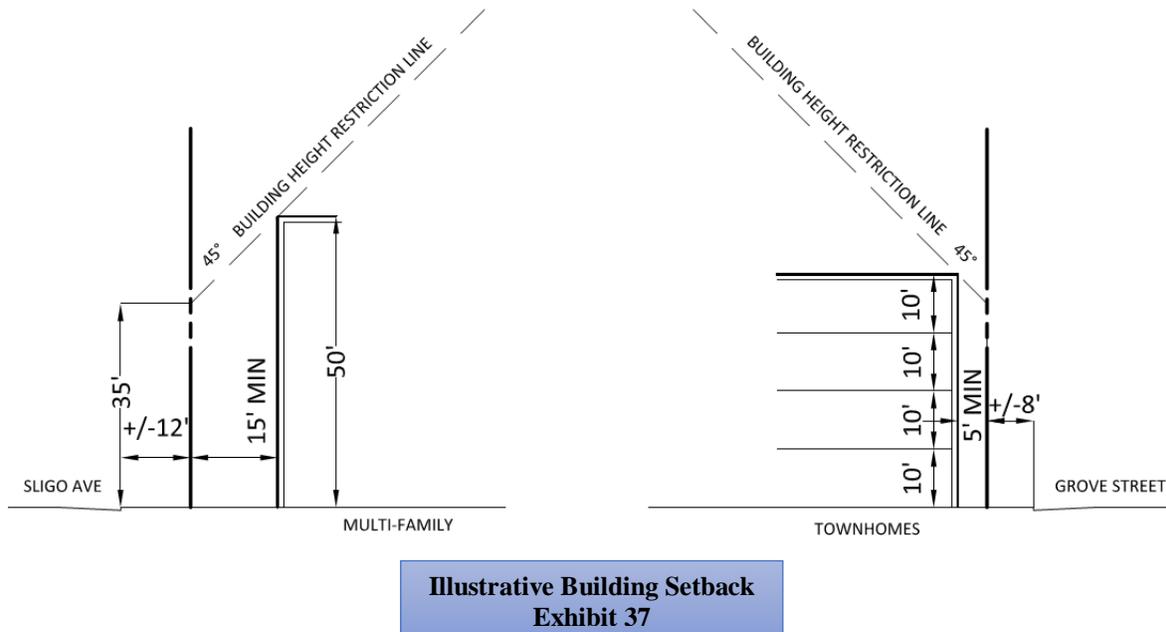
2. Height Restrictions

a. When the subject property abuts a property in an Agricultural, Rural Residential, Residential Detached, or Residential Townhouse zone that is vacant or improved with an agricultural or residential use, any structure may not protrude beyond a 45 degree angular plane projecting over the subject property, measured from a height equal to the height allowed for a detached house in the abutting zone at the setback line determined by Section 4.1.8.A.

b. When the subject property confronts a property in an Agricultural, Rural Residential, Residential Detached, or Residential Townhouse zone that is vacant or improved with an agricultural or residential use, any structure may not protrude beyond a 45 degree angular plane projecting over the subject property, measured from a height equal to the height allowed for a detached house in the confronting zone at the front or side street setback line determined under Article 59-4.

Conclusion: Technical Staff did not address this criteria in its report. At the public hearing, Mr. Maisto submitted an illustrative of the proposed setbacks from the single-family detached units and the townhomes across Grove Street to demonstrate that the application meets the setback and height compatibility standards (Exhibit 37, on the next page). The Hearing Examiner concludes that this

requirement has been met.



D. General Requirements

1. Parking, recreation facilities, screening, and landscaping must be provided under Article 59-6 as required for the Euclidean zone that establishes uses under Section 5.2.3 for each applicable residential or commercial area.

Conclusion: Recent amendments to the Zoning Ordinance permit the Hearing Examiner to consider these more detailed requirements of the Zoning Ordinance “to the extent the Hearing Examiner finds it necessary to ensure compatibility...” *ZTA 15-09, Ordinance No. 18-08*. Staff recommended deferring the items listed above to site plan. Exhibit 21, p. 9. Mr. Maisto testified that all required parking will be accommodated on-site, as described above. The FZP shows recreational facilities, including both public and private open space plazas and a public pathway, which also offer the opportunity to meet landscaping and screening requirements. The Hearing Examiner finds this evidence sufficient to conclude that the application will meet general requirements for parking, recreational facilities, screening and landscaping in the R-60 Zone.

2. Open Space

a. If public benefits are not required under Section 5.3.5.E, open space must be provided under Section 4.5.3.C.1 (for standard method) as required for the Euclidean zone that establishes uses under Section 5.3.3.

Conclusion: As previously noted, ArtSpace meets the required amount of common open space with the private plaza located internal to the site and the required amount of public open space through the public plaza located along Sligo Avenue and the public pathway on the western edge of the site.

V. RECOMMENDATION

Based on the foregoing analysis and after a thorough review of the entire record, I conclude that the proposed reclassification and development will meet the standards set forth in the Zoning Ordinance and that it will be consistent with a coordinated and systematic development of the regional district. I therefore recommend that Zoning Application No. H-110, requesting reclassification of 2.31 acres of land described as Lots 5-11, Block J of the Easley Subdivision, located at 801 Sligo Avenue, Silver Spring, Maryland from the R-60 Zone to the CRNF 1.25, C-0.25, R-1.0, H-65, be approved in the amount requested and subject to the specifications and requirements of the Floating Zone Plan, Exhibit 39(c). The Applicant must submit to the Hearing Examiner for certification a reproducible original and three copies of the Floating Zone Plan approved by the District Council within 10 days of approval.

Dated: January 21, 2016

Respectfully submitted,

A handwritten signature in black ink, consisting of a stylized 'L' and 'R' followed by a long horizontal line extending to the right.

Lynn A. Robeson
Hearing Examiner