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I. EXECUTIVE SUMMARY

Applicant:	Investment Properties, Inc.
LMA No. & Date of Filing:	H-114, filed May 24, 2016
Zoning Sought:	Zone: IMF 2.5, H 70 - Moderate Industrial Floating Zone
Current Zone and Use:	Current Zone: IH 2.5, H70 – Heavy Industrial Zone Current Use: Light Industrial - with a self-storage facility and a warehouse.
Location:	851 and 861 East Gude Drive in Rockville, Maryland - as Part of Parcel E (N766) and Parcel F(N851) Ensor Property Plat No. 21528 in the Cotler Industrial Park Subdivision, situated on the west side of East Gude Drive, just north of Dover Road.
Acreage to be Rezoned:	Approximately 14.17 acres of land (617,265 square feet). Parcel E contains approximately 7.36 acres (320,606 square feet) and Parcel F contains approximately 6.81 acres (296,659 square feet).
Density Permitted in IMF 2.5, H 70:	Per §§59.4.8.3.A.2 and 59.5.5.5.A.2, Maximum FAR of 3.00
Density Planned:	FAR of 0.49. The Application retains existing buildings, and seeks approval of additional density that would be accommodated almost entirely within existing building footprints.
Building Coverage, Defined as Open Space Required:	10% Minimum (61,727 sq. ft.) per §§59.4.8.3.A.1 and 59.5.5.5.D.2
Open Space Planned:	20% (125,540 sq. ft.) Open Space Planned
Parking Spaces Required/Planned:	To be determined depending on the extent floor area is expanded and the nature of the new tenants occupying the space
Building Height Required/Planned:	Per §59.5.5.5.B.2, as established in the Floating Zone Plan / 70 foot maximum planned
Stormwater Management:	A ponded stream enters a large storm drain that traverses the southeast side of the property along Dover Road. Any additional changes will be evaluated at Preliminary Plan and Site Plan Review
Environmental Issues:	The Site is not in a Special Protection Area. A ponded stream and associated stream valley buffer extend onto the southwest portion of the property. The existing development is under an exemption (41998061E) from the forest conservation requirements, granted on September 24, 1997, under grandfathering provision..
Consistency with Master Plan:	The project is consistent with the general intent and objectives of the <i>2004 Upper Rock Creek Area Master Plan</i> .
Neighborhood Response:	There has been no input from the community.
Traffic Issues:	The proposed increase in density would lead to a significant increase in AM and PM trips; however, none of the studied intersections would exceed the Derwood Policy Area CLV standard of 1,475.
Planning Board Recommends:	Approval
Technical Staff Recommends:	Approval
Hearing Examiner Recommends:	Approval

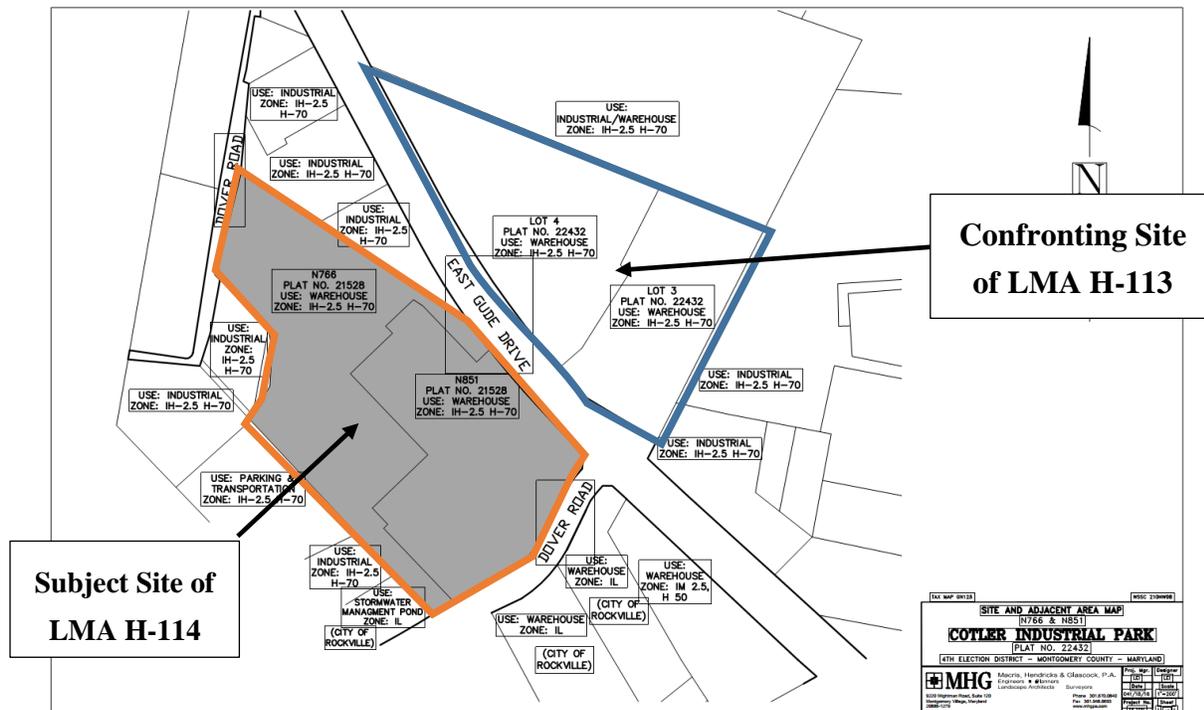
II. STATEMENT OF THE CASE

Local Map Amendment (LMA) Application No. H-114, filed on May 24, 2016, by Applicant Investment Properties, Inc., requests reclassification from the existing IH 2.5, H 70 Heavy Industrial Zone to the IMF 2.5, H 70 - Moderate Industrial Floating Zone of Part of Parcel E (a/k/a Parcel N766) and Parcel F (a/k/a Parcel N851) of the Ensor Property, described in Plat No. 21528 in the Cotler Industrial Park Subdivision of Rockville. The property is located at 851 and 861 East Gude Drive in Rockville, and consists of 14.17 acres of land (617,265 square feet) situated on the west side of East Gude Drive, just north of Dover Road. Parcel E contains approximately 7.36 acres (320,606 square feet) and Parcel F contains approximately 6.81 acres (296,659 square feet).

The property is owned by Gude Drive Properties, LLC and Dover Properties III, LLC, which have given their authorization for this rezoning application. Exhibit 21. Ownership of all the properties is confirmed by state tax records under Tax ID Nos. 04-03303834 (Exhibit 19) and 04-03303823 (Exhibit 19(a)). The Application would retain the existing buildings, but it seeks approval of additional density that would be accommodated almost entirely within existing building footprints. Applicant's Statement of Justification (Exhibit 22, p. 1). The Applicant seeks the greater flexibility and compatibility afforded by the proposed zone. Exhibit 22, p. 2.

A notice of the hearing (Exhibit 24) was mailed out and posted on OZAH's website on June 22, 2016, establishing a hearing date on September 16, 2016. This case has been consolidated for hearing with LMA H-113 because the two sites confront each other across East Gude Drive; they involve the same Applicant; they have the same expert witnesses; and they seek the same zoning reclassification – from the existing IH 2.5, H 70 Heavy Industrial Zone to the IMF 2.5, H 70 - Moderate Industrial Floating Zone. Although they involve separate properties and therefore require separate Hearing Examiner reports and separate Council resolutions, the Hearing

Examiner recommends that the Council consider them together, not only because it will economize time and resources, but also because their proximity to each other means that a rezoning of either site must be considered in terms of its effects on compatibility with the other site, as well as with other properties in the surrounding area. Their proximity to each other can be seen on the following “Site and Adjacent Area Map” (Exhibit 10) provided by the Applicant:



Technical Staff of the Maryland-National Capital Park and Planning Commission (“Technical Staff”) reviewed the substance of the application, and recommended approval in a report dated August 26, 2016 (Exhibit 26). The report considers the application for rezoning in LMA H-114 jointly with the Applicant’s related application in LMA H-113. The Montgomery County Planning Board (“Planning Board”) also considered the applications jointly on September 8, 2016, and the three members present unanimously recommended approval, as set forth in a memorandum dated September 12, 2016 (Exhibit 27). There has been no response from the community in this case, either for or against.

A public hearing was convened, as scheduled, on September 16, 2016, at which time the Applicant presented evidence and called four witnesses in support of the application. There was no opposition testimony. The Applicant announced at the public hearing that it proposed to change the previously submitted binding element to give it some flexibility to accommodate any future tenant's needs to have a small amount of floor area outside the building footprints. Tr. 7-8.

The record was held open after the hearing, at the Applicant's request, to give its counsel the opportunity to file additional materials, amending the proposed binding element, and also giving Technical Staff and the public time for comment. On September 21, 2016, the Applicant timely filed an amended Floating Zone Plan (Exhibit 33), as well as an executed covenant to record the binding element in the land records (Exhibit 33(b)) and a justification for the proposed changes (Exhibit 33(a)). Copies were sent to Technical Staff for comment, and Technical Staff responded on September 27, 2016 that they did not object to the changes. Exhibit 35. No further comments were received, and the record closed, as scheduled, on October 7, 2016.

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.

III. FACTUAL BACKGROUND

A. Subject Property

Staff describes the subject property as follows (Exhibit 26, pp. 4-5):

This Subject Property is located at 851 and 861 East Gude Drive, on the west side of the road and at the northwest corner of the intersection of Dover Road and East Gude Drive in Rockville. It consists of two parcels known as Part of Parcel E (7.36 ac) and Parcel F (6.81 ac) Ensor Property. The Property comprises a combined total of 14.17 acres and is currently improved with a self-storage facility with heights ranging between 8.67 feet and 10.5 feet (on Pt of Parcel E) and a 65,000 Square-foot, 28-foot-high warehouse building (Parcel F) with associated parking. The Property slopes down towards the center along the boundary line between the two parcels. Areas of steep slopes (greater than 25 percent) define the western (rear) edge of the property. Steep slopes also exist in the central area along the property line between the two parcels. A ponded stream that is located on the adjoining

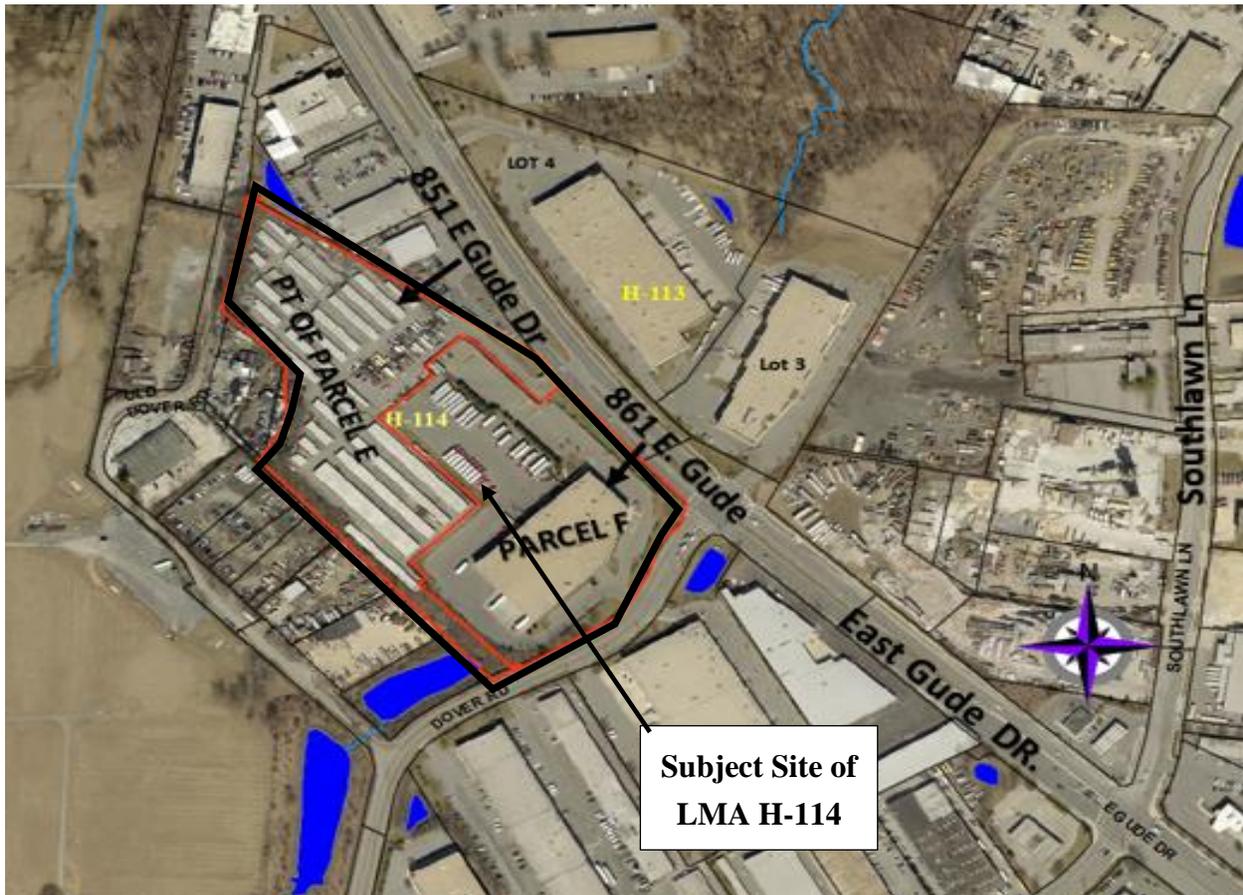
property to the west of Parcel F extends to the southwest portion of the Property where it enters a storm drain that traverses the property.

There are two existing full movement vehicle driveway access points for the Property; one located on the Property's frontage on East Gude Drive (east) and the other located along the its frontage on Dover Road (south).

The property is located within a Flood Hazard Zone and the stream that exists on the property is contained within a pipe that traverses the site. The existing buildings are located outside of the flood plain. The property is not located within a Special Protection Area. There are no State or Federal records for rare, threatened or endangered species within the boundaries of the Property.

The subject site can be seen in the following aerial photo supplied by Technical Staff

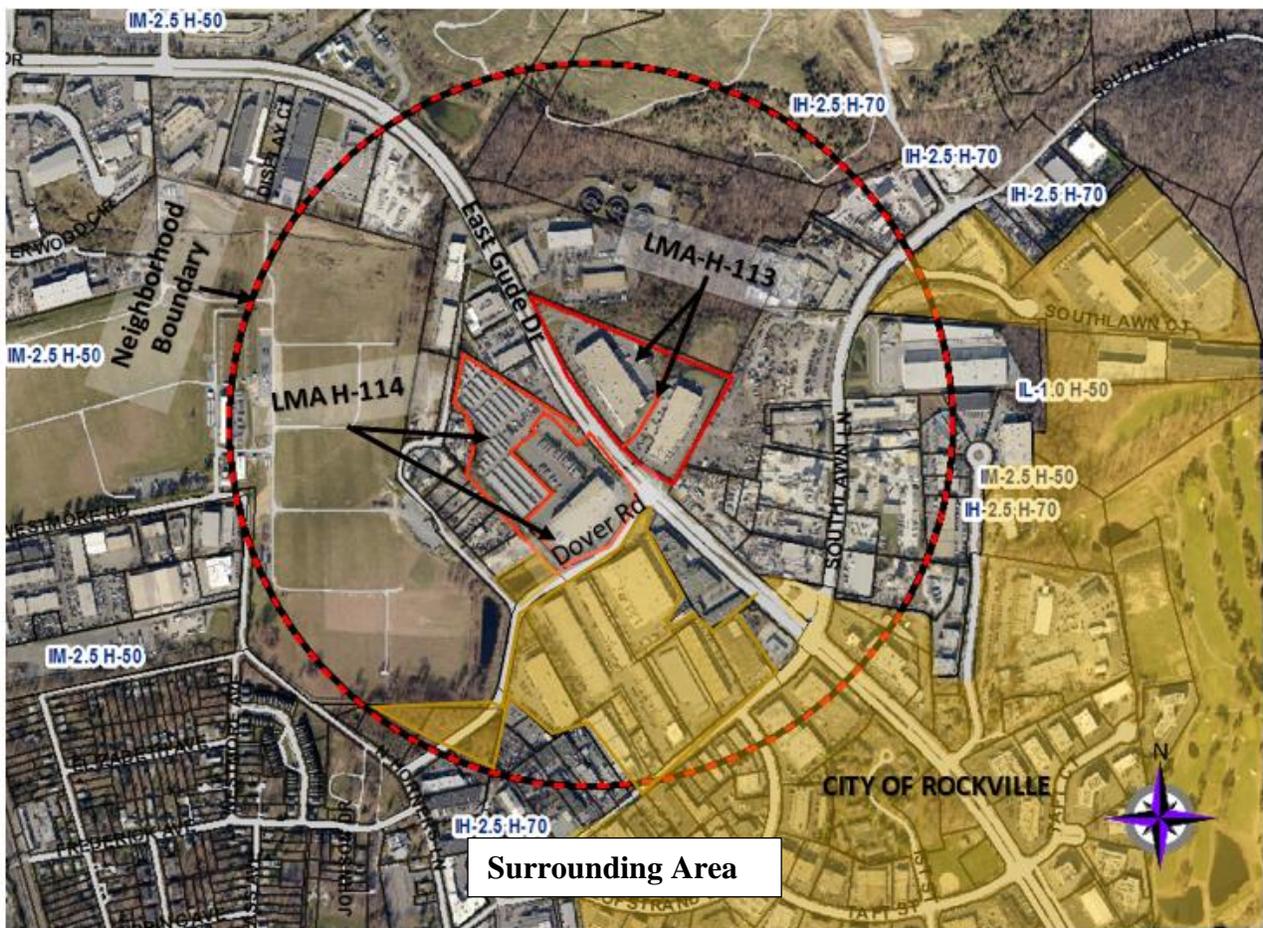
(Exhibit 26, p. 5):



B. Surrounding Area

The surrounding area must be identified in a Floating zone case so that compatibility can be evaluated properly. In general, the definition of the surrounding area takes into account those areas

that would be most directly affected by the proposed development. The surrounding area, as defined by Technical Staff includes properties located within a 2,000 foot radius centered on East Gude Drive between the subject site and the site of its sister application, LMA H-113. It is predominantly developed with light and heavy industrial uses, some of which are located within the City of Rockville (Exhibit 26, p. 5). A map from the Staff report (Exhibit 26, p. 6), showing the defined surrounding area, is reproduced below:



The Applicant did not object to Technical Staff's definition of the surrounding area, and the Hearing Examiner accepts it as well. The Applicant's land use expert, Victoria Bryant, described the surrounding area in her land planning report (Exhibit 9, pp. 7-8):

The Property abuts or confronts only IH2.5/H-70 zoned land. On the north side of East Gude Drive starting to the northwest of the site and working clockwise around the property, the existing uses include but are not limited to: travel agent, property management services, sale of tires and automobile parts, scrap metal collection, asphalt contractor, concrete mix supplier, auto repair, paper recycling, and gas/convenience station. On the west side of East Gude Drive starting to the northwest of the site and working counter-clockwise, the existing uses include but are not limited to: rental car, marble supplier, distillery, auto body repair, self-storage, distribution center, industrial equipment supplier, non-profit building supply resale, auto body repair, and a service station. In general the less intensive uses are to the northwest of the site (i.e., travel agent, property management), and as one progresses southwest along East Gude Drive toward Southlawn Lane the uses intensify (asphalt and concrete contractors). The existing uses on the Property, as discussed above, share more in common with the uses to the northwest of the site than the southeast. In general the existing uses on the site and to the northwest of the site are light industrial in nature.

Technical Staff described the surrounding area in more general terms (Exhibit 26, pp. 5-6):

The central, eastern and southeastern parts of the neighborhood are zoned Heavy Industrial (IH) with a 2.5 total FAR and a maximum height of 70 feet but are developed with a mixture of light and moderate industrial uses such as service and supply oriented uses and heavy Industrial uses such as asphalt and concrete contractors. This portion of the neighborhood, further east of East Gude Drive, also includes a small part of the former Gude Landfill that is zoned residential (R-200) and an old sewer treatment plant that is no longer operational but might be considered for future industrial uses. The remainder of the northwestern and western portion of the neighborhood is zoned IM with a 2.5 total FAR and a maximum height of 50 feet (IM-2.5-H-50) and developed mostly with light Industrial uses similar in nature to those on the Subject Properties. The neighborhood also includes some properties that are within the jurisdiction of the City of Rockville.

The Subject Properties are already improved with warehouse buildings and self-storage facilities and are surrounded by buildings with similar uses. The existing buildings currently house various service, office, showrooms and warehouses that are associated more with light and moderate industrial uses than the heavy industrial uses for which the Properties are currently zoned.

The “bottom line” from both descriptions is that the existing uses on the subject site and in the surrounding area are quite similar to the light and moderate uses proposed for the subject site and allowed in the proposed zone.

C. Zoning History

Technical Staff reports the following zoning history (Exhibit 26, p. 5):

Following approval of the 1968 Upper Rock Creek Master Plan, Sectional Map Amendment F 657 rezoned the Properties from I-1 (Light Industrial) to I-2 (Heavy Industrial). Subsequent master plans in 1985 and 2004 retained the Properties' I-2 zoning. With the adoption of the new Zoning Code in 2014, the I-2 Zone was reclassified as I-H-2.5. H-70, with 2.5 FAR and a maximum height of 70 feet.

D. Proposed Development

Local Map Amendment Application H-114 proposes to reclassify the 14.17-acre property located at 851 and 861 East Gude Drive, Part of Parcel E (a/k/a Parcel N766) and Parcel F (a/k/a Parcel N851) of the Cotler Industrial Park, from the existing IH 2.5, H 70 Heavy Industrial Zone to the IMF 2.5, H 70 - Moderate Industrial Floating Zone. As previously mentioned, the site is currently improved with a self-storage facility at 851 East Gude Drive, with heights ranging between 8.67 feet and 10.5 feet (on Pt of Parcel E), and a 65,000 Square-foot, 28-foot-high warehouse building at 861 East Gude Drive (Parcel F) with associated parking. There are two existing full movement vehicle driveway access points for the Property.

Photographs of the existing buildings on the site are reproduced below (Exhibit 26, p. 21):



Self Storage and Warehouse at 850 and 851 E. Gude Drive

There are no plans to change the footprints of these structures, but the Applicant may ultimately increase the gross floor area and height from 149,805 square feet at a height of 28 feet to a gross floor area of 299,610 square feet, at a maximum height of 70 feet. As stated by Technical Staff (Exhibit 26, p. 7),

The Applicant proposes to continue operating the existing businesses with future plans to increase the Gross Floor Areas of the current improvements while remaining within the current footprints. The Applicant intends to achieve the proposed densities employing various internal and external modification methods including creating mezzanines in the stand alone buildings and adding second stories in the case of the self-storage-facilities. . . . The Applicant stated that the intent is to build the proposed additional spaces on a “tenant-by-tenant” basis as new leases are signed or as existing leases are expired.”

It should be noted, however, that any expansion of Gross Floor Area to accommodate additional uses may be limited by the availability of parking. At the suggestion of the Hearing Examiner (Tr. 46-49), when the Applicant amended the Floating Zone Plan (FZP) to modify its proposed binding element, the Applicant also added the following sentence to the note below the parking table in the FZP: “Achievable density may be limited by amount of parking available on site, to be determined at Site Plan.” Exhibit 33.

E. Floating Zone Plan

Pursuant to Zoning Ordinance §59-7.2.1.B.2.g., every application for rezoning to a Floating zone must be accompanied by a “Floating Zone Plan” (FZP) that contains the following information:

- i. building location, density, massing, height, and anticipated use;*
- ii. locations of open spaces and preliminary stormwater management strategy;*
- iii. pedestrian, bicycle, and vehicular circulation, parking, and loading;*
- iv. any binding element on the application. An applicant who proposes a binding element must submit an unexecuted covenant suitable for filing in the land records reflecting any restriction on the development standards, development program, or use that will be applicable to the property if the District Council approves the application; and*
- v. the following additional information:*
 - (a) current and proposed zone;*
 - (b) a plan certified by a licensed professional, showing existing site conditions and vicinity within 100 feet, including total tract area; existing topography; watershed in which the site is located; Special Protection or Primary*

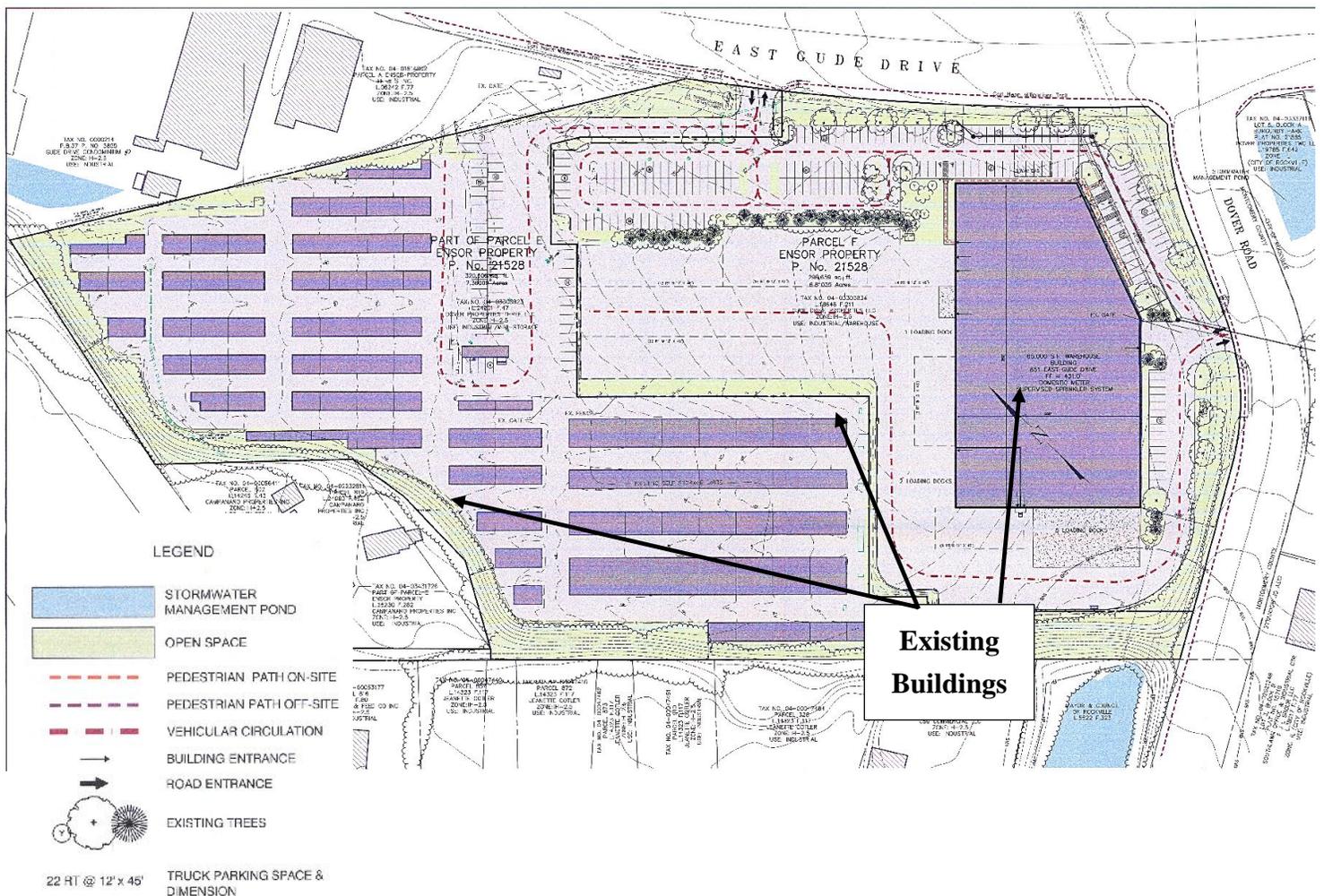
Management areas; any floodplain, wetland, or perennial or intermittent stream, and any associated buffers; whether or not rare, threatened, or endangered species were observed on the property; whether or not the property is on the Locational Atlas and Index of Historic Sites; the aerial extent of forest and tree cover on the property; and date(s) field work was conducted;

(c) existing or approved adjacent land uses, buildings, and rights-of-way;

(d) a Traffic Study under the Planning Board's LATR Guidelines if the incremental increase in vehicular peak-hour trips between the density of the base zoning and the density of the requested floating zone meets the minimum applicability requirement in the LATR Guidelines; and

(e) general phasing of structures, uses, rights-of-way, sidewalks, dedications, and future preliminary and site plan applications;

The Applicant has met these requirements by filing its amended Floating Zone Plan (Exhibit 33) and related documents (Exhibits 1 through 19, 21, 22, 28, 31 and 32). The FZP is reproduced below and on the following page.



DATA TABLE FOR 851 & 861 E GUDE DRIVE

Existing Zone:	Industrial High	IH 2.5/H 70
IMF Floating Zone:	Industrial Moderate Floating	IMF 3.0/H 120
Proposed Zone:	Industrial Moderate Floating	IMF 2.5/H 70
Site Area:	14.17 Acres or 617,265 SF	
Building Type (Section 5.5.4.A):	Multi Use and/or General	

IMF Zone must demonstrate conformance with IM Zone standards per Section 59.5.5.

Data table demonstrates conformance with IM zone utilizing Standard Method of Development.

	IM ZONE	IMF ZONE	PROPOSED
Open Space (min)	SECT. 4.8.3.A(1)	SECT. 5.5.5.D(2)	
Amenity Open Space >10,000 SF	10% or 61,727 SF	10% or 61,727 SF	20%, 125,540 SF
Lot and Density	SECT. 4.8.3.A(2)	SECT. 5.5.5.A(2)	
Density, FAR	0.25 to 2.50 FAR or MAX 1,543,162 SF	0.25 to 3.00 FAR or MAX 1,851,795 SF	0.49 FAR or 299,610 SF ⁽¹⁾
Placement:			
Principal Building & Accessory Structure Setbacks (min)	SECT. 4.8.3.A(3)	SECT. 5.5.5.B(2)	
Front setback	10 Ft.	Established by	81 Ft.
(a) Minimum Setback from street. A main building must not be nearer to any street line than the distance shown:	25 Ft		140 Ft.
Side setback abutting Industrial Zone	0 Ft.	plan	20 Ft.
Rear Setback abutting Industrial Zone	0 Ft.		30 Ft.
Rear setback, Alley	0 Ft.		n/a
Parking Setbacks for Surface Parking Lots - 10 or more spaces	SECT. 6.2.9.C(3)(b)	SECT. 5.5.5.B(2)	
Front setback	6	Established by	22 Ft.
Side street setback	0	floating zone	25 Ft.
Side setback	0	plan	4 Ft.
Rear setback	0		14 Ft.
Rear setback, alley	0		n/a
Parking Lot Tree canopy ^{2, 3}	25% or 85,052 SF	25% or 85,052 SF	3.4% or 11,490 SF
Parking Lot Landscaped Areas	5% or 17,011 SF	5% or 17,011 SF	9.1% or 30,811 SF
Height (max)	SECT. 4.8.3.A(4)	SECT. 4.8.2.A(1)	
Principal Building	70 Ft.	120 Ft.	70 Ft.
Accessory structure	70 Ft.	120 Ft.	70 Ft.
Gallery/Awning	Allowed	Allowed	n/a
Balcony	Allowed	Allowed	n/a
Permeable area (min)	10% or 61,727 SF	10% or 61,727 SF	21% or 126,661 SF
Tree Canopy (min)	10% or 61,727 SF	10% or 61,727 SF	13% or 79,767 SF

Binding Element:

No increase in gross floor area will occur outside of the existing building footprints, except that a maximum of 5000 square feet may be located on existing impervious area outside of building footprints for ancillary tenant uses. This area will count towards the maximum gross floor area allowed by the plan.

GENERAL NOTES	
1.	The site is located in the Middle Rock Creek Watershed, use IV, Southlawn Tributary to the Potomac River.
2.	The site does not lie within a Special Protection Area or a Primary Management Area.
3.	No wetlands exist on site. A stream is present on the southwest corner of the property. There is an associated stream valley buffer.
4.	No rare, threatened or endangered species were observed on site.
5.	The property is not listed in the Locational Atlas and Index of Historic Sites.
6.	The property is located in Flood Hazard Zone X (areas determined to be outside 0.2% annual chance flooding) and is partially within a Special Flood Hazard Area as defined by the Federal Emergency Management Agency, National Flood Insurance Program Map for Montgomery County, Maryland, Community Plan Number 24031CC332D, effective date September 29, 2006. The floodplain is contained within a culvert that traverses the property until it exits the culvert. The existing structures, however, are not affected and are not in the floodplain.
7.	Fieldwork was conducted on December 8, 2015.
8.	The survey for Part of Parcel E with one-foot topography was prepared by Macris, Hendricks and Glascock, P.A on November 30, 2015. The remainder of the topography is from Montgomery County Topographic Map 220NW07, dated July 30, 2014.

GFA Analysis:	
Existing GFA	149,805
Proposed GFA	149,805
Total GFA	299,610¹

¹ Maximum 27,115 SF of retail use

² Final landscaping requirements for new development to be determined at time of Site Plan

³ Existing conditions grandfathered pursuant to section 59.7.7.1 of the zoning Ordinance

Section 6.2.4 Parking Requirements for 851 & 861 East Gude Drive (Existing Conditions)					
USE	METRIC	BASELINE MIN.	SF OF USE OR EMPLOYEE	REQUIRED	PROVIDED
Office	1,000 SF of GFA	2.60	0	0.0	
Retail	1,000 sf of Gross Leasable Area	5.00	0	0.0	
Warehouse/Light Manufacturing	1,000 SF of GFA	1.50	65,005	97.5	100.0
Self-storage with Driveway access	1,000 SF of Office Space	3.00	600	1.8	5.0
	per Employee	1.00	3	3.0	3.0
Total Parking				102.3	108.0

Loading Spaces- 11

Future parking will be determined based on tenant mix at time of Site Plan and/or Use and Occupancy permit. Achievable density may be limited by amount of parking available on-site, to be determined at Site Plan.

The FZP shows one binding element –

No increase in gross floor area will occur outside of the existing building footprints, except that a maximum of 5000 square feet may be located on existing impervious area outside of building footprints for ancillary tenant uses. This area will count towards the maximum gross floor area allowed by the plan.”¹

Technical Staff summarized the proposed development (Exhibit 26, p. 12):

The Applicant proposes to dedicate . . . a maximum of 27,115 square feet of retail area for the proposed development of Application H-114.

In addition to the Local Map Amendment review, if approved, Application[] LMA H-[114] . . . [is] subject to other development approval procedures, including approval by the Montgomery County Planning Board of Preliminary Plans of Subdivision, Forest Conservation Plans and Site Plans. . . .

The Property that is the subject of LMA H-114 (Part of Parcel E and Parcel F) also has an approved Preliminary Plan, No. 119841490 . . . , approved in 1984, for 200,000 square feet of industrial space.

. . . As noted, the Applicant has no immediate plans to change or modify the existing improvements. According to the Applicant, future modification and expansion of current improvements will be driven by market demand, future tenant mix, and new lease agreements. Future development that exceeds 200,000 square feet, will be subject to regulatory review, including an analysis of Adequate facilities, and to address Part of Parcel E. Prior to issuance of a building permit on Part of Parcel E, a new record plat will be required.

F. Master Plan

The subject site is located in the area covered by the 2004 Upper Rock Creek Master Plan.

The new Zoning Ordinance has three different approaches that must be satisfied in analyzing rezoning applications in light of applicable master plans. First, the new Zoning Ordinance establishes “Necessary Findings” by the Council for approval of rezoning applications, one of which – Section 59.7.2.1.E.2.a. – specifies that the District Council must find that the Floating

¹ Prior to the OZAH hearing, the binding element agreed to by the Applicant was “No increase in GFA will occur outside of the existing building footprints on the property.” At the hearing, the Applicant asked for additional flexibility in case it needed to occupy a small area outside the current building footprints to accommodate the needs of tenants, such as for outdoor equipment. Technical Staff agreed to this change (Exhibit 35), and there have been no other objections. Since any such expansion would be limited to the overall gross floor area agreed to, the Hearing Examiner sees no downside to accommodating this modification to the proposed binding element.

Zone Plan will “substantially conform with the recommendations of the applicable master plan, general plan, and other applicable County plans.”²

Another provision in the new Zoning Ordinance – Section 59-5.1.2.A.1. – provides, *inter alia*, that:

- . . . 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; . . .

Finally, in Section 59.5.1.3, the new Zoning Ordinance differentiates between Floating zones that are recommended for a subject site in the applicable master plan and those that are not. If the proposed Floating zone is specifically recommended for a site in the master plan, then Section 59.5.1.3.B. provides that “there are no prerequisites for an application.” In contrast, if the proposed Floating zone is not recommended in the master plan, then Section 59.5.1.3.C. requires that certain density standards be met, and if the subject site has a residential base zone, other requirements must be met as well. The subject site in this case is in an Industrial zone, and thus does not have a Residential base zone. Under Section 59.5.1.3.C.3., “When requesting a Floating zone for a property with a non-Residential base zone there are no prerequisites for an application.”

The present section of this report addresses the goals of the applicable *2004 Upper Rock*

² A few words should be said about the legal definition of the term “substantially conform with the recommendations of the applicable master plan,” as it is used in Zoning Ordinance §59-7.2.1.E.2.a. The Maryland Court of Appeals held, in the case of *Trail v. Terrapin Run*, 403 Md. 523, 548, 569 and 573-574; 943 A.2d 1192 (2008), that legislative words such as “conform to” a master plan and “consistent with” a master plan were intended to convey the concept of being generally “in harmony with” the master plan, unless the legislation specified otherwise. Subsequently, however, the Maryland legislature enacted the *Smart, Green, and Growing - Smart and Sustainable Growth Act of 2009*, effective July 1, 2009. That Act amended Md. Land Use Article, §§1-301 to 1-304, in an express attempt to legislatively overturn the *Terrapin Run* holding by defining the term “consistent with,” as used in land use legislation. Essentially, the Act defines the term “consistent with” as a requirement that proposed legislation or regulations regarding land use further (or at least not impede) master plan policies and goals. On the other hand, it appears from the wording of the Act that the state legislature did not intend to apply its definition of “consistency” to cover actions on individual rezoning or special exception applications, because it limited the definition of “action” to “the adoption of a local law or regulation” concerning special exceptions and specified other matters, not to the review of specific rezoning or special exception applications. Maryland Code, Land Use Article, § 1-301. The Hearing Examiner therefore concludes that the 2009 legislation does not apply to the instant rezoning application, and that we should still be guided by the holding in *Terrapin Run*.

Creek Area Master Plan, and the Applicant's conformance thereto. Compliance with the specific requirements of Sections 59.5.1.2. and 3 will be further discussed in Part V of this report, which reviews the Council findings called for in the Zoning Ordinance.

The Applicant's land planner, Victoria Bryant, documents the Applicant's compliance with the Master Plan, at length, in her land planning report (Exhibit 9, pp. 9-15):

The Master Plan focus is on "Managing development to protect the watershed and its stream valleys" (Master Plan p. 1). . . . The Master Plan's concern for the environment is based on the "high quality stream conditions and habitats" (Master Plan p. 39) of the Upper Rock Creek watershed, consisting of the mainstem of Rock Creek and of the North Branch. Protection of this resource is a central theme influencing the Plan's allocation of uses and densities. . . . In accordance with the Master Plan's theme of environmental protection, industrial uses have been identified as appropriate in the developed portions of the planning area which already contain existing industrial uses and are located near existing major transportation routes. Industrial zones are found in the southern end of the planning area, at the Montgomery County Airpark, and the Southlawn area. The Master Plan recommends retaining the existing industrial zoning in these areas (Master Plan p. 13, 93 & 94)). The [Subject] Property is located within this designated area. . . . Therefore, development within the Urban Watershed management area will not negatively impact the water quality of Rock Creek watershed, and would be in accordance with the Master Plan.

"Some portions of the Gude Drive-Southlawn Lane area are generally light industrial in character, even though parts of the area are classified in the I-2 Zone" (Master Plan p. 33). The Property provides uses of a light industrial nature on currently zoned high industrial land. Land use and zoning goals for industrial uses in the planning area are to "Continue to allow commercial and industrial land uses...in the appropriate locations and at manageable densities" (Master Plan, p. 13). The Application follows this recommendation of the Master Plan. The [subject] Property is currently an industrial land use in an appropriate location for such use. The proposed density is below the 3.0 FAR or 1,465,563 SF allowed under the new Zoning Ordinance. The buildings were built prior to the county wide rezoning, and are modern functioning facilities that are not near the end of their lifecycle. Therefore, this application does not contemplate demolishing any of the existing buildings, but rather increases the existing density through, among other potential measures, the addition of mezzanines. This modest increase in the FAR maintains the scale and intensity of the existing district as identified by the Master Plan objective for industrial areas to "maintain...light industrial districts at their existing scales and intensities..." (Master Plan, p. 13).

* * *

As noted above, the Master Plan recommends retaining high industrial uses in the area, as the county has a finite amount of IH zoned property (Master Plan p

33). It calls out Montgomery Air Park and the Southlawn area as appropriate for industrial uses (Master Plan p 33). However, it does make exceptions to this broad recommendation for the H & S Leasing Property (Master Plan p. 34), for the west side of East Gude adjacent to the City of Rockville, and for properties along Southlawn Lane (Master Plan p. 33). It recognizes and contemplates the market demand for light industrial uses in the area, and that not all existing properties are suitable for the IH zone. For the reasons outlined above, the Property is better suited to light industrial.

The current site is developed with buildings that accommodate light industrial uses. . . . The existing improvements on the Property are reflective of the light industrial character of its neighbors, and do not lend themselves to heavy industrial uses. Therefore, the light industrial zone would be a more appropriate zone in the context of the surrounding area and existing development.

. . . The lots are irregular in shape and abut a stream valley buffer making it difficult to meet setbacks and useable areas needed for high industrial. The existing buildings are designed to support light industrial type users, and it will be several decades before they reach the end of their life cycle. Additionally, the existing water, sewer, stormwater, and other utilities found on-site are not necessarily adequate for heavy industrial users with large water, power, or effluent demands. The quality of the existing building types, the irregular lot shape, and the presence of a stream valley buffer and a floodplain on-site make it an unlikely candidate for land assembly for a high industrial use. . . .

Finally, the Master Plan recommends High Industrial for the Southlawn Drive area and the site, but provides guidance for where and when a specific site may be more suited to a light industrial use. The above examination shows that the Application meets the criteria set out in the Master Plan for a light industrial use.

Technical Staff set forth what it considered to be the relevant portions of the applicable master plan in conjunction with the Applicant's plans (Exhibit 26, pp. 12-13):

The Land Use Plan section of the 2004 Upper Rock Creek Master Plan sets an objective to "maintain commercial and light industrial districts at their existing scales and intensities and provide appropriate transitions from non-residential to residential uses" (p.13). The land use plan also makes an overall recommendation to retain the existing industrial zoning in the planning area. The Subject Properties are developed with industrial uses and are located within the portion of the Master Plan area that is identified for industrial land use (Figure 5). Currently, the Properties are zoned IH (Industrial High) and the Applicant is requesting a rezoning of the Properties to IMF (Industrial Moderate Floating) Zone which is more consistent with the character of the existing developments on the property.

The Applicant indicated that the existing buildings predate the county's comprehensive revision to its zoning code. The Applicant intends to maintain the already established uses with proposed modifications to the buildings within the existing footprints and with substantially less FAR than allowed in the IMF Zone.

The Environmental Resources Plan section of the Master Plan places the Properties within the larger “Upper Rock Creek Mainstem Watershed,” in an area further designated as “Urban Watershed Management Area,” (p.50). The modifications proposed by the Subject Applications would not have a negative impact on the watershed since they would be confined within the existing foot prints of buildings and there will not be any disturbance of land anywhere else on the properties. . . .

Ms. Bryant also addressed master plan conformance at the hearing. She noted that Industrial Zones are what exist in this area, and what are recommended in the Master Plan. She opined that by proposing an industrial use, while in a slightly different zone, it is still an industrial use, as recommended by the Master Plan. The Master Plan also goes on to say that the Gude Drive - Southlawn area is generally light industrial in character, even though parts of the area are classified at I-1 Zone, which is the new I-H Zone. Master Plan at page 33. The land use and zoning goals for the industrial uses in the planning area are to continue to allow commercial industrial land uses in appropriate locations, at a manageable density. Page 13 of the Master Plan. She feels that the proposal follows this goal because the proposed densities are consistent with the surrounding neighborhood, at the lower end of the FAR requirement. It is currently being used as industrial land, and it will continue to be used as industrial land. The buildings that are built on the properties were built prior to the county-wide re-zoning, and are very modern, functioning facilities that are not anywhere near the end of their lifespan. A modest increase in the FAR, which maintains the scale and intensity of the existing district, is also a Master Plan objective. Page 13 of the Master Plan. Tr. 49-51.

Ms. Bryant agreed that the Master Plan recommends high industrial uses in the County (page 33 of the Master Plan), but it does make exceptions from this broad recommendation within the Master Plan itself. The plan recognized the fact that there are parts of this neighborhood which are moving over to the City of Rockville because of the light industrial nature of this particular segment of the area. The same arguments apply to the subject sites, which are small pieces of property, with a shape, stormwater management and stream valley buffers on both the properties

that make it hard for a heavy industrial use to go into these sites. The subject sites have existing infrastructure that is relatively new, and the sites are currently catering to light industrial uses. The subject sites are at the edge, where everything to the west and south is light industrial, while up Southlawn, high industrial uses are found on much larger parcels. Ms. Bryant agreed with the Hearing Examiner's characterization of the subject sites as transitional between light industrial to the south and west and heavy industrial to the east. The Master Plan encourages appropriate land use by providing flexibility to respond to changing economic, demographic, and planning trends that occur between comprehensive district and section map amendments. According to Ms. Bryant, flexibility is exactly what the Applicant is seeking in these cases, so that it can respond to the market demands by obtaining the zone that is actually more flexible and provides greater uses and encourages more industrial use than the I-H Zone allows. The proposed density is appropriate for the size of the lot and the character of the neighborhood, and its increased uses will better serve the needs of the population. Tr. 51-58.

Technical Staff concluded that the proposed rezoning substantially conforms with the recommendations of the applicable master plan (Exhibit 26, pp. 19-20):

The requested reclassification of the IMF Zone substantially complies with the 2004 Upper Rock Creek Area Master Plan goals, which encourages the continuation of "commercial and industrial land uses in the Upper Rock Creek watershed in appropriate locations and at manageable densities" (p.13). The proposed rezoning is consistent with the Master's plan's objective and recommendation to retain the existing industrial zoning in the Planning area (p.13).

The Subject Applications are located in an area specifically recommended for industrial uses. Although the properties were zoned I-2 (Heavy Industrial), they were developed for the purposes of housing and operating uses with light industrial nature. The Applicant intends to retain the industrial nature of the properties as recommended by the Master Plan. The subject Applications propose for a more flexible industrial zone, that is consistent with the nature of the current uses and the character of surrounding area.

It is also worth noting that the 2004 upper Rock Creek Master Plan supported the rezoning of a nearby property (H&S Leasing), which is located southeast of the Property across Dover road, to a lighter industrial zone in part because

“redevelopment in the I-2 Zone is likely to be incompatible with surrounding uses.” (p 34). This rationale is similarly applicable to the Subject Properties. Many of the uses in the immediate area are light industrial in nature. The requested IMF reclassification of the Subject Properties, which are already developed and operated with light industrial uses, would be more appropriate and practical than redeveloping them with a heavy industrial uses under the existing IH zoning.

Based on this record, the Hearing Examiner concludes that the proposed rezoning is consistent with the general intent and objectives of the 2004 Upper Rock Creek Area Master Plan. Although the Master Plan seeks to “[r]etain the existing industrial zoning in the Planning Area,” (Master Plan, p. 13), the Plan also notes that “[s]ome portions of the Gude Drive-Southlawn Lane area are generally light industrial in character, even though parts of the area are classified in the I-2 Zone.” Plan at 33. Thus, the only issue here is whether the Master Plan is wedded to the heavy industrial zone that is currently attached to the subject site, or whether it can be read as advocating an industrial zone, even if it is of medium intensity, as requested by the Applicant. The Hearing Examiner agrees with Technical Staff and Applicant’s land planner that the critical issue is that the site remain in an Industrial Zone, not that it be in the heavy Industrial Zone, since the current uses on the subject site and the surrounding uses are all either light or medium industrial uses. This conclusion is consistent with the requirements for compatibility in the area.

G. Public Facilities

Under the County’s Adequate Public Facilities Ordinance (“APFO,” Code §50-35(k)), an assessment must be made at subdivision as to whether the transportation infrastructure, area schools, water and sewage facilities, and other services will be adequate to support a proposed development, and in turn, whether the proposed development will adversely affect these public facilities. Both the Planning Board and the Council have roles to play in this assessment process.³

The Planning Board reviews the adequacy of public facilities at subdivision, under

³ The Council is presently considering proposed changes to the subdivision and APFO provisions in the County Code, and a new 2016-2020 Subdivision Staging Policy. These new provisions are not in effect at the time of this writing.

parameters that are set by the County Council every four years in the Subdivision Staging Policy (SSP). While the final test under the APFO is carried out at subdivision review, the District Council must first make its own evaluation as to the adequacy of public facilities in a rezoning case, as spelled out for traffic issues in Zoning Ordinance §59.7.2.1.E.2.e, quoted immediately below, and for other public facilities in §59.5.1.2.A.2, which will be discussed below.

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

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 ability of transportation facilities to handle a proposed development is the Local Area Transportation Review ("LATR"). LATR generally involves a traffic study intended to evaluate whether a proposed development would result in unacceptable congestion during the peak hour of the morning and evening peak periods. An LATR traffic study is not required unless a proposed development would generate 30 or more peak-hour automobile trips. For developments that will generate fewer than 30 peak-hour trips, only a traffic statement need be filed.⁴ In this case, a full traffic study was required because the total trips generated by the proposed development will exceed 30 trips in both the morning and evening peak traffic hours. In fact, the increase in traffic to be generated by the use, assuming the Applicant uses the property to the full extent planned, will itself exceed 30 trips in each of the peak hours.

Applicant employed Nancy Randall, an expert in transportation planning, who prepared Traffic Studies for both cases (Exhibit 19 in H-113 and Exhibit 17 in H-114)) to satisfy the Planning Department's Local Area Transportation Review (LATR). Ms. Randall testified she obtained a scoping agreement from Technical Staff, which designated the study area. The study

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

area, which is the same for both H-113 and H-114, included Dover Road and East Gude Drive intersections and access points to the sites. Ms. Randall testified that the existing intersections and the existing volumes that were counted all met the required standards, and are well under the Critical Lane Volume (CLV) standard for this area, which is at 1475 CLV. The highest CLV at any one of the intersections occurred at East Gude and Dover Road, and that is at 1152, so there was more than sufficient capacity at these intersections. Tr. 68-72.

Ms. Randall further testified that she calculated CLVs with the increased densities proposed for H-113 and H-114 assuming the worst case trip production scenario for potential tenancy on those sites. For H-113, she calculated that the result of adding the additional traffic from the doubling in square footage of those buildings, would generate a net increase overall from the property in the morning peak hour of 79 trips, and 248⁵ in the evening peak hour. This would bring the highest CLV up to 1,231 critical lane vehicles at East Gude Drive and Dover Road. The East Gude Drive site access trips for that property also go up, but they are well within the 1475 CLV standard. For the H-114 properties, Ms. Randall included the H-113 development in the potential background traffic, and the net increase in volume for the H-114 parcels is 117 morning peak hour trips, and 249 evening peak hour trips. The resulting highest CLV, again, occurred at the intersection of East Gude Drive and Dover Road with a CLV of 1,257 vehicles during the evening peak hour. The site access on Dover Road is well under, the maximum with 474 vehicle trips. Tr. 81-88.

Ms. Randall added that she also did pedestrian-bicycle transit statements for both sites, at the request of MCDOT, and she included their request as Exhibit 30 and her pedestrian- bicycle transit statements as Exhibit 31 in both files. Tr. 89-92.

Based on her analysis and in her expert opinion, Ms. Randall stated that nearby roads and

⁵ Actually, this figure should have been 249, as correctly reported in the Table from the Technical Staff report (Exhibit 26, p. 15) shown below. Ms. Randall made a subtraction error of one digit in her report (Exhibit 19, p. 22).

circulation systems are adequate to serve the proposed developments. She further opined that the proposed development would not generate traffic that exceeds the critical lane volumes, or volume capacity ratio standards as applicable under the Planning Board's LATR guidelines. She noted that the LATR guidelines require a CLV of 1475, and for both cases the CLV will be well below that 1475 critical lane volume limit. Ms. Randall further testified that, in her expert opinion, the proposed zoning classifications and developments would be suitable for the subject properties from the standpoint of transportation planning, and would be compatible with existing and approved adjacent development. She also stated that none of those conclusions would be affected if there is an additional 5,000 square feet of usage outside of the footprint of the building because it is going to be an ancillary use, such as storage of outdoor equipment, such as a generator. Finally, Ms. Randall testified that the access points to the sites, and the internal circulation in the sites, in both H-113 and 114, are safe and adequate. Tr. 92-95.

Technical Staff confirmed Ms. Randall's analysis in its own discussion of Local Area Transportation Review. Exhibit 26, pp. 14-17. Results for both H-113 and H-114 are shown because the effects of traffic from the two sites are interrelated:

The proposed change in commercial land uses would generate the following number [of] peak-hour trips during the weekday morning peak period (6:30 to 9:30 a.m.) and the evening peak period (4:00 to 7:00 p.m.):

Table 2.1: LATR (H-113)

Land Use	Square Feet	Weekday Peak-Hour	
		Morning	Evening
800 & 850 E Gude Drive			
Existing Land Uses			
Warehouse	123,360	93	68
Office	23,268	32	52
Subtotal	146,628	125	120
Proposed Land Uses			
Warehouse	259,385	139	110
Retail	33,871	65	259
Subtotal	293,256	204	369
Net Increase from Existing	+146,628	+79	+249

Table 2.2: LATR (H-114)

Land Use 851 & 861 E Gude Drive	Square Feet	Weekday Peak-Hour	
		Morning	Evening
Existing Land Uses			
(Gude) Self-Storage	84,800	12	22
Warehouse	65,005	65	45
Subtotal	149,805	77	67
Proposed Land Uses			
Warehouse	272,495	143	113
Retail	27,115	51	203
Subtotal	299,610	194	316
Net Increase from Existing	+149,805	+117	+249

The Subject Applications are within the Derwood Policy area. A traffic study was submitted to satisfy the LATR test because the “total” number of site-generated peak-hour trips is 30 or more. Based on the traffic study results, the capacity/Critical Lane Volume (CLV) values at the studied two intersections. The results are shown in the Table 3.1 and Table 3.2 below.

1. Existing: The traffic condition as it currently now.
2. Background: The existing condition plus the trips generated from approved but unbuilt nearby developments and the concurrent LMA H-114 at 851 & 861 Gude Drive.
3. Total: The background condition plus the additional site-generated trips based on proposed change in commercial land uses.

Table 3A: CLV (H-113)

Studied Intersections H-113	Traffic Condition					
	Existing		Background		Total	
	AM	PM	AM	PM	AM	PM
Dover Road & Site Access	348	422	363	440	364	444
Calhoun Drive & East Gude Drive	892	1,016	897	1,030	905	1,053
East Gude Drive & Display Court	1,019	1,010	1,027	1,029	1,038	1,062
East Gude Drive & Site North Access	1,010	1,002	1,018	1,022	1,053	1,132
East Gude Drive & Site South Access	996	971	1,004	991	1,010	1,013
East Gude Drive & Dover Road	1,004	1,152	1,007	1,167	1,042	1,231
East Gude Drive & Southlawn Drive	1,029	1,131	1,037	1,137	1,046	1,168

Table 3.2: CLV (H-114)

Studied Intersections H-114	Traffic Condition					
	Existing		Background		Total	
	AM	PM	AM	PM	AM	PM
Dover Road & Site Access	353	430	369	452	383	474
Calhoun Drive & East Gude Drive	893	1,016	906	1,053	913	1,080
East Gude Drive & Display Court	1,017	1,010	1,036	1,062	1,046	1,101
East Gude Drive & Site North Access	1,008	1,003	1,051	1,132	1,061	1,172
East Gude Drive & Site South Access	987	976	1,001	1,017	1,032	1,037
East Gude Drive & Dover Road	1,012	1,154	1,050	1,223	1,064	1,257
East Gude Drive & Southlawn Drive	1,037	1,131	1,055	1,168	1,074	1,193

As indicated in the table above, the calculated CLV values do not exceed the CLV standard of 1,475 for the Derwood Policy Area, and, thus, the LATR test is satisfied.

...

In addition to LATR, the County employs Transportation Policy Area Review (TPAR) to compensate the public for the cost of transportation improvements necessitated by proposed developments. As indicated by Technical Staff (Exhibit 26, p. 17), the Applicant must satisfy the TPAR test by paying a transportation impact tax that equals 25% of Department of Permitting Services' (DPS's) transportation/development impact tax. Payments are paid to DPS at the time of building permit.

Based on this record, the Hearing Examiner finds that transportation facilities are adequate and will not be adversely affected by the proposed development. In addition, Technical Staff set forth the transportation issues that will be addressed at Preliminary Plan and Site Plan reviews (Exhibit 26, p. 17):

1. The Application must be limited to:
 - LMA H-113: 259,385 square feet of warehouse use and 33,871 square feet of general retail use
 - LMA H-114: 272,495 square feet of warehouse use and 27,115 square feet of general retail use

2. The Application must satisfy the transportation APF - Policy Area Review test by paying the Transportation Policy Area Review (TPAR) equal to 25% of the transportation/development impact tax to the Montgomery County Department of Permitting Services (DPS) at the time of building permit.
3. The Applicant's plans must reflect the Montgomery County Department of Transportation's (MCDOT) most recent Capital Improvements Program (CIP) Project, No. P501309, East Gude Drive Roadway Improvements, to improve East Gude Drive from Crabbs Branch way to Southlawn Lane.
4. The Application must provide lead-in sidewalks from East Gude Drive and Dover Road.
5. The Application must provide the required number of public Inverted-U bike racks located near the main entrances and private bike lockers for employees near their building entrance.

The new Zoning Ordinance revisits the issue of public facilities in Section 59.5.1.2.A.2., which provides that:

The intent of the Floating zones is to: A. Implement comprehensive planning objectives by: . . . 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; . . . [Emphasis added.]

Thus, the new Zoning Ordinance requires an analysis at rezoning of the adequacy of non-transportation facilities, as well as transportation facilities. Of course, since the proposed use is industrial, not residential, it will not generate any demand for additional school facilities. With regard to other listed public facilities and services, the 2012-2016 Subdivision Staging Policy provides, at p. 21, that we “. . . 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.” There is no evidence of inadequacy in this case, and therefore police stations, firehouses and health clinics will be considered sufficient.

Applicant's civil engineer, Stephen Crum, testified that the existing buildings on the site are connected to public facilities for water, sewer, electric, telephone and natural gas, and they have sufficient capacity to accommodate the proposed uses and the existing uses, even if they double the floor area use of these buildings, and add 5,000 square feet of space. He indicated that

the addition of the binding element, as changed, would not affect his analysis. He also opined that the sites are suitable for the uses that are contemplated under the industrial medium intensity use category. Tr. 63-65. Technical Staff agreed, stating that “The property is currently served by public water and sewer as well as fire and rescue facilities,” and concluded that “The subject application will be adequately served by public facilities.” Exhibit 26, p. 14.

Based on this record, the Hearing Examiner finds that the proposed use will be served by adequate public services and facilities.

H. Environment

Under the new Zoning Ordinance, an Applicant for rezoning is not required to submit an approved Natural Resource Inventory / Forest Stand Delineation (NRI/FSD) with its rezoning application;⁶ however, as required by the new Zoning Ordinance, Applicant filed an “Existing Conditions Plan” (Exhibit 13), certified by a professional and showing the existing conditions on the site and in the vicinity within 100 feet, including existing topography; watershed; Special Protection or Primary Management areas [there are none]; floodplains; wetlands; streams and associated buffers; forests; and the absence of rare, threatened, or endangered species.

Technical Staff reports that the site is located in the Middle Rock Creek watershed, but it is not a special protection area. No NRI/FSD has been done on this site; however, as noted by Staff, an exemption (41998061E) from the forest conservation requirements was granted on September 24, 1997, under the grandfathering provision, and existing development took place in accordance with that exemption. Technical Staff further reports (Exhibit 26, p. 18):

. . . A ponded stream with an associated stream valley buffer extends onto the southwest portion of the property, where it then enters a large storm drain that traverses the southeast side of the property along Dover Road. This undergrounded

⁶ Compare Section 59-D-1.3(a) of the old Zoning Ordinance with Section 59.7.2.1.B.2.g.v.(b) of the new Zoning Ordinance, which calls for “a plan certified by a licensed professional, showing existing site conditions and vicinity within 100 feet . . .,” including a variety of environmental information. The approval process for an NRI/FSD is pushed back to site plan review by the Planning Department under the new Zoning Ordinance.

stream, which is now a storm drain, is within a 50-foot to 70-foot wide floodplain.

. . . If the Subject Application is approved, the applicant will have to comply with the Forest Conservation Ordinance which may include a continuation of their exemption.

With regard to stormwater management, Technical Staff observed that runoff along the south of Parcel F and the east of Part of Parcel E drains into Dover Road Regional Stormwater Management Facility, which is owned and maintained by the City of Rockville. This pond discharges into the storm-drain facility that contains the undergrounded stream, and runoff from the west side of Part of Parcel E is conveyed directly to the same storm-drain facility. Exhibit 26, p. 19.

Applicant's civil engineer, Stephen Crum, testified that stormwater management has been addressed for both the applications, and exists under the criteria that were in place at the time of construction. He opined that without any additional disturbance, no new stormwater management would be required under current Code. Tr. 65-66.

Technical Staff concluded that "the proposal meets the basic sustainability requirement by not imposing a burden on the existing facilities and the environment." Exhibit 26, p. 21.

Based on this record, the Hearing Examiner is satisfied that the proposed use raises no new environmental concerns, and any impacts will be further evaluated at site plan review.

I. Community Concerns

There has been no input from the community in this case.

IV. SUMMARY OF THE HEARING

A public hearing was convened, as scheduled, on September 16, 2016, to cover both LMA H-113 and LMA H-114. The cases were consolidated for the hearing because the two sites confront each other across East Gude Drive; they involve the same Applicant; they have the same expert witnesses; and they seek the same zoning reclassification – from the existing IH 2.5, H 70 Heavy Industrial Zone to the IMF 2.5, H 70 - Moderate Industrial Floating Zone.

The Applicant presented evidence and called four witnesses in support of the application— James Whalen, the Applicant’s owner; Victoria Bryant, a land planner; Stephen Crum, a civil engineer; and Nancy Randall, a transportation planner. There was no opposition testimony.

At the inception of the hearing, the Hearing Examiner asked the Applicant to address three issues: 1. The absence on the floating zone plans of parking calculations for the proposed future expansion of floor area; 2. The lack of executed covenants for the binding elements, as required by the Zoning Ordinance; and 3. The citation explaining the Applicant’s contention that the proposed zone allows a height of up to 120 feet (though only 70 feet is sought here). Tr. 5-6.

Applicant’s counsel, Erin Girard, Esquire, addressed the parking calculation issues, stating that the I-M-F Zone allows a number of different uses, and that parking requirements differ for these different uses. Since the Applicant has not yet determined precisely which uses will occupy the additional floor area, they noted in their plans that the parking calculations would be done as tenant mixes changed, and when they seek permits, they would have to show to DPS that the parking was sufficient on the site. Tr. 6.

With regard to the covenants issue, Ms. Girard indicated that the Applicant wanted to modify the proposed binding element. Instead of limiting density growth to the existing building footprints, the Applicant proposed for it to read that no increase in gross floor area of more than 5,000 square feet will occur outside of the existing building footprint, or the existing impervious

area. The proposed change in the previously submitted binding element would give it some flexibility to accommodate any future tenant's needs to have a small amount of floor area outside the building footprints. Tr. 7-8.

The Hearing Examiner indicated that he would have to give the Technical Staff and the public the opportunity to comment on any such change, which would delay the closing of the record, but the Applicant was entitled to propose any binding element it wished, as long as the proposed covenant containing the binding element was executed and in the record before the record closed. Tr. 8-10.

The Hearing Examiner indicated that the central issue in this case is whether or not there is substantial compliance with the Master Plan since the Master Plan seems to be indicating heavy industrial, whereas the evidence the Applicant suggests would militate in favor of the moderate industrial. Ms. Girard replied that the Applicant was not proposing to go against the Master Plan and convert heavy industrial development into moderate, because the current development on both sites is moderate today, and everything around it is moderate. Tr. 11-13.

At the conclusion of the hearing, the Hearing Examiner asked the Applicant to announce on the record at the public hearing the exact language of the modified binding element the Applicant proposed. It was then entered into the record as Exhibit 32 and read out loud by the Hearing Examiner (Tr. 95-98):

No increase in gross floor area will occur outside of the existing building footprints, except that a maximum of 5,000 square feet may be located on existing impervious area outside the building footprints for ancillary tenant uses. This area will count towards the maximum gross floor area allowed by the plan.

The record was held open until October 7, 2016, at the Applicant's request, to give its counsel the opportunity to file revised floating zone plans with the new binding element language, as well as its executed declaration of covenants, and to give Technical Staff and the public the opportunity to comment. Tr. 99-103.

1. James Whelan (Tr. 13-26):

James Whelan testified that he is the owner of Investment Properties, Inc., the Applicant. It is a real estate development and asset management firm. He is also a partner with other owners of the properties in question and has been authorized to act in their behalf. Mr. Whalen briefly reviewed the history of Investment Properties, Inc. on the two sites. Tr. 14.

Mr. Whalen believes the I-M-F Zone is a more appropriate zoning classification for the property than the existing I-H Zone because it would provide more flexibility and available uses. The Applicant found the heavy industrial zone reduced his choices of available uses to the point where there really were only a few tenants we could actually do business with, in the absence of a special exception [now called a “conditional use”]. Although he was ultimately able to backfill a vacancy with another tenant, he is determined to make sure this difficulty doesn’t happen again. “So, it really is all about flexibility and uses.” Tr. 15-18.

The Applicant has no intention to add increased density now, but if it does happen in the future, he intends to accommodate the proposed increase in density within the existing building footprints. The potential for having 5,000 feet outside the footprint would be just to give added flexibility. For example, if a tenant requires some kind of special ancillary covered storage, and they want to put it right on top of concrete, he wants to be able to say yes. Mr. Whalen indicated that if the Council grants the re-zoning classifications, the property owner intends to operate the property in accordance with the statement and plans submitted with the application, including any binding elements. Tr. 20-26.

2. Victoria Bryant (Tr. 26-62):

Victoria Bryant testified as an expert in land planning. She testified that there are no specific recommendations for these sites in the 2004 Upper Rock Creek Master Plan, but there are some recommendations for the overall area. Tr. 27.

Ms. Bryant described the subject site and its immediate environs, and she indicated that she agreed with Technical Staff's definition of the surrounding area, a 2,000-foot radius of the subject properties. As stated by Ms. Bryant, the surrounding areas and properties for both subject sites are a variety of industrial, light industrial and heavy industrial. Some of the uses in the area include a travel agent, property management services, sales of tires, automobile parts, scrap metal, and most of those tend to be towards the northwest. Towards northwest of both the H-113 and the H-114 sites, most of the properties are a lighter industrial use – property management, travel agencies, a distillery, auto body repair, and some service stations. To the north and east along Southlawn, there are more high industrial sites, including a concrete and asphalt plant. They're all in the I-H 2.5 Zone, with a FAR of 2.5 and a height of 70 feet. Both properties are surrounded by that combination of industrial uses, except H-114, has some additional light industrial uses that are within the City of Rockville, directly to the south of the property. Tr. 32-35.

Exhibit 11 of LMA H-113, is an aerial photograph of the 800 and 850 East Gude Drive properties, which are the ones to the northeast of East Gude Drive. The image shows it's currently improved with two industrial buildings that have parking along the fronts and the sides of both of the properties, and large loading docks at the rear of each of the buildings. They are improved with 146,628 square feet gross floor area, and the Applicant is asking to double that square footage either through mezzanines or, if approved through some outdoor storage. There is a little forest conservation easement on the property, but there's no actual forest being saved; it's just an easement over the landscaping. The Applicant was never required to record the forest conservation easement. There are also two storm water management facilities and a large stream which is actually piped under H-113 under East Gude Drive, and then daylights just to the south of 861 East Gude Drive along Dover Road. Tr. 35-37.

Exhibit 7 of LMA H-114, which shows the properties of 851 and 861 East Gude Drive, is

across East Gude Drive from the LMA H-113 site. It is improved with a warehouse, a loading/staging area, and a series of one-story self-storage buildings, with a small office. There's the office building, along with some additional storage of vehicles, and motorboats. It is improved with 149,805 square feet gross floor area, and the Applicant is asking again to double that number. And again, that would be met through adding a mezzanine to 861, or any outdoor storage; and then a second floor to 851. Any expansion will have to go through site plan review pursuant to Section 59-7.2.1G(2), and has to be made compliant with the applicable parking requirements based on the actual tenant mix. It was hard to say how many spaces the Applicant will need when we don't know what the use will be. Again, if it was retail it would be a much higher number; if it was a warehouse it's a much lower number. So, the idea behind both H-113 and H-114 was that the loading dock areas are substantial enough that they could be converted to parking spaces if necessary to accommodate any future uses. If for whatever reason, the use would become too burdensome from a parking perspective, then DPS would not allow the use to go forward, if the Applicant could not accommodate it appropriately. Tr. 37-39.

Ms. Bryant explained where Applicant's figure on their FZPs for a maximum height in the zone of 120 feet came from. Under Division 4.8 Industrial Zones, Section 4.8.2, density height allocations, Section A, designating height limits, it says density is calculated as an allowable floor area ratio, each sequence of maximum total FAR, and maximum height is a zone under the following limits, and then under I-M there is a table that lists the I-L, the I-M, and the I-H, and under the I-M it has height as a maximum 25 to 120 feet. So, the Applicant was just referencing that section, saying technically the height could go to 120 feet, but the Master Plan calls for a maximum of 70 feet, which is what the Applicant is seeking. The Hearing Examiner noted that the Applicant had cited Section 5.5.5.B(2) with regard to height on its FZPs, not Section 4.8.2. Tr. 45-46.

Ms. Bryant indicated that the Floating Zone Plan for LMA H-113, shows that the site is in general conformance with the zoning requirements of the I-M and the I-M-F Zone. The chart shows that the site is required to have 248 parking spaces for the existing uses, and it has 275, so there are already some additional spaces available should some of the uses change around. In order to get a building permit to outfit an interior space, DPS has to review the use and determine that there is sufficient parking on the site. [The Hearing Examiner noted that, in the absence of a binding element, the rezoning review assumes the most intense use permitted under the zone that is sought. He suggested that restricting density expansion to the available parking should be noted on the floating zone plans.⁷] Tr. 46-49.

Ms. Bryant further testified that the Floating Zone Plan for LMA H-114, also shows that the site is in general conformance with the zoning requirements of the I-M and the I-M-F Zone, although the landscaping will have to be beefed up at site plan. Again, the table shows the parking, where the site is required to have 103 parking spaces for the current uses, and there are currently 108 spaces. There is a large facility at the very center of the property that is all asphalted for truck parking, and it could be easily turned into automobile parking if the Applicant should need additional parking spaces. Tr. 48-49.

Ms. Bryant then addressed compatibility and master plan conformance. She noted that Industrial Zones are what exist in this area, and what are recommended in the Master Plan. She opined that by proposing an industrial use, while in a slightly different zone, it is still an industrial use, as recommended by the Master Plan. The Master Plan also goes on to say that the Gude Drive - Southlawn area is generally light industrial in character, even though parts of the area are classified at I-1 Zone, which is the new I-H Zone. Master Plan at page 33. The land use and

⁷ In response to the Hearing Examiner's suggestion, when the Applicant amended the FZPs to modify their proposed binding element, they also added the following sentence to the note below the parking table in both plans: "Achievable density may be limited by amount of parking available on site, to be determined at Site Plan." Exhibit 33.

zoning goals for the industrial uses in the planning area are to continue to allow commercial industrial land uses in appropriate locations, at a manageable density. Page 13 of the Master Plan. She feels that the proposal follows this goal because the proposed densities are consistent with the surrounding neighborhood, at the lower end of the FAR requirement. It is currently being used as industrial land, and it will continue to be used as industrial land. The buildings that are built on the properties were built prior to the county-wide re-zoning, and are very modern, functioning facilities that are not anywhere near the end of their lifespan. A modest increase in the FAR, which maintains the scale and intensity of the existing district, is also a Master Plan objective. Page 13 of the Master Plan. Tr. 49-51.

Ms. Bryant further testified that the I-M-F Zone allows for 36 uses, which is more than the I-H Zone for this site. It would only exclude four uses, which would be mining and excavation, transfer of trash, a crematory and heavy industrial, no one of which would be appropriate for these sites. The configuration of the property and having a stream valley buffer would make it unwieldy for heavy industrial to come into this site. She agreed that the Master Plan recommends high industrial uses in the County (page 33 of the Master Plan), but it does make exceptions from this broad recommendation within the Master Plan itself. The plan recognized the fact that there are parts of this neighborhood which are moving over to the City of Rockville because of the light industrial nature of this particular segment of the area. The same arguments apply to the subject sites, which are small pieces of property, with a shape, storm water management and stream valley buffers on both the properties that make it hard for a heavy industrial use to go into these sites. The subject sites have existing infrastructure that is relatively new, and the sites are currently catering to light industrial uses. The subject sites are at the edge, where everything to the west and south is light industrial, while up Southlawn, high industrial uses are found on much larger parcels. Ms. Bryant agreed with the Hearing Examiner's characterization of the subject sites as transitional

between light industrial to the south and west and heavy industrial to the east. The Master Plan encourages appropriate land use by providing flexibility to respond to changing economic, demographic, and planning trends that occur between comprehensive district and section map amendments. According to Ms. Bryant, flexibility is exactly what the Applicant is seeking in these cases, so that it can respond to the market demands by obtaining the zone that is actually more flexible and provides greater uses and encourages more industrial use than the I-H Zone allows. The proposed density is appropriate for the size of the lot and the character of the neighborhood, and its increased uses will better serve the need of the population. Tr. 51-58.

Ms. Bryant opined that the development satisfies sustainability requirements, including location, connection to circulation networks, density and use limitations, open space, environmental protection mitigation. It is located in an industrial area; it takes advantage of the existing network; its uses are allowed in the I-M Zone; and they are in conformance with all applicable environmental laws. They ensure protection of established neighborhoods, in that they are compatible – an industrial use in an industrial neighborhood. Thus, there will be no negative impacts. The Applicant is just asking for a zone that's actually more compatible to the uses that are currently found in the area, which are light industrial. Tr. 58.

[Applicant's counsel noted that Ms. Bryant's land planning reports are Exhibit 7 in H-113, and Exhibit 9 in H-114. She also discussed the wording of the proposed binding element with the Hearing Examiner. Applicant's counsel indicated that the Applicant adopts the findings and conclusions of the Technical Staff and its report.] Ms. Bryant testified that the new wording of the binding element would not change her testimony in any way. Tr. 59-61.

Ms. Bryant further testified that in her expert opinion, the proposed zoning re-classification will substantially conform to the recommendations of the Upper Rock Creek Master Plan, the General Plan, and other applicable County plans. In addition, in her expert opinion, approval of

the applications would further the public interest and will satisfy the intent and standards of the proposed I-M-F Zone, as laid out in the data tables on the FZPs of H-113 and 114. Finally, Ms. Bryant opined that the proposed zoning re-classifications would be compatible with existing and approved adjacent development. Tr. 61-62.

3. Stephen Crum (Tr. 63-67):

Stephen Crum testified as an expert in civil engineering. He opined that the sites are developed, and they are suitable for the uses that are contemplated under the industrial medium intensity use category. He indicated that the addition of the binding element as changed would not affect his analysis. Mr. Crum further testified that the buildings are connected to public facilities, water, sewer, electric, telephone, natural gas, and they have sufficient capacity to accommodate the proposed uses and the existing uses, even if they double the floor area use of these buildings, and add 5,000 square feet of space. Tr. 63-65.

Mr. Crum further testified that stormwater management has been addressed for both the applications, and exists under the criteria that were in place at the time of construction. He opined that without any additional disturbance, no new stormwater management would be required under current Code. Enclosing a loading dock area of 5,000 square feet or less would not trigger any additional sediment control. There wouldn't be an amendment to the preliminary plan, but if for some reason the Applicant disturbed more than 5,000 square feet, it would be required to get a sediment control permit from Montgomery County Department of Permitting Services. Only the new 5,000 square feet would be considered re-development under the ESD environmental site design guidance and would have to meet environmental site design requirements. Tr. 65-66.

Mr. Crum further testified that his detailed analysis is contained in the engineering reports in the record as Exhibit 6 in H-113 and Exhibit 11 in H-114. In his expert opinion as a civil engineer, the proposed developments will be served by adequate public facilities and services,

including water, sanitary, sewer, storm drainage, and other public improvements. Also, in his opinion from a civil engineering standpoint, the proposed zoning re-classifications will be compatible with existing and improved adjacent development. Tr. 66-67.

4. Nancy Randall (Tr. 68-95):

Nancy Randall testified as an expert in transportation planning, and she explained the traffic studies she did to satisfy the Planning Department's Local Area Transportation Review (LATR). Her studies are contained in Exhibit 19 in H-113, and Exhibit 17 in H-114. She obtained a scoping agreement from Technical Staff, and both properties would have the same study area. The study area included Dover Road and East Gude Drive intersections and access points to the sites. Ms. Randall testified that the existing intersections and the existing volumes that were counted all met the required standards, and are well under the Critical Lane Volume (CLV) standard for this area, which is at 1475 CLV. The highest CLV at any one of the intersections occurred at East Gude and Dover Road, and that is at 1152, so there was more than sufficient capacity at these intersections. Tr. 68-72.

Ms. Randall further testified that Critical Lane Volume is a calculation of the critical movements at a signalized intersection, or unsignalized intersection. It's the standard that Montgomery County currently uses for measuring capacity at an intersection. Pipeline Development is added to the existing traffic as part of the LATR study. Pipeline Development consists of approved projects that have not yet been built or occupied. Tr. 73-75.

There was a discussion between the witness and the Hearing Examiner about an error in the initial report of the Transportation Planning Staff, which erroneously said that the proposed new density would not increase the number of trips by over 30, but that the total number of trips would be over 30. Actually both of those are going to occur if the Applicant adds the density being proposed. Transportation Planning Staff corrected that error in their memo attached to the

Technical Staff report (Exhibit 27(a)) forwarded by the Planning Board with its letter (Exhibit 27).⁸ Tr. 76-80.

Ms. Randall further testified that she calculated CLVs with the increased densities proposed for H-113 and H-114 assuming the worst case trip production scenario for potential tenancy on those sites. For H-113, she calculated that the result of adding the additional traffic from the doubling in square footage of those buildings, would generate a net increase overall from the property in the morning peak hour of 79 trips, and 248⁹ in the evening peak hour. This would bring the highest CLV up to 1,231 critical lane vehicles at East Gude Drive and Dover Road. The East Gude Drive site access trips for that property also go up, but they are well within the 1475 CLV standard. For the H-114 properties, Ms. Randall included the H-113 development in the potential background traffic, and the net increase in volume for the H-114 parcels is 117 a.m. peak hour trips, and 249 p.m. peak hour trips. The resulting highest CLV, again, occurred at the intersection of East Gude Drive and Dover Road with a CLV of 1,257 vehicles during the p.m. peak hour. The site access on Dover Road is well under the maximum, with 474 vehicle trips. Tr. 81-88.

Ms. Randall added that she also did pedestrian-bicycle transit statements for both sites, at the request of MCDOT, and she included their request as Exhibit 30 and her pedestrian- bicycle transit statements as Exhibit 31 in both files. Tr. 89-92.

Ms. Randall further testified that Park and Planning Staff and the Montgomery County Department of Transportation evaluated her traffic impact analysis and agreed with her conclusions. Based on her analysis and in her expert opinion, she stated that nearby roads and

⁸ The Hearing Examiner also noted that Technical Staff had not entered a different correction in the Technical Staff report (Exhibit 26) that the Planning Board noted in its letter (Exhibit 27), flipping the gross square footage entries in the table on page 7 of the Technical Staff report. So the Hearing Examiner announced that he would interlineate those changes in the copies of the Technical Staff report included in the files. Tr. 82.

⁹ Actually, this figure should have been 249, as correctly reported in the Table from the Technical Staff report (Exhibit 26, p. 15). Ms. Randall made a subtraction error of one digit in her traffic report (Exhibit 19, p. 22).

circulation systems are adequate to serve the proposed developments. She further opined that the proposed development would not generate traffic that exceeds the critical lane volumes, or volume capacity ratio standards as applicable under the Planning Board's LATR guidelines. She noted that the LATR guidelines require a CLV of 1475, and for both cases the CLV will be well below that 1475 critical lane volume limit. Ms. Randall further testified that, in her expert opinion, the proposed zoning classifications and developments would be suitable for the subject properties from the standpoint of transportation planning, and would be compatible with existing and approved adjacent development. She also stated that none of those conclusions would be affected if there is an additional 5,000 square feet of usage outside of the footprint of the building because it is going to be an ancillary use, such as storage of outdoor equipment, like a generator. Finally, Ms. Randall testified that the access points to the sites, and the internal circulation in the sites, in both H-113 and 114, are safe and adequate. Tr. 92-95.

V. ZONING ISSUES

Zoning involves two basic types of classifications, Euclidean zones and Floating zones. The term "Euclidean" zoning arose from the seminal United States Supreme Court case upholding the land use authority of local governments, *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). Euclidean zoning divides the territory of a local jurisdiction into zoning districts with set boundaries and specific regulations governing aspects of land development, such as permitted uses, lot sizes, setbacks, and building height.

A Floating zone is a more flexible device that allows a legislative body to establish a district for a particular category of land use, with regulations specific to that 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 to the Council that the proposed development will meet the standards set forth in the new Zoning Ordinance that went into effect on October 30,

2014, and that it will be consistent with a coordinated and systematic development of the regional district, as required by the 2012 Maryland Land Use Article, Code Ann. § 21-101(a)(4)(i).¹⁰

Montgomery County has many Floating zones, including the IMF Zones. The IMF 2.5, H 70 Zone contains development standards which must be met, but the details of site-specific issues such as building location, stormwater control, vehicular and pedestrian routes, landscaping and screening are generally addressed by the Planning Board, after rezoning, at site plan review, per §§59.7.1.3, 59.7.2.1.G.2 and 59.7.3.4 of the Zoning Ordinance. The Council has a broader discretionary role in determining whether to approve a rezoning; however, the new Zoning Ordinance still requires a structured and detailed analysis for the Council's review of rezoning applications, as follows:

Zoning Ordinance §59.7.2.1.E. establishes a set of “Necessary Findings” the Council must make for any Floating Zone application:

E. Necessary Findings

1. *A Floating zone application that satisfies Article 59-5 may not be sufficient to require approval of the application.*
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;*
 - b. *further the public interest;*
 - c. *satisfy the intent and standards of the proposed zone and, to the extent the Hearing Examiner finds it necessary to ensure compatibility, meet other applicable requirements of this Chapter;*
 - d. *be compatible with existing and approved adjacent development;*
 - 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; and*
 - f. *when applying a non-Residential Floating zone to a property previously under a Residential Detached zone, not adversely affect the character of the surrounding neighborhood.*

¹⁰ 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.

As is apparent, Finding 2.c. of these “Necessary Findings” incorporates requirements spelled out elsewhere in the Code—specifically under sections that establish “the intent and standards” of the Zone. Those general standards are found in Zoning Ordinance Sections 59.5.1.2., 5.1.3. and 5.1.4. Specific standards for Industrial Floating Zones are spelled out in Sections 59.5.5.1., 5.5.2., 5.5.3., 5.5.4. and 5.5.5. This report will first address the general “Necessary Findings” set forth above, and will then review the specific standards which must be met to rezone to an IMF 2.5, H 70 Zone.

When the reclassification sought by an applicant is recommended by the Planning Board, approval of the rezoning by the Council requires an affirmative vote of 5 Council members; however, when the Planning Board does not recommend the reclassification sought (or if approval would be contrary to the recommendation of the municipality in which the property is located), the Zoning Ordinance requires an affirmative vote of 6 members of the Council for approval. Zoning Ordinance §59.7.2.1.F.2. The Planning Board did recommend approval of the rezoning in this case, and no municipality has made a recommendation, so a simple majority of 5 members of the Council is required for approval.

A. The “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;

Conclusion: The subject site is located in the area covered by the 2004 Upper Rock Creek Master Plan. For the reasons set forth at some length in Part III.F. of this report, the Hearing Examiner finds that the proposed Floating Zone Plan will substantially conform with the recommendations of the applicable master plan, general plan, and other applicable County plans.

b. further the public interest;

Applicant's land planner, Victoria Bryant, testified that this proposal would further the public interest of the county. Tr. 61-62. The IMF Zone allows for 36 uses, which is more than the I-H Zone for this site. It would only exclude four uses, which would be mining and excavation, transfer of trash, a crematory and heavy industrial, none of which would be appropriate for these sites. Also, the Master Plan encourages appropriate land use by providing flexibility to respond to changing economic, demographic, and planning trends that occur between comprehensive district and section map amendments. According to Ms. Bryant, flexibility is exactly what the Applicant is seeking in these cases, so that it can respond to the market demands by obtaining the zone that is actually more flexible and provides greater uses and encourages more industrial use than the I-H Zone allows. The proposed density is appropriate for the size of the lot and the character of the neighborhood, and its increased uses will better serve the needs of the population. Tr. 51-58. Ms. Bryant opined that the development satisfies sustainability requirements, including location, connection to circulation networks, density and use limitations, open space, environmental protection mitigation. It is located in an industrial area; it takes advantage of the existing network; its uses are allowed in the I-M Zone; and they are in conformance with all applicable environmental laws. They ensure protection of established neighborhoods, in that they are compatible – an industrial use in an industrial neighborhood. Thus, there will be no negative impacts. The Applicant is just asking for a zone that's actually more compatible to the uses that are currently found in the area, which are light industrial. Tr. 58.

Technical Staff agreed, stating (Exhibit 26, p. 25):

The Project will further the public interest by ensuring provision of long established uses and services in a manner that is compatible with the existing and future developments in the surrounding area while maintaining the preservation of environmental resources..

Conclusion: Based on this undisputed evidence, the Hearing Examiner finds that the proposed development will further the public interest.

c. satisfy the intent and standards of the proposed zone and, to the extent the Hearing Examiner finds it necessary to ensure compatibility, meet other applicable requirements of this Chapter;

Conclusion: For the reasons set forth below in Parts V.B., V.C., V.D. and V.E. of this report, the Hearing Examiner finds that the proposed Floating Zone Plan will satisfy the intent and standards of the proposed zone, and to the extent necessary to ensure compatibility, it will meet the other applicable requirements of the Zoning Ordinance.

d. be compatible with existing and approved adjacent development;

Land planning expert, Victoria Bryant, testified that the proposed development will be compatible with the surrounding area. It would be a light-to-moderate industrial use in a light-to-moderate industrial neighborhood. Thus, there will be no negative impacts. The zone being sought is actually more compatible to the uses that are currently found in the area than the current zone, because the immediate surrounding uses are light industrial. Tr. 58. Technical Staff agreed, stating (Exhibit 26, p. 25):

The proposed Floating Zone Plan is compatible with its surrounding conditions. There are no residentially developed properties within a 2,000 [foot] radius of the subject properties. The properties are surrounded by various light and heavy industrial uses. Moreover, the rezoning request proposes to maintain the existing uses on the properties which are already in harmony with the character of the surrounding area. Any future modification and increase in density would be contained within the existing building foot prints and established building height limits of the zone and limits set under future site plan reviews. The existing developments on the property and any future increase in density are and will be compatible with adjacent developments in terms design, height, massing, and building materials.

Conclusion: Based on this undisputed evidence, the Hearing Examiner finds that the proposed development will be compatible with existing and approved adjacent development.

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; and

Conclusion: For the reasons set forth in Part III.G. of this report, the Hearing Examiner finds that the proposed development will not generate traffic that exceeds the critical lane volume or volume/capacity ratio standard as applicable under the Planning Board's LATR Guidelines.

f. when applying a non-Residential Floating zone to a property previously under a Residential Detached zone, not adversely affect the character of the surrounding neighborhood.

Conclusion: This provision is inapplicable because the subject property is currently under an Industrial Zone, not a Residential Detached Zone.

B. The Intent and Standards of the Zone as set forth in Section 59.5.1.2.

The next step in the review process is a determination of whether the proposed development will satisfy the intent and standards of the IMF 2.5, H 70 - Moderate Industrial Floating 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*
- 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*
- 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.*

Section 59.5.1.2.A - Encourage the appropriate use of land . . .

Conclusion: The first test listed under this section essentially asks whether the proposal will comport with the goals of the general plan and the applicable master plan. The standard set forth in §59.5.1.2.A.1. is, of course, repetitive of the previously discussed Master Plan standards, and for the reasons set forth in Part III.F. of this report, the Hearing Examiner finds that the proposed Floating Zone Plan will further the goals of the general plan, applicable master plan, and functional master plans.

Sections 59.5.1.2.A.2 and A.3, address the adequacy of existing and planned public facilities. For the reasons set forth in Part III.G. of this report, it is clear that the proposed use is supported by existing and planned infrastructure.

Conclusion: Based on this record, the Hearing Examiner finds that the proposed development will satisfy the intent standards for the IMF 2.5, H 70 Zone, as set forth in §59.5.1.2.A.

Section 59.5.1.2.B - Implement comprehensive planning objectives . . .

The second portion of the intent provision (Section §59.5.1.2.B.) asks whether the proposal will encourage an appropriate, flexible and sustainable use of the land that will serve the community even in changing circumstances. As mentioned above, Land Planner Victoria Bryant testified that flexibility is exactly what the Applicant is seeking in these cases, so that it can

respond to the market demands by obtaining the zone that is actually more flexible and provides greater uses and encourages more industrial use than the I-H Zone allows. The proposed density is appropriate for the size of the lot and the character of the neighborhood, and its increased uses will better serve the needs of the population. Ms. Bryant opined that the development satisfies sustainability requirements, including location, connection to circulation networks, density and use limitations, open space and environmental protection. Tr. 51-58.

Technical Staff agreed that the subject site is an appropriate location for the proposed development, stating (Exhibit 26, p. 9):

The Subject Applications are located in an area specifically recommended for industrial uses. Although the properties were zoned I-2 (Heavy Industrial), they were developed for the purposes of housing and operating uses with light industrial nature. The Applicant intends to retain the industrial nature of the properties as recommended by the Master Plan. The subject Applications propose for a more flexible industrial zone, that is consistent with the nature of the current uses and the character of surrounding area.

Technical Staff also agreed that the proposed development would allow more flexibility (Exhibit 26, pp. 20-21):

Placing a floating zone on the Subject Properties would promote the intent of the IMF Zone by allowing flexibility in responding to changing economic, demographic, and planning trends. The Applicant believes that it will be able to respond to the market demands by obtaining a zoning designation that allows for more permitted uses than the existing IH zone allows. The IMF zone allows for 36 more uses than the IH zone, but only excludes four permitted uses under the IH zone.

In addition, this part of the county has evolved into a largely light industrial area, with activities like those on the subject properties--warehousing, printing, auto services—prominently featured. The 2004 Plan recognized this evolution, although it left existing zones in place. The creation of Industrial Floating Zones, which were not available under the previous Zoning Ordinance, allows landowners to respond to the realities of market demands and the physical characteristics of the neighborhood.

The proposed density is appropriate for the size of the lot and the character of the neighborhood. Application of the IMF zone to the Properties will increase the diversity of uses and will better serve the needs of the population. The proposal will have no negative impact upon any nearby residential neighborhood or commercial activities, as the properties are surrounded with industrial uses similar in nature to

the existing uses on the subject property. . . .

Conclusion: Based on this undisputed evidence, the Hearing Examiner finds that the proposed development will satisfy the intent standards for the IMF 2.5, H 70 Zone, as set forth in §59.5.1.2.B., and will encourage the appropriate and flexible use of the land.

Section 59.5.1.2.C - Ensure protection of established neighborhoods . . .

The third prong of the intent provision (Section §59.5.1.2.C.) seeks to ensure protection of established neighborhoods by requiring design flexibility and compatibility with existing developments. Once again, the requirements of this section are repetitive of the general compatibility findings required by Section 59.7.2.1.E.2.d. As previously mentioned, land planner Victoria Bryant testified that, in accordance with Section 59.5.1.2.C , the proposed development will be compatible with the surrounding area, in that it would be a light-to-moderate industrial use in a light-to- moderate industrial neighborhood. The zone being sought is actually more compatible to the uses that are currently found in the area than the current zone, because the immediate surrounding uses are light industrial. Tr. 58.

Technical Staff agreed, stating (Exhibit 26, p. 22):

The proposed Floating Zone Plan meets the development standards of the IMF Zone. Since the site is already developed and no new structures are proposed, the character of the neighborhood will not be impacted.

* * *

The proposed/existing development is and will continue to be compatible with the surrounding area. The adjacent properties as well as properties in the surrounding area are improved with developments similar to those of the existing and proposed uses on the Subject Properties. The proposed modification or increase in density will be contained within the existing footprints of buildings and improvements and will be in keeping with the light industrial character of this part of East Gude Drive. The area contains light industrial uses on both IM and IH zoned properties as well as heavy industrial uses established on IH zoned properties. The proposed rezoning would not have a negative impact on existing or future development of the surrounding area and it would blend well with the existing character of the industrial neighborhood.

The Planning Board adopted Technical Staff's findings. Exhibit 27.

Conclusion: As was stated with regard to the compatibility findings required in §59.7.2.1.E.2.d, above, the Hearing Examiner finds that the proposed development will be compatible with existing and approved adjacent development. The standards set forth in §59.5.1.2.C. have been satisfied.

C. The Applicability of the Zone as set forth in 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 the site in question. Each subsection is listed separately below, followed by the Hearing Examiner's finding on each:

Section 59.5.1.3. A. A Floating zone must not be approved for property that is in an Agricultural or Rural Residential zone.

Conclusion: Subsection "A" is not applicable since the subject site is in an Industrial zone, not in either an Agricultural or a Rural Residential zone.

Section 59.5.1.3. B. If a Floating zone is recommended in a master plan, there are no prerequisites for an application. For properties with a master plan recommendation for a Floating zone for which an application can no longer be made as of October 30, 2014, the following table identifies the equivalent Floating zones for which an applicant may apply:

* * *

Conclusion: Subsection "B" is not applicable since the Upper Rock Creek Master Plan neither recommends nor opposes a Floating zone on the subject site. It is silent on the issue.

Section 59.5.1.3. 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: Subsection "C" is applicable since the Upper Rock Creek Master Plan does not expressly recommend a Floating zone on the subject site. Subsection "C.1." requires the

maximum density to be calculated in accordance with Section 59.5.5.5, which is done in the next part of this report. As will be shown there, the proposed use will be within the maximum density allowed. No density bonus has been requested in this case.

2. Residential Base Zone

* * *

Conclusion: Subsection “C.2.” is not applicable since the site is not in a Residential Base Zone.

3. Non-Residential Base Zone

*When **requesting** a Floating zone for a property with a non-Residential base zone there are no prerequisites for an application.*

Conclusion: Under the terms of Subsection C.3. “*there are no prerequisites for an application.*”

Based on this undisputed record, the Hearing Examiner finds that the subject Floating Zone application meets all the tests set forth in Section 59.5.1.3 for applying the requested IMF 2.5, H 70 Zone to the site in question. Section 59.5.1.4 notes that an application for a Floating Zone must be approved as a Local Map Amendment under Section 59.7.2.1. As discussed in Part V.A. of this report, the application does meet the requirements set forth under Section 59.7.2.1. Section 59.5.1.5 is inapplicable to the zone sought in this case.

D. The Industrial Floating Zones, their Purpose and Uses, as set forth in Division 5.5

Zoning Ordinance §59.5.5 lists the Industrial Floating Zones, specifies their purpose, designates the allowed uses and building types and sets forth the applicable development standards. The development standards are discussed in the next part of this report, Part V.E.

Division 5.5. Industrial Floating Zones

Section 59.5.5.1. Zones

- A. *There are 2 categories of Industrial Floating zones.*
- B. *Industrial Floating zones are mapped using the zone's initials followed by the maximum allowed total density and maximum allowed height*

as limited by Division 5.5. Zones are established at density increments of 0.25 FAR and height increments of 5 feet.

1. *Industrial Light – Floating (ILF# H#)*
2. *Industrial Moderate – Floating (IMF# H#)*

Conclusion: The subject application seeks the second category, the Industrial Moderate Floating Zone, with a density of up to 2.5 FAR and a height limit of 70 feet – *i.e.*, the IMF 2.5, H 70 Zone.

Section 59.5.5.2. Purpose

The purpose of the Industrial Floating zones is to allow development of industrial sites with primarily light manufacturing, warehouse, and related uses at a range of densities and heights flexible enough to respond to various settings.

Conclusion: The uses currently on the subject site include buildings occupied by largely light industrial businesses, including parts and service suppliers and warehouses, as well as offices and showrooms. The subject application would seek permission to expand the uses almost entirely within the current building footprints. The Hearing Examiner finds that this plan is consistent with the stated purpose of the Industrial Floating Zones.

Section 59.5.5.3. Land Uses

A. The following land uses are allowed in the Industrial Floating zones:

1. *In the ILF zones, only the uses allowed in the IL zone are allowed.*
2. *In the IMF zones, only the uses allowed in the IM zone are allowed.*

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

Conclusion: The subject application seeks only uses that are allowed in the IM Zone. The Applicant has also added a binding element to its Floating Zone Plan which provides,

No increase in gross floor area will occur outside of the existing building footprints, except that a maximum of 5000 square feet may be located on existing impervious area outside of building footprints for ancillary tenant uses. This area will count towards the maximum gross floor area allowed by the plan.

The Hearing Examiner finds, as did Technical Staff and the Planning Board, that the proposed Floating Zone Plan, with its binding element, meets the land use requirements of this provision.

Exhibit 26, pp. 24-25, Exhibit 27 and Exhibit 35.

Section 59.5.5.4. Building Types Allowed

- A. Building types are allowed under the equivalent Euclidean zone.
- B. An applicant may voluntarily prohibit building types or establish binding elements that restrict specific building types to support the necessary findings of approval under Section 7.2.1.

Conclusion: The subject application seeks buildings that are allowed in the IM Zone. The Applicant has also added a binding element to its Floating Zone Plan which limits any expanded floor area almost entirely to within the existing building footprints. The Hearing Examiner finds, as did Technical Staff and the Planning Board, that the proposed Floating Zone Plan, with its binding element, meets the building type limitations of this provision. Exhibit 26, pp. 24-25.

E. Development Standards for the Zone as set forth in Section 59.5.5.5.

Development Standards for the IMF 2.5, H 70 Zone are spelled out in Zoning Ordinance §59.5.5.5. , which is set forth below:

A. Density

- 1. If a Floating zone is recommended in a master plan, density must not exceed that recommendation.
- 2. If a Floating zone is not recommended in a master plan, the following density limits apply:

Density Allowed			
Pre-Existing Euclidean Zone	Maximum Total Density Allowed in FAR Based on Size of Tract in Acres		
	Less than 0.5 acres	0.5 acres - 3.00 acres	Greater than 3 acres
RE-2, RE-2c, RE-1, R-200	0.50 FAR	0.75 FAR	1.00 FAR
R-90, R-60, R-40, TLD, TMD, THD	0.75	1.00	1.25
R-30, R-20, R-10	1.00	1.25	1.50
CRN	0.75	1.00	1.25
CRT	1.00	1.25	1.50
CR	2.00	2.50	3.00
Employment	1.00	1.25	1.50
Industrial	2.00	2.50	3.00

3. *An applicant may limit density below the maximum allowed by Section 5.5.5.A to support the necessary findings of approval under Section 7.2.1.*

Conclusion: In the subject case, the Master Plan neither recommends nor opposes a Floating Zone on the site. Therefore, the density limits set forth in the Table under Section 59.5.5.A.2. are applicable. The last row specifies the density limits for Industrial Floating Zones, based on acreage. The subject site contains over 3 acres, so the applicable density limit is a “FAR” (Floor Area Ratio) of no more than 3. The Applicant is seeking the IMF 2.5, H 70 Zone, which limits the FAR to 2.5, well below the statutory FAR limit of 3.00.

B. Setback and Height

1. *If a Floating zone is recommended in a master plan, height must not exceed that recommendation.*
2. *Setbacks from the site boundary and maximum height are established by the floating zone plan. All other setbacks are established by the site plan approval process under Section 7.3.4.*
3. *Height must satisfy the compatibility standards for the applicable building type under Section 4.1.8.B.*

Conclusion: As mentioned above, the Master Plan neither recommends nor opposes a Floating Zone on the site. Therefore, the height provisions in Sections 59.5.5.B.2. and 3., set forth above, are applicable. Together, they provide that the Floating Zone Plan (FZP) establishes the height limits and site boundary setbacks, consistent with compatibility and subject to the Site Plan Review process. In this case, the FZP sets a height limit of 70 feet and shows the locations of existing buildings on the site. Since the FZP height limit of 70 feet is well within the compatibility standards set forth in Section 59.4.8.2.A.1 for the base IM Zone (25 feet to 120 feet of height for a site with a FAR from 0.25 to 2.5), the proposed use is compliant with height restrictions. Since the building footprints will not be changed, there is no issue regarding building setbacks in this case.

C. Lot Size

Minimum lot sizes are established by the site plan approval process under Section 7.3.4.

Conclusion: There is no plan to change existing lot sizes in this case, but any concerns in this

regard will be addressed at Site Plan Review, as required by this section.

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 5.5.3.*
- 2. Open space must be provided under Section 4.8.3.A.1 as required for the Euclidean zone that establishes uses under Section 5.5.3.*
- 3. The floating zone plan may provide for additional parking, open space, recreation facilities, screening, or landscaping or further restrict lighting to allow the District Council to make the necessary findings of approval under Section 7.2.1.*

Conclusion: The amended FZP (Exhibit 33) has a table showing existing parking and demonstrating that it exceeds current requirements, based on the existing uses. The number of parking spaces required is 103 spaces, and the site has 108 spaces. The Applicant cannot calculate future parking requirements because it does not yet know the mix of new potential tenants (*i.e.*, office v. retail v. warehouse use) and thus does not know the parking requirements that will be applicable. Tr. 6, 37-39. Therefore, the amended FZP (Exhibit 33) contains a note indicating:

Future parking will be determined based on tenant mix at time of Site Plan and/or Use and Occupancy permit. Achievable density may be limited by amount of parking available on site, to be determined at Site Plan.”

Technical Staff reports (Exhibit 26, p. 12):

The Subject Properties are currently served by adequate parking. Future amendments will evaluate future parking needs as part of preliminary plan and site plan review process.

Based on this record, the Hearing Examiner finds that the Applicant is currently providing the parking that is required and that any future parking requirements incurred by an increase or change in the tenant uses will be addressed adequately at Site Plan Review or during the permitting process.

The applicable development standards, and the Applicant’s compliance therewith, are set forth by Technical Staff in a Table in their report (Exhibit 26, p. 24):

Table 5: Standard Method Development Standards

	REQUIRED		PROPOSED	
	IM ZONE	IMF ZONE	H-114	
1. Site				
Open Space (min)	SECT. 4.8.3.A(1)	SECT. 5.5.5.D(2)		
Amenity Open Space >10,000 SF	10% or 48,852 SF	10% or 48,852 SF	20%, 125,540 SF	
2. Lot and Density	SECT. 4.8.3.A(2)	SECT. 5.5.5.A(2)		
Density, FAR	0.25 to 2.50 FAR or MAX 1,221,302 SF	0.25 to 3.00 FAR or MAX 1,465,563 SF	0.49 FAR or 299,610 SF	
3. Placement:	SECT. 4.8.3.A(3)	SECT. 5.5.5.B(2)		
Principal Building & Accessory Structure Setbacks (min)				
• Front setback	10 Ft.	Established by floating zone plan	81 ft	
• Side street setback	10 Ft.		32 ft	
• Side setback abutting Industrial Zone	0 Ft.		20 ft	
• Rear Setback abutting Industrial Zone	0 Ft.		30 ft	
• Rear setback, Alley	0 Ft.		n/a	
Parking Setbacks for Surface Parking Lots - 10 or more spaces	SECT. 6.2.9.C(3)(b)	SECT. 5.5.5.B(2)		
Front setback	6	Established by	22 ft	
Side street setback	0	floating zone	25 ft	
Side setback	0	plan	4 ft	
Rear setback	0		14 ft	
Rear setback, alley	0		n/a	
Parking Lot Tree canopy*	25% or 49,453 SF	25% or 49,453 SF	3.4% or 11,490 SF*	
Parking Lot Landscaped Areas	5% or 9,891 SF	5% or 9,891 SF	9.1% or 30,811 SF	
Height (max)	SECT. 4.8.3.A(4)	SECT. 5.5.5.B(2)		
Principal Building	Mapped and sec 4.1.8.b	Mapped and sec 4.1.8.b	70 ft	
Accessory structure	Mapped and sec 4.1.8.b	Mapped and sec 4.1.8.b.	N/A ft	
Form	SECT. 4.8.3.A(5)	SECT. 5.5.4.A		
Gallery/Awning	Allowed	Allowed	n/a	
Porch/Stoop	Allowed	Allowed	n/a	
Balcony	Allowed	Allowed	n/a	
Open Space Landscaping and Outdoor Lighting - Amenity Open Space	SECT. 6.3.8.A	SECT. 5.5.5.B(2)		
Permeable area (min)	10% or 48,852 SF	10% or 48,852 SF	21% or 126,661 SF	
Tree Canopy (min)	10% or 48,852 SF	10% or 48,852 SF	13% or 79,767 SF	

* Existing conditions grandfathered pursuant to Section 59.7.7.1

Conclusion: Based on this undisputed record, the Hearing Examiner finds that the subject Floating zone application meets all the development standards set forth in Section 59.5.5.5. of the Zoning Ordinance.

VI. CONCLUSIONS

Based on the foregoing analysis and after a thorough review of the entire record, the Hearing Examiner concludes 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, as required by the Maryland Land Use Article, Code Ann. § 21-101(a)(4)(i) (2012). More specifically, the evidence demonstrates compliance with Zoning Ordinance §59.7.2.1.E., which spells out the general requirements for approval of a rezoning to a Floating zone, and with Sections 59.5.1.2., 59.5.1.3., 59.5.1.4., 59.5.5.1., 59.5.5.2., 59.5.5.3., 59.5.5.4. and 59.5.5.5, which together detail the intent, purposes, and standards of the proposed IMF 2.5, H 70 Zone.

VII. RECOMMENDATION

I, therefore, recommend that Local Map Amendment Application No. H-114, requesting reclassification from the existing IH 2.5, H 70 Heavy Industrial Zone to the IMF 2.5, H 70 - Moderate Industrial Floating Zone, of Part of Parcel E (a/k/a Parcel N766) and Parcel F (a/k/a Parcel N851) of the Ensor Property, described in Plat No. 21528 of the Cotler Industrial Park Subdivision, located at 851 and 861 East Gude Drive in Rockville, Maryland, and consisting of 14.17 acres of land (617,265 square feet) be **approved** in the amount requested and subject to the specifications and requirements of the Floating Zone Plan, Exhibit 33; provided that the Applicant files an executed covenant reflecting the binding element in the land records and submits to the Hearing Examiner for certification a true copy of the Floating Zone Plan approved by the District

Council within 10 days of approval, in accordance with §§59.7.2.1.H.1.a. and b. of the Zoning Ordinance.

Dated: October 11, 2016

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Martin L. Grossman". The signature is fluid and cursive, with a long horizontal stroke at the end.

Martin L. Grossman
Hearing Examiner