

Resolution No.: 19-83
Introduced: April 30, 2019
Adopted: April 30, 2019

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT
IN MONTGOMERY COUNTY, MARYLAND**

By: District Council

SUBJECT: APPLICATION NO. H-129 FOR AMENDMENT TO THE ZONING ORDINANCE MAP, Emily Vaias, Esquire, and Katherine M. Noonan, Esquire, Attorneys for the Applicant, MHP Forest Glen, LLC; OPINION AND RESOLUTION ON APPLICATION; Tax Account Number 13-01125413.

OPINION

On October 31, 2018, MHP Forest Glen, LLC, filed LMA Application No. H-129 with the Office of Zoning and Administrative Hearings (OZAH), seeking a Local Map Amendment to reclassify 2.634 acres (out of a gross tract of 3.59 acres) from the existing R-10 Zone to a different Euclidean Zone (Exhibits 1 and 7).¹ On December 27, 2018, the Applicant amended its application to seek reclassification of its R-10 zoned property not to another Euclidean Zone, but rather to a Floating Zone – the CRTF-1.75, C-0.25, R-1.5, H-70 Commercial Residential Town Floating Zone. Exhibits 23 and 26. The property, identified Parcel C, Block A, in the McKenney Hills subdivision, is located at 9920 Georgia Avenue and 2106 Belvedere Boulevard in Silver Spring, Maryland 20902, and is subject to the 1996 Forest Glen Sector Plan.

The property is owned by the Applicant (Exhibit 3), and is currently developed with 72 garden apartments known as the Forest Glen Apartments. The Applicant seeks to redevelop the property by removing the existing improvements and constructing two new linked residential buildings with approximately 220 residential units, of which most would be affordable and a minimum of 20% would be Moderately Priced Dwelling Units (MPDUs). Structured parking for about 250 vehicles would also be provided.

The Applicant’s commitment to 20% MPDUs is included as a binding element in the final Floating Zone Plan (Exhibit 59). A notice of the hearing (Exhibit 42) was mailed out and posted on OZAH’s website on January 18, 2019, establishing an OZAH hearing date of March 1, 2019.

¹ A Euclidean Local Map Amendment requires a demonstration of a substantial change in the zoning neighborhood or a mistake in the original zoning or comprehensive rezoning. See *Stratakis v. Beauchamp*, 268 Md. 643, 652-53, 304 A.2d 244, 249 (1973). This doctrine is known as the “change/mistake” rule and is rarely used in this jurisdiction. Much more common are local map amendments seeking a “floating zone,” as is described herein.

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 January 25, 2019 (Exhibit 43). The Montgomery County Planning Board (“Planning Board”) considered the application on February 7, 2019, and the four members present unanimously recommended approval, as set forth in a letter to the Hearing Examiner dated February 19, 2019 (Exhibit 44). The Planning Board letter also recommended that:

1. The Applicant must amend its Floating Zone Plan to show 0' minimum setbacks and a proposed height of 70', consistent with the requirements of Chapter 59§ 5.3.5.B.2
2. The Applicant must submit a Forest Conservation Plan for review and approval prior to securing zoning approval from the Office of the Hearing Examiner.

The Applicant followed both of these recommendations, submitting a Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) (Exhibit 46), a proposed Preliminary Forest Conservation Plan (PFCP)(Exhibit 48) and a Request for a Tree Variance (Exhibit 49) to the Planning Department on February 22, 2019, for review and approval. On February 26, 2019, the Applicant submitted a revised Floating Zone Plan (FZP) (Exhibit 50) to OZAH to reflect the changes in the minimum setbacks and the maximum height of the proposed buildings. On the same day, the Planning Department approved the NRI/FSD as No. 420191310 (Exhibits 51 and 51(a) and (b)).

On February 28, 2019, the Planning Department advised the Hearing Examiner that the Planning Board had scheduled a review of the PFCP for March 14, 2019 (Exhibit 53). On March 1, 2019, Staff recommended conditional approval of the PFCP and the tree variance (Exhibit 61(a)).

A public hearing was convened, as scheduled, on March 1, 2019, at which time the Applicant presented evidence and called five witnesses in support of the application. There was no opposition testimony. In fact, the only response from the community has been a February 27, 2019 letter supporting the application from Partap Verma, Founder of the Friends of Forest Glen and Montgomery Hills, and Founder of the Finding Forest Glen Blog (Exhibit 55).

The record was held open after the hearing to await Planning Board action on the PFCP and to give Applicant’s counsel the opportunity to file a final revised Floating Zone Plan, which the Applicant did on March 4, 2019 (Exhibit 59). The only change was to note the “Minimum 20% MPDUs as a binding condition.” On March 14, 2019, the Applicant filed an executed Declaration of Covenants (Exhibit 60) regarding its sole binding element, to be filed in County’s land records if the Council approved the rezoning application, in accord with Zoning Ordinance §59.7.2.1.F.3.

The Hearing Examiner’s Report and Recommendation on this application had to await the Planning Board’s action on the PFCP because County Code Section 22A-11(b)(2)(C) provides:

(C) Approval. The Planning Board must review and act on the forest conservation plan concurrently with the development plan, floating zone plan, project plan, sketch plan, preliminary plan of subdivision, or site plan, as appropriate. . . . For a

development plan or a floating zone plan, a Planning Board recommendation to the District Council on the preliminary forest conservation plan must be made under Section 59-7.2.1. . . .

The Planning Board conditionally approved the PFCP and tree variance on March 14, 2019. Having received that Resolution (Exhibit 61) the same day, the Hearing Examiner held the record open for 15 days for any comments, as provided in Rule 11.0 of OZAH's Rules of Procedure for Zoning, Conditional Use & Board of Appeals Referral Cases. Thus, the record closed on March 29, 2019, as the Hearing Examiner announced it would at the hearing. Tr. 126.

In a Report and Recommendation issued on April 2, 2019, the Hearing Examiner recommended approval of the rezoning application on grounds that the proposed reclassification and development will meet the standards set forth in the Zoning Ordinance and will be consistent with the coordinated and systematic development of the regional district, as required by the Maryland Land Use Article, Code Ann. (2012), §§21-101(a) and (b).

To avoid unnecessary detail in this Opinion, the Hearing Examiner's Report and Recommendation, dated April 2, 2019, is incorporated herein by reference. Based on its review of the entire record, the District Council finds that the application does meet the standards required for approval of the requested rezoning for the reasons set forth by the Hearing Examiner.

The Property, Surrounding Area and Zoning History

Technical Staff set forth the location and description of the subject property as follows (Exhibit 43, p. 2):

The 2.63-acre (3.59-acre gross tract area) property . . . is located on the western side of Georgia Avenue in the southwest quadrant of the intersection of Georgia Avenue and Belvedere Boulevard. The Property, Parcel C of the McKenney Hills Subdivision, Plat No. 1775, in Forest Glen, is currently improved with a series of garden-style apartment structures comprising 72 multifamily apartment units [known as the Forest Glen Apartments]. The property contains a double row of mature trees along its frontage on Belvedere Boulevard.

It should be noted that the site is less than one-quarter of a mile from the Forest Glen Metro Station (Tr. 72) and that there is a narrow underground WMATA easement along the eastern side of the property (Tr. 84).

Ms. Praj Kasbekar, the Applicant's senior project manager, testified that the buildings currently on the site have become obsolete, and it would take an "obscene amount of money to try to bring it to the current code and livable conditions that the residents there deserve." Tr. 28. They are served by the old original boiler; there is no air conditioning in the units, and there are no elevators. "So there's a lot of senior, disabled residents there right now who just have no way to get around." Tr. 28. One other feature of the site is that it slopes uniformly downward to the west from Georgia Avenue, falling about 20 feet. According to the Applicant's architect, Dave

Stembel, that is significant because it affects how the parking can be accommodated and screened. Tr. 46-47.

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 Hearing Examiner defined the surrounding area as bounded by Hildarose Drive on the north; Woodland Drive on the east; Forest Glen Road (MD Rt. 192) on the south; and Greeley Avenue, Clark Place and Darcy Forest Drive on the west. The District Council accepts that definition of the surrounding area.

The surrounding area was described by Technical Staff (Exhibit 43, p. 3):

The Property is generally bounded to the north by similar garden-style apartments known as the “Belvedere Apartments,” to the south by the Americana Finnmark condominium community, to the west by single-family detached and townhome units, and to the east by Georgia Avenue. Single-family detached structures and General Getty Neighborhood Park are on the east side of Georgia Avenue across from the subject property. Properties fronting the Georgia Avenue corridor between the I-495 Beltway and Wheaton’s commercial district include an eclectic mix of single-family detached dwellings, multifamily structures, churches, office buildings, medical office buildings, storage space, and large-format retailers. . . .

Technical Staff also reported the following zoning history (Exhibit 43, pp. 5-6):

In 1978, the Forest Glen and Vicinity Sector Plan was approved, and Sectional Map Amendments G-134 and G-136 confirmed the existing R-10 zoning and applied it across the entire Property, eliminating a preexisting split zone. Parcel C’s R-10 zone was reconfirmed by the 1996 Forest Glen Sector Plan.

The Property falls within the boundary of the ongoing Forest Glen/Montgomery Hills Sector Plan. Staff presented draft preliminary recommendations to the Planning Board on December 6, 2018, [Exhibit 41(c)] which propose the Subject Property be rezoned to CRT 2.0, H-70 (see Figure 3). Based on subsequent discussions and further refinement of the recommendations, Staff anticipate recommending an additional five (5) feet of height and anticipate bringing formal recommendations to the Planning Board in Fall 2019. The rezoning proposed through this application is CRT 1.75—.25 FAR less than what is being analyzed through the Forest Glen/Montgomery Hills Sector Plan. The discrepancy is due to limitations of tract and base zone per Chapter 59 §5.1.3.C.1.

Of course, only the current Forest Glen Sector Plan, approved and adopted in 1996, can be applied to this application. It is worthy of note, however, that the new zone being proposed for the subject site by Technical Staff in its preliminary recommendation to the Planning Board (*i.e.*, the CRT Zone) is the Euclidean version of the CRTF Zone the Applicant has applied for in this case. Moreover, Staff’s proposed CRT zone would have allowed a density up to an FAR of 2.0 and a height of 70 feet. It would thus permit the same height limit as the Applicant has proposed,

and would have permitted an even greater density than is permitted under the Zoning Ordinance for this property (FAR of 1.75),² which is currently zoned R-10. Thus, the zone requested by the Applicant would restrict development to buildings even more compatible with the nearby single-family dwellings than the density that would be permitted under the zone recommended by Staff in the proposed new Sector Plan under consideration. Both the Hearing Examiner and the District Council have the authority under Zoning Ordinance §59.7.6.2.B.3 to postpone the resolution of this application pending action on the revised Sector Plan under consideration. Given the facts established in this record, the District Council sees no need to do so.

Proposed Development

LMA Application No. H-129, seeks a Local Map Amendment to reclassify 2.634 acres (out of a gross tract of 3.59 acres)³ from the existing R-10 Zone to a Floating Zone – the CRTF-1.75, C-0.25, R-1.5, H-70 Commercial Residential Town Floating Zone. Exhibits 23 and 26. The property, identified as Parcel C, Block A, in the McKenney Hills subdivision, is located at 9920 Georgia Avenue and 2106 Belvedere Boulevard in Silver Spring, Maryland 20902.

The Applicant seeks to redevelop the property by removing the existing garden apartments and constructing two linked residential buildings with approximately 220 residential units, of which most would be affordable and a minimum of 20% would be Moderately Priced Dwelling Units (MPDUs).⁴ Structured parking for up to 250 vehicles would also be provided. Most of the parking structure would be underground. The percent of MPDUs was specified as a “Binding Condition” on the final Floating Zone Plan or FZP (Exhibit 59), which is reproduced below:

PROPOSED COMMERCIAL RESIDENTIAL TOWN-FLOATING ZONE
CRTF - 1.75, C - 0.25, R - 1.5, H - 70
PROPOSED UNIT COUNT +/- 220 UNITS
MINIMUM 20 % MPDUS AS A BINDING CONDITION

CALCULATIONS

		PROPOSED ZONE: CRTF
FAR:		1.5(Residential proposed)
	CRTF	1.75
	CRTF	0.25
	R	1.5
HEIGHT:	Max. Allowed	70 ft
MIN. OPEN SPACE:		10%
SETBACKS (Min.):		
	Front	0 ft
	Side	0 ft
	Side, abutting other Zones	0 ft
	Rear, abutting other Zones	n/a
	Rear, alley	n/a

Note: Ultimate Building placement and design to be determined during Site Plan submission.

CONCEPTUAL UNIT MATRIX

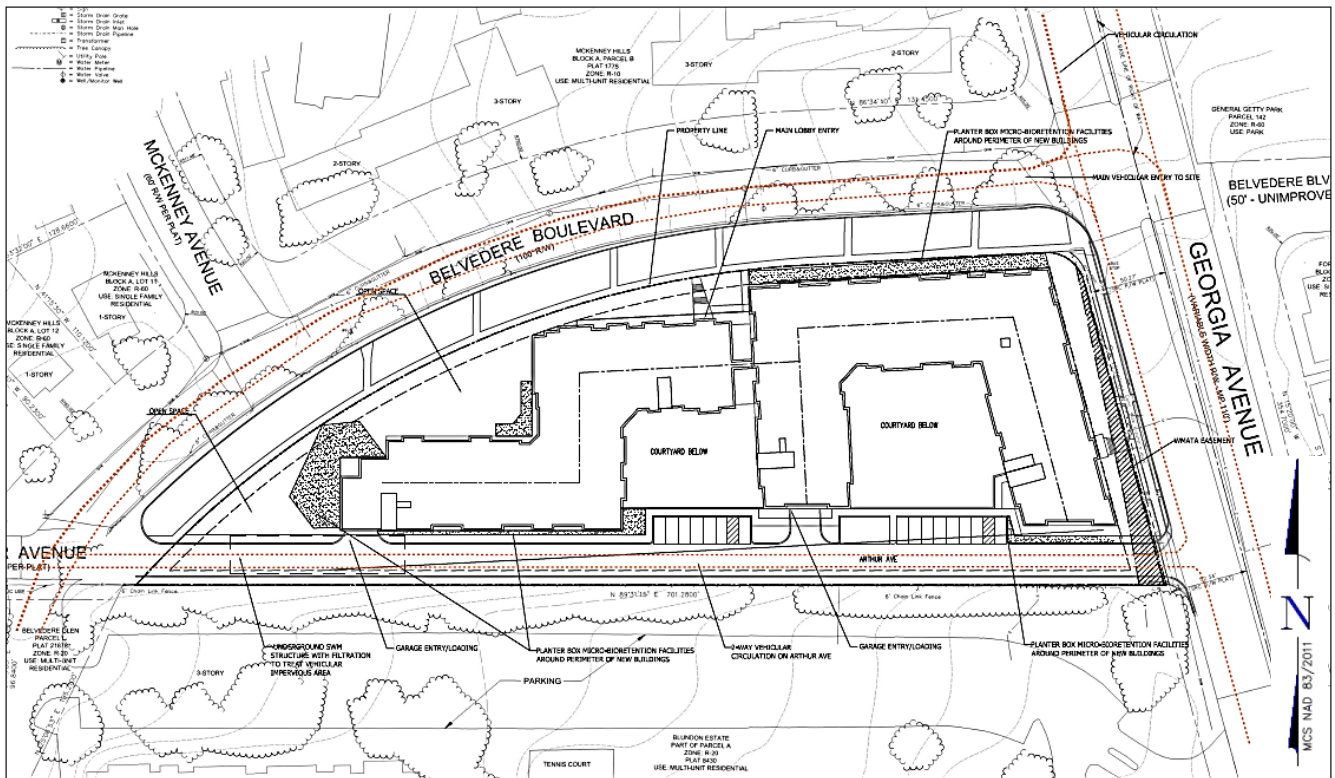
Date: 02.22.2019		
UNIT TYPES	TOTAL UNITS	FLOOR GROSS
UNIT GSF AREA		
FIRST FLOOR	20	27,000
SECOND FLOOR	46	49,000
THIRD FLOOR	49	49,000
FOURTH FLOOR	49	49,000
FIFTH FLOOR	28	28,500
SIXTH FLOOR	28	28,500
TOTAL UNITS	220	231,000
TOTAL UNIT GSF	183,250	
TOTAL BUILDING GROSS (SF)	231,000	
TOTAL UNIT COUNT	220	
	PARKING	
PARKING FIRST FLOOR (P1)	88	
PARKING LEVEL P2:	148	
SURFACE PARKING:	14	
PARKING TOTAL:	250	

Note: Unit Matrix is Preliminary and subject to change at Site Plan Submission.

² As discussed below, Zoning Ordinance §59.5.3.5.A.2. limits density for the proposed floating zone to an FAR of 1.75 because the total tract exceeds three acres and it is currently in the R-10 Zone.

³ “The Applicant’s tract includes the subject property, parcel C, as well as previous dedications including fifty (50) feet of right-of-way (ROW) spanning the frontage of Belvedere Boulevard and twenty (20) feet of ROW spanning the property’s Georgia Avenue frontage.” Exhibits 27 and 43, p. 6. That accounts for the difference between the area to be rezoned (2.634 acres) and the gross tract of 3.59 acres.

⁴ The Applicant corrected Staff’s suggestion that all the units would be affordable. The Applicant indicates that most would likely be affordable, but that at least 20% would be MPDUs. Tr. 38.



Note: All design features are Conceptual and will be determined during Site Plan Submission.

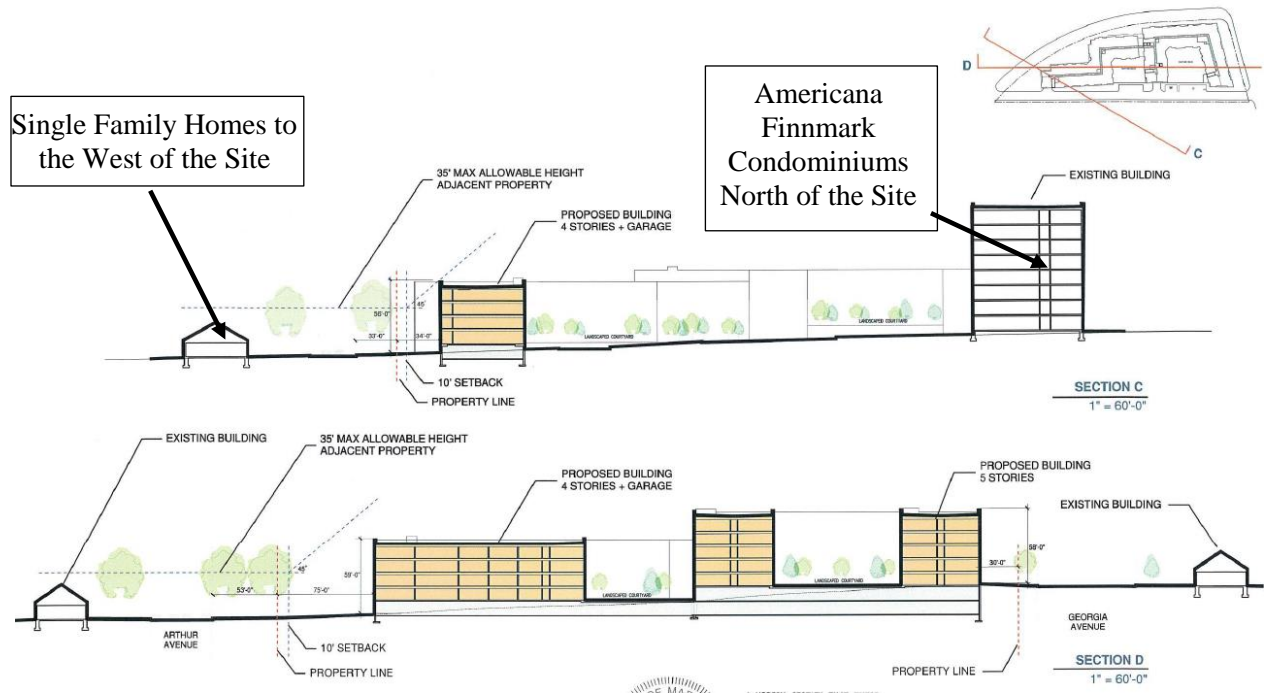
A3 FLOATING ZONE PLAN
P-207

Under 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” which meets certain requirements. The Applicant has met these requirements by filing its final Floating Zone Plan (FZP) in Exhibit 59 and related documents (Exhibits 2, 3, 6, 11, 18, 19, 20, 23, 26, 27, 29, 37, 38, 41(a), 41(k) 48, 49, 51, 56 and 57).

It is important to note that, except for the 20% minimum MPDU Binding Element, “All Design features [on the FZP] are Conceptual and will be determined during Site Pan Submission.” Exhibit 59. The MPDU condition is the only binding element on the plan, and it is reflected in an executed Declaration of Covenants (Exhibit 60), filed on March 14, 2019.

The conceptual plan calls for two linked residential buildings, with a total of approximately 220 apartment units. Dave Stembel, the Applicant’s architect, testified that the plan is for the C-shaped building on the east, adjacent to Georgia Avenue, to be six stories tall, and the Z-shaped building on the west would be stepped down to four stories to reduce the massing near the single-family neighborhood west of the site. Tr. 55-56. The breakdown of the units has not been determined, but Mr. Stembel testified that the plan is for the unit breakdown to include one-bedroom, two-bedroom, and three-bedroom units, and the projected parking of up to 250 parking spaces was calculated with the assumption of 30 percent three-bedroom units, 30 percent two-bedroom units and 40 percent of the one-bedroom units. All that is subject to change at Site Plan. Tr. 56-57.

As can be seen from the architectural sections (part of Exhibit 38, reproduced below), the massing of the proposed buildings steps down in the vicinity of single family structures.



The following is the Applicant's Conceptual Landscape Plan (Exhibit 37), which demonstrates the planned landscape screening, garage entry points, lobby entry, open space and the two south-facing courtyards for the residents atop the planned underground garage. Tr. 53-54.



Conformance with the Master Plan

The subject site lies within the area covered by the 1996 Forest Glen Sector Plan. The Sector Plan divides the covered area into Forest Glen West (properties within the planning area west of Georgia Avenue) and Forest Glen East (properties within the planning area east of Georgia Avenue). The property in question falls within Forest Glen West. The existing garden apartments on the site are not specifically mentioned in the 1996 Forest Glen Sector Plan; however, the site is clearly depicted in the existing and proposed land use maps on Sector Plan pp. 17-18, and in the existing and proposed zoning maps on Sector Plan pp. 19-20.

It is notable that both the existing and proposed land uses specify “Residential - Multi Family.” Similarly, both the existing and proposed zoning specifies Multiple-Family, High Density Residential (R-10 Base Zone) for the site.

The general vision of the *1996 Forest Glen Sector Plan* is spelled out on Sector Plan pp. 11-12:

This Sector Plan retains the basic aim of the 1978 Forest Glen Sector Plan: the maintenance of a harmonious relationship and balance among the various physical, social, and economic aspects of the Forest Glen area within the context of the Kensington-Wheaton Planning Area and of Montgomery County.

* * *

This Plan reinforces the most desirable existing aspects of the Forest Glen area while accommodating those elements of change which are appropriate. The Plan preserves and strengthens the existing residential communities and the Forest Glen Metro station. The Plan also addresses elements of potential change in Forest Glen including the potentially developable or redevelopable properties near Metro and the nature and location within the community of health care services.

This Plan envisions a community consisting of two stable residential neighborhoods, identified herein as Forest Glen East and Forest Glen West, which are separated by Georgia Avenue. While the prevalent character of the two neighborhoods is that of single-family homes, several multi-family complexes in Forest Glen West round out the range of housing choices.

The Sector Plan lists 14 “Planning Goals” on Plan pp. 12 and 13, recognizing that some of these interests will be “only partly satisfied.” Both the Applicant’s land planning expert, David Ager, and the Technical Staff identify three of those Planning Goals as the Plan’s main objectives. Mr. Ager addressed them in his Land Planning Report (Exhibit 41(k), p. 35) and at the hearing at Tr. 89-91, concluding that the proposed project will satisfy all three main goals.

Technical Staff also discusses the three main objectives of the *1996 Forest Glen Sector Plan* (Exhibit 43, pp. 7-8):

The Subject Property falls within the neighborhood delineated as “Forest Glen West” in the 1996 Forest Glen Sector Plan. The Plan recommends that the residential character of Forest Glen West be retained by maintaining the neighborhood’s residential zoning and lists three (3) main plan objectives, as discussed below. The proposed rezoning meets the intent of these objectives.

1) Ensure that new development is compatible with the character of the existing residential neighborhood.

Belvedere Boulevard is 100 feet wide, which provides de facto 30-foot setbacks on either side of street, including an approximately 5-foot sidewalk and a 25-foot wide landscape panel. The three (3) single-family detached homes across from the Property on the north side of Belvedere Boulevard are effectively buffered from the building due to the existing wide section.

2) Protect the edges of the existing residential neighborhoods along Georgia Avenue and soften the impact of major roadways on adjacent homes.

The proposed Floating Zone Plan illustrates that the proposed building will function as an edge to Georgia Avenue, similar to how the existing garden-style apartments exist today.

3) Focus new development at the Metrorail station, consistent with the General Plan.

The proposed affordable and moderately priced units will be located less than a half-mile from the Forest Glen Metro Station.

The key Sector Plan goal that the proposed redevelopment be compatible with the nearby residential development was emphasized by Dave Stembel, the Applicant’s architect, who explained why the proposed buildings would be architecturally compatible with the surrounding neighborhood. Tr. 59-60:

The building as we've envisioned the massing and keeping the parking below grade for the most part so that the parking is not a visual distraction, but in fact is hidden from view for the largest part, and stepping the building down with the largest massing being on Georgia Avenue, main north-south boulevard and closest to the larger structures in the neighborhood stepping down to the single-family to the west means that the development will fit into the character of the neighborhood in terms of the height and the massing. The . . . right of way on Belvedere Boulevard, . . . is a significant right-of-way. So that the planned development is significantly further back from Belvedere Boulevard than it would be in just about any other neighborhood setting. And that contributes to the character and fitting into the neighborhood.

Mr. Stembel further testified that the proposed buildings would serve as a transition between the three-to-four story garden apartments to the north and the eight-story Americana Finnmark Condominium building to the south, as shown on the photograph simulation and sections in Exhibit 38. Tr. 61-62.

In further discussion regarding the Sector Plan (Exhibit 43, p. 15), Technical Staff concluded:

The proposed rezoning and the Applicant's conceptual Floating Zone Plan supports these three (3) objectives. The proposed five-story structure buffers the existing single-family detached community from Georgia Avenue and steps down from the Americana Finnmark's high-rise structures south to the existing garden-style apartments points north. Most importantly, the proposed rezoning would create affordable units and MPDUs within a half mile of a high-quality transit station.

The Hearing Examiner agreed with Technical Staff's observations, but also found that the proposed rezoning supports the Plan's general "vision," by preserving and strengthening the existing residential communities, allowing smart redevelopment of properties near Metro and improving the multi-family complexes in Forest Glen West to provide additional housing choices.

The benefits of the proposed redevelopment were also documented by a letter of support from Partap Verma, Founder of the Friends of Forest Glen and Montgomery Hills and Founder of the Finding Forest Glen Blog (Exhibit 55). In that letter, Ms. Verma states, *inter alia*:

MHP's project is the first of its kind in our neighborhood and is largely supported by our citizens for a variety of reasons. First, MHP's redevelopment of the existing garden apartments increases affordable housing dramatically. As a county that has prioritized social justice issues, our community recognizes that many residents who need metro access often can't afford to live near mass transit and have disproportionately longer commutes as a result. MHP's project tackles this issue head-on and should be supported accordingly.

Based on this record, the District Council concludes that the proposed rezoning substantially conforms with the recommendations of the applicable *1996 Forest Glen Sector Plan*, and will further its policies and goals.

Adequacy of 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.

The Planning Board reviews the adequacy of public facilities at subdivision, under parameters that are set by the County Council every four years in the Subdivision Staging Policy (SSP).⁵ The final test under the APFO will be carried out at subdivision review. Nevertheless, the District Council must make its own evaluation as to the adequacy of public facilities in a

⁵ The Council adopted its current 2016-2020 Subdivision Staging Policy on November 15, 2016. It applies to preliminary plans filed on or after January 1, 2017. See Subdivision Staging Policy 2016-2020, Res. No 18-671, adopted 11-15-16, eff. 1-1-17.

rezoning case, as spelled out for transportation 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 is discussed at the end of this section.

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 required, as in this case, when the number of new peak-hour person trips exceeds a threshold of 50. *Planning Department's LATR Guidelines* (2017), pp. 19-21. The current LATR process evaluates not only projected new vehicular driver trips, but also new vehicle passenger trips, new transit trips, and new non-motorized trips.

In the subject case, a full traffic study of the impact of new vehicular driver trips was required under the LATR Guidelines because the new vehicular driver trips that will be generated by the proposed development (57 in the AM peak hour and 72 in the PM peak hour) will exceed the 50-trip threshold. However, as noted by Technical Staff (Exhibit 43, pp. 10-11), the projected new trips for pedestrians, bicycles and transit use did not reach the threshold necessary to require an LATR study for those trips. Glenn Cook, the Applicant's transportation planner, agreed with that conclusion. Tr. 117-118.

Mr. Cook explained the process for the LATR traffic study he conducted, at the hearing. He stated that he prepared a traffic study (Exhibit 11) in accordance with the County's Local Area Transportation Review (LATR) standards. "The first step is to have a scoping agreement worked out with the Staff because the Staff dictates what intersections we should look at. Depending on the policy area you're in it dictates what methodology you use as far as the analysis is concerned. And then trip generation use information from the Institute of Transportation Engineers Trip Generation Report." Tr. 111-112.

The study included intersections along Rt. 97 (Georgia Avenue), from Dennis Avenue to the north down to Forest Glen; and the intersections of Belvedere Avenue and Arthur Avenue. Technical Staff indicated that there were no approved, but not yet built, developments to be considered in the study. Mr. Cook then conducted a trip generation analysis based on the expected 220 units planned for this project. He then subtracted out the traffic generated by the existing units on the site to determine the number of new trips that would be generated. Mr. Cook noted that Technical Staff took a somewhat different approach to their own calculations, but Staff did not ask him to redo his calculations, so he did not do so. The differences were slight, such as one additional trip in the morning peak hour and one in the evening, based on Staff's calculations. The Staff's numbers are reflected on page 10 of the Staff Report (Exhibit 43). Tr. 112-115.

Mr. Cook further testified that when the new trips were assigned to the various intersections, the results were well within the congestion standard for the applicable Policy Area (Kensington-Wheaton), which has Critical Lane Volume (CLV) standard of 1,600. The Policy Area also requires analysis under the State’s Highway Capacity Manual (HCM) methodology, which requires that intersection delays be under 80 seconds in this area. Mr. Cook found that all the intersections meet that criteria for both methodologies, as reflected in the Staff Report (Exhibit 43, p. 11). “So therefore, we concluded that we can comply with the requirements of the LATR and that no intersection improvements are needed to address capacity at these intersections.” Tr. 115-116.

Technical Staff agreed with Mr. Cook’s conclusion, but since they had slightly different numbers, Staff’s charts are reproduced below from Exhibit 43, pp. 10-11:

Table 1 – Vehicular Trip Generation

Vehicle Trip Generation	AM	PM
Site Generated Vehicle Trips (Driver) (ITE 10 th Edition - 220 Midrise Units)	74	94
Credited Existing Vehicle Trips (72 apartment units, driveway counts)	-11	-15
LATR Policy Area Adjustment	91% of ITE Rate	
Net New Vehicle Trips (Driver)	57	72
Net New Person Trips (Converted using 51.9% vehicle driver mode share)	96	122
Local Area Transportation Review Required? (Are AM or PM person trips ≥ 50?)	Yes	Yes

(Source: ITE, 10th Edition, revised from Applicant’s LATR Review)

Table 2 – Multimodal Trip Generation

Multimodal Trip Generation (LATR Guidelines, Kensington Wheaton Policy Area)	Percentage	AM	PM
New Vehicle Driver Trips (see “Vehicle Trip Generation” Table)	59.1%	57	72
New Vehicle Passenger Trips	25.4%	24	31
New Transit Trips	8.1%	8	10
New Non-Motorized Trips	7.4%	7	9
Net New Person Trips	100%	96	122
Pedestrian Adequacy Test Required? (Are non-motorized + transit trips ≥ 50?)		No	No
Bicycle Adequacy Test Required? (Are non-motorized trips ≥ 50?)		No	No
Transit Adequacy Test Required? (Are transit trips ≥ 50?)		No	No

(Source: ITE, 10th Edition, revised from Applicant’s LATR Review)

Both Mr. Cook and the Technical Staff observed (Exhibit 43, p. 11):

The Property falls within the Kensington Wheaton Policy Area, which requires both Critical Lane Volume (CLV) and Highway Capacity Manual (HCM) delay analyses. The intersection congestion standards for the policy area are a CLV of 1600 and 80 seconds of delay per vehicle. **As demonstrated in Table 3 [below], each of the studied intersections fell below its relevant congestion standards. . .**
 [Emphasis added.]

Table 3 – Existing and Future Traffic Impact

	AM				PM			
	Existing CLV	Future CLV	Existing Delay	Future Delay	Existing CLV	Future CLV	Existing Delay	Future Delay
Georgia Avenue and Dennis Avenue	1338	1340	47.8	47.8	1243	1245	40.4	40.4
Georgia Avenue and Belvedere Boulevard	1190	1210	12.9	23.2	979	995	0.6	1.6
Georgia Avenue and Arthur Avenue	1172	1205	0.1	0.7	723	757	0.0	0.1
Georgia Avenue and Forest Glen Road	1402	1411	67.4	67.7	1364	1373	53.1	53.6
Belvedere Boulevard and Arthur Avenue	98	110	7.0	7.0	78	82	6.9	7.0

(Source: Applicant’s LATR Review prepared by the Traffic Group)

One additional point was made by Technical Staff (Exhibit 43, p. 12):

The Maryland Department of Transportation’s State Highway Administration (SHA) has provided initial input suggesting that operations could be improved through the creation of a left-turn storage lane at Georgia Avenue’s northbound approach to Belvedere Boulevard due to increased queues generated by the development. Staff and the Applicant will work with SHA during the Preliminary Plan review on any appropriate condition(s) to mitigate any impact generated by the Property.

This uncontradicted evidence demonstrates that the proposed rezoning and redevelopment will meet the County’s standards for avoiding excessive road congestion from the new development, and the Hearing Examiner so found. It is interesting to note, in this context, that the current LATR standards go beyond the “critical lane volume [CLV] or volume/capacity ratio standard. . .” specified in Zoning Ordinance §59.7.2.1.E.2.e. as the applicable test. As discussed by both Mr. Cook and Technical Staff, they also considered delay standards from the State’s Highway Capacity Manual (HCM), and found that the proposed development would meet those standards as well.

Based on this record, the District Council finds that transportation facilities are adequate and will not be unduly affected by the proposed development.

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.

With regard to other public facilities and services other than transportation, the 2016-2020 Subdivision Staging Policy provides, at p. 14, 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. The Subdivision Staging Policy also provides (at p. 13) that “. . . applications must be considered adequately served by water and sewerage if the subdivision is located in an area in which water and sewer service is presently available . . .” That is the case here. The Applicant’s civil engineer, Kenneth Jones, testified that there is already water and sewer service on the property (W1 and S1), and he anticipates that existing sources will provide adequate service to the proposed development. Tr. 106-107.

In addition, Technical Staff reports that “Other utilities, public facilities and services, such as electric, telecommunications, police stations, firehouses and health services are currently operating within the standards set by the Subdivision Staging Policy Resolution currently in effect.” Exhibit 43, p. 12.

As to the adequacy of neighborhood public schools, Staff reports the following (Exhibit 43, p. 12):

Flora M. Singer Elementary School, Sligo Middle School and Einstein High School serve the Property. Assuming the redevelopment generates 220 units as presented in the Applicant’s Floating Zone Plan, the Property is projected to generate twenty-one (21) elementary school students, eight (8) middle school students, and eleven (11) high school students. Capacity will be further assessed during subsequent Preliminary Plan review.

Since Technical Staff’s statement did not give a complete picture of the capacity of the local schools to handle the students that may be generated, the Hearing Examiner raised this question at the hearing. The Applicant’s land planner, David Ager, testified that there would be adequate school capacity in all three area schools (elementary, middle and high school) to handle the expected students from the proposed development. Tr. 97.

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

Environmental Impacts

Technical Staff reported that “There are no forests, wetlands, or other environmental features on the Property. The Property is in the Lower Rock Creek watershed but is outside any Special Protection Area. . . . While there is no forest on the Property, there are a number of large and specimen trees that will be impacted with any demolition of the existing buildings or any future development proposals. . . .” Exhibit 43, p. 12.

Under the 2014 Zoning Ordinance, an Applicant for rezoning is not required to submit an approved Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) or a proposed Preliminary Forest Conservation Plan (PFCP) with its rezoning application; however, recent changes to the County Code require that Council action on a rezoning application must await a Planning Board action on the proposed PFCP. This requirement is contained in County Code Section 22A-11(b)(2)(C), which provides:

(C) Approval. The Planning Board must review and act on the forest conservation plan concurrently with the development plan, floating zone plan, project plan, sketch plan, preliminary plan of subdivision, or site plan, as appropriate. . . . For a development plan or a floating zone plan, a Planning Board recommendation to the District Council on the preliminary forest conservation plan must be made under Section 59-7.2.1. . . .

As a result of these changes in the law, the Planning Board, in a letter to the Hearing Examiner dated February 19, 2019 (Exhibit 44), recommended that the Applicant submit a Forest Conservation Plan for review and approval prior to securing zoning approval from the Office of the Hearing Examiner. The Applicant followed this recommendation, submitting a Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) (Exhibit 46), a proposed Preliminary Forest Conservation Plan (PFCP)(Exhibit 48) and a Request for a Tree Variance (Exhibit 49) to the Planning Department on February 22, 2019 for review and approval. On February 26, 2019, the Planning Department approved the NRI/FSD as No. 420191310 (Exhibits 51 and 51(a) and (b)).

On March 1, 2019, Staff recommended conditional approval of the PFCP and the tree variance (Exhibit 61(a)). The Planning Board conditionally approved the PFCP and tree variance on March 14, 2019, by Resolution (Exhibit 61). The specified conditions were:

1. The Applicant must submit a Final Forest Conservation Plan with the subsequent Preliminary Plan and Site Plan submittals.
2. Prior to the start of any clearing, grading, or demolition occurring on the Property, the Applicant must receive approval from the M-NCPPC Office of the General Counsel of a Certificate of Compliance to use an off-site forest mitigation bank for 0.45 acres of mitigation credit.

3. The Applicant must plant twenty-two (22) three (3)-inch caliper native canopy trees within one year of construction completion as mitigation for tree loss.

The Planning Board having addressed the forest conservation issue, the only remaining environmental question relates to stormwater management on the site. Technical Staff did not find it necessary to address stormwater management in its report, but Kenneth Jones, the Applicant's expert in civil engineering and environmental design did so at the hearing. Mr. Jones testified that a full stormwater management plan will be required for Preliminary Plan review, but the Floating Zone Plan indicates some of the stormwater management concept, including bio retention facilities, micro-bio retention facilities in planter boxes which will receive rooftop runoff from the adjacent buildings, and possibly some in the open courtyards which are set above the parking decks. There may also be an underground treatment quality structure to supplement the total storm water treatment for the site. In Mr. Jones' opinion, he will be able to achieve full compliance with the environmental site design requirements. Tr. 105-106. There is no contrary evidence in this case.

Based on this record, the District Council is satisfied that the proposed use will not harm the environment, and any impacts will be further addressed at site plan and preliminary plan review.

Necessary Findings Specified by the Zoning Ordinance

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 types of zoning districts for specified uses, without attaching those districts to particular pieces of property unless and until a local map amendment application is approved. Applications for a Floating Zone can be filed by individual land owners, and approving an application for a Floating Zone attaches that zone and its regulations to that land owner's individual piece of property, without applying that Floating Zone to a larger zoning district. To approve such a rezoning, the Council must find that the proposal 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 2012 Maryland Land Use Article, Code Ann. §§21-101(a) and (b).⁶

Montgomery County has many Floating Zones, including the Commercial Residential Town Floating Zone (CRTF). The specific zone sought in this case is the CRTF-1.75, C-0.25, R-1.5, H-70, which would allow a Floor Area Ratio (FAR) of up to 1.75 in total, with a limit on commercial density to an FAR of up to 0.25 and a limit on residential density to an FAR of up to

⁶ 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." Sections 21-101(a) and (b) of the Land Use Article contain the rough equivalent of the previous language in Article 28, Md. Code Ann., § 7-110.

1.5. The height would be limited to 70 feet. Other development standards must be met, but generally the details of site-specific issues such as building location, stormwater control, vehicular and pedestrian routes, landscaping and screening are addressed, after rezoning, at site plan and preliminary plan reviews by the Planning Board. The Council has a broader discretionary role in determining whether to approve a rezoning; however, the 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.*

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 Commercial Residential Town Floating Zones are spelled out in Sections 59.5.3.1., 5.3.2., 5.3.3., 5.3.4. and 5.3.5. We will first address the general “Necessary Findings” set forth above, and will then review the specific standards which must be met to rezone to a CRTF-1.75, C-0.25, R-1.5, H-70 Commercial Residential Town Floating 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.

The District Council's Findings

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;

The subject site is located in the area covered by the *1996 Forest Glen Sector Plan*. For the reasons set forth above, and in Part III.F. of the Hearing Examiner's report, the District Council finds that the proposed Floating Zone Plan will substantially conform with the recommendations of the applicable sector plan.

Technical Staff addressed the proposal's consistency with the County's General Plan (Exhibit 43, p. 15):

The proposed rezoning is consistent with the intent of the County's 1964 General Plan in that it supports development in a major corridor with existing transit, water, and sewer service. While Georgia Avenue was not originally planned as a major corridor within the 1964 Plan, the development of WMATA Metrorail's Red Line changed the area's land use patterns, and subsequent master and functional master plans have recognized Georgia Avenue as a major corridor.

The 1969 update to the County's General Plan notes the need for adequate housing opportunities for individuals of all wage levels, and the 1993 Refinement to the General Plan discusses the need to create housing plans that improve transit ridership, reduce travel demand, and make efficient use of capital investments in public services and facilities. This sentiment is reaffirmed in the 2011 Amendment to the Housing Element of the General Plan. Because the proposed rezoning will support affordable housing near transit service, the Application is consistent with longstanding policy grounded in the General Plan and its subsequent updates.

The District Council adopts Staff's reasoning in this regard, and finds that the proposed rezoning and development are consistent with the General Plan. Conformance with other County plans is demonstrated in the Hearing Examiner's report, at Part III.G., regarding Public Facilities, and in Part III.H., regarding the Environment. Based thereon, the District Council finds that the proposed rezoning substantially conforms to other applicable County plans.

b. further the public interest;

The proposed rezoning will allow redevelopment of a residential property that is in significant need of improvement and repair, as testified to by Ms. Praj Kasbekar, the Applicant's senior project manager. Ms. Kasbekar stated that the buildings currently on the site have become obsolete, and it would take an "obscene amount of money to try to bring it to the current code and livable conditions that the residents there deserve." Tr. 28. They are served by the old original

boiler; there is no air conditioning in the units, and there are no elevators. “So there's a lot of senior, disabled residents there right now who just have no way to get around.” Tr. 28.

The proposed redevelopment would allow the addition of many more apartment units within a quarter mile of a Metrorail station, and most of them will likely be affordable units, including a guaranteed minimum of 20% MPDUs, the latter being a binding element on the Floating Zone Plan. Based on this undisputed evidence, the District Council 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;

For the reasons set forth in Parts V.B., V.C., V.D. and V.E. of the Hearing Examiner’s report, as summarized below, the District Council 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;

There is ample evidence in this record that the proposed rezoning and development will be compatible with existing and approved adjacent development. The Applicant produced the testimony of two experts on the subject, their architect, Dave Stembel, and their land planner, David Ager.

Mr. Stembel opined that the proposed buildings would be architecturally compatible with the surrounding neighborhood. Tr. 59-60:

The building as we've envisioned the massing and keeping the parking below grade for the most part so that the parking is not a visual distraction, but in fact is hidden from view for the largest part, and stepping the building down with the largest massing being on Georgia Avenue, main north-south boulevard and closest to the larger structures in the neighborhood stepping down to the single-family to the west means that the development will fit into the character of the neighborhood in terms of the height and the massing. The . . . right of way on Belvedere Boulevard, . . . is a significant right-of-way. So that the planned development is significantly further back from Belvedere Boulevard than it would be in just about any other neighborhood setting. And that contributes to the character and fitting into the neighborhood.

Mr. Stembel further testified that the proposed buildings would serve as a transition between the three-to-four story garden apartments to the north and the eight-story Americana Finnmark Condominium building to the south, as shown on the photograph simulation and sections in Exhibit 38. Tr. 61-63.

Mr. Ager testified that the proposed rezoning and development would be compatible with surrounding development and would comport with the goals of the 1996 Forest Glen Sector Plan. In Mr. Ager's words (Tr. 90-91):

. . . The compatibility is accomplished through the design of the project as the architect illustrated with his cross-sections. . . . The architect was very careful to create transitional designs in his massing of his buildings so that the building relates to multifamily north and south of the subject property and creates the smallest massing and lowest portion of the building closest to the single-family detached to the west. And also as illustrated on the Floating Zone Plan some of the larger public open space components are located in that area as well.

Technical Staff addressed the compatibility issue as follows (Exhibit 43, p. 15):

The proposed height, 70 feet, falls below the 100 feet maximum permitted in the R-10 zone. Additionally, the building will serve as a buffer between the adjacent single-family detached residential community and Georgia Avenue. The flexibility provided through the proposed zone and the optional development process will allow the Planning Department to provide richer design guidance during the Preliminary Plan and Site Plan review approval processes.

Based on this undisputed evidence, the District Council 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

For the reasons set forth on pages 10 to 13 of this Opinion, and in Part III.G. of the Hearing Examiner's report, the District Council finds that the proposed development will not generate traffic that exceeds the critical lane volume or volume/capacity ratio standard, nor the applicable delay standard, 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.

This provision (§59.7.2.1.E.2.f.) is inapplicable since the current zone (R-10) is not a Residential Detached zone, and the District Council so finds.

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 CRTF-1.75, C-0.25, R-1.5, H-70

Commercial Residential Town 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 . . .

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 on pages 8 to 10 of this Opinion, the District Council finds that the proposed Floating Zone Plan will further the goals of the general plan, master plan, and functional master plan.

Sections 59.5.1.2.A.2 and A.3, address the adequacy of public facilities and the design flexibility of the planned development. For the reasons set forth on pages 10 to 13 of this Opinion, and in Part III.G. of the Hearing Examiner's report, the District Council finds that the proposed use is supported by existing infrastructure, and the conceptual nature of all of the Applicant's Floating Zone Plan (except for the binding element of a minimum of 20% MPDUs) maximizes the flexibility of the Planning Department to ensure the implementation of the County's planning objectives at Site Plan Review and Subdivision. Based on this record, the District Council finds that the proposed development will satisfy the intent standards for the CRTF-1.75, C-0.25, R-1.5, H-70 Commercial Residential Town Floating 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. The Applicant's land planner, David Ager, testified that the proposed development will allow flexibility in uses for the site. Tr. 95. The remaining questions are essentially repetitive of provisions previously addressed. It is apparent from this record that a modern building to replace the current outdated development on the site will better serve the community even in changing circumstances.

Based on this undisputed evidence, the District Council finds that the proposed development will satisfy the intent standards for the CRTF-1.75, C-0.25, R-1.5, H-70 Commercial Residential Town Floating 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, the proposed development will be compatible with the surrounding area.

As was stated with regard to the compatibility findings required in §59.7.2.1.E.2.d, above, the District Council 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.

The Applicability of the Zone as set forth in Section 59.5.1.3.

Section 59.5.1.3. of the 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 District Council’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.

Subsection “A” is not applicable since the subject site is in a Residential 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:

* * *

Subsection “B” is not applicable since the 1996 Forest Glen Sector 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:

C.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.

Subsection “C” is applicable since the 1996 Forest Glen Sector 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 59.5.3.5, which is done on page 27 of this Opinion. As is shown there, the proposed use will be within the maximum density allowed. No density bonus has been requested in this case.

C.2. Residential Base Zone

* * *

c. When requesting a Commercial Residential Floating (CRF) zone, Commercial Residential Town Floating (CRTF) zone, or any Employment Floating zone (NRF, GRF, EOFF, LSCF) for a property with a Residential base zone:

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

ii. The application must satisfy a minimum of 2 prerequisites for each of the categories under Section 5.1.3.D.

Subsection “C.2.” is applicable since the application seeks the CRTF Zone, and the site is currently in a Residential Base Zone (R-10). The application satisfies Subsection C.2.c.i. because, as stated by Technical Staff (Exhibit 42, p. 13), “The proposal meets the requirement of §5.1.3.C.2.c.i by fronting on Georgia Avenue, a non-residential street.”⁷ The application satisfies Subsection 5.1.3.C.2.c.ii. because, as enumerated below by Technical Staff (Exhibit 43, p. 13), it satisfies at least two prerequisites for each of the required categories in the Table set forth in Section 5.1.3.D. Technical Staff lists the Section 59.5.1.3.D. prerequisites that are satisfied by this application, as follows (Exhibit 43, p. 13):

Category One: Transit and Infrastructure:

- 1) At least 75 percent (75%) of the Property is within .75 miles of a level 1 transit station/stop (Forest Glen WMATA Metrorail Station).
- 2) The Property has frontage on and vehicular, bicycle, and pedestrian access to at least two (2) roads (Belvedere Boulevard and Georgia Avenue), one (1) of which is nonresidential (Georgia Avenue).

Category Two: Vicinity and Facilities:

- 1) The Property is located in a transitional location between property in an existing residential multifamily zone and a residential detached zone.
- 2) The Property is adjacent to a route that provides access to Flora M. Singer Elementary School, which is located approximately .4 miles west of the property. Sidewalks and vehicular pathways are continuous between the school and the Property.

Category Three: Environment and Resources

- 1) The Property does not contain forest, and as such, development will not reduce existing forest cover to an area of 10,000 square feet or width of 35 feet at any point.
- 2) The Property does not contain any rare, threatened, endangered species, or critical habitats listed by the Maryland Department of Natural Resources.

Based on the foregoing, the District Council finds that the application satisfies all of the applicable requirements of §59.5.1.3.C.2.

C.3. Non-Residential Base Zone

The District Council finds that Subsection “C.3” is not applicable since the site is in a Residential Base Zone.

⁷ The Hearing Examiner corrected Technical Staff’s citation within the quote. Staff identified the subsection as §5.1.3.C.i., whereas the correct citation is §5.1.3.C.2.c.i.

Based on this undisputed record, the District Council finds that the subject Floating Zone application meets all the tests set forth in Section 59.5.1.3 for applying the CRTF-1.75, C-0.25, R-1.5, H-70 Commercial Residential Town Floating 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 on pages 18 to 20 of this Opinion, 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.

The Commercial/Residential Floating Zones, their Purpose and Uses, in Division 5.3

Zoning Ordinance Division 59-5.3 lists the Commercial Residential Floating Zones, specifies their purpose, designates the allowed uses and building types and sets forth the applicable development standards.

Division 5.3. Commercial/Residential Floating Zones

Section 5.3.1. Zones

- A. There are 3 categories of Commercial/Residential Floating zones.*
- B. Commercial/Residential Floating zones are mapped using the zone's initials followed by the maximum allowed total, commercial, and residential densities and maximum allowed height as limited by Division 5.3. Zones are established at density increments of 0.25 FAR and height increments of 5 feet.*
 - 1. Commercial Residential Neighborhood – Floating (CRNF# C# R# H#)*
 - 2. Commercial Residential Town – Floating (CRTF# C# R# H#)*
 - 3. Commercial Residential – Floating (CRF# C# R# H#)*

The Zone sought in this case is the CRTF-1.75, C-0.25, R-1.5, H-70 Commercial Residential Town Floating Zone, the type listed as Item No. 2, above.

Section 5.3.2. Purpose

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

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

Technical Staff found that the proposed rezoning would satisfy the purpose of the Commercial Residential Floating zones because (Exhibit 43, pp. 13-14):

- 1) The Commercial/Residential Floating Zone is intended to allow the development of mixed-use centers and communities at a range of densities and heights flexible enough to respond to various settings. The Subject Property falls between multifamily high-rise, multifamily garden-style apartments, and single family detached properties and the flexibility provided by a floating zone designation allows for appropriate transitions and responses to the existing built environment.
- 2) The Commercial/Residential Floating Zone is intended to allow flexibility in uses

for a site. While the Applicant intends to construct a residential apartment building, the proposed zoning allows for the development of commercial in addition to residential, thereby increasing the range of development possibility for the Property.

- 3) The Commercial/Residential Floating Zone should provide mixed-use development that is compatible with adjacent development. As previously stated, the Applicant intends to construct an all-residential building; however, the proposed zoning increases the development opportunities across the Property. The structure of the proposed development better integrates with a mixed-use environment, while responding to the existing character of the adjacent all-residential neighborhood west of Georgia Avenue.

The District Council finds that the proposed rezoning would satisfy the purposes of the Commercial Residential Floating zones for the quoted reasons set forth by the Technical Staff, and for the reasons set forth on pages 21-22 of this Opinion, in response to Section 59.5.1.2, concerning the overall intent and purposes of this general category of floating zones.

Section 5.3.3. Land Uses

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

- 1. In the CRNF zones, only the uses allowed in the CRN zone are allowed.*
- 2. In the CRTF zones, only the uses allowed in the CRT zone are allowed.*
- 3. In the CRF zones, only the uses allowed in the CR 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.

Subsection 5.3.3.A.2. limits development in the CRTF Zone to uses allowed in the CRT zone. Development in the CRT Zone is described in Zoning Ordinance Division 4.5. As indicated by Technical Staff (Exhibit 43, p. 14), the type of multi-unit building proposed in this case is allowed in the CRT zones. As permitted in Subsection 5.3.3.B, the Applicant in this case has voluntarily imposed a binding element in the final Floating Zone Plan (Exhibit 59) and executed Declaration of Covenants (Exhibit 60), guaranteeing a minimum of 20% MPDUs in the development. Based on this record, the District Council finds that the requirements of Section 5.3.3. have been satisfied.

Section 5.3.4. Building Types Allowed

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

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

Subsection 5.3.4.A. specifies that “Any building type is allowed in the Commercial/Residential Floating zones,” so the buildings proposed by the Applicant clearly qualify. As allowed in Subsection 5.3.4.B, the Applicant in this case has voluntarily imposed a

binding element in the final Floating Zone Plan (Exhibit 59) and executed Declaration of Covenants (Exhibit 60), guaranteeing a minimum of 20% MPDUs in the development. Based on this record, the District Council finds that the requirements of Section 5.3.4. have been satisfied.

Development Standards for the Zone as set forth in Section 59.5.3.5.

Development Standards for the CRTF-1.75, C-0.25, R-1.5, H-70 Commercial Residential Town Floating Zone are spelled out in Zoning Ordinance §59.5.3.5., which is set forth below:

Section 5.3.5. Development Standards

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.*

Because the proposed floating zone is not specifically recommended in the applicable Sector Plan, §5.3.5.A.2. specifies that the density limits allowed are those spelled out in the following Table. As can be seen in the bolded row of the Table, where the pre-existing Euclidean Zone on the site is R-10, as is the case here, and the gross tract area of the site exceeds 3 acres, as is the case here, the prescribed density limits are 1.75 total FAR, with a maximum of 1.5 Residential FAR and 1.5 Commercial FAR. The District Council finds that the Applicant is requesting density within those limits.

Density Allowed						
Pre-Existing Euclidean Zone	Maximum Density Allowed in FAR Based on Size of Tract in Acres					
	Up to 0.5 acres		0.51 acres - 3.00 acres		Greater than 3 acres	
	Total Density	C or R Density	Total Density	C or R Density	Total Density	C or R Density
RE-2, RE-2c, RE-1, R-200	0.75 FAR	0.5 FAR	1.0 FAR	0.75 FAR	1.25 FAR	1.0 FAR
R-90, R-60, R-40, TLD, TMD, THD	1.0	0.75	1.25	1.0	1.5	1.25
R-30, R-20, R-10	1.25	1.0	1.5	1.25	1.75	1.5
CRN	1.0	0.75	1.25	1.0	1.5	1.25
CRT	2.0	1.5	3.0	2.0	4.0	3.0
CR	4.0	3.0	6.0	4.5	8.0	6.0
Employment	2.0	1.5	3.0	2.0	4.0	3.0
IL, IM	0.75	0.5	1.0	0.75	1.5	1.25

3. *An applicant may limit density below the maximum allowed by Section 5.3.5.A to support the necessary findings of approval under Section 7.2.1.*

The Applicant has opted for the maximum permitted residential FAR of 1.5, and a commercial density not to exceed 0.25 FAR, bringing the total density requested to an FAR of 1.75, as permitted in the Table. The Applicant's conceptual plans do not presently include any commercial development on the site. Based on this record, the District Council finds that the density requirements of Section 5.3.3.A. have been satisfied.

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.*

Since the Floating Zone is not expressly recommended in the applicable Sector Plan, Subsection 59.5.3.5.B.1. is not applicable. Applying Subsections 59.5.4.5.B.2. and 3., setbacks from the site boundary and maximum height are established by the Floating Zone Plan. As recommended by the Planning Board (Exhibit 44), the Applicant revised its Floating Zone Plan (FZP) to specify a minimum setback of zero feet and a maximum height of 70 feet (Exhibit 59); however, as discussed elsewhere in this record, a number of actual setbacks established at Site Plan review will likely exceed the minimum specified in the FZP, and the actual building height will likely not exceed 65 feet, with an even lower height on the western end of the site, in the vicinity of the single-family residences.

The District Council also finds that the proposed development will be compatible with existing development in the area for the reasons stated in response to the findings called for in §59.7.2.1.E.2.d. The precise height and angle measurements called for in Section 4.1.8.B will be addressed by the Planning Board at Site Plan review.

C. Lot Size

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

This section provides that lot sizes “are established at the site plan approval process under Section 7.3.4.” Technical Staff notes, in response (Exhibit 43, p. 14), that “The Applicant proposes to maintain the existing lot. The segment of Arthur Avenue that is currently private may need to be subdivided at Preliminary Plan.” In any event, the District Council finds that this provision is satisfied because the Applicant's proposal will have to go through Site Plan Review, following the District Council's approval of the rezoning.

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 5.3.3.*

As stated by Technical Staff (Exhibit 43, p. 14),

Parking space, parking screening, and open space requirements will be assessed to be consistent with development requirements of the proposed CRT Zone during Preliminary Plan and Site Plan review. Based on its current development scheme, the Applicant anticipates providing roughly 250 parking spaces, partially below grade, and will provide a minimum of ten (10) percent of the Property to meet Public Open Space requirements.

The number of parking spaces required will ultimately be determined by the breakdown of the apartment units, which has not yet been finalized, but the Applicant's architect, Dave Stembel testified that the plan is for the unit breakdown to include one-bedroom, two-bedroom, and three-bedroom units, and the projected parking of up to 250 parking spaces was calculated with the assumption of 30 percent three-bedroom units, 30 percent two-bedroom units and 40 percent of the one-bedroom units. All that is subject to change at Site Plan. Tr. 56-57. Applicant's land planner, David Ager, testified that there is "an abundance of off-site recreation in this neighborhood," exceeding the requirements for rezoning. Tr. 84-88. There is no contrary evidence in this record.

The Applicant's Conceptual Landscape Plan (Exhibit 37) demonstrates the planned landscape screening, garage entry points, lobby entry, open space and the two south-facing courtyards for the residents atop the planned underground garage. Tr. 53-54. It is reproduced on page 7 of this Opinion. Because the Applicant's plans are conceptual at this stage, the final determination of the adequacy of parking, recreation, screening and landscaping will have to await the Planning Board's Site Plan review. The District Council finds, based on the undisputed evidence at this stage, that the Applicant's proposal is sufficient to meet the standards for rezoning with regard to parking, recreation, screening and landscaping, subject to review and modification of the particulars during the Site Plan process.

2. Open Space

- a. If public benefits are not required under Section 5.3.5.E, open space must be provided under Section 4.5.3.C.1 (for standard method) as required for the Euclidean zone that establishes uses under Section 5.3.3.*
- b. If public benefits are required under Section 5.3.5.E, open space must be provided under Section 4.5.4.B.1 (for optional method) as required for the Euclidean zone that establishes uses under Section 5.3.3.*

Section 5.3.5.E., quoted below, does require public benefits for this project because this project calls for a density of greater than 1.0 FAR. Therefore, under Section 5.3.5.D.2.b., above, "open space must be provided under Section 4.5.4.B.1 (for optional method) as required for the Euclidean zone that establishes uses under Section 5.3.3." Section 4.5.b.1. provides that for a site with a tract area of 3.01 to 6.00 acres (which subsumes the tract in question) and two or more frontages (as is the case under consideration), there is a requirement for a minimum of 10% open space. The District Council finds that the Applicant's Floating Zone Plan (Exhibit 59) complies with this requirement by specifying a minimum of 10% open space for the project.

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.*

The Applicant has not sought to add additional elements beyond the Floating Zone Plan and Declaration of Covenants guaranteeing a minimum of 20% MPDUs.

E. Public Benefits

1. Public Benefits Required

- a. *Development above the greater of 1.0 FAR or 10,000 square feet of gross floor area in the CRTF zone requires public benefits.*
- b. *Development above the greater of 0.5 FAR or 10,000 square feet of gross floor area in the CRF zone requires public benefits.*
- c. *When public benefits are required by development in the Commercial/Residential Floating zones, a sketch plan must be submitted under Section 7.3.3.*

2. Public Benefit Points and Categories Required

- a. *Public benefits under Division 4.7 must be provided according to zone and tract size or maximum total mapped FAR, whichever requires more public benefit points:*

Zone	Tract Size OR Max Total FAR	Public Benefit Points (min)	Number of Benefit Categories (min)
CRTF	< 10,000 SF OR < 1.5 max FAR	25	2
	≥ 10,000 SF OR ≥ 1.5 max FAR	50	3
CRF	< 10,000 SF OR < 1.5 max FAR	50	3
	≥ 10,000 SF OR ≥ 1.5 max FAR	100	4

b. *In the CRF zone, the purchase of BLTs is required under Section 4.7.3.F.1.a.*

As discussed in responding to the previous section, Section 5.3.5.E. does require Public Benefits for this project because this project calls for a density of greater than 1.0 FAR. The number of Public Benefit Points needed and the number of categories of benefits is determined by the above Table. The bolded row in that Table shows that a project in the CRTF Zone, with a tract size of 10,000 square feet or more or a density equal to or exceeding 1.5 FAR, requires a minimum of 50 Benefit Points in at least 3 Benefit Categories. However, as noted by Technical Staff (Exhibit 43, p. 14), the number of required Benefit Categories is reduced to one under §4.7.3.D.6.e. because the Applicant anticipates supplying at least 20% MPDUs.

Staff also indicates that the Public Benefits categories will be approved at Preliminary Plan, and point values will be assessed and approved at Site Plan. However, it is clear without even getting to that stage that the Applicant will have more than enough Benefit Points under Sections 4.7.3.D.6.a. and e. based on its commitment to a minimum of 20% MPDUs alone. Those Subsections provide:

Section 4.7.3.D.6.

Moderately Priced Dwelling Units: There is no limitation on the number of points for providing more than 12.5% of the residential units as MPDUs as required under Chapter 25A. Points are calculated as follows:

a. 12 points are granted for every 1% of MPDUs greater than 12.5%. Any fraction of 1% increase in MPDUs entitles the applicant to an equal fraction of 12 points.

* * *

e. For a project providing a minimum of 15% MPDUs, one less benefit category than is required under Section 4.5.4.A.2 and Section 4.6.4.A.2 must be satisfied. A project that provides a minimum of 20% MPDUs does not have to satisfy any other benefit category under Section 4.5.4.A.2 and Section 4.6.4.A.2.

Section 4.7.3.D.6.e. reduces the number of Public Benefit Categories for the Applicant to one because “A project that provides a minimum of 20% MPDUs does not have to satisfy any other benefit category . . .” Looking at §4.7.3.D.6.a., it is apparent that “12 points are granted for every 1% of MPDUs greater than 12.5% . . .” Since the Applicant will provide a minimum of 20% MPDUs, (*i.e.*, 7.5% above 12.5%), it is entitled to 7.5 X 12 points (*i.e.*, 90 Public Benefit Points) based on MPDUs alone. Thus, the District Council finds that the Applicant will more than meet its public Benefit Point Minimum of 50 Points.

Based on this undisputed record, the District Council finds that the subject Floating Zone application meets all the development standards set forth in Section 59.5.3.5. of the Zoning Ordinance.

Conclusion

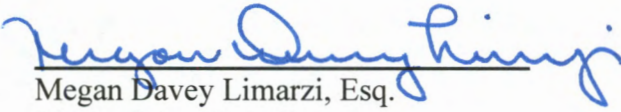
Based on the foregoing analysis and after a thorough review of the entire record, the District Council concludes that the proposed reclassification and development will meet the standards set forth in the Zoning Ordinance, and that it will be consistent with a coordinated and systematic development of the regional district, as required by the Maryland Land Use Article, Code Ann. (2012) §§21-101(a) and (b). 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., 59.5.3.1., 59.5.3.2., 59.5.3.3., 59.5.3.4. and 59.5.3.5, which together detail the intent, purposes, and standards of the proposed CRTF-1.75, C-0.25, R-1.5, H-70 Commercial Residential Town Floating Zone.

ACTION

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District located in Montgomery County, Maryland, approves the following resolution:

Local Map Amendment Application No. H-129, requesting reclassification from the existing R-10 Zone to the CRTF-1.75, C-0.25, R-1.5, H-70 Commercial Residential Town Floating Zone, of Parcel C, Block A, in the McKenney Hills subdivision, located at 9920 Georgia Avenue and 2106 Belvedere Boulevard in Silver Spring, Maryland, and consisting of 2.634 acres (out of a gross tract of 3.59 acres), is hereby **approved** in the amount requested and subject to the specifications and requirements of the Floating Zone Plan, Exhibit 59; provided that the Applicant files an executed Declaration of Covenants (Exhibit 60) 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.

This is a correct copy of Council action.



Megan Davey Limarzi, Esq.
Clerk of the Council