

**BEFORE THE COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS THE DISTRICT COUNCIL FOR THE MARYLAND-  
WASHINGTON REGIONAL DISTRICT IN MONTGOMERY COUNTY, MARYLAND**

**Office of Zoning and Administrative Hearings  
Stella B. Werner Council Office Building  
100 Maryland Avenue, Room 200  
Rockville, Maryland 20850  
(240) 777-6660**

**IN THE MATTER OF:**

**Glenmont Forest Investors, LP**  
Applicant

Brian Alford  
Steve Allison  
Matthew Leakan  
Randall Rentfro  
Anne Randall

For the Application

Local Map Amendment  
Application No. H-149

\* \* \* \* \*

Elizabeth Rogers, Esq.  
Steven Robins, Esq.  
Attorneys for the Applicant

\* \* \* \* \*

Before: Kathleen E. Byrne, Hearing Examiner

**HEARING EXAMINER’S REPORT AND RECOMMENDATION**

**Table of Contents**

**I. CASE SUMMARY ..... 3**

**II. STATEMENT OF THE CASE..... 5**

**III. NOTICE QUESTIONS..... 6**

**IV. FACTUAL BACKGROUND..... 7**

**A. Subject Property..... 7**

**B. Surrounding Area ..... 9**

**C. The Applicant’s Proposal ..... 12**

**1. Floating Zone Plan ..... 13**

**2. Binding Elements ..... 15**

**3. Access ..... 16**

**4. Environment..... 19**

**D. Community Concerns ..... 20**

**V. FINDINGS AND CONCLUSIONS..... 21**

**A. The “Necessary Findings” Required by Zoning Ordinance §59.7.2.1.E.2..... 21**

**1. Substantial Conformance with the Master Plan..... 21**

**2. Compatibility ..... 28**

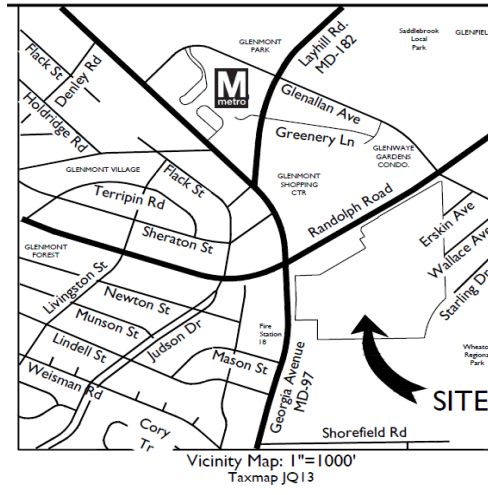
**3. Adequate Public Facilities/Public Interest ..... 37**

**B. The Intent and Standards of the Zone (Section 59.7.2.1.E.2.c)..... 42**

1. Intent of Floating Zones (Section 59.5.1.2)..... 42  
2. Purpose of the Commercial Residential Floating Zones (Section 59.5.3.2) ..... 44  
C. Applicability of a Floating Zone (§59.5.1.3) ..... 44  
D. Development Standards and Uses Permitted in the CRF Zone (Div. 59.5.3)..... 45  
1. Uses and Building Types Permitted (§§59.5.3.3 and 59.3.3.4) ..... 45  
2. Development Standards of the CRF Zone ..... 45  
3. Requirements of Article 59.6 ..... 47  
VI. RECOMMENDATION..... 47

## I. CASE SUMMARY

Applicant: Glenmont Forest Investors, LP  
LMA No. & Date of Filing: H-149, filed January 23, 2024



Current Zone: R-30 multi-family.

Current Use: 19 two-to-three story garden style apartment complex buildings containing 458 dwelling units.

Requested Zone: CRF-1.75, (C-0.25, R-1.5, H-75' (Commercial Residential Floating Zone).

Proposed Use: Construct mixed-use residential development containing up to 2,275 residential dwelling units and up to 5,000 square feet of commercial use.

Consistency with Master Plan: Consistent with the *2013 Glenmont Sector Plan* and consistent with *Thrive Montgomery 2050*, General Plan.

MPDUs Provided: 15%

Neighborhood Response: Opposition received at the hearing and via letters from individuals located in the surrounding neighborhood. Neighbors expressed concern that the 5-fold increase in dwelling units and the opening of Erskine was not compatible with the surrounding neighborhood. In addition, neighbors expressed concern with the impact to the natural environment through the loss of mature

trees and increase in impervious surface on the stormwater management.

Planning Board Recommends: Approval

Technical Staff Recommends: Approval

Hearing Examiner Recommends: Approval with condition that Erskine Ave not be connected as a vehicle through street

District Council Votes Needed to Approve: 6

## II. STATEMENT OF THE CASE

Glenmont Forest Investors, LP (Applicant or Glenmont) filed its LMA Application on January 23, 2024. LMA No. H-149 seeks to rezone approximately 34.87 acres of property from R-30 multi-family to CRF 1.75, C-0.25, R-1.5, H-75' (Commercial Residential Floating). Exhibit 1. The subject property is located at southeast quadrant of the intersection of Randolph Road and Georgia Avenue, Silver Spring, Maryland as part of Parcel A, Plat No. 6337 and Parcel B, Plat No. 8065 in the "Americana Glenmont" subdivision and the "Americana Glenmont Apartments" subdivision (Tax Account No. 13-00975447 and 13-00975436). *Id.* Notice of the public hearing was mailed on May 14, 2024 and posted on OZAH's website. Exhibit 25. The notice established a hearing date of June 14, 2024. Staff of the Montgomery County Planning Department (Planning Staff or Staff) transmitted its report and the Planning Board's written recommendation on June 4, 2024. Exhibit 46. Staff recommended approval of the application with three binding elements, required the Applicant address additional issues at Sketch Plan, Preliminary Plan and/or Site Plan approval and recommended approval with conditions of the Preliminary Forest Conservation Plan (FCP) No. F20240450. *Id.* The Planning Board also recommended approval of the application and approved the associated Forest Conservation Plan (No. F20240450). *Id.*

The public hearing proceeded as scheduled on June 14, 2024. The Applicant presented five witnesses, one representing a principal of the Applicant and four expert witnesses. The following community members testified in opposition of the Application: Leopoldo Villegas, Beverly O'Brien, Cecilia Castro De Anderson, Lindsay Roe, Richard Takamoto, and Vicki Vergagni. The Hearing Examiner held the record open for 21 days to receive the transcript of the proceedings as well as a written statement from the Applicant with its closing statement. As requested by the Hearing Examiner, the Applicant in its closing statement provided an explanation of the Notice process under the Zoning Ordinance and OZAH's rules as followed with this Application. The Hearing Examiner received the transcript on June 24, 2024, and the written statement from the Applicant later in the day on June 3, 2024. Due to the 4<sup>th</sup> of July holiday, the Hearing Examiner closed the record on June 5, 2024.

### III. NOTICE QUESTIONS

Several members of the community who testified in opposition as well as correspondence received from community members expressed frustration and confusion over the notice process. These individuals stated they received notices that they considered late and did not understand why some neighbors received notices and others did not. Exhibit 63 and T. 282. The Hearing Examiner asked the Applicant in its written statement to explain how the list of who gets a notice is generated and how those notices are sent. T. 281. Section 7.5 of the Article 59, the Zoning Ordinance, governs Notice Standards.<sup>1</sup> Section 7.5.1 requires that the LMA property to be physically posted with a sign, the hearing date be posted on the OZAH website, and a hearing notice be mailed. On March 28, 2024, OZAH posted LMA 149 on its website identifying the June 14, 2024 hearing date. Regarding the physical posting requirement, Section 59.7.5.2.C.1 requires 1 sign be posted for every 500 feet of frontage<sup>2</sup>. The Applicant posted the physical sign on January 30, 2024, along every frontage, including the stubbed rights-of-way of Wallace Avenue and Erskine Avenue and the paper street (known as "Starling Drive") to the south. Exhibits 57 and 69. Section 59.7.5.2.D requires the Applicant to prepare and submit a notice list, i.e. a list of individual property owners that must receive a notice by mail, that includes all "abutting<sup>3</sup> and confronting<sup>4</sup> property owners; civic, homeowners and renters associations that are registered with the Planning Board and located within ½ mile of the site; and any municipality within ½ mile of the site;..." This list, generated by the Applicant and submitted to Planning with its application, included all abutting and confronting property owners as defined by the Zoning Ordinance and also "conservatively" included a few additional homes on Wallace and Erskine Avenue. Exhibit 69. Section 59.7.5.2.E.a. requires the Hearing Examiner to mail notice a minimum of 30 days before the scheduled hearing date to the individual property owners identified on the Applicant's list. On May 14, 2024, the Notice of Hearing was mailed to those individual property owners required to receive written

---

<sup>1</sup> *Montgomery County, Md. Code, §59.7.5 (2024)*,

([https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco\\_md\\_zone2014/0-0-0-5900](https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco_md_zone2014/0-0-0-5900))

<sup>2</sup> Frontage is defined as "[a] property line shared with an existing or master-planned public or private road, street, highway, or alley right-of-way, open space, or easement boundary." See Section 59.1.4.2.

<sup>3</sup> Abutting is defined as "2 properties are abutting if they share a property line or easement line" *Id.*

<sup>4</sup> Confronting is defined as "[p]roperties that are directly across a right-of-way with a master plan width of less than 80 feet from each other based on a line between the 2 properties that is drawn perpendicular to the right-of-way. Properties within a 45 degree diagonal across an intersection are also confronting." *Id.*

notice. Exhibit 25. The requirement of “abutting and confronting” as defined in the Zoning Ordinance explains why the occupants of 2012 Glenallan Avenue received a physical notice, but the occupants of 2008 Glenallan Avenue did not. While it may seem random that two neighbors would not receive the same notice, who does and does not receive a notice is not based on what properties front existing street surrounding the development, but rather how a boundary line of an existing property “lines up” with the boundary lines of the proposed development. Hearing Examiner understands how when one neighbor gets a notice and another does not, it can be perceived as problematic and that neighbors were “missed.” However, upon review of the list generated by the Applicant pursuant to the requirements set forth in Section 59.7.5.2.D, Hearing Examiner finds that the Applicant properly identified those individual property owners to receive notice and the three vehicles for notice, posting, website and mail, were proper in the instant case.

#### **IV. FACTUAL BACKGROUND**

##### **A. Subject Property**

The subject property contains approximately 32.64 acres of land and is bounded by Randolph Road to the north along with the County's 4<sup>th</sup> District Police Station and a parking lot owned by the Maryland DOT SHA, Georgia Avenue to the west along with a church at the southwest corner, a two-story townhouse community to the south and a single-family neighborhood to the east and a small private lot between it and Wheaton Regional Park. Exhibit 46, Attachment 1, pg. 3. Further across Randolph Road to the north is the Glenmont Shopping Center containing a grocery store, restaurants and other retail businesses and the Glenmont Metro Station is approximately ½ mile northwest of the property. *Id.* Across from Georgia Avenue is a fire station and beyond that is a single-family detached neighborhood. *Id.*



Staff Report – Exhibit 46, Figure 3



Currently, the Property contains 19 two-to-three story buildings operating a garden-style apartment complex known as the Americana Glenmont Forest Apartments. *Id.* at pg. 6. Constructed in 1962, the complex contains a total of 482 dwelling units. *Id.* Staff notes that none of the 482 dwelling units are regulated affordable housing. *Id.* Brian Alford, an employee of Grady Management and representing the management and ownership at the hearing, testified that the existing development, buildings and improvements are “nearing the end of their useful life span and will be in need of significant reinvestment in the next coming years.” T. 23.

### **B. Surrounding Area**

The surrounding area is typically identified and characterized in a Floating Zone case. The boundaries are defined by those properties that will experience the direct impacts of the use. This area is then characterized to determine whether the Floating Zone Plan will be compatible with the impacted area.

Staff defined the neighborhood boundaries as, “bordered by Glenallan Avenue to the north, Wheaton Regional Park to the east, Shorefield Road to the south, and Georgia Avenue to the west.” *Id.* at 3. Staff further identified the Neighborhood as “mixed-use in character with a variety of housing, commercial, and institutional uses,” further noting the Glenmont Shopping Center and Glenmont Metro Station to be within the Neighborhood boundaries. *Id.* (See *Neighborhood image on the next page.*)



Staff Report – Exhibit 46, Figure 1

Staff described the Neighborhood zoning patterns and uses to be “varied” with the Glenmont Shopping Center operating the most intense zone with a total density of up to 3.0 floor area ratio (FAR) and building heights up to 120 feet and that properties close to the Glenmont Metro Station permit building maximum densities of 2.0 FAR and also building heights of up to 120 feet. Id. pg. 4. The Hearing Examiner notes that both intense uses/developments are located across Randolph Road from the subject property. The defined neighborhood also contains multi-unit residential zones R-20 and R-30, a Townhouse House Zone RT-15 and residential detached zones R-60 and R-90. Id. The



Hearing Examiner notes via the arrow on the image below depicting the zoning in the Staff defined neighborhood that the only existing R-90 single family development rests immediately adjacent to the east of the subject property.



Staff Report, Exhibit 46, Figure 2

Based on the record, the Hearing Examiner agrees with Staff that the uses and zones are varied with the most intense uses located across Randolph Road from the subject property. In addition, it is undisputed that the subject property immediately abuts without a “road break” R-30, R-90, and RT-

150 zones. The uses in non-road break R-30 zones contain a church and a police station and the approximately 20 single-family lots are located in R-90 zone properties between the subject property, Glenallan Avenue and Wheaton Regional Park. (*See map above.*)

### **C. The Applicant's Proposal**

The Applicant plans to redevelop the property with a "mixed-use, predominately residential development" that will "include up to 5,000 square feet of neighborhood-serving commercial use and up to 2,275 multi-family living units." Exhibit 45, pg. 6. The residential units will be primarily rental with a "for sale option" to be evaluated as an option at a later date, and the project will include associated parking, open space, public benefits, and various residential amenities. *Id.* The Applicant proposes providing 15% moderately priced dwelling units (MPDUs) representing a 2.5% above the County Code requirement for MPDUs, meaning that if the full 2,275 units become developed, 342 would be preserved as affordable for 99 years. *Id.*

Brian Alford, representing the ownership group, testified that the Applicant is comfortable with the recommended conditions as set forth by the Planning Board. T. 24. Specifically, Mr. Alford stated with respect to condition number four, the Applicant will "strive to incorporate at least 273 two bedrooms and 49 three-bedroom units." T. 25. Further, Mr. Alford stated his belief that rather than spend resources on the existing apartments, the proposed redevelopment project meets the County's anticipated demand for additional housing and its close proximity to transit brings the community into alignment with the County's current goals. T. 23. The Applicant's amended statement of justification described the "project layout" as follows:

The multi-family buildings have been strategically arranged to create a sense of community and encourage pedestrian activity. The Project is broken down into smaller blocks by a series of internal private streets to promote connectivity within the site and to the surrounding areas. The Project is organized around an internal spine road that runs east-west. Erskine Drive is proposed to be extended into the site, to connect with Randolph Road, as a public street. Additionally, several north-south private roads connect the internal spine road to Randolph Road, with the western-most



private road, also providing for a future connection to Georgian Woods Place (to the south). The buildings have been pulled up to the street to define and enhance the pedestrian environment both along the external site frontages and along the internal streets. The commercial component of the Project is currently anticipated to be located on the ground floor on future Parcel C, with clear visibility from Randolph Road, to define and activate the main entrance to the Property and complement the retail uses on the north side of Randolph Road. The final building layout and internal programming will be determined at the time of Site Plan.

Exhibit 45, pg. 8. (See cover page image from the Amended Statement of Justification/Land Use Report below.)



Amended Land Use Report, Exhibit 45, pg.1

## 1. Floating Zone Plan

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 (FZP) that contains required information and often a list of “binding elements” that restrict future development of the property. The Applicants have submitted the required plan. Exhibit 30. An excerpt of the FZP showing the proposed building layouts, frontage on Randolph Road, possible townhouse locations to the east and south, open space/forest conservation area to the southeast and “eastern transition zone” is taken from the Staff report and shown on the next page.



Staff Report – Exhibit 46, Figure 6 – Floating Zone Plan

The Project is organized around a grid of streets that create small blocks, with buildings positioned close to the roads. Proposed buildings front on an east-west spine road (Street B, transitioning into Erskine Avenue) that connects Georgia Avenue and Randolph Road. The Applicant proposes to extend Erskine Avenue as a public road through the Property. The rest of the proposed roads are intended to be private and will be further evaluated at Preliminary Plan.

Exhibit 46, pg. 13.

Mr. Matthew Leakan testified on behalf of the Applicant and was admitted as an expert in land planning. T. 65. Mr. Leakan detailed the existing conditions noting the existing improvements, location of the property to the adjacent uses and parcels, that there are three points of vehicular access to the site, explained that “there’s a significant topography on site, approximately 50 to 70 feet vertical topography from Randolph Road and George Avenue...and the property falls away from” those roads and the property contains no modern stormwater management. T. 57-60. Mr. Leakan testified that the development is “compact” with the design going “up” not “out.” T. 73. He further described 8 buildings with in a “multifamily format and are different building typologies with structured parking... in a facility parking garage screened from public view.” T. 74. Further, he testified that the building heights are limited to 45 feet for those structures that are within 100 feet of the single family detached neighborhood to the east, while the tallest buildings of up to 75 feet will be located closer to Georgia Avenue and Randolph Road. T. 74-75 and Exhibit 46, pg. 9. When the Hearing Examiner asked if the Applicant proposes townhouses or apartments along the perimeter, Mr. Leakan responded the Applicant wanted flexibility to have either multi-family or townhouse, both or some combination. T. 76-77.

## **2. Binding Elements**

The Staff Report includes four binding elements (Exhibit 46, pg. 6):

1. The maximum building height is limited to 45 feet, for a distance of 100 feet from the eastern Property boundary.
2. The use of the Property will be limited to multi-unit living, townhouse living and up to 5,000 square feet of non-residential use.

3. The development must provide a minimum of 15 percent (15%) Moderately Priced Dwelling Units (MPDUs) or Montgomery County Department of Housing and Community Affairs (MCDHCA)-approved equivalent consistent with the requirements of Chapter 25A.

Staff further required the Applicant address at the time of Sketch Plan, Preliminary Plan

and/or Site Plan approve the following:

1. Update the LATR Transportation Study to include new vehicle counts and develop a list of LATR off-site mitigations and associated costs.
2. Coordinate with M-NCPPC and Montgomery County Department of Transportation (MCDOT) staff to determine:
  - a. if a right-in-right-out access proposed to the east of the Randolph Road/Glenmont Circle intersection is operationally feasible;
  - b. the appropriate road classification and right-of-way width for internal roadways;
  - c. if Street B will be a public or private road; and
  - d. the appropriate phasing of transportation infrastructure.
3. Ensure that public open space is usable, minimally encumbered by conservation areas or stormwater management facilities, and sufficient for the number of dwelling units proposed.
4. Strive to provide at least:
  - a. 273 two-bedroom units and 49 three-bedroom units; and
  - b. Ten (10) percent market-rate affordable units (for households earning 80% Area Median Income) under rental agreements, as approved by MCDHCA.

*Id.*

### 3. Access

Mr. Randall Rentfro testified to the existing access points and those proposed for the FZP. T. 121. Specifically, he identified the 3 main points of access that exist today, two along Randolph Road and one along Georgia Avenue. T. 121. Mr. Rentfro identified the northeast entrance and the southwest entrance as both being right in/right out with the central exit along Randolph Road being a “full movement signalized intersection.” T. 121. *(See Exhibit 12, Existing Conditions Site Plan with notations on existing access points on the following page.)* Mr. Rentfro further testified that the Applicant will be adding a proposed connection between Erskine Avenue and Randolph Road which will be a public street, along with proposed private street connections from the “north/south to the future ... redevelopment of the police property and to the south which is currently the HOC property.” T. 121. Along with these street connections, Mr. Rentfro testified no pedestrian connection is available directly to Wheaton Regional Park without further collaboration with the



Housing Opportunities Commission because of "the paper street and private property." T. 122. (See Exhibit 36, Revised Vehicular Circulation Plan on page 18 below.)

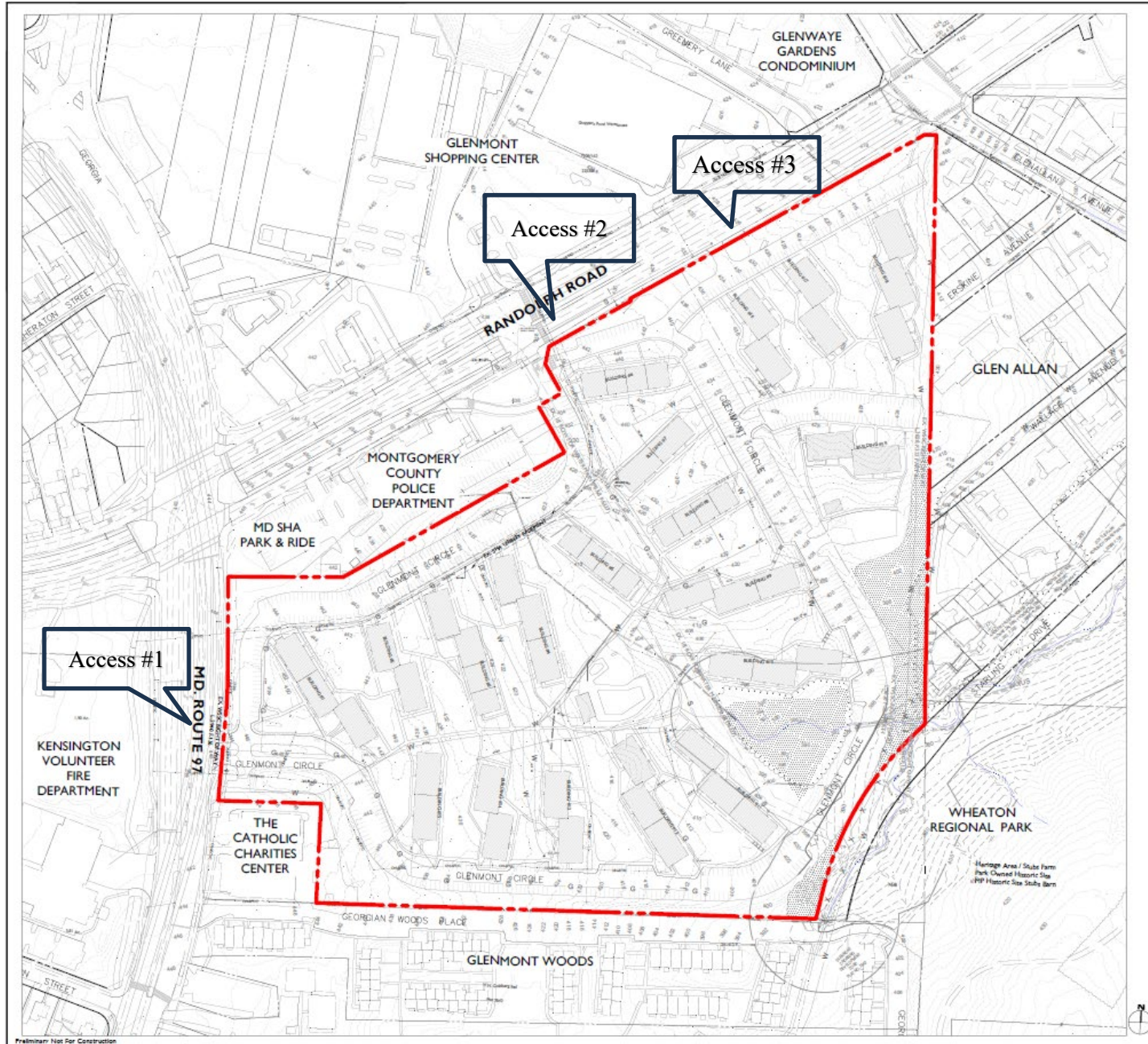


Exhibit 12 – Existing Conditions Site Plan – Access points noted

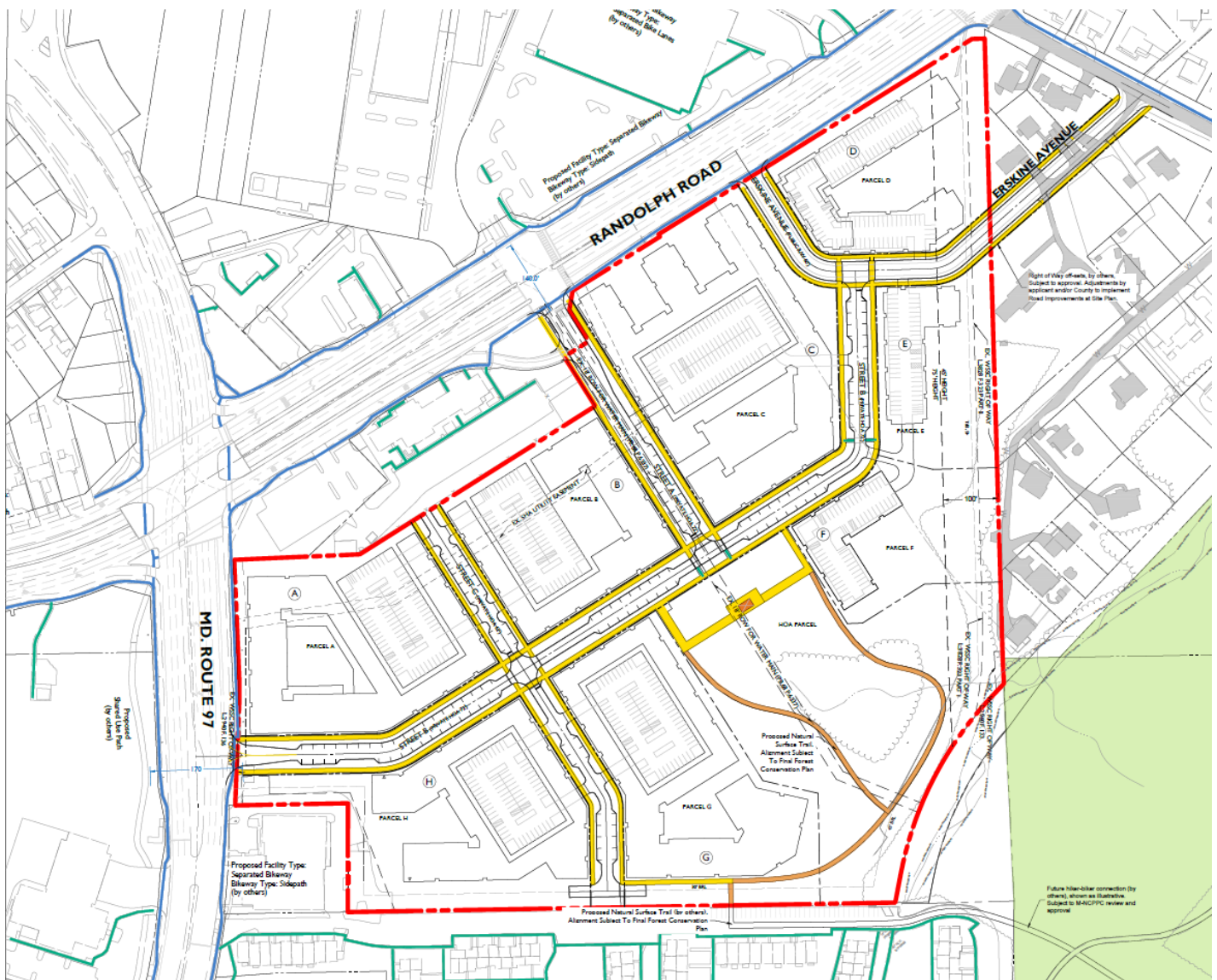
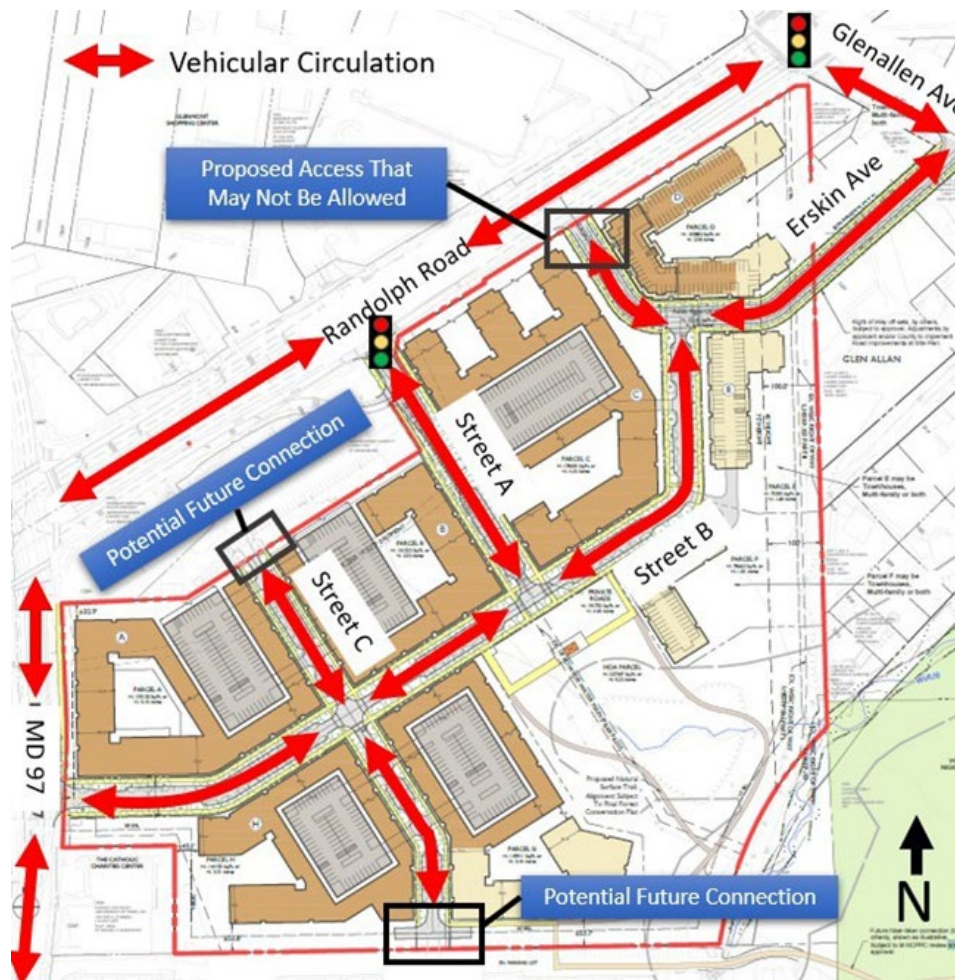


Exhibit 36 – Revised Vehicular Access

Mr. Rentfro testified at length to the sight distance requirements and opined in his expert opinion that vehicular access will be safe and adequate from a sight distance perspective. T. 122-126. Ms. Anne Randall, Applicant's traffic expert, also reviewed the access plan. T. 145-148. She reiterated that only one signalized intersection will remain, at the intersection of Randolph and Glenallan Circle. T. 147. She further identified that the new Erskine Avenue extension would not be signalized and would be a right in/right out only and further opined that the new connection would not be used often. T. 147.



Several neighbors voiced concerns over the proposed extension of Erskine Avenue creating an access point through the existing single-family neighborhood to the east. Specifically, Mr. Villegas, testified that he believed creating an Erskine connection would lead to “every single mom and parents ... go through the shortcuts.” T. 190. Ms. Roe, who lives on Erskine, testified the congestion on Glenallan in the morning backs up past the existing Erskine entrance. T. 210.



Staff Report Exhibit 36,  
Vehicular Circulation – Figure 9

#### 4. Environment

The Preliminary Forest Conservation Plan (FCP) submitted concurrently with the Local Map Amendment application shows 1.32 acres of forest retention and all forest conservation requirements

met onsite with 3.33 acres of forest planting. Exhibit 36, pg. 13. Further, the plan identifies all existing and planted areas of forest will be protected by Category I Conservation Easements. *Id.*

The Applicant proposes to utilize a mix of practices for stormwater management which will include Environmental Site Design features such as micro-bioretenion facilities, bioswales, and non-rooftop disconnects. *Id.* at 14. The stormwater management strategy will be further refined during subsequent regulatory review.

Mr. Leakan testified that no modern stormwater management system currently serves the property other than a simple drain conveyance system. T. 60. Mr. Rentfro stated that while a formal stormwater concept plan is not required during the LMA process, he noted the Applicant has begun collaboration with DPS on the concept and the plan is currently in review and that it will be finalized prior to preliminary plan. T. 132. Further, he testified that once the concept plan is approved, the stormwater plan will go through a second review as part of the site plan approval process and that the public will have an opportunity to review and comment during each phase. T. 133. Mr. Rentfro testified he reviewed the neighbor's correspondence and concerns over runoff. T. 135. He opined that while he understands those concerns, the subject property is not the direct cause of the stormwater management issues that exist today nor will it be the cause once the future development is complete. T. 136. Mr. Rentfro went into great detail testifying to the drainage patterns, the "fall" of the property, the drainage points and the plan to address stormwater on site. T. 136-140. Specifically, Mr. Rentfro stated the redevelopment will allow the property to meet the 2010 MDE stormwater management regulations through a sign design that includes "storage and filtration structural" best management practices "that will meet or exceed the applicable county and state laws." T. 140.

#### **D. Community Concerns**

Staff noted that the Applicant complied with all submittal and signage requirements. Exhibit 36, pg. 19. In addition, the Applicant met with the Glenmont Exchange Community Group on April

11, 2024. *Id.* Staff received email inquiries about the Project, one from a resident asking for information, and another from a Montgomery County Public Schools (MCPS) demographer asking about Project phasing. *Id.* OZAH received 10 letters from close by neighbors in opposition. Two of letters contained signatures of 6 different neighbors on each letter. Exhibits 48-56 and 63-67. The following neighbors testified during the hearing in opposition to the application: Leopoldo Villegas, Beverly O'Brien, Cecilia Castro De Anderson, Lindsay Roe, Richard Takamoto and Vicki Vergagni. The opposition testimony raised concerns about stormwater management, deforestation/tree removal, traffic, pedestrian safety, and the overall negative impact the extension of Erskine would have to the neighborhood immediately to the east of the proposed development. T. 187-234.

## V. FINDINGS AND CONCLUSIONS

A floating zone is a flexible device that allows a legislative body to establish development standards and uses for a particular district before “attaching” to individual properties. The zone may be applied to individual properties with the approval of a Local Map Amendment.

For approval, the District Council must find that the proposal will meet the standards required by the Zoning Ordinance and that it will be consistent with a coordinated and systematic development of the Regional District. (*See, Md. Land Use Art., §21-101(a) and (b).*) While many of the site-specific requirements for development are addressed by later approvals, the Zoning Ordinance contains various standards, or “Necessary Findings” that the Council must make. These standards incorporate the requirements of other sections of the Zoning Ordinance, as set forth below.

### A. The “Necessary Findings” Required by Zoning Ordinance §59.7.2.1.E.2.

#### 1. Substantial Conformance with the Master Plan

Several sections of the Zoning Ordinance require an applicant to demonstrate that the proposed rezoning conforms to the applicable Master Plan:

***Section 7.2.1.E.2.a. 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;*

\* \* \*

*Section 59.7.2.1.E.2.b: ...further the public interest...*

\* \* \*

*Section 59.7.2.2.c: ...satisfy the intent and standards of the proposed zone...*

\* \* \*

*Section 59.5.1.2.A.1. (Intent of Floating Zones): Implement comprehensive planning policies by... furthering the goals of the general plan, applicable master plan, and functional master plan...*

### **Sector Plan Discussion**

The property is located in an area governed by the 2013 Glenmont Sector Plan. *(See image from Sector Plan on the following page.)*

Map 1: Sector Plan Area



2013 Glenmont Sector Plan, pg. 4

Staff concluded that the project substantially conforms to the 2013 Glenmont Sector Plan (Sector Plan) and Thrive Montgomery 2050 (General Plan). Exhibit 46, pg. 16. Specifically, Staff identified “high-level vision” of the Sector plan quoting the following:

Glenmont is envisioned as a predominantly residential neighborhood with new transit-oriented, mixed-use development concentrated in and around the Glenmont Shopping Center and Metro station. The Glenmont of the future will be a walkable, diverse, and sustainable community with services and amenities primarily for the local residents and workers.

Id. and See 2013 Glenmont Sector Plan, p. 5.

Staff also identified that the Sector Plan offers “detailed guidance for the future of the Glenmont Forest block, which aligns with the proposed Local Map Amendment.” Specifically, page 29 of the Sector Plan states:

Because of the property's location within easy walking distance of the Metro, its proximity to the Glenmont Shopping Center, its single ownership, and its size, it may be suitable for future rezoning through a Local Map Amendment to CR Zone or an equivalent zone to encourage a multifamily redevelopment of four- to six-story buildings.

The Staff Report further notes that the Sector Plan provides additional direction for the property including a 100-foot-wide transition zone of CRN-1.5, C-0.25, R-1.5, H-45 (or similar) as being an appropriate buffer between redevelopment and the adjacent single-family detached houses. *Id.* Staff points out that rather than split-zone the Property, the Project seeks to “accomplish the same compatible transition through the use of a binding element” limiting building heights to 45 feet for a distance of 100 feet from the eastern property line. *Id.* at 16. The Sector Plan also provides that “if the Property is rezoned, redevelopment should use a compact building footprint and structured parking to emulate the existing open space character.” 2013 Glenmont Sector Plan, pg. 29.

The Sector Plan lays out specific objectives that should be achieved if the Property is rezoned:

- Provide, as a priority, the CR Zone public benefits of Public Open Space to retain the open and green character of the site, and Affordable Housing to obtain more than the 12.5 percent required minimum MPDUs.
- Encourage the achievement of greater than minimum required Public Use Space through compact footprint.
- Protect and restore areas of environmental buffer and investigate options for stream restoration with redevelopment.
- Preserve as much existing tree canopy as possible.
- Connect new internal streets with Erskine and/or Wallace Avenues.
- Construct a hiker/biker path between Randolph Road and the existing Wheaton Regional Park's hard surface trail network

*Id.* pg. 30.

Staff addressed these recommendations, first noting that the Applicant proposes a binding element of 15% MPDUs. Exhibit 46, pg. 17. Regarding the “Public Use Space,” such benefits will



be determined at the time of Sketch Plan and while the Open Space Exhibit submitted shows 11 percent of Public Open Space, this plan is conceptual and will be reevaluated seeking a balance between open space/green character and urban fabric for a new housing development close to a Metro Station. *Id.* For the “protection and restore areas of environmental buffer” recommendation, Staff notes “[t]he stream buffer area will be protected and reforested within a Category I Forest Conservation Easement. A portion of the onsite stream will be restored by the Parks Department in conjunction with the stream restoration on the adjacent Wheaton Regional Park property (as approved by Forest Conservation Plan No. F2023009A).” *Id.* Regarding preservation of the existing tree canopy, Staff notes that the Applicant is requesting removal of most of the onsite trees outside the forest area. *Id.* Further, Staff notes that the FZP is “conceptual in nature and “recognizes that removal of many of the variance trees will be necessary due to building demolition impacts, but Staff will work closely with the Applicant to save trees where possible.” *Id.* Regarding the final two recommendations, connecting Erskine and/or Wallace Avenues and construction of a hiker/biker path between Randolph Road and the existing Wheaton Regional Park, Staff notes the Erskine connection to Randolph Road is planned in this ZFP and a future connection of the hiker/biker path is infeasible at this time, but the Applicant will pursue a connection in coordination with Montgomery Parks and the HOC property owner to the south. *Id.*

Applicant's expert, Matthew Leakan testified at length to how the proposed development is in substantial conformance with the overall goals of the Sector Plan and opined that the project not only conforms with the Sector Plan but also the General Plan. T. 80-108. He specifically addressed the 6 recommendations for redevelopment of the site as identified in the Sector Plan by noting the project calls for 15% MPDUs, restricting the height of the buildings near the neighborhood to the east at 45', improves connectivity by connecting Erskine, and that the development is designed to avoid the natural resource area. T. 80-83. He further testified to an 11% open space proposal and that the Applicant seeks to preserve as much existing tree canopy as possible through the compact development. T. 83-85. Regarding the recommendation to connect “Erskine and/or Wallace,” Mr.

Leakan opined connecting Wallace to be infeasible due to the topography and that Erskine “had a lot more desirability in terms of being able to extend the street grid as recommended in the sector plan.”

T. 86.

### **General Plan Discussion**

Staff notes the County's General Plan (*Thrive Montgomery 2050*) provides recommendations intended to diversify the housing stock across incomes, building types, and geography. Exhibit 46, pg. 18, *citing Thrive Montgomery 2050*, pg. 23. The General Plan also states that “[t]he construction of a wider variety of sizes and types of housing and a focus on affordability and attainability will help diversify the mix of incomes in neighborhoods across the county, improving access to services, amenities, and infrastructure for low- and moderate-income residents, who are disproportionately people of color.” *Id.*

Staff found that the project will provide an increase in the number of units within walking distance to a Metro station, provides regulated affordable housing where none currently exists and determined that the Application is strongly aligned with policies in the housing for all chapters of the General Plan, in particular the recommendation to provide more housing of all typologies. *Id. citing* pg. 136 and 121.

The specific policies from the General Plan addressed by the Applicant are as follows:

- Increase the number of income-restricted affordable housing units, especially for low-income households with particular attention to high-income areas to ensure that people who work in retail, service and other low-wage earning employment sectors have the option not to commute. (p. 132).
- Facilitate the development of a variety of housing types in every part of the county but especially in areas near transit, employment, and educational opportunities. (p. 132).

*Id.* at 18-19.

Mr. Leakan explained the “sector plan ... affirms a lot of the position statements, policy recommendations, goals and objectives that the general plan does.” T. 70. Further, he testified that both the General Plan and the Sector Plan established goals to “incentivize development of the County near its transit facilities and in its corridors.” T. 107. Mr. Leakan testified that Georgia

Avenue is planned for more transit service accessibility in the future. T. 108. In Mr. Leakan's description of the neighborhood, he noted that the Glenmont Shopping Center is identified specifically in the General Plan as a "major center for development predominately inducing higher intensities and higher heights are planned for that location." T. 62. In wrapping up his discussion on both the General Plan and the Sector Plan, Mr. Leakan opined that the project complies with the intent, purposes and standards of the "CR floating zone as well as the applicable development standards."

### **Public Interest Discussion**

Staff determined that the Project will further the public interest by yielding up to 1,793 additional units at a convenient, transit accessible location of which 15% will be MPDUs, in a location where none currently exist. Exhibit 46, pg. 19. Additionally, the redevelopment is across the street from the Glenmont Shopping Center offering many amenities to residents and is within walking distance (approximately ½ mile) of the Glenmont Metro Station. *Id.* Mr. Leakan opined that the redevelopment of an aging multi-family development with desirable new housing close to existing infrastructure and amenities, other regulatory requirements to be required such as modern stormwater management and forest conservation are all in the public interest. T. 107.

Conclusion: Aside from the explicit requirement to "substantially conform" to the Master Plan, OZAH has interpreted the "public interest" requirement as conformance to adopted County plans and policies, including the relevant land use plans. The Hearing Examiner agrees with both Staff's and Mr. Leakan's characterization of the goals and recommendations of both the Sector Plan and the General Plan for the property.

The Hearing Examiner agrees with Staff and Mr. Leakan's testimony that the proposed redevelopment is inline with the recommendations of the Sector Plan including "affordable housing to obtain more than 12.5 percent of the required minimum MPDUs," maintains a "100-foot wide buffer along the eastern property line," and seeks to connect internal streets. The Hearing Examiner

finds the increased number of dwelling units sought, the design of the redevelopment locating the taller buildings to the north and west of the property with the four-story buildings to the east (also keeping in line with the goals of the General Plan) to provide a wide choice of housing types for all people of all income levels close to amenities and public transportation. The Hearing Examiner also finds the project will take an underutilized and aging apartment complex, in a location with amenities and easy access to Metro and upgraded housing with 15% MPDUs to be in conformance with both the Sector and General Plans and to be in public interest.

The Hearing Examiner also finds Staff's review and application of the Sector Plan to the proposed redevelopment to be correct. She further finds that the Application satisfies the intent and standards of the proposed zone. The Hearing Examiner finds it significant that the Sector Plan identified the subject property as one ripe for a rezoning and recommended the specific rezoning sections as submitted by the Applicant. *(See Glenmont Sector Plan, pg. 35.)*

## **2. Compatibility**

Several sections of the Zoning Ordinance require the District Council to analyze the compatibility of the proposed FZP with adjacent uses and the surrounding area. The application must:

***Section 7.2.1.E.2.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;***

\* \* \*

***Section 5.1.2.C. (Intent of Floating Zones). 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 5.3.2. (Purpose of Commercial/Residential Zones). The purpose of the Commercial/Residential 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... provide mixed-use development that is compatible with adjacent development.***

***Section 7.2.1.E.2.d. be compatible with existing and approved adjacent development...***

Regarding compliance with Section 5.1.2.C, Staff determined that:

The proposed development will provide a compatible relationship with existing adjacent residential development to the south and east. The Project provides generous setbacks to the south and east, and proposed buildings will step down in height approaching the detached residential neighborhood to the east. Buildings will be restricted to 45 feet in height within a distance of 100 feet from the eastern Property line.

Exhibit 46, pg. 20-21.

The Applicant, in addressing Section 5.3.2 in its land use report, stated as follows:

The CRF Zone is an appropriate zoning classification for the Property. The intent of the CRF Zone is to allow mixed-use development at a range of densities and heights flexible enough to respond to various settings. It also allows flexibility in uses which can be located on a site. It seeks to provide mixed use development which is compatible with adjacent development. As described previously in this Report, the proposed Project facilities redevelopment of the Property with additional, modern residential housing on this prominent site, which is located within walking distance of the Glenmont Metro Station.

Exhibit 45, pgs. 22-24.

The Applicant further asserts the proposed development satisfies the purpose of the commercial/residential zone through the binding elements that limit the height of the structures to 45 feet for a distance of 100 feet from the eastern property boundary and the use of the property will be limited to multi-family/townhouse living and retail/service establishments (up to 5,000 square feet and restaurant use). *Id.*

When asked about the type of housing stock to be constructed, the Applicant's expert, Mr.

Leakan testified that as the floating zone plan is “conceptual,” the Applicant wanted the flexibility to construct one or both or some combination of multi-family or townhouse. T.77. He further stated that the Applicant seeks to create a development framework “setting the compatibility edges along the eastern property” line. T. 77. Mr. Leakan testified at length to the efforts taken by the Applicant to ensure compatibility of all surrounding neighborhoods. He referred to Exhibit 39 to opine that a conservative approach was used to create the maximum setbacks to the east and south of the property and how from the eastern property boundary the 45-foot maximum building height within the 100-foot setback zone and the 75-foot building height maximum being all aggregated to the far west portion of the property satisfies the compatibility requirement of 5.1.2.C. T. 100-101. Further, Mr. Leakan opined that the setbacks, building heights, maintenance of the existing forest achieves “multiple policy goals, and in this case compatibility ... going above and beyond.” T. 109.

Randall Rentfro, the Applicant's expert in civil engineering, explained the proposed connection of Erskine, a public road, as a “right in/right out” from Randolph Road through the property to Glenallan Avenue, was analyzed and found to be in conformance based on roadway classifications. T. 129-130. See Exhibit 36. Anne Randall, Applicant's expert in transportation planning, identified the intersection of Glenallan and Randolph as being signalized, but noted that the intersection of Erskine and Glenallan will not be signalized and more than likely a “stop controlled intersection” because “the volume of traffic anticipated at this time is light. It's not going to be heavily used” and that, based on the distribution tables, the majority of the traffic is headed toward the south. T. 147-148. Anne Randall further testified that currently Erskine is a narrow road with no sidewalks. T. 155.

Testimony from those arguing in opposition, that the development is not compatible with the surrounding residential neighborhoods, focused on the impact on the surrounding residential neighborhoods. Mr. Leopoldo Villegas testified to his belief that once Erskine is open, parents trying to get to school will cut through the development from Georgia Avenue and proceed through Erskine to Glenallan. T. 190. Further, he testified that “rush hour” is not 8:00 am, but when schools start and

that extension of Erskine will completely change the neighborhood characteristics. T. 191-193.

Ms. Cecilia Castro De Anderson, who has lived on Erskine Avenue since 2005, echoed Mr. Villegas testimony that the extension of Erskine is not compatible with the neighborhood surroundings and further testified to that the current neighborhood adjacent to the property to the east is "surrounded by nature, in a "unique setting" and the character needs to be preserved. T. 196-97, 205. Specifically, she stated that a 5-fold increase in population density would seriously impact the quality of life for residents to the east. T. 197. Ms. Castro De Anderson testified to her observations that traffic on Glenallan during rush hour backs up now and from Erskine, traffic would be forced to turn right or left onto Glenallan. T. 197. She described Erskine as a "three house long street that dead ends into another secondary street." T. 200. An additional concern raised by Ms. Castro De Anderson was the level of noise that would come from Erskine once the road is opened to Randolph Road. T. 199. Ms. Castro De Anderson specifically testified to her personal observation of opening the windows in the rear of her house and hearing the traffic from Randolph Road and then opening the windows in the front of the house and hearing birds and quiet, stating that once the Erskine connection is created, it will destroy the peace of the neighborhood. T. 199, 205.

Ms. Lindsay Roe, another neighbor in opposition, testified to her concern over the dozens of trees to be cut down and that the new trees cannot replace the ecological function of the mature trees. T. 208-209. Further, she stated that the opening of Erskine would be more of a "headache than a benefit." T. 209. Specifically, she described Erskine as a "driveway... a one-lane road that leads to four driveways." T. 209. Ms. Roe observed that the existing apartment complex has access from both Georgia and Randolph. T. 210. Ms. Roe also noted the Applicant's expert testified that the Erskine extension road would not be used much anyway, so what is the "utility in taking the nature out ...in order that people can be a few seconds quicker to get to the nature center." T. 210. She further testified she regularly observes that congestion on Glenallan exists now in the morning for local residents trying to get to Randolph from Glenallan and that traffic gets backed up past Erskine in the morning. T. 210.

Ms. Vicki Vergagni, a neighbor in opposition and an elected representative of the Glen Way Gardens Condominium directly across from the development, testified to the fact that the intersection at Randolph and Glenallan has two school populations that come across the roads, an elementary school and Kennedy High School. T. 219, 221. Ms. Vergagni expressed shock at the “enormity of the request” specifically the density, size and form of the structures. T. 222. It is her belief that the “gigantic redevelopment will have a dangerous impact on the community and the quality of life of its residents.” T. 222. Ms. Vergagni questioned how nearly 5 times the number of pedestrians would travel from the new complex to the Metro given the difficulty of crossing Randolph Road and Georgia Avenue. T. 228. It is Ms. Vergagni's belief that the LMA should be denied for the Applicant's failure to address transportation compatibility and the public interest. T. 230.

As part of the Applicant's rebuttal testimony to the question of whether Erskine should be extended, Mr. Leakan opined on the “difficult decision” surrounding the customary use of an existing dead-end street, in that it feels permanent, but the public policy behind inter-parcel connectivity exists and that it is an AICP and an APA policy that connectivity is a relief to traffic congestion. T. 262. He further opined the roads that were “stubbed” to the property were always intended to be a connection. He added that if, at the time of construction, the County intended otherwise it, would have been made a cul-de-sac. T. 261.

Conclusion: As identified at the start of this section, the Zoning Ordinance requires review of several different sections to determine a proposed development's “compatibility” with the surrounding established neighborhoods and existing development. In reviewing the boundaries of the Sector Plan, the Hearing Examiner notes that the R-90 single family neighborhood to the immediate east of the property is not located within the boundaries of the Glenmont Sector Plan. (*See Sector Plan Image on page 21 above.*) In addition, this area to the east of the property contains the only single-family detached residential development in the entire “surrounding neighborhood” as described by Staff. (*See Surrounding Neighborhood Image on pages 10 and 11 above.*) The Hearing



Examiner agrees with Staff and Mr. Leakan that the placement of the structures, design of the structures, setbacks, graduated heights of the proposed buildings from the east to the west, open space areas, and designated forest conservation areas are compatible with the surrounding neighborhoods, to the extent that visually, the intensity of the use will front the major roads. With that said, the Hearing Examiner finds that the proposed connection of Erskine through the adjacent single-family neighborhood to not be compatible with that portion of the surrounding neighborhood. Upon consideration of the exhibits presented, testimony of the Applicant's expert and the testimony in opposition, the Hearing Examiner finds persuasive the observations of the neighbors, characterizing the "unique" setting created by the mature trees and small "driveway" like street of Erskine.



Staff Report – Exhibit 46, Figure 3 -Aerial View of Existing Conditions  
Close-up of Erskine Connection to the Property

The Hearing Examiner also finds the R-90 single-family detached homes to the immediate east of the property and the immediate west of Glenallan to be unique in their lot shape and house configuration on the lots as compared to those homes east of Glenallan and the single-family homes beyond the Fire Station west of Georgia Avenue. The Hearing Examiner agrees with the opposition that to make Erskine connect directly to Randolph Road for vehicle traffic and create a through connection from Georgia Avenue through a development expanded from the existing 482 units to up to 2,275 units to Glenallan to be in opposite to this detached single-family home existing adjacent development.

While the Hearing Examiner does not disagree with Mr. Leakan's testimony regarding the public policy of creating interconnectivity of public streets or with the recommendations of the Glenmont Sector Plan and the General Plan to connect said streets, she notes that the neighborhood to the east is not in the Glenmont Sector Plan and the LMA process requires a public hearing for thorough review of the specifics of project in order to determine compatibility with adjacent properties. While it is important to adhere to public policy and plan recommendations, it was the testimony of Applicant's transportation expert that the Erskine connection would not be heavily used and if so, then is the connection being made simply because of a general policy? Shouldn't the question we are asking be what impact does this general policy have on the immediately adjacent neighborhood to the east of the property?

The Hearing Examiner further finds that a vehicle roadway connection from a 2,275-unit complex through this single-family development to the east to not be compatible with properties immediately adjacent that front Erskine to the west of Glenallan, nor is it compatible with the homes all along Glenallan south of Randolph Road. Creating Erskine as a vehicle through street from Randolph will negatively alter the quality of life for those adjacent residents.

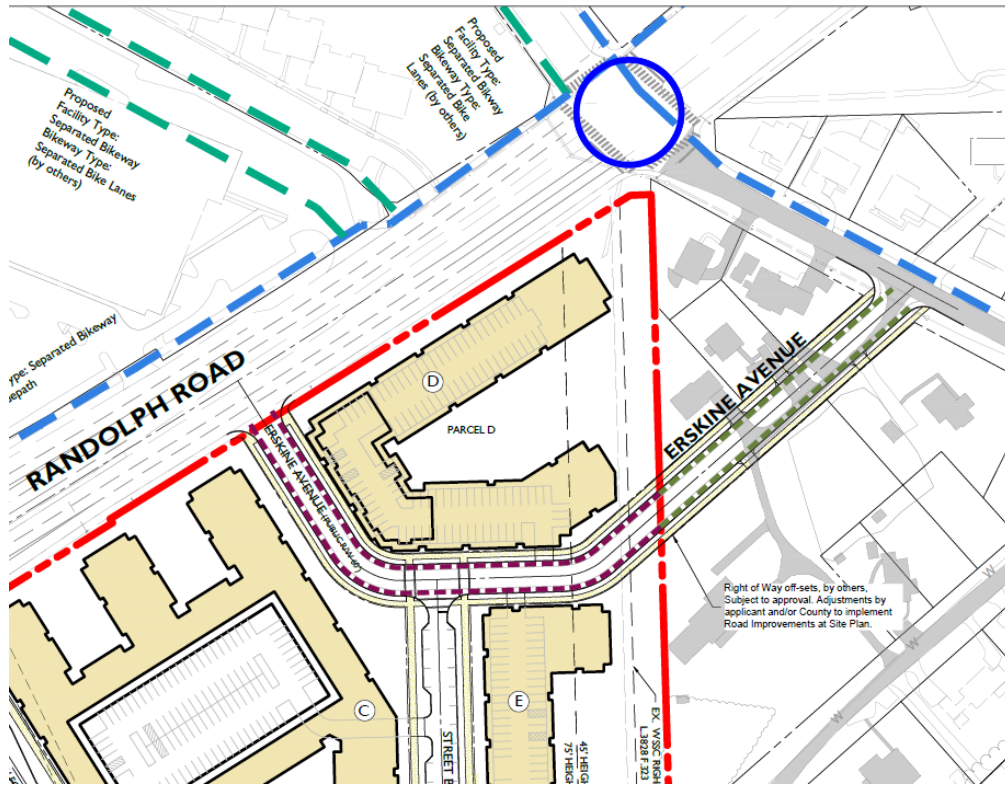


Exhibit 37 – Revised Bicycle Circulation Plan – Close up of the Erskine Extension through the east.



Exhibit 40 – LATR – Figure 1-2



Without the creation of a vehicle street connection to Erskine, the Hearing Examiner finds that the Applicant will have the ability to retain more mature trees along the eastern boundary of the property further protecting the natural environment and the tree canopy per the General Sector recommendations and still establish connectivity via a pedestrian and/or bike path. As a point of clarity, the Hearing Examiner only finds that the Erskine vehicle roadway connection to be incompatible with the neighborhood to the east. The project itself is compatible with the surrounding properties to the extent that it plans for generous setbacks and proposes a binding element limiting building heights to 45 feet for a distance of 100 feet from the eastern property line. The project also places the higher buildings and massing toward the west. In addition, the buildings will be setback at least 30 feet from the existing townhouse development to the south and satisfy height restrictions along the southern property line. The Applicant's proposed design anticipates above-using "diverse range of materials and design techniques" to reduce the bulk of the structures and the above-ground structured parking to be visually concealed either by the residential buildings or other architectural treatments.<sup>5</sup> While final design of the open space occurs at Site Plan review, the proposal to place the open space to southeast of the property adjacent to the forest conservation area will provide a natural transition from the property the adjacent treed areas. Those individuals opposing the project argue the jump from 482 units to 2,275 units creates an increase in density incompatible with the adjacent/surrounding neighborhood. The Hearing Examiner understands this concern, but she finds the proposed design, the location of the property at the corner of Georgia and Randolph Roads within ½ mile of the Metro, the other intense uses of properties in the surrounding neighborhood, aside from the one immediately to the east, to be compatible upon the removal of Erskine as a through vehicle street. With the elimination of Erskine as a vehicle through street, this standard has been met.

---

<sup>5</sup> Exhibit 45, pg. 7

### 3. Adequate Public Facilities/Public Interest

Several sections of the Zoning Ordinance require an applicant for a Floating Zone to demonstrate that public facilities will be adequate to serve the property. The Council must find that the application meets the following standards:

*Section 7.2.1.E.2.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...*

\* \* \*

*Section 7.2.1.E.2.b: further the public interest...*

\* \* \*

*Section 7.2.1.E.2.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;*

\* \* \*

*Section 5.1.2.A.2: (Intent of the Floating Zones). "...implement comprehensive planning objectives by...ensuring that the proposed uses are in balance with and supported by the existing and planned infrastructure..."*

#### **Traffic & Stormwater Discussion**

Because the project is estimated to generate more than "50 or more net new peak hour person trips," the Applicant was required to submit a Transportation Impact Study to determine multimodal adequacy. Exhibit 45, pg. 23. Staff notes the site is located within an "orange policy area" that it is immediately adjacent to a "red policy area" and that the applicant was asked to analyze seven intersections within the Glenmont Policy area for informational purposes only. *Id.* Upon review of the documents submitted, Staff confirmed that "none of the studied intersections are anticipated to exceed the congestion standard." *Id.* Staff further affirmed that "all study intersections will operate within the policy area's congestion standards" and that "additional traffic analysis will be completed at the time of Preliminary Plan." *Id.* at 24.

Land Use	Morning Peak Hour	Evening Peak Hour
Existing (credit)		
Multifamily Housing (Low-Rise) 482 units	265	351
Proposed		
Multifamily Housing (Mid-Rise) 2,275 units	1,523	1,367
Net New Person Trips	+1,258	+1,016

Staff Report – Exhibit 46, Table 3, pg. 23

The Applicant’s transportation planning expert, Ms. Anne Randall, testified at length to the LATR<sup>6</sup>, roadway design and the traffic in and surrounding the project. Ms. Randall explained that in preparing the LATR, she considered whether the project is going to cause more than 50 “person” trips, not just vehicle, but also pedestrian and bicycle, which required an LATR study even though for an LMA only vehicle trips are required to be reviewed. T. 151-152. As part of the review and preparation of a scoping agreement, it is determined the maximum amount of money that the developer will be required to pay for deficiencies in the system based on a “fee per dwelling unit.” T. 153. The study determined that the developer would be required to spend a maximum of \$9,988,160<sup>7</sup> on pedestrian, bicycle and vehicular improvements looking at a 1,500-foot radius from the site. T. 153, 155. Ms. Randall further explained that this money is spent off-site, not on-site, and can be used to improve existing deficiencies including, sidewalks, crosswalks, pedestrian signals, ADA requirements, street lighting, etc. and can resolve the pedestrian issues raised by the community. T. 154.

In reviewing motor vehicle adequacy, Ms. Randall reviewed a total of 13 intersections and noted that these 13 intersections are in a “red policy area,” which no longer requires a vehicle analysis, while an “orange policy area” requires vehicle, pedestrian, bike, transit, vision zero.” T.

<sup>6</sup> See Exhibit 40 – LATR Study

<sup>7</sup> The amount of this “cap” is determined at the preliminary plan stage. T. 158.

160. Ms. Randall advised that her team included vehicle analysis even though it was not required. T. 160.

160. In explaining the difference between orange and red policy areas, Ms. Randall stated “orange areas are where the County wants to see development and red areas around Metro stations are where they want to see more intense transit-oriented kind of growth to support that transit service.” T. 162.

Ms. Randall opined that in a “red policy area you want the congestion which is why in the red policy areas they no longer ask for the vehicular test.” T. 163. She further opined that “all of the study intersections, both the red policy area as well as the orange policy area intersections ...were well below the threshold, the max allowed in either the red policy area or the orange policy area.” T. 164-165.

Specifically, she stated that the delay standard for these intersections in the orange is 80 seconds overall and delay in the red is 120 seconds. T. 164. The study revealed that the max at the intersection of Georgia Avenue and Randolph Road was 92.3 seconds, below the 120-max allowed for a red policy area, and in the orange policy area intersections at Georgia and Arcola was at 30.8 seconds, well below the 80 maximum. T. 165-166. Ms. Randall opined that none of the studied intersections either in the red or orange area would exceed the LATR standards. T. 166

Ms. Randall further testified that the Montgomery County Department of Transportation asked that the right in/right out on Randolph Road coming out of the project be studied “with and without” it. T. 167. She further explained that these final traffic determinations will be made at the time of preliminary plan, another review will be completed, all of the turning movement counts will be redone, and another scoping agreement prepared. T. 167. She stated “we'll go through this whole process again and it will be determined at that time based on the analyses that we do” during preliminary plan. T. 167. In addition, Ms. Randall opined that for this LMA application “everything passed and they did not request or require any road improvements for this project in relation to the vehicle... or any of the other tests that we provided.” T. 167.

During the rebuttal portion of the testimony, Mr. Leakan explained that this application process is the catalyst to correcting a “perception that there's a substandard or a nonstandard or a poor condition today as it relates to either stormwater or traffic” and that while the LMA process does not

provide a firm commitment to do these things today, zoning comes first. T. 263. He further opined that “the APFO process is very thorough in Montgomery County. It is very rigorous, and what I would suggest is the solution to a lot of these problems really lie in the adequate public facilities test and a faithful sort of notion that those catalysts ... are really the solution to create ... to solve those problems.” T. 263.

Mr. Rentfro, Applicant's civil engineering expert, testified that no modern stormwater management controls, other than a simple conveyance system, exist on the property. T. 60. Mr. Rentfro participated in the preparation of the site layout including the stormwater management strategy narrative and is in collaboration with DPS on the stormwater management concept plan, which will be finalized during the next steps and approved prior to preliminary plan approval. T. 37, 132. Mr. Rentfro further explained that stormwater approvals require a 2-step process, the first being the site plan and second a final permitting set that must be reviewed and approved by DPS and satisfy current code requirements. T. 133. He further explained that the proposed layout of the project will satisfy 2010 MDE stormwater regulations and fully “accommodate stormwater management facilities that meet or exceed applicable county and state law.” T. 140.

Mr. Takamoto, a neighbor in opposition to the Application, testified that he understands the stormwater management is a “concept plan” but, based on his previous history with the property, he is very concerned about stormwater runoff coming from Glenmont Forest Apartments and in his observations, the statements made during hearing testimony that “no runoff coming from Glenmont Forest Apartments” is untrue. T. 216. Mr. Takamoto engaged the services of an engineering company and asserted the report<sup>8</sup> he personally obtained conflicts with that statement that no runoff comes from the Glenmont Forest Apartment.” T. 216. He further testified that a “riprap drain” that runs along the edge of the property when properly maintained keeps water off his property, but

---

<sup>8</sup> See Exhibit 63 – Takamoto opposition and engineering report. The Hearing Examiner acknowledged during the hearing notes in this Report that the engineer who prepared the report was not available for cross examination.



expressed concern about runoff and sediment during construction that would negatively impact his property. T. 217.

During rebuttal, Mr. Rentfro explained briefly how modern stormwater management works. T. 271. He explained that a storage capacity computation is required and, when computations are done based on existing conditions, roughly 80,000 cubic feet of water would need to be treated that is not currently being treated and that the site contains approximately 40% impervious surfaces. T. 272. Further, he explained the proposed impervious surface for the development is approximately 54%, and while an increase, the law requires providing over 114,000 cubic feet of storage and adding ~~63~~ facilities on the property where today there are none. T. 272. Essentially, Mr. Rentfro opined that while there is a 14% impervious surface none of the stormwater is being currently treated and with the new stormwater management facilities installed almost double the amount of water will be managed and treated.

### **Public Interest and Satisfaction of Intent and Standards of the Proposed Zone Discussion**

Staff advised that the project furthers the public interest by providing up to 1,793 additional units at a transit accessible location including 15 percent MPDUs where currently none exist. Exhibit 46, pg. 19. The location of the development across from the Glenmont Shopping Center and within a ½ mile of the Glenmont Metro Station further supports the proposition that the redevelopment is in the public interest. *Id.* Staff also determined that this location is convenient to transit, has the infrastructure in place to support the development and that the structured parking allows for enhancement and restoration of the property's natural features. *Id.* at pgs. 19-20. As discussed in Part V. A.1. above, the Sector Plan recommends a floating zone for the property and focuses on its location near transit. *Id.*

Conclusion: Based upon the testimony of the Applicant's experts, the determinations made in the Staff report, and as stated in Part V. A.1. above the Hearing Examiner finds again the project to

be in the public interest. While the opposition questioned the adequacy of the stormwater management plan and area transportation, based on the LATR submitted, the testimony of Mr. Rentfro and Ms. Randall, and the Staff report, the Hearing Examiner finds that public facilities will be adequate to serve the proposed use and the finer details, regarding stormwater and transportation, will be determined at a later stage of the development process. In addition, the Hearing Examiner finds the overall proposed development to be in balance with the existing and planned infrastructure. The Hearing Examiner still finds the connection a vehicle through street of Erskine from Randolph to Glenallen to be incompatible with the surrounding neighborhood, given the fact that final transportation plan is not adopted until the preliminary plan stage, the public facilities without the Erskine connection are still adequate.

#### **B. The Intent and Standards of the Zone (Section 59.7.2.1.E.2.c)**

As already stated, Section 59.7.2.1.E.2.c of the Zoning Ordinance requires the District Council to find that the FZP “satisfy the intent and standards of the proposed zone.” The Zoning Ordinance includes an “intent” clause for all Floating Zones and a “purpose” clause for the particular zone requested. Several of these have already been analyzed in Part V.A of this Report. The balance of the intent findings for Floating Zones and the purposes of the CRF Zone are discussed below.

#### **1. Intent of Floating Zones (Section 59.5.1.2)**

The intent of Floating Zones is in Section 59.5.1.2 of the Zoning Ordinance. The Hearing Examiner has already discussed whether the application has met the intent Sections 59.5.1.2.A.1 and 2. This section discusses whether the FZP meets the remaining intents of the CRF Zone.

*Section 59.5.1.2.A.3 ... The intent of the Floating zones is to:*

*A. Implement comprehensive planning objectives by...*

*3. allowing design flexibility to integrate development into circulation networks, land use patterns, and natural features within and connected to the property...*

In analyzing Section 59.5.1.2.A., Staff determined the proposed redevelopment “capitalizes

on the Project's convenient and transit accessible location to significantly increase the amount of housing available in an area with the infrastructure to support it...[the] street grid will better integrate the new development into the existing circulation infrastructure [and the] Compact development with structured parking allows for enhancement and restoration of the Property's natural features." *Id.* at 19-20. The Applicant's civil engineering expert, Mr. Rentfro and its land use expert, Mr. Leakan, both contributed to the Applicant's land use report which states that the "project responds to its surroundings and has been designed to respond to its transit-oriented nature, while simultaneously promoting the open space character envisioned by the Sector Plan and providing a compatible transition to the adjacent single family residential land." T. 57, 120 and Exhibit 45, pg. 21.

Conclusion: The Hearing Examiner agrees with Staff and the Applicant that the project has been designed to respond to the transit-oriented nature of much of the surrounding neighborhood. It is important to note the fact that the bulk of the property will remain a residential multi-family use. In addition, the project design modernizes the property, replacing the aging garden style apartment complex with structures laid out for better flow and appearance. The gradual elevation change of the proposed structures lessens the visual impact of the properties to the east property.

***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 open space standards and environmental protection and mitigation; and***

Both Staff and the Applicant point to the fact that the Sector Plan acknowledges that a floating Commercial/Residential Zone would be appropriate given the Property's proximity to transit and commercial services. Exhibit 46, pg. 20 and Exhibit 45, pg. 21-22. Both Staff and the Applicant

also agree that the Floating Zone will allow the replacement of the aging garden apartments, providing a significant amount of additional housing with modern amenities, helping to alleviate the acute housing need. *Id.* Staff and the Applicant assert the project satisfies basic sustainability principals through “infill redevelopment,” well-served by existing infrastructure, public transportation, preservation of existing forest, afforestation and the establishment of a stormwater management where none currently exists.

Conclusion: The Hearing Examiner agrees with Staff and the Applicant that the project meets the intent of the floating zone. This project will provide additional transit-accessible housing in conformance with the Sector Plan. The development satisfies the sustainability requirements through redevelopment of an infill lot, taking advantage of existing infrastructure, provides an opportunity for preservation of forested area and the addition of open green space, and the creation of modern stormwater management.

## **2. Purpose of the Commercial Residential Floating Zones (Section 59.5.3.2)**

In addition to meeting the intent of Floating Zones, the FZP must meet the purpose of the zone requested. The purposes of the CRF Zone are in Section 59.5.3.2. The Hearing Examiner has already discussed Section 59.5.3.2 above

Conclusion: The Hearing Examiner already found in Part V.A.2 of this Report (relating to compatibility of the use with surrounding development) that with the removal of Erskine as a through vehicle street from Randolph to Glenallen, the FZP furthers the purpose of §5.3.2. To discuss again the remaining purposes are redundant considering the findings already made. The FZP has been designed in response to the property's transit-oriented setting, maintains a multi-family/residential use and will be compatible with the community and surrounding properties as noted above. This standard has been met with the removal of Erskine as a vehicle through street from Randolph to Glenallen.

### **C. Applicability of a Floating Zone (§59.5.1.3)**

Section 59.5.1.3. of the Zoning Ordinance sets up a series of threshold tests to determine

whether a Floating Zone may be applied to properties current in an Agricultural or Rural Residential Zone. The Hearing Examiner finds that the property is in neither an Agricultural or Rural Residential Zone, and additionally, the Hearing Examiner finds that the Sector Plan recommends rezoning the property to a CR Zone in the future. Considering this fact, no prerequisites are required for this application.

**D. Development Standards and Uses Permitted in the CRF Zone (Div. 59.5.3)**

**1. Uses and Building Types Permitted (§§59.5.3.3 and 59.3.3.4)**

Section 59.5.3.3 of the Zoning Ordinance limits the uses permitted in the CRF Zone to “only” those uses permitted in the CR Zone. Townhouse and multi-unit living are both permitted in a CR Zone<sup>9</sup>. In addition, certain commercial uses are also permitted in a CR Zone. Those specific commercial uses are to be determined later.

**2. Development Standards of the CRF Zone**

**Section 5.3.5 Development Standards.**

Staff correctly notes that the design of the development will be finalized and reviewed by the Planning Board at the time of subsequent Sketch, Preliminary, and Site Plan review. Exhibit 46, pg. 21. Staff determined that the FZP meets the development standards of the CRF (Zoning Ordinance, §59.5.3.5), as demonstrated in the table from the Staff Report (Exhibit 46, pgs. 21-22, shown on the next page).

---

<sup>9</sup> See Use Table 3.1.6.

	<b>Required/Permitted</b>	<b>Proposed</b>
<b>Tract Area</b>	N/A	34.87 ac (1,518,942 sf)
Previous ROW Dedications	N/A	2.23 ac (97,220 sf)
Proposed ROW Dedications	N/A	0.74 ac (32,261 sf)
<b>Site Area</b>	N/A	31.90 ac (1,389,461 sf)
<b>Density (max)</b>		
Total	1.75 FAR (2,658,149 sf)	1.5 FAR (2,283,413 sf)
Commercial	0.25 FAR (379,736 sf)	5,000 sf
Residential	1.5 FAR (2,278,413 sf)	1.5 FAR (2,278,413 sf)
<b>Setbacks from Property Boundary (min)</b>		
<i>From Public Streets</i>	Established by Floating Zone Plan	Apartment Building- 0 ft Townhouse- 5ft
<i>From Abutting Lots</i>		
Rear/East (R-90) Rear/South (RT-15)	37.5 ft 1 30 ft 2	45 ft 30 ft
<b>Open Space (min)</b>	10% of site area (3.2 acres/138,946 sf)	±11% of site area (3.5 acres/152,840 sf)
<b>Building Height (max.)</b>	75 feet, and height compatibility requirements	75 feet, and height compatibility requirements of 59-4.1.8.B.3, 4, 5
<b>Public Benefits</b>	100 points required	Determined at Sketch/Site Plan
<p>1 Under Section 59-4.1.8.A, the rear setback requirement is 1.5 x 25 (rear setback for detached house in R-90).</p> <p>2 Under Section 59-4.1.8.A, the rear setback requirement is 1.5 x 20 (RT-15 Zone setback). To be conservative, the Applicant is considering both east and south setbacks as “rear.”</p> <p>3 Per binding element, all buildings within 100 feet of the eastern lot line will be limited to 45 feet.</p> <p>4 Per Section 4.5.2.C.7, the height limit of the zone and master plan do not apply to the extent required to provide more than 12.5% MPDUs.</p> <p>5 Height of individual buildings will be determined during Sketch/Site Plan review.</p>		

**Development Standards for the  
CRF 1.75, C 0.25, R 1.5, H-75 Zone  
Staff Report, Exhibit 45, pg. 21**

### 3. Requirements of Article 59.6

Article 59.6 of the Zoning Ordinance contains general development standards for most developments. These standards regulate the number and design of parking spaces, drive aisles, landscaping, lighting, and public and private open space. As properly identified by Staff, these final design determinations will be made during the sketch, preliminary site plan stages. Staff identified the number of proposed units against the parking requirements.

	<b>Min/Max Spaces</b>	<b>Proposed Spaces</b>
Studio (93)	47/93	<b>2,275</b>
1- bedroom (1191)	596/1,489	
2-bedroom (804)	402/1,206	
3-bedroom (187)	94/374	
<b>2,275 units</b>	<b>1,138/3,162</b>	

Table 2 - Vehicle Parking – Staff Report pg. 23.

Staff footnotes the table above stating that parking counts and types will be determined at the time of Site Plan and parking adjustments for NADMS and unbundling under section 540-6.2.3.1.

*Id.* The Hearing Examiner agrees with Staff and finds that project meets the development standards for the CRF-1.75, C-0.25, R-1.5, H-75 Zone.

### VI. RECOMMENDATION

For the foregoing reasons, the Hearing Examiner concludes that the proposed reclassification and Floating Zone Plan will meet the standards set forth in the Zoning Ordinance with one adjustment, the removal of the vehicle through street of Erskine connecting Randolph to Glenallan, and that it will be consistent with a coordinated and systematic development of the Regional District, under State law. Therefore, I recommend that Local Map Amendment Application No. H- 149, requesting reclassification from the existing R-30 Zone to CRF-1.75 C-0.25, R-1.5, H-75’ (Commercial Residential Floating) located at 2300 Glenmont Circle, Silver Spring, Maryland as part of Parcel A, Plat No. 6337 and Parcel B, Plat No. 8065 in the “Americana Glenmont” subdivision and the “Americana Glenmont Apartments” subdivision (Tax Account No. 13-00975447, 13-00975436), be **approved** in the amount requested and subject to

the specifications and requirements of the Floating Zone Plan (Exhibit 30) to be amended to remove Erskine as a vehicle through street from Randolph to Glenallan and provided that the Applicant files a final executed Declaration of Covenants reflecting the binding elements in the land records and submits to the Hearing Examiner for certification a true copy of the Floating Zone Plan with the Erskine change 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.

Issued: August 19, 2024.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'KB', with a long horizontal flourish extending to the right.

---

Kathleen E. Byrne  
Hearing Examiner