

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR
MONTGOMERY COUNTY, MARYLAND

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6660

NOTICE TO APPLICANTS PROPOSING BINDING ELEMENTS IN A FLOATING ZONE PLAN

Under the provisions of Zoning Ordinance §59.7.2.1.B.2.g.iv., an applicant who proposes a binding element must submit an unexecuted covenant suitable for filing in the land records reflecting any restriction on the development standards, development program, or use that will be applicable to the property if the District Council approves the application.

Under the provisions of Zoning Ordinance §59.7.2.1.F.3.a,

- a. Before the close of the administrative record the applicant must submit to the Hearing Examiner an executed covenant that reflects any restriction on the development standards, development program, or use in the approved floating zone plan.
- b. The executed covenant must also state that the restricted development standards, development program, or use remain in full effect until the property is rezoned or the floating zone plan is amended and an amended covenant is executed and recorded.
- c. The applicant must file the executed covenant in the land records of Montgomery County within 10 days after approval of the application by the District Council and submit certification of such filing to the Planning Board with the site plan application. The Planning Board must not accept a site plan application without this certification.

In order that the covenants contain enough information to meet the objectives of the Zoning Ordinance, the following minimum provisions must be included:

1. executed by all persons having a property interest, including both contract purchasers and property owners;
2. bind all successors in interest and run with the land, unless the property is rezoned to another classification or the development plan modified by the District Council;
3. contain a complete and accurate description of the subject property;
4. incorporate by reference any applicable floating zone plan, by exhibit number, and specify with particularity all binding elements of the plan, or in the absence of a plan, all binding elements pertaining to the application;
5. contain a provision that enures to the benefit of Montgomery County and provides that the covenants may be enforced by the County or other appropriate government agencies; and
6. contain a provision that amendments to the covenants may only be made by the declarant or successors in interest to conform with modifications approved by the District Council or other appropriate government agencies.

Model Covenants are attached hereto.

Exhibit 14
H-157

**MODEL COVENANTS FOR USE IN FLOATING ZONE LOCAL MAP AMENDMENT
CASES UNDER SECTION 59.7.2.1. OF THE ZONING ORDINANCE²**

DECLARATION OF COVENANTS

This Declaration of Covenants, made this ___ day of _____, by _____
and _____, record owners ("Owners") of the property located at _____
_____ Maryland, _____, and described as Lot _____, Block _____
address
of Section _____ ("Property").

WITNESSETH

WHEREAS, on _____, 20___, the Owners and/or those in privity with them
("Applicants"), filed Zoning Application G- _____, requesting the reclassification of the
Property from the _____ Zone to the _____ Zone, in accordance with Section 59-7.2.1. of the
2014 Montgomery County Zoning Ordinance; and

WHEREAS, the Applicants submitted a Floating Zone Plan ("FZP") (Ex. _____) and
proposed covenants (Ex. _____) as part of the rezoning application pursuant to Zoning
Ordinance §59-7.2.1.B.2.e.iv., for the purpose of limiting development of the Property to

Generally describe restrictions

as depicted in the FZP; and

² Revised February 7, 2019.

WHEREAS, Section 59-7.2.1. of the Zoning Ordinance requires that Zoning Application H-_____ and the FZP (Ex. _____) be submitted to the Montgomery County Council, sitting as the District Council ("Council"), for approval; and

WHEREAS, upon approval of the rezoning and the FZP by the Council, Section 59-7.2.1.F.3. of the Zoning Ordinance requires the submission and filing in the Land Records of Montgomery County, Maryland, of an executed covenant reflecting in specific language any restricted development standards, development program, or limitation on uses contained in the approved FZP,

NOW, THEREFORE, in consideration of the foregoing and in compliance with the Zoning Ordinance, the Owners on behalf of themselves, and their heirs, personal representatives, successors or assigns, hereby declare, covenant and agree, that so long as the Property remains in the _____ Zone, the Property (and all its parts or subparts) shall be transferred, sold conveyed and occupied subject to the conditions, covenants and restrictions set forth herein:

1. So long as the Property is zoned _____, no development, construction or use will be started, erected or maintained on the Property that does not conform to the binding elements of the FZP (Ex. _____), amended as may be authorized by law, ordinance or regulation. Further, the FZP contains the following binding restrictions and limitations by which the Owners shall be bound. All other elements will be governed by the provisions of the Montgomery County Code:

2. These Covenants will be recorded among the Land Records of Montgomery County, Maryland, immediately following the grant of the _____ Zone for the Property. Further, these Covenants shall run with the land; shall be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns; shall inure to the benefit of each owner thereof and to Montgomery County, Maryland, so long as the Property is zoned _____; and shall remain in effect until such time as the Property is rezoned or the restrictions on development are removed or are amended by action of the Council or other governmental body having jurisdiction, or are declared invalid by any court of competent jurisdiction, at which time the covenants and restrictions shall terminate and have no further force and effect. These Covenants shall not take effect until the Property is rezoned to the _____ Zone, and the Council approves the FZP (Ex. No. _____).

3. The binding elements contained in this Declaration of Covenants and in the FZP shall be enforceable by the Council pursuant to Section 59-7.2.1.J. of the Zoning Ordinance.

4. This Declaration of Covenants may be amended by the Owners or their successors or assigns to conform to any modification made by the Council in the binding elements contained in the FZP, or any amendment thereof.

IN WITNESS WHEREOF, the Owners have set their hands and seals on the day and year written below.

WITNESS:

OWNERS:

_____ (SEAL)

WITNESS:

_____ (SEAL)

STATE OF MARYLAND,
COUNTY OF MONTGOMERY, to wit:

I hereby certify that on the _____ day of _____, 20____, before the subscriber, a Notary Public in and for the aforesaid County and State, personally appeared _____, personally well known to me (or satisfactorily proved) to be the person whose name is subscribed to the within instrument and did acknowledge the foregoing Declaration to be his/her own free act.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal.

NOTARY PUBLIC

My Commission Expires: _____

ATTORNEY’S CERTIFICATION

I HEREBY CERTIFY that I am an attorney duly admitted to practice before the Court of Appeals of Maryland and that the foregoing instrument was prepared by me or under my supervision.
