

BEFORE THE HEARING EXAMINER FOR MONTGOMERY COUNTY, MARYLAND

Stella B. Werner Council Office Building

100 Maryland Avenue

Rockville, Maryland 20850

Exhibit 57

OZAH Case No: H-159

IN THE MATTER OF:

Local Map Amendment Case No. H-159 Notley Assemblage, LLC

**PRE-HEARING SUBMISSION FILED ON BEHALF OF THE GREATER COLESVILLE CIVIC
ASSOCIATION AND KYLE SMIDDIE**

The Greater Colesville Citizens Association, Daniel L. Wilhelm, President, and Kyle Smiddie, a confronting property owner who lives at 334 Flannery Lane, Silver Spring, MD 20904 (“Clients”), by and through undersigned counsel, submit this Pre-Hearing Submission in support of their Opposition to the above-reference Local Map Amendment application (“Rezoning”).

I. Statement of Grounds In Opposition to the Application.

This statement offers a summary of the grounds for my Clients’ opposition to the Rezoning set forth more fully in three letters previously submitted to the Planning Department dated September 17, October 7 and October 13, 2025, filed in this proceeding concurrently with this submission.

A. As a threshold matter the property does not qualify for rezoning because it does not have the minimum two prerequisites necessary under the Transit and Infrastructure category to be eligible for consideration for Rezoning.

All floating zone rezoning applications that are not recommended in a master plan and that also request “an increase in density above that allowed by the base zone” “must satisfy a minimum of two prerequisites for each of the categories under Section 5.1.3.D” (emphasis added). A prerequisite is “something that is necessary *before* something else can take place or be done.” Black’s Law Dictionary, 12th ed. (emphasis added).

The Updated Land Use Report filed in support of the Rezoning inaccurately claims that it meets three prerequisites in this category when in fact it meets only one (*i.e.*, the property is not in an area subject to a moratorium based on lack of school capacity). The other two claimed Transit and Infrastructure prerequisites - vehicular access to a non-residential road and *existing* water/sewer infrastructure adequate to serve the proposed development - are not met.

1. The site does not have vehicular access to a non-residential road.

The “site” must have “frontage on *and vehicular*, bicycle, and pedestrian *access to at least 2 roads, at least one of which is nonresidential.*” Zoning Code § 59-1.3.D. The Zoning Code defines “site” as “an area of land including all existing *and proposed lots and parcels in one application* . . .” Zoning Code § 4.1.7.A.2 (emphasis added).

While the Subject Property *as currently used* has vehicular access to a non-residential road (New Hampshire Avenue), the Rezoning application itself does not, because the proposed lots within

the site do not have vehicular access to New Hampshire Avenue. An August 19, 2025 Comment Letter responding to MNCPPC comments offered in connection with the LATR confirms that there will be no vehicular site access to New Hampshire Avenue.

MNCPPC Comment No. 19: “Access and Circulation (p.10): Please modify that emergency access will no longer be out of New Hampshire Avenue, as it was initially proposed.

Response: Comment Acknowledged. Emergency access from New Hampshire Avenue has been removed and the updated site plan is included in the revised TIS.

(Emphasis in original.) See Figure 9 from October 13, 2025 Letter.¹

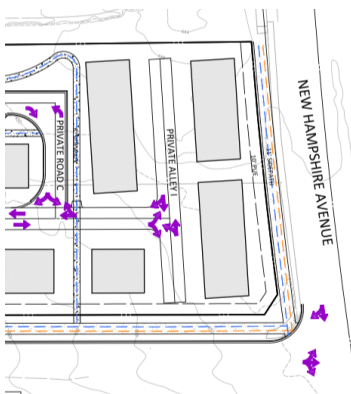


Figure 9 from October 13, 2024 Letter
(excerpted from DAIC Plan No. 10.vi. (circulation plan) confirming no vehicular access from site to non-residential road (New Hampshire Avenue))

With no site access to a non-residential road the Rezoning cannot satisfy this prerequisite.

2. There is no evidence that the existing water and sewer infrastructure is adequate to serve the proposed Rezoning.

The Updated Land Use Report says “It is *anticipated* that the existing water and sewer infrastructure will not require either an upgrade to the service line or installation of a pump station.”

The plain language of the Zoning Code however, makes it clear that the applicant must prove now that the site is served by existing water/sewer infrastructure adequate to serve the project. This prerequisite requires that “The site is served by existing water and sewer infrastructure that will not require either an upgrade to the service line or installation of a pump station due to the proposed development.” Zoning Code § 59-1.3.D.

These requirements, a prerequisite that must be established prior to approval of the Rezoning, is not a contingent finding to be determined later. It is plainly evident from the zoning provision that this determination is not to be left to future assessment. What if the Rezoning is approved

¹ We note that the Updated Land Use Report has not been updated to reflect that there will be no vehicular access of any kind to New Hampshire Avenue.

and it is later determined that an upgrade to the service line, or installation of a pump station, is necessary? Clearly this potential is a circumstance that this prerequisite is intended to preclude.

The Rezoning application fails to establish that the site “is served” by water/sewer infrastructure adequate to support the project.

B. The CRNF zone is not intended for, or appropriately located, at this location.

The CRNF zone is a mixed-use zone, intended to offer mixed-use development compatible with adjacent development. The Rezoning proposes 100% residential use, does not offer any mixed use, and as such is inconsistent with the purpose and intent of the zone. Because it is a mixed-use zone and is intended as a transitional zone *between* lower-density residential and commercial development, the design standards include higher density, greater heights, and significantly less open space than is typical of an exclusively residential zone.

C. Prior CRNF Rezoning Confirm This 100% Residential Project Surrounded Exclusively By Residential Development Is The Wrong Zone For The Proposed Location.

There currently are four Council-approved rezonings to the Commercial/Residential Floating Zone. None share the characteristics of the proposed exclusively residential townhouse development in the middle of a long-established exclusively single-family detached community abutting with a senior housing development.

Further, the properties that were the subject of these rezoning applications:

1. Did not redevelop existing single-family detached residential housing but instead redeveloped existing institutional or commercial buildings; and
2. Are bounded by major roadways, a Metro rail line or station, and/or were described as an “edge condition” to an urban area, specifically the Silver Spring Central Business District (CBD). None had exclusive ingress/egress to a minor residential road as the sole means of access.

The material differences in road access, the underlying existing use and the character of the surrounding neighborhoods between the prior CRNF zone approvals and this Rezoning proposal underscore that the Rezoning as proposed is inconsistent not only with the purpose of the CRNF zone but how it has been applied in practice over nearly a decade.

D. The delineated “Surrounding Neighborhood” is unjustifiably large.

The applicant’s proposed neighborhood extends well beyond the area that will experience direct impacts from the development, which is the standard typically applied when making a determination as to how far the neighborhood boundaries should be drawn. “Direct impacts” include such things as visual compatibility (height, setbacks, massing, open space), traffic impacts to nearby intersections proximate to the proposed new development (not based on LATR standards but based on considerations of compatibility and adverse impacts to the community), and potential stormwater, impervious coverage, tree loss and other environmental concerns.

The applicant’s proposed Neighborhood should be revised to exclude the commercial and retail properties to the south/southeast, and to exclude the PUD townhome development to the south,

as shown in Exhibit 2. When the Rezoning is evaluated in the context of the properly delineated neighborhood, the lack of compatibility, adverse impact on the existing neighborhood and lack of public benefit is evident.²

E. The Rezoning Does Not Substantially Conform With The 1997 Approved and Adopted White Oak Master Plan As Amended In the 2014 White Oak Science Gateway Master Plan.

The White Oak Master (“White Oak Plan”) offers the most relevant master plan recommendations for this project. Originally adopted in 1997, it was materially amended in 2014 with the adoption of the 2014 White Oak Science Gateway Master Plan (“White Oak Science Gateway Plan”).

The White Oak Science Gateway Plan includes 3,000 acres and was adopted as a “Comprehensive Amendment to portions of the Approved and Adopted 1997 White Oak Master Plan and portions of the Approved and Adopted 1997 Fairland Master Plan [“Fairland Plan”] . . .” and was primarily comprised of property within the White Oak Plan.³

All of the [2014 Plan] area was previously part of the 1997 White Oak Master Plan except for the . . . US 29/Cherry Hill Road Employment Area” of the Fairland Plan. White Oak Science Gateway Plan p. 20. .pdf p. 22. [2014 White Oak Science Gateway Plan](#) (emphasis added).⁴

The 3,000-acre 2014 White Oak Science Gateway Plan, which included 2,200 acres within the original White Oak Plan and only 800 acres from the original Fairland Plan, profoundly changed zoning and land use patterns within its boundaries, in part by recommending that 665 acres be rezoned CR, 79 acres be rezoned CRT, and 24 acres be rezoned to CRN. White Oak Science Gateway Plan p. 31 Table 2, .pdf p. 33.

By leaving the White Oak Plan recommendations in place within the remaining areas of the Plan, the 2014 White Oak Science Gateway Plan reaffirmed the 1997 recommendations:

The 1997 White Oak Master Plan envisioned the area remaining residential, with any infill development following the established pattern. Commercial areas would be attractive, pedestrian-friendly, multi-purpose centers for daily retail services. Any redevelopment within the centers would enhance the communities, but *the character and density of the neighborhoods would not appreciably change.*

² The Rezoning fails to meet the Floating Zone standards for approval even when evaluated within the Neighborhood delineated by the applicant. Nonetheless it should be revised to reflect the correctly delineated boundaries.

³ Certification of Approval and Adoption White Oak Science Gateway Master Plan. White Oak Science Gateway Plan, .pdf p. 5. [2014 White Oak Science Gateway Master Plan](#) “This Plan contains the text and supporting maps for a comprehensive amendment to portions of the approved and adopted 1997 White Oak Master Plan and portions of the approved and adopted 1997 Fairland Master Plan, as amended.” *Id.*, .pdf p. 3. Dan Wilhelm, now President of GCCA, was a member of the Citizens Advisory Committee for the White Oak Science Gateway Plan as a GCCA representative as that plan was drafted and approved. *Id.*, .pdf p. 2.

⁴ Geographically, this area is located north of the Paint Branch Stream Valley Park and south of Cherry Hill Road.

White Oak Science Gateway Plan p. 20, .pdf p. 22 (emphasis added).

Additionally, the White Oak Plan accurately describes the Colesville neighborhoods surrounding the Rezoning as: “mostly low-density, single family detached residential in nature with a scattering of townhouses tucked throughout.” White Oak Plan p. 10. The White Oak Plan “envision[s] the [plan area] remaining residential in nature. Within that context, the White Oak Plan says:

- a. In-fill development will follow the established residential pattern” (p. 13);
- b. Has a goal to “protect and strengthen *existing* neighborhood character and pattern of land use” (p. 38);
- c. Recommends future development “retain existing zoning designations in residential neighborhoods” (p. 38); and
- d. To “encourage new residential development within residential neighborhoods that is compatible with the surrounding neighborhoods and community” (p. 38).

When viewed against these recommendations, the request to rezone property now zoned R-200 to a mixed-use Commercial/Residential zone does not conform to these recommendations and moreover is directly contrary to the recommendation that future development “retain existing zoning designations in residential neighborhoods.”⁵

F. The Rezoning Does Not Substantially Conform With The Thrive Montgomery 2050 Plan.

The Thrive Montgomery 2050 Plan (“Thrive Plan”) recommendations stand independently of area master plan recommendations *until* those area plans are “modified pursuant to the guidance of this [Thrive] Plan.” In other words, by its own terms, the Thrive 2050 recommendations are forward looking:

Area master plans . . . will remain valid until modified pursuant to the guidance provided by this Plan. Like the previous general plan, [Thrive Plan’s] broad policy recommendations pave the way for future actions, such as amendments to other plans, policies, and development rules.

Thrive Plan, [Thrive Montgomery 2050](#), .pdf p. 2 (emphases added).⁶ As such, Thrive Plan recommendations do not supersede White Oak Plan recommendations and must be considered

⁵ This floating zone application does not require a master plan recommendation that the property is eligible for a floating zone in order to find master plan conformance. However, this mixed-use commercial/ residential zone with proposal’s attendant increase in density, lot coverage and height limits, and material reductions in open space and setbacks requirements from those more typical of residential zones (even residential floating zones), on its face conflicts with the recommendations of the White Oak Plan.

⁶ The Thrive Plan did *amend* certain other master plans (while affirming 1994 the White Oak Plan recommendations), e.g., the 1969 General Plan (On Wedges and Corridors) and several functional master plans, e.g., the Master Plan of Historic Preservation, as amended; the 2010 Purple Line Functional Plan, as amended; the 2011 Housing Element of the General Plan, as amended; and the 2013 Countywide Transit Corridors Functional Master Plan, as amended, among others. The Thrive Plan is now in the implementation process, as the Council’s recent adoption of Zoning Text Amendment 25-02 allowing redevelopment of certain “Corridor” properties for higher densities of housing pursuant to Thrive Plan recommendations attest.

independently of them. The White Oak Plan recommendations, which were developed specific to the subject property and surrounding neighborhood and reaffirmed in 2014, take precedence over Thrive 2050 commentary.

The Thrive Plan specifically references the Colesville Center, a commercial shopping center located south of Notley Road and outside of the Defined Neighborhood, as a “Village and Neighborhood Center.” Thrive Plan p. 71. The Thrive Plan defines a “Village and Neighborhood Center” as “the lowest intensity centers containing a small number of neighborhood-serving uses and *located in rural areas and low-density residential neighborhoods.*”

While the neighborhood surrounding the Colesville Village and Neighborhood Center is an established “low density residential neighborhood,” the density proposed in the Rezoning is not “low density” (see, e.g., the Low Density Townhouse Floating Zone). Consequently the proposed Rezoning does not conform to the Thrive 2050 recommendations, which does not in any way encourage higher density residential development within this neighborhood.

G. The Proposed Rezoning Is Not Compatible With Existing Adjacent Development

1. The Height and Massing Of The Buildings Are Incompatible With The Existing Neighborhood.

The Subject Property is surrounded by existing development, including the Wiltshire Estates Senior Housing development (approved by special exception) immediately to the north and east of a portion of the site, as are existing single-family homes. Existing single-family homes also abut the property to the north along Greenspring Lane and to the west, accessed by a long driveway through the woods north of Colesville Manor Neighborhood Park. More single-family homes confront the site to the south along Notley Road and fronting on Petwyn Court.

The existing low-density neighborhood has considerable open space, is in parts heavily treed, and is served exclusively by neighborhood roads. The single-family residential structures do not exceed 40 feet in height.

Even the adjoining 155-bed senior housing project, at 48.6 feet in height, has an effective height of forty feet or lower at the western end because the site drops approximately 8 – 10 feet in elevation at that end, so it effectively is less than 40 feet tall when viewed from the Notley Road.

The 50-foot height limit proposed in the Rezoning would tower over even the senior housing structure and would dwarf the surrounding single-family homes that are modest in both scale and height, and is highly incompatible with the abutting and confronting single-family homes. The overall height and massing of the project is incompatible with the existing surrounding neighborhood.

2. The Density And Internal Road Network, Leaving Only Ten Percent Open Space, Is Incompatible With The Surrounding Open, Low Density R-200 Residential Housing And The Wide Setbacks Provided In The Senior Housing Project.

The Rezoning includes only 10% open space. The existing surrounding R-200 single-family residential development has a maximum 25% building coverage limitation (Zoning Code § 59-4.4.7.B), leaving 75% of these lots remaining in open area. Similarly, the senior housing project

(also in the R-200 zone) is subject to this 25% building coverage limitation and as developed meets that standard. (See May 28, 2015 Planning Staff Report p. 17.) The minimal amount of open space associated with the Rezoning is highly incompatible with the surrounding neighborhood.

H. The Proposed Rezoning Will Adversely Affect The Character Of The Surrounding Neighborhood

Not only is the proposed Rezoning incompatible with the surrounding neighborhood, it will adversely affect the character of the surrounding neighborhood in at least two ways: (1) There will be overflow parking on Notley Road and along confronting and abutting interior roads; and (2) because there is no ingress/egress from New Hampshire Avenue, there will be excessive cut-through traffic between the site and Randolph Road (to the south) via Sherwood Forest Drive, which will be easier to navigate than facing already excessive delays at Notley/New Hampshire Avenue to travel to points south.

Additionally, the Rezoning plan itself confirms that the highly constrained site, from a practical perspective, will not be able to provide adequate parking for the residents given the driveway limitations associated with individual units. Moreover, even if the residents had adequate parking, it defies credulity that in a development of 130 units that there would only be 30 guests parking spots needed at any given time, particularly during sports seasons (virtually year round), graduation and wedding seasons, and during holidays. The 30-proposed guest parking spaces are woefully inadequate, particularly at this location *which is not served by any form of public transit*.

Additionally, Petwyn Court, an existing cul-de-sac that would confront one of the two Notley Road access points to the site, will be the first choice for overflow parking. As a result, existing Petwin Court residents will be subject to additional vehicular traffic, constraints on their own use of their street for guest parking, and possible interference with their own ability to ingress/egress the street to their homes. Greenspring Lane, which abuts the site to the north, will also likely face overflow parking for guests who want easy access to the site along the northern boundary of the site, constraining parking and access along this local road and encouraging people to trespass through those private properties to access the site. These adverse impacts will adversely impact the quiet, private nature of this street, in part by increasing parking demand on this narrow street.

I. The Proposed Rezoning Does Not Further The Public Interest And Moreover Is Detrimental To The Public Interest (Zoning Code § 7.2.1.E.b)

1. Increased Traffic From The Rezoning, If Approved, Would Materially Impair Public Safety At The Notley Road/New Hampshire Avenue Intersection.

The proposed Rezoning will generate 64 net new vehicular trips during the morning peak hour and 77 net new vehicular trips during the afternoon peak hour on Notley Road, a “substandard (narrow two-lane and un-striped) residential [street]” that serves the surrounding neighborhood. LATR p. 5; Wiltshire Estates Staff Report p. 10. Every one of these trips necessarily will ingress/egress via Notley Road, a residential road. This is the result of the fact that the site does not have vehicular access to New Hampshire Avenue, defeating the very purpose of the prerequisite requirement that this floating zone have access to a non-residential road, which

would serve to divert some percentage of site traffic from a residential road to one with far greater capacity.⁷

The resulting overburdening of Notley Road, a “minor street “that is already highly congested during peak hours,” does not serve a public benefit and instead poses a direct detriment to the residents within and proximate to the Neighborhood. LATR pp. 6, 12; LATR August 19, 2025 comments letter p. 2 ¶ 5.

With Notley Road serving as the sole means of ingress/egress to the site, public safety is further compromised by the fact that the existing 85th percentile speed along Notley Road *exceeds the posted speed limit by over 20%* in both the eastbound and westbound directions. LATR p. 13.

My clients ask that the Hearing Examiner recommend DENIAL of H-159 for any one or more of these reasons.

II. Copies of all reports to be introduced at the hearing.

My Clients do not expect to introduce any formal reports at the hearing but will rely on the following materials in support of their arguments (in addition to any materials entered into the record by any other party or participant), filed concurrently with this submission.

1. September 17 2025 Letter
2. October 7, 2025 Letter
3. October 13, 2025 Letter
4. Neighborhood Delineation
5. Wiltshire Estates Planning Department Staff Report dated May 28, 2025
6. 2016 H-110 Council Resolution 18-405 (ArtSpace)
7. 2022 LMA 143 Council Resolution 19-1308 (Strathmore)
8. 2023 H-148 Council 20-197 (CORSO)
9. 2025 H-156 Council Resolution 20-850 (TriPointe Homes)

⁷ The LATR incorrectly states that “The project site is within a quarter-mile of bus stops serving WMATA bus route Z2 that provides connection to the Silver Spring Metrorail Station.” LATR p. 47. This was the only public transit facility available in the vicinity of the site. WMATA has discontinued all bus service on New Hampshire Avenue north of Randolph Road, leaving the site unserved by any means of public transit. It is unclear whether this change affects the underlying traffic generation rates for the site, but calls for an update to the LATR as it relates to the Transit Facilities analysis.

III. Names of All Expert Witnesses

Mr. Daniel L. Wilhelm: Mr. Wilhelm will testify as an expert as to the project's lack of master plan conformance including, but not limited to, the 1994 White Oak Master Plan, the 2014 White Oak Science Gateway Plan and the 2050 Thrive Montgomery Plan; the Rezoning's inconsistency with previously approved CRNF zone approvals; the lack of public transit within the neighborhood and larger surrounding area; general inadequacy of the road network in the neighborhood and general public safety issues at the Notley Road/New Hampshire Avenue intersection; and the lack of compatibility with and adverse impacts to the neighborhood ("neighborhood" both as delineated in the Rezoning materials and as submitted by the Clients).

Mr. Wilhelm's CV is attached (Exhibit 10) and my Clients reserve the right to call additional expert witnesses if they deem necessary.

III. All other witnesses who will testify

Mr. Wilhelm may testify as a lay witness generally with respect to the grounds that are outlined in this Statement of Justification and in the concurrently filed materials and may testify as to any other grounds in support of opposition that may be raised by other participants in this proceeding to the extent he is not accepted as a expert witness with respect to any one or more topics identified in Section II herein.

Mr. Kyle Smiddie will testify in opposition to the Rezoning generally with respect to the grounds that are outlined in this Statement of Justification and in the concurrently filed materials and may testify as to any other grounds in support of opposition that may be raised by other participants in this proceeding

IV. Estimated time required for presentation.

3 hours.

Respectfully submitted,



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