

Clerk's Note: The resolution number was inadvertently listed as 19-1238. The duplicate resolution number was changed to 19-1308.

Exhibit 57 (g)
OZAH Case No: H-159

Resolution No.:	19-1308
Introduced:	June 14, 2022
Adopted:	June 14, 2022

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

By: District Council

SUBJECT: APPLICATION NO. H-143 FOR AMENDMENT TO THE ZONING ORDINANCE MAP, Erin Girard, Esquire, Attorney for the Applicant, EYA Development LLC and BL Strathmore LLC; OPINION AND RESOLUTION ON APPLICATION; 4920 Strathmore Avenue, more particularly known as Parcel No. 045, Parcel B, Garrett Park Academy of the Holy Cross, as shown on Plat No. 20824, and all of the property located at 4910 Strathmore Avenue, more particularly known as Parcel N875, Parcel A, Garret Park- Holy Cross Convent, as shown on Plat No. 9347; Tax Account Nos. 04-03234564 and 04-00045122

OPINION

On August 4, 2021, EYA Development, LLC (“Applicant” or “EYA”) filed Local Map Amendment (LMA) application (H-143) requesting the rezoning of the property located at 4910/4920 Strathmore Avenue (the “Property”) in North Bethesda, Maryland from its current R-60 Zone (detached residential) to CRNF 0.75, C 0.25, R 0.75, H 50 (Commercial Residential Neighborhood- Floating). Exhibit 1. The property is currently improved by Garrett Park Academy of the Holy Cross (Parcel B), and Garret Park- Holy Cross Convent, or St. Angela’s Hall (Parcel N875/Parcel A), a vacant and unoccupied retirement home for nuns. If approved, the proposed development of the property will include 125 single-family dwelling units (including a minimum of 15% MPDUs) and a 145-bed residential care facility.

On December 6, 2021, Staff of the Montgomery County Planning Department (Planning Staff or Staff) issued its revised report recommending approval of the application with binding elements. Exhibit 62. The Planning Board agreed with Staff and recommended approval on December 17, 2021. Exhibit 61. OZAH’s public hearing proceeded as noticed on January 31, 2022 and concluded on February 1, 2022. Six (6) witnesses testified for the Applicant: Jack Lester (Applicant), Brenda Bacon (Brandywine Living), Jeff Amateau (civil engineer), Joshua Sloan (land planner), Katie Wagner (traffic engineer), and Jack McLaurin (architect). Community members Katie Prebble and Sister Ruth Marie Nickerson also testified in support of the application. Mr. David Shaffer, Esq. appeared on behalf of Garrett Park Estates and White Flint Civic Association. Community members testifying in opposition included: Douglas Burdin, Kip

Edwards, Arthur Ribeiro, Vanessa Lide, Cynthia Weitz, and Gerilee Bennett, a town councilmember representing the Town of Garrett Park. The Hearing Examiner left the record open until February 11, 2022. Several additional exhibits were received during this period and marked and admitted without objection as evidentiary exhibits. The Hearing Examiner issued a report recommending approval on April 6, 2022. The Hearing Examiner reopened the record to receive the revised Floating Zone Plan with binding elements, entered into the record as Exhibit 88.

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

Subject Property

The subject property is located at 4910/4920 Strathmore Avenue, immediately south of the intersection of Strathmore Avenue and Stillwater Avenue. Exhibit 62, p. 4. The two areas proposed for rezoning under this LMA are Parcel A, which is currently improved with the former St. Angela's Hall (approximately 38,000 square feet) with two driveway entrances on Strathmore Avenue, surface parking, outdoor amenity spaces, pedestrian paths, and open lawn areas, and a portion of Parcel B, which is currently improved by a school site known as the Academy of the Holy Cross, a Catholic high school for girls, consisting of various school buildings and athletic fields. *Id.*

The entire property including all of parcels A and B is approximately 38.22 acres in size. Exhibit 62, p. 4. The portion subject to this rezoning application (hereinafter the "site"), comprised of all of Parcel A and a portion of Parcel B, is approximately 15.36 acres (669,082 square feet) under common ownership. *Id.* The building and driveways for the existing but closed and vacant St. Angela's Hall are located on the high point of the site and slope down to a nearby tributary of Rock Creek and associated wetlands along the western, southern, and eastern sides of the property. *Id.* The main existing school site, which will remain unchanged under this application and is not subject to rezoning, is further improved by buildings, lawn, athletic fields, driveways, and parking areas. The property is currently zoned R-60. *Id.*

Surrounding Area

The Staff-defined neighborhood includes the community of single-family detached homes that front the property to the north across Strathmore Avenue (Garret Park Estates), the single-family attached neighborhood to the west (Symphony Park townhouse community), institutional uses abutting the property to the south and east (The Music Center at Strathmore and The Mansion at Strathmore), and a public transit station (Grosvenor-Strathmore Metro Station). Exhibit 62, p. 4; Exhibit 34, p. 5. Other surrounding uses include nearby public and private schools and a church. Exhibit 34, p. 5. Three public parks or playgrounds are also nearby: Garrett Park Estates Local Park, Druid Drive Neighborhood Park, and Garrett Park – Waverly Park. Exhibit 62, p. 4.

The Hearing Examiner concurred with the delineation of the surrounding area as described by Staff and the Applicant. The Hearing Examiner further characterized the area as predominantly

residential with single-family detached and single-family attached homes with institutional uses to serve the surrounding community. *Hearing Examiner's Report*, p. 9.

Proposed Development

The subject application seeks to rezone this R-60 property to CRNF 0.75 C-0.25 R-0.75 H-50, (Commercial Residential Neighborhood-Floating). Private roads, open spaces, environmental conservation areas, and infrastructure will also be implemented through the redevelopment process with access to the Academy of the Holy Cross maintained but redesigned through the redevelopment. Exhibit 34, p. 4. Following approval of the rezoning, future development on the site will relocate the entry drive, replace St. Angela's Hall on Parcel A with a 145- bed residential care facility owned and operated by Brandywine Living, and up to 10 detached single-family dwellings and 115 attached townhouse units on the area currently occupied by athletic fields and landscaped lawns, for a total of 125 single-family dwelling units (including a minimum of 15% MPDUs). Exhibit 34, p. 9. No commercial uses are proposed and a prohibition on commercial uses is listed as a binding element to this application. Exhibit 34, p. 19. The property's existing R-60 zone only allows townhouses by limited or conditional use and residential care facilities by conditional use only, therefore, the Applicant is seeking to rezone the property to the CRNF zone to permit both uses by right as a comprehensive project. Exhibit 53, p. 2. The FZP contains six binding elements that will permanently restrict future development:

1. Permitted uses on the Site include up to 125 single-family detached and attached dwelling units (including a minimum of 15% MPDUs) and a residential care facility (with up to 145 beds).
2. Commercial uses are not permitted on the Property, except permitted accessory uses associated with the residential care facility.
3. A natural surface trail must be provided along the western side of the Site that is subject to a public access easement
4. The Property is limited to no more than three points of vehicular access from Strathmore Avenue.
5. The Property must be subdivided to delineate the boundary of the area subject to the rezoning at the time of Preliminary Plan.
6. A Phase I Noise Analysis must be submitted with the Preliminary Plan to identify noise levels that might impact interior and exterior spaces subject to the Planning Department's Noise Guidelines. The analysis must be performed by a qualified acoustical engineer. If a combined Preliminary/Site Plan is submitted, the Site Plan must include recommendations from a qualified acoustical engineer to mitigate excessive noise levels per the Noise Guidelines.

Criteria for Approval

To approve an LMA, the District Council must find that the proposal will meet the standards required by the Zoning Ordinance and that it will be consistent with the 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. See,

Zoning Ordinance, §59.7.2.1.E. These standards incorporate the requirements of other sections of the Zoning Ordinance, and most fall within three main categories: (1) conformance with the Master Plan, (2) compatibility with the surrounding area and adjacent properties, and (3) whether the project is supported by adequate public facilities.

Conformance with the Master Plan¹

The entirety of the subject property falls within the boundaries of the *1992 North Bethesda/Garrett Park Master Plan* (“Master Plan” or “Plan”). Exhibit 62, p. 17. The Master Plan area is bordered by I-270 to the west, the City of Rockville to the north, Rock Creek Park to the east, and I-495 to the south. *Id.* The subject property is listed as one of the “Key Vacant or Redevelopable Parcels” in the Plan area, or Parcel #14. Exhibit 34, p. 12.

The Master Plan lays out both general recommendations for the Master Plan area and specific recommendations for the subject property. According to Staff, the proposed rezoning will support the objectives of the plan “to encourage land use patterns that preserve and increase the variety of the housing stock particularly with elderly housing, provide safe and efficient transportation, provide facilities to meet the recreational needs of the public, and reduce environmental impacts.” Exhibit 62, p. 17. General recommendations of the Plan include: focusing future development at Metrorail stops, new transit stations, and areas best served by transportation infrastructure, with more emphasis on housing; reduction in block sizes in the vicinity of Metro areas; improvements to the pedestrian friendliness of streets, particularly near transit nodes; and provision of a landmark quality and sense of place for nodal areas and districts. *Id.* Staff opined that the proposed development supports these objectives as it “achieve[s] this critical land use and transportation linkage” by providing residential housing to replace a vacant retirement home and “deliver more housing than was previously on the Site” while accessible to nearby rail service at the Grosvenor-Strathmore Metrorail Station, public bus stops and routes that traverse Strathmore Avenue, coupled with the construction of an “internal system of new private roads that create short, walkable blocks.” *Id.* Based on her experience with other Brandywine sites, Ms. Bacon testified that many employees of the Brandywine residential care facility will likely use public transit for their daily travel to and from work. T. 57. The Applicant testified that the provision of housing is repeated as a primary objective throughout the plan, which calls for development of “[a] wide range of housing types within each neighborhood...to avoid large concentrations of any single type and increase the potential for pedestrian connection between diverse housing types,” “preserv[ing] and increase[ing] the variety of housing stock, including affordable housing” and “encourag[ing] a mixture of land uses in redeveloping areas to promote variety and vitality.” Exhibit 53, p. 5, citing the Master Plan at pp. 12, 33, 35.

In addition to general recommendations, the Master Plan also includes recommendations specific to 4910/4920 Strathmore Avenue. Exhibit 62, p. 18. Listed as Parcel No. 14, the Plan

¹ Section 59-7.2.1.E.2.a. of the Zoning Ordinance requires the District Council to find that the FZP “substantially conforms with the recommendations of the applicable master plan, general plan, and other applicable County plans.” Section 59-7.2.1.E.2.b requires the FZP to be “in the public interest,” which includes a review of conformity with County plans and policies and whether the development will be consistent with the coordinated and systematic development in the Regional District under State law. Section 59-7.2.1.E.2.c requires the application to satisfy the intent of Floating Zones. The intent of Floating Zones incorporates compliance with the applicable master plan. *Zoning Ordinance*, §59-5.1.2.A.1.

identifies the 35+ acre tract for the Academy of the Holy Cross which includes the school buildings, athletic fields, and a former group home for retired nuns. Exhibit 62, p. 18 (citing the Master Plan, pp. 80-81). Also linking to nearby transit, Staff notes that the Plan “supports the continued existence of the Academy and the retirement home at this location and recommends that the existing R-60 zoning be confirmed.” *Id.* Staff opines that the application satisfies this specific objective by retaining the Academy of the Holy Cross School but replacing the now vacant retirement home with a new but analogous use as a residential care facility for seniors, and adding residential housing as infill development in a previously unimproved portion of the lot, all within proximity to a transit node. Exhibit 62, p. 18. The Plan specifically recommended retaining the Academy of the Holy Cross because of its proximity to excellent transit. Exhibit 34, p. 13.

The Master Plan also emphasizes other objectives for 4910/4920 Strathmore Avenue including “preserving green areas and institutional open space for environmental protection, wildlife sanctuary, recreation, and visual relief.” Plan, p. 81. Staff notes that portions of the existing open lawn areas on the property are proposed to be protected through Conservation Easements with native plantings that can provide water quality protection, wildlife habitat, and visual relief from the surrounding development. Exhibit 62, p. 18. Portions of these conservation easements are proposed to be located along a planned nature trail located along the western edge of the property which will be open to the public during daylight hours. *Id.*

Staff further noted that the proposed development will “complement the existing sense of place” created by the surrounding residential neighborhoods to the north and west and educational and institutional spaces to the southwest and east. Exhibit 62, p. 17. Staff concluded that the proposed development “aims to fit within the existing neighborhood fabric of this well-established community while also delivering exceptional urban design and architectural detailing to further articulate quality.” *Id.*

According to Staff, the Master Plan “makes significant recommendations to encourage and support transit use, including expansion to the public transportation system.” Exhibit 62, p. 19. The Master Plan recommends that “future development be focused on Metrorail (Metro) stops, new transit stations, and areas best served by transportation infrastructure, with more emphasis on housing.” *Id.*; citation to Master Plan, unknown. Staff notes that the proposed site is in close proximity to existing transit services including bus and rail services and the application includes: improving access to transit services through upgrading pedestrian and bicycle infrastructure along the corridor; constructing a new master-planned 10-foot-wide shared use path along Strathmore Avenue to support walking to the nearby Grosvenor-Strathmore Metrorail Station; construction of a new internal road and pathway system with five-foot wide asphalt sidewalks throughout the Site’s new roads and natural surface trail along the western edge of the Property. *Id.* With respect to public transit, Mr. Sloan added that Ride-On Routes 5 and 37 run along Strathmore Ave while Routes 37 & 46 run along Rockville Pike. Exhibit 34, p. 6. Further, he estimated that “the Garrett Park MARC station is a 12-minute walk to the northwest and the Grosvenor-Strathmore Metro Red Line Station is a 10-minute walk along the trails in Symphony Park and the Music Center at Strathmore.” *Id.* Mr. Douglas Burdin, a community member, testified that because of the site layout, residents living in this new development would be required to use Strathmore Avenue and a walking path in Symphony Park to access the Metro station, as the planned development does not contain a cut-through connecting to Cloister Drive or Tuckerman Lane. T. 340-341. Mr. Burdin

estimated this walk-time to be between 13-18 minutes. *Id.* Mr. Burdin estimated this same walk-time to the Garrett Park MARC station. *Id.*

Both the Hearing Examiner and Staff agreed that the proposed development substantially conforms to the Master Plan. The Hearing Examiner concluded that the the proposed rezoning supports the general objectives of the North Bethesda/Garrett Park Master Plan, and satisfies the intent and standards of the floating zone by furthering the goals of the Plan to provide housing near public transit and mixed-use nodes, and furthers the public interest by advancing the goals and objectives of the Master Plan. *Hearing Examiner's Report*, p. 27. Based on this record, the District Council agrees with the Hearing Examiner and so finds.

Compatibility

Several sections of the Zoning Ordinance require the District Council to decide whether the FZP is compatible with adjacent uses and the surrounding area.² The Hearing Examiner found that the proposed development will be compatible with adjacent properties and the surrounding area. *Hearing Examiner's Report*, p. 30. The Hearing Examiner found that the proposed residential care facility will replace and provide necessary improvements to the previous retirement home with an updated residential care facility to serve seniors. *Id.* The FZP utilizes the site's topography to mitigate the height, size, and impact of the proposed buildings, as the lot slopes east to west. T. 150; *See* Exhibit 40. Further, the proposed residential housing serves the needs of increased residential housing demand as identified in the Master Plan, by providing single-family housing specifically located in close proximity to public transit at the Grosvenor-Strathmore Metro station, Garrett Park MARC station, and bus routes. *Hearing Examiner's Report*, p. 30. The District Council agrees and finds that the FZP will be compatible with the surrounding area.

Adequacy of Public Facilities/Public Interest

The District Council must also find that public facilities will be adequate to serve the FZP. While a more detailed review will occur later in the development process, a threshold analysis must be performed at the rezoning stage.³

² The application must 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. *Zoning Ordinance*, §59.7.2.1.E.1.c. The intent of the Floating Zones requires the applicant to “ensure protection of established neighborhoods” by “establishing compatible relationships between new development and existing neighborhoods through limits on applicability, density, and uses” and “providing development standards and general compatibility standards to protect the character of adjacent neighborhoods.” *Id.*, Section 59.5.1.2.C.1 and 2. One purpose of the Commercial/Residential Floating Zones (which includes the CRNF Zone), is to “provide development that is compatible with adjacent development.” *Id.*, 59.5.3.2.C. Finally, §59.7.2.1.E.2.f states that “when applying a non-Residential Floating zone to a property previously under a Residential Detached zone, [it must] not adversely affect the character of the surrounding neighborhood.” Because the property falls within a Residential Detached Zone (the R-60 Zone), this provision applies as well.

³Section 59.7.2.1.E.2.e requires that an Applicant demonstrate that traffic generated from the proposed development “does not exceed the critical lane volume or volume/capacity ratio standard as applicable under the Planning Board’s LATR Guidelines, or, if traffic exceeds the applicable standard, that the applicant demonstrate an ability to mitigate such adverse impacts . . .” The adequacy of other facilities is part of the Council’s determination that an application will be “in the public interest...” and that it be “it will be consistent with a coordinated and systematic development of the Regional District” under State law. *Zoning Ordinance*, §59-7.2.1.E.1.b; *Md. Land Use Art.*, §21-101(a) and

The FZP must comply with the Planning Board's Local Area Transportation Review (LATR) Guidelines. *Zoning Ordinance*, 59.7.2.1.E.1.c. According to Staff, the 2020-2024 Growth and Infrastructure Policy went into effect on January 1, 2021. Exhibit 62, p. 14. The scope of the Applicant's traffic impact study was approved by Staff in November of 2020 and as such, the transportation study for the Local Map Amendment was subject to the previous 2016-2020 Subdivision Staging Policy. *Id.* At the time of the review, the subject property was located within the North Bethesda orange policy area under the 2016-2020 Subdivision Staging Policy. *Id.* In this policy area, LATR compliance is required, and the Applicant submitted a traffic impact study to determine multimodal adequacy including both Critical Lane Volume (CLV) and Highway Capacity Manual (HCM) delay analyses. *Id.* Staff noted that Preliminary Plan will be subject to the 2020-2024 Growth and Infrastructure Policy (GIP) and a new transportation study will be required as part of that analysis.

The Traffic Study concluded that Critical Lane Volume (CLV) and Highway Capacity met the intersection congestion standards for the policy area. CLVs are 1,550 and the HCM analysis measured 71 seconds of delay per vehicle. Both are "within acceptable levels of congestion." Exhibit 62, p. 14. The traffic study further concluded congestion standards met the LATR requirements even though existing delays for the Stillwater Avenue and Strathmore Avenue intersection exceed the 71 second delay standard. Staff concluded that the proposed realignment of the driveway for the Academy of the Holy Cross and construction of a new driveway at the Stillwater Avenue approach will accommodate school traffic during the AM peak hour sufficient to mitigate the capacity delay. Exhibit 62, p. 14. Staff concluded that the traffic study demonstrates that "all intersections within the study area will operate within the policy area's congestion standards." *Id.* The Hearing Examiner found that adequate public facilities are met under this application and that the FZP furthers the public interest by implementing the comprehensive planning objectives contained in the Master Plan to support diverse residential housing options in close proximity to public transit. *Hearing Examiner's Report*, p. 35. The Hearing Examiner further noted that "at the rezoning stage the Council must determine only that the development complies with traffic and transit congestion standards set by the LATR and the Annual Growth Policy, unless there is some evidence that other public facilities cannot be provided" and concluded that the methodology used in the Traffic Study was credible and there was no credible evidence suggesting that LATR requirement were not satisfied by this application or that other public facilities will be insufficient to meet demand. *Id.* The District Council agrees and finds that public facilities will be adequate to serve the FZP.

Mr. Kip Edwards, a member of the community, testified that the community had concerns regarding the credibility of the traffic study. purchased a traffic counting software service called Camlytics that uses "machine learning to count cars which enter and exit the frame" to conduct their own lay analysis. T. 249. Mr. Edwards testified that the Camlytics analysis resulted in a traffic count that was "much higher than the numbers used in the August 2021 LATR supplemental report, which is what planning board staff ultimately relied on when they met their conclusions." T. 250. Ms. Wagner responded that she reviewed the video and compared the video recorded by the community with her own analysis and "found that the spreadsheet overexaggerated the number of

(b). The intent of the Floating Zones is to "implement comprehensive planning objectives by...ensuring that the proposed uses are in balance with and supported by the existing and planned infrastructure..." *Zoning Ordinance*, §59-7.2.1.E.1.b; 59-5.1.2.A.2.

vehicles traveling along Strathmore Avenue.” T. 162. Ms. Wagner also noted that the video was “not collected on a typical weekday as required by the park and planning staff.” Id. Staff noted that future traffic analysis will be completed in accordance with the updated 2020-2024 Growth and Infrastructure Policy, with the property now in a different policy area (*i.e.*, the Grosvenor Policy Area) and subject to those requisite standards. *Id.*

Mr. Douglas Burdin, a community member, also expressed concern about the “massive delays” noted in the LATR study and the supplemental analysis with respect to the studied intersections, and the reliability of the proposed traffic mitigation measures (e.g. traffic signal, turn lane, realignment of Stillwater) proposed to alleviate that delay and congestion. T. 342.

The Hearing Examiner characterized the community’s traffic concerns as “real, sincere, well-considered, and reasonable”, but found the weight of the evidence in the Applicant’s favor, stating:

...at the rezoning stage the Council must determine only that the development complies with traffic and transit congestion standards set by the LATR and the Annual Growth Policy, unless there is some evidence that other public facilities cannot be provided. While the Hearing Examiner shares the reservations of community members with regard to traffic congestion on an instinctual level, as the development proposes dense residential uses on previously unimproved land and a vacant building, Ms. Wagner’s methodology was sound and her testimony was credible with regard to the LATR study, the supplemental analysis, and the conclusions drawn from that study.

The Council finds that the Traffic Impact Study and Supplemental Analysis in the record are the best, most reliable evidence that the application will meet the LATR Guidelines and finds the evidence sufficient to approve the rezoning of the property. Further review will occur at subdivision under the current Growth and Infrastructure Policy will occur at subdivision.

The Intent of Floating Zones (§59.5.1.2)

The District Council must determine whether the FZP fulfills the intent of the Floating Zones. Several of these have already been addressed.⁴ The remaining include (from Section 59-5.1.2):

Section 59-5.1.2.A.3. 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; and

⁴ The intent of Floating Zones contained in Sections 59-5.1.2.A.1 and 2 and 59-5.1.2.C of the Zoning Ordinance has already been addressed in the Council’s findings relating to the compatibility of the FZP with surrounding uses and the adequacy of public facilities. The balance of the Floating Zone intent clauses are discussed here.

The Hearing Examiner found that the FZP utilizes the design flexibility provided by the Floating Zones to integrate the development compatibly with surrounding uses by employing design strategies to mitigate the visual impact of the proposed single-family homes and the residential care facility, and expanding access points for vehicular and pedestrian safety and efficiency of access to eliminate queuing and traffic congestion, thereby satisfying the intent of a floating zone in furtherance of the public interest. From this record, the District Council finds, as did the Hearing Examiner, that the proposed FZP satisfied the intent of Floating Zones.

Section 5.1.2.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;*
- 3. ensuring that development satisfies basic sustainability requirements, including open space standards and environmental protection and mitigation; and*

The FZP will provide diverse housing options for families and seniors which supports Master Plan goals for single-family residential and senior housing, and self-limits with a restriction on commercial uses and a density below the maximum permitted under zone regulations. The District Council finds that the development proposed meets this intent, as did the Hearing Examiner.

Purpose of Commercial/Residential Floating Zones (Section 59.5.3.2)

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

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

The District Council has already addressed the third purpose (*i.e.*, providing compatible development) above. The Hearing Examiner found that the FZP furthers the other purposes of commercial/residential floating zones. Binding elements limiting the use of the property to density, height, and restriction on commercial uses will further ensure compatibility with adjacent development and the surrounding area. The CRNF Zone allows the flexibility to incorporate a new building to replace an aging one, and to provide diverse infill housing to a previously unimproved site in a manner compatible with the surrounding area while minimizing environmental impacts through open space requirements, conservation easements, and protection of two stream valley buffers. *Hearing Examiner's Report*, p. 40. The CRNF Zone allows the

flexibility to incorporate a new building into a developed site in a manner compatible with the surrounding area while minimizing environmental impacts. The District Council agrees with this analysis and finds that the FZP proposed meets the purposes of the Commercial/Residential Floating Zone.

The Applicability of the Zone (Section 59.5.1.3.)

Section 59.5.1.3. of the Zoning Ordinance sets up a series of threshold tests to determine whether a site may apply for a Floating Zone.⁵ Because the Master Plan does not recommend a Floating Zone for this property and the property is in a Residential Detached Zone, it must meet the following prerequisites (*Zoning Ordinance*, §59.5.1.3.C.2.b):

- i. The property must front on a nonresidential street or must confront or abut a property that is in a Residential Townhouse, Residential Multi-Unit, Commercial/Residential, Employment, or Industrial zone; and
- ii. The application must satisfy a minimum of 2 prerequisites for each of the categories under Section 5.1.3. D., Section 59.5.1.3. D. Prerequisites.

The Hearing Examiner found that the FZP meets these prerequisites. The Staff Report and the Hearing Examiner's Report set forth in detail the reasons the application meets the additional requirements of Section 59.5.1.3. Having no evidence to the contrary, the District Council finds that the FZP meets the applicability standards of the Zoning Ordinance.

Uses and Building Types Permitted (Section 59.5.4.3 and 59.5.4.4)

Section 59.5.3.3A.2 of the Zoning Ordinance permits "only" those uses permitted in the CRN Zone in the CRNF Zone. Detached residential, attached residential, and residential care facilities are all permitted uses in the CRN and, therefore, the CRNF zone, as proposed under this application. Under 59.5.3.4.A., "[a]ny building type" is permitted in the Commercial/Residential Floating Zone, therefore, the FZP meets this standard. The District Council finds that the use and building type proposed meet these standards.

Development Standards of the Zone (Section 5.3.5)

Staff concluded and the Hearing Examiner found that the FZP meets the development standards of the CRNF Zone. Based on this evidence, the District Council agrees with the finding of the Hearing Examiner that the application meets the development standards of the CNRF Zone.

⁵ Section 59-5.1.3.A prohibits placement of a Floating Zone on property currently in an Agricultural or Rural Residential Zone. As this property is zoned R-60, a Residential Detached Zone and NR, and Employment Zone, that section does not apply.

Conclusion

Based on the foregoing analysis and after a thorough review of the entire record, including the Hearing Examiner's Report issued April 6, 2022, the District Council concludes that the proposed reclassification and development will meet the standards set forth in the Zoning Ordinance, and that it will be consistent with the coordinated and systematic development of the Regional District under State law.

ACTION

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

Local Map Amendment Application No. H-143, requesting reclassification of the property located at 4910/4920 Strathmore Avenue (the "Property") in North Bethesda, Maryland, Tax Account Nos. 04-03234564 and 04-00045122, from its current R-60 Zone (detached residential) to CRNF 0.75, C 0.25, R 0.75, H 50 (Commercial Residential Neighborhood-Floating)., is hereby **approved** subject to the specifications and requirements of the revised Floating Zone Plan (Exhibit 88), provided that the Applicant files an 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 approved by the District Council within 10 days of approval, in accordance with §§59.7.2.1.H.1.a. and b. of the Zoning Ordinance.

This is a correct copy of Council action.



Judy Rupp
Clerk of the Council