

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

Local Map Amendment
Application No. H-141

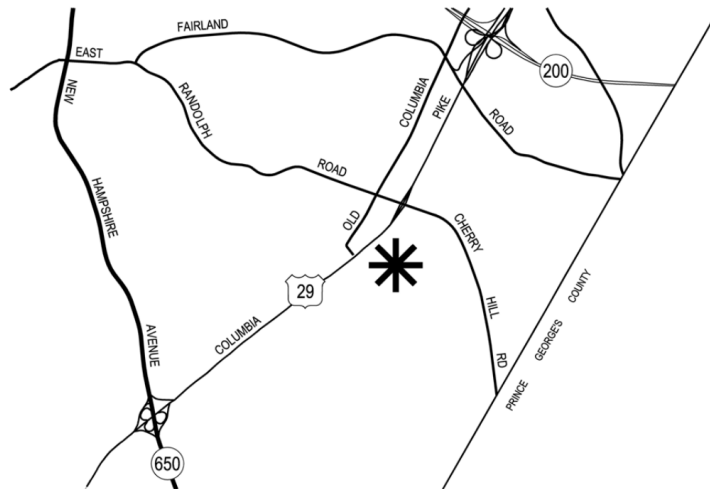
I. CASE SUMMARY	3
II. STATEMENT OF THE CASE.....	5
III. FACTUAL BACKGROUND	5
A. SUBJECT PROPERTY	5
B. SURROUNDING AREA	7
C. THE APPLICANT’S PROPOSAL.....	9
1. Floating Zone Plan	10
2. Binding Elements.....	10
3. Environment	12

D. COMMUNITY CONCERNS.....	12
IV. FINDINGS AND CONCLUSIONS	12
A. THE “NECESSARY FINDINGS” REQUIRED BY ZONING ORDINANCE §59.7.2.1.E.2.	13
1. Substantial Conformance with the Master Plan	13
2. Compatibility	16
3. Adequate Public Facilities/Public Interest.....	18
B. THE INTENT AND STANDARDS OF THE ZONE (SECTION 59.7.2.1.E.2.C).....	20
1. Intent of Floating Zones (Section 59.5.1.2).....	20
2. Purpose of the Commercial Residential Floating Zones (Section 59.5.3.2).....	22
C. APPLICABILITY OF A FLOATING ZONE (§59.5.1.3).....	23
D. DEVELOPMENT STANDARDS AND USES PERMITTED IN THE CRF ZONE (DIV. 59.5.3)	23
1. Uses and Building Types Permitted (§§59.5.3.3 and 59.3.3.4).....	23
2. Development Standards of the CRF Zone	23
3. Requirements of Article 59.6.....	24
V. RECOMMENDATION.....	25

I. CASE SUMMARY

Applicant: White Oak Apartments, LLC

LMA No. & Date of Filing: H-141, filed May 19, 2021.



Current Zone: CR-0.75, C-0.75, R-0.25, H-75 (Commercial/Residential Zone).

Current Use 66,150 square-foot office building and associated surface parking.

Requested Zone: CRF-1.25, C-0.25, R-1.25, H-85 (Commercial Residential Floating Zone). Moderate increase in density, height, and change in mix of uses to enable solely residential development.

Proposed Use: Multi-unit residential with up to 400 dwelling units in three buildings, including one apartment-style multi-family building and 2 “two-over-two” multi-family buildings.

MPDUs: Binding element requiring 15% of units constructed to be MPDUs.

Consistency with Master Plan: Located within the Life Sciences Center/FDA major activity area of the 2014 White Oak Science Gateway Master Plan. Consistent with the Master Plan.

Neighborhood Response: Support residential use but oppose possibility of public roadway.

Planning Board Recommends: Approval

Technical Staff Recommends: Approval

Hearing Examiner Recommends: Approval

District Council Votes Needed
to Approve: 5

II. STATEMENT OF THE CASE

White Oak Apartments, LLC (Applicant or White Oak) filed LMA Application No. H-141 on May 19, 2021. The application seeks to rezone approximately 7.83 acres of property from the CR 0.75, C-0.75, R-0.25, H-75 (Commercial Residential Zone) to the CRF 1.25, C-0.25, R-1.25, and H-85 (Commercial Residential Floating Zone). Exhibit 1. The subject property is located at 2220 Broadbirch Drive, White Oak, MD, further identified as Parcel EEEE in the Westfarm Technology Park subdivision (Tax Account No. 05-03268832). *Id.*

Notice of the public hearing was mailed and posted on OZAH's website on August 12, 2021. Exhibit 23. The notice established a hearing date of September 24, 2021. The Applicant submitted revisions to its Floating Zone Plan (FZP) and other application documents on August 25, 2021. Exhibits 24-31.

The public hearing proceeded as scheduled on September 24, 2021. The Applicant presented six witnesses, one representing a principal of White Oak and five expert witnesses. At the public hearing, the Applicant agreed to binding elements limiting the type and density of the proposed use and committing to restrict 15% of the units constructed as MPDUs. Mr. Dan Wilhelm, President of the Greater Colesville Citizens' Association, appeared and testified as an individual. The Hearing Examiner held the record open to receive final binding elements and an executed declaration of covenant. These were received and the record closed on October 4, 2021. Exhibit 48.

III. FACTUAL BACKGROUND

A. Subject Property

Containing about 7.83 acres, the subject property is located north of Broadbirch Drive in the Westfarm Technology Park subdivision, generally southeast of the intersection of U.S. 29 and Cherry Hill Road. An aerial photograph of the property (Exhibit 33, p. 4) is on next page.



The lot is now developed with a 66,150 square foot office building with associated surface parking. Exhibit 33. A driveway from Broadbirch Drive provides access. DARCARS holds an easement over portions of the access drive, which connects two vehicle storage lots. Staff advises that a six-foot tall chain-link fence borders the west, north and east sides of the property, as shown on the photograph below (*Id.*, p. 6):



White Oak's expert in land planning, Ms. Jane Pryzgocki, testified that the property is rectangular and slopes from the south to north. While the grade is gentle on most of the site, there are some steep slopes at the perimeter and closer to the southern end of the site. T. 31. The site has been mostly cleared. About one-third of an acre of forest exists in the southwest corner of the site. There is a small stream channel within the forested area that picks up from an outflow, which is a daylighted storm drainpipe on the adjacent western property. This flows into another storm drainpipe, which carries the water into the public storm drain system within the right-of-way. T. 32.

Staff reports that several easements constrict development on the property. In addition to the DARCAR's easements, these include a storm drain easement in the southwest corner, a Pepco right-of-way near the western property line, and a 20-foot storm drain and public utility easement along Broadburch Drive.

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 FZP will be compatible with the impacted area.

Staff defined the boundaries of the surrounding area as Columbia Pike (U.S. 29) to the west, Cherry Hill Road to the north, Plum Orchard Drive to the east, and Industrial Parkway and properties to the south, as shown on the aerial photograph from the Staff Report (Exhibit 33, p. 4, on the next page).

Staff described the character of the area as non-residential, consisting of commercial, retail, industrial, and service uses. Uses in the area include hotels, restaurants, car dealerships, business parks, a MCPS bus depot and a portion of the Adventist White Oak Hospital. There are no residential uses in the area.



Figure 1: Vicinity Map/Staff-Defined Neighborhood
(Staff-Defined Neighborhood outlined in yellow, Property in red)

Exhibit 33, p. 10

Future development in the area will include a shopping center at the intersection of Old Columbia Pike and Industrial Parkway and a new BRT FLASH station. *Id.*, p. 2. Except for the hospital, the entire area is in the CR (Commercial/Residential) Zone. A portion of the hospital property is zoned LSC (Life Sciences Center). *Id.* Staff advises that the area falls within a federally designated “Opportunity Zone.” According to Staff, the IRS defines as “an economic development tool that allows people to invest in distressed areas...to spur economic growth and job creation in low-income communities while providing tax benefits to investors.” *Id.*¹ Ms. Pryzgocki, testified

¹ The Staff Report quotes from the IRS’ website at <https://www.irs.gov/businesses/opportunity-zones>.

that the Master Plan calls for redevelopment of the area with a mix of uses, including residential, discussed later in this Report. *Id.*

Based on this record, the Hearing Examiner agrees with Staff that the existing area is non-residential and characterized by commercial office, retail, industrial, and service uses. She also agrees with Ms. Pryzgocki that the Master Plan encourages redevelopment to a mixed-use area, including residential uses.

C. The Applicant's Proposal

Mr. Josh Wooldridge testified on behalf of the NRP Group, a principal of the White Oak. Based in Montgomery County, NRP is the third-ranked developer and manager of multi-family housing nationwide. Their market research demonstrated that there hasn't been a market-rate multi-family development in this area since 1988. Their company believes that this proposal is a "critical opportunity" to provide multi-family housing near the FDA, the new Adventist hospital campus, the new FLASH Bus Rapid Transit (BRT) system, and other major employers with over 20,000 jobs. T. 9-10, 16. He believes that all the ingredients for a "live-work-play" environment, including the FLASH BRT Station at Tech Road, are in place except for multi-family residential development. T. 17.

The development will include up to 400 multi-family dwelling units. Approximately 28 of those units will be "two-over-two" units, a product introduced by NRP. These provide significantly larger units than the one to three-bedroom units in the apartment style building and are very attractive to families. There is enough room for residents to work from home so they don't have to commute and may live and work in the community. T. 25. These units appear like townhouses from the street, but are actually two, two-story multi-family units on top of each other, each with an internal garage. For that reason, they will be approximately 50-55 feet in height. Ms. Pryzgocki testified that the balance of the units will be apartment-style multi-family units in one building, with

a mix of one- to three-bedroom units. T. 100. The apartment-style building will be a maximum of 85 feet in height, or four to five stories. T. 39-40.

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 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 40. An excerpt of the FZP showing the proposed building layouts, drive aisles, road reservations, and forest conservation areas is reproduced on the following page.

Ms. Pryzgocki testified that access to the units will be from Broadbirch Drive. Parking for the multi-family structure is provided in a structure on the north end of the property, with units above. Residents will have the choice to park in the garage or in a surface lot on the southern side of the building. There is an internal circulation road that goes from east to west, which serves the two-over-two units. Each of those units will have one space in a garage and one in a driveway. T. 38. Sidewalks, natural surface paths, and an eight-foot shared-use path along the main entrance road provide pedestrian circulation on-site. T. 38-39. The minimum required public and private open space and recreational facilities are provided on-site as well. T. 39.

2. Binding Elements

The FZP includes three binding elements (Exhibit 40):

1. Residential development may not exceed 400 dwelling units.
2. A minimum of 15% of the dwelling units constructed must be Moderately Priced Dwelling Units under Chapter 25A of the Montgomery County Code.
3. Uses shall be limited to multi-family dwelling units inclusive of two-over-two or stacked multi-family units.

3. Access

Mr. Michael Workosky, the Applicant's expert transportation planner, testified that the FZP shows an access road with a 60-foot right-of-way, which can be either private or public. At present,

Forest Conservation Easement

Public Open Space

Private Open Space

Two-over-Two Units

Apartment Style Units

**Floating Zone Plan
Exhibit 40**

there are two alternative designs - one is for a public street that would have a potential future connection. The other design is for a site driveway that could be a private street. T. 91-94.

3. Environment

Mr. Daniel Park, White Oak's expert in landscape architecture and forestry, testified that there are "a few" steep slopes to the southwest, where the site drains. The drainage area consists of a shored exposed channel, approximately 150 feet in length, which conveys off-site and on-site drainage into a culvert that flows into the public storm drain system. T. 71. As this area contains existing forest, it will be preserved through a Category I Forest Conservation Easement. T. 72.

There are 0.35 acres of forest in the southwest corner of the property. Of this, approximately 0.24 acres will be preserved in the forest conservation easement and 0.1 acres will be cleared to provide public open space. The total mitigation required is .89 acres. White Oak will meet the balance by payment of a fee-in-lieu when the Final Forest Conservation Plan is approved. T. 73.

The conditions of approval for the PFCP require them to submit a FFCP at the time of site plan. The Planning Board asked the Applicant to install additional plantings between the proposed forest conservation easement and the proposed pedestrian connection. These plantings will not be part of the Forest Conservation Easement, although White Oak will work with the Planning Department to install appropriate riparian plantings. T. 75.

D. Community Concerns

Mr. Daniel Wilhelm appeared at the public hearing. In general, he supports a residential project at this location, but does not support a public connection between Broadbirch Drive and White Horn Court.

IV. 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.1.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.1.b: ...further the public interest...

* * *

Section 59.7.2.1.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...

Staff concluded that the project substantially conforms to the *2014 White Oak Science Gateway Master Plan* (Master Plan or Plan). According to Staff, the “overarching” goal of the plan is to “transform the built environment from auto-oriented single-purpose nodes into vibrant mixed-use centers.” Exhibit 33, p. 7 (*quoting, Master Plan*, p. 23). Located in the Life Science/FDA major activity area, staff advises that the Plan recommended CR zoning to provide “land use flexibility” and spur redevelopment. *Id.* Staff found that the proposed development will take advantage of the County’s major investment in the BRT line to introduce residential development to the predominantly light industrial area. The also found that the master planned connection to Whitehorn Court conformed to the Plan’s recommendations (*See, Exhibit 33, p. 9, below*):



According to Staff, when adjacent properties redevelopment, road dedications will be required to complete the connection from Broadbirch Drive and Whitehorn Court. In Staff’s opinion, this will improve area circulation and extend dead-end streets as the Plan recommends. *Id.*, p. 8.

Staff also found that the Master Plan sought to allow higher densities without impacting environmental goals. They concluded that the FZP meets this objective because it retains the existing forested area within a stream valley and includes a large portion of the on-site stream buffer

as public open space. Exhibit 33, p. 9. Because the existing stream is significantly degraded, Staff advises that the buffer will not improve water quality. However, Staff found that preservation of the area “creates an asset from a degraded environmental feature.” *Id.*

The project also furthers the public interest, recommends Staff, because it alleviates a potential housing shortage in the County, takes advantage of the County's investment in the BRT station near the property, and will provide more than the minimum number of MPDUs required.

Ms. Pryzgocki opined that the use conformed to the Master Plan because it recommended changing the industrial zoning to CR to provide more flexible development standards and land uses. White Oak is proposing the CRF Zone that seeks a slight difference in the density permitted and mix of uses for the property. The Plan's goal was to create vibrant mixed-use centers. Ms. Pryzgocki opined that a “mixed use” center can combine single-use properties in conjunction with surrounding employment, retail, restaurants, and transit. T. 47.

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 master plan. The Hearing Examiner agrees with both Staff's and Ms. Pryzgocki's characterization of the goals and recommendations of the Master Plan, which states (*Plan*, p. 9):

Reimagining existing centers – and providing a framework for reinvestment – is vital to this community's longevity. This Plan seeks to leverage White Oak's assets and establish the foundation upon which the area can evolve into a community that offers more opportunities to live-work-play locally.

Key to the Plan's vision is development of three “major activity centers.” *Plan*, p. 25. Located in the Life Sciences Center/FDA activity area, the residential development proposed here furthers the Plan's goal to utilize a mix of uses to spur redevelopment. Obviously, residential development, which is currently absent, is key to a live-work-play environment. The Hearing

Examiner agrees with Ms. Pryzgocki's testimony that the proposed single-use residential property furthers the "mixed use" community concept envisioned by the Plan when viewed in the context of the surrounding area. Having no evidence to the contrary, the Hearing Examiner finds that the project furthers the Plan's environmental goals for the reasons stated by Staff. The FZP substantially conforms to the Plan's transportation goal because it enables the connection to White Horn Court recommended. While Mr. Wilhelm opposes a public connection, this will be determined at later stages of development. For now, the FZP does not foreclose the opportunity and therefore is consistent with the Plan and furthers the public interest.

2. Compatibility²

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.1.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.***

² Section 59.7.2.1.E.1.d also addresses compatibility, but only when the existing zone is a Residential Detached Zone: "...when applying a non-Residential Floating zone to a property previously under a Residential Detached zone, not adversely affect the character of the surrounding neighborhood." The CR Zone is not a residential detached zone. *Zoning Ordinance*, §59.2.1.3.C.1. For this reason, the Hearing Examiner does not address this standard.

* * *

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

Section 7.2.1.E.1.d. be compatible with existing and approved adjacent development...

Staff determined that the project would be compatible with adjacent and surrounding development due to the modest increase in density and height requested and the lack of nearby residential uses. Staff also viewed the two-over-two buildings and public open space as an “appropriate” density transition. The public open space will enhance the pedestrian experience in the area. Exhibit 33, p. 14. Ms. Pryzgocki testified that the highest part of the development would be adjacent to a hotel that is four to five stories as well, and there are other buildings in the area that are approximately that high. The height of the apartment-style building steps down approaching Broadbirch Drive to be more compatible with the lower-rise buildings across that road. T. 39-40. The zero-foot perimeter setback runs along the northern property line, adjacent to the hotel and office building.

Mr. Workosky testified that the Floating Zone requested gives the Applicant flexibility in the setbacks to accommodate existing easements and provide the option of a public or private road. White Oak is proposing a 10-foot setback from the property line, as well as an additional 10-foot PUE easement. The rear setback will also be at least 10 feet from the property line. On the eastern property boundary, they are proposing a 60-foot setback. The western setback will be zero, adjacent to the Hilton Garden Hotel and an office building. T. 42-44.

Conclusion: Based on this record, the Hearing Examiner agrees with Staff that White Oak has used the design flexibility of the CRF Zone to ensure compatibility with adjacent and surrounding properties. The zero-foot setback along the northern property line locates the highest part of the

building adjacent to buildings of like height, transitioning down toward Broadbirch Drive. It also permits public open space along the western and southern boundary, and preservation of much of existing forest. These flexible setbacks also enable the Applicant to accommodate either a public or private roadway on the property. This standard has been met.

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.1.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.1.b: further the public interest...

* * *

Section 7.2.1.E.1.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..."

Staff advises that the property falls within the White Oak Local Area Transportation Improvement Program area (LATIP), which is exempt from review under the Local Area Transportation Review (LATR) Guidelines. Exhibit 33, p. 15. Development within the LATIP area must pay a fee based on the number of trips generated or build improvements as a credit toward the fee. *Id.* Nevertheless, Mr. Workosky submitted an LATR exemption statement to demonstrate

that residential development will generate fewer trips than permitted under the existing zoning. According to him, the residential development would generate 256 and 123 site-generated vehicle trips, respectively, and 355 and 199 person trips, respectively, a reduction of 389 vehicle trips and 519 person trips. T.88-89. The development is still subject to the Local Area Transportation Review Improvement payments, which will be evaluated at the site plan stage. T. 89. Staff agreed, comparing the two development scenarios (Exhibit 33, p. 15):

Development Scenario	Generating the Most Peak Hour Vehicle Trips	Square Feet or Units	Site-Generated Peak-Hour Vehicle Trips	Site-Generated Peak-Hour Person Trips
Existing CR-0.75, C-0.75, R-0.25, H-75 Zone				
Commercial - Retail @ 0.75 FAR		255,691	768	1,064
Proposed CRF-1.25, C-0.25, R-1.25, H-85 Zone				
Commercial - Retail @ 0.25 FAR		85,230	256	355
Residential - High Rise Residential & 1.0 FAR		359	123	190
Net Change in Peak-Hour Trips			-389	-519

The project's civil engineer, Mr. Tim Stemann, testified that other public facilities will be available as well. There is no existing stormwater management on site. As part of this project, White Oak will install micro-bioretenction areas along the west side of the property to treat the apartment building, the parking area, and the access road. There are two smaller planter micro-bioretenction facilities located near the two-over-two units to treat that drainage. T. 80. In his opinion, there is sufficient space on-site to provide required treatment according to State standards. T. 80-81. Sewer and water are also available. There is an existing 8-inch sewer line and a 12-inch waterline along Broadbirch Drive. They will be able to connect to that line to serve the entire site. T. 81.

Mr. Stemann testified that they have preliminarily reviewed fire access with the Montgomery County Department of Fire and Rescue Services (DFRS). This indicates that adequate fire access for the apartment-style units will proceed from the access road to the northern edge of the garage. The additional roadway that extends west/east, can provide access to the southern end

of the apartment-type units and the two-over-two multi-family units. T. 82. The sides where access is not available to fire trucks will be served by foot. T. 83. The propose to install new fire hydrants along the access roads to the site. T. 85.

Conclusion: Based upon the uncontroverted testimony and evidence in this record, the Hearing Examiner finds that public facilities will be adequate to serve the proposed use and will be finally determined at a later stage of the development process.

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 particular Zone requested. Several of these have already been analyzed in Part IV.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...

Staff found that the FZP meets this standard because the zone requested “allows flexibility to provide a residential project that is compatible with the surrounding area, respects and enhances the existing environmental features and begins to improve connectivity within the area.” Exhibit

33, p. 12. Ms. Pryzgocki opined that the FZP uses flexibility in setbacks and development standards to enable a mixed-use development at a range of densities and heights that is flexible enough to respond to the setting, provides a range of different housing types, and includes public and private open space that is compatible with adjacent development. T. 50-51. Mr. Workosky testified that flexible setbacks enable White Oak to permit a public road connection if ultimately determined at site plan. T. 94.

Conclusion: The Hearing Examiner agrees with Staff and White Oak that the FZP utilizes the flexible setbacks to permit a residential use that is compatible with surrounding uses. The zero-foot setback along the northern property line enables the density proposed while accommodating a compatible transition to lower-intensity uses in height and public open space to buffer the higher intensity development on the site. The FZP also utilizes flexible setbacks to accommodate a public road connection, which will be finally determined at site plan.

B. Encourage the appropriate use of land by:

- 1. providing flexible applicability to respond to changing economic, demographic, and planning trends that occur between comprehensive District or Sectional Map Amendments;***
- 2. allowing various uses, building types, and densities as determined by a property's size and base zone to serve a diverse and evolving population; and***
- 3. ensuring that development satisfies basic sustainability requirements including:***
 - a. locational criteria,***
 - b. connections to circulation networks,***
 - c. density and use limitations,***
 - d. open space standards,***
 - e. environmental protection and mitigation; and***

Staff determined that the FZP meets this standard because (Exhibit 33, p. 12):

The Master Plan envisioned significant amounts of residential development at nearby properties that has yet to materialize. The proposed zone allows the Subject Property to provide the first residential development in the area, responding to the County's acute need for additional housing. This Project may help spur the evolution of this area into the mixed-use community envisioned in the Plan.

According to Staff, the project is sustainable due to its proximity to the new BRT station, retail, office, and service uses. It will mitigate current degraded environmental conditions and provide stormwater management on-site.

Conclusion: The Hearing Examiner agrees with Staff that the project meets the intent of the floating zones. Staff notes that housing recommended at other sites failed to develop. Mr. Wooldridge testified that no residential project has been developed within the area since 1988. This will provide housing near at least five major employers and approximately 20,000 jobs within walking distance of transit, retail, restaurants, and other amenities. The proposed development introduces a new type of dwelling unit, a two-over-two unit, to permit additional space for families that may want to work at home. The record demonstrates that the proposed development is sustainable, as it is located within walking distance of mass transit and services, provides the requisite public and private open space, preserves most of the existing forest on-site, and uses the public open space to enhance current environmental conditions.

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

Section 5.3.2. Purpose

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

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

Staff concluded that the FZP met this standard, restating that the FZP uses the flexibility in the CRF to “increase the amount of residential density allowed” and to “modestly increase the building height.”

Conclusion: The Hearing Examiner already found that the FZP furthers the purpose of §5.3.2.C in Part IV.A.2 of this Report (relating to compatibility of the use with surrounding development). The remaining purposes listed here are redundant of the findings already made. The FZP uses the additional height of the zone requested and flexible setbacks to accomplish a compatible residential project through height transition and provision of public open space. This standard has been met.

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 a Residential Zone. Staff advises, and the Hearing Examiner agrees, that there are no prerequisites for property already within the CR Zone.

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. Multi-unit living is permitted in the CR Zone and this standard is met. The CRF Zone permits any building type, thus, the multi-family buildings are permitted in the requested zone.

2. Development Standards of the CRF Zone

Section 5.3.5. Development Standards.

Staff found that the FZP meets the development standards of the CRF-1.25, C-0.25, R-1.25, H-85 Zone, (Zoning Ordinance, §59.5.3.5), as demonstrated in the table from the Staff Report (Exhibit 33, p. 14, shown on the next page).

White Oak will have to provide public benefits that conform to the Master Plan recommendations during approval of a Sketch and Site Plan. Staff advises that potential major

Table 1: Development Standards for Optional Method In the CRF-1.25, C-0.25, R-1.25, H85 Zone		
	Required/Allowed	Proposed
Tract Area	n/a	358,008 sf (8.22 acres)
Parcel EEEE	n/a	340,838 sf (7.83 acres)
Prior R.O.W Dedication	n/a	17,170 sf (0.39 acres)
Density (max)	8 FAR ¹	1.25 FAR (447,510 sf)
Commercial	6 FAR	0 FAR ²
Residential	6 FAR	1.25 FAR (447,510 sf)
Setbacks from site boundary	Established by Floating Zone Plan	
Front (Broadbirch Drive)		10 ft
Side (west)		0 ft
Rear (north)		10 ft
Side (east)		60 ft
Height (max)	85 ft	85 ft
Lot Size (min)	Established by Site Plan	
Public Open Space (min)	10% of Site	10% of Site*
Parking	Established by Site Plan	Approximately 530*
Public Benefits (minimum)	100 points in 4 Categories	100 points in 4 Categories*

¹ Since a floating zone is not recommended in the Master Plan, the maximum density allowed on the Property is established by Section 59.5.3.5.A.2.

² The proposed zone allows up to 0.25 commercial FAR, but the Applicant is not currently proposing any commercial development.

*Final amounts to be determined at Site Plan.

Table Comparing Development Standards of Zone Requested and Proposed FZP (Ex. 33)

public benefits may include a public road connecting White Horn Court and Broadbirch Drive, providing more than the minimum MPDUs, and quality building design, including providing more structured parking than required by the Zoning Ordinance. Exhibit 33, p. 9. While the public benefits provided are not part review at the rezoning stage, the record demonstrates that the Applicant will be able to provide public benefits when required.

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. Based on the undisputed evidence at this stage, the Applicant's proposal will be able to meet these standards, subject to review and modification of the particulars during site plan review.

V. 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 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-141, requesting reclassification from the existing CR-0.75, C-0.75, R-0.25, H-75 to the CRF-1.25, C-0.25, R-1.25, H-85 of Parcel EEEE in the Westfarm Technology Park subdivision (Tax Account No. 05-03268832), located at 2220 Broadbirch Drive, White Oak, Maryland, be **approved** in the amount requested and subject to the specifications and requirements of the Floating Zone Plan (Exhibit 40), provided that the Applicant files an executed Declaration of Covenants (Exhibit 41) 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.

Issued: November 4, 2021.

Respectfully submitted,



Lynn Robeson Hannan
Hearing Examiner