

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

**Office of Zoning and Administrative Hearings
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 200
Rockville, Maryland 20850
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**IN THE MATTER OF:
CORSO DC LLC**

Applicant

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Timothy Gary
Jane Przygocki
Timothy Hoffman
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Daniel Park

For the Application

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Attorney for the Applicant

* * * * *

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Andy Leon Harney, Village Manager
Village of Chevy Chase

* * * * *

Before: Lynn Robeson Hannan, Hearing Examiner

Local Map Amendment
Application Case No. H-148

HEARING EXAMINER’S REPORT AND RECOMMENDATION

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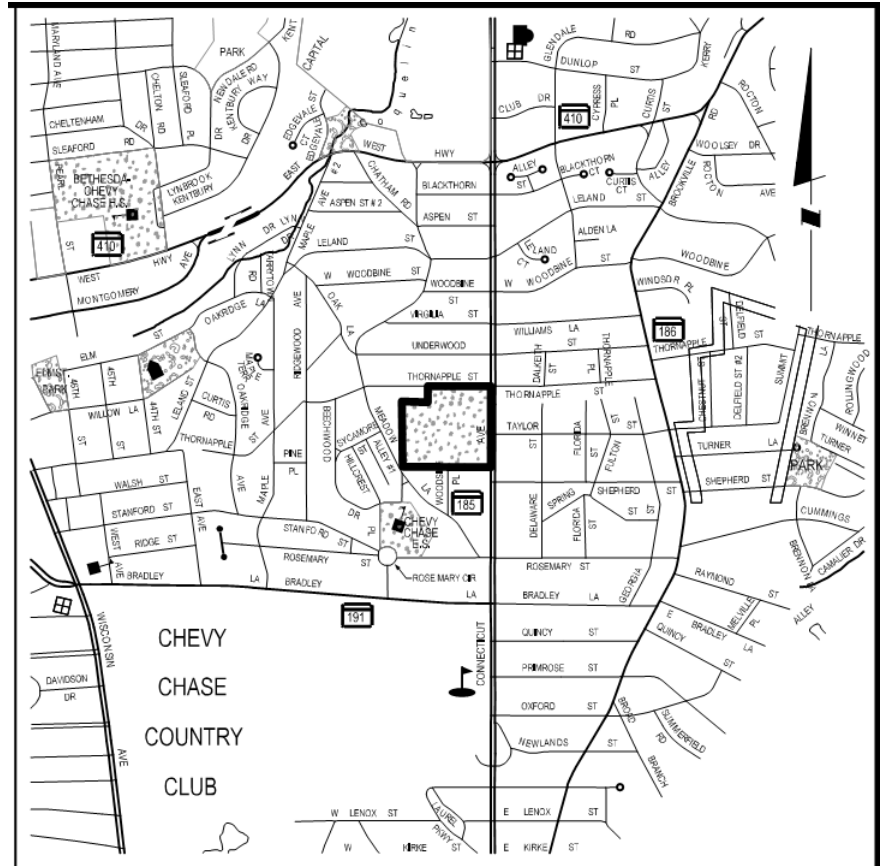
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I. CASE SUMMARY

Applicant: CORSO DC LLC

LMA No. & Date of Filing: H-148, filed November 2, 2022.

Location: 7100 Connecticut Avenue, Chevy Chase, Md., approximately 1,100 feet north of Bradley Boulevard (shown below):



Current Zone: R-60 (Residential Detached).

Current Use: Former National 4-H Conference Center (no longer operating).

Requested Zone: CRNF-1.5, C-0.25, R-1.25, H-70 (Commercial Residential Neighborhood Floating Zone).

Proposed Use: Residential Care Facility with 287 independent living units, 190 assisted living beds, and 30 memory care beds.

MPDUs Required/Provided: 15%/15%

Public Open Space Req./Provided: 10%/10.6% (T. 72)

Consistency with Master Plan: Consistent with the *1990 Bethesda Chevy Chase Master Plan*.

Neighborhood Response: Property is within the municipal boundaries of the Town of Chevy Chase (Section 4) and confronts Section 3 of the Village of Chevy Chase across Connecticut Avenue. Both support the application with the binding elements to (1) require additional analysis of the safety and efficiency of the intersection of the site access with Connecticut Avenue and Taylor Street, (2) require a parking demand analysis to ensure all parking is accommodated on-site, and (4) provide for continuing community engagement during subsequent approvals.

Planning Board Recommends: Approval

Technical Staff Recommends: Approval

Hearing Examiner Recommends: Approval

District Council Votes Needed
to Approve: 6

II. STATEMENT OF THE CASE

CORSO DC LLC (Applicant or CORSO) filed LMA Application No. H-148 on November 2, 2022. The application seeks to rezone approximately 12.29 acres of property from the R-60 (Residential Detached) Zone to the CRNF-1.5, C-0.25, R-1.25, H-70 (Commercial Residential Neighborhood Floating Zone). Exhibit 1. The subject property is located at 7100 Connecticut Avenue, Chevy Chase, MD, further identified as Parcel 1, Block 5, "Section 4 Chevy Chase" subdivision (Tax Account No. 07-00464946). *Id.*

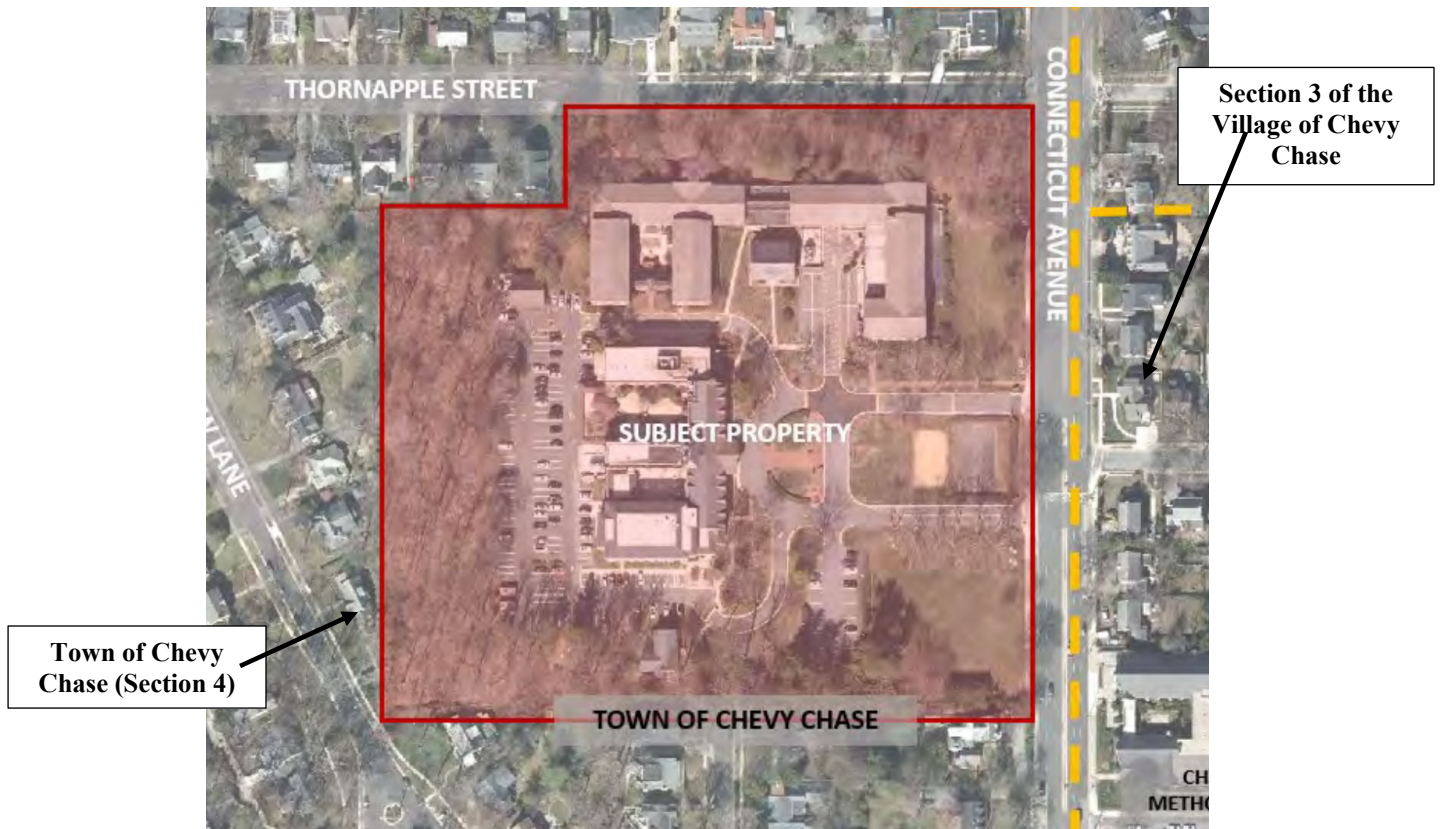
OZAH issued notice of the public hearing, which established a hearing date of March 24, 2023, on February 6, 2023. Exhibit 23. Staff of the Montgomery County Planning Department (Planning Staff or Staff) transmitted its report and the Planning Board's written recommendation on March 14, 2023. Staff recommended approval of the application with 21 binding elements. Exhibit 45, pp. 3-4. The Planning Board also recommended approval but modified some of the binding elements to address concerns expressed by both the Town of Chevy Chase (Section 4) (Town) and Section 3 of the Village of Chevy Chase (Village). Exhibit 47.

The public hearing proceeded on the scheduled date. The Applicant presented seven witnesses, including a principle of CORSO and five experts. Mr. Barney Rush, Mayor of the Town, and Ms. Andy Leon Harney, Village Manager of the Village, also testified. The Town and Village requested an amendment to Binding Element Nos. 2 and 3 to require a parking demand study and a vehicle access study *prior* to submission of the applicant's preliminary and site plans. The Hearing Examiner left the record open to receive an updated FZP and Declaration of Covenants that included the agreed-upon revisions to the binding elements. The Applicant submitted these, and the record closed on April 3, 2023. Exhibits 65(a) and (b). The record re-opened on May 11, 2023, to receive corrections to this report, an Errata, and an Order Re-Opening and Closing the Record.

III. FACTUAL BACKGROUND

A. Subject Property

Containing about 12.29 acres, the subject property is in the southwest quadrant of the intersection of Connecticut Avenue and Thornapple Street, within the municipal boundaries of the Town. The Village confronts the property across Connecticut Avenue. An aerial photograph of the property (Exhibit 45, p. 8) is shown below:



The property is improved with buildings that had been used by the former National 4-H Conference Center. Staff advises that the property slopes from generally from west to east, rising 40 feet towards the center and then gently sloping down 10 feet approaching Connecticut Avenue. Approximately 3.71 acres of forest border the north, west and southern property lines. According to Staff, there are no other environmentally sensitive features on the site, such as wetlands, protected floodplains or stream valley buffers. The historic Stephano Lozupone House is located to the north

across Thornapple Avenue. Staff advises that it will not be impacted by the proposed use. Exhibit 45, p. 8-9.

B. Surrounding Area

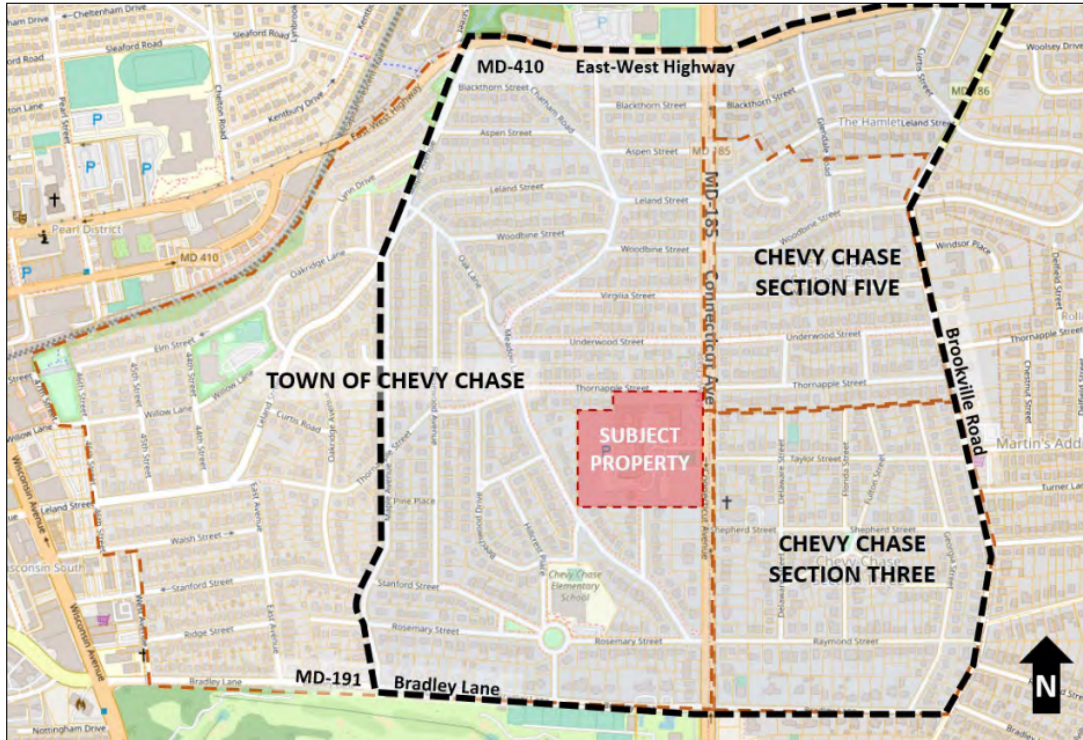
The surrounding area is typically identified and characterized in an application for a Floating Zone. The boundaries are defined by those properties that will experience the direct impacts of the use. This area is then characterized to determine whether the development will be compatible with the neighborhood's character.

Staff used major roadways in this area of Chevy Chase and surrounding municipalities to delineate the surrounding neighborhood. Staff's boundaries include East-West Highway to the north, Bradley Lane to the south, and Brookville Road to the east. Staff determined the western boundary to be the western limits of the Town of Chevy Chase, which is zoned R-60 as well.¹ Exhibit 45, p. 7.

Staff described the surrounding area as consisting primarily of single-family homes on all sides with some institutional uses. *Id.* Ms. Jane Przygocki, the Applicant's expert in land planning, agreed with Staff's assessment, characterizing the area "largely residential in nature with some institutional uses, such as the Chevy Chase Elementary School and Chevy Chase United Methodist Church." T. 53. A graphic from the Staff Report shows the Staff-defined neighborhood boundary (Exhibit 45, p. 7, on the next page).

Based on this record, the Hearing Examiner characterizes the area as primarily single-family detached residential dwellings in the R-60 Zone with institutional uses typically associated with

¹ At the public hearing, the Applicant's land planner, Ms. Jane Przygocki, testified that there was a discrepancy between the neighborhood boundaries described in the text of the Staff Report and the graphic shown in the Staff Report (on the next page). The text states that the boundary is the western limits of the Town, while the graphic shown places the western boundary at Maple Avenue. In her opinion, the distinction makes no difference, as the character of both is the same.



**Surrounding Area
Exhibit 45, p. 7**

residential development.

C. The Applicant’s Proposal

Mr. Tim Gary, founder and CEO of Gallerie Senior Living, believes that the site is well-suited for the proposed residential care facility. Gallerie Living, which owns and operates CORSO, chose the site because it is so close to families in the surrounding area. He testified that this gives residents and families the ability to age gracefully with dignity in the same community. T. 21.

CORSO proposes to remove the existing conference center and replace it with a “residentially scaled” senior care community containing 287 independent living dwelling units, 190 assisted living beds, and 30 memory care beds. Exhibit 45, pp. 10-11. CORSO submitted a conceptual aerial architectural rendering of the project (Exhibit 38, on the next page). The project will include up to 5,000 square feet of retail facing Connecticut Avenue that will be open to the public, bringing the total size to 700,000 square feet. Construction will be in two phases, beginning



with structures in the site interior. Exhibit 45, pp. 9-10. Final phasing will be determined at site plan. *Id.* The Applicant has agreed with the Town and Village to limit the heights of buildings along the property's perimeter. A binding element restricts the height of buildings along Connecticut Avenue to 60 feet for the first 80 feet into the site. Another binding elements requires all buildings on the perimeter to present as four stories plus a roof. Buildings on the northwest corner of the site are restricted to three stories on top of a garage plus the roof. Exhibit 45, p. The stepped building heights are shown on the next page (Exhibit 37).

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 65(b). An excerpt of the FZP showing the proposed building layouts, drive aisles, and forest conservation areas is reproduced on page 11.

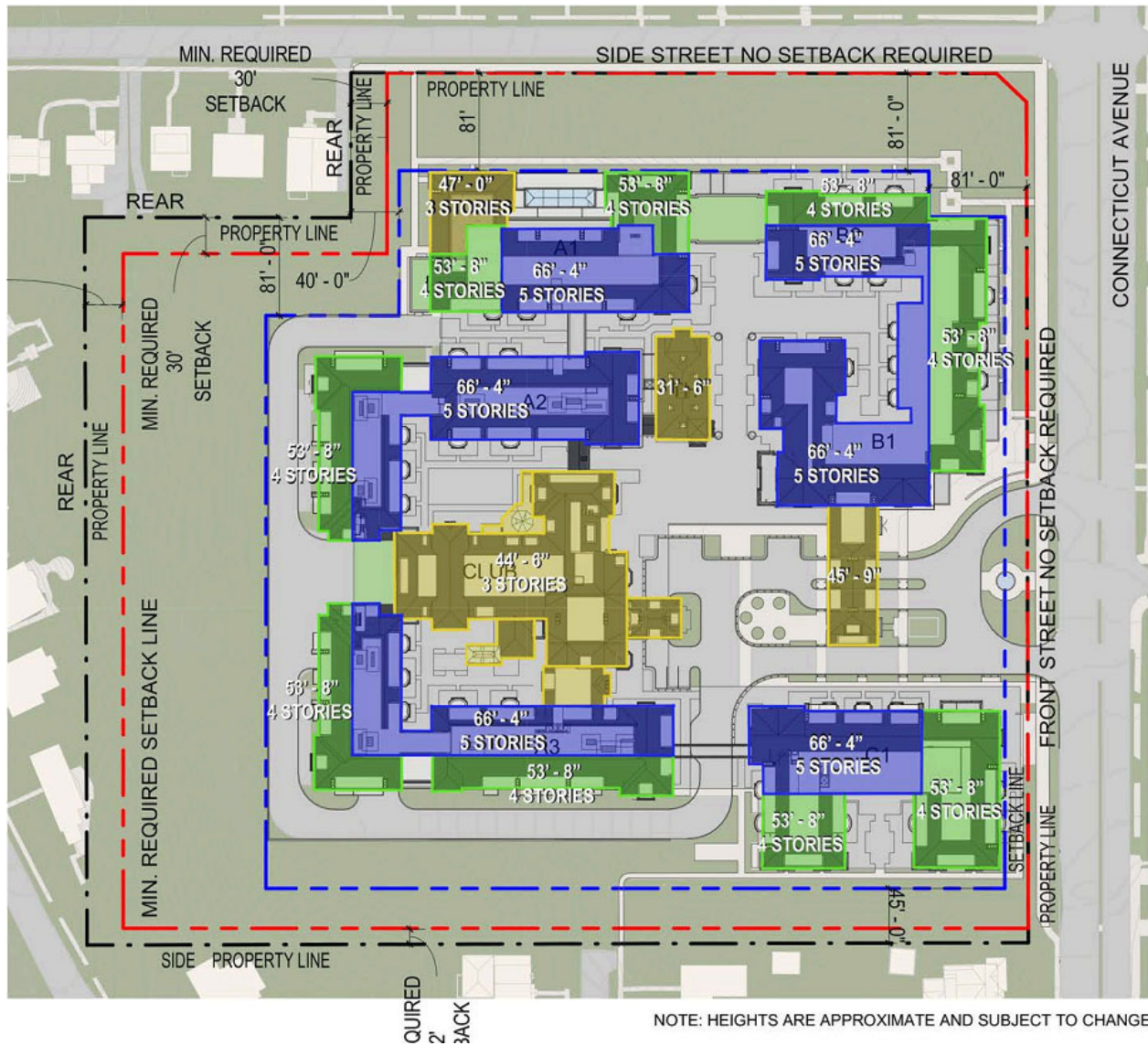
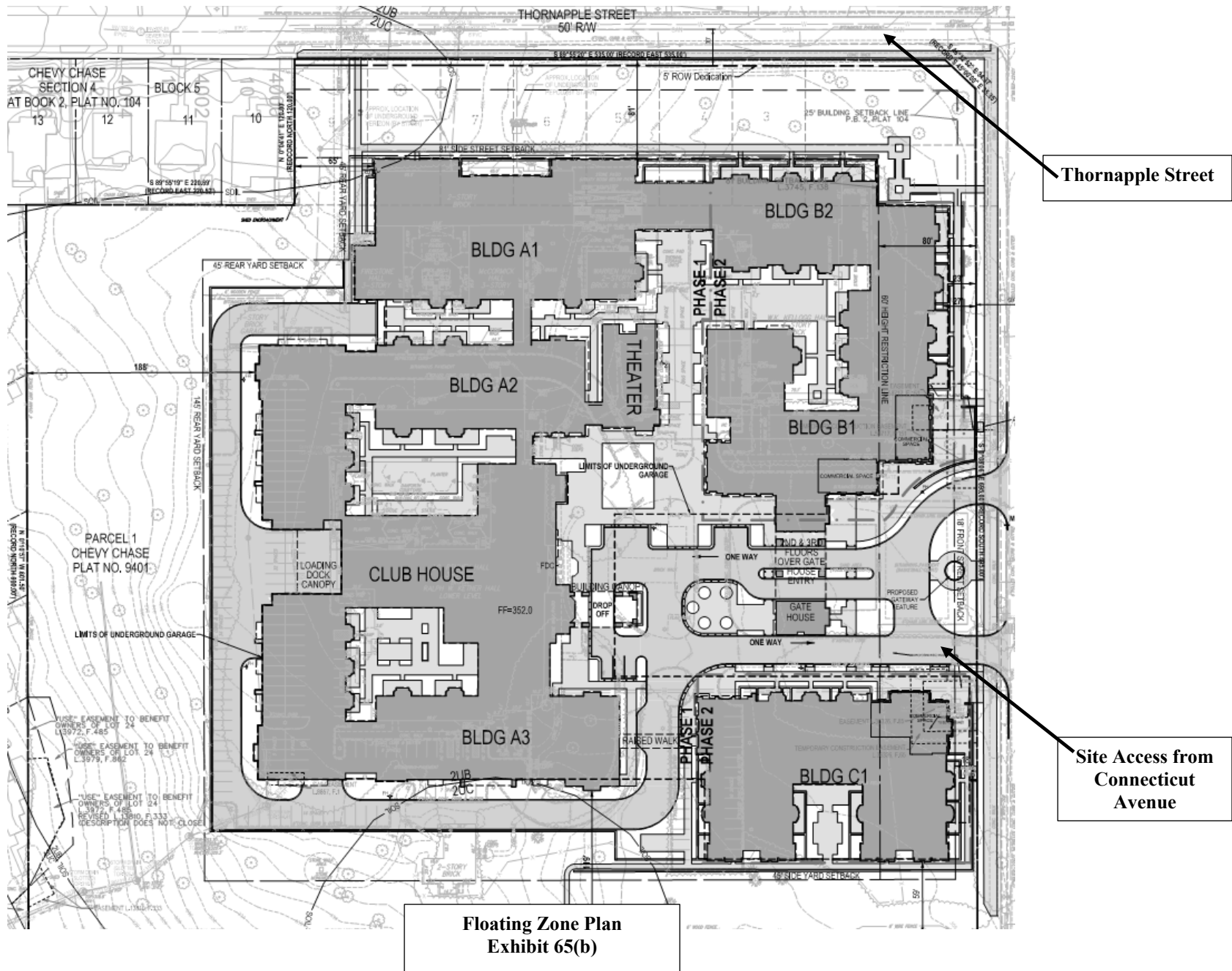


Diagram of Building Heights (Exhibit 37)

2. Binding Elements

The FZP contains 21 binding elements, two of which were modified during OZAH's public hearing (Exhibits 65(a) and (b)):

1. Use of the property will be limited to a residential care facility and ancillary commercial establishments. No more than 5,000 square feet of commercial use, with no single establishment larger than 2,500 square feet shall be permitted. Such commercial establishments shall be made available to the general public.



2. Vehicular access will be limited to Connecticut Avenue. Vehicular access to and from Thornapple Street, Woodside Place, and Meadow Lane and the property must be prohibited. Before submission of a Preliminary Plan and/or Site Plan applications, the Applicant will complete a Comprehensive Vehicular Site Access Study that shall include, but not be limited to review of the existing roadway, intersection geometrics, speed limits, existing turning movements, vehicular and pedestrian counts, evaluation of collision data for the most recent three-year period, forecasted future traffic volumes based upon the existing traffic counts and proposed program, and a signal warrant analysis. The Applicant will work with the State Highway Administration and the Town of Chevy Chase to determine the need for traffic-related measures along Connecticut Avenue. In addition, the Applicant will coordinate with Chevy Chase Section 3 to address traffic-related impacts to that neighborhood.
3. Before submission of Preliminary Plan and/or Site Plan Applications, the Applicant will complete a Parking Demand Analysis to ensure on-site parking for all property employees and visitors, including during peak use and visitation periods, is adequate. The Applicant will implement the recommendations of the Parking Demand Analysis to ensure that all parking necessary to meet the needs of the Project is accommodated on-site, subject to approval by the necessary governmental entities.
4. The Applicant shall provide garage space and five (5) separate parking spaces for use by the Town of Chevy Chase, the details of which will be provided during site plan review.
5. The Applicant shall place areas, as more accurately depicted on the Final Forest Conservation Plan, generally along the southern, western and northern property lines, in a Category I Conservation Easement. The Town of Chevy Chase forester shall be included in the proceedings regarding the creation and maintenance of the Category I Conservation Easement.
6. The Applicant shall construct new pathways connecting the existing sidewalk on Thornapple Street with Connecticut Avenue and connecting the property with Woodside Place. No pedestrian pathway shall directly connect between Woodside Place and Connecticut Avenue. A public walking path through the proposed Category I Conservation Easement, as applicable, generally located along the western property boundary, shall be prohibited.
7. The Applicant shall maintain minimum building setbacks as shown on the Floating Zone Plan, including a maximum building height of sixty feet (60') for a distance of eighty feet (80') from Connecticut.
8. The Applicant shall comply with all applicable stormwater management regulations. A Town of Chevy Chase-appointed engineer will be included in the review of the stormwater management plans for the Property, as coordinated by the Montgomery County Department of Permitting Services.

9. The Applicant shall locate and/or screen refuse storage and collection areas and loading and service areas so as to minimize the view and noise from the adjacent property boundaries.
10. The Applicant shall install planting materials that are primarily native species. The Applicant will remove all invasive species on the Property, in accordance with the Final Forest Conservation Plan. The Applicant will provide sufficient planting depth above garage areas to support canopy and shade trees, where applicable.
11. The Applicant shall install a non-deciduous tree screen along the south property line outside of the Category I Conservation Easement. Foundation planting shall be installed where garage walls extend above grade.
12. The Applicant shall provide exterior lighting according to applicable County regulations and coordinated so as minimize impact to adjacent properties.
13. The Applicant will enter into a Construction Management agreement with the Town of Chevy Chase before approval of the Certified Site Plan for the Property.
14. At the time of Site Plan, the Applicant will provide an interim landscaping plan for the phased build-out of the Project.
15. Vinyl siding and EFIS are prohibited on all new buildings.
16. The Applicant shall execute and record among the land records, so as to be enforceable against all successors and assigns, a Declaration of Covenants that will include the binding elements included in the approved Local Map Amendment prior to approval of the Certified Site Plan for the Property.
17. The outward-facing architectural facades along all sides of the Property will be designed to read as four (4) stories plus roof, with the exception of the northwest corner of the Property, which shall be designed to read as three (3) stories on top of the garage plus roof. Additionally, these outward facing facades must adhere to a maximum height, as observed from the established measuring point of 55 feet with the exception of the northwest corner of the Property, which shall adhere to a maximum height of 50 feet.
18. The Project will provide ground floor entrances along both Thornapple Street and Connecticut Avenue commensurate with individual units located along these respective facades.
19. The Project will include a porte cochere at the site entrances featuring specialty paving, with the final design and location to be finalized at the time of Site Plan.
20. The Project will incorporate a fountain or similar gateway feature at the main entrance along Connecticut Avenue, with the final design to be approved by the Planning Board in connection with the Site Plan approval.

21. Before obtaining any building or grading permits, the Project must receive Site Plan approval

CORSO proposes to utilize the existing site access. An aerial photograph of the access is shown below (Exhibit 60). Ms. Nancy Randall, CORSO's expert in transportation planning, testified that inbound access is from southbound right turn or northbound left on Connecticut Avenue. Ms. Randall testified that egress is a right-turn only to southbound Connecticut.



4. Environment

The property contains approximately 3.71 acres of existing forest. A Preliminary Forest Conservation Plan (PFCP), approved by the Planning Board, calls for removal of 0.74 acres of forest. Approximately 2.94 acres of forest will be preserved in a Category I forest conservation easement. Exhibit 45, p. 17.

D. Community Concerns

Mr. Barney Rush, Mayor of the Town, and Ms. Andy Leon Harney, Village Manager of the Village, testified at the public hearing. Both are generally supportive of the development but have some concerns still to be addressed. Mr. Rush testified that his constituents are skeptical that the trip generation rates used to calculate trips generated from the former 4-H conference center are accurate. He believes that traffic from the Center was *lower* than estimated in the Traffic Study, which found that the redevelopment would *reduce* traffic from the site. His constituents are concerned that traffic from the redevelopment may result in an *increase* in traffic from the former use. The Town also wants to ensure that all employees, residents, and visitors park on-site and not on neighborhood streets. This includes peak visitation days. Keys to the Town's support are the binding elements negotiated with CORSO. These include requiring CORSO to complete a parking demand study and a comprehensive vehicle access study prior to submission of a preliminary plan or site plan and continuing to involve the Town in future approvals.

The Village is concerned about safety of the access on Connecticut Avenue, directly across from the Village. Ms. Harney testified that the right-only southbound exit onto Connecticut is dangerous without a signal, because cars that want to proceed north will be forced to cross several lanes of traffic to make a U-turn. These, and other concerns from the Town and the Village, are discussed in more detail later in this Report.

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 (LMA).

To approve the 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 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 and are listed 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...

The property lies within the boundaries of the *1990 Bethesda Chevy Chase Master Plan* (Master Plan or Plan). Staff concluded that the project substantially conforms to Master Plan.

While Staff recognized that the Plan in general reconfirmed the existing R-60 zoning, the Plan also recommended housing for existing country clubs, private schools, and “institutional uses” if these “ever redeveloped.” *Plan*, p.; Exhibit 45, p. 21.

Staff also found that this application conformed to four of the seven “overarching” goals of the Plan (*Id.*, p. 21):

- *Provide for a balanced housing supply so that persons of varying income levels, age, backgrounds, and household characteristics may find suitable housing appropriate to their needs.*

The Project provides diverse housing opportunities on-site that will help to meet the needs of the surrounding community. As proposed, the Project includes a variety of units for senior living, with three levels of care (i.e., Independent Living, Assisted Living and Memory Care), to allow residents of the surrounding community to age-in-place. The Project will provide MPDUs per the standards of Chapter 25A with final review at the time of Site Plan application.

- *Protect the high-quality residential communities throughout the Planning Area as well as the services and environmental qualities that enhance the area.*

The Project layout has been designed to protect and retain the existing tree canopy that exists along the northern, western, and southern Property boundaries to the maximum extent feasible. This natural screening provides a significant physical and visual buffer from the surrounding residential communities, but also serves to protect the environmental features on-site.

- *Protect the natural resources and environmental qualities of the Planning Area.*

The Project will preserve and enhance the natural resources that exist on-site and the environmental qualities of the Planning Area. As mentioned, the Project preserves a majority of the existing tree canopy that exists on-site today and will provide for its permanent protection through Category I Forest Conservation Easement(s) as proposed with the associated Preliminary Forest Conservation Plan. This will also provide for the protection of the steep slopes that exist along the western Property boundary. The Project also will provide stormwater management on-site, to be reviewed during the Preliminary Plan application.

- *Contribute to a strong sense of community and help reinforce community cohesion.*

The Project proposes a conceptual layout design and building heights to be compatible with, and complement, the character of the surrounding residential neighborhood. The proposed conceptual building architecture related to styles found in the surrounding neighborhood, and many of the proposed Binding Elements reinforce these styles by restricting certain materials and requiring the future buildings to read as a limited amount of building stores. The Master Plan recognizes that “[t]he way we meet the special needs of the elderly...also relates to our sense of a community that cares about its residents.” The Project accomplishes this by providing a range of services for residents ages 62 years and older, which will serve County residents and allow Chevy Chase residents to stay in their community as they age.

Ms. Przygocki agreed with Staff that the project fulfilled these goals of the Master Plan. According to her, it addresses the strong demand for senior housing and maintains the high-quality of housing in the area. T. 64. It protects natural resources by permanently retaining much of the the existing forest and by modernizing on-site stormwater management.

Conclusion: The Hearing Examiner agrees with Staff and the Applicant that the project conforms to the Master Plan. The Plan is more than 30 years old, and notes that specific recommendations may age over time. *Plan*, p. vi. The proposed development meets the Plan's general goal to “balance” the housing supply by providing opportunities for residents to age in their own neighborhood. It protects the existing forest through Category I Conservation Easements, and upgrades on-site stormwater management to current standards. The Hearing Examiner is persuaded by the evidence and expert testimony that the project has been designed to create a sense of community with the surrounding area. A pedestrian side walk will border Connecticut Avenue and the northern side includes public open space. Retail fronting Connecticut Avenue will be open to the public as well as residents. The stepped-up heights also ease the transition between the surrounding single-family detached homes and the residential care facility.

2. Compatibility

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

must:

Section 7.2.1.E.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.***

* * *

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...

i. General Compatibility (Summary of Testimony and Evidence)

Staff concluded that the development will be compatible with the surrounding area and adjacent properties for several reasons. Preservation of the existing forest establishes a visual and physical barrier from the surrounding community. Exhibit 45, p. 26. Maintaining the existing forest also causes setbacks to be much larger than required for the Zone. Staff found that the retail and first-floor units have been oriented toward Connecticut Avenue, which will “activate” and “enliven” this portion of a major road. *Id.* The architecture and building materials incorporate elements from homes in the surrounding area, and buildings will be limited to 60-feet in height for an 80-foot depth from Connecticut Avenue. *Id.*

For similar reasons, Ms. Przygocki opined that the application will be compatible with the

surrounding area. It replaces an institutional use with a residential use more in keeping with the character of the community. The setbacks from the curb line along Connecticut Avenue are comparable to the building setbacks on the other side of that street. T. 54-55.

Ms. Sarah Alexander, CORSO's expert in architecture, submitted photographs of homes in the surrounding area and testified that the proposed project will use materials and architectural elements reminiscent of these homes. The project uses sloped roofs and dormers and gables rather than the typical flat roof, which makes the buildings blend with the surrounding homes. T. 95-96.

ii. Compatibility of Traffic and Parking (Summary of Testimony and Evidence).

A major issue in this case is whether the site access will operate safely and efficiently. Ms. Przygocki contends that the project is compatible with adjacent land uses because it uses the existing site access. T. 59. Ms. Randall opined that the access shown on the FZP would have no adverse traffic impacts. Because the proposed development generates fewer than 50 person trips, the Local Area Transportation Review (LATR) Guidelines do not require CORSO to do a full traffic study. She testified that the project generates fewer than 50 person trips because the LATR Guidelines permit a credit for "existing" trips even though the former use no longer operates. T. 110-118. The County Code requires only that a building be "substantially intact" to obtain credit for "existing trips." T. 117. When a credit for "existing" trips (from the former 4-H conference center) is applied against estimated trips generated by proposed facility, the traffic generated from the site is less than that generated by the former conference center. T. 110.

In response to questions from the Hearing Examiner, Ms. Randall did supply information on traffic volumes at two intersections near the site access and crash data for the access point. She submitted 2019 and 2022 traffic counts for Bradley Boulevard/Connecticut Avenue and East-West Highway/Connecticut Avenue. The 2019 counts (pre-COVID) were taken when the 4-H Center was open; it was closed at the time the 2022 counts were taken. At both intersections, the 2019

Critical Lane Volumes (CLV) were under the policy area standards.² In 2022, the Bradley Boulevard intersection remained below the CLV standard of 1600 for the policy area. There is no current CLV cap on the East-West Highway intersection, however, the 2022 CLVs were less than the 2019 counts. T. 125-126.

In Ms. Randall's opinion, redevelopment will not cause delays at the intersection of the site access/Connecticut Avenue/Taylor Street above the maximum standard for the policy area. The maximum for the policy area is an 80-second delay. Ms. Randall estimated the traffic generated by the 4-H conference center and factored that into the existing delays. The result showed delays of 1.9 seconds in the morning peak hour and 1.5 seconds in the evening peak hour, well under the 80-second cap. When they added existing volumes to projected traffic from the proposed facility, the delays were reduced (*i.e.*, .7 seconds in the a.m. peak hour and 1 second in the p.m. peak hour). T. 126-129.

Ms. Randall also presented crash data for the intersection of the site access, Connecticut Avenue, and Taylor Street (in the Village). These included accidents reported to the police for the last 5 years and two months (Exhibit 61, on the next page). Ms. Randall testified that there have been 6 reported, all of which occurred on northbound side of Connecticut avenue east of the median, on the opposite side from the site access. T. 133.

In Ms. Randall's opinion, traffic will be compatible with the surrounding area. Redevelopment with a residential care facility will generate 82 fewer vehicle trips in the morning

² "CLV" or Critical Lane Volume measures an intersection's ability to carry traffic by analyzing the level of congestion at locations with conflicting vehicle movements, such as an intersection. *2021 LATR Guidelines*, p. 33. The County is divided into different "policy areas," each of which have different congestion standards. *Id.*, p. 7. In some policy areas, congestion standards also include measure of the delay. The amount of delay is measured by the weighted average of all approaches. T. 126.

Category	Subcategory	Number of Crashes	Number of Crashes	Number of Crashes	Number of Crashes	Number of Crashes	Number of Crashes	Number of Crashes
		2018	2019	2020	2021	2022	2023	Total of 5yrs and 2 months
Severity	Property Damage	1	0	0	2	0	0	3
	Injury Crash	2	0	1	0	0	0	3
Collision Type	Side Swipe	1	0	0	1	0	0	2
	Same Direction Rear End	1	0	1	1	0	0	3
	Angle	1	0	0	0	0	0	1
Intersection Related	Yes	3	0	1	2	0	0	6
Direction	NB	3	0	1	2	0	0	6
	SB	0	0	0	0	0	0	0

**Crash Data at Access Intersection
Exhibit 61.**

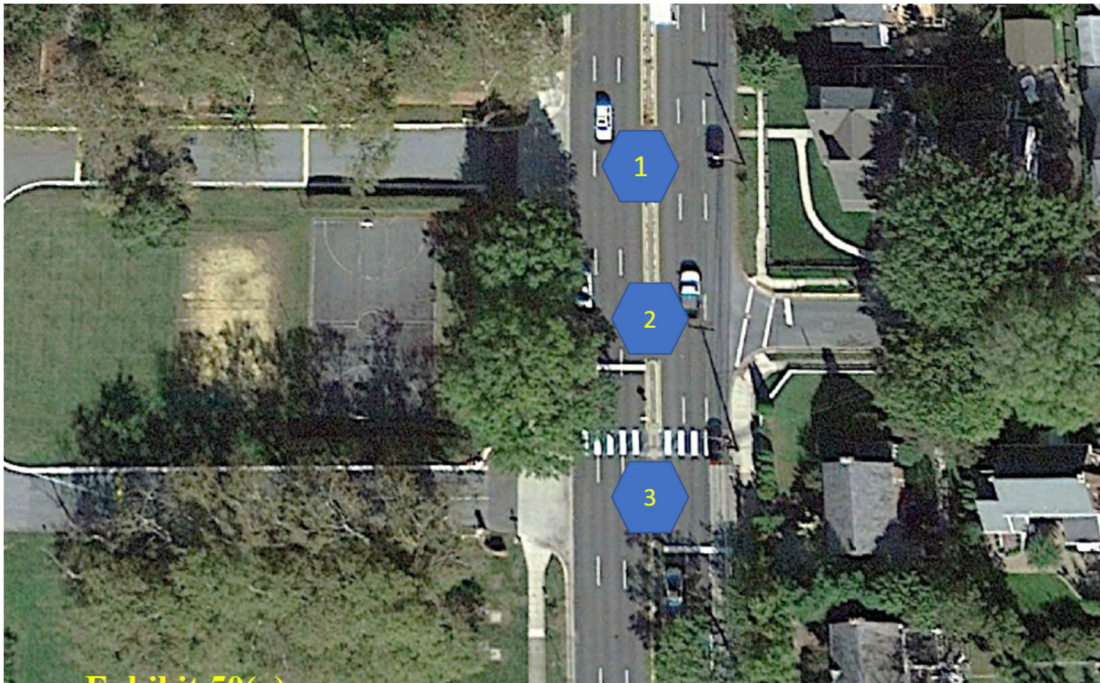
and 46 fewer in the evening peak hours. Residential care/assisted living is a very low traffic generator. Transit stops for Ride-On and Metro are adjacent to the site and along the east side of Connecticut. T. 135-136.

Ms. Randall described what would be involved in the “comprehensive vehicular access study” required by Binding Element No. 2. The study will examine and collect data relevant to whether modifications can be made to make the intersection operate more efficiently and (if the data supports this) more safely. Information considered will include current traffic counts and delays from all approaches to the intersection, projected future counts and delays, queuing issues, crash data for the last three years, and an analysis whether a signal warrant is appropriate. After collection of this data, the study will then analyze whether modifications that can be made to improve efficient operation and safety, if necessary. Potential modifications include signalization (enabling a full-movement intersection), changes to the location of the crosswalk, and changes to signage. T. 120-124.

The Town and Village are “deeply skeptical” of the traffic credit applied in the LATR traffic statement. Mr. Rush believes the traffic formulas used by CORSO to estimate traffic from the 4-H Center are “wildly” excessive. Those who stayed at the Center did not have cars (they arrived by

bus) and did not add to traffic in the area. The Center had a very small staff. T. 159. One reason the Town continues to support the development is the binding element (*i.e.*, Binding Element No. 2) requiring CORSO to conduct a comprehensive vehicular access study. It is very important to the Town that CORSO attempt to use actual amount of traffic generated from the 4-H Center traffic to the extent possible, rather than the formula used by the Applicant. The Town expects CORSO to conform to any changes recommended by the study. T. 160.

The Village raises similar concerns. Ms. Harney testified that the Village is concerned about cut-through traffic using Taylor Street. She believes that the current configuration may result in risky and unsafe traffic maneuvers for vehicles wanting to proceed north because they will have to cross three narrow lanes to make a U-turn to head north. To explain, Ms. Harney submitted a graphic showing the three existing median breaks at the intersection (Exhibit 50(a), below):



Ms. Harney testified that median break No. 3 allows vehicles exiting the site to proceed northbound on Connecticut. Break No. 2 used to permit eastbound vehicles to exit Taylor Street and proceed southbound on Connecticut Avenue, although she believes there may be signs

prohibiting that now. Break No. 1 is the site entry used by northbound buses on Connecticut Avenue to make a left turn into the Center. She testified that the crosswalk is in a “crazy” location because there are no signals and it’s south of Taylor Street and north of the current exit. T. 166-167. People use a much safer crosswalk to the north. In December 2022, the Town sent a letter reiterating its position that redevelopment of the residential care facility would result in an increase in traffic from the 4-H Center. T. 168.

The Village is concerned about relying on a vehicular access study prepared by the Applicant because it may be slanted in their favor. Ms. Harney does not believe that the crash data presented by CORSO in this hearing comprehensively captures safety problems because accidents without property damage or personal injury (*e.g.*, fender benders) do not have to be reported. She pointed out that the lanes on the east side of Connecticut are only 9-feet wide, a substandard width. T. 168-169.

Ms. Harney testified that it’s clear that the median breaks at the site access are dangerous and will have to be closed because, while it was easy to see buses entering and exiting the former 4-H Center, it will be difficult to see the vehicular traffic accessing the residential care facility. T. 169. Using the existing access is also unsafe because traffic exiting the site must proceed south on Connecticut Avenue. Traffic that wishes to proceed north will then have to cross several lanes of traffic on Connecticut to make a U-turn onto Connecticut Avenue northbound. Some streets south of the site access prohibit left turns. There is one street where a U-turn is possible if there isn’t much northbound traffic. She believes these maneuvers are “risky,” particularly during the two-year construction period with heavy traffic.

When the Village asked for SHA’s opinion on using the site access, SHA engineers agreed with them that the existing configuration “does present serious public safety hazards.” T. 171. The Village initially supported a signalized intersection to avoid these concerns, but then realized that

would lead to cut-through traffic from Taylor Street. To address CORSO's desire to maintain the existing configuration, SHA prepared the following intersection design concept called "Split Phase, Alternative 2" (Exhibit 50(c), below):



The Village does not agree with this approach because the signal at Taylor Street will create cut-through traffic and the configuration does not deal with the need for vehicles exiting the site to make a U-turn on Connecticut Avenue to proceed north. T. 172. The Village prefers a second alternative, "Split Phase Alternative 1" (Exhibit 50(c), on the next page). This option permits vehicles to exit from the northern driveway and permits them to turn left or right without the need to make U-turns on Connecticut Avenue. The southern entry could be used for service and emergency vehicles, while the northern entry could be made wider to permit two-way traffic. T. 174. Because of the potential impacts on the Village, Ms. Harney feels it important to retain the language in Binding Element No. 2, requiring CORSO to coordinate with the Village during the comprehensive vehicular access study.



**Split Phase Alternative 2 (Configuration favored by Village)
Exhibit 50(c)**

Staff advises that the FZP shows 545 parking spaces on-site, although the range required by the Zoning Ordinance is between 323 spaces and a maximum of 528. Exhibit 45, p. 29. Ms. Przygocki testified that 503 spaces would have direct access to a drive aisle and 42 spaces would be tandem (one space with no direct access to a drive aisle). CORSO has agreed to perform a parking demand analysis (Binding Element No. 3) to determine whether all parking can be met on-site. Mr. Rush testified that the requirement for a parking demand analysis is also important to the Town's support. The Town wants to ensure that all parking for employees, residents, and visitors may be accommodated on-site rather than on streets in the Town. The Town did not see in the back-up information on the parking demand for residents, employees during shift changes, and visitors, especially on heavy visitor days. T. 160-161. The Town is looking for these much more concrete measures of what will occur. The Town interprets the binding element to mean that recommendations of the study will be implemented. If the parking is determined to be inadequate,

that means that the binding element hasn't been met. It would require some additional changes in the plans that would meet the actual parking demand. *Id.*

Ms. Harney reiterated her support for the parking demand study required by Binding Element No. 3. She testified that Village residents are concerned about on-street parking in their community and believe that all parking for the residential care facility should be accommodated on-site. T. 164, 175.

iii. Conclusion: General Compatibility.

The Hearing Examiner agrees with Staff that the project will be compatible with surrounding and adjacent land uses. She primarily relies on the significant visual and physical barrier created by permanently preserving forest on three sides and the stepped-up building heights, which are lower around the perimeter and highest in the site's interior. The uncontroverted evidence that building materials and architectural elements of the project reflect those of the surrounding neighborhood also supports a finding that the use will be compatible with surrounding and adjacent development.

iv. Conclusion: Compatibility of Traffic Impacts.

Even when a traffic study is not required, the Hearing Examiner must still make a finding that traffic impacts will be compatible with the surrounding uses.³ Were this application subject to a full traffic study, some analysis of the safety and operation of the intersection would be required at the rezoning stage. *See, LATR Guidelines*, Sections 3.C.3 (Vision Zero Statement), p. 25. A full traffic study is not required, however, for developments that will result in fewer than 50 person trips. *Id.*, §II.B (p. 7.) CORSO's proposal is under 50 person trips due to a credit for "existing trips" from the 4-H Center, even though that use has been abandoned and no trips are currently on

³ Maryland courts have held that traffic impact is a component of compatibility to be considered in land use cases. *Md. Reclamation Assocs. v. Harford County*, 414 Md. 1, 34 (2010).

the road.⁴

Ms. Randall did provide evidence (crash data for the last five years) and expert testimony that the current configuration of the intersection does not pose significant safety hazards. This data is the only expert or objective evidence on the safety of the intersection. That, combined with Ms. Randall's expert testimony that most of the accidents were unrelated to the site access (northbound turns from Taylor Street), supports a finding that the *existing* operation (with the 4-H Center initially in operation but without the residential care facility) is relatively safe. The concerns of the Village and the Town are based on their belief that the residential care facility will result in more traffic than was generated by the 4-H Conference Center. While the Hearing Examiner does not doubt sincerity of the testimony, she must give more weight to the objective and expert evidence in this record. Both the Town and Village acknowledge that they are not traffic experts. T. 159. The Town plans to continue to pursue using trip numbers from the 4-H Center that are "as realistic as possible," so the Town's concerns will continue to be addressed. T. 160.

Ms. Randall's testimony that intersections north and south on Connecticut Avenue will continue to meet policy area standards also supports a finding that traffic will not have an adverse impact on the area. Based on the objective evidence before her, the Hearing Examiner finds that the vehicular access study, which will be conducted with oversight by SHA and the Planning Department, and with participation from the Village and Town, will adequately address any potential adverse impacts from site traffic.

Similar reasoning applies to the concerns expressed that on-site parking provide may be

⁴ Ms. Randall submitted information regarding Council Bill 38-10, adopted in 2010, that amended the definition of "existing building" for the purpose of testing the roadway adequacy. The Hearing Examiner reviewed the legislative history of the bill and included both the Bill and the legislative history in the record of this case. Exhibits 49(a)-(d). Based on the information presented to her for the first time, she agrees that the Council intended to permit applicants to take credit for "existing trips" that are no longer on the road for a variety of policy reasons.

inadequate. The FZP demonstrates that the development may accommodate more than the number of spaces required by the Zoning Ordinance. There is no objective evidence before the Hearing Examiner that the FZP doesn't provide sufficient on-site parking, and she commends both parties on addressing these concerns through the binding element requiring a parking demand analysis prior to filing a preliminary plan or site plan application.

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 proposed development generates fewer than 50 person trips due to the trip credit claimed for the former 4-H Conference Center use. Ms. Randall presented expert testimony and evidence to support this position.

Staff also determined that existing public facilities, such as water and sewer, utilities, fire

and police, and health care facilities are adequate to serve the use. Exhibit 45, p. 23. Mr. Timothy Hoffman, CORSO's expert in civil engineering, agreed, opining that water, electric, sewer, gas already served the site. T. 47. A stormwater management concept is not required for rezoning, but stormwater management will be addressed in detail during preliminary and site plan. *Id.* According to Mr. Hoffman, stormwater strategies will be green roofs and micro-bioretenion facilities distributed throughout the site in sequence with underground structural treatment practices to provide the required treatment volumes. T. 47-48.

Conclusion: As described, Ms. Randall presented persuasive testimony and evidence that a full traffic study is not required for this application because the credit for existing trips brings the total new trips under 50. The uncontroverted evidence and testimony support a finding that the remaining public facilities, except for stormwater management, are already present at the property. While stormwater has not been finalized, expert testimony establishes that it can be accommodated using accepted techniques, with the final design established later in the approval process. This standard has been met.

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 lists the "intent" of all Floating Zones and a "purpose" for each zone. 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 CRNF Zone are discussed below.

1. Intent of Floating Zones (Section 59.5.1.2)

Section 5.1.2 of the Zoning Ordinance lists the intent of all Floating Zones. 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 intent standards.

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...

Planning Staff concluded that (Exhibit 45, p. 23):

The proposed rezoning will allow the project to be integrated into the existing community and provide much needed senior housing and neighborhood-serving retail. The natural features of the site consist of mature trees, areas of steep slopes, and forest; these areas are proposed to be maintained with much of these areas being protected via conservation easement.

Ms. Przygocki testified that the FZP integrates the development into the existing community and provides needed housing. While primarily designed for residents, it will be available to visitors and the neighborhood. It protects and maintains the tree canopy and steep slopes around the property and preserves them in forest conservation easements. This also will ensure a physical and visual buffer. It also permits development to respond to changing demographic trends. This development permits some Master Plan goals to be achieved in a manner that promotes sustainability. This is consistent with smart growth policies with existing utilities and transit already established and provides a housing need that is County-wide. T. 68.

Conclusion: The Hearing Examiner agrees with Staff and the Applicant that the project fulfills this intent. It integrates the community outside of the property by providing public retail and walking paths. At the same time, she agrees that retention of most of the existing forest provides a visual buffer from three sides of the site. Stepping up heights of the facades along Connecticut Avenue and Thornapple Street provides an appropriate transition from the lower density homes in the surrounding area to the larger structure. This criterion for approval has been met.

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 the FZP meets this intent of the Floating Zone (Exhibit 45, p. 25):

The proposed Floating Zone will allow the Petitioner the flexibility to redevelop this now unused, long-standing institutional use with a more compatible mixed-use, predominantly residential development. As documented in the 2018 Housing Needs Study [footnote omitted], the County faces a significant need for more senior housing, which the proposed Project plans to meet through developing high-quality senior housing, at varying levels of care, which will serve County residents and allow them to stay in their community as they age.

The Project layout and architecture has been designed to ensure compatibility with the surrounding neighborhood with respect to setbacks, building height, design, and access/circulation. The project promotes sustainability and smart growth principles through infill redevelopment of the Property, which is already served by the existing infrastructure and public transportation...

Staff also confirmed that the redevelopment complies with all basic sustainability requirements. *Id.*

Conclusion: The Hearing Examiner agrees with Staff that the project meets this intent of the Floating Zones. The Master Plan, which made no specific recommendation for this site, is over 30 years old. As Staff notes, a more recent (2018) study identifies the need for more senior housing in Montgomery County. This project will contribute to meeting that need. Expert testimony demonstrates that the architecture is reminiscent of existing homes in the community, including dormers and gabled roofs that help reduce the scale of the redevelopment. Ms. Randall testified that the property is served by two bus routes and Staff confirms that the redevelopment complies with all sustainability criteria. The Hearing Examiner finds that this intent standard has been met.

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 Hearing Examiner has already discussed some of these purposes; the remaining are discussed here.

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; ...***

Conclusion: The remaining purposes listed here are redundant of the findings already made. The Hearing Examiner has already found that the FZP uses additional height of the zone requested and flexible setbacks to accomplish a compatible residential project through height transition, provision of public open space, and forest retention. The FZP allows redevelopment with a residential rather than institutional use, in accordance with the Master Plan. 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 currently in a Residential Zone. Because the existing zoning is residential (R-60) the tests must be applied to this application. No one contests the findings of the Staff Report that the application meets the requisite number of thresholds, and the Hearing Examiner does not repeat them here. Exhibit 45, pp. 27-28. Given the uncontroverted evidence, the Hearing Examiner finds that the property meets the requisites for application of a Floating Zone.

D. Development Standards and Uses Permitted in the CRNF 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 CRNF Zone to “only” those uses permitted in the CRN Zone. A residential care facility is a limited use in the

CRNF Zone. *Zoning Ordinance*, §59.3.1.6. Commercial retail uses are permitted uses in the CRNF Zone. The CRNF Zone permits any building type, thus, the multi-family buildings are permitted in the requested zone. *Id.*, §59.5.3.4.

2. Development Standards of the CRNF Zone

Staff found that the FZP meets the development standards of the CRNF-1.5, C-0.25, R-1.25, H-70 Zone (*Zoning Ordinance*, §59.5.3.5), as demonstrated in the table from the Staff Report (Exhibit 33, p. 14, shown below):

	Required/Permitted	Proposed
Site		
Tract Area	N/A	594,271 sf (13.64 acres)
Previous ROW Dedications		58,850 sf (1.35 acres)
Proposed ROW Dedications		2,688 sf (0.06 acres)
Site Area		532,733 sf (12.23 acres)
Maximum Density of Development	891,406 GFA (1.50 FAR)	700,000 gsf (1.18 FAR)
Open Space	10% of Site Area	11.1% of Site Area, to be finalized at Site Plan
Lot Coverage (max.)	Set at Site Plan	To be determined at Site Plan
Building Height (max.)	70 feet	70 feet
Principal Building Setbacks (min.)³		
Front setback from public street	Set by Floating Zone Plan	18 feet
Side street setback (Thornapple Street)		81 feet
Side setback		45 feet
Rear setback		145 feet

As indicated, the FZP demonstrates that the site can accommodate more than the required number of parking spaces. Staff further advises that it the FZP demonstrates that the required number of bicycle spaces can be accommodated on-site.

Conclusion: The approved Floating Zone Plan determines the setbacks from the site boundary. *Zoning Ordinance*, §59.5.3.5.B.2. Remaining development standards may be finalized at site plan unless they are restricted by a binding element. The Floating Zone Plan demonstrates that the redevelopment can be built according to standards of the Zoning Ordinance and incorporate the binding elements listed.

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-148, requesting reclassification from the existing R-60 to the CRNF-1.5, C-0.25, R-1.25, H-70 of property located at 7100 Connecticut Avenue, Chevy Chase, MD, further identified as Parcel 1, Block 5, "Section 4 Chevy Chase" subdivision (Tax Account No. 07-00464946) be **approved** in the amount requested and subject to the specifications and requirements of the Floating Zone Plan (Exhibit 65(b)), provided that the Applicant files an executed Declaration of Covenants (Exhibit 65(a)) 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: May 12, 2023.

Respectfully submitted,



Lynn Robeson Hannan
Hearing Examiner