

Resolution No. 16-430
Introduced: January 22, 2008
Adopted: January 22, 2008

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

By: County Council

SUBJECT: APPLICATION NO. G-860 FOR AMENDMENT TO THE ZONING ORDINANCE MAP, Patricia A. Harris, Esquire, Attorney for Applicant, Green Acres Metro, L.P., OPINION AND RESOLUTION ON APPLICATION

Tax Account Nos. 04-00048923, 04-00048934 and 04-001999131.

OPINION

Application No. G-860, filed on November 15, 2006, requests reclassification of approximately 4.633 acres of land in the White Flint area from the C-2 Zone (General Commercial) to the TS-M Zone (Transit Station-Mixed). The subject site is described as Part of Lot 3, Lot 4, and Lot 5 of Green Acres Subdivision, and is located at 11520, 11560, and 11564, Rockville Pike, North Bethesda. This site is on the west side of Rockville Pike, between Nicholson Lane and Marinelli Road in the White Flint Sector of the North Bethesda-Garrett Park Master Plan.

The site will be developed with a mixed-use development consisting of office, retail and multi-family residential. There will be approximately 246,223 square feet of residential space and 201,822 square feet of commercial space, in two buildings, one eleven stories tall and the other thirteen stories tall. The residential component of the project consists of 247 dwelling units, including approximately 38 moderately priced dwelling units (MPDUs). The planned MPDUs constitute 15 percent of the total number of proposed residential units, which allows up to a 22 percent bonus density under Section 25A-5(c) of the Montgomery County Code. The actual number of MPDUs will be determined at site plan, based on the amount of bonus density actually achieved. All MPDUs will be constructed on-site.

Parking will be provided in underground garages to accommodate approximately 1,093 vehicles. Traffic impact issues will be satisfied using the Growth Policy's Alternative Review Procedure for Metro Station Policy Areas, and the proposed development will be subject to preliminary plan and site plan approval by the Planning Board.

The application for rezoning was reviewed by the Technical Staff of the Maryland-National Capital Park and Planning Commission, and in a report dated September 18, 2007, Staff recommended approval of the application. The Montgomery County Planning Board considered the application on October 25, 2007 and, by a vote of 5 to 0, recommended approval, but added the additional recommendation "that the binding elements 1 and 3 of the Development Plan be revised to eliminate the density restriction of 2.22 FAR (floor area ratio)¹ and the height restriction of 11 and 13 floors, respectively." Exhibit 78. The Planning Board's rationale for the additional recommendation is that revisions of the White Flint Sector of the North Bethesda Garrett Park Master Plan are now being considered, and if approved, those revisions would allow greater density and height.

There is no opposition in this case, and Applicant's development plan has been endorsed by the Washington Smart Growth Alliance² as a "Smart Growth Project" and an "excellent example of redeveloping older suburban strip centers and creation [of] great walkable places." Exhibit 82.

A public hearing was held on November 5, 2007, the record closed on November 9, 2007, and the Hearing Examiner's report was filed on December 20, 2007. The Hearing Examiner recommended approval on grounds that the proposed development satisfies the intent, purpose and standards of the TS-M Zone; that it meets the requirements set forth in Section 59-D-1.61 of the Zoning Ordinance; that the application proposes a project that would be compatible with development in the surrounding area; and that the requested reclassification to the TS-M Zone has been shown to be in the public interest.

¹ FAR "is determined by dividing the gross floor area of all buildings on a lot by the area of that lot." Zoning Ordinance §59-A-2.1.

To avoid unnecessary detail in this Resolution, the Hearing Examiner's Report and Recommendation, dated December 20, 2007, is incorporated herein by reference. Based on its review of the entire record, the District Council finds that the application does meet the standards required for approval of the requested rezoning for the reasons set forth by the Hearing Examiner. The District Council also agrees with the Hearing Examiner's conclusion that this development must be evaluated under the standards of the Sector Plan that is currently in force, not by a revision that is under review but has not yet been approved. If a revised sector plan is in effect when this case goes to site plan review and subdivision, then an application for a development plan amendment can be filed by the Applicant to allow appropriate modifications to the binding elements to conform to the revised sector plan.

The subject property is comprised of three lots currently being used by a McDonald's restaurant and a variety of retail stores housed in a 60,000 square-foot, two-story shopping center. The remainder of the site is devoted to at-grade parking for customers of the shopping center. Part of Lot 3 is located at the southwestern corner of the Rockville Pike and Marinelli Road intersection; Lot 4 has frontage along both Rockville Pike and Nicholson Lane; and Lot 5 is located in the center of the property on Rockville Pike. The property is within the White Flint Sector Plan area of the North Bethesda Garrett Park Master Plan, and its center is approximately 800 feet from the White Flint Metro Station. The combined property is almost trapezoidal in shape, with a notch missing from its southeastern corner.

The gross tract area, including both land previously dedicated to public right-of-way (6,622 square feet) and land that is proposed for dedication (31,291 square feet), is approximately 201,822 square feet (4.633 acres). The proposed net lot area is approximately 3.76 acres (163,909 square feet). The topography of the Property reflects a gradual rise in grade from an elevation of 396 feet in the southwest corner of the site to an elevation of 420 feet in the center of the site before decreasing to an elevation of

² Washington Smart Growth Alliance is a joint effort of the Greater Washington Board of Trade, the Chesapeake Bay Foundation, Enterprise Community partners, the Metropolitan Washington Builders' Council, the Coalition for Smarter Growth and the Urban Land Institute of Washington.

406 feet along the frontage with Rockville Pike. The site is primarily impervious and lacks significant vegetation, although a Tree Save Plan will be required as part of the Final Forest Conservation Plan. Applicant will have to submit for site plan review, since specimen or significant trees will be impacted by the construction. Technical Staff reports that the property is not located within a Special Protection Area or a Primary Management Area, and there are no steep slopes, wetlands, streams, or erodible soils.

The surrounding area must be identified in a floating zone case so that compatibility can be evaluated properly. The "surrounding area" is defined less rigidly in connection with a floating zone application than in evaluating a Euclidean zone application. In general, the definition of the surrounding area takes into account those areas that would be most directly affected by the proposed development. In the present case, Technical Staff recommends designating the surrounding area as:

- (1) across Rockville Pike to the east to include the Nuclear Regulatory buildings and the White Flint Metro Station,
- (2) west to Executive Boulevard to include the TS-M zoned high-rise residential buildings,
- (3) south to Executive Boulevard Extended to include the existing commercial buildings, and
- (4) north of Marinelli Road to include the Montgomery County Conference Center and Marriott Hotel.

The Hearing Examiner accepted this definition, as does the District Council.

The land use and zoning pattern of the surrounding area reflects a mix of retail, office, multi-family residential, and transit-related uses. The White Flint Metro Station, located at the northeast corner of Marinelli Road and Rockville Pike, is well within walking distance of the subject property. Located immediately east of the subject property across Rockville Pike are two high-rise office buildings that house the Nuclear Regulatory Commission and several retail commercial uses. The entire block facing the subject property across Rockville Pike is recommended for future development under the TS-M zone. A 9.7-acre site immediately west of the property is developed with two 18-story, high-rise, residential buildings known as The Grand and The Wisconsin. The 9.7 acre site is classified in the TS-R zone. The Montgomery County Conference Center and a 225-room hotel are located to the north immediately across Marinelli Road from the subject site and zoned TS-M. "Anthropologie", a single-story retail commercial

use, is located immediately south of the subject property. That C-2 zoned site is also proposed for future development under the TS-M zone. Two automobile service stations zoned C-2 are located immediately south and southeast of the property at the intersection of Rockville Pike and Nicholson Lane. Farther south on the west-side of Rockville are the two Rockwall Office buildings recommended for future development under the TS-M zone.

The zoning and area planning history of the subject site was set forth in the Technical Staff report:

The subject property was first identified for transit-related development in the 1970 North Bethesda Garrett Park Master Plan. The Master Plan recognized that the Metro station would be a major determinant of future development in the area and encouraged a mixture of office, retail, and residential uses on sites within convenient walking distance of the Metro station. The Metro station impact area was again studied in the 1978 White Flint Sector Plan. The same development policies were carried forward for properties within the Metro station impact area. Because regional commercial uses were judged to be a more suitable land use for properties along Rockville Pike, the subject property was reclassified from the C-1 zone to the C-2 zone by comprehensive rezoning following adoption of the Sector Plan.

The 1992 North Bethesda-Garrett Park Master Plan recommended a more intense mixed-use development pattern for the White Flint Metro Station impact area. The subject property was identified as a key transit-related site appropriate for a mix of residential and employment uses at a 2.4 FAR. Although the property was confirmed in the C-2 zone by the 1992 Master Plan, the property was identified as appropriate for development under the standards of the TS-M zone.

The planned 201,822 square feet of commercial space for the proposed project would be comprised of 115,886 square feet of retail space and 85,936 square feet of office space. Beneath the two buildings will be an underground garage to accommodate 801 shared office/retail spaces and 292 residential spaces. Applicant also plans streetscape improvements, plazas, upgraded pedestrian and vehicular circulation and green rooftop terraces. Woodglen Drive would be extended and improved to connect Nicholson Lane with Marinelli Road.

A private street, or pedestrian plaza, will divide the site into halves, with a northern half being primarily office and retail, and the southern portion being primarily residential and retail. A third street,

along the southern property line, will provide service access, including two garage entrances. A third garage entrance will be located on Woodglen, near the northern end of the proposed office building.

Applicant's objective is to increase density and build a mixed-use project appropriate in scale to its location across the street from the Metro. This would take advantage of retail opportunities in the White Flint area, and serve as a connector site between the LCOR development to the northeast and the White Flint Crossing development to the south. The project was designed as a "two-sided building," which takes into account the Woodglen side to the west, as well as the Rockville Pike side to the east. It has also been designed as a "green" building, using "smart growth" principals.

Applicant's architect, Peter Fillat, testified that the intent is to make Rockville Pike "a boulevard type of space." Tr. 80-81. A 35-foot setback will create an edge, consistent with what Technical Staff asked Applicant to do, and the buildings will face the street and create a pleasant pedestrian environment. Pedestrians coming from the Metro stop will be encouraged to cross the street into the subject site. Woodglen Drive extended is anticipated to be different from Rockville Pike, more of a neighborhood street. The buildings will also face that street, and they will create a sidewalk which ranges from 15 feet to 25 feet, with the goal of creating a smaller street, with neighborhood retail most people living in the community would walk to. There will also be a bicycle path along the opposite side of the street.

Technical Staff concluded that development of the subject property under the standards of the TS-M Zone would be compatible with the scale and density of existing and planned land use for the surrounding area. Both Staff and the Planning Board characterized the project as "a well-designed, mixed-use development." Exhibits 77 and 78, p. 1. Based on this record, the District Council agrees.

Pursuant to Code § 59-D-1.1, development in the TS-M Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the TS-M Zone. The Development Plan, and the Land Use Plan that constitutes one of its primary parts, are binding on the Applicant except where particular elements are identified as illustrative or conceptual. Illustrative

elements may be changed during site plan review by the Planning Board, but the binding elements cannot be changed without a separate application to the District Council for a development plan amendment.

The land use plan for the present zoning application, Exhibit 95(a), is titled "Development Plan."

The binding elements are printed on the development plan, and they are as follows:

BINDING ELEMENTS:

1. Development on the property shall be limited to 2.22 FAR (448,045 square feet) with no more than 1.0 FAR. (201,822 square feet) of non-residential density.
2. The Applicant shall provide up to 15% of the total number of residential units as MPDUs depending on the amount of the density bonus achieved by the Applicant pursuant to Chapter 25A of the Montgomery County Code, as amended 2004.
3. The total number, mix and location of the residential units, including the MPDUs, shall be determined at site plan. All MPDUs shall be provided on-site. The following maximum height limitations shall apply to the development: (i) up to eleven (11) stories for Building I located on the northern portion of the Property; and (ii) up to thirteen (13) stories for Building 2 located on the southern portion of the Property. The final determination of the height, in feet, of each of the buildings referenced on the development plan shall be made at site plan.
4. A dedication agreement between the Applicant and Forest City regarding the ultimate alignment and right-of-way of Woodglen Road Extended between Nicholson Lane and Marinelli Road shall be provided prior to site plan approval.
5. A minimum of 10% public use space and 25% active or passive recreation space will be provided with final areas to be determined at site plan.
6. All necessary releases of the Building Restriction Line and Access Agreement that binds a portion of the Landow Property for the benefit of the Holladay Property and binds a portion of the Holladay Property for the benefit of the Landow Property shall be provided prior to site plan approval.

The project will be developed in one phase, and as pledged in Binding Element No. 5, will provide the required minimum of 10 percent public use space (16,391 square feet, on ground level) and 25 percent active or passive recreation space (28,034 square feet),³ with final areas to be determined at site plan. Most of the active/passive recreational space is in roof-top terraces.

³ Pursuant to Zoning Ordinance §59-C-8.43(b), the 25% active/passive recreational space (28,034 square feet) is based only on the portion of the net lot area devoted to residential purposes (112,133 square feet).

The neighbor to the south of the subject site (the “Anthropologie” Store owned by Rockville Seasons Limited Partnership, an affiliate of Landow and Company) has an access easement and a Building Restriction Line (BRL) covenant on the subject site. Applicant and its neighbor have a written agreement that will require a Reciprocal Easement Agreement to be executed, which will provide access to the Landow Property via the proposed 24-foot right-of-way on the subject site, as shown on the Development Plan. The parties have also agreed to record, in the land records, a release of the existing building Restriction Line Covenant and Access Agreement. The recordation of these releases will extinguish all rights previously associated with the Building Restriction Line Covenant and Access Agreement. The Development Plan includes a binding element (Number 6) that requires all necessary releases of the Building Restriction Line Covenant and Access Agreement to be finalized at the time of site plan review.

Applicant has also reached an agreement with the neighbor to the west of the subject site, Forest City, which operates the adjacent “The Grand” apartments, to dedicate sufficient right-of-way to allow for the extension and reconfiguring of Woodglen Drive, extended. The Department of Public Works and Transportation (DPWT) has conceptually approved this plan, and the agreement will be finalized by site plan, resulting in the dedication at subdivision, as reflected in Binding Element No. 4.

As mentioned, Applicant proposes to supply 1,093 parking spaces in an underground garage, 292 for the residential users and 801 for the commercial users (shared office/retail). The number of residential parking spaces to be provided is the amount required in Zoning Ordinance §59-E-3.7 for the proposed dwelling units; however, the number of commercial spaces to be provided is reduced by two factors, the mixed-use nature of the development and the proximity to a Metro stop. The number of required spaces in a mixed-use facility is calculated in accordance with a matrix established in Zoning Ordinance §59-E-3.1. The commercial portion of that figure may be further reduced by 15%, if the Planning Board elects to do so at site plan in accordance with Zoning Ordinance §59-E-3.32(a), because the development is within 1,600 feet of a Metro station. Applicant’s proposed parking assumes such approval by the Planning Board.

Section 59-D-1.61 of the Zoning Ordinance requires the District Council, before it approves any application for re-zoning to the TS-M Zone, to consider whether the application, including the development plan, fulfils the “purposes and requirements” set forth in Code Section 59-C for the new zone. In making this determination, Zoning Ordinance §59-D-1.61 expressly requires the District Council to make five specific findings, and Maryland law requires that zoning power be exercised in the public interest.

§59-D-1.61(a): Consistency with Master Plan and other County Policies.

The first required finding is consistency with the use and density requirements of the Master Plan and with other County plans and policies. The subject site is located within the *White Flint Sector Plan* area of the *North Bethesda Garrett Park Master Plan*, approved and adopted in 1992. The key point in the Sector Plan is the fact that it recommends the subject site for the TS-M Zone sought in this case, as demonstrated by Figure 19 on page 55 of the Master Plan.

Page 35 of the Master Plan lists its overall “Land Use and Zoning Objectives.” The District Council finds that the proposed development would satisfy all the specified goals. The project will provide significant density and tall buildings, near the center of the area, contributing to the urban core that the Master Plan seeks. It will be a mixed-use development near the Metro Station with a transit serviceable residential component. Applicant will make improvements along the entire perimeter of this property, particularly along Rockville Pike and Woodglen extended, which will improve the circulation pattern for pedestrians and vehicles in the area and relieve some of the congestion on Rockville Pike. It will also add vitality to the area that is now lacking and streetscape treatments that are recommended in the Sector Plan. The proposed development will provide new housing stock, both market rate and affordable, and will also provide employment opportunities with the office and retail uses proposed on the site.

Consistent with the Master Plan (pp. 285 and 291), the Development Plan also calls for the extension of Woodglen Drive, which will become the western boundary of the project and will connect Marinelli to the North and Nicholson to the South with a vehicular, pedestrian and bicycle route. This will

provide an important north/south connector, which will greatly improve circulation in the area for both vehicles and pedestrians, and will also assist in getting people more conveniently to the Metro station, all of which are goals of the Master Plan.

The development will also substantially comply with the density recommendations of the Sector Plan for the reasons discussed in the Hearing Examiner's report. Although the subject site is under six acres, it does not violate the requirement on page 56 of the Master Plan that requires six acres for densities of over 1.0 FAR because this is a mixed-use project, and its commercial element does not exceed 1.0 FAR.

Technical Staff and the Planning Board concluded that "[t]he project is in substantial compliance with the zoning, land use, and density recommendations of the North Bethesda-Garrett Park Master Plan" The District Council agrees and so finds. This mixed-use project also is not dependent upon the County's Capital Improvements Program.

Under the County's Adequate Public Facilities Ordinance ("APFO," Code §50-35(k)), the Planning Board has the responsibility, when it reviews a preliminary plan of subdivision, to assess whether the following public facilities will be adequate to support a proposed development: transportation, schools, water and sewage facilities, and police, fire and health services. The Planning Board's application of the APFO is limited by parameters that the County Council sets in its Growth Policy. While the ultimate test under the APFO is carried out at subdivision review, evidence concerning adequacy of public facilities is relevant to the District Council's determination in a rezoning case as to whether the reclassification would serve the public interest and would comply with County plans and policies.

Under both the Growth Policy in effect when this application was filed and the new Growth Policy adopted on November 13, 2007 in Resolution No. 16-376 (p. 23), "[t]he Planning Board and staff must consider the programmed services to be adequate for facilities such as police stations, firehouses, and health clinics unless there is evidence that a local area problem will be generated." There is no such evidence in this case, and those public facilities are therefore deemed adequate.

The remaining three public facilities – transportation, schools and water and sewer service – were discussed at length in the Hearing Examiner’s report. For the reasons stated therein and summarized below, the District Council finds that the proposed development will not unduly burden the County’s public facilities.

1. Transportation

The proposed development is entirely within a Metro Station Policy Area. The 2003-2005 Growth Policy which was in effect when this application was filed and the 2004 Local Area Transportation Review (LATR) Guidelines allow the LATR requirements to be satisfied for this type of case using the “Alternate Review Procedure for Metro Station Policy Areas.” On November 13, 2007, the Council adopted a new Growth Policy in Resolution 16-376. It also provides for the Alternate Review Procedure for Metro Station Policy Areas (*Growth Policy*, ¶ TAI), and specifies that it may be used for developments planned entirely within a Metro Station Policy Area, not only in lieu of the usual LATR requirements but also in lieu of the new Policy Area Mobility Review (PAMR) requirements. Thus, whether the new Growth Policy or the old Growth Policy applies in this case, Applicant’s transportation facility requirements may be satisfied under the Alternate Review Procedure.

Under the Alternative Review Procedure, an applicant for a subdivision that is built completely within a Metro Station Policy Area is not required to submit a traffic study at the rezoning stage if the applicant agrees to meet specific trip reduction goals established by the Planning Board, participate in programs operated by a transportation management organization, pay an ongoing annual contribution or tax to fund operating expenses of the transportation management organization, and pay the applicable development impact tax. A project is analyzed as if it were on a vacant piece of property, and it is required to reduce the maximum number of potential trips that would otherwise be generated from the proposed uses by 50 percent. At the time of zoning, a mitigation plan is submitted, showing that it is reasonable and probable that Applicant will meet the required 50 percent mitigation. At the time of preliminary plan, a

standard local area review transportation study will be done. That will identify the road improvements that need to be done in the corridor, and those road improvements are then made with the increase in taxes that are associated with the fees levied upon these projects. The reduction is accomplished through various transportation demand management programs. Applicant has filed the "Trip Reduction" report required at the rezoning stage, and Technical Staff accepted Applicant's Trip Reduction report and outline the measures Applicant will be required to take.

Based on the entire record, the District Council finds that transportation facilities will be adequate for this project.

2. School Capacity:

The subject property is located in the Walter Johnson cluster. Bruce H. Crispell, Director of the Division of Long-range Planning, Montgomery County Public School's (MCPS), stated in a letter dated February 1, 2007 (Attachment 8 to Exhibit 77) that the current Growth Policy schools test finds capacity adequate in the Walter Johnson cluster. Enrollment at Luxmanor Elementary School currently exceeds capacity. However, an addition is scheduled to open in August 2008, resulting in space available beginning in 2008. Enrollment at Tilden Middle School is currently within capacity and is projected to stay within capacity. Enrollment at Walter Johnson High School currently exceeds capacity. However, modernization of the school is scheduled for completion in August 2009, resulting in spaces available beginning in 2009.

In addition to the finding of adequate capacity under the old Growth Policy, Tables 3 and 4 attached to the new Growth Policy demonstrate that capacity is projected to be adequate in the Walter Johnson cluster under both the 120% of MCPS program capacity test and the 105% of MCPS program capacity test.

Applicant also produced testimony at the hearing that construction of the subject buildings will not be completed until the spring of 2011 or fall of 2012. Thus, the additional school capacity will be available

when the new students begin moving in. Therefore, the District Council concludes that MCPS will have the capacity to handle the increased demand projected from the subject development.

3. Water Service, Sewer Service and Other Utilities:

Technical Staff reports that the subject site is served by public water and sewer systems, and is currently in Water Service Category W-1 and Sewer Service Category S-1. Technical Staff observes that existing water and sewer mains appear to be adequate to accommodate the proposed development, but additional information will have to be submitted at subdivision. Under both the old and the new Growth Policies, applications must be considered adequately served by water and sewerage if the subdivision is located in an area in which water and sewer service is presently available (*i.e.*, Category D). Since the subject site is in Categories W-1 and S-1, the District Council finds water and sewer facilities to be adequate. Applicant's civil engineer, testified that the property is well served by public utilities – gas, electric, telephone, sewer, water and storm drains in the adjacent public roadways.

In sum, based on this record, the District Council finds that the requested rezoning does not conflict with “applicable County plans and policies.”

§59-D-1.61(b): purposes, standards and regulations of the zone; safety, convenience and amenity of residents; and compatibility with adjacent development.

The second required finding is:

That the proposed development would comply with the purposes, standards, and regulations of the zone as set forth in article 59-C, would provide for the maximum safety, convenience, and amenity of the residents of the development and would be compatible with adjacent development.

The requirements for the TS-M Zone are found in Code §59-C-8. The TS-M Zone is a “floating zone,” intended generally to be used in Transit Station Development Areas. Sections 59-C-8.21(b) and (c) also specify that the TS-M Zone is intended for locations where multiple-family residential development or substantial commercial or office uses already exist or where such uses are recommended by an approved and adopted master plan. That is the case here.

In accordance with Zoning Ordinance §59-C-8.21(d), the District Council finds the development plan to be consistent with the requirements of the Zoning Ordinance. With regard to the purposes of the TS-M Zone, the proposed development will put 247 residential units, including 38 MPDUs, and a significant amount of retail and office space within easy walking distance of a Metro station. It will provide improvements to the streets and sidewalks to encourage walking and the use of the transit by future employees, shoppers and residents. It has a significant open space, a plaza, which will help to promote interactions between the visitors, the residents and local workers, to create the vitality needed for this area. The amenities include enhanced streetscaping, an upgraded pedestrian network, improved linkages to the Metro station provided by the extension of Woodglen Drive, a bike path along Woodglen, a plaza, 10% public use space, and 25 % active/passive space for the benefit of all the residents of the development. Bikeway improvements and adjacent retail space will reduce the dependence on the automobile in the area. Based on the ample evidence in the record, the District Council finds, as did Technical Staff and the Planning Board, that the proposed development satisfies the purposes of the TS-M Zone, as set forth in Code §59-C-8.23.

Zoning Ordinance §59-C-8.24 provides that the TS-M Zone is “permitted only in a Transit Station Development Area defined in section 59-A-2.1 and in accordance with an approved and adopted master plan or sector plan [with exceptions not relevant here].” The subject site is within a Transit Station Development Area as defined in Section 59-A-2.1 and is in accord with the Master Plan.

Zoning Ordinance §59-C-8.25 requires that a proposed development in the TS-M Zone conform to “the facilities and amenities” of the Sector Plan, include any required easements, provide for safe and efficient circulation and adequate open and recreation space, and insure compatibility with the surrounding area, as well as the ability of the area to accommodate the intended use. The required easements are shown on the Development Plan, and the other requirements mentioned in this provision will be discussed below in connection with other specific findings.

Zoning Ordinance §59-C-8.3 specifies the uses permitted in the TS-M Zone. All of the uses proposed for this mixed-use project (residential, office and specified retail) are permitted in the TS-M Zone. The remaining requirements of the TS-M Zone are spelled out in Code Section 59-C-8.4, which prescribes development standards. The proposed development meets those standards, and the District Council finds that Applicant's development plans are in accordance with all of the purposes, standards and regulations of the TS-M Zone, as set forth in Article 59-C of the Code.

The next part of "Finding (b)" required by Section 59-D-1.61 is a determination that the proposed development would provide the "maximum safety, convenience, and amenity of the residents." As stated by Technical Staff (Exhibit 77, p. 16),

The project design satisfies the master plan amenity objectives by providing streetscape improvements, public use space, passive and active recreational areas, plazas, and sidewalks. The project will contribute to the urban design vision for Rockville Pike. The developer will dedicate 75 feet of right-of-way from the existing centerline of Rockville Pike, and set back any building 10 feet from the right-of-way line, placing any new buildings a minimum of 85 feet from the existing centerline. The application implements the master plan recommendation for the provision of public facilities and amenities.

The District Council finds that Applicant has provided the maximum in safety, convenience and amenities for the future residents of this development.

The final required determination under "Finding (b)" is that the proposed development be compatible with adjacent development. As observed by Technical Staff (Exhibit 77, p. 16),

The scale, density, and land uses of the project ensure compatibility with the surrounding area. The 20-story Nuclear Regulatory Commission buildings face the property across Rockville Pike. Two 18-story residential buildings face the property immediately to the west. The C-2 zoned site that adjoins the property to the south is recommended for the TS-M zone in connection with any future development. The Montgomery County Conference Center and hotel to the north are classified in the TS-R zone. The project complies with the master plan land use and density recommendations for the site and compares favorably with existing and planned development for the area.

Based on this record, the District Council finds Applicant's Development Plan to be compatible with adjacent development.

§59-D-1.61(c): safe, adequate and efficient internal vehicular and pedestrian circulation systems.

The third required finding is “[t]hat the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate, and efficient.”

Technical Staff agreed that the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate, and efficient, but noted that Transportation Planning Staff will require certain enhanced traffic calming measures at site plan and more detail regarding pedestrian crosswalks, pedestrian pushbuttons, refuge islands, handicapped ramps, bike lockers and delivery schedules. Staff notes that these issues need not be finalized at rezoning, but they must be addressed at the subdivision and site plan stages. Applicant also demonstrated that sight distances at the proposed access points would satisfy all requirements, and produced expert evidence that the traffic circulation and entry access points will be safe and efficient, in terms of both pedestrians and vehicular traffic.

Based on the entire record, the District Council finds that external access and internal circulation will be safe, adequate and efficient for both vehicular and pedestrian traffic.

§59-D-1.61(d): preventing erosion, preserving vegetation, forest conservation and water resources.

The site is not located in a Special Protection Area or Primary Management Area. It has no steep slopes or erodible soils, and there are no wetlands or streams on the site. The level of site imperviousness will be significantly reduced by the proposed development, and Technical Staff reported no environmental issues warranting denial of this application. By situating Woodglen as far to the east as possible, Applicant will be able to preserve most of the trees next to the adjacent “The Grand” property, to the west. Also, a tree protection plan will be prepared as part of the sediment control plan. Technical Staff observed that the sediment control measures proposed by Applicant “are consistent with best management practices to prevent soil erosion, ensure sediment control, and preserve natural resources of the site.” Exhibit 77, p. 20. These measures will be further reviewed for adequacy at the time site plan review. A Tree Save Plan will

be required as part of the Final Forest Conservation Plan, and a Stormwater Management Plan will have to be approved by DPS prior to subdivision.

In sum, the District Council finds that Applicant has demonstrated the environmental controls required by "Finding (d)."

§59-D-1.61(e): common area maintenance.

The fifth required finding is "[t]hat any documents showing the ownership and method of assuring perpetual maintenance of any areas intended to be used for recreational or other common or quasi-public purposes are adequate and sufficient."

Applicant, Green Acres Metro, L.P, is the owner of the subject site. Tr. 17. Because part of the development will be nonresidential, and it is uncertain whether the residential units will be condominiums or apartments, Applicant supplemented the record with an affidavit (Exhibit 95(b)), giving assurances of perpetual maintenance in all areas intended to be used for recreational or other common or quasi-public purposes. If there is a condominium, perpetual maintenance will be provided for in recorded homeowner association documents. Otherwise, perpetual maintenance will be provided by Applicant through a management company.

The District Council finds that Applicant has sufficiently demonstrated both ownership of the property and its commitment to perpetual maintenance of all recreational and other common or quasi-public areas.

The Public Interest

The applicant must show that the proposed reclassification is sufficiently in the public interest to justify its approval. The State Zoning Enabling Act applicable to Montgomery County requires that all zoning power must be exercised:

. . . with the purposes of guiding and accomplishing a coordinated, comprehensive, adjusted, and systematic development of the regional district, . . . and [for] the protection and promotion of the health, safety, morals, comfort, and welfare of the

inhabitants of the regional district. [Regional District Act, Maryland-National Capital Park and Planning Commission Article (Art. 28), Md. Code Ann., § 7-110].

When evaluating the public interest, the District Council normally considers Master Plan conformity, the recommendations of the Planning Board and Technical Staff, any adverse impact on public facilities or the environment and public benefits such as provision of affordable housing.

As outlined above, Applicant's proposal is consistent with the recommendations, goals and objectives of the 1992 North Bethesda-Garrett Park Master Plan, and the White Flint Sector Plan contained therein. The Planning Board and its Technical Staff supported the proposed rezoning, as did the Hearing Examiner. The impact on public facilities was discussed above, and the evidence indicates that transportation, schools and water and sewer services would not be adversely affected by the proposed development. The proposed project will bring an attractive, mixed-use development within walking distance of a Metro Station, and will provide affordable housing and streetscape improvements. There has been no opposition to this project, and it has been endorsed by the Washington Smart Growth Alliance as a "Smart Growth Project" and an "excellent example of redeveloping older suburban strip centers and creation [of] great walkable places." Exhibit 82.

For the reasons discussed above, the District Council concludes that the proposed development would be in the public interest.

Conclusion

Based on the foregoing analysis and the Hearing Examiner's report, which is incorporated herein, and after a thorough review of the entire record, the District Council concludes that the proposed development satisfies the intent, purpose and standards of the TS-M Zone; that it meets the requirements set forth in Section 59-D-1.61 of the Zoning Ordinance; that the application proposes a project that would be compatible with development in the surrounding area; and that the requested reclassification to the TS-

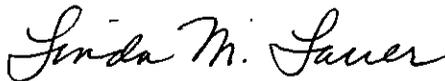
M Zone has been shown to be in the public interest. For these reasons and because approval of the instant zoning application will aid in the accomplishment of a coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District, the application will be approved in the manner set forth below.

ACTION

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

Zoning Application No. G-860, requesting reclassification from the C-2 Zone to the TS-M Zone of approximately 4.633 acres of land described as Part of Lot 3, Lot 4, and Lot 5 of Green Acres Subdivision, and located at 11520, 11560, and 11564, Rockville Pike, North Bethesda, in the 4th Election District, is hereby approved in the amount requested and subject to the specifications and requirements of the revised Development Plan, Exhibit 95(a), provided that the Applicant submits to the Hearing Examiner for certification a reproducible original and three copies of the Development Plan approved by the District Council within 10 days of approval, in accordance with §59-D-1.64 of the Zoning Ordinance.

This is a correct copy of Council action.



Linda M. Lauer
Linda M. Lauer, Clerk of the Council