Resolution No. 16-525
Introduced: April 29, 2008
Adopted: April 29, 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-873 FOR AMENDMENT TO THE ZONING ORDINANCE MAP, Jody S. Kline, Esq., Attorney for The Washington Episcopal Day School, Inc., Owner, OPINION AND RESOLUTION ON APPLICATION.
Tax Account Nos. 07-03374317 and 07-03155706

OPINION

Application No. G-873, filed on July 16, 2007 by Applicant Washington Episcopal School, Inc., requests reclassification from the R-30 (multi-family residential) and C-O (commercial, office building) Zones to the PD-28 Zone (Planned Development, 28 units per acre) of 11.2 acres of land located at 5523 Landy Lane and 5600 Little Falls Parkway in Bethesda, Maryland, in the 7th election district. The property is identified as Lot N-103 (Parcel A, Little Falls Office Park) and Condominium Unit 1, River Road Land Condominium. As required under the PD Zone, the application was accompanied by a Development Plan with detailed specifications related to land use, density, development standards and staging. Pursuant to Code § 59-D-1.11, development under the PD Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the PD Zone.

The Hearing Examiner recommended approval of the proposed rezoning on grounds that the proposed development would be in substantial compliance with the applicable sector plan, would comply with the purposes, standards and regulations of the PD-28 Zone, would provide for a form of development that will be compatible with existing and planned land uses in the surrounding area, and would serve the public interest. The Montgomery County Planning Board (the "Planning Board") and its Technical Staff made similar recommendations. The District Council agrees with these

conclusions, and incorporates herein the Hearing Examiner's Report and Recommendation dated April 18, 2008.

A. Subject Property and Surrounding Area

The subject property consists of approximately 11.2 acres of land located north of River Road, west of Little Falls Parkway and east of the Capital Crescent Trail (the "Trail") in Bethesda. The property is irregularly shaped, with approximately 960 feet of frontage along Little Falls Parkway, an 860-foot length along the Trail, and a 390-foot length along its northern property line. Vehicular access is available via a driveway entrance on Little Falls Road and via Landy Lane, a stub road that connects with River Road and terminates on the subject property.

The northern and western portions of the property are developed with a large, three-story building that houses the Applicant, Washington Episcopal Day School (the "school"), a private educational institution with an enrollment of about 300 students in pre-school through eighth grade. The school has a large three-story building with associated surface parking, a playground, a grass athletic field and an all-purpose athletic court. The southern and eastern portions of the property are developed with four office/warehouse buildings varying from one to three stories in height, with extensive surface parking and loading areas. The majority of the subject site is covered in impervious surface. A grass athletic field at the north end of the site is the only significant open space, and is bisected by easements accommodating sanitary sewer and storm drains. The site contains no areas of forest and very few large trees, and the topography generally slopes downward from the southeast corner of the site to the northwest corner.

The subject property consists of two parcels. The northern and western portions of the property comprise Unit 1 in the River Road Land Condominium, with 5.9 acres of land. The southern and part of the eastern portion of the property comprise Parcel A in the Little Falls Office Park, containing 5.3 acres of land. The current zoning lines do not follow the parcel lines.

The surrounding area for this application is bounded generally by Dorset Avenue to the north, properties abutting Little Falls Park Stream Valley to the east, River Road to the South and

properties abutting the western edge of the Trail to the west. The surrounding area contains a mix of uses in a variety of zones, including offices, light industrial, retail, institutional, mid-rise and high-rise multi-family residential, and single-family detached residential. The subject property abuts the Trail to the west, a mid-rise, multi-family residential building in the R-10 Zone known as the Kenwood House to the north, Little Falls Stream Valley Park to the east, through which Little Falls Parkway runs in a north-south direction, and a series of light-industrial buildings in the I-1 Zone to the south. On the far side of Little Falls Stream Valley Park are single-family detached homes in the Town of Somerset, classified under the R-60 Zone. Between the subject property and River Road are light-industrial buildings, mostly in one-story structures, including a banquet hall special exception fronting on Landy Lane, two gas stations in the C-4 (Limited Commercial) Zone, a bank building in the C-O Zone and a church in the R-60 Zone. South of these uses, at the junction of River Road and Little Falls Parkway, is the Kenwood House, a high-rise, multi-family condominium building in the R-10 Zone. The Trail at this location has a paved walking/bicycle trail and provides an important link to the Bethesda Central Business District further north. On the far side of the Capital Crescent Trail, most of the subject site faces the Westwood II Shopping Center in the C-4 Zone and office/warehouse uses in the I-1 Zone. The athletic field at the north end of the subject site sits across the Trail from single-family, detached homes in Kenwood. As seen on the aerial photograph that follows, beyond the surrounding area to the south are a great many industrial and commercial uses, and to the north, west and east are single-family detached neighborhoods.

The subject property was classified under the I-2 Zone in the 1954 comprehensive zoning of the area. It was reclassified under the R-30 and C-O Zones by Sectional Map Amendment (G-368) in 1982.

B. Proposed Development

The subject site formerly housed the regional headquarters for the Marriott Corporation. The Washington Episcopal Day School was founded in 1987 and moved to the subject site in 1988, as a tenant in the existing main building. The school acquired the existing building and the surrounding six

acres of land in 1996, substantially renovated the building and grounds in 1999, and acquired the adjacent five-acre parcel to the southeast, occupied by office/light-industrial buildings, in late 2004. The school now proposes to rezone the entire 11-acre tract, sell one acre in the southwest corner as the site for a multi-family residential building, and reserve the remaining ten acres for school use.

The multi-family building is proposed as an age-restricted residence, limited to households with at least one person age 55 or older. The building would have a maximum of eight stories and 97 feet of height, and no more than 121 dwelling units. It is shown on the Development Plan in an L-shape, facing the school building to the north and a proposed new athletic field to the east. To the south and west, the multi-family building would face existing commercial and light-industrial buildings on neighboring properties.

The school's long-range plan includes a four-story addition to the existing three-story school building, for a total of 175,000 square feet of educational space; an additional athletic field; four tennis courts along the eastern edge of the property; and a new loop road to provide better vehicular circulation and more space for parents to line up during student drop-off and pick-up. (Currently, testimony indicates that most parents use the Little Falls Parkway entrance, and at school dismissal, the pick-up line extends onto Little Falls Parkway.) The Applicant also plans to install enhanced landscaping along the loop road and in parking areas, with the details to be worked out at site plan. With the exception of installing sidewalks and creating a second drop-off/pick-up point, which are part of Phase I of the development, implementation of the school-related improvements will depend on whether and when the school's capital campaign raises the necessary funds.

C.. Development Plan

Pursuant to Code § 59-D-1.11, development under the PD Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the PD Zone. This development plan must contain several elements, including a land use plan showing site access, proposed buildings and structures, a preliminary classification of dwelling units by type and number of bedrooms, parking areas, land to be dedicated to public use, and land

intended for common or quasi-public use but not intended to be in public ownership. Code §59-D-1.3. The Development Plan is binding on the Applicant except where particular elements are identified as illustrative or conceptual. The Development Plan is subject to site plan review by the Planning Board, and changes in details may be made at that time. The principal specifications on the Development Plan – those that the District Council considers in evaluating compatibility and compliance with the zone, for example – may not be changed without further application to the Council to amend the Development Plan.

The principal component of the Development Plan in this case is a document entitled Development Plan, Exhibit 92(a). Additional elements of the Development Plan include an aerial photograph of the area (Ex. 13), a zoning map indicating the relationship between the subject site and neighboring zoning and land uses (Ex. 5), and the Natural Resources Inventory/Forest Stand Delineation (NRI/FSD, Ex. 9).

Exhibit 92(a) satisfies the requirements of Code § 59-D-1.3 by showing access points, approximate locations of existing and proposed buildings and structures, preliminary classification of the proposed multi-family building by number of bedrooms, parking areas, an intended right-of-way dedication for Landy Lane, and areas intended for common use but not public ownership (athletic fields, sports courts and interior vehicular and pedestrian ways for walking, jogging or running).

The Development Plan proposes to demolish the existing office/warehouse buildings and a substantial amount of the existing surface parking areas. The existing school building in the middle of the site is to remain, to be expanded in the future with a four-story addition along its east side. The Development Plan shows a new loop road to serve both the school and the residential building, and a reduced amount of surface parking laid out in multiple, smaller parking areas. The eight-story multi-family building is shown in the southwest corner of the site, adjacent to the neighboring light industrial uses, with its parking underground. The Development Plan provides for a new cul de sac at the terminus of Landy Lane, in front of the multi-family building, providing an easy turnaround.

The Development Plan contains a series of textual binding elements, many of which are the result of negotiations with community representatives and an agreement between the Applicant and the Citizens Coordinating Committee on Friendship Heights (the "CCC on Friendship Heights"). The CCC on Friendship Heights, which was represented by counsel in these proceedings, is an umbrella group representing about 12 citizens associations, including Kenwood, Kenwood Condominiums, Chevy Chase Village, Chevy Chase West, Westmoreland, Somerset, Green Acres, Glen Cove, Brookdale and Springfield.

The textual binding elements are summarized below and shown in full on pages 19 through 22 of the Hearing Examiner's Report.

- Residential use limited to independent seniors (at least one person per unit age 55 or older). Residential building limited to 121 dwelling units, including MPDUs, and a height of eight stories or 97 feet.
- Non-residential use limited to private educational institution for grades nursery through eighth grade. Total school building space limited to 175,000 square feet of space. Building addition limited to a height of four stories or 55 feet.
- Uses at north end of site limited to athletic field and accessory structures.
- Parking for all uses shall be on site.
- Accessory structures, including bleachers, limited to 15 feet in height.
- Locations of buildings, parking, athletic fields and other amenities will be as shown on Development Plan, with minor adjustments permitted.
- Applicant will construct a cul de sac at the terminus of Landy Lane for public use, and, subject to County approval, a sidewalk along Landy Lane to River Road. Applicant will also build sidewalks as shown on the Development Plan, including to the right-of-way line for Little Falls Parkway. Truck deliveries will be limited to the Landy Lane entrance.
- Applicant will seek approval for a traffic light at River Road and Landy Lane, in coordination with the CCC on Friendship Heights, and will contribute to the cost of the light per an agreement between the Applicant and the CCC on Friendship Heights.
- Applicant will contribute to a facility supporting the Trail, to be determined at site plan.[1]

[1] The Development Plan presented to the Planning Board provided for the Applicant to construct eight parking spaces adjacent to the Trail entrance, at the request of Technical Staff. The proposal met with intense opposition from the Capital Crescent Trail Coalition, resulting in the submission of nearly 40 emails to MNCPPC. Following testimony from several speakers, the Planning Board recommended removing the eight parking spaces and adding a commitment, now shown on the Development Plan, to contribute to an unspecified facility supporting the Trail.

- Shared use agreement between the school and the owner of the multi-family building will provide for building residents to use school athletic fields and walkways. Building residents will also have access to school programs such as sporting events, recitals, lectures and charitable events.

- General locations for student pick-up and drop-off will be as shown on Development Plan, and traffic entering site shall not queue on public streets. Gates or other measures shall be used to limit cut-through traffic through the site other than for school functions.

- Green area shall be no less than 54% of lot area.

- Phase I will be development of multi-family building, extension of Landy Lane, installation of sidewalks and creating two drop-off/pick-up points. Simultaneous with construction of residential building, existing office/light-industrial buildings on site will be demolished and the underlying land stabilized with grass. This area may be used for recreational purposes as a lawn or improved as an athletic field (including a potential underground parking garage).

- Phase 2, to occur at one or more unspecified times in the future, includes improvements to the school as shown on the Development Plan.

D. Traffic Issues

Under the County's Adequate Public Facilities Ordinance ("APFO," Code §50-35(k)), an assessment must be made as to whether the transportation infrastructure, area schools, water and sewage facilities, and police, fire and health services will be adequate to support a proposed development, and in turn, whether the proposed development would adversely affect these public facilities. Both the Planning Board and the Council have roles to play in this assessment process. The Planning Board reviews the adequacy of public facilities at subdivision, under parameters that the County Council sets biennially in the Growth Policy.[2] While the final test under the APFO is carried out at subdivision review, the District Council makes its own evaluation as to the adequacy of public facilities in a rezoning case, because the Council has primary responsibility to determine whether the reclassification would be compatible with the surrounding area and would serve the public interest.

Pursuant to Zoning Text Amendment 07-17, enacted on February 26, 2008, the present application will be evaluated under the Growth Policy in effect when the application was filed, the 2003-

[2] *See 2007-2009 Growth Policy, Resolution No. 16-376,* adopted November 13, 2007.

2005 AGP Policy Element.[3] Under that policy element, subdivision applications are subject to only one transportation test, Local Area Transportation Review ("LATR").[4] The Planning Board recognizes its LATR Guidelines as the standard to be used by applicants in the preparation of reports to the Hearing Examiner for zoning cases.

The Applicant performed a traffic study as required in this case. Technical Staff directed the Applicant to study the effects of the proposed development on the critical lane volume ("CLV") at four nearby intersections, all on Little Falls Parkway: River Road, Dorset Avenue, Hillandale Road and Massachusetts Avenue. Technical Staff identified no background traffic to be applied in this case. The traffic study found that each of the four intersections currently operates with a CLV below the applicable 1600-CLV congestion standard for the Bethesda-Chevy Chase policy area, and would continue to do so with the development proposed here.

As summarized on pages 37 to 48 of the Hearing Examiner's Report, this case has involved considerable discussion of traffic issues, due primarily to concerns raised by the Citizens Coordinating Committee for Friendship Heights (the "CCC of Friendship Heights") and other area residents. Questions raised about the accuracy of trip generation rates in the initial traffic study resulted in the Applicant performing additional traffic counts after the hearing, which were reviewed by Technical Staff and other parties to the case. The additional, more detailed counts at the site driveways resulted in higher trip generation rates for the proposed school expansion, but a different distribution of trips on the roadway network, with fewer trips going through the congested intersection of River Road and Little Falls Parkway. This combination of factors supports the conclusion of the initial traffic study that the requirements of LATR are satisfied.

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[3] The Applicant's traffic expert testified at the hearing that the proposed development would also be able to satisfy the mitigation requirements of Policy Area Mobility Review under the 2007-2009 Growth Policy, using one or more of the methods outlined in the Growth Policy. *See* Tr. at 174. The applicable critical lane volume standard (for the Bethesda/Chevy Chase Policy area) was not changed in the 2007-2009 Growth Policy. *See* 2007-2009 Growth Policy at 12.

[4] See *2003-05 Annual Growth Policy – Policy Element, Resolution No. 15-375*, adopted October 28, 2003; Local Area Transportation Review Guidelines Approved and Adopted July 2004 ("2004 LATR Guidelines") at 1.

Projected traffic generation for the multi-family building is quite low and community members questioned its accuracy. The trip generation rates used are those established under LATR for the type of building in question, and were shown to be only slightly lower than analogous trip generation rates published by the Institute of Transportation Engineers, so they have been accepted here.

The record includes extensive, unrefuted testimony from community members about problems with neighborhood cut-through traffic, which is caused by drivers fleeing heavy congestion on River Road. Pursuant to an agreement between the Applicant and the CCC of Friendship Heights, the Applicant has agreed, as a textual binding element of the Development Plan, to request approval for a traffic light at River Road and Landy Lane from the State Highway Administration, and to contribute to its cost. A traffic expert testifying on behalf of the CCC of Friendship Heights, and many community members, testified that the proposed traffic light would be beneficial. The Applicant's traffic expert was somewhat more skeptical, testifying that a light might help, or might make conditions worse.

Counsel for the CCC of Friendship Heights agreed that the rezoning need not be contingent on the approval of the traffic light, given that approval would be beyond the Applicant's control. It is clear, however, that the proposed traffic light is extremely important to area residents. Counsel for the CCC of Friendship Heights stressed that the chance of success in obtaining approval for the light would be enhanced if the District Council were to state its support for a light in the context of this rezoning application. The District Council's approval of the requested rezoning and the Development Plan includes accepting the textual binding elements, among them the Applicant's commitment to seek approval for the traffic light. Thus, while the evidence in this record is not sufficient to demonstrate whether the proposed traffic light would improve local traffic conditions, the District Council endorses the proposal in concept, provided that the State Highway Administration determines that a traffic light is warranted.

E. Development Plan Findings

The District Council finds that the Development Plan submitted with this application satisfies all the requirements for a development plan under Code §59-D-1.61(a)-(e). Each of the required findings is addressed below.

§59-D-1.61(a): master plan consistency. In the present case, the Hearing Examiner, the Planning Board and Technical Staff found that the proposed development is in substantial compliance with the recommendations of the *1982 Approved and Adopted Westbard Sector Plan* (the "Sector Plan." The District Council agrees, noting that because the Sector Plan is 26 years old, many years beyond the time frame generally anticipated for master and sector plan updates, it is appropriate to place more weight on the Sector Plan's general recommendations than on very specific recommendations which, by their nature, are more likely to become outdated.

The Sector Plan recommended that redevelopment of the subject property should "present an attractive appearance to the surrounding area yet be able to fit in with the older, functioning light-industrial area." Sector Plan at 20. The Development Plan proposed here would satisfy this recommendation. The site can be expected to have an attractive appearance with the demolition of existing light-industrial buildings and extensive surface parking, to be replaced with a new multi-family building, a large playing field, a modest amount of surface parking (approximately 137 spaces) distributed in several locations on site, new landscaping and, at some point, a new school addition. The school and the new multi-family building are types of uses that can be expected to maintain an attractive appearance, and to operate without noticeable adverse impacts on the surrounding area. The developer's representative explained that units in the multi-family building would be priced differently depending on what floor they are on and whether they face the school field or the adjacent industrial uses, consistent with pricing in other multi-family buildings near commercial and light-industrial areas.

The Sector Plan's more specific recommendations for the subject site include making sure that new development is compatible with the diverse uses in the surrounding area and with existing traffic

constraints. To achieve this, the plan identified multi-family residential buildings and limited office uses as "an acceptable combination." *See id.* at 28, 39. There is no indication in the plan that this recommendation was based on a strong need for either multi-family residential space or office space. Rather, these appear to be uses that the planners viewed as useful and compatible possibilities. The looseness of the references to office use is underscored by the plan's reference, in some places, to "office/laboratory/research facilities." The District Council finds that the proposed combination of a multi-family building and a private school would serve at least as well in providing uses that would be useful and compatible. The proposed combination would provide additional housing with a variety of pricing levels, a school that may be attended by some area children and contribute to the local economy, and lower levels of parking and traffic than the uses identified in the Sector Plan.

The Sector Plan recommended density limits – up to 353 dwelling units and 180,000 square feet of office space – that were commensurate with the PD-28 Zone. The language of the plan implies that a lower density PD Zone might have been preferred, but was not used because it would have required a certain percentage of townhouses. Instead, the planners recommended a PD density that permits all multi-family buildings, but recommended an eight-story limit on building heights to counterbalance the relatively high number of dwelling units permitted. *See* Sector Plan at 39. The plan expressed concern about the traffic impacts of this level of development, recommending that PD zoning be granted subject to "conditions" requiring trip-reduction measures, such as staggered work hours and employer-subsidized transit fares. Thus, it appears that the maximum density levels recommended in the Sector Plan were not goals in and of themselves, but rather were a means of attaining a compatible use of the site. The Applicant here has proposed a maximum amount of school space equivalent to the amount of office space the Sector Plan recommended, and slightly more than one-third the number of residential units. In the context of the overall set of goals and recommendations described in the Sector Plan, the District Council finds this to be acceptable.

The Sector Plan also recommended specific locations and building height limits for the two uses: multi-family uses in the middle of the site, between four and eight stories in height, and office uses

at the southern end of the site, serving as a transition to the neighboring light-industrial uses and "positioned so as to block off or deflect noise from existing industrial uses." Sector Plan at 39. The multi-family building now proposed for the site would serve as a transition between the surrounding single-family neighborhoods and the light-industrial uses, and would block or deflect at least some of the noise. The existing school building would remain in the middle of the site and would expand to a maximum of four stories, in keeping with the minimum height limit the Sector Plan envisioned. While the middle of the site might have provided all units in the multi-family building with equally attractive views, having the school at that location instead would have no adverse impact on the surrounding area, and the location proposed for the multi-family building would add a different element to the housing offerings in the vicinity.

The Sector Plan assumed that no direct vehicular access should be provided between the residential and office uses, except for emergency vehicles. As noted earlier, such an arrangement would be inconsistent with the purpose clause of the PD Zone. The intention of stating this assumption may have been to support a recommendation that through-travel by outsiders should be inhibited by the interior design and operation. The present Development Plan satisfies this recommendation by memorializing the Applicant's intention to use gates or other measures to prevent, as much as possible, the school from being used for cut-through traffic unrelated to school functions.

The proposed development would also promote the Sector Plan's general goals of preserving the residential character of surrounding neighborhoods, encouraging additional multi-family development and, through improved stormwater management, avoiding further water quality degradation in Willet Branch.

Based on the preponderance of the evidence, the District Council finds that the proposed development would be in substantial compliance with the use, density and other recommendations of the Sector Plan. The evidence further supports the conclusion that the Development Plan does not conflict with any other county plans or policies, or the capital improvement program. It would further county housing policy by creating additional housing options, including affordable housing. The evidence demonstrates that the proposed development would satisfy the requirements of Local Area

Transportation Review, would have no adverse impact on public school capacity and, as a consequence, would be consistent with the county Growth Policy.

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

1. The Purpose Clause

The purpose clause for the PD Zone contains a number of goals and objectives, all of which are satisfied by the instant application. The District Council's findings as to each paragraph of the purpose clause are set forth below.

First paragraph: Sector Plan implementation. As discussed under (a) above, the proposed development would substantially comply with the recommendations and objectives of the Sector Plan and would implement those objectives more fully than would be possible under the existing zoning classifications, which would not support mixed use or a site layout similar to that envisioned in the Sector Plan.

Second paragraph: social and community interaction, distinctive visual character, balanced mixture of uses. Although the proposed development involves two disparate uses, the site layout and operational program would encourage social and community interaction and activity by giving residents of the multi-family building access to the school's recreational facilities, including the playing fields, future tennis courts, all-purpose sports court and paved areas, when those facilities are not needed for school use. Site residents and students would not be using the same facilities at the same time, but interaction could take place among people using neighboring tennis courts, for example, or on the paved areas available for walking or jogging. Testimony indicates that the school intends to try and integrate residents of the multi-family building into the life of the school by inviting them to school athletic events, holiday programs, recitals and other special events. Whether such invitations will be accepted remains to be seen, but there is the potential for the two uses to work together.

The proposed development would facilitate social and community interaction among site residents, area residents and potentially students at the school by preserving access from the site to the

Trail. The school's representative at the hearing indicated that while the site is private property, the gate from the site to the Trail is kept unlocked, which allows community members (as well as site residents and, to the extent they are permitted off-campus, students) to reach the Trail by walking through the subject site.

The proposed development would create a distinctive visual character through the loop road winding through the site, associated landscaping, and the large amount of open space to be preserved in the form of athletic and recreational facilities. The openness of the site and residential and educational character of the buildings would be distinctive in comparison with the non-descript light-industrial buildings nearby. The proposed uses would add to a balanced mix of uses in the area by providing an additional housing option and expanding a schooling option.

Third paragraph: broad range of housing types. This development would add to the stock of multi-family housing in Westbard by providing age-restricted units at varying price levels, depending on their location within the building, including 12.5 percent MPDUs. The L-shaped design shown on the Development Plan would maximize the number of units with views of the school's open spaces and the Trail.

Fourth and fifth paragraphs: trees, grading and open space. There is little tree cover on the site, and none that qualifies as forest. The small amount of tree cover would be removed in connection with demolishing existing light-industrial buildings and replacing them with a green playing field. New trees would be planted along the loop road, and steps have been proposed to help protect the critical root zones of several large trees growing just outside the property line. The proposed development would take advantage of trees by placing new multi-family dwellings within sight of the Trail and of Little Falls Stream Valley Park.

The larger open space areas on the site would not be available to the general community for recreation, but would provide visual respite in a highly-developed area, particularly for several nearby mid-rise and high-rise buildings that have views onto the subject site. Their views would be enhanced by the additional playing field and other open spaces proposed on the Development Plan.

Moreover, testimony indicated that members of the community at large have informal pedestrian access to the Capital Crescent Trail through the site, which would be preserved with the proposed development.

Sixth paragraph: pedestrian networks. A system of sidewalks and pedestrian walkways marked along drive aisles would provide safe pedestrian access throughout the site, and from the site to the Capital Crescent Trail and Little Falls Stream Valley Park.

Seventh paragraph: scale. The PD Zone encourages, but does not require, development on a large scale. The Development Plan proposes a maximum of 121 dwelling units in a single building, sized to preserve maximum space for school facilities and open space.

Eighth paragraph, first part: maximum safety, convenience and amenity. The evidence demonstrates that combining the proposed uses with substantial open space, a pedestrian network, a loop road with two access points, site amenities and school programming open to site residents would provide safety, convenience and amenity for site residents and the school. Site residents would also have ready access to the Capital Crescent Trail and to nearby businesses.

Eighth paragraph, second part: compatibility. The evidence supports the conclusion that the proposed development would be compatible with existing uses in the surrounding area. The site layout would place the tallest building at the greatest possible distance from single-family residences, with the height dropping to four stories in the middle of the site. The multi-family building would also serve as a transition between single-family neighborhoods and the light-industrial uses just south of the site. Some apartments would have close-up views of the adjacent light-industrial buildings, but this would be reflected in their cost. The multi-family use would be consistent with existing multi-family buildings just south of the site and abutting it to the north. It would be unlikely to have any noticeable impact on neighboring light-industrial uses, most of which don't have doors or windows facing the subject site.

The proposed school expansion would not introduce any new elements to the area, although it would intensify activity levels on site. The school has operated at the subject site for ten

years, with no evidence of any complaints except for traffic. Given the size of the site, the evidence suggests it can readily absorb the additional school population. Nearby residential uses are buffered from visual and noise impacts of school activities by distance and, at least during the warm-weather months, trees on the Capital Crescent Trail and in Little Falls Stream Valley Park.

For the reasons stated above and in Part III.H. of the Hearing Examiner's Report, the District Council finds that the preponderance of the evidence supports a conclusion that the proposed rezoning and development are unlikely to be incompatible with the surrounding area due to adverse impacts on traffic conditions.

Ninth paragraph: three findings. The purpose clause states that the PD Zone "is in the nature of a special exception," and shall be approved or disapproved based on three findings:

(1) the application is or is not proper for the comprehensive and systematic development of the county;

(2) the application is or is not capable of accomplishing the purposes of this zone; and

(3) the application is or is not in substantial compliance with the duly approved and adopted general plan and master plans.

Based on the preponderance of the evidence and for the reasons stated above, the District Council concludes that present application is proper for the comprehensive and systematic development of the County; is capable of accomplishing the purposes of the zone; and is in substantial compliance with the Sector Plan.

2. Standards and Regulations of the Zone

The standards and regulations of the PD-28 Zone are summarized below, together with the grounds for the District Council's conclusion that the proposed development would satisfy these requirements.

Section 59-C-7.121, Master Plan Density. Pursuant to Code §59-C-7.121, "no land can be classified in the planned development zone unless such land is within an area for which there is an existing, duly adopted master plan which shows such land for a density of 2 dwelling units per acre or

higher." The subject property is recommended in the Sector Plan for PD-28 zoning, which permits a density up to 28 dwelling units per acre, so this requirement is satisfied.

Section 59-C-7.122, Minimum Area. Code §59-C-7.122 specifies several criteria, any one of which may be satisfied to qualify land for reclassification to the PD Zone. The subject application satisfies the first of these criteria, which states the following:

> That it contains sufficient gross area to construct 50 or more dwelling units under the density category to be granted.

The subject property contains sufficient gross area to permit the construction of 121 dwelling units.

Section 59-C-7.131, Residential Uses. Pursuant to Code §59-C-7.131, all types of residential uses are permitted, but parameters are established for the unit mix. A PD-28 development with less than 200 units is permitted to have solely multi-family dwelling units in buildings over four stories in height, as proposed in this case. No minimum is prescribed for other types of dwelling units.

Section 59-C-7.132, Commercial Uses. Commercial uses are permitted under certain circumstances in the PD Zone but are not required. None are proposed here.

Section 59-C-7.133, Other Uses. This section contains several provisions about uses other than residential and commercial, two of which are potentially applicable to the present case.

Section 59-C-7.133(b) states as follows:

> Any nonresidential, noncommercial use may be permitted at the discretion of the district council on a finding that it is compatible with the planned development and satisfies the requirements of section 59-C-7.15.

The Applicant and Technical Staff treated this section as sufficient to permit the school as part of the proposed PD-Zone development.

The District Council observes that section 59-C-7.133(d) of the Zoning Ordinance contains other, more specific language that may be operable here:

> Any special exception use in the R-90 zone, as shown in Section 59-C-1.31, may be permitted by the district council if the use meets the requirements of section 59-G-1.2 and division 59-G-2. If the use is proposed after the district council has approved the development plan . . .

A private educational institution such as the Washington Episcopal School is permitted in the R-90 Zone only by special exception. Section 59-G-1.2 contains the general conditions with which all special exceptions must comply, and division 59-G-2 contains specific standards for each category of special exception use. A special exception cannot be approved unless compliance with both the general and the specific standards is demonstrated. Under the standard statutory interpretation maxim that the specific governs the general, the intent behind Section 59-C-7.133(d) appears to be to require any use that would need a special exception in the R-90 Zone to demonstrate compliance with the special exception standards before being approved in the PD Zone. The applicability of Section 59-C-7.133(d) was not raised either in the Staff Report or during the hearing. Accordingly, rather than decide this legal issue in a case where it was not discussed, the District Council finds that the requirements of Section 59-C-7.133 are satisfied because the evidence demonstrates compliance with both paragraph (b) and paragraph (d).

As noted above, the school would be compatible with the planned development, and Section 59-C-7.15 would be satisfied as discussed below. Thus, paragraph (b) is satisfied.

The evidence regarding compatibility, traffic and master plan compliance is sufficient to conclude that all of the general special exception standards, which address compatibility, master plan compliance, proliferation of special exceptions and adequacy of public facilities, would be satisfied. *See* Code § 59-G-1.21. The specific conditions for a private educational institution require that the school not constitute a nuisance; that all buildings be architecturally compatible with nearby buildings; that the school will not change the character of the surrounding residential community (which, in this case, is mixed in character); that the school not exceed 87 pupils per acre unless special findings are made (with 600 students and 11 acres of land, the Washington Episcopal School would have approximately 54 students per acre); and that all outdoor recreation areas must be located, landscaped or buffered so as not to intrude on adjacent residential properties. *See* Code § 59-G-2.19. The District Council finds that for the reasons discussed in other sections of this report regarding compatibility and traffic, the present application satisfies the above requirements from section 59-G-1.21.

The specific standards also require the Board of Appeals to approve a site plan, and to make a finding that any summer camp program will not, in combination with the school's other activities, have an adverse effect on the surrounding neighborhood due to traffic, noise, lighting, or parking, or the intensity, frequency or duration of activities. *See* Code §§ 59-G-2.19(b) and (d). The Development Plan can adequately serve the role of a site plan in this case. Information about the summer camp program submitted after the hearing indicates that the camp operates with fewer children and staff members than the number of students and staff on campus during the academic year, and this pattern is expected to continue even with an increase in enrollment. *See* Ex. 99. The District Council finds this evidence sufficient to conclude that the summer camp program would not, in combination with the regular academic program, have any adverse effect on the surrounding neighborhood. If the number of people on site is smaller than during the academic year, the level of activity and traffic generation can also be expected to be lower, indicating that impacts overall would decrease during the summer months.

As shown in the previous two paragraphs, paragraph (d) of Section 59-C-7.133 is satisfied.

Section 59-C-7.14, Density of Residential Development. The Zoning Ordinance provides the following direction for the District Council in considering a request for the PD Zone (§ 59-C-7.14(b)):

> The District Council must determine whether the density category applied for is appropriate, taking into consideration and being guided by the general plan, the area master or sector plan, the capital improvements program, the purposes of the planned development zone, the requirement to provide [MPDUs], and such other information as may be relevant.

The Zoning Ordinance classifies the density category applied for, PD-28, as a high-density planned development zone. This is the density recommended for the subject site in the Sector Plan, chosen to avoid the requirement for townhouses in lower density categories. The Sector Plan attempted to limit full realization of that density by recommending building height restrictions. The development now proposed would be below the maximum density for the zone, consistent with the density level the Sector Plan appeared to be targeting and the traffic constraints in the surrounding area. The District Council considers the requested density category appropriate, as did the Sector

Plan, because it avoids curtailing the flexibility of the zone by requiring uses other than multi-family. This density category is only appropriate, however, in the context of a development plan such as proposed here, which limits the density and intensity of use to levels below the maximum that the zone could support.

Section 59-C-7.15, Compatibility. This section requires that a proposed development be compatible internally and with adjacent uses. It also establishes minimum parameters for setbacks and building height that are designed to promote compatibility. As discussed above, the District Council finds that the proposed development would be compatible with existing development in the surrounding area. The application also satisfies the specific setback and building height provisions, as detailed below.

Section 59-C-7.15 of the Zoning Ordinance states that where land classified under the PD Zone adjoins land for which the area master plan recommends a one-family detached zone, no building other than a one-family detached residence may be constructed within 100 feet of such adjoining land, and no building may be constructed at a height greater than its distance from such adjoining land. The multi-family building proposed on the submitted Development Plan is within 20 feet of two property lines, but the abutting properties were recommended for light-industrial zoning in the Sector Plan. Part of the existing school building appears to be within 100 feet of the property line abutting the Capital Crescent Trail, which is not specifically recommended for any zone in the Sector Plan. The Zoning Ordinance provides that public right-of-way takes on the zoning of the least intensive adjacent zone. That could support an interpretation of the Sector Plan's zoning recommendations to recommend the least intensive adjacent zoning for the Trail right-of-way. In the area of the school building, none of the property adjacent to the Trail was recommended for single-family residential zoning, so there is no basis to attribute such a recommendation to the Trail right-of-way. Accordingly, the Development Plan would satisfy this requirement.

Section 59-C-7.16, Green Area. The PD-28 Zone requires a minimum of 50 percent green area. The Development Plan depicts green space equal to about 58 percent of the site, but that

percentage is subject to adjustment at site plan. Nonetheless, the submitted plan demonstrates that the proposed development can be accomplished with sufficient green area to satisfy this requirement.

Section 59-C-7.17, Dedication of Land for Public Use. The Development Plan depicts a dedication of property along Landy Lane to provide for a cul de sac, allowing public access to a turnaround. No other dedications are proposed.

Section 59-C-7.18, Parking Facilities. Off-street parking must be provided in accordance with the requirements of Article 59-E of the Zoning Ordinance. The Development Plan provides for more than the required number of spaces, both in the underground parking for the multi-family building and in the surface parking areas for the school. The school also proposes to use the tennis courts for overflow parking during special events, and has left open the possibility of constructing additional underground parking beneath the new athletic field.

The final two elements of finding (b), the maximum safety, convenience and amenity of the residents, and compatibility, have already been addressed.

§59-D-1.61(c): safe, adequate and efficient internal vehicular and pedestrian circulation systems. The evidence supports a finding that the proposed internal vehicular and pedestrian circulation systems and points of external access would be safe, adequate, and efficient. A new loop road and a cul de sac turnaround area off of Landy Lane would provide for safe and efficient vehicular circulation through the site. A system of sidewalks and walkways marked along drive aisles would provide for safe, adequate and efficient pedestrian circulation through the site, and from the site to the Capital Crescent Trail and Little Falls Stream Valley Park.

§59-D-1.61(d): preservation of natural features. The subject site is almost entirely graded and developed, with few natural features to preserve. Applicable forest conservation requirements would be satisfied by new landscaping along the loop road and in parking areas. While the Department of Permitting Services had not yet approved the concept stormwater management plan at the time of the hearing, the Applicant's engineer testified persuasively that stormwater management requirements would be capable of being satisfied with underground facilities and an expansion of a bio-

retention facility in the northern part of the site. The evidence suggests that stormwater management would be improved over the current condition, which was established without the benefit of today's stormwater management regulations.

§59-D-1.61(e): common area maintenance. The Applicant has not provided any draft documents of this nature. However, the evidence supports a conclusion that the property remaining in school ownership would be controlled by the school and maintained by it in perpetuity, and that the property to be sold to a residential developer would be controlled by that developer, with appropriate provision for perpetual maintenance of common areas.

F. Public Interest

In addition to the five development plan findings, the District Council also must consider the relationship of the present application to the public interest. When evaluating the public interest, the District Council normally considers master plan conformity, the recommendations of the Planning Board and Technical Staff, and any adverse impact on public facilities or the environment.

For the reasons discussed under finding (a) above, the District Council concludes that the subject application substantially complies with the Sector Plan.

As discussed in more detail in Part III.H of the Hearing Examiner's Report, the preponderance of the evidence supports a conclusion that the proposed development would be unlikely to have adverse effects on traffic conditions, in light of the proposed site layout and the Applicant's commitment to create two drop-off/pick-up areas, to use access controls to minimize cut-through traffic, and to seek approval for and contribute financially to a traffic light at River Road and Landy Lane.

Neither the proposed senior residence nor the private school expansion would have any impact on the public schools.

Accordingly, having carefully weighed the totality of the evidence, the District Council concludes that approval of the requested zoning reclassification would be in the public interest.

For these reasons and because to approve 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-873, requesting reclassification from the R-30 (multi-family residential) and C-O (commercial, office building) Zones to the PD-28 Zone (Planned Development, 28 units per acre) of 11.2 acres of land located at 5523 Landy Lane and 5600 Little Falls Parkway in Bethesda, Maryland, in the 7th Election District, is hereby *approved* in the amount requested, subject to the specifications and requirements of the final Development Plan approved by the District Council, Exhibit 92(a), provided that, within 10 days of receipt of the District Council's approval resolution, the Applicant must submit to the Hearing Examiner for certification a reproducible original and three copies of the approved Development Plan.

This is a correct copy of Council action.

Linda M. Lauer

Linda M. Lauer, Clerk of the Council