

Resolution No.: 16-1393  
Introduced: June 15, 2010  
Adopted: June 15, 2010

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

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By County Council

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**SUBJECT:** APPLICATION NO. G-884 FOR AMENDMENT TO THE ZONING ORDINANCE  
MAP, Stuart R. Barr, Esquire, Attorney for Applicant, The Hanson Family, OPINION  
AND RESOLUTION ON APPLICATION  
Tax Account Nos. 06-00393952, 06-03136510 and 06-03132818.

**OPINION**

Application No. G-884, filed on June 1, 2009, by Applicant “the Hanson Family,” requests reclassification of a 170.77-acre parcel of mostly unimproved farm land from the RE-2 Zone to the PD-2 Zone. The Applicant proposes to develop the property with 187 residential units, at least 35% of which will be single-family detached units and at least 35% (but not more than 45%) of which will be townhouse or attached units. The site will include a local park of at least 10 acres dedicated to the Maryland-National Capital Park and Planning Commission (M-NCPPC), and 12.5% of the units will be Moderately Priced Dwelling Units (MPDUs). No commercial uses are proposed.

The site is comprised of three parcels, 020, 945 and 312, located at 14100 and 14200 Quince Orchard Road, bordering Muddy Branch Park, Turkey Foot Road, Quince Orchard Road and Travilah Road, in Gaithersburg, Maryland.

The application for rezoning was reviewed by the M-NCPPC’s Technical Staff, who in a report dated February 22, 2010, recommended approval (Exhibit 49). The Montgomery County Planning Board

("Planning Board") considered the application on March 4, 2010, and by a vote of 4 to 0, also recommended approval, as stated in a memorandum dated March 5, 2010 (Exhibit 52).<sup>1</sup>

Two opposition letters were received prior to the hearing. Dr. Paul Goldberg, a nearby resident, wrote to oppose the development because, in his opinion, it will exacerbate traffic problems in his neighborhood (Exhibit 44). Norman Knopf, Esquire, attorney for the Hunting Hill Estates Homeowners Association (HHE-HOA), filed a letter of opposition raising concerns about compatibility (Exhibit 51).

A public hearing was originally noticed for December 4, 2009 (Exhibit 31), but it was postponed so that the Applicant could amend its application to resolve some concerns raised by Technical Staff. The revisions resulted in less environmental impact and improved compatibility with surrounding development. Following these revisions, a new notice of a hearing date was issued and the hearing preceded as scheduled on March 12 and 15, 2010. Applicant called five witnesses, and six opposition witnesses testified, including three from the HHE-HOA. The People's Counsel participated in the proceedings and supports the application.

The record was held open until April 12, 2010, to allow the parties to make additional requests to Applicant for binding elements, to allow Technical Staff time to consider some revisions in the development plan resulting from the hearing, and to give the parties an opportunity to file final arguments. After the submission of revised plans and comments thereon, the record closed, as scheduled on April 12, 2010. The Hearing Examiner's Report and Recommendation was filed on May 18, 2010, and it is incorporated herein by reference.

The Hearing Examiner recommended approval on grounds that the proposed development satisfies the intent, purpose and standards of the PD-2 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

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<sup>1</sup> In that same memorandum, the Planning Board noted that it did not believe that this stage of the proceeding was appropriate to specify the dispersal and architectural features of proposed MPDUs, which some community members had requested be determined in a binding element as part of the development plan.

development in the surrounding area; and that the requested reclassification to the PD-2 Zone has been shown to be in the public interest.

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. In reaching this conclusion, the District Council notes that the proposed development plan is almost exactly what is called for in the 2002 Potomac Subregion Master Plan.

### **The Property, Surrounding Area and Zoning History**

The 170.77-acre subject property is irregularly shaped and has approximately 600 feet of street frontage along Turkey Foot Road, 1,000 feet of frontage along Travilah Road and 1,600 feet along Quince Orchard Road. The property has been used as a family-operated farm for the past three generations. Two single-family residences (with associated barns and outbuildings), and one mobile home exist in the northeastern quadrant of the property. Activities on site have included raising cattle, harvesting grain and producing timber.

Approximately one-third of the property is forested, with the remaining area used for crops or pasture. Two farm ponds are located in the center and southeastern corner of the site, respectively. Four intermittent tributaries exist on the property, flowing to the adjacent Muddy Branch Stream Valley Park, located north and west of the site. The site is not in either a special protection area or a primary management area.

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, the District Council accepts the area designated by Applicant in Exhibit 53(a) as properly describing the surrounding area, for the reasons set forth by the Hearing Examiner in his report. It

surrounds the subject site, approximately one quarter to one half mile out from its property line, and includes the following areas and development, as described by Applicant's land planner, Matthew Leakan (3/12/10 Tr. 124):

. . . the zoning immediately adjacent to and within the surrounding area of the subject site to the east is R-200 . . . single-family zoning currently in use as the Potomac Horse Center, which is a commercial use. To the south of that Potomac Meadows subdivision [is] another R-200 zoned portion of land. Immediately to the south of that [is] an R-200 TDR zoned portion, and then going around the horn again clockwise to the west R-200 for the . . . underlying zoning of the Travilah Elementary School, located at Travilah and Dufief Mill Road. Then RE-2 immediately to the south of the property comprising the Hunting Hill neighborhood, Hunting Hill Farm neighborhood, Belvedere neighborhood to the south and west, the what's described as Windmill Farm neighborhood to the south and west again, and then again RE-2 zoning[;]. . . the underlying zone of Muddy Branch Stream Valley Park parcels is RE-2 zoning with no improved residential homes. Just to the north of the RE-2 zone, again, within the surrounding area there's a cluster, RE-2 cluster zone, which transitions from the RE-2 to the R-200 just to the north of that subdivision, Potomac Chase subdivision . . .

The zoning history was reported by Technical Staff: The subject property was zoned R-A dating back to 1958, the year that Upper Montgomery County was combined with the then Regional District of Montgomery County by a zoning ordinance revision and a comprehensive remapping of the County. In 1973, through Zoning Text Amendment 73013, the R-A Zone was renamed RE-2. The subject property has been zoned RE-2 ever since. Two sectional map amendments (G-247 and G-800) have involved nearby properties, but have not affected the subject site.

### **Proposed Development**

Applicant is proposing a 187-unit residential development that will incorporate a 10 acre local park, large open spaces, walking paths and bicycle trails. The residences will be clustered away from environmentally sensitive resources, and will provide a variety of unit types and lot sizes so as to offer a maximum opportunity for a variety of life styles. Exhibit 49, p. 6. The timing of the proposed development is uncertain because the Hanson family intends to continue farming the land for the indefinite

future. Technical Staff assesses the proposed development as “closely follow[ing] the goals and conceptual layout shown in the Potomac Subregion Master Plan.” *Id.* Staff further explains:

Larger single-family detached homes are strategically placed on the perimeter of the property to fit within the established residential patterns to the south and east of the site. Similarly, large areas of parkland and open space are proposed to the north and east of the site to fit the existing character of the area. Smaller lots and attached homes are grouped toward the center of the site, away from existing patterns of development along Travilah and Quince Orchard and buffered by forested areas. A significant portion of the property will be preserved as open space, including the creation of a ten acre local park along Quince Orchard Road. A network of pedestrian, biking, and equestrian paths will connect internal open spaces to the ten acre park, the adjacent Potomac Horse Center, and the Muddy Branch Stream Valley Park. *Id.*

The proposed development will incorporate the two existing farm ponds and the existing residence located at the northeastern corner of the site. Several greens, squares and open spaces are planned to allow gathering space for the community. The proposed development includes significant dedications of forested area along the border of Muddy Branch Stream Valley Park and along the tributaries and stream valleys.

Three entrances are proposed to the Property – two along Quince Orchard Road and one along Travilah Road at its intersection with Turkey Foot Road. A traffic circle is proposed at the Travilah and Turkey Foot Road intersection to enhance safety and slow traffic.<sup>2</sup>

### **Development Plan & Binding Elements**

Pursuant to Zoning Ordinance § 59-D-1.11, development under the PD-2 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-2 Zone. Under Code §59-D-1.3, this development plan must contain several elements, including a land use plan. Illustrative and conceptual elements of the development plan may be changed during site plan review by the Planning Board, but the binding elements (*i.e.*, those that the

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<sup>2</sup> Technical Staff notes that a roundabout is not typically a feature or entryway to a rustic road; however, Staff recognizes that this is a unique location and the roundabout addresses concerns raised by the community. By utilizing a roundabout, the Applicant is able to preserve trees on Turkey Foot Road, ensuring that the rustic road will retain its character. Exhibit 49, p. 7.

District Council considers in evaluating compatibility and compliance with the zone) cannot be changed without a separate application to the District Council for a development plan amendment.

The final Land Use Plan for the present zoning application is labeled Exhibit 82(a). Although land use plans are technically only a part of the overall development plan, they are usually referred to as the “development plan,” and may be so referenced herein. It contains a site layout, a listing of all the binding and non-binding elements and other notations.

The proposed Development Plan is divided into four, color coded, “Land Bays,” designated “A” through “D.” Land Bay A consists almost entirely of the 10 acre local park to be dedicated to M-NCPPC and three to five acres of additional open space. Land Bay B is approximately 11 acres in size and will contain a maximum of 11 single-family detached dwelling units (*i.e.*, lots sizes of approximately one acre each). Land Bay C is approximately 15 acres in size and will contain a maximum of 4 single-family detached dwelling units, each of which will have a minimum lot size of 2 acres. Land Bay D is approximately 130 acres, and it will contain between 66 and 121 single-family detached dwelling units and between 66 and 85 single-family attached dwelling units. There are no commercial uses proposed for the site.

It should be noted that Applicant has been very flexible in making changes to satisfy the expressed needs of the neighbors. Seven new binding elements and two new non-binding elements were added to the land use plan as a result of the public hearing.<sup>3</sup> Technical Staff approved all of the changes, stating “Staff has no objection to the revised development plan and supports the effort to further limit development of the site in a manner compatible with the surrounding area.” Exhibit 80.

The binding and non-binding textual elements from the Land Use Plan (Exhibit 82(a)) are set forth on the following pages:

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<sup>3</sup> The land use plan initially presented at the hearing (Exhibit 40(a)), which had already been changed significantly in response to comments of Technical Staff, had 6 binding elements and 8 non-binding elements, while the final land use plan (Exhibit 82(a)) has 13 binding elements and 10 non-binding elements.

**DEVELOPMENT PLAN NOTES:**

**BINDING ELEMENTS:**

1. The total area to be rezoned to PD-2 is 170.77 acres+/- . The limits of the property to be rezoned are based on the identification Plat and Metes & Bounds description.
2. The total number of residential units shall not exceed 187 units. Any units over 170 require the use of Transferable Development Rights (TDR's). A minimum of 35% of the total units will be single-family detached and a minimum of 35% of the total units will be townhouses or attached. No commercial uses are proposed.
3. The developed area of the site shall not exceed 50% of the total site area, excluding the local park. The developed area is all of the proposed residential lots and road rights of way.
4. Parking will be provided through a combination of on-lot parking (in driveways and/or garages) and on-street parking. A minimum of 51 on-street parking spaces shall be provided in Land Bay A to satisfy the parking demand for the local park. The total number of on-street parking spaces shall not exceed 193 for Land Bays B, C, and D.
5. The local park site shall be dedicated to M-NCPPC and must be at least 10 acres in size and free and clear of any existing structures as required by M-NCPPC
6. The project shall provide 12.5% of the total number of units as Moderately Priced Dwelling Units (MPDU's)
7. The dwelling units in Land Bay C shall be at least 2 stories in height and comply with the minimum side yard setbacks and height restrictions of the RE-2 zone in place at the time of this Development Plan approval.
8. Attached units, including townhouses, shall not comprise more than 45% of the total number of dwelling units for this project.
9. Vehicular access to Land Bay C for the proposed residential uses shall be located at the intersection of Travilah Road and Turkey Foot Road and shall be the only point of vehicular access from Travilah Road and Turkey Foot Road.
10. Except where Street A joins Travilah Road and Turkey Foot Road, the distance between the Street A right of way and the Travilah Road right of way shall be a minimum of 30'.
11. The existing residence located at 14200 Quince Orchard Road, as identified, shall be retained to be incorporated into the plan.
12. The open space between the Street A right-of-way and Travilah Road right-of-way shall be considered green area, as defined by the Zoning Ordinance, but shall not contain children's playgrounds or swimming pools.
13. Land Use Analysis by Land Bay



**Quince Orchard Road/Local Park & Open Space: ±15 acres**

Use	Area	# Units	On-Lot Parking	On-Street Parking
Local Park	10 Acres min.	n/a	n/a	51-65 spaces
SFD Units:	Zero (0)	Zero (0)	Zero (0)	
SFA Units:	Zero (0)	Zero (0)	Zero (0)	
MF Units:	Zero (0)	Zero (0)	Zero (0)	
Commercial:	Zero (0)	Zero (0)	Zero (0)	
Open Space:	13 Ac. +/-			



**Large Lot Residential Addressing Existing Adjacent Residences: ±11 acres**

Use	Area	# Units	On-Lot Parking (Driveway and/or garage)	On-Street Parking
SFD Units:	n/a	11 (Max)	22 (2 /lot min.)	Zero (0)
SFA Units:	n/a	Zero (0)	Zero (0)	
MF Units:	Zero (0)	Zero (0)	Zero (0)	
Commercial:	Zero (0)	Zero (0)	Zero (0)	
Open Space:	0 Ac. +/-			



**Large Lot Residential Addressing Travilah Road: ±15 acres**

Use	Area	# Units	On-Lot Parking (Driveway and/or garage)	On-Street Parking
SFD Units:	n/a	4 (Max)	8 (2 /lot min.)	Zero (0)
<i>(Lots to be min. 2 acres in size)</i>				
SFA Units:	n/a	Zero (0)	Zero (0)	
MF Units:	Zero (0)	Zero (0)	Zero (0)	
Commercial:	Zero (0)	Zero (0)	Zero (0)	
Open Space:	7 Ac. +/-			



**Internal Neighborhood: ±130 acres**

Use	Area	# Units	On-Lot Parking (Driveway and/or garage)	On-Street Parking
SFD Units:	n/a	66 - 121	132-242 (2/lot min.)	193 (max)
SFA Units:	n/a	66 - 85	132-170 (2/lot min.)	
MF Units:	Zero (0)	Zero (0)	Zero (0)	
Commercial:	Zero (0)	Zero (0)	Zero (0)	
Open Space:	71 Ac +/-			

**NON-BINDING (ILLUSTRATIVE) ELEMENTS :**

1. This Development Plan generally depicts the overall and unified concept for the Hanson Property and the conformance to the Potomac Subregion Master Plan and Zoning Ordinance.
2. Building and parking locations shown hereon are approximate. Specific building and structure locations, footprints, parking locations, roadways, trails and other design details will be refined and finalized during the Subdivision and Site Plan proceedings.
3. The exact limits of the areas to be dedicated to public use may be refined at future planning stages.
4. This plan is to be developed in one or two phases except as otherwise required to satisfy future AGP staging requirements, construction sediment control requirements, or other standards as required during future regulatory review.
5. The shading for the offsite areas are for illustrative purposes only to identify adjacent land uses.
6. There shall be no more than six (6) bedrooms per unit.
7. Rights of way for the following confronting roads will be dedicated as required at the time of Preliminary Plan approval:
  - a. Quince Orchard Road (80' right of way)
  - b. Travilah Road (80' right of way)
  - c. Turkey Foot Road (70' right of way)
8. At the Subdivision or Site Plan review stage, any units that are unable to be located within either Land Bays B or C may be relocated to Land Bay D and any reduced open space and undeveloped area within Land Bay D as a result of this transfer may be relocated to Land Bays B or C.
9. Subject to septic testing, roadway engineering, and other civil engineering analysis, the dwelling units in Land Bay C shall be designed to comply with the following RE-2 zone development requirements: minimum 150' lot width at building line, minimum 50' front yard setback, minimum 35' rear yard setback.
10. The Potomac Master Plan recommends dedication of "a ten-acre site as a local park, sufficient to accommodate two ball fields and adequate parking."

**Development Program**

Subject to further refinement at the time of Preliminary Subdivision approval, the anticipated sequence of construction is as follows:

- Mass grading of site and sediment control measures
- Installation of common infrastructure (water and sewer lines, public utilities, storm water management facilities, storm drain pipes, primary road access)
- Fine grading of site
- Construction of homes, recreational facilities

Consistent with the 2002 Potomac Subregion Master Plan, the Development Plan calls for up to 187 dwelling units, if transferable development rights (TDRs) are used. Without TDRs, the development will be limited to 170 dwelling units. As required by law, at least 12.5% of the units will be moderately priced dwelling units (MPDUs).

According to Technical Staff, the development data provided by Applicant will meet the development standards for the PD-2 Zone, including the 30% green area required by the Zone (§59-C-7.16). Exhibit 49, pp. 20-22. Applicant has depicted approximately 56% green area ( *i.e.*, about 96 acres). The project also includes the 374 off-street parking spaces required for 187 dwelling units, and 244 to 258 on-street spaces are planned.

In addition to the parkland, the development plan shows illustrative street right-of-way dedications for Quince Orchard, Travilah, and Turkey Foot Roads, with final dedications to be established at the time of Preliminary Plan. Applicant's Public Domain Plan (Exhibit 76(a)) depicts the connecting trails and bikeways planned by Applicant.

## Required Findings

Section 59-D-1.61 of the Zoning Ordinance requires the District Council, before it approves any application for re-zoning to the PD-2 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 in the area analyzed in the 2002 Potomac Subregion Master Plan. The Master Plan recommends the PD-2 Zone for the subject site and specifies various objectives and recommendations, including a “concept plan” for the development. Master Plan pp. 26 and 70-75. Exhibit 76(e), the Master Plan Compliance Exhibit, lists the recommendations of the Master Plan and Applicant’s compliance therewith. It also contains a side-by-side reproduction of the Master Plan’s Concept Plan (Figure 7)<sup>4</sup> and Applicant’s Land Use Plan. As can be seen on Exhibit 76(e), Applicant’s land use plan tracks the recommendations of the Master Plan. 3/12/10 Tr. 145-150; 193-195. The Technical Staff report contains an excellent discussion of Applicant’s compliance with the Master Plan (Exhibit 49, pp. 11-14), which was quoted by the Hearing Examiner in his report. Technical Staff concluded that Applicant’s “proposal supports almost all of the Master Plan recommendations. . . . Staff finds the proposed rezoning from RE-2 to PD-2 consistent with the 2002 Potomac Subregion Master Plan.”<sup>5</sup> *Id.* There is no contrary

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<sup>4</sup> The diagram from page 74 of the Master Plan reproduced in this exhibit is actually from the “Interim Addition” of the approved and adopted 2002 Master Plan. When M-NCPPC published the final addition of the Master Plan, it “improved” the diagram on page 74 by colorizing it, thereby obscuring the important details shown on the original diagram.

<sup>5</sup> Staff noted that the slight deviation in road configuration from the Master Plan’s conceptual layout was necessary to avoid an adverse environmental impact to a stream on the property and an unworkable distance between two access points.

evidence in this record, and the District Council finds that the proposed development is consistent with the recommendations, guidelines and goals of the 2002 Potomac Subregion Master Plan.

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 spelled out in Zoning Ordinance §59-H-2.4(f). That section requires Applicant to produce "[s]ufficient information to demonstrate a reasonable probability that available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application is submitted."

In this case, the application was submitted on June 1, 2009, so the 2007-2009 Growth Policy adopted November 13, 2007 (Resolution 16-376) will apply to the rezoning determination. The 2007-2009 Growth Policy provides, at pp. 22-23, "[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 the District Council therefore concludes those public facilities are 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:

Concerns about traffic impacts were raised mostly by a nearby resident, Dr. Paul Goldberg, who

felt that the proposed development would worsen traffic on already overcrowded roadways. 3/12/10 Tr. 82-87.

Applicant's expert in traffic engineering, Wes Guckert, conducted traffic counts at intersections near the subject site, as requested by Technical Staff and the neighbors. Mr. Guckert then performed intersection capacity analyses to determine the critical lane volumes (CLVs), and whether or not the development would meet the critical lane volume threshold for the Rural West Area, which is 1,350 CLV. He determined that the development would meet the critical lane volume standards for Local Area Transportation Review (LATR) and reported his findings in Exhibits 17 and 36(h). Policy Area Mobility Review (PAMR), does not apply in this policy area. Based on these findings, Mr. Guckert concluded that the nearby roads and intersections can adequately handle the traffic proposed to be generated by this development. 3/12/10 Tr. 302-303.

Also, in his expert opinion, the proposed internal vehicular circulation systems will be safe and adequate, and the proposed points of external access, as well as the proposed round-about at Travilah Road and Turkey Foot Road, will be safe, adequate and efficient. The three proposed access points also provide adequate sight distances. 3/12/10 Tr. 302-303. Mr. Guckert opined that public transportation facilities and services would be adequate to serve the proposed development, and the proposed uses would not adversely affect the existing residential community as to traffic conditions. 3/12/10 Tr. 295-316.

Both Technical Staff and Department of Transportation (DOT) staff concurred with his findings. As stated by Technical Staff (Exhibit 49, pp. 23-24 and its Attachments 5 and 6),

All existing intersections are currently operating at the acceptable congestion standard and this standard is projected to continue under total future traffic conditions. Therefore, this application meets the LATR requirements of the APF review.

The site is located in the Rural West Policy Area where there is no PAMR mitigation requirement. Therefore, the subject application also satisfies the PAMR requirements of the APF review.

Technical Staff therefore concluded that “[t]he proposed development under the PD-2 Zone will not have an adverse impact on the surrounding roadway network.” *Id.* Staff also found that “the proposed access to the site [will] be safe and adequate . . . [and] that the internal vehicular and pedestrian circulation provides for a safe and adequate movement of traffic.”

Given the review by both M-NCPPC Technical Staff and DOT Staff, and the absence of any expert evidence to the contrary, the District Council finds that there is a reasonable probability that available public transportation facilities and services will be adequate to serve the proposed development.

## 2. School Capacity:

The subject property is located within the Wootton Cluster and is served by Travilah Elementary School, Robert Frost Middle School and Wootton High School. In a letter dated February 17, 2010, Bruce H. Crispell, Director of Planning and Capital Programming for Montgomery County Public Schools (MCPS), reported to Technical Staff that the proposed development of 187 dwelling units is estimated to generate 57 elementary, 27 middle and 17 high school students, at full build-out.

Mr. Crispell indicated that enrollment at the elementary school is currently within capacity and is projected to remain within capacity; enrollment at Robert Frost Middle School is currently over capacity, although enrollment is trending down and is expected to be within capacity by the 2014-2015 school year; and enrollment at Wootton High School is currently over capacity and is projected to remain over capacity. However, Mr. Crispell concluded by stating that “the current growth policy schools test (FY 2010) finds capacity adequate in the Wootton Cluster.” (Attachment 7 to Exhibit 49). There is no evidence in the record to the contrary.

Given the fact that capacity is adequate under the current growth policy schools test, the District Council finds that it is reasonably probable that public school facilities and services will be adequate to serve the proposed development.

### 3. Water and Sewer Service

Frank G. Bossong, Applicant's civil engineer testified the entire development would be served by public water, and all but Land Bay C would be served by public sewer; Land Bay C would be served by septic systems. 3/15/10 Tr. 63-65. Public water mains are available adjacent to the subject site. The project is located in an area categorized as S6/W6, and Applicant is requesting S3/W3 categories, which means public water and sewer service. If the S3 category is granted, Land Bay C may still develop with septic fields; however, the S3 category would allow later development of a pressure sewer there.

A Washington Suburban Sanitary Commission (WSSC) memo (Exhibit 76(a)), indicates that while sewage capacity might be exceeded for short periods under wet weather conditions, "the interceptor capacity should be sufficient to handle the generated flow." Mr. Bossong testified that if WSSC finds a specific problem later, there will be a requirement to fix the problem before this development can go forward.

The District Council finds that Applicant has demonstrated a reasonable probability that available water and sewer facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application was submitted.

In sum, based on this record, the District Council finds that the requested rezoning does not conflict with "other 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.*

#### 1. Compliance with the Purposes, Standards and Regulations of the Zone

Planned Development (PD) zones are a special variety of floating zone, with performance specifications integrated into the requirements of the zone. These zones allow considerable design

flexibility if the performance specifications are satisfied. The applicant is not bound to rigid design specifications, but may propose site-specific criteria, within the parameters established for the zone, for elements such as setbacks, building heights and types of buildings.

Section 59-C-7.11, Purpose Clause

The PD Zones have a lengthy purpose clause, Zoning Ordinance §59-C-7.11, which is linked to the goals of the applicable master plan.

As discussed above, the proposed development will be in substantial compliance with the 2002 Potomac Subregion Master Plan. Accordingly, the requested reclassification will comply with the first element of the PD Zone's purpose clause by allowing implementation of applicable Master Plan objectives.

The second paragraph of the purpose clause calls for a design which will facilitate social and community interaction, create a distinctive visual character and offer a balanced mix of uses. As observed by Technical Staff (Exhibit 49, pp. 17-20), the proposed development will provide several greens, squares, and open spaces to allow gathering space for the community and encourage social and community interaction. The proposal will also incorporate two existing ponds and various tributary areas into the fabric of the community. These natural features will contribute to the desired "distinctive visual character" of the development. Added to this will be a local park with ball fields to be located along Quince Orchard Road, and a network of pedestrian and equestrian paths which will connect the open areas to the proposed residences and to adjacent developments, thereby maximizing social and community interaction. There will be no commercial uses on site because the Master Plan does not envision any, but there will be a mix of residential and recreational uses.

The third paragraph of the purpose clause encourages "a broad range of housing types." The proposed development will provide for a range of different sized single-family detached homes, single-family attached units and townhouse units on differing sized lots. It will thus provide a broad range of housing choices.

The fourth and fifth paragraphs address trees, grading and open space. The areas to be developed as part of this proposal are primarily on existing open fields, thereby preserving much of the existing forest on the property. As already mentioned, the proposal will provide a great deal of open space, including several greens, squares, and a 10 acre local park with ball fields to allow an area for community recreation.

The sixth paragraph calls for pedestrian circulation networks to minimize reliance upon automobiles. The development plan here provides for a network of pedestrian, biking, and equestrian paths which will clearly reduce reliance upon automobiles.

The large scale advocated in the seventh paragraph of the purpose clause is provided by a development of over 170 acres in size.

The eighth paragraph of the purpose clause calls for a development which provides for safety, convenience, amenity and compatibility, and the ninth paragraph reiterates the need for a development that will be proper for the comprehensive and systematic development of the County, and consistent with the Master Plan and the Zone. Safety was discussed above in connection with transportation facilities, and as noted there, the proposed access ways and internal circulation systems will be adequate and safe. Convenience and amenities include the pedestrian, bike and equestrian networks and park areas which were discussed above in this section.

Compatibility was discussed at length in Part III.E. of the Hearing Examiner's report, and despite concerns expressed by the community, the Hearing Examiner found that the overwhelming weight of the evidence established that the proposed development will be compatible with surrounding uses, subject to the later detailed review at site plan and subdivision. The District Council also finds that the proposed development will be compatible with surrounding development, and that details regarding the specific sizes, placements and exteriors of individual dwelling units, as well as the appropriate dispersal of MPDUs, are more properly left to site plan and subdivision, as suggested by the Planning Board. The District Council further finds that the binding elements already included in the proposed development plan,

especially the maximum number of dwelling units in Land Bays B and C, adequately insure compatibility with existing development in the surrounding area.

The PD Zone requires that a certain percentage of the dwelling units be townhouse or attached. Since both the Planning Board and the Council approved the Master Plan recommendation for the PD-2 Zone on this site, it was clearly determined that this type of development would be generally compatible with its surroundings. The development proposed here is almost identical to the conceptual plan set forth in the Master Plan for this very property. That conceptual plan called for the same zone and classification applied for (PD-2) and the same number of units proposed in this development plan, arranged in almost the same way, as is evident from Exhibit 76(e) reproduced on pp. 25-26 of the Hearing Examiner's report.

Technical Staff concluded that the development plan would satisfy the zone's purpose clause, including compatibility with the surrounding area (Exhibit 49, p. 15), and the Planning Board adopted Technical Staff's findings (Exhibit 52). The Hearing Examiner also agreed. Based on this record, the District Council finds that the subject development will provide the kind of housing mix and general-benefit open space recommended by the purpose clause, as well as pedestrian interconnectivity and compatibility with its surroundings.

In sum, the proposed development is consistent with the intent and purposes of the PD-2 Zone. We next look to the "standards and regulations" of the PD-2 Zone. The standards and regulations of the PD-2 Zone are spelled out in Code Sections 59-C-7.12 through 7.18.

Section 59-C-7.121, Master Plan

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 applicable Master Plan, the 2002 Potomac Subregion Master Plan, recommends that the subject property be developed under the PD-2 Zone, which permits 2 dwelling units per acre. Accordingly, this provision is satisfied in this case.

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. Alternative criterion (a) requires that the site “contain sufficient gross area to construct 50 or more dwelling units under the density category to be granted.” The subject property contains 170.77 acres, more than large enough to construct 50 dwelling units. It is in fact recommended for at least 170 dwelling units by the Master Plan, and up to 187 dwelling units if TDRs are employed.

Section 59-C-7.13 and 7.131, Residential Uses Permitted

Pursuant to Code §59-C-7.131, single-family attached (including townhouses) and detached units are permitted in the PD-2 Zone, but it also specifies that in a development of fewer than 200 units, multi-family dwellings are not permitted. Moreover, a minimum of 35% of the units must be detached and a minimum of 35% must be attached or townhouse. Here, the proposed Development Plan provides for at least 35% single-family detached units and at least 35% single-family townhouse and attached units, satisfying this requirement (Binding Element 2). It also contains a binding element setting the maximum percentage of attached and townhouse units at 45% (Binding Element 8).

Section 59-C-7.132, Commercial Uses

There are no commercial uses proposed here.

Section 59-C-7.133, Other Uses Permitted

Under subsection (a) of this provision of the PD Zone, recreational facilities intended for the exclusive use of the residents and their guests are permitted. Moreover, under subsection (b), any nonresidential, noncommercial use is permitted at the discretion of the District Council on a finding that such use is compatible with the planned development and surrounding development under the strictures of §59-C-7.15.

Because the proposed park will not be for the exclusive use of the residents, it clearly does not fall under subsection (a). To be permitted, then, it must fall under subsection (b), which requires a finding of

compatibility. The District Council finds that the proposed 10 acre park would be compatible with the proposed on-site development and with development in the surrounding area.

Section 59-C-7.14, Density of Residential Development

Three subsections (a), (b) and (e) apply to this case. Subsection (a) sets forth the available density categories for residential development in a PD Zone. In this case, the density category specified in the development plan is PD-2, which is the category recommended in the 2002 Potomac Subregion Master Plan. Subsection (b) requires the District Council to determine the propriety of the density category applied for, and Subsection (e) permits the District Council *“to approve a density bonus of up to 10% above the maximum density specified in the approved and adopted master plan for the provision of TDRs, if the use of TDRs is recommended for the site.”*

The density category applied for, PD-2, is the lowest density available in the PD Zones, and is specifically recommended in the 2002 Potomac Subregion Master Plan. Consistent with the Master Plan and Subsection (e), the Development Plan calls for up to 187 dwelling units, if transferable development rights (TDRs) are used. Without TDRs, the development will be limited to 170 dwelling units. The effective density of placing 187 units on a site of 171 acres is 1.09 dwelling units per acre. The District Council finds that to be an appropriate density for the site. As required by law, at least 12.5% of the units will be moderately priced dwelling units (MPDUs).

Section 59-C-7.15, Compatibility

Section 59-C-7.15 requires a finding of compatibility and specifies that only single-family detached homes may be constructed within 100 feet of any adjoining single-family detached zone. It also prohibits buildings constructed to a height greater than its distance from such adjoining land.

As previously discussed, Technical Staff, the Planning Board and the Hearing Examiner found that the proposed development will be compatible with surrounding development. Moreover, as noted by Technical Staff (Exhibit 49, pp. 21-22), *“The proposal provides solely for single-family detached housing*

or vast stretches of open space around the perimeter of the development. [*i.e.*, there will be no buildings other than single-family residents within 100 feet of the adjoining land.] Further, the single-family detached homes will require setback distances from the perimeter of the development that are at least as great as the height of the homes.” Thus, the District Council finds that all the setbacks proposed for this development comply with the provisions of this section.

#### Section 59-C-7.16, Green Area

This section of the Ordinance requires 30% green space for the PD-2 Zone, and the Development Plan more than satisfies that requirement with a minimum of 50% green space (Binding Element 3). Technical Staff found that “The proposed development plan depicts green area at 56 percent of the property, which calculates to approximately 96 acres.” Exhibit 49 p. 22.

#### Section 59-C-7.17, Dedication of Land for Public Use

This section requires that land necessary for public streets, parks, schools and other public uses must be dedicated in accordance with regulations and the Master Plan, with such dedications shown on all required development plans and site plans. The development plan in this case depicts a 10 acre local park and a substantial amount of tributary area associated with the Muddy Branch Stream Valley Park being dedicated to M-NCPPC. In addition to the parkland, the development plan shows illustrative street right-of-way dedications for Quince Orchard, Travilah, and Turkey Foot Roads, with final dedications to be established at the time of Preliminary Plan.

#### Section 59-C-7.18, Parking Facilities

This section requires that off-street parking be provided in accordance with Zoning Ordinance Article 59-E. Under §59-E-3.7, two parking spaces are required for each single-family dwelling unit. As shown on the Development Plan, the proposed project will provide two off-street spaces for each dwelling unit proposed, and ample on-street parking throughout the development and adjacent to the local park.

In sum, the District Council concludes that the proposed rezoning and the Development Plan will be consistent with the purpose clause and all applicable standards for the PD-2 Zone.

## 2. Safety, Convenience and Amenity of Residents

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.” Since this required finding is practically identical with one of the purpose clause requirements for the PD-2 Zone, it has been discussed in that context above. The District Council finds that Applicant has provided the maximum in safety, convenience and amenities for the future residents of this development.

## 3. Compatibility with Adjacent Development

The final required determination under “Finding (b)” is that the proposed development be compatible with adjacent development. For the reasons discussed above in connection with the Purpose Clause of the PD-2 Zone, the District Council concludes that the proposed residential dwelling units will be compatible with other uses existing or proposed in the vicinity of the planned 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.”

As discussed above, Applicant’s traffic engineer opined that the proposed internal vehicular circulation systems will be safe and adequate, and the proposed points of external access, as well as the proposed round-about at Travilah Road and Turkey Foot Road, will be safe, adequate and efficient. The three proposed access points also provide adequate sight distances. 3/12/10 Tr. 302-303. Applicant’s land planner testified that the pedestrian systems were safe and adequate, as well. 3/12/10 Tr. 201. Technical Staff also found that “[t]he development plan maximizes safe connections between the proposed development and the surrounding area.” Exhibit 49, p. 19.

Accordingly, the District Council finds that the proposed circulation systems and site access would 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 subject site is not within a Special Protection Area or Primary Management Area. Technical Staff stated that the site has been designed with the natural features of the property in mind and that the proposed development and infrastructure have been situated away from natural tributaries and forested land. Staff recommended approval of a “tree variance” and the proposed Preliminary Forest Conservation Plan. The Department of Permitting Services has approved the stormwater management concept plan, and both plans will be reviewed in connection with site plan and subdivision. As observed in Part III.D.5. of the Hearing Examiner’s report, Applicant has been sensitive to environmental concerns, and the entire record indicates that Applicant’s plans take due care to protect the environment.

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.”

The Hanson family is the Applicant and the owner of the subject site, as indicated in the public tax records. Applicant submitted an illustrative homeowners association declaration of covenants that describes the proposed ownership and maintenance of common areas by a homeowners association, after development. Exhibit 48(b), Section 3.1.

The District Council finds that Applicant has sufficiently demonstrated both its interest in 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.

The issue of Master Plan conformance was discussed above. As outlined therein, Applicant's proposal is consistent with the recommendations, goals and objectives of the 2002 Potomac Subregion Master Plan. The Planning Board and its Technical Staff both support the proposed rezoning. The impact on public facilities was also discussed above. The evidence indicates that transportation, schools and water and sewer services would not be adversely affected by the proposed development.

The proposed project will offer a mix of housing opportunities, including affordable housing, in a manner which is sensitive to the environment and compatible with the surrounding area. It will also provide a new ten acre public park and substantial open space which will benefit the community.

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 PD-2 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 PD-2 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-884, requesting reclassification from the RE-2 Zone to the PD-2 Zone, of a 170.77-acre parcel of land, known as Parcels 020, 945 and 312, located at 14100 and 14200 Quince Orchard Road, bordering Muddy Branch Park, Turkey Foot Road, Quince Orchard Road and Travilah Road, in Gaithersburg, Maryland, is hereby approved in the amount requested and subject to the specifications and requirements of the revised Development Plan, Exhibit 82(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, as required under Code §59-D-1.64.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council