

Resolution No.: 17-22
Introduced: January 18, 2011
Adopted: January 18, 2011

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

By: District Council

SUBJECT: APPLICATION NO. G-876 FOR AMENDMENT TO THE ZONING ORDINANCE MAP, C. Robert Dalrymple, Esquire and Heather Dlhopsky, Esquire, Attorneys for Applicant, Washington Property Company, OPINION AND RESOLUTION ON APPLICATION. Tax Account No. 07-00430190.

OPINION

Application No. G-876, filed on May 27, 2008 by Washington Property Company, requests reclassification of approximately 1.76 acres of land adjacent to the Wheaton Central Business District from the R-60 to the TS-R Zone (Transit Station-Residential). Applicant seeks to rezone Parcels P754, P758 and N760, a site located on the west side of Georgia Avenue just south of its intersection with Viers Mill Road, adjacent to Westfield Wheaton Shopping Center and within 1,500 feet of the Wheaton Metro Station.

The site is currently occupied by the First Baptist Church of Wheaton and its associated parking. The subject property lies within area covered by the *1990 Wheaton Central Business District and Vicinity Sector Plan*.

The application for rezoning was reviewed by the Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC), and in a report dated July 12, 2010, Staff recommended approval of the application. The Montgomery County Planning Board (Planning Board), considered the application on July 22, 2010 and, by a vote of 4 to 0, also recommended approval, and supported the possibility of including street-level retail in the project provided that all adequate public facilities requirements may be met.

Before the Hearing Examiner, the Applicant proposed a maximum of 245 dwelling units, including 31 (12.5%) MPDUs and 222 underground parking spaces. The 245-unit maximum reflects an increase in the number of units reviewed by the Planning Board. The Applicant proposed the increase to permit more market flexibility in the type of dwelling units offered (i.e., one or two bedrooms), but the increase is not intended to change the bulk of the development. As the Planning Board requested, the Applicant added a binding textual element limiting the

height of the building to 70 feet and requiring a ten-foot setback and landscaping along the southern property line. Also at the request of the Planning Board, the development plan preserves a possibility of including incidental retail at the time of site plan, but the Applicant does not propose retail uses at this time.

The hearing in this case concluded on October 15, 2010, and the record was held open until November 8, 2010, in part to allow the Applicant to file additional evidence relating to the increased number of dwelling units. The Hearing Examiner recommended approval on grounds that the proposed development satisfies the intent, purpose and standards of the TS-R Zone; that it meets the requirements set forth in §59-D-1.61 of the Zoning Ordinance; that the application proposes a project that would be compatible with development in the surrounding area; and that the requested reclassification to the TS-R Zone has been shown to be in the public interest.

The Wheaton Redevelopment Advisory Committee supported the application, as did an adjacent property owner to the south of the subject property. Specifically, the Wheaton Redevelopment Advisory Committee stated the application is “consistent with the County’s goal of Smart Growth communities and it will benefit Wheaton by bringing needed density to support our commercial center. The design of this project will enhance the architectural fabric of Georgia Avenue and create a pleasant streetscape along one of the main arteries of into our town center.” Exhibit 34, p. 41. The adjacent owner supported the application because he felt that the existing use underutilized property so close to a Metro Station.

There has been no opposition to this application.

To avoid unnecessary detail in this Resolution, the Hearing Examiner’s Report and Recommendation, dated December 16, 2010, is incorporated herein by reference. Based on its review of the entire record, the District Council finds that the application does meet the standards required for approval of the requested rezoning for the reasons set forth by the Hearing Examiner.

The subject property consists of three parcels located adjacent to, and southwest of, the Westfield Wheaton Shopping Center and the boundary of the Wheaton Central Business District. The property is situated immediately southwest of the intersection of Viers Mill Road and Georgia Avenue and the Wheaton Metro Station lies less than one-quarter mile (approximately 1,100 square feet) to the north.

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. Technical Staff recommends including within the “surrounding area” the entire Wheaton Central Business District, and describes the area as bounded by University Boulevard to the north, Amherst Avenue to the East, McComas and Douglas Avenues to the south, and the Westfield Wheaton Shopping Center ring road to the west. The District Council accepts this definition of the “surrounding area.”

Land use in the surrounding area is generally a mix of retail and residential development. There are several higher density (up to six stories) existing residential projects within the surrounding area as well as a variety of retail uses ranging from the mall to one-story retail businesses. An eighteen-story residential development (with retail on the first level) has been approved. Properties immediately adjoining the proposed development include a townhome community (zoned RT 12.5) along the southern border, Stephen Knolls Elementary School to the southwest, and Westfield Wheaton Shopping Center to the northwest. One to two story retail buildings lie directly across Georgia Avenue (to the east) and a six-story residential development is across Georgia Avenue to the northeast.

Technical Staff advises that the R-60 Zone was enacted and mapped in the 1958 comprehensive rezoning. The Board of Appeals approved a special exception for a private educational institution (for up to 36 children) in 1976.

The applicable master plan, the *1990 Wheaton Central Business District and Vicinity Sector Plan*, recommends retention of the existing R-60 zoning for the subject property. The Plan also, however, defines as a primary goal the attraction of a strong residential population base to support the wealth of retail in the surrounding area. As set forth below, because the Sector Plan's recommendation of R-60 for this property is twenty years old and its basis is unclear, and because the proposed development furthers the primary goal of the Sector Plan, the District Council finds that the application is consistent with the Sector Plan. Additionally, a public hearing draft amendment to the Sector Plan is now pending. While not binding on this application, the evidence demonstrates that the proposed development will not preclude implementation of the goals of the draft Sector Plan amendment.

As previously noted, the Applicant proposes a maximum of 245 dwelling units rising six stories along the Georgia Avenue frontage. At the request of the Planning Board, the Applicant has agreed to leave open the potential for adding a small amount of retail at the time of site plan review, but does not propose any retail at this time.

Parking will be underground and will not be visible from Georgia Avenue. As proposed, the application includes 222 parking spaces (256 are required). While the Applicant has requested a "concept waiver" of the minimum parking requirements, the Hearing Examiner found that such a waiver is unnecessary at the rezoning stage, but should be addressed at the time of site plan review as provided by the Code. For the reasons set forth by the Hearing Examiner, the District Council concurs with this finding.

The existing use (the church and its parking lot) protrudes into an environmental buffer resulting from a stream on adjoining property to the west (Stephen Knolls Elementary School). The proposed development is planned to occupy the same development envelope as the existing use, but a stream valley buffer mitigation plan is a binding element of the development plan. Exhibit 58(a). The proposed mitigation plan is designed to stabilize the banks of the entire stream (approximately 800 feet in length), thereby reducing erosion not only on the subject property, but also on properties to the south (including the townhome community.)

Both Technical Staff and the Hearing Examiner concluded that the proposed development is compatible with adjacent development by providing a transitional "gateway" to

the Wheaton Central Business District through increasing height, density and other features. The development incorporates the following features to enhance compatibility with the surrounding properties and area:

- Dedication of additional sidewalk width along Georgia Avenue to enhance pedestrian access to the Central Business District;
- Public seating and enhanced landscaping along the Georgia Avenue streetscape for public use;
- Terraced setbacks and landscaping along the southern end of the property adjacent to the townhomes with a minimum ten-foot setback from the property line;
- Architectural details along the Georgia Avenue façade reminiscent of the townhome community to the south.

Pursuant to Zoning Ordinance §59-D-1.1, development in the TS-R Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the TS-R Zone. The Development Plan and the Land Use Plan that constitutes one of its primary parts are binding on the Applicant except where particular elements are identified as illustrative or conceptual. Illustrative elements may be changed during site plan review by the Planning Board, but the binding elements cannot be changed without a separate application to the District Council for a development plan amendment.

The binding elements included in this application, which are printed on the Development Plan (Exhibit 58(a)), are as follows:

1. Because the Planning Staff has determined that the proposed building improvements will encroach upon stream valley buffer, the Applicant must provide stream valley buffer mitigation as generally provided for in the exhibit labeled "Conceptual Stream Valley Buffer Encroachment Mitigation Exhibit" made part of the record for this case or as otherwise approved by the Planning Board in conjunction with 59-D-3 site plan approval for this project.
2. The Applicant may pursue any uses permitted in the TS-R Zone at the time of site plan, at the Applicant's option.
3. The project will not exceed a maximum of 245 multi-family dwelling units, including 12.5% Moderately Priced Dwelling Units, with final unit count, unit mix, and parking requirements to be addressed at site plan.
4. The project will not exceed 70 feet in building height (measured from the building height measuring point of 410.3 feet as shown on the Development Plan), with final building height, not to exceed 70 feet, to be determined at the time of site plan.
5. The project will be set back a minimum of 10 feet from the southern property line adjacent to the townhouses.

6. The 10-foot setback along the southern property line will be landscaped to the extent practical to provide additional screening and buffering from the adjacent townhouses.

Section 59-D-1.61 of the Zoning Ordinance requires the District Council, before it approves any application for rezoning to the TS-R Zone, to consider whether the application, including the development plan, fulfils the “purposes and requirements” set forth in Code §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 County plans and policies. These include the consistency with the applicable master plan and County growth policies.

Master Plan

The subject site is located within the area analyzed by the *1990 Wheaton Central Business District and Vicinity Sector Plan*.

While the Sector Plan recommended retention of the then-existing R-60 zoning for this particular property, the Plan also enunciated as a key goal the attraction of a large residential population. As articulated in the Plan, a strong residential population was needed to strengthen the existing retail uses, to promote transit ridership, and to reinforce Wheaton as a lively area during the day and the evening. Given that the Sector Plan is twenty years old, and there is little evidence as to why it recommended retaining the R-60 zoning on the property at that time, the Sector Plan should be interpreted to give effect to its underlying intent for the area, and not strictly in accordance with the recommendation for this particular property. A master plan is only a guide where, as here, the Zoning Ordinance does not make it mandatory. *See Richmarr Holly Hills, Inc. v. American PCS, L.P.*, 117 Md. App. 607, 635-636, 701 A.2d 879, 893, n.22 (1997). In this case, development utilizing the TS-R zone will better achieve the goals of the Sector Plan than development under the existing zoning; it is therefore reasonable to conclude that reclassification to the TS-R zone is appropriate in this instance. For these reasons, the District Council finds that the proposed development is consistent with the goals and objectives of the *1990 Wheaton Central Business District and Vicinity Sector Plan*, and is thus in substantial compliance with the Sector Plan.

Growth Policy

Another County policy which must be considered is the Adequate Public Facilities Ordinance (“APFO,” Code §50-35(k)). While the ultimate test under the APFO is carried out at subdivision review, evidence concerning adequacy of public facilities is also relevant to the District Council’s determination in a rezoning case. Under the 2009-2011 Growth Policy, “[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.” Council Resolution 16-1187, p. 24. There is no such evidence in

this case. We therefore turn to the remaining three public facilities, transportation, schools and water and sewer service.

1. Transportation

Under the 2009-2011 Growth Policy, subdivision applications are subject to Local Area Transportation Review (“LATR”) and Policy Area Mobility Review (“PAMR”) requirements. LATR generally involves a traffic study intended to evaluate whether a proposed development would result in unacceptable congestion during the morning and evening peak hours at specified intersections. Congestion is defined by the County in terms of “critical lane volume” (CLV) above specified limits. The CLV standard specified for the relevant intersections is 1800. The LATR traffic study in this case demonstrates that the project meets current County CLV standards if developed with a maximum of 245 residential dwelling units.

PAMR in general measures both arterial road congestion levels and the relative speed by which commutes between home and work may be made by transit versus roadways. The Growth Policy establishes adequacy by comparing Relative Arterial Mobility and Relative Transit Mobility and adopting trip mitigation requirements for each policy area. The trip mitigation requirement for this development is 10% of the total amount of peak hour trips to be generated. Because the property is located within a Metro Station Policy Area, it is eligible for an 18% credit toward peak-hour trip mitigation. As the transit station credit is in excess of the 10% mitigation required, the evidence demonstrates that this requirement has been met.

A revised traffic study (to reflect the 245-unit maximum and the possibility of retail) concluded that a small amount (i.e., 10,000 square feet) of commercial use would have an insignificant impact on LATR requirements. Because the Applicant need only show a “reasonable probability” that APFO standards may be met at the rezoning stage, the District Council finds that there is a reasonable probability that Applicant’s proposal, even with the possibility of a small amount of retail, will meet LATR requirements at the time of preliminary plan review. Based on the evidence of record, the District Council finds that transportation facilities will be adequate for this project.

2. School Capacity:

This property is located within the Oakland Terrace Elementary School, Newport Mill Middle School, and Albert Einstein High School attendance areas. The Montgomery County Public Schools (MCPS) estimated that the impact of this project would be approximately thirty-six (36) elementary, seventeen (17) middle and eighteen (18) high school students. According to the MCPS and Technical Staff, the current Growth Policy schools test finds capacity adequate in the Einstein cluster. The District Council concludes that the increased demand projected from the subject development is within the capacity of MCPS.

3. Water and Sewer Service:

Under the FY 2009-2011 Growth Policy, applications must be considered adequately served by water and sewerage if the subdivision is located in an area in which water and sewer service is presently available. Council Resolution 16-1187, p. 24. The subject site is served by public water and sewer systems, and is currently in Water Service Category W-1 and Sewer

Service Category S-1. Both WSSC and Technical Staff found that water and sewer facilities were adequate to support the proposed development. The District Council so finds.

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

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

The first 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.

Intent and Purposes

The requirements for the TS-R Zone are found in Code §59-C-8. The TS-R Zone is a “floating zone,” intended to be used in transit station development areas and on properties located within 1,500 feet of a Metro Station and adjacent to a Central Business District. *Montgomery County Code*, §59-C-8.21(a). The TS-R zone is intended to be used where multiple-family residential development already exists or where such development is recommended by an approved and adopted master plan. Because the subject property is located adjacent to the boundary of the Wheaton Central Business District and is within 1,100 feet of the Wheaton Metro Station, it is eligible to be rezoned to the TS-R Zone. A variety of housing, including multi-family, townhouse and single family homes already exist and are planned within the surrounding area. Therefore, the District Council finds that the proposed development meets the intent of the TS-R Zone, as did the Technical Staff, Planning Board, and Hearing Examiner.

Section 59-D-1.2 requires that the development plan “clearly indicate” how the proposed development meets the purposes of the TS-R Zone. These purposes are set forth in Code §59-C-8.22:

- (a) To promote the effective use of the transit station development areas and access thereto;*
- (b) To provide residential uses and certain compatible non-residential uses within walking distance of the transit stations;*
- (c) To provide a range of densities that will afford planning choices to match the diverse characteristics of the several transit station development areas within the county; and*
- (d) To provide the maximum amount of freedom possible in the design of buildings and their grouping and layout within the areas classified in this zone; to stimulate the coordinated, harmonious and systematic development of the area within the zone, the area surrounding the zone and the regional district as a whole; to prevent detrimental effects to the use or development of adjacent*

properties or the surrounding neighborhood; to provide housing for persons of all economic levels; and to promote the health, safety, morals and welfare of the present and future inhabitants of the regional district and the county as a whole.

Technical Staff found the proximity of the residential development to the Wheaton Metro Station met the first purpose. In addition, the additional sidewalk width and amenities along the Georgia Avenue frontage encourage pedestrian access to the CBD and the metro station. Therefore, these features also support the first purpose. The proposed development will place up to 245 residential units less than one-quarter mile (within walking distance) of a Metro station. Therefore, the development meets the second purpose by providing residential uses (including MPDUs) within 1,100 feet of a metro station.

The six-story residential building accomplishes the third purpose by adding to the variety of housing types in the surrounding area, which include high-rise multi-family projects as well as developments in the PD-9, PD-11, RT 12.5, and R-60 zones. The break in massing, setbacks and landscaping along the southern property line (adjoining the townhomes), and the pedestrian amenities to be added to the sidewalk along Georgia Avenue, accomplish the fourth purpose of the TS-R Zone. Based on the ample evidence in the record, the District Council finds, as did the Hearing Examiner, Technical Staff and the Planning Board, that the proposed development satisfies the purposes of the TS-R Zone.

Development Standards of the TS-R Zone

Zoning Ordinance §59-C-8.3 specifies the uses permitted in the TS-R Zone. Residential dwellings are permitted in the TS-R Zone. In addition to residential dwellings, a limited amount of nonresidential uses, including certain commercial uses, are permitted. While the Applicant does not plan any retail uses at the present time, it has agreed that any retail ultimately included in the project must come within those uses permitted in the TS-R Zone.

Zoning Ordinance §59-C-8.24 provides that the TS-R Zone is “permitted only in a Transit Station Development Area defined in §59-A-2.1 and in accordance with an approved and adopted master plan or sector plan, except in areas within and adjacent to a Central Business District in accordance with §59-C-8.21(a).” As previously discussed, the property is within and adjacent to the Wheaton Central Business District in accordance with §59-C-8.21(a).

Zoning Ordinance §59-C-8.25 requires that a proposed development in the TS-R Zone conform to “the facilities and amenities” of the Sector Plan, including any required easements or dedications necessary to insure safe and efficient circulation and adequate open and recreation space, and insure compatibility with the surrounding area, as well as the ability of the area to accommodate the intended use. The Sector Plan contained no site specific recommendations relating to the subject property. The Applicant proposes to dedicate additional sidewalk width along Georgia Avenue which reduces conflicts between vehicles entering the parking garage and pedestrians. The additional dedicated sidewalk area also meets the “public use space” requirements in the TS-R Zone. Passive and active recreational areas are also provided which meet the TS-R standards.

A development must also meet all the applicable development standards set forth in Code §59-C-8.4. Technical Staff found that the proposed development met all applicable development standards with the exception of the parking requirements established in §59-E of the Code. This prompted the Applicant to request a “concept waiver” of the parking requirements for the project. The Hearing Examiner concluded that a waiver of the parking requirements is unnecessary at the rezoning stage because those requirements are not included within §59-C-8 of the Code. Any waiver of the parking requirements, if ultimately necessary, should be addressed at the site plan stage as authorized in Section 59-E of the Zoning Ordinance. *See, e.g., Montgomery County Code, §59-E-5.* As a result, and based on the evidence of record, the District Council finds that Applicant’s development plans are in accordance with all of the standards and regulations of the TS-R Zone, as set forth in that section.

Safety, Convenience and Amenity of Residents

The next part of “Finding (b)” required by §59-D-1.61 is a determination that the proposed development would provide the “maximum safety, convenience, and amenity of the residents.” Proposed amenities include an outdoor architecturally designed and landscaped deck with a pool and interior spaces which will include amenities based on market demand, such as a “cyber-café.” The outdoor public use space and streetscape enhancements provide safety and amenities to both residents and the public. Technical Staff and the Hearing Examiner concluded that in addition to on-site amenities, the development’s proximity and access to the Wheaton Metro Station and the services, restaurants, shopping, etc., in the Wheaton Central Business District will afford residents ample amenities and conveniences. The District Council therefore finds that the proposed development will provide for the maximum safety, convenience and amenity of the residents.

Compatibility with Adjacent Development

The final required determination under “Finding (b)” is that the proposed development be compatible with adjacent development. Both Technical Staff and the Hearing Examiner found this to be the case. The Georgia Avenue façade and streetscape are designed to create an inviting urban edge to the Wheaton Central business district and the requested TS-R zoning on this site would “balance” the CBD entrance by matching the existing zoning on the confronting property across Georgia Avenue to the east. Technical Staff found the development compatible with the surrounding area due to the number of multi-family residential buildings that had been constructed or approved within the Central Business District. It also found that the 70-foot height was an appropriate transitional increase in density along Georgia Avenue as one approaches the Metro Station. The Hearing Examiner concluded that several features also address compatibility with surrounding properties, especially the townhome community immediately to the south. A ten-foot building setback and landscaping, coupled with terraced levels of residential units, break the mass of the side of the building adjoining the townhomes. Architectural details, such as “stoop entrances” along the Georgia Avenue streetscape, are also included to create a compatible transition from the townhome community to the Wheaton CBD.

For all these reasons, the District Council finds Applicant’s Development Plan to be compatible with adjacent development.

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

The third required finding is “[t]hat the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate, and efficient.” Both Technical Staff and the Hearing Examiner have advised that internal vehicular and pedestrian circulation systems are safe and efficient due to measures taken to distinguish the drive aisle of the parking garage from the pedestrian sidewalk. According to the Applicant’s traffic expert, the parking garage driveway was designed to have a flat grade at the entrance to increase sight distance as cars approached the sidewalk. The building was also set back from the sidewalk to permit drivers (and pedestrians) more time to see vehicles entering the garage. Additionally, the sidewalk pavement differs textually from the drive aisle to alert residents of the approaching sidewalk.

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

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

The fourth required finding is:

That by its design, by minimizing grading and by other means, the proposed development would tend to prevent erosion of the soil and preserve natural vegetation and other natural features of the site. Any applicable requirements for forest conservation under Chapter 22A and for water resource protection under Chapter 19 also must be satisfied. The district council may require more detailed findings on these matters by the planning board at the time of site plan approval as provided in division 59-D-3.

The evidence is uncontroverted that there are no significant natural features on the site. Both the existing development (the church and associated parking) and the proposed development intrude on an environmental buffer created by an off-site stream located on adjoining property to the west. The evidence demonstrates that the stream is of poor quality due to erosion from large amounts of stormwater. The erosion has adversely impacted properties to the south of the subject property, including the townhome community.

As a binding element of the proposed development plan, the Applicant must implement a stream valley buffer plan designed to address erosion along the entire 800 foot length of the stream (beyond that part which borders the subject property). Elements of the plan include clearing debris from the stream channel, creating new outfall extension, and stabilizing the stream bank. Therefore, approval of the proposed development offers the opportunity mitigate erosion damage along many properties in the area while at the same time creating no greater impact on the environmental buffer than that which currently exists.

Technical Staff advises, and the Hearing Examiner concluded, that stormwater management may be accomplished on the property by means of bioretention planters, groundwater recharge trenches, and gardens located on the terrace level.

A preliminary forest conservation plan, utilizing off-site mitigation, has been submitted and conceptually approved by Technical Staff.

For the above reasons, the District Council finds that the application meets the requirements of §59-D-1.61(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 Applicant has submitted a copy of its contract of sale with the First Baptist Church of Wheaton, Inc. as evidence of its ownership of the property. The Applicant’s commitment to perpetual maintenance of all recreational and other common or quasi-public areas is supported by testimony from Mr. Daryl South, the Applicant’s Vice President of Development, and by a submittal from the Applicant stating that Washington Property Company intends to retain ownership of the property and either (1) will contract with a third-party rental management company to implement property management practices standard for “luxury rental apartments” or (2) manage the property itself. According to the submittal, if the property is converted in the future to condominiums, the condominium association will be vested with the responsibility for management.

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

The Public Interest

An 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, the environment, and public benefits such as the provision of affordable housing.

As discussed above, the proposed development will further the goals of the Sector Plan. Both Technical Staff and the Planning Board recommend approval of the application, and there will be no adverse affect on public facilities and the environment. Moreover, the proposal will

provide the public benefit of providing housing, some of which will be MPDUs, in proximity to a Metro Station. Therefore, the District Council concludes that the proposed development would be in the public interest.

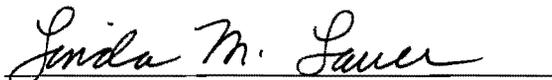
Based on the foregoing analysis and the Hearing Examiner's report, which is incorporated herein, and after a thorough review of the entire record, the District Council concludes that the proposed development satisfies the intent, purpose and standards of the TS-R Zone; that it meets the requirements set forth in Section 59-D-1.61 of the Zoning Ordinance; that the application proposes a project that would be compatible with development in the surrounding area; and that the requested reclassification to the TS-R 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-876, requesting reclassification from the R-60 to the TS-R Zone of approximately 1.76 acres of land consisting of Parcels P754, P758 and N760, located southwest of the intersection of Georgia Avenue and Viers Mill Road in Wheaton, in the 13th Election District, be **approved** in the amount requested and subject to the specifications and requirements of the final Development Plan, Exhibit 58(a), provided that the Applicant submits to the Hearing Examiner for certification a reproducible original and three copies of the Development Plan approved by the District Council within 10 days of approval, in accordance with §59-D-1.64 of the Zoning Ordinance.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council