

Resolution No.: 18-392
Introduced: February 2, 2016
Adopted: February 2, 2016

**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-964 FOR AMENDMENT TO THE ZONING ORDINANCE MAP, Robert R. Harris, Esquire and Cynthia Bar, Esquire, Attorneys for Applicant, Montrose Baptist Church, OPINION AND RESOLUTION ON APPLICATION Tax Account Nos. 04-00116231, 04-00116845 and 04-02894342.

OPINION

Local Map Amendment (LMA) G-964, filed on April 29, 2014 by Applicant Montrose Baptist Church requests reclassification from the existing R-60 and R-90 Residential Zones to the RT-15 Zone of 8.7617 acres, identified as Lots 4, 5 and 32 in Block 2 of the Randolph Farms Subdivision, located at 5020, 5010 and 5100 Randolph Road in Rockville. The subject site is in the 4th Election District and bears the Tax Account Numbers 00116231, 00116845 and 02894342. It is owned by the Applicant, Montrose Baptist Church, and it will be developed by the Optionee, RRC/S Montrose, LLC (Exhibits 41(a), 42(a) and 43(a)). The site is subject to the 1992 North Bethesda/Garrett Park Master Plan. Currently located on the property are the Montrose Baptist Church, the Montrose Christian School and the Montrose Christian Child Development Center. The proposed development would contain 109 townhouses.

Because this application was filed on April 29, 2014, it is governed by the Zoning Ordinance in effect on October 29, 2014, pursuant to the "grandfathering" provision, §59-7.7.1.B. of the new Zoning Ordinance. It is worthy of note that this case is the last of the rezoning applications filed prior to the effective date of the new Zoning Ordinance.

The application was filed under the standard method, which permits the Applicant for the RT-15 Zone to seek rezoning without submission of either a Development Plan or a Schematic Development Plan. Instead, the Applicant must submit a Site Plan to the Planning Board for its review at a later date. Environmental controls for forest conservation and stormwater management will also be evaluated in connection with subdivision and site plan review.

The case was originally scheduled for a hearing before the Office of Zoning and Administrative Hearings (OZAH) on September 22, 2014. At the request of the Applicant, it was continued a number of times (Exhibits 19 through 30), finally settling on December 11, 2015. Notice of a hearing on that date was duly issued (Exhibit 30) and was also published in two newspapers, as required under the old Zoning Ordinance (Exhibits 31 and 32).

The zoning application was reviewed by the Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC) who, in a report dated November 9, 2015, recommended approval of the rezoning request (Exhibit 33). The Planning Board considered the application on November 19, 2015 and unanimously recommended approval (Exhibit 39) based on the reasons set forth in the Technical Staff Report and its conclusion that:

The proposed development will be adequately served by public facilities and transportation infrastructure. It complies with the purpose clause of the RT Zone, and furthers the land use goals of the *1992 North Bethesda/Garrett Park Master Plan*. The Board finds that the proposed development is compatible with existing and proposed uses in the surrounding area, and the site functions as a transition between single-family homes and more intense uses.

The OZAH hearing proceeded as scheduled on December 11, 2015. The Applicant called four witnesses and introduced a private "Declaration of Covenant" limiting the development to 109 townhomes if the rezoning to the RT-15 Zone is approved. Exhibit 46. In addition, one witness, Brian Hooker, President of the Randolph Civic Association (RCA), testified in support of the application. There were no opposition witnesses, and the record closed on December 22, 2015, following the receipt of the transcript and Applicant's proof of recording the above-referenced private covenant in the County's land records (Exhibits 55 and 56).

The Hearing Examiner's Report and Recommendation was filed on January 15, 2016, and it is incorporated herein by reference. The Hearing Examiner recommended approval on grounds that Applicant's proposal would satisfy the requirements of the RT-15 Zone and its purpose clause; that the planned development will be compatible with the surrounding area; and that rezoning will be in the public interest.

After a careful 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 Property, Surrounding Area and Zoning History

The subject property consists of 8.7617 acres, identified as Lots 4, 5 and 32 in Block 2 of the Randolph Farms Subdivision, located at 5020, 5010 and 5100 Randolph Road in Rockville, approximately 0.7 miles east of Rockville Pike. According to Technical Staff (Exhibit 33, p. 2), 2.07 acres of the 8.76 acres consists of previously dedicated right-of way, leaving a net area for development of 6.69 acres. "Lots 4 and 5 are zoned R-90. Lot 32 is split-zoned; the northern portion is zoned R-90, and the southern portion is zoned R-60. In sum, approximately 5.14 acres of the Site are zoned R-90, and 1.55 acres are zoned R-60." The site is bordered by Randolph

Road to the north, Putnam Road to the west, and Macon Road to the south. Detached houses border the site to the south and east.

Technical Staff also describes the topography and existing uses on the site (Exhibit 33, p. 2):

The topography generally slopes down towards the southwestern corner of the Site, with a few areas of steep slopes (> 25%). The Site is currently improved with three buildings, totalling approximately 88,940 square feet, that house the Montrose Baptist Church, the Montrose Christian School, and the Montrose Child Development Center. The Site also contains approximately 160 surface parking spaces and several outdoor recreation areas.

These features are identified on the Natural Resources Inventory/Forest Stand Delineation or NRI/FSD (Exhibit 48), approved by the Technical Staff on October 20, 2015. Additional details about the site, its current use and nearby development are described in Applicant's Land Use and Zoning Report (Exhibit 34(a), pp. 3-4):

The Property is located between a commercial shopping center (zoned CR 1.5) and multi-family to the west (zoned R-20 and R-30), and single family communities to the north and east (zoned R-60 and 90). It is only approximately 1,275 feet from the White Flint/Pike District a new emerging urban district and approximately 3,300 feet from the White Flint Metro. It has convenient access to shopping, restaurants and major community-serving retail via Randolph Road.

... The schools and child care center have operated on the Property for over fifty years and at one time served over 500 children. The Church and school are comprised of several buildings totaling about 88,940 square feet and large asphalt parking lots with approximately 160 parking spaces.

The Property gently slopes from a high point of 350 feet in elevation to a low point of 316 feet in elevation. A stream valley buffer, which is associated with an offsite stream, is located near the terminus of Macon Road and Putnam Road. There are no steep slopes, wetlands, or floodplains on the Property. The NRI/FSD submitted with the Application shows the existing site conditions.

The RT-15 Zone is a floating zone and evaluation of the zoning issues, especially compatibility, requires delineation of a surrounding area. In general, the defined surrounding area takes into account those areas which are most directly affected by the proposed development, and any special study areas, which may have been defined by a master plan.

In this case, the surrounding area was designated by Technical Staff as:

... generally bound[ed] by the Montrose Parkway right-of-way and Rock Creek Park to the north, Gaynor Road to the east, Rocking Horse Road and Boiling Brook Parkway to the south, and Parklawn Drive to the west ...

Staff noted that "The surrounding area was delineated based on natural boundaries and logical roadways that capture the diverse, transitional nature of the area." Exhibit 33, p. 2. Applicant's land use planner, Kevin Foster, testified at the hearing that Applicant agreed with Technical Staff's definition of the surrounding area. Tr. 39. The Hearing Examiner also accepted Staff's definition, as does the District Council.

Technical Staff described the surrounding area as follows (Exhibit 33, pp. 2-3):

The land use pattern in the surrounding area is predominately single-family residential, but it also includes multi-family residential, commercial, institutional, and industrial uses.

The location of the Site is a generally transitional area between single-family detached houses to the north and east and commercial, industrial, and multi-family uses to the west. Loehmann's Plaza, a shopping center anchored with a grocery store, is located directly across Putnam Road to the west. Detached single-family houses built in the 1960s are located across Randolph Road to the north, and also about the Site to the south and east. The area includes three multi-family complexes located to the northwest and southwest of the Site.

A Montgomery County Public Schools office facility (the Rocking Horse Road Center) and the Charles E. Smith Jewish Day School are located in the southern part of the defined surrounding area. The surrounding area also includes two office buildings, one of which is a medical office building that was approved by special exception in the R-60 Zone. A U-haul moving and storage facility occupies the northwest corner of the surrounding area.

The Applicant added the following detail in its description of the surrounding area in its Land Use Report (Exhibit 34(a), p. 5):

The entire area comprises about 150 acres and houses a variety of land uses including commercial offices, retail, multi-family residential (R-20 and R-30), single-family residential, community services, and institutional uses. . . .

To the direct north and east of the Property are communities consisting principally of 2-story single family residential homes. To the northwest and due west of the Property are more intense uses, including multi-family units (R-20) and a shopping center, known as Loehmann's Plaza, which houses various uses including neighborhood serving stores and restaurants. It is located adjacent to the Property across Putnam Road and is zoned CR 1.5 (C1.0, R1.0, H-75) which would allow redevelopment at much higher than the existing density. Other nearby land uses include the Rocking Horse Road Center, a former Montgomery County public school which is now used by the Department of Health and Human Services, multi-family housing to the southwest, a U-Haul moving and storage facility to the northwest and the Kensington Eye Care Center to the northeast. . . .

Technical Staff gave the following zoning history for the subject site (Exhibit 33, p. 2):

At the time of the 1954 comprehensive rezoning of the County, the Site was classified in the R-90 and R-60 Zones. In 1958, when the Regional District was expanded to include Upper Montgomery County, the associated comprehensive map amendment confirmed the R-90 and R-60 zoning for the Site. The zoning was confirmed again by District Map Amendment G-956 in 2014.

In sum, the subject property has remained in the R-60 and R-90 Zones since its initial classification in 1954.

Proposed Development

As mentioned in the first part of this Opinion, the development proposed by the Applicant would be limited to 109 townhouses. The application was filed under the standard method, which permits the Applicant for the RT-15 Zone to seek rezoning without submission of either a Development Plan or a Schematic Development Plan. Instead, Applicant must submit a Site Plan to the Planning Board for its review at a later date, if the rezoning is approved by the Council. *Zoning Ordinance §59-C-1.75*. Since there is no approved plan at this stage limiting the size of the development, it must be evaluated under the most intense development permitted in the RT-15 zone (*i.e.*, 131 townhouse units on 8.76 acres), as Technical Staff and the Hearing Examiner have done.

Nevertheless, after negotiations with the Randolph Civic Association (RCA), the Applicant has voluntarily limited itself to 109 townhouse units by private covenant (Exhibit 46), filed in the County land records (Exhibits 55 and 56), and has submitted a concept plan showing the essence of its proposal at this stage (Exhibit 51). It shows 109 townhouse units, of which 14 (12.5%) are MPDUs; however, the concept plan is not binding on the zoning process and may be significantly varied at Site Plan and Subdivision review. Although private covenants are not ordinarily enforceable through the zoning process, parties can resort to the courts for relief. The case law holds that the zoning authority should not be deterred by the private covenants, but rather should act on the zoning issues based on the Zoning Ordinance. As stated by the Maryland Court of Appeals in *Perry v. Board of Appeals*, 211 Md. 294, 299-300, 127 A.2d 509 (1956),

The [zoning] ordinance does not override or defeat whatever private rights exist and are legally enforceable, but neither is it controlled in its workings or effects by such rights.

Applicant's proposal is further described in its Land Use Report (Exhibit 34(a), p. 4):

The proposal envisions a scale-appropriate urban residential community of single-family townhomes, and a minimum of 30% percent green area. A new private street system will be created to serve the townhomes. The new street pattern will link the development to the surrounding street network and provide access to the site improvements via Randolph Road and Putman Road. The redevelopment also

includes new streetscape and sidewalks on all public street frontages designed to encourage more walkability for the existing neighborhood.

Creative site planning, maintenance of open spaces, and distinctive architecture will ensure the project enhances the character of the community. The addition of single-family townhomes to this neighborhood will enhance the housing choices for area residents. The use of the Property for townhomes will provide an option of a new housing type for current residents.

At the hearing, Andrew Brown, the managing member of RRC/S Montrose LLC, which was formed specifically to redevelop this site, testified that "this is a perfect example of smart growth." Tr. 23. Mr. Brown further testified that the Applicant has a number of problems with its operations on the site – the church membership has been shrinking for a number of years; the church needs the funds from the sale of this property in order to fund the construction of a new facility in Clarksburg; the building in which the affiliated Montrose Christian School operates is outdated, very expensive to maintain and doesn't meet today's educational requirements; and the church had a financial setback due to the alleged embezzlement of one and a half million dollars of tuition payments, all of which has led to poor maintenance of the property in recent years. He feels that the proposed townhouse project will be a much better neighbor than the current institutional use. Tr. 20-21.

Mr. Brown asserted that there are many home buyers who are attracted to neighborhoods closer in, and this site is a perfect example of that. He believes that three specific demographic profiles will be attracted to this site – young couples, both with and without children; empty nesters; and singles in the early and mid-stages of their careers. They will be very attracted to this particular site because of its proximity to the job centers in Bethesda, Silver Spring, Rockville and even downtown Washington. There is walkable retail, with Loehmann's Plaza right next door to the property, and additional retail further west on Randolph Road and down Boiling Brook Parkway. There is frequent Ride-On and Metro Bus service passing directly by the site on Randolph Road and good access to both the Twinbrook and White Flint Metro Stations. All of these make this site very attractive for infill development. Tr. 21-23. Mr. Brown believes the proposed development is appropriate for the neighborhood and will have a more positive impact on the surrounding community than the existing institutional church, school and daycare use. Tr. 26.

Applicant's land planner, Kevin Foster, testified the project would include 12.5% MPDUs (Tr. 51) and approximately three parking spaces per unit, 62 of which will be on-street spaces. The rest will be in garages and driveways, since most of the units will have two-car garages and driveways. Tr. 48 and 64-65. The Applicant will also rebuild the pedestrian systems along Randolph Road, Putnam Road and Macon Road. All the sidewalks are going to have to be replaced and upgraded with handicap ramps. Bike racks will be provided, and a safe bicycle and pedestrian network system will be established. There will be facilities to meet recreational, social and human service needs of the community, for the elderly and handicapped and for tots, teens and adults. Tr. 53-54.

Mr. Foster further testified that there will be an environmental benefit to the project because a stormwater management system with environmental site design (ESD) will be provided, controlling all of the site run-off where no stormwater management exists today. Tr. 55.

Applicant's transportation planner, Michael Lenhart, testified that under the proposal, the existing entrance to the school, roughly in the center of the site, would be closed, and a future entrance to the site in the vicinity of the existing parking lot entrance toward the east end of the site, would be rebuilt in that area. There would also be a connection to Putnam Road, so the site would have two access points, one to Randolph Road and one to Putnam Road, thereby eliminating one access point on Randolph Road. In his opinion, those access points will be safe, adequate and efficient. Mr. Lenhart also opined that the internal roadways will be safe, efficient and adequate under the Concept Plan for vehicular, bike and pedestrian traffic. Tr. 90-92.

Adequacy of Public Facilities

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 Subdivision Staging Policy.¹ 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).

Section 59-H-2.4(f) 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 filed on April 29, 2014, so the 2012-2016 Subdivision Staging Policy, adopted November 13, 2012, in Resolution 17-601, applies to the rezoning determination.

The 2012-2016 Subdivision Staging Policy provides, at p. 21, "[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 evidence of inadequacy in this case, so police stations, firehouses and health clinics will be considered sufficient. The remaining three public facilities – transportation, schools and water and sewer service – are addressed below.

Technical Staff provided an extensive description of existing and planned transportation facilities, finding that they will be adequate to handle the traffic that will be generated by the proposed use. Exhibit 33, pp. 4-6. In fact, the proposed development would generate fewer trips and therefore put less demand on transportation facilities than the present use. This finding is evidenced by the Local Area Transportation Review (LATR) analysis provided by Applicant's

¹ In 2010, the County Council changed the name of the Growth Policy to the Subdivision Staging Policy, but both Zoning Ordinance §59-H-2.4(f) and APFO Code §50-35(k) still refer to the Council's Growth Policy. The 2012-2016 Subdivision Staging Policy was adopted by the Council on November 13, 2012, in Resolution 17-601.

transportation planner, Michael Lenhart, and approved by Technical Staff. Exhibit 33, p. 6, and Exhibit 34(b).

Mr. Lenhart used figures from the Institute of Transportation Engineers (ITE) Trip Generation Manual (9th Edition) to calculate the trip generation for the existing private school and the existing child day care facility. The resulting trip generation rates for the existing school (based on an average of 250 students) and daycare (based on an average of 100 children) are 278 morning peak hour trips and 226 evening peak hour trips. Historical observations of the school show a much higher maximum attendance, and therefore an even higher trip generation on occasion. In his October 27, 2015 traffic statement, Mr. Lenhart contrasted this existing trip generation with the projected trip generation from 130 townhouses based on trip generation rates from the LATR Guidelines. He found that 130 townhouse units would generate 64 morning peak hour trips and 97 evening peak hour trips. This information was summarized in a table on page 6 of the Technical Staff report (Exhibit 33).

At the OZAH hearing (Tr. 83-89), Mr. Lenhart introduced an amended Traffic Statement (Exhibit 52), dated December 3, 2015, based on an assumption of 131 townhouses, instead of 130, because the maximum buildout at a possible density of 15 townhouses per acre is 131 units (15 X 8.7617 acres = 131.43). This change had a *de minimis* impact on the figures, adding only one evening trip to the projected total, thereby reducing the net reduction in evening trips to 128 fewer trips, instead of the 129 depicted in Technical Staff's table. The actual reduction in trips is likely to be even greater, since the Applicant has entered into a private covenant to limit the number of townhouse units to 109. However, even basing this LATR analysis on the assumption of a possible 131 townhouse units, the reduction in trips, and thus the burden on the transportation facilities, will be significant if this project goes forward. Whether or not the Applicant will be required to make a payment to the County to satisfy Transportation Policy Area Review (TPAR) will be decided at Preliminary Plan Review.

Technical Staff noted (Exhibit 33, p. 6) that "If the Local Map Amendment (LMA) is approved, the Applicant will have . . . [to agree to] the following at preliminary plan review:

1. Dedicate additional right-of-way along the Randolph Road frontage for a total right-of-way of 50 feet from its centerline.
2. Dedicate additional right-of-way along the Putnam Road frontage for a total right-of-way of 30 feet from its centerline.
3. Upgrade the substandard sidewalks to be five feet wide along the three adjacent roadways of Randolph Road, Putnam Road, and Macon Road.
4. Provide the missing pedestrian crossings and handicap ramps at the three adjacent intersections with Putnam Road.
5. Provide the required bike parking spaces on the Site.

At the OZAH hearing, in response to a question from the Hearing Examiner, Applicant's counsel indicated that Applicant would comply with these requirements, which are also listed in Attachment 4 to the Staff report (Exhibit 33). Tr. 7. The Hearing Examiner concluded that the Applicant has shown a reasonable probability that available transportation facilities and services will be adequate to serve the proposed development. The District Council so finds.

The next issue regarding public facilities concerns County schools. Attachment 3 to the Technical Staff report (Exhibit 33) is a memorandum from Bruce Crispell, the Director, Division of Long-range Planning, Montgomery County Public Schools. Mr. Crispell indicates that “[t]he 130 townhomes planned for the project would generate approximately 23 elementary school students, 8 middle school students and 13 high school students.” He notes that:

The project is within the service area of Viers Mill Elementary school, the Middle School Magnet Consortium (where there is choice to attend Argyle MS, Loiederman MS or Parkland MS) and the Downcounty Consortium (where there is a choice of attending Blair, Einstein, Kennedy, Northwood, or Wheaton high schools. And, the base area high school is Wheaton High School.)

Mr. Crispell concluded that “Under the current FY 2016 Subdivision Staging Policy School Test, there is a school facility payment required at the middle school and high school levels. Space is adequate at the elementary school level.”

There is no contrary evidence in this record, and the District Council therefore finds that the Applicant has shown a reasonable probability that available school facilities and services will be adequate to serve the proposed development.

Attachment 2 to the Technical Staff report (Exhibit 33) is a memorandum from the Washington Suburban Sanitary Commission (WSSC). WSSC reviewed the application and determined that there is adequate water and sewer service available to the site and that “[t]he impact from rezoning this property would be negligible.” Applicant’s civil engineer, Seth Churchill, added that telephone, electric, gas and cable TV are also available on the site. Tr. 81.

Based on the above discussion, the District Council finds that Applicant has demonstrated 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 was submitted.

Environmental Impacts

Although environmental controls for forest conservation and stormwater management will be fully evaluated in connection with subdivision and site plan review, they are briefly examined at the rezoning stage to ensure that the development will be in the public interest. The Applicant filed a Natural Resource Inventory/Forest Stand Delineation (NRI/FSD No. 420160570) as Exhibit 48. It was approved by Technical Staff on October 20, 2015.

1. Forest Conservation:

As reported by Staff (Exhibit 33, pp. 6-7),

The site contains some areas of tree cover with significant and specimen trees, but no forest. No streams, floodplains, or wetlands are present. There is a small area of environmental buffer that extends onto the southwest corner of the

Site from an off-site stream. . . There is 0.08 acres of Conservation Easement along the south property line of Lot 3. This pre-Forest Conservation Law easement was implemented by Preliminary Plan #119892120 as a tree save area, but it currently includes a portion of a parking lot and approximately eight individual trees. The disposition of this easement will be reviewed as part of the Preliminary Forest Conservation Plan at Preliminary Plan review.

2. Stormwater Management:

Applicant's land planner, Kevin Foster, testified that there will be an environmental benefit to the project because a stormwater management system with environmental site design (ESD) will be provided controlling all of the site run-off where no storm water management exists today. Tr. 55. Applicant's civil engineer, Seth Churchill, testified that he has not seen any evidence of stormwater management on the site, although it is possible that there are very small quality control devices, which he did not detect. In his opinion, the Applicant will be able to develop a stormwater management system on the site that will fully comply with the state and county codes which call for environmental site design (ESD) to the maximum extent practicable (MEP). Tr. 79-80.

Technical Staff confirmed that the redevelopment will be subject to the Stormwater Management Act of 2007, and will be required to use Environmental Site Design (ESD) techniques to the maximum extent practicable. Exhibit 33, p. 7.

Based on this record, the District Council finds that the proposed development will not cause harm to the environment, and in fact will likely improve on-site stormwater management.

Standard for Review

A floating zone, such as the RT-15 Zone, is a flexible device. Individual property owners may seek to have property reclassified to a floating zone by demonstrating to the Council that the proposed development will be consistent with the purpose and regulations of the proposed zone and compatible with the surrounding development. The Council must also find that the rezoning will be in the public interest and part of the coordinated and systematic development of the regional district, as required by the Maryland Land Use Article, Code Ann. § 21-101(a)(4)(i) (2012).²

Montgomery County has many floating zones, including the R-T Zones. The RT-15 Zone contains development standards and a post-zoning review process that generally delegate to the Planning Board the details of site specific issues such as building location, stormwater control, vehicular and pedestrian routes, landscaping and screening. The Council has a broader and more discretionary role in determining whether to approve a rezoning. We turn now to the three areas of Council review discussed above – the purpose and requirements of the zone, compatibility with land uses in the surrounding area, and relationship to the public interest.

² Effective October 1, 2012, the Regional District Act, Article 28, Md. Code Ann., was re-codified, without a change in substance, into a new "Land Use Article." Section § 21-101(a)(4)(i) of the Land Use Article contains the rough equivalent of the previous language in Article 28, Md. Code Ann., § 7-110.

Purpose and Requirements of the Zone

Under the "purpose clause" set forth in Zoning Code §59-C-1.721, the R-T Zone may be applied if a proposal meets any one of three alternative criteria: (1) it is in an area designated for R-T Zone densities (implying a master plan designation); (2) it is in an area that is appropriate for residential development at densities that are allowed in the R-T Zones; or (3) it is in an area where there is a need for buffer or transitional uses between commercial, industrial, or high-density apartment uses and low-density one-family uses.

It is conceded in this case that the 1992 North Bethesda/Garrett Park Master Plan does not specifically designate the subject site for the RT-15 Zone; however, there are three alternative methods of satisfying the Purpose Clause, and an Applicant is required to satisfy only one of them. Accordingly, the Purpose Clause may also be satisfied by development in areas "appropriate for residential development at densities allowed in the R-T Zones" or in areas "where there is a need for buffer or transitional uses between commercial, industrial, or high-density apartment uses and low-density one-family uses."

The evidence in this case supports Applicant's contention that the subject site satisfies both the "appropriateness" and the "transitional" criteria. In this regard, Applicant's land use planner, Kevin Foster, testified that the development is appropriate at this location for a number of reasons. He observed that townhouses are an appropriate use for this site since they are an allowed use in the R-60 and R-90 Zones with MPDUs, and thus are presumptively compatible with existing single-family homes. Given that fact, he reasoned that the appropriate density is really the question. Tr. 45. Mr. Foster noted that the proposed density on the subject site of 15 dwelling units per acre would be clearly in the middle of the range of the densities in the surrounding area, and thus would be a very appropriate density and compatible with this area. Similarly, the proposed building heights would also be appropriate here. In the majority of the surrounding area, the building height is a maximum of 35 feet. To the west of the site, the CR Zone at Loehmann's Plaza has a maximum height of 75 feet, and in the R-20 Zone, a maximum of 80 feet; the R-30 maximum is 35 feet; and the employment-office area height is 75 feet. The Applicant is proposing a maximum height of 35 feet, and that is clearly compatible, and clearly appropriate for this site, being surrounded by R-60 and R-90 zoned development. Tr. 65-69.

Part (b) of the purpose clause seeks to provide suitable sites for townhouses in locations in the county where there is a need for a buffer or transitional uses between commercial, industrial, or high intensity apartment uses and low density one-family uses. In Mr. Foster's opinion, this site fits both of those requirements. Referring back to Exhibit 50, Mr. Foster noted that the proposed use, at a density of 15 units per acre and 35 feet in height, would be a perfect transition from the higher densities and heights to the west (*e.g.*, Loehmann's Plaza and the higher residential densities) and the lower densities and heights to the east (single-family homes in the R-60 and R-90 Zones). This site would also serve as a noise and visual buffer from Randolph Road for the existing neighborhood. Though its main function is transition, it fulfills both segments of Part (b) of the purpose clauses. Tr. 69-70.

The same conclusion was reached by the Planning Board (Exhibit 39) and by its Technical Staff (Exhibit 33, pp. 8-9):

. . . Although the Site is not designated for R-T zoning in a master plan, it is appropriate for townhouse densities because of its location along a major road, and because it will serve as a buffer between one-family residential and more intense uses.

The proposed RT-15 Zone is compatible with the density and height pattern of the zoning in surrounding area, where the scale of density and height generally increases from east to west (Figure 3). The R-60 and R-90 zoned single-family neighborhoods to the east of the Site allow maximum densities between 4.84 and 7.27 dwelling units per acre and a maximum height up to 35 feet. The R-30 Zone directly to the south of the Site allows a maximum density of 17.69 units per acre and a maximum height of 35 feet. The CR zoning on Loehmann's Plaza, located directly to the west of the Site, allows a density up to 1.5 FAR and a maximum height of 75 feet. The R-20 Zone to the southwest of the Site allows a maximum density of 26.47 units per acre and a maximum height of 80 feet.

A townhouse development at the proposed density would serve as an appropriate transition between Loehmann's Plaza shopping center and the multi-family complexes to the west of the Site, and the detached houses to the east. This type of step down in density has been used throughout the County and the region to transition between commercial sites and single-family homes.

The proposed development would also serve as a visual and auditory buffer between Randolph Road to the north, and the detached houses on Macon Road to the south. In addition, because of its flexibility in design and layout, an R-T Zone at this particular location, with its proximity to retail, parks, and transit, would allow a reasonable number of additional residents to take advantage of the nearby amenities.

There is no contrary evidence in the record, and the District Council agrees with the Hearing Examiner's finding that the proposed rezoning would satisfy the stated purpose of the RT-15 Zone by being appropriate for the area and by providing a transition between higher densities to the west and single-family homes to the east, as well as a buffer for the single-family neighborhoods from Randolph Road noises and views.

In addition, the proposed use would satisfy the stated intent of the RT-15 Zone by providing flexibility in the design of townhouses and their grouping and layout, and freedom in the types of home ownership available in the area, without having detrimental effects on the use or development of adjacent properties in the neighborhood.

The development standards for the RT-15 Zone are spelled out in Zoning Code Sections 59-C-1.722 through 59-C-1.75. The Applicant has requested reclassification from the R-60 and R-90 Zones to the RT-15 Zone to allow a development of 109 townhouses; however, the case was evaluated based on the most intense use possible in the RT-15 zone (131 townhouse units on 8.76 acres) since there is no binding Schematic Development Plan (SDP) under the standard method of rezoning.

Code Section 59-C-1.722, governing row design, will be applied at site plan review, because there is no binding SDP at the rezoning stage. Code Sections 59-C-1.723 and 1.724 are inapplicable to this case because the Applicant is not combining tracts and there are currently no dwellings on the site.

The development standards for the RT-15 Zone are set forth in Code Section 59-C-1.73, and Technical Staff discussed compliance with those standards in its report, noting that at present it can only determine that the proposal satisfies the minimum tract area requirement, which is 40,000 square feet. "[A]ll other development standards must be approved by the Planning Board at Preliminary and Site Plan review." Exhibit 33, pp. 10-11. As previously mentioned, the Applicant indicated that it would comply with all applicable development standards (Tr. 74-76); that it will provide more than the required parking spaces; and that, as required by law, it will provide MPDUs. Tr. 48 and 64-65.

The Hearing Examiner concluded, and the District Council agrees, that the Applicant has met the standards set forth in the Zoning Ordinance for the RT-15 Zone, to the extent they can be determined at this stage, under the standard method of application. Pursuant to Zoning Ordinance §59-C-1.75, the development cannot proceed on the site until Site Plan approval by the Planning Board has been achieved in accordance with Zoning Ordinance §59-D-3.

Compatibility

The next criterion for evaluating this rezoning application is whether the proposed development will be compatible with land uses in the surrounding area. Compatibility has generally been evaluated in terms of land use, density, height and bulk. Applicant states in its Land Use and Zoning Report (Exhibit 34(a), p. 5):

The proposed townhouse community will complement and be compatible with all of the existing uses in the community.

* * *

If one looks at the variety of land uses which surround the Property one is struck by the fact that townhouses are not included in the mix. The introduction of this type of residential unit at this location is an appropriate complement to the existing mix of uses and services. It is also an appropriate transition from the CR1.5 and R-20 zoned properties to the west and the R-60/90 zoned properties to the east and north.

Applicant's land planner, Kevin Foster, testified that in his opinion, this proposal would be very compatible with the neighborhood. Townhouses are presumed to be compatible to begin with in the R-60 and the R-90 Zone because they are allowed under MPDU development and cluster development in those zones. Moreover, the proposed height and density would be compatible with the existing neighborhood, as was discussed in connection with the Purpose Clause of the RT-15 Zone, above. Tr. 71-72.

Technical Staff also concluded that the proposed development would be compatible (Exhibit 33, p. 10):

The proposed townhouse community would be compatible with development in the surrounding area. A townhouse community will reinforce the residential character of the surrounding area by substituting a residential use for the existing institutional use. The proposed townhouse use is considered single-family residential and, if designed properly, will be compatible with the adjacent single-family detached houses to the east and south. The maximum height in the RT-15 Zone, 35 feet, is compatible with the maximum height of 35 feet in the R-60 and R-90 Zones. At Preliminary Plan and Site Plan review, special attention should be given to the scale, articulation, and placement of buildings in relation to the nearby residential uses to ensure that the proposed development is harmonious with the neighborhood.

The Planning Board agreed, stating that "the proposed development is compatible with existing and proposed uses in the surrounding area . . ." Exhibit 39. The Planning Board will also evaluate compatibility at the site plan stage, and this post-zoning review provides an additional safeguard against any incompatible development.

There is no contrary evidence, and the District Council therefore concludes, as did the Hearing Examiner, that the proposed use will be compatible with existing and planned development within the surrounding area.

Public Interest

Maryland law requires that the proposed rezoning be in the public interest. As stated in Maryland Land Use Article, Code Ann. § 21-101(a)(4)(i) (2012),

(i) planning, zoning, or subdivision control powers in the regional district [must be exercised to:]

(1) guide and accomplish a coordinated, comprehensive, adjusted, and systematic development of the regional district;

(2) coordinate and adjust the development of the regional district with public and private development of other parts of the State and of the District of Columbia; and

(3) protect and promote the public health, safety, and welfare.

Factors which may be considered in determining the public interest include consistency with the master plan; the recommendations of the Planning Board and its staff; possible adverse effects on the surrounding area, public facilities and the environment; and potential public benefits such as provision of affordable housing and increasing the housing stock, in general.

1. Master Plan Conformity:

Compliance with Master Plan recommendations is not mandatory in this case because the R-T Zones do not require it; rather, the courts have held that the Master Plan or Sector Plan should

be treated only as a guide in rezoning cases like this one. As stated in *Trail v. Terrapin Run*, 403 Md. 523, 527, 943 A.2d 1192, 1195 (2008),

We repeatedly have noted that [master] plans, which are the result of work done by planning commissions and adopted by ultimate zoning bodies, are advisory in nature and have no force of law absent statutes or local ordinances linking planning and zoning. Where the latter exist, however, they serve to elevate the status of comprehensive plans to the level of true regulatory device.³

Even though strict conformance to the Master Plan is not required, an evaluation to see whether the proposed development will forward goals of the applicable Master Plan plays a part in evaluating whether the development would be in the public interest.

The subject site is within the area covered by the 1992 *North Bethesda Garrett Park Master Plan*. According to Technical Staff (Exhibit 33, p. 7), it is also within the boundaries of the *White Flint 2 Sector Plan*, which is currently being prepared and is expected to be reviewed by the County Council in 2017. Since no draft land use recommendations for the *White Flint 2 Sector Plan* have been released, Staff indicated that it had reviewed this application only for consistency with *North Bethesda Garrett Park Master Plan*. The Applicant followed the same procedure. Tr. 58-62. The Hearing Examiner also agreed with this approach, as does the District Council. It certainly does not make sense to evaluate a proposed rezoning under a Master Plan that is merely being considered, and has neither been approved by the Council nor adopted by the Planning Board.

Technical Staff found that the proposed development is consistent with the goals of the Master Plan (Exhibit 33, pp. 7-8):

The *North Bethesda Garrett Park Master Plan* does not contain any specific recommendations for the Site, but it does include the following general land use objectives that relate to the application on page 35:⁴

- *Direct future development to land nearest to metro stops and new transit stations, and to areas best served by transportation infrastructure.*
- *Preserve and increase the variety of housing stock, including affordable housing.*
- *Encourage a land use pattern that provides opportunities for housing and employment.*
- *Encourage a mixture of land uses in redeveloping areas to promote variety and vitality.*

The application supports these Master Plan objectives. The Site is well served by existing and planned *transportation* infrastructure. Metrobus and Ride On stops are within walking distance of the Site, and buses provide relatively frequent

³ Because the proposed RT-15 Zone does not require conformance with the Master Plan, this case is not affected by legislation aimed at modifying *Terrapin Run's* interpretation of the words, "conformance" and "consistency." See Smart, Green, and Growing - Smart and Sustainable Growth Act of 2009, effective July 1, 2009.

⁴ As noted by the Hearing Examiner, the Master Plan's Land Use Objectives are actually listed on page 34 of the Plan.

service to the Twinbrook and White Flint Metro stations. The Site is also located close to the planned eastern extension of Montrose Parkway, which will provide convenient access to I-270 and I-495. Further, the County's *Transit Corridors Functional Master Plan* calls for BRT service along Randolph Road, with a planned BRT station a few blocks away.

If approved, the proposed townhouse development will enhance the housing choices for area residents. Single-family and multi-family homes are prevalent, but there are no townhouses within the defined surrounding area. The proposed development will also increase the stock of affordable housing because a minimum of 12.5% of the units will be Moderately Priced Dwelling Units (MPDUs).

Due to the abundance of commercial and industrial businesses in the vicinity of the Site, this application could offer increased opportunities for employees to live near their places of employment. A townhouse development at this density would also encourage a more active streetscape, especially in the evening, and it will enhance the pedestrian environment.

Applicant's land planner, Kevin Foster, also testified that the proposed use is supportive of the Master Plan's goals. The Master Plan recommends residential land use for the area in which the subject site is located. The Plan's objectives seek to protect and reinforce the integrity of the existing residential neighborhood, as well as other goals. In his opinion, replacing what is now becoming an aging institutional use with a newer residential use will create a new residential edge for a clearly residential neighborhood, and it will reinforce the residential identity of this neighborhood. It will create a more residential streetscape, with pedestrian connections, and it will create a buffer from Randolph Road for the residential community behind it. The site is greatly served by transit between the bus service lines that currently are on Randolph Road, the BRT Master Plan service along Randolph Road with the station at Parklawn and Randolph, the MARC station that is proposed at Parklawn and the existing metro stations. The proposal will preserve and increase the variety of housing stock, including affordable housing (MPDUs), and the proposal will introduce a housing type that is not currently there – townhouses. Tr. 48-51, 66.

Mr. Foster further testified that the project will encourage a mixture of land uses in redeveloping areas to promote variety and vitality. It will add vitality to the streetscape and more residents to the area that can serve the Loehmann's Plaza retail. It will provide housing and very close to employment and will reduce dependence on the automobile with walkability to retail right next door and direct access to the Metro sites. It also will act as a noise buffer to the community behind it. The Applicant will also rebuild the pedestrian systems along Randolph Road, Putnam and Macon. All the sidewalks will be replaced and upgraded with handicap ramps. Bike racks will be provided, and a safe bicycle and pedestrian network system will be established. There will be facilities to meet recreational, social and human service needs of the community, for the elderly and handicapped and for tots, teens and adults. Tr. 52-54.

In sum, the undisputed evidence supports the conclusion that the proposed development would be consistent with the goals of the *North Bethesda Garrett Park Master Plan*, and the District Council so finds.

2. Public Facilities and the Environment:

As discussed above, the Applicant has demonstrated 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 was submitted. In fact, the traffic burden on the County's road system will be reduced because the proposed townhouse development will produce fewer trips than the existing use. The District Council so finds.

Moreover, all the evidence indicates that the project will cause no harm to the environment. On the contrary, the evidence suggests that there will be an environmental benefit to the project because a stormwater management system with environmental site design (ESD) will be provided, and it will control all of the site run-off, where no stormwater management exists today. Tr. 55-56, 79-80. The District Council so finds.

3. Other Public Interest Considerations:

In addition to considerations of Master Plan conformity, adequacy of public facilities and impacts on the environment, the evidence in this case has shown that the proposal will provide a potential benefit to the public by increasing the availability and variety of housing in the County and by offering additional affordable housing close to public transportation and retail.

As stated by Technical Staff (Exhibit 33, p. 10):

The proposed development would promote the public interest by advancing several goals of the Master Plan and providing additional housing near existing public infrastructure.

* * *

In addition, . . . the proposed development will decrease the peak hour vehicle load on the road network in comparison to the existing use. Shops, transit, and employment opportunities are within walking distance of the Site, decreasing the need for future residents to depend on a car for every trip. The proposed development will enhance the pedestrian network with upgrades to nearby sidewalks and crosswalks. The proposed development will also generate tax revenue to support existing and proposed infrastructure, and it will enhance water quality by improving the Site's stormwater management capabilities.

The District Council thus concludes that the proposed use would aid in accomplishing a coordinated, comprehensive, adjusted, and systematic development of the regional district and 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 application satisfies the requirements of the RT-15 Zone and its purpose clause; that the application proposes a form of development that would be compatible with land uses in the surrounding area;

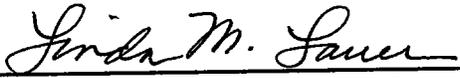
and that the requested reclassification to the RT-15 Zone would be in the public interest. For these reasons and because approval of the instant zoning application will aid in the accomplishment of the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional 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-964, for the reclassification from the R-60 and R-90 Zones to the RT-15 Zone, under the Standard Method of Application, of 8.7617 acres of private property, identified as Lots 4, 5 and 32 in Block 2 of the Randolph Farms Subdivision, located at 5020, 5010 and 5100 Randolph Road in Rockville, Maryland, is hereby **approved** in the amount requested.

This is a correct copy of Council action.


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