

Resolution No.: 18-405
Introduced: February 23, 2016
Adopted: February 23, 2016

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

By: District Council

SUBJECT: APPLICATION NO. H-110 FOR AMENDMENT TO THE ZONING ORDINANCE MAP, Patricia A. Harris, Esquire, Attorney for the Applicant, ArtSpace Projects, Inc.; OPINION AND RESOLUTION ON APPLICATION; Tax Account Number 13-01044362

OPINION

On September 10, 2015, ArtSpace Projects, Inc. (Applicant or ArtSpace) filed Local Map Amendment Application (LMA) No. H-110. The application requests a reclassification from the R-60 Zone to the Commercial Residential Neighborhood Floating Zone (CRNF) 1.25, C-0.25, R-1.0, H-65.¹ The property is located at 801 Sligo Avenue, Silver Spring, Maryland. It is described as Lots 5-11, Block J of the Easley Subdivision. Exhibit 1. ArtSpace seeks to develop up to 68 multi-family affordable units, 4 workforce townhouse units, 7 market rate townhouse units, 30 artist studios, and 1,500 square feet of retail.

Staff of the Montgomery County Planning Department (Staff) recommended approval of the application in a report dated December 7, 2015. Exhibit 21. The Montgomery County Planning Board recommended approval as well. Exhibit 22.

After a public hearing on January 8, 2016, the Hearing Examiner also recommended approval. *Hearing Examiner's Report* (January 21, 2016). She found that the proposed reclassification and development will satisfy the standards for approval required by the *2014 Montgomery County Zoning Ordinance*. In addition, she found that the proposed reclassification will be consistent with the coordinated and systematic development of the Regional District, as required by State law. *Maryland Code Ann., Land Use*, § 21-101(a)(4)(i).

To avoid unnecessary detail in this opinion, the Hearing Examiner's Report and Recommendation is incorporated in this opinion by reference. Based on its review of the entire

¹ The first number listed after the acronym "CRNF" (i.e., 1.25) reflects the total floor area ratio (FAR) permitted in the zone. "C-0.25" indicates the maximum FAR permitted for commercial uses, and "R-1.00" means maximum FAR for residential uses is 1.00. "H-65" indicates that the maximum height permitted is 65 feet. *Zoning Ordinance*, §59.5.3.1.

record, the District Council finds that the application meets the standards required for approval of the requested rezoning.

SUBJECT PROPERTY

The subject property consists of approximately 2.31 acres located in the northwest quadrant of the intersection of Sligo Avenue and Grove Street in Silver Spring. It is immediately to the east of the Silver Spring Central Business District (CBD). Existing improvements include a building formerly used as the District 3 Police Station and associated surface parking. The site currently has 3 access points: one on Grove Street and 2 on Sligo Avenue.

SURROUNDING AREA

The surrounding area must be identified in a floating zone case to evaluate the compatibility of the use with properties it will directly impact. Staff defined the boundaries of the surrounding area as Fenton Street to the west, Silver Spring Avenue to the north, Chicago Avenue to the east, and Gist Avenue to the south.

To the north and the south, the neighborhood consists primarily of single-family homes on narrow lots. Fenton Village, a low- to mid-rise mixed-use development, lies to the west. To the east lie a mixture of residential uses, including townhouses on Twin Holly Lane and single-family and low-rise multi-family apartment buildings along Sligo Avenue. Exhibit 23. Mr. Joshua Sloan, the Applicant's expert in land use planning and landscape architecture, characterized the area as an "edge condition" to an urban area. The character of the area is primarily a mix of residential uses, which transition to more intense uses in the Silver Spring CBD. Exhibit 25-26.

PROPOSED DEVELOPMENT

This project started with a community initiative to explore redevelopment of the former police station site. The initiative resulted in a Request for Qualifications and Development Proposals (RFQADP) issued by the Montgomery County Department of Housing and Community Affairs. The RFQADP sought "creative, feasible proposals for transforming the Site into a mixed-income housing development including artist live/work multi-family rental and for-sale housing that is compatible with the surrounding residential neighborhood and the goals of the RFQADP." Exhibit 28, p. 3. ArtSpace was selected to develop the site. Exhibit 30. ArtSpace is the largest real estate developer in the nation that specifically designs spaces for artists and art organizations. Their projects are unique because their buildings use an "artist work model," which allows a larger volume of space within each residence, and wider hallways and elevators, to facilitate creative activity. T. 14.

ArtSpace proposes up to 68 multi-family units, 11 townhomes (4 workforce housing and 7 market rate units), 30 artist studios and 1,500 square feet of retail. The multi-family units will serve residents at different income levels (i.e., 30%, 40%, 50% and 60% of the adjusted median income for the area). T. 17-18; Exhibit 21, p. 3. ArtSpace proposes a public plaza along Sligo Avenue where artists may display their works. It also proposes a private plaza in the interior of

the development that provides common open space for the townhouse units. A public walkway will border the western site boundary, connecting the development to nearby pedestrian pathways.

FLOATING ZONE PLAN

Section 59-7.2.1.B.2.g of the Zoning Ordinance requires applications for Floating Zones must include a "Floating Zone Plan" (FZP) that contains specified information, including the location, massing, and height of buildings and anticipated uses. ArtSpace filed an FZP meeting this requirement (Exhibit 39(c)). Excerpts of the FZP are included in the Hearing Examiner's Report.

The buildings are arranged to create a transition from the single-family dwellings and townhomes adjoining and confronting the property to the east and north to the higher intensity uses in the Silver Spring CBD, immediately to the west. The townhouse units face the single-family dwellings and townhouses across Grove Street. The multi-family buildings step up to 3 stories along the northern boundary (adjacent to single-family homes) and then 4 stories on the western end of the site, adjoining the CBD. Binding elements in the FZP reinforce these height limits, permitted uses, required public and private open space, and density (Exhibit 39(c)):

BINDING ELEMENTS

1. VEHICULAR ACCESS FROM GROVE STREET SHALL BE PROHIBITED.
2. VEHICULAR ACCESS FROM THE ALLEY LOCATED TO THE NORTH OF THE PROPERTY IS PROHIBITED.
3. THE MAXIMUM BUILDING HEIGHT OF ANY STRUCTURE WITH FRONTAGE ON GROVE STREET SHALL NOT EXCEED 42 FEET FOR A DEPTH OF 75 FEET, AS MEASURED FROM THE CURB AT GROVE STREET.
4. THE MAXIMUM BUILDING HEIGHT OF THE 3 STORY BUILDING LOCATED PARALLEL TO THE ALLEY SHALL NOT EXCEED 50 FEET, AS MEASURED FROM THE CURB AT SLIGO AVENUE.
5. THE MAXIMUM BUILDING HEIGHT ALONG SLIGO AVENUE SHALL NOT EXCEED 60 FEET, AS MEASURED FROM THE CURB AT SLIGO AVENUE.
6. A PUBLIC PLAZA, AT LEAST 3,750 SQUARE FEET IN SIZE, WILL BE LOCATED ALONG SLIGO AVENUE.
7. A MINIMUM OF 3,500 SQUARE FEET OF COMMON OPEN SPACE WILL BE LOCATED IN AN INTERIOR COURTYARD FOR USE BY RESIDENTS OF THE SITE.
8. THE MINIMUM BUILDING OFFSETS FROM THE PROPOSED RIGHT OF WAY FROM GROVE STREET WILL BE 5 FEET AND FROM SLIGO AVENUE WILL BE 15 FEET.
9. FINAL DEVELOPMENT/UNIT MIX SHALL NOT EXCEED:
 - 68 MULTIFAMILY UNITS
 - 11 TOWNHOMES
 - 30 ARTISTS STUDIOS
 - 1,500 SF COMMERCIAL/RETAIL
10. A MINIMUM OF 10 OF THE ARTIST STUDIOS WILL BE LEASED TO RESIDENTS OF THE DEVELOPMENT.
11. FINAL DEVELOPMENT WILL INCLUDE A MINIMUM OF 12.5% MPDUs.
12. TOTAL SQUARE FOOTAGE OF DEVELOPMENT WILL NOT EXCEED 1.16 FAR OR 139,000 SQUARE FEET.

NECESSARY FINDINGS

Zoning Ordinance §59-7.2.1.E. establishes the “Necessary Findings” the District Council must make to approve a Floating Zone application. Because the Planning Board recommended approval of the rezoning, 5 Council members must approve the application. *Zoning Ordinance*, §59-7.2.1.F.2.

The Hearing Examiner’s report and recommendation found that the subject site’s requested zone and density satisfied the prerequisites required by Section 59.5.1.3 of the Zoning Ordinance. Based on that report, the District Council finds that the site satisfies the prerequisites for the zone and density requested.

The District Council’s findings follow.

A. Required “Necessary Findings” (§59-7.2.1.E.2.)

For a Floating zone application the District Council must find that the floating zone plan will:

a. substantially conform with the recommendations of the applicable master plan, general plan, and other applicable County plans;

The property is located within the *2000 East Silver Spring Master Plan* (Plan) area. One of the Plan’s primary objectives is to “support stable residential neighborhoods and to assure linkages to commercial centers and public facilities.” *Plan*, p. 21.

The Plan reconfirmed the existing R-60 Zoning for the subject property but recommended rezoning to the RT-8 floating zone to increase the range of housing stock in the area. *Plan*, p. 27. The 2014 Zoning Ordinance prohibited new Local Map Amendment applications requesting that zone. *Zoning Ordinance*, §59-8.1.1. Although the Plan recommends the property for a floating zone, the Applicant cannot apply for the particular floating zone recommended.²

Staff concluded that the application met the Plan’s goal for the property by increasing the range of housing stock available in the area. The Hearing Examiner agreed with Staff that the proposed development would meet both the general and specific goals of the Plan because it will (1) increase the affordable housing stock in the area, (2) preserve the existing neighborhood as a transitional buffer between lower density residential uses and the CBD, (3) enhance the adjoining Fenton Village by providing an arts attraction, (4) secure additional public areas and pedestrian connections, and (5) bring the site up to today’s environmental standards. Based on this evidence, the District Council finds that the proposed development substantially conforms to the recommendations of the Plan.

² The 2014 Zoning Ordinance permits an application for a Residential Townhouse Floating Zone, but this would not permit the artist studios and retail space requested. *Zoning Ordinance*, §§59.5.1.3, 59.3.1.6.

b. further the public interest;

A project that complies with County plans and policies is in the “public interest”, under the District Council’s interpretation of that phrase. This is because State law requires the Council to approve only rezoning applications that further the “coordinated, comprehensive, adjusted, and systematic development of the regional district.” Md. Code Ann., Land Use § 21-101 (West). To “further the public interest,” public facilities must be adequate to serve the use.

ArtSpace submitted a Land Use Report (Exhibit 7) describing how; 1) the project would meet all regulations governing stormwater management, 2) wet and dry utilities are available to the site, and 3) public services (schools, police and fire stations) are adequate to serve the proposed development. Currently 2 of the schools within the Blair Cluster, Takoma Park Middle School and Blair High School, exceed their maximum capacity under the FY 2016 Subdivision Staging Policy. If these schools remain over capacity when a preliminary plan is presented for approval, ArtSpace will be required to pay an impact tax. That payment will allow the project to proceed. Staff found that the development would have adequate public facilities, as did the Hearing Examiner. Based on this evidence, the District Council finds that these facilities will be adequate to serve the development.

c. satisfy the intent, purposes, and standards of the proposed zone and requirements of this Chapter;

For the reasons in Parts IV.B through E of the Hearing Examiner’s Report, summarized below, the District Council finds that the proposed FZP will satisfy the intent, purposes and standards of the proposed zone and the requirements of the Zoning Ordinance.

d. be compatible with existing and approved adjacent development;

ArtSpace’s experts in land planning and architecture testified that the proposed development will be compatible with the surrounding area because it creates a transition between lower density residential uses to the east and north and the Silver Spring CBD to the west. The lower density townhouse units on the subject property will confront single-family detached dwellings and townhouses across Grove Street. Stepped up heights from east to west foster a compatible transition of scale between the single-family detached and attached units on the eastern side of the site to the edge of the CBD on the western side. T. 44. The multi-family units along the northern edge of the property will be first-floor accessible with patios to transition to the single-family homes bordering this edge of the property. T. 55; Exhibit 7, p. 5. Both Staff and the Hearing Examiner found that the stepped up heights and densities of the uses are sensitive to and compatible with the existing residential neighborhood. Based on this evidence, the District Council finds that the proposed development will be compatible with existing and approved adjacent development.

e. generate traffic that does not exceed the critical lane volume or volume/capacity ratio standard as applicable under the Planning Board’s LATR Guidelines, or, if traffic exceeds the applicable standard, that the applicant demonstrate an ability to mitigate such adverse impacts;

This section requires the District Council to make a preliminary finding that transportation infrastructure will be adequate to support a proposed development. *Zoning Ordinance*, §59-7.2.1.E.2.e. The Planning Board will make the final determination of whether these facilities are adequate during the subdivision process. *See Montgomery County Code*, §50-35(k). The Council determines whether roadway capacity is adequate under the Local Area Transportation Review (LATR) test. *See, 2012-2016 Subdivision Staging Policy*, Council Resolution 17-601 (November 13, 2012.) Developments that will generate fewer than 30 peak-hour trips are exempt from the LATR and require only a traffic statement demonstrating the basis for the exemption. *Id.*, pp. 10-11.

ArtSpace submitted a traffic statement to show that the development would generate fewer than 30 peak hour trips. Exhibit 21. ArtSpace's traffic expert, Mr. Craig Hedberg, opined that the use would generate 26 morning peak hour trips and 25 evening peak hour trips. T. 72-74. His calculations include a credit for the trips generated by the former police station, and a 15% credit for artists who will live and work in the development. A binding element ensures that a minimum of 10 of the studios will be rented to resident artists. Staff reviewed Mr. Hedberg's traffic statement and agreed with its conclusions, as did the Hearing Examiner. Based on this evidence, the District Council finds that roads surrounding the site will be adequate to serve the proposed use.

f. when applying a non-Residential Floating zone to a property previously under a Residential Detached zone, not adversely affect the character of the surrounding neighborhood.

The Hearing Examiner concluded that the development would not adversely affect the character of the surrounding neighborhood because it conforms to the Plan, facilities are adequate to serve the use, and the scale and massing are compatible with the surrounding residential uses, as discussed above. Based on this evidence, the District Council finds that the application meets this standard.

B. The Intent of the Floating Zones (§59-5.1.2.)

The proposed development must satisfy the intent of the Floating Zone. Section 59-5.1.2 describes this intent:

The...Commercial/Residential floating...zones are intended to provide an alternative to development under the restrictions of the Euclidean zones mapped by Sectional Map Amendment (the Agricultural, Rural Residential, Residential, Commercial/Residential, Employment, Industrial, and Overlay zones). To obtain a Floating zone, an applicant must obtain approval of a Local Map Amendment under Section 7.2.1. The intent of the Floating zone is to:

- A. Implement comprehensive planning objectives by:

 - 1. furthering the goals of the general plan, applicable master plan, and functional master plans;*
 - 2. ensuring that the proposed uses are in balance with and supported by the existing and planned infrastructure in the general plan,**

applicable master plan, functional master plan staging, and applicable public facilities requirements; and

3. allowing design flexibility to integrate development into circulation networks, land use patterns, and natural features within and connected to the property; and

The District Council found that the application furthers the goals of the *2000 East Silver Spring Master Plan* and that public facilities and infrastructure are adequate to serve the use. The *2005 Approved and Adopted Bikeways Functional Master Plan* calls for an on-road bike lane along Sligo Avenue, which is not precluded by the development. Exhibit 21, p. 8. Nearby transit facilities include the Silver Spring Metro Station and a proposed Purple Line station, which are approximately .47 miles west of the property and less than 1/3 of a mile south of the property, respectively. A bus stop for Montgomery County Ride-On is adjacent to the site on Sligo Avenue and runs between Silver Spring and Langley Park/Takoma. Additional Ride-On and WMATA bus routes are accessible from stops located nearby on Fenton Street. Exhibit 21, p. 2. The public pathways along Sligo Avenue and the western boundary of the site will provide pedestrian connections to other areas of Silver Spring. The District Council finds that the application furthers the comprehensive planning objectives listed in the Zoning Ordinance.

B. Encourage the appropriate use of land by:

- 1. providing flexible applicability to respond to changing economic, demographic, and planning trends that occur between comprehensive District or Sectional Map Amendments;*
- 2. allowing various uses, building types, and densities as determined by a property's size and base zone to serve a diverse and evolving population; and*
- 3. ensuring that development satisfies basic sustainability requirements including:*
 - a. locational criteria,*
 - b. connections to circulation networks,*
 - c. density and use limitations,*
 - d. open space standards,*
 - e. environmental protection and mitigation; and*

This application provides a flexible response to the abandonment of the former police station. It contains a mix of building types and densities sensitive to the transitional location of the property. It would provide sustainability measures including proximity to public transit, connections to pedestrian circulation networks. It complies with density and use limitations, open space standards. It will upgrade environmental systems on the site, including stormwater management. The District Council finds that the development will meet this intent of the Floating Zones, as did the Hearing Examiner.

C. Ensure protection of established neighborhoods by:

- 1. establishing compatible relationships between new development and existing neighborhoods through limits on applicability, density, and uses;*
- 2. providing development standards and general compatibility standards to*

protect the character of adjacent neighborhoods; and
 3. *allowing design flexibility to provide mitigation of any negative impacts found to be caused by the new use.*

The compatibility requirements of this section are repetitive of the compatibility findings required in §59-7.2.1.E.2.d, above. The District Council finds that the proposed development will be compatible with existing and approved adjacent development.

C. Purpose, Land Uses, and Building Types Permitted by the CRNF Zone (Section 59-5.3)

Zoning Ordinance §59.5.3.2 establishes the permitted uses and building types, and describes the purpose of the CRNF Zone:

Section 5.3.2. Purpose

The purpose of the Commercial/Residential Floating zones is to:

- A. allow development of mixed-use centers and communities at a range of densities and heights flexible enough to respond to various settings;*
- B. allow flexibility in uses for a site; and*
- C. provide mixed-use development that is compatible with adjacent development.*

The Hearing Examiner concluded that the development proposed uses the flexibility of the zone to design a mixed use development that will be compatible with the surrounding community and provide public and private open space, as previously discussed. The District Council agrees and finds that this purpose has been met.

Section 5.3.3. Land Uses

A. The following land uses are allowed in the Commercial/Residential Floating zones:

- 1. In the CRNF zones, only the uses allowed in the CRN zone are allowed.*

The application proposes a mix of multi-unit and townhouse living units, commercial retail, and artisan manufacturing and production, all of which are permitted by right in the CRNF Zone.

Section 5.3.4. Building Types Allowed

- A. Any building type is allowed in the Commercial/Residential Floating zones.*
- B. An applicant may voluntarily prohibit specific building types or establish binding elements that restrict specific building types to support the necessary findings of approval under Section 7.2.1.*

Because any building type is allowed in the CRNF Zone, the proposed development meets this requirement. The Applicant has limited the number of units, building types, and building heights in its FZP to promote compatibility with the surrounding residential uses. Based on this record, the District Council finds that this application satisfies all the requirements in Section 59.5.3 for the purpose, permitted uses and allowed building types in the CRNF Zone.

D. Development Standards for the Zone (Section 59.5.3.5)

The bulk regulations for the CRNF Zone are included in Section 59.5.3.5.a-c of the Zoning Ordinance. Staff summarized these requirements in a table comparing the minimum standards required to the proposed development shown on the FZP (Exhibit 21, p. 17, below):

Commercial Residential Floating Neighborhood Zone Standards

Development Standards	Required	Provided
Tract Area		119,990 sf
Prior Dedications	NA	19,192 sf
New Dedication	NA	3,365 sf
Site	NA	97,433 sf
Density		
Total FAR/GFA	1.25 (149,987 sf)	1.16 (139,000 sf)
Commercial	0.25 (29,997 sf)	0.24 (29,000 sf)
Residential	1.00 (119,990)	0.92 (110,000 sf)
Building Height		
Townhouses	Established by Plan	42 ft
Multi-Unit	Established by Plan	60 ft
Building Setbacks		
Public Street	Established by Plan	0 ft
Adjoining Lot		
Side	Established by Plan	15 ft
Rear	Established by Plan	0 ft
Open Space	10% of site	9,743 sq ft
Lot Size (for townhouses)	Established by Plan	800 ft

The chart does not include the common open space requirements for the townhomes. *Hearing Examiner's Report*, p. 26. For standard method applications, the CRNF Zone requires 10% public open space for the portion of the site development devoted to multi-family units and 20% common open space for the portion of the site devoted to the townhomes. *Zoning Ordinance*, §59.4.5.3. The 5,666-square foot private plaza shown in the FZP meets the minimum common open space required for the portion of the site dedicated to the townhomes (i.e., 28,328 square feet). At least 10% of the residual lot area (i.e., 72,469 square feet) must be devoted to public open space. ArtSpace meets this requirement with a total of 7,247 square feet of public open space consisting of the public plaza along Sligo Avenue and a walkway on the western boundary of the site. Exhibit 7, p. 6. Based on this evidence, the District Council concludes that all development standards have been met.

In addition to the above standards, Section 59.5.3.5.B of the Zoning Ordinance requires building heights to meet the "compatibility" standards of Section 59.4.1.8.B. The latter section states:

2. Height Restrictions

a. When the subject property abuts a property in an Agricultural, Rural Residential, Residential Detached or Residential Townhouse zone that is...improved with an agricultural or residential use, any structure may not protrude beyond a 45 degree angular plane projecting over the subject property, measured from a height equal to the height allowed for a detached house in the abutting zone at the setback line determined by Section 4.1.8.A.

b. When the subject property confronts a property in an Agricultural, Rural Residential, Residential Detached, or Residential Townhouse zone that is...improved with an agricultural or residential use, any structure may not protrude beyond a 45 degree angular plane projecting over the subject property, measured from a height equal to the height allowed for a detached house in the confronting zone at the front or side street setback line determined under Article 59-4.

ArtSpace's expert in architecture submitted an illustration of the proposed setbacks from the single-family detached units and the townhomes across Grove Street to demonstrate that the application meets the setback and height compatibility standards, above (Exhibit 37). From this evidence, the District Council concludes that the application met this requirement, as did the Hearing Examiner.

Conclusion

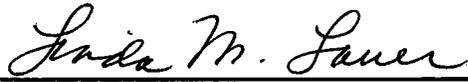
Based on the foregoing analysis, the Hearing Examiner's report, and after a thorough review of the entire record, the District Council concludes that the proposed reclassification and development will meet the standards in the *2014 Zoning Ordinance* and that it will be consistent with a coordinated and systematic development of the Regional District.

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:

That Local Map Amendment Application No. H-110, requesting reclassification of 2.31 acres of land described as Lots 5-11, Block J of the Easley Subdivision, located at 801 Sligo Avenue, Silver Spring, Maryland, from the R-60 Zone to the CRNF 1.25, C-0.25, R-1.0, H-65 Zone be **approved** in the amount requested and subject to the specifications and requirements of the Floating Zone Plan, Exhibit 39(c). The Applicant must submit to the Hearing Examiner for certification a reproducible original and 3 copies of the Floating Zone Plan approved by the District Council within 10 days of approval.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council