

Resolution No.: 18-665  
Introduced: November 8, 2016  
Adopted: November 8, 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**

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By: District Council

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**SUBJECT:** APPLICATION NO. H-114 FOR AMENDMENT TO THE ZONING ORDINANCE MAP, Erin Girard, Esquire, Attorney for the Applicant, Investment Properties, Inc.; OPINION AND RESOLUTION ON APPLICATION; Tax Account Numbers 04-03303834 and 04-03303823.

**OPINION**

Local Map Amendment (LMA) Application No. H-114, filed on May 24, 2016, by Applicant Investment Properties, Inc., requests reclassification from the existing IH 2.5, H 70 Heavy Industrial Zone to the IMF 2.5, H 70 - Moderate Industrial Floating Zone of Part of Parcel E (a/k/a Parcel N766) and Parcel F (a/k/a Parcel N851) of the Ensor Property, described in Plat No. 21528 in the Cotler Industrial Park Subdivision of Rockville. The property is located in the 4<sup>th</sup> Election District at 851 and 861 East Gude Drive in Rockville, and consists of 14.17 acres of land (617,265 square feet) situated on the west side of East Gude Drive, just north of Dover Road. Parcel E contains approximately 7.36 acres (320,606 square feet) and Parcel F contains approximately 6.81 acres (296,659 square feet).

The property is owned by Gude Drive Properties, LLC and Dover Properties III, LLC, which have given their authorization for this rezoning application. Exhibit 21. The Application would retain the existing buildings, but it seeks approval of additional density that would be accommodated almost entirely within existing building footprints. Applicant's Statement of Justification (Exhibit 22, p 1). The Applicant seeks the greater flexibility and compatibility afforded by the proposed zone. Exhibit 22, p. 2. The proposal is set forth in a Floating Zone Plan (FZP), Exhibit 33, which contains an illustrative diagram and specifications of the proposal, as well as other information regarding the development.

A notice of the hearing was mailed out on June 22, 2016, establishing a hearing date of September 16, 2016. The Hearing Examiner consolidated this case for a hearing with LMA H-113 because the two sites confront each other across East Gude Drive; they involve the same Applicant; they have the same expert witnesses; and they seek the same zoning reclassification; however, because they involve separate properties with different ownership, the Hearing Examiner wrote separate reports, and the Council has issued separate Resolutions.

Technical Staff of the Maryland-National Capital Park and Planning Commission (“Technical Staff”) reviewed the substance of the application, and recommended approval in a report dated August 26, 2016 (Exhibit 26). The report considered the application for rezoning in LMA H-114 jointly with the Applicant’s related application in LMA H-113. The Montgomery County Planning Board (“Planning Board”) also considered the applications jointly on September 8, 2016, and the three members present unanimously recommended approval, as set forth in a memorandum dated September 12, 2016 (Exhibit 27). There has been no response from the community in this case, either for or against.

A public hearing was convened, as scheduled, on September 16, 2016, at which time the Applicant presented evidence and called four witnesses in support of the application. There was no opposition testimony. The Applicant announced at the public hearing that it proposed to change the previously submitted binding element to give it some flexibility to accommodate any future tenant’s needs to have a small amount of floor area outside the building footprints. Tr. 7-8.

The record was held open after the hearing, at the Applicant’s request, to give its counsel the opportunity to file additional materials amending the proposed binding element, and also giving Technical Staff and the public time for comment. On September 21, 2016, the Applicant timely filed an amended Floating Zone Plan (Exhibit 33), as well as an executed covenant to record the binding element in the land records (Exhibit 33(b)) and a justification for the proposed changes (Exhibit 33(a)). Copies were sent to Technical Staff for comment, and Technical Staff responded on September 27, 2016 that they did not object to the changes. Exhibit 35. No further comments were received, and the record closed, as scheduled, on October 7, 2016.

In a Report and Recommendation issued on October 11, 2016, the Hearing Examiner recommended approval of the rezoning application on grounds that the proposed reclassification and development will meet the standards set forth in the Zoning Ordinance and will be consistent with the coordinated and systematic development of the regional district, as required by the Maryland Land Use Article, Code Ann. (2012), § 21-101(a)(4)(i).

To avoid unnecessary detail in this Opinion, the Hearing Examiner’s Report and Recommendation, dated October 11, 2016, 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 Property, Surrounding Area and Zoning History**

Technical Staff describes the subject property as follows (Exhibit 26, pp. 4-5):

This Subject Property is located at 851 and 861 East Gude Drive, on the west side of the road and at the northwest corner of the intersection of Dover Road and East Gude Drive in Rockville. It consists of two parcels known as Part of Parcel E (7.36 ac) and Parcel F (6.81 ac) Ensor Property. The Property comprises a combined total of 14.17 acres and is currently improved with a self-storage facility with heights ranging between 8.67 feet and 10.5 feet (on Pt of Parcel E) and a 65,000 Square-

foot, 28-foot-high warehouse building (Parcel F) with associated parking. The Property slopes down towards the center along the boundary line between the two parcels. Areas of steep slopes (greater than 25 percent) define the western (rear) edge of the property. Steep slopes also exist in the central area along the property line between the two parcels. A ponded stream that is located on the adjoining property to the west of Parcel F extends to the southwest portion of the Property where it enters a storm drain that traverses the property.

There are two existing full movement vehicle driveway access points for the Property; one located on the Property's frontage on East Gude Drive (east) and the other located along the its frontage on Dover Road (south).

The property is located within a Flood Hazard Zone and the stream that exists on the property is contained within a pipe that traverses the site. The existing buildings are located outside of the flood plain. The property is not located within a Special Protection Area. There are no State or Federal records for rare, threatened or endangered species within the boundaries of the Property.

Consistent with Zoning Ordinance §59.7.2.1.B.2.g.v.(b), Applicant filed an "Existing Conditions Plan" (Exhibit 13), certified by a professional and showing the existing conditions on the site and in the vicinity within 100 feet, including existing topography; watershed; Special Protection or Primary Management areas [there are none]; floodplains; wetlands; streams and associated buffers; forests; and the absence of rare, threatened, or endangered species.

The surrounding area must be identified in a Floating zone case so that compatibility can be evaluated properly. In general, the definition of the surrounding area takes into account those areas that would be most directly affected by the proposed development. The surrounding area, as defined by Technical Staff, includes properties located within a 2,000 foot radius centered on East Gude Drive between the subject site and the site of its sister application, LMA H-113. It is predominantly developed with light and heavy industrial uses, some of which are located within the City of Rockville (Exhibit 26, p. 5).

The Applicant did not object to Technical Staff's definition of the surrounding area, and the Hearing Examiner accepted it as well. The Applicant's land use expert, Victoria Bryant, described the surrounding area in her land planning report (Exhibit 9, pp. 7-8):

The Property abuts or confronts only IH2.5/H-70 zoned land. On the north side of East Gude Drive starting to the northwest of the site and working clockwise around the property, the existing uses include but are not limited to: travel agent, property management services, sale of tires and automobile parts, scrap metal collection, asphalt contractor, concrete mix supplier, auto repair, paper recycling, and gas/convenience station. On the west side of East Gude Drive starting to the northwest of the site and working counter-clockwise, the existing uses include but are not limited to: rental car, marble supplier, distillery, auto body repair, self-storage, distribution center, industrial equipment supplier, non-profit building supply resale, auto body repair, and a service station. In general, the less intensive

uses are to the northwest of the site (i.e., travel agent, property management), and as one progresses southwest along East Gude Drive toward Southlawn Lane the uses intensify (asphalt and concrete contractors). The existing uses on the Property, as discussed above, share more in common with the uses to the northwest of the site than the southeast. In general the existing uses on the site and to the northwest of the site are light industrial in nature.

Technical Staff described the surrounding area in more general terms (Exhibit 26, pp. 5-6):

The central, eastern and southeastern parts of the neighborhood are zoned Heavy Industrial (IH) with a 2.5 total FAR and a maximum height of 70 feet but are developed with a mixture of light and moderate industrial uses such as service and supply oriented uses and heavy Industrial uses such as asphalt and concrete contractors. This portion of the neighborhood, further east of East Gude Drive, also includes a small part of the former Gude Landfill that is zoned residential (R-200) and an old sewer treatment plant that is no longer operational but might be considered for future industrial uses. The remainder of the northwestern and western portion of the neighborhood is zoned IM with a 2.5 total FAR and a maximum height of 50 feet (IM-2.5-H-50) and developed mostly with light Industrial uses similar in nature to those on the Subject Properties. The neighborhood also includes some properties that are within the jurisdiction of the City of Rockville.

The Subject Properties are already improved with warehouse buildings and self-storage facilities and are surrounded by buildings with similar uses. The existing buildings currently house various service, office, showrooms and warehouses that are associated more with light and moderate industrial uses than the heavy industrial uses for which the Properties are currently zoned.

The “bottom line” from both descriptions is that the existing uses on the subject site and in the surrounding area are quite similar to the light and moderate industrial uses proposed for the subject site and allowed in the proposed zone.

Technical Staff reports the following zoning history (Exhibit 26, p. 5):

Following approval of the 1968 Upper Rock Creek Master Plan, Sectional Map Amendment F 657 rezoned the Properties from I-1 (Light Industrial) to I-2 (Heavy Industrial). Subsequent master plans in 1985 and 2004 retained the Properties’ I-2 zoning. With the adoption of the new Zoning Code in 2014, the I-2 Zone was reclassified as I-H-2.5. H-70, with 2.5 FAR and a maximum height of 70 feet.

### **Proposed Development**

The Applicant has no plans to change the footprints of the existing structures on the site, but it may ultimately increase the gross floor area and height from 149,805 square feet at a height of 28 feet to a gross floor area of 299,610 square feet, at a maximum height of 70 feet. The site is currently improved with a self-storage facility on Parcel E and a warehouse building on Parcel F.

As stated by Technical Staff (Exhibit 26, p. 7),

The Applicant proposes to continue operating the existing businesses with future plans to increase the Gross Floor Areas of the current improvements while remaining within the current footprints. The Applicant intends to achieve the proposed densities employing various internal and external modification methods including creating mezzanines in the stand alone buildings and adding second stories in the case of the self-storage-facilities. . . . The Applicant stated that the intent is to build the proposed additional spaces on a “tenant-by-tenant” basis as new leases are signed or as existing leases are expired.”

Any expansion of Gross Floor Area to accommodate additional uses may be limited by the availability of parking. At the suggestion of the Hearing Examiner (Tr. 46-49), when the Applicant amended the Floating Zone Plan (FZP) to modify its proposed binding element, the Applicant also added the following sentence to the note below the parking table in the FZP: “Achievable density may be limited by amount of parking available on site, to be determined at Site Plan.” Exhibit 33.

Under Zoning Ordinance §59-7.2.1.B.2.g., an application for rezoning to a Floating zone must be accompanied by a “Floating Zone Plan” (FZP) that contains the following information:

- i. *building location, density, massing, height, and anticipated use;*
- ii. *locations of open spaces and preliminary stormwater management strategy;*
- iii. *pedestrian, bicycle, and vehicular circulation, parking, and loading;*
- iv. *any binding element on the application. An applicant who proposes a binding element must submit an unexecuted covenant suitable for filing in the land records reflecting any restriction on the development standards, development program, or use that will be applicable to the property if the District Council approves the application; and*
- v. *the following additional information:*
  - (a) *current and proposed zone;*
  - (b) *a plan certified by a licensed professional, showing existing site conditions and vicinity within 100 feet, including total tract area; existing topography; watershed in which the site is located; Special Protection or Primary Management areas; any floodplain, wetland, or perennial or intermittent stream, and any associated buffers; whether or not rare, threatened, or endangered species were observed on the property; whether or not the property is on the Locational Atlas and Index of Historic Sites; the aerial extent of forest and tree cover on the property; and date(s) field work was conducted;*
  - (c) *existing or approved adjacent land uses, buildings, and rights-of-way;*
  - (d) *a Traffic Study under the Planning Board’s LATR Guidelines if the incremental increase in vehicular peak-hour trips between the density of the base zoning and the density of the requested floating zone meets the minimum applicability requirement in the LATR Guidelines; and*
  - (e) *general phasing of structures, uses, rights-of-way, sidewalks,*

*dedications, and future preliminary and site plan applications;*

The Applicant has met these requirements by filing its amended Floating Zone Plan (Exhibit 33) and related documents (Exhibits 1 through 19, 21, 22, 28, 31 and 32). Technical Staff summarized the proposed development (Exhibit 26, p. 12):

The Applicant proposes to dedicate . . . a maximum of 27,115 square feet of retail area for the proposed development of Application H-114.

In addition to the Local Map Amendment review, if approved, Application[] LMA H-[114] . . . [is] subject to other development approval procedures, including approval by the Montgomery County Planning Board of Preliminary Plans of Subdivision, Forest Conservation Plans and Site Plans. . . .

The Property that is the subject of LMA H-114 (Part of Parcel E and Parcel F) also has an approved Preliminary Plan, No. 119841490 . . . , approved in 1984, for 200,000 square feet of industrial space.

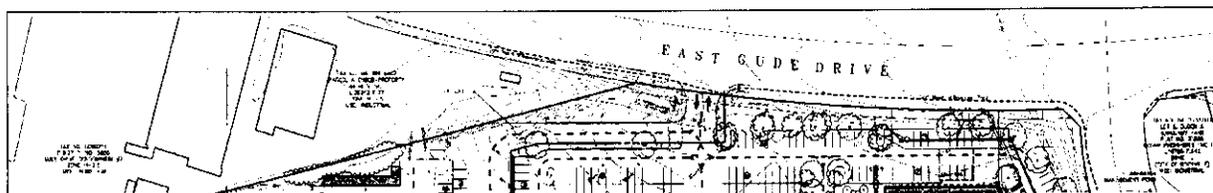
. . . As noted, the Applicant has no immediate plans to change or modify the existing improvements. According to the Applicant, future modification and expansion of current improvements will be driven by market demand, future tenant mix, and new lease agreements. Future development that exceeds 200,000 square feet, will be subject to regulatory review, including an analysis of adequate facilities, and to address Part of Parcel E. Prior to issuance of a building permit on Part of Parcel E, a new record plat will be required.

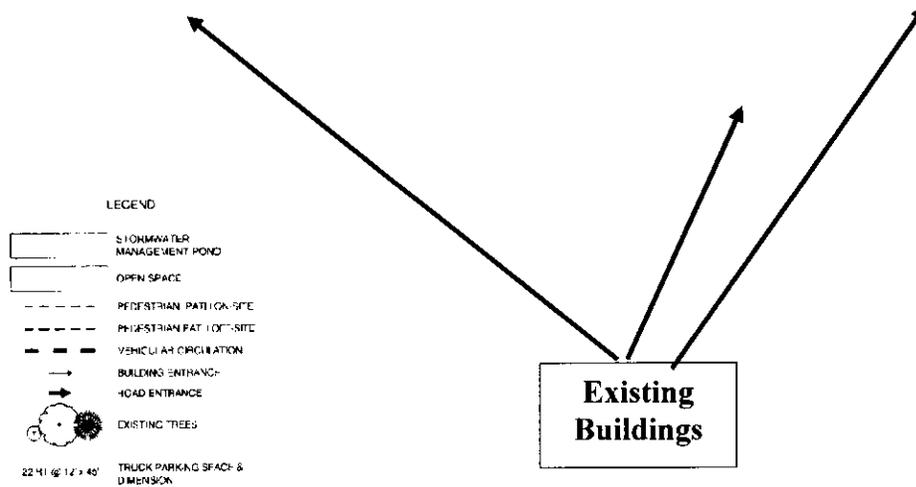
The amended Floating Zone Plan (Exhibit 33) has one binding element –

No increase in gross floor area will occur outside of the existing building footprints, except that a maximum of 5000 square feet may be located on existing impervious area outside of building footprints for ancillary tenant uses. This area will count towards the maximum gross floor area allowed by the plan.

Prior to the OZAH hearing, the binding element agreed to by the Applicant was “No increase in GFA will occur outside of the existing building footprints on the property.” At the hearing, the Applicant asked for additional flexibility in case it needed to occupy a small area outside the current building footprints to accommodate the needs of tenants, such as for outdoor equipment. Technical Staff agreed to this change (Exhibit 35) and there have been no other objections. Since any such expansion would be limited to the overall gross floor area agreed to, the District Council agrees with Technical Staff and the Hearing Examiner that there is no downside to accommodating this modification to the proposed binding element.

A full copy of the amended Floating Zone Plan (Exhibit 33) is reproduced in the Hearing Examiner’s report, and the site layout diagram from the FZP is set forth below:





**Conformance with the Master Plan**

The subject site is located in the area covered by the 2004 Upper Rock Creek Master Plan. The Applicant’s land planner, Victoria Bryant, documents the Applicant’s compliance with the Master Plan, at length, in her land planning report (Exhibit 9, pp. 9-15), which is quoted by the Hearing Examiner on pages 16-17 of his report. Ms. Bryant also addressed master plan conformance at the hearing. Tr. 49-58. The central point is that the Upper Rock Creek Master Plan contemplates the continuation of an industrial zone in this area and that a moderate industrial zone, such as the one requested, is much more suited to this particular site and its immediate surroundings than a heavy industrial zone.

Technical Staff agrees with the analysis of Applicant’s land planner (Ex. 26, pp. 12-13):

The Land Use Plan section of the 2004 Upper Rock Creek Master Plan sets an objective to “maintain commercial and light industrial districts at their existing scales and intensities and provide appropriate transitions from non-residential to residential uses” (p.13). The land use plan also makes an overall recommendation to retain the existing industrial zoning in the planning area. The Subject Properties are developed with industrial uses and are located within the portion of the Master Plan area that is identified for industrial land use . . . Currently, the Properties are zoned

IH (Industrial High) and the Applicant is requesting a rezoning of the Properties to IMF (Industrial Moderate Floating) Zone which is more consistent with the character of the existing developments on the property.

The Applicant indicated that the existing buildings predate the county's comprehensive revision to its zoning code. The Applicant intends to maintain the already established uses with proposed modifications to the buildings within the existing footprints and with substantially less FAR than allowed in the IMF Zone.

The Environmental Resources Plan section of the Master Plan places the Properties within the larger "Upper Rock Creek Mainstem Watershed," in an area further designated as "Urban Watershed Management Area," (p.50). The modifications proposed by the Subject Applications would not have a negative impact on the watershed since they would be confined within the existing foot prints of buildings and there will not be any disturbance of land anywhere else on the properties. . . .

Technical Staff concluded that the proposed rezoning substantially conforms with the recommendations of the applicable master plan (Exhibit 26, pp. 19-20):

The requested reclassification of the IMF Zone substantially complies with the 2004 Upper Rock Creek Area Master Plan goals, which encourages the continuation of "commercial and industrial land uses in the Upper Rock Creek watershed in appropriate locations and at manageable densities" (p.13). The proposed rezoning is consistent with the Master's plan's objective and recommendation to retain the existing industrial zoning in the Planning area (p.13).

The Subject Applications are located in an area specifically recommended for industrial uses. Although the properties were zoned I-2 (Heavy Industrial), they were developed for the purposes of housing and operating uses with light industrial nature. The Applicant intends to retain the industrial nature of the properties as recommended by the Master Plan. The subject Applications propose for a more flexible industrial zone, that is consistent with the nature of the current uses and the character of surrounding area.

Based on this record, the Hearing Examiner concluded, and the District Council agrees, that the proposed rezoning is consistent with the general intent and objectives of the 2004 Upper Rock Creek Area Master Plan. This conclusion is also consistent with the requirements for compatibility in the area.

### **Adequacy of Public Facilities**

Under the County's Adequate Public Facilities Ordinance ("APFO," Code §50-35(k)), an assessment must be made at subdivision as to whether the transportation infrastructure, area schools, water and sewage facilities, and other services will be adequate to support a proposed

development, and in turn, whether the proposed development will adversely affect these public facilities. Both the Planning Board and the Council have roles to play in this assessment process.<sup>1</sup>

The Planning Board reviews the adequacy of public facilities at subdivision, under parameters that are set by the County Council every four years in the Subdivision Staging Policy (SSP). While the final test under the APFO is carried out at subdivision review, the District Council must first make its own evaluation as to the adequacy of public facilities in a rezoning case, as spelled out for traffic issues in Zoning Ordinance §59.7.2.1.E.2.e, quoted immediately below, and for other public facilities in §59.5.1.2.A.2, which will be discussed below.

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

*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 . . ."*

The principal tool used by the County to evaluate the ability of transportation facilities to handle a proposed development is the Local Area Transportation Review ("LATR"). LATR generally involves a traffic study intended to evaluate whether a proposed development would result in unacceptable congestion during the peak hour of the morning and evening peak periods. An LATR traffic study is not required unless a proposed development would generate 30 or more peak-hour automobile trips. For developments that will generate fewer than 30 peak-hour trips, only a traffic statement need be filed.<sup>2</sup> In this case, a full traffic study was required because the total trips generated by the proposed development will exceed 30 trips in both the morning and evening peak traffic hours. In fact, the increase in traffic to be generated by the use, assuming the Applicant uses the property to the full extent planned, will itself exceed 30 trips in each of the peak hours.

Applicant employed Nancy Randall, an expert in transportation planning, who prepared Traffic Studies for both cases (Exhibit 19 in H-113 and Exhibit 17 in H-114) to satisfy the Planning Department's Local Area Transportation Review (LATR). Ms. Randall testified she obtained a scoping agreement from Technical Staff, which designated the study area. The study area, which is the same for both H-113 and H-114, included Dover Road and East Gude Drive intersections and access points to the sites. Ms. Randall testified that the existing intersections and the existing volumes that were counted are all well under the Critical Lane Volume (CLV) standard for this area, which is at 1475 CLV. The highest CLV at any one of the intersections occurred at East Gude and Dover Road, and that CLV was 1152, so there was more than sufficient capacity at these intersections. Tr. 68-72.

Ms. Randall further testified that she calculated CLVs with the increased densities proposed for H-113 and H-114 assuming the worst case trip production scenario for potential

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<sup>1</sup> The Council is presently considering proposed changes to the subdivision and APFO provisions in the County Code, and a new 2016-2020 Subdivision Staging Policy. These new provisions are not in effect at the time of this writing.

<sup>2</sup> Planning Department's *LATR and TPAR Guidelines* (2013), p. 6.

tenancy on those sites. For the H-114 properties, Ms. Randall included the H-113 development in the potential background traffic, and the net increase in volume for the H-114 parcels is 117 morning peak hour trips, and 249 evening peak hour trips. The resulting highest CLV, again, occurred at the intersection of East Gude Drive and Dover Road with a CLV of 1,257 vehicles during the evening peak hour. Tr. 81-88.

Ms. Randall added that she also did pedestrian-bicycle transit statements for both sites, at the request of MCDOT, and she included her pedestrian-bicycle transit statements as Exhibit 31 in both files. Tr. 89-92.

Based on her analysis and in her expert opinion, Ms. Randall stated that nearby roads and circulation systems are adequate to serve the proposed developments. She further opined that the proposed development would not generate traffic that exceeds the critical lane volumes, or volume capacity ratio standards as applicable under the Planning Board's LATR guidelines. She noted that the LATR guidelines require a CLV of 1475, and for both cases the CLV will be well below that 1475 critical lane volume limit. Ms. Randall further testified that, in her expert opinion, the proposed zoning classifications and developments would be suitable for the subject properties from the standpoint of transportation planning, and would be compatible with existing and approved adjacent development. She also stated that none of those conclusions would be affected if there is an additional 5,000 square feet of usage outside of the footprint of the building because it is going to be an ancillary use, such as storage of outdoor equipment, such as a generator. Finally, Ms. Randall testified that the access points to the sites, and the internal circulation in the sites, in both H-113 and H-114, are safe and adequate. Tr. 92-95.

Technical Staff confirmed Ms. Randall's analysis in its own discussion of Local Area Transportation Review. Exhibit 26, pp. 14-17.

In addition to LATR, the County employs Transportation Policy Area Review (TPAR) to compensate the public for the cost of transportation improvements necessitated by proposed developments. As indicated by Technical Staff (Exhibit 26, p. 17), the Applicant must satisfy the TPAR test by paying a transportation impact tax that equals 25% of Department of Permitting Services' (DPS's) transportation/development impact tax. Payments are paid to DPS at the time of building permit.

Based on this record, the District Council finds that transportation facilities are adequate and will not be adversely affected by the proposed development.

The new Zoning Ordinance revisits the issue of public facilities in Section 59.5.1.2.A.2., which provides that:

*The intent of the Floating zones is to: A. Implement comprehensive planning objectives by: . . . 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; . . . [Emphasis added.]*

Thus, the new Zoning Ordinance requires an analysis at rezoning of the adequacy of non-transportation facilities, as well as transportation facilities. Of course, since the proposed use is industrial, not residential, it will not generate any demand for additional school facilities. With regard to other listed public facilities and services, the 2012-2016 Subdivision Staging Policy provides, at p. 21, that we “. . . 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, and therefore police stations, firehouses and health clinics will be considered sufficient.

Applicant’s civil engineer, Stephen Crum, testified that the existing buildings on the site are connected to public facilities for water, sewer, electric, telephone and natural gas, and they have sufficient capacity to accommodate the proposed uses and the existing uses, even if they double the floor area use of these buildings, and add 5,000 square feet of space. He indicated that the addition of the binding element, as changed, would not affect his analysis. He also opined that the sites are suitable for the uses that are contemplated under the industrial medium intensity use category. Tr. 63-65. Technical Staff agreed, stating that “The property is currently served by public water and sewer as well as fire and rescue facilities,” and concluded that “The subject application will be adequately served by public facilities.” Exhibit 26, p. 14. Based on this record, the District Council finds that the proposed use will be served by adequate public services and facilities.

### **Environmental Impacts**

Technical Staff reports that the site is located in the Middle Rock Creek watershed, but it is not a special protection area. No NRI/FSD has been done on this site; however, as noted by Staff, an exemption (41998061E) from the forest conservation requirements was granted on September 24, 1997, under the grandfathering provision, and existing development took place in accordance with that exemption. Technical Staff further reports (Exhibit 26, p. 18):

. . . A ponded stream with an associated stream valley buffer extends onto the southwest portion of the property, where it then enters a large storm drain that traverses the southeast side of the property along Dover Road. This undergrounded stream, which is now a storm drain, is within a 50-foot to 70-foot wide floodplain.

. . . If the Subject Application is approved, the applicant will have to comply with the Forest Conservation Ordinance which may include a continuation of their exemption.

With regard to stormwater management, Technical Staff observed that runoff along the south of Parcel F and the east of Part of Parcel E drains into Dover Road Regional Stormwater Management Facility, which is owned and maintained by the City of Rockville. This pond discharges into the storm-drain facility that contains the undergrounded stream, and runoff from the west side of Part of Parcel E is conveyed directly to the same storm-drain facility. Exhibit 26, p. 19.

Applicant's civil engineer, Stephen Crum, testified that stormwater management has been addressed for both the applications, and exists under the criteria that were in place at the time of construction. He opined that without any additional disturbance, no new stormwater management would be required under current Code. Tr. 65-66.

Technical Staff concluded that "the proposal meets the basic sustainability requirement by not imposing a burden on the existing facilities and the environment." Exhibit 26, p. 21.

Based on this record, the District Council is satisfied that the proposed use raises no new environmental concerns, and any impacts will be further evaluated at site plan review.

### **Necessary Findings**

Zoning involves two basic types of classifications, Euclidean zones and Floating zones. The term "Euclidean" zoning arose from the seminal United States Supreme Court case upholding the land use authority of local governments, *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). Euclidean zoning divides the territory of a local jurisdiction into zoning districts with set boundaries and specific regulations governing aspects of land development, such as permitted uses, lot sizes, setbacks, and building height.

A Floating zone is a more flexible device that allows a legislative body to establish a district for a particular category of land use, with regulations specific to that use, without attaching that district to particular pieces of property. Individual property owners may seek to have property reclassified to a Floating zone by demonstrating to the Council that the proposed development will meet the standards set forth in the new Zoning Ordinance that went into effect on October 30, 2014, and that it will be consistent with a coordinated and systematic development of the regional district, as required by the 2012 Maryland Land Use Article, Code Ann. § 21-101(a)(4)(i).<sup>3</sup>

Montgomery County has many Floating zones, including the IMF Zones. The IMF 2.5, H 70 Zone contains development standards which must be met, but the details of site-specific issues such as building location, stormwater control, vehicular and pedestrian routes, landscaping and screening are generally addressed by the Planning Board, after rezoning, at site plan review, per §§59.7.1.3 and 7.3.4 of the Zoning Ordinance. The Council has a broader discretionary role in determining whether to approve a rezoning; however, the new Zoning Ordinance still requires a structured and detailed analysis for the Council's review of rezoning applications, beginning with the "Necessary Findings" spelled out in Zoning Ordinance §59.7.2.1.E.:

#### E. Necessary Findings

1. *A Floating zone application that satisfies Article 59-5 may not be sufficient to require approval of the application.*
2. *For a Floating zone application the District Council must find that the floating zone plan will:*

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<sup>3</sup> 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.

- a. substantially conform with the recommendations of the applicable master plan, general plan, and other applicable County plans;*
- b. further the public interest;*
- c. satisfy the intent and standards of the proposed zone and, to the extent the Hearing Examiner finds it necessary to ensure compatibility, meet other applicable requirements of this Chapter;*
- d. 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; and*
- 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.*

Finding 2.c. of these “Necessary Findings” incorporates requirements spelled out elsewhere in the Code—specifically under sections that establish “the intent and standards” of the Zone. Those standards are found in Zoning Ordinance Sections 59.5.1.2., 5.1.3. and 5.1.4. Specific standards for Industrial Floating Zones are spelled out in Sections 59.5.5.1., 5.5.2., 5.5.3., 5.5.4. and 5.5.5. We will first address the general “Necessary Findings” set forth above, and will then review the specific standards which must be met to rezone to an IMF 2.5, H 70 Zone.

When the reclassification sought by an applicant is recommended by the Planning Board, approval of the rezoning by the Council requires an affirmative vote of 5 Council members; however, when the Planning Board does not recommend the reclassification sought (or if approval would be contrary to the recommendation of the municipality in which the property is located), the Zoning Ordinance requires an affirmative vote of 6 members of the Council for approval. Zoning Ordinance §59.7.2.1.F.2. The Planning Board did recommend approval of the rezoning in this case, and no municipality has made a recommendation, so a simple majority of 5 members of the Council is required for approval.

*Zoning Ordinance §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 subject site is located in the area covered by the 2004 Upper Rock Creek Master Plan. For the reasons set forth above, and at some length in Part III.F. of the Hearing Examiner’s report, the District Council finds that the proposed Floating Zone Plan will substantially conform with the recommendations of the applicable master plan, general plan, and other applicable County plans.

- b. further the public interest;*

Applicant's land planner, Victoria Bryant, testified that this proposal would further the public interest of the county. Tr. 61-62. The IMF Zone allows for 36 uses, which is more than the I-H Zone for this site. The IMF Zone would exclude only four uses, which would be mining and excavation, transfer of trash, a crematory and heavy industrial, none of which would be appropriate for these sites. Also, the Master Plan encourages appropriate land use by providing flexibility to respond to changing economic, demographic, and planning trends that occur between comprehensive district and section map amendments. According to Ms. Bryant, flexibility is exactly what the Applicant is seeking in these cases, so that it can respond to the market demands by obtaining the zone that is actually more flexible and provides greater uses and encourages more industrial use than the I-H Zone allows. The proposed density is appropriate for the size of the lot and the character of the neighborhood, and its increased uses will better serve the need of the population. Tr. 51-58. Ms. Bryant also opined that the development satisfies sustainability requirements, including location, connection to circulation networks, density and use limitations, open space, and environmental protection. It is located in an industrial area; it takes advantage of the existing network; its uses are allowed in the I-M Zone; and they are in conformance with all applicable environmental laws. They ensure protection of established neighborhoods, in that they are compatible – an industrial use in an industrial neighborhood. Thus, there will be no negative impacts. The Applicant is just asking for a zone that's actually more compatible to the uses that are currently found in the area, which are light industrial. Tr. 58.

Technical Staff agreed, stating (Exhibit 26, p. 25):

The Project will further the public interest by ensuring provision of long established uses *and* services in a manner that is compatible with the existing and future developments in the surrounding area while maintaining the preservation of environmental resources.

Based on this undisputed evidence, the District Council finds that the proposed development will further the public interest.

*c. satisfy the intent and standards of the proposed zone and, to the extent the Hearing Examiner finds it necessary to ensure compatibility, meet other applicable requirements of this Chapter;*

For the reasons set forth in Parts V.B., V.C., V.D. and V.E. of the Hearing Examiner's report, as summarized below, the District Council finds that the proposed Floating Zone Plan will satisfy the intent and standards of the proposed zone, and to the extent necessary to ensure compatibility, it will meet the other applicable requirements of the Zoning Ordinance.

*d. be compatible with existing and approved adjacent development;*

Land planning expert, Victoria Bryant, testified that the proposed development will be compatible with the surrounding area. It would be a light-to-moderate industrial use in a light-to-moderate industrial neighborhood. Thus, there will be no negative impacts. The zone being sought is actually more compatible to the uses that are currently found in the area than the current

zone, because the immediate surrounding uses are light industrial. Tr. 58. Technical Staff agreed, stating (Exhibit 26, p. 25):

The proposed Floating Zone Plan is compatible with its surrounding conditions. There are no residentially developed properties within a 2,000 radius of the subject properties. The properties are surrounded by various light and heavy industrial uses. Moreover, the rezoning request proposes to maintain the existing uses on the properties which are already in harmony with the character of the surrounding area. Any future modification and increase in density would be contained within the existing building foot prints and established building height limits of the zone and limits set under future site plan reviews. The existing developments on the property and any future increase in density are and will be compatible with adjacent developments in terms design, height, massing, and building materials.

Based on this undisputed 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; and*

For the reasons set forth above, and in greater length in Part III.G. of the Hearing Examiner's report, the District Council finds that the proposed development will not generate traffic that exceeds the critical lane volume or volume/capacity ratio standard as applicable under the Planning Board's LATR Guidelines.

*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.*

This provision is inapplicable because the subject property is currently under an Industrial Zone, not a Residential Detached Zone.

#### **The Intent and Standards of the Zone as set forth in Section 59.5.1.2.**

The next step in the review process is a determination of whether the proposed development will satisfy the intent and standards of the IMF 2.5, H 70 - Moderate Industrial Floating Zone. These standards are set forth in **Zoning Ordinance §59.5.1.2:**

*The Residential Floating, Commercial/Residential Floating, Employment Floating, and Industrial 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 zones 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**
- 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***
- 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.**

***Section 59.5.1.2.A - Encourage the appropriate use of land . . .***

The first test listed under this section essentially asks whether the proposal will comport with the goals of the general plan and the applicable master plan. The standard set forth in §59.5.1.2.A.1. is, of course, repetitive of the previously discussed Master Plan standards, and for the reasons set forth above, the District Council finds that the proposed Floating Zone Plan will further the goals of the general plan, applicable master plan, and functional master plans.

Sections 59.5.1.2.A.2 and A.3, address the adequacy of existing and planned public facilities. For the reasons set forth above, and at length in Part III.G. of the Hearing Examiner's report, it is clear that the proposed use is supported by existing and planned infrastructure. Based

on this record, the District Council finds that the proposed development will satisfy the intent standards for the IMF 2.5, H 70 Zone, as set forth in §59.5.1.2.A.

***Section 59.5.1.2.B - Implement comprehensive planning objectives . . .***

The second portion of the intent provision (Section 59.5.1.2.B.) asks whether the proposal will encourage an appropriate, flexible and sustainable use of the land that will serve the community even in changing circumstances. As mentioned above, Land Planner Victoria Bryant testified that flexibility is exactly what the Applicant is seeking in these cases, so that it can respond to the market demands by obtaining the zone that is actually more flexible and provides greater uses and encourages more industrial use than the I-H Zone allows. The proposed density is appropriate for the size of the lot and the character of the neighborhood, and its increased uses will better serve the needs of the population. Ms. Bryant opined that the development satisfies sustainability requirements, including location, connection to circulation networks, density and use limitations, open space and environmental protection. Tr. 51-58.

Technical Staff agreed that the subject site is an appropriate location for the proposed development, stating (Exhibit 26, p. 9):

The Subject Applications are located in an area specifically recommended for industrial uses. Although the properties were zoned I-2 (Heavy Industrial), they were developed for the purposes of housing and operating uses with light industrial nature. The Applicant intends to retain the industrial nature of the properties as recommended by the Master Plan. The subject Applications propose for a more flexible industrial zone, that is consistent with the nature of the current uses and the character of surrounding area.

Technical Staff also agreed that the proposed development would allow more flexibility (Exhibit 26, pp. 20-21):

Placing a floating zone on the Subject Properties would promote the intent of the IMF Zone by allowing flexibility in responding to changing economic, demographic, and planning trends. The Applicant believes that it will be able to respond to the market demands by obtaining a zoning designation that allows for more permitted uses than the existing IH zone allows. The IMF zone allows for 36 more uses than the IH zone, but only excludes four permitted uses under the IH zone.

In addition, this part of the county has evolved into a largely light industrial area, with activities like those on the subject properties--warehousing, printing, auto services—prominently featured. The 2004 Plan recognized this evolution, although it left existing zones in place. The creation of Industrial Floating Zones, which were not available under the previous Zoning Ordinance, allows landowners to respond to the realities of market demands and the physical characteristics of the neighborhood.

The proposed density is appropriate for the size of the lot and the character of the neighborhood. Application of the IMF zone to the Properties will increase the diversity of uses and will better serve the needs of the population. The proposal will have no negative impact upon any nearby residential neighborhood or commercial activities, as the properties are surrounded with industrial uses similar in nature to the existing uses on the subject property. . . .

Based on this undisputed evidence, the District Council finds that the proposed development will satisfy the intent standards for the IMF 2.5, H 70 Zone, as set forth in §59.5.1.2.B., and will encourage the appropriate and flexible use of the land.

***Section 59.5.1.2.C - Ensure protection of established neighborhoods . . .***

The third prong of the intent provision (Section 59.5.1.2.C.) seeks to ensure protection of established neighborhoods by requiring design flexibility and compatibility with existing developments. Once again, the requirements of this section are repetitive of the general compatibility findings required by Section 59.7.2.1.E.2.d. As previously mentioned, land planner Victoria Bryant testified that, in accordance with Section 59.5.1.2.C , the proposed development will be compatible with the surrounding area, in that it would be a light-to-moderate industrial use in a light-to-moderate industrial neighborhood. The zone being sought is actually more compatible to the uses that are currently found in the area than the current zone, because the immediate surrounding uses are light industrial. Tr. 58.

Technical Staff agreed, stating (Exhibit 26, p. 22):

The proposed Floating Zone Plan meets the development standards of the IMF Zone. Since the site is already developed and no new structures are proposed, the character of the neighborhood will not be impacted.

\* \* \*

The proposed/existing development is and will continue to be compatible with the surrounding area. The adjacent properties as well as properties in the surrounding area are improved with developments similar to those of the existing and proposed uses on the Subject Properties. The proposed modification or increase in density will be contained within the existing footprints of buildings and improvements and will be in keeping with the light industrial character of this part of East Gude Drive. The area contains light industrial uses on both IM and IH zoned properties as well as heavy industrial uses established on IH zoned properties. The proposed rezoning would not have a negative impact on existing or future development of the surrounding area and it would blend well with the existing character of the industrial neighborhood.

The Planning Board adopted Technical Staff’s findings. Exhibit 27.

As was stated with regard to 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. The standards set forth in §59.5.1.2.C. have been satisfied.

**The Applicability of the Zone as set forth in Section 59.5.1.3.**

Section 59.5.1.3. of the new Zoning Ordinance sets up a series of tests to determine whether the requested Floating zone may be applied to the site in question. Each subsection is listed separately below, followed by the District Council’s finding on each:

***Section 59.5.1.3. A. A Floating zone must not be approved for property that is in an Agricultural or Rural Residential zone.***

Subsection “A” is not applicable since the subject site is in an Industrial zone, not in either an Agricultural or a Rural Residential zone.

***Section 59.5.1.3. B. If a Floating zone is recommended in a master plan, there are no prerequisites for an application. For properties with a master plan recommendation for a Floating zone for which an application can no longer be made as of October 30, 2014, the following table identifies the equivalent Floating zones for which an applicant may apply:***

\* \* \*

Subsection “B” is not applicable since the Upper Rock Creek Master Plan neither recommends nor opposes a Floating zone on the subject site. It is silent on the issue.

***Section 59.5.1.3. C. If a Floating zone is not recommended in a master plan, the following apply:***

- 1. The maximum allowed density is based on the base zone and on the size of the tract as stated in Division 5.2 through Division 5.5. Any density bonus requested under Chapter 25A may be added to the density allowed under Division 5.2 through Division 5.5 and included in the units per acre or FAR of the zone requested.***

Subsection “C” is applicable since the Upper Rock Creek Master Plan does not expressly recommend a Floating zone on the subject site. Subsection “C.1.” requires the maximum density to be calculated in accordance with Section 59.5.5.5, which is done below. As is shown there, the proposed use will be within the maximum density allowed. No density bonus has been requested in this case.

***2. Residential Base Zone***

\* \* \*

Subsection “C.2.” is not applicable since the site is not in a Residential Base Zone.

### **3. Non-Residential Base Zone**

*When requesting a Floating zone for a property with a non-Residential base zone there are no prerequisites for an application.*

Under the terms of Subsection C.3. *“there are no prerequisites for an application.”*

Based on this undisputed record, the District Council finds that the subject Floating Zone application meets all the tests set forth in Section 59.5.1.3 for applying the requested IMF 2.5, H 70 Zone to the site in question. Section 59.5.1.4 notes that an application for a Floating Zone must be approved as a Local Map Amendment under Section 59.7.2.1. As discussed above, the application does meet the requirements set forth under Section 59.7.2.1. Section 59.5.1.5 is inapplicable to the zone sought in this case.

### **The Industrial Floating Zones, their Purpose and Uses, as set forth in Division 5.5**

Zoning Ordinance §59.5.5 lists the Industrial Floating Zones, specifies their purpose, designates the allowed uses and building types and sets forth the applicable development standards.

#### **Section 59.5.5.1. Zones**

- A. There are 2 categories of Industrial Floating zones.*
- B. Industrial Floating zones are mapped using the zone's initials followed by the maximum allowed total density and maximum allowed height as limited by Division 5.5. Zones are established at density increments of 0.25 FAR and height increments of 5 feet.*
  - 1. Industrial Light – Floating (ILF# H#)*
  - 2. Industrial Moderate – Floating (IMF# H#)*

The subject application seeks the second category, the Industrial Moderate Floating Zone, with a density of up to 2.5 FAR and a height limit of 70 feet – *i.e.*, the IMF 2.5, H 70 Zone.

#### **Section 59.5.5.2. Purpose**

*The purpose of the Industrial Floating zones is to allow development of industrial sites with primarily light manufacturing, warehouse, and related uses at a range of densities and heights flexible enough to respond to various settings.*

The uses currently on the subject site include buildings occupied by largely light industrial businesses, including parts and service suppliers and warehouses, as well as offices, showrooms and storage facilities. The subject application would seek permission to expand the uses almost entirely within the current building footprints. The District Council finds that this plan is consistent with the stated purpose of the Industrial Floating Zones.

#### **Section 59.5.5.3. Land Uses**

- A. The following land uses are allowed in the Industrial Floating zones:*
  - 1. In the ILF zones, only the uses allowed in the IL zone are allowed.*

- 2. *In the IMF zones, only the uses allowed in the IM zone are allowed.*
- B. An applicant may voluntarily prohibit specific uses or establish binding elements that restrict specific uses to support the necessary findings of approval under Section 7.2.1.*

The subject application seeks only uses that are allowed in the IM Zone. The Applicant has also added a binding element to its Floating Zone Plan which provides:

No increase in gross floor area will occur outside of the existing building footprints, except that a maximum of 5000 square feet may be located on existing impervious area outside of building footprints for ancillary tenant uses. This area will count towards the maximum gross floor area allowed by the plan.

The District Council finds, as did Technical Staff, the Planning Board and the Hearing Examiner, that the proposed Floating Zone Plan, with its binding element, meets the land use requirements of this provision. Exhibit 26, pp. 24-25, Exhibit 27 and Exhibit 35.

**Section 59.5.5.4. Building Types Allowed**

- A. Building types are allowed under the equivalent Euclidean zone.*
- B. An applicant may voluntarily prohibit building types or establish binding elements that restrict specific building types to support the necessary findings of approval under Section 7.2.1.*

The subject application seeks buildings that are allowed in the IM Zone. The Applicant has also added a binding element to its Floating Zone Plan which limits any expanded floor area almost entirely to within the existing building footprints. The District Council finds, as did the Hearing Examiner, that the proposed Floating Zone Plan, with its binding element, meets the building type limitations of this provision. Exhibit 26, pp. 24-25.

**Development Standards for the Zone as set forth in Section 59.5.5.5.**

Development Standards for the IMF 2.5, H 70 Zone are spelled out in Zoning Ordinance §59.5.5.5., which is set forth below (Only the Industrial Zone category is depicted):

**A. Density**

- 1. If a Floating zone is recommended in a master plan, density must not exceed that recommendation.*
- 2. If a Floating zone is not recommended in a master plan, the following density limits apply:*

<b>Density Allowed</b>			
<b>Pre-Existing Euclidean Zone</b>	<b>Maximum Total Density Allowed in FAR Based on Size of Tract in Acres</b>		
	<b>Less than 0.5 acres</b>	<b>0.5 acres - 3.00 acres</b>	<b>Greater than 3 acres</b>
<b>Industrial</b>	2.00	2.50	<b>3.00</b>

3. *An applicant may limit density below the maximum allowed by Section 5.5.5.A to support the necessary findings of approval under Section 7.2.1.*

In the subject case, the Master Plan neither recommends nor opposes a Floating Zone on the site. Therefore, the density limits set forth in the Table under Section 59.5.5.5A.2. are applicable. The last row specifies the density limits for Industrial Floating Zones, based on acreage. The subject site contains over 3 acres, so the applicable density limit is a "FAR" (Floor Area Ratio) of no more than 3. The Applicant is seeking the IMF 2.5, H 70 Zone, which limits the FAR to 2.5, well below the statutory FAR limit of 3.00.

***B. Setback and Height***

1. *If a Floating zone is recommended in a master plan, height must not exceed that recommendation.*
2. *Setbacks from the site boundary and maximum height are established by the floating zone plan. All other setbacks are established by the site plan approval process under Section 7.3.4.*
3. *Height must satisfy the compatibility standards for the applicable building type under Section 4.1.8.B.*

As mentioned above, the Master Plan neither recommends nor opposes a Floating Zone on the site. Therefore, the height provisions in Sections 59.5.5.5.B.2. and 3., set forth above, are applicable. Together, they provide that the Floating Zone Plan (FZP) establishes the height limits and site boundary setbacks, consistent with compatibility and subject to the Site Plan Review process. In this case, the FZP sets a height limit of 70 feet and shows the locations of existing buildings on the site. Since the FZP height limit of 70 feet is well within the compatibility standards set forth in Section 59.4.8.2.A.1 for the base IM Zone (25 feet to 120 feet of height for a site with a FAR from 0.25 to 2.5), the proposed use is compliant with height restrictions. Since the building footprints will not be changed, there is no issue regarding building setbacks in this case.

***C. Lot Size***

*Minimum lot sizes are established by the site plan approval process under Section 7.3.4.*

There is no plan to change existing lot sizes in this case, but any concerns in this regard will be addressed at Site Plan Review, as required by this section.

***D. General Requirements***

1. *Parking, recreation facilities, screening and landscaping must be provided under Article 59-6 as required for the Euclidean zone that establishes uses under Section 5.5.3.*
2. *Open space must be provided under Section 4.8.3.A.1 as required for the Euclidean zone that establishes uses under Section 5.5.3.*
3. *The floating zone plan may provide for additional parking, open space, recreation facilities, screening, or landscaping or further restrict lighting to allow the District Council to make the necessary findings of approval under Section 7.2.1.*

The amended FZP (Exhibit 33) has a table showing existing parking and demonstrating that it exceeds current requirements, based on the existing uses. The number of parking spaces required is 103 spaces, and the site has 108 spaces. The Applicant cannot calculate future parking requirements because it does not yet know the mix of new potential tenants (*i.e.*, office v. retail v. warehouse use) and thus does not know the parking requirements that will be applicable. Tr. 6, 37-39. Therefore, the amended FZP (Exhibit 33) contains a note indicating:

Future parking will be determined based on tenant mix at time of Site Plan and/or Use and Occupancy permit. Achievable density may be limited by amount of parking available on site, to be determined at Site Plan.”

Technical Staff reports (Exhibit 26, p. 12):

The Subject Properties are currently served by adequate parking. Future amendments will evaluate future parking needs as part of preliminary plan and site plan review process.

Based on this record, the District Council finds that the Applicant is currently providing the parking that is required and that any future parking requirements incurred by an increase or change in the tenant uses will be addressed adequately at Site Plan Review or during the permitting process.

The applicable development standards, and the Applicant’s compliance therewith, are set forth by Technical Staff in a Table in their report (Exhibit 26, p. 24):

**Table 5: Standard Method Development Standards**

	REQUIRED		PROPOSED
	IM ZONE	IMF ZONE	H-114
<b>1. Site</b>			
<b>Open Space (min)</b> Amenity Open Space >10,000 SF	<b>SECT. 4.8.3.A(1)</b> 10% or 48,852 SF	<b>SECT. 5.5.5.D(2)</b> 10% or 48,852 SF	<b>20%, 125,540 SF</b>
<b>2. Lot and Density</b> Density, FAR	<b>SECT. 4.8.3.A(2)</b> 0.25 to 2.50 FAR or MAX 1,221,302 SF	<b>SECT. 5.5.5.A(2)</b> 0.25 to 3.00 FAR or MAX 1,465,563 SF	<b>0.49 FAR or 299,610 SF</b>
<b>3. Placement:</b> Principal Building & Accessory Structure Setbacks (min)	<b>SECT. 4.8.3.A(3)</b>	<b>SECT. 5.5.5.B(2)</b>	
• Front setback	10 Ft.	Established by floating zone plan	81 ft
• Side street setback	10 Ft.		32 ft
• Side setback abutting Industrial Zone	0 Ft.		20 ft
• Rear Setback abutting Industrial Zone	0 Ft.		30 ft
• Rear setback, Alley	0 Ft.		n/a

<b>Parking Setbacks for Surface Parking Lots - 10 or more spaces</b>	<b>SECT. 6.2.9.C(3)(b)</b>	<b>SECT. 5.5.5.B(2)</b>	
Front setback	6	Established by	22 ft
Side street setback	0	floating zone	25 ft
Side setback	0	plan	4 ft
Rear setback	0		14 ft
Rear setback, alley	0		n/a
Parking Lot Tree canopy*	25% or 49,453 SF	25% or 49,453 SF	3.4% or 11,490 SF*
Parking Lot Landscaped Areas	5% or 9,891 SF	5% or 9,891 SF	9.1% or 30,811 SF
<b>Height (max)</b>	<b>SECT. 4.8.3.A(4)</b>	<b>SECT. 5.5.5.B(2)</b>	
Principal Building	Mapped and sec 4.1.8.b	Mapped and sec 4.1.8.b	70 ft
Accessory structure	Mapped and sec 4.1.8.b	Mapped and sec 4.1.8.b.	N/A ft
<b>Form</b>	<b>SECT. 4.8.3.A(5)</b>	<b>SECT. 5.5.4.A</b>	
Gallery/Awning	Allowed	Allowed	n/a
Porch/Stoop	Allowed	Allowed	n/a
Balcony	Allowed	Allowed	n/a
<b>Open Space Landscaping and Outdoor Lighting - Amenity Open Space</b>	<b>SECT.6.3.8.A</b>	<b>SECT. 5.5.5.B(2)</b>	
Permeable area (min)	10% or 48,852 SF	10% or 48,852 SF	21% or 126,661 SF
Tree Canopy (min)	10% or 48,852 SF	10% or 48,852 SF	13% or 79,767 SF

\* Existing conditions grandfathered pursuant to Section 59.7.7.1

Based on this undisputed record, the District Council finds that the subject Floating zone application meets all the development standards set forth in Section 59.5.5.5. of the Zoning Ordinance.

**Conclusion**

Based on the foregoing analysis and after a thorough review of the entire record, the District Council concludes that the proposed reclassification and development will meet the standards set forth in the Zoning Ordinance, and that it will be consistent with a coordinated and systematic development of the regional district, as required by the Maryland Land Use Article, Code Ann. § 21-101(a)(4)(i) (2012). More specifically, the evidence demonstrates compliance with Zoning Ordinance §59.7.2.1.E., which spells out the general requirements for approval of a rezoning to a Floating zone, and with Sections 59.5.1.2., 59.5.1.3., 59.5.1.4., 59.5.5.1., 59.5.5.2., 59.5.5.3., 59.5.5.4. and 59.5.5.5, which together detail the intent, purposes, and standards of the proposed IMF 2.5, H 70 Zone.

**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:

Local Map Amendment Application No. H-114, requesting reclassification from the existing IH 2.5, H 70 Heavy Industrial Zone to the IMF 2.5, H 70 - Moderate Industrial Floating Zone, of Part of Parcel E (a/k/a Parcel N766) and Parcel F (a/k/a Parcel N851) of the Ensor Property, described in Plat No. 21528 in the Cotler Industrial Park Subdivision, located at 851 and 861 East Gude Drive in Rockville, Maryland, and consisting of 14.17 acres of land (617,265 square feet) is hereby **approved** in the amount requested and subject to the specifications and requirements of the Floating Zone Plan, Exhibit 33; provided that the Applicant files an executed covenant reflecting the binding element in the land records and submits to the Hearing Examiner for certification a true copy of the Floating Zone Plan approved by the District Council within 10 days of approval, in accordance with §§59.7.2.1.H.1.a. and b. of the Zoning Ordinance.

This is a correct copy of Council action.

  
Linda M. Lauer, Clerk of the Council