

**BEFORE THE COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THE MARYLAND-
WASHINGTON REGIONAL DISTRICT IN MONTGOMERY COUNTY, MARYLAND**

**Office of Zoning and Administrative Hearings
Stella B. Werner Council Office Building
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Rockville, Maryland 20850
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IN THE MATTER OF:	*	
	*	
White Oak Storage Owner, LLC	*	
Applicant	*	
	*	
Anthony Piscitelli	*	
Steve Cratin	*	
Patrick La Vay	*	
Rebekah Brown	*	
Brian Donnelly	*	Local Map Amendment
	*	Application No. H-147
For the Application	*	
	*	
* * * * *	*	
	*	
Elizabeth Rogers, Esq.	*	
Attorney for the Applicant	*	
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* * * * *	*	
Before: Kathleen E. Byrne, Hearing Examiner	*	

HEARING EXAMINER’S REPORT AND RECOMMENDATION

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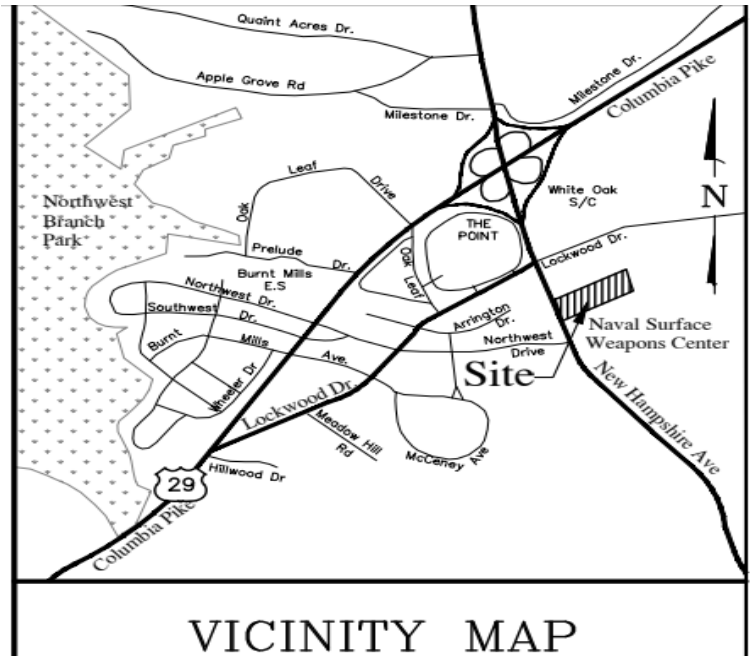
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I. CASE SUMMARY

Applicant: White Oak Storage, LLC

LMA No. & Date of Filing: H-147, filed May 19, 2021



Current Zone: CR-2.5, C-1.5, R-1.5, H-200 (Commercial/Residential Zone).

Current Use: 115,200 square-foot self-storage building and associated surface parking.

Requested Zone: CRTF-2.5, C-2.25, R-1.25, H-200 (Commercial Residential Town Floating Zone). Under prior zone self-storage is a limited use confined to a basement or cellar of a building used for other purposes. Self-storage without these restrictions under CRTF is allowed only as a conditional use.

Proposed Use: Continue self-storage use, expand existing structure by 3,600 square feet and building a new freestanding 116,000 square foot self-storage building.

Consistency with Master Plan: Located within the *2014 White Oak Science Gateway Master Plan*. Consistent with the Master Plan.

Neighborhood Response:	No neighborhood support or opposition received.
Planning Board Recommends:	Approval
Technical Staff Recommends:	Approval
Hearing Examiner Recommends:	Approval
District Council Votes Needed to Approve:	6

II. STATEMENT OF THE CASE

White Oak Self Storage (Applicant or White Oak) filed two applications on September 15, 2022. The first, LMA Application No. H-147, seeks to rezone approximately 2.62 acres of property from the CR-2.5, C-1.5, R-1.5, H-200 (Commercial Residential) to CRTF 2.25, C-2.25, R-1.5, H-200' (Commercial Residential Town Floating). Exhibit 1. The second seeks conditional use approval to operate a self-storage facility. *Id.* The Hearing Examiner issued a separate Report and Decision approving the conditional use application subject to approval of this rezoning. *See* CU 23-02, *Hearing Examiner Report and Decision* dated February 23, 2023. The subject property is located at 11105 New Hampshire Avenue, Silver Spring, MD 20904, and is further identified as part of Lot E in the "White Oak" subdivision recorded as Plat No. 8280 (Tax Account No. 05-00276584). *Id.*

Notice of the public hearing was mailed and posted on OZAH's website on December 13, 2022. Exhibit 24. The notice established a hearing date of January 13, 2023. The Applicant submitted an amended application on December 5, 2022 and revised plans on November 1, 2022. Exhibits 18-23.

The public hearing proceeded as scheduled on January 13, 2023. The Applicant presented three witnesses, one representing a principal of the Applicant and two expert witnesses. No additional witnesses appeared in either support or opposition of the Application. The Hearing Examiner held the record open for ten days only to receive the transcript of the proceedings. Upon receipt of the transcript, the record closed on January 24, 2023.

III. FACTUAL BACKGROUND

A. Subject Property

The subject property contains approximately 114,234 square feet of land and is bounded by New Hampshire Avenue to the west, existing commercial and self-storage uses to the north, the FDA campus to the south, and garden apartments to the east. The Property is long and narrow. Exhibit 30, pgs. 7-8. An aerial photograph of the property is shown below. *Id.* at 8.



Staff Report – Exhibit 30. Figure 1

Today, the lot is developed with a 115,200 square foot self-storage building with associated surface parking. Exhibit 30, pg. 10. A driveway from New Hampshire Avenue provides access to the site and an additional parking area in the rear of the lot that as vehicle storage.

White Oak's expert in civil engineering, Mr. Patrick La Vay, testified that the property is approximately 400 feet south of Lockwood Drive fronting New Hampshire Avenue and is 1,000 feet from east to west and 100 feet from north to south. There are no natural resources of significance. T. 26-27. Staff confirmed the lot contains no forest, wetlands, streams or floodplains. Exhibit 30, pgs. 10-11.

B. Surrounding Area

The surrounding area is typically identified and characterized in a Floating Zone case. The boundaries are defined by those properties that will experience the direct impacts of the use. This area is then characterized to determine whether the Floating Zone Plan will be compatible with the character of the impacted area.

Staff defined the neighborhood boundaries as follows, "Columbia Pike to the north and Oak Leaf Drive to the west [and] [t]o the south, the neighborhood terminates where the commercial uses on either side of New Hampshire Avenue terminate, and to the east the neighborhood terminates east of the White Oak Shopping Center and where the commercial uses south of Lockwood Drive transition to multi-family residential." *Id.* at 8. The surrounding area is delineated (in yellow) in a graphic from the Staff Report shown on the following page.

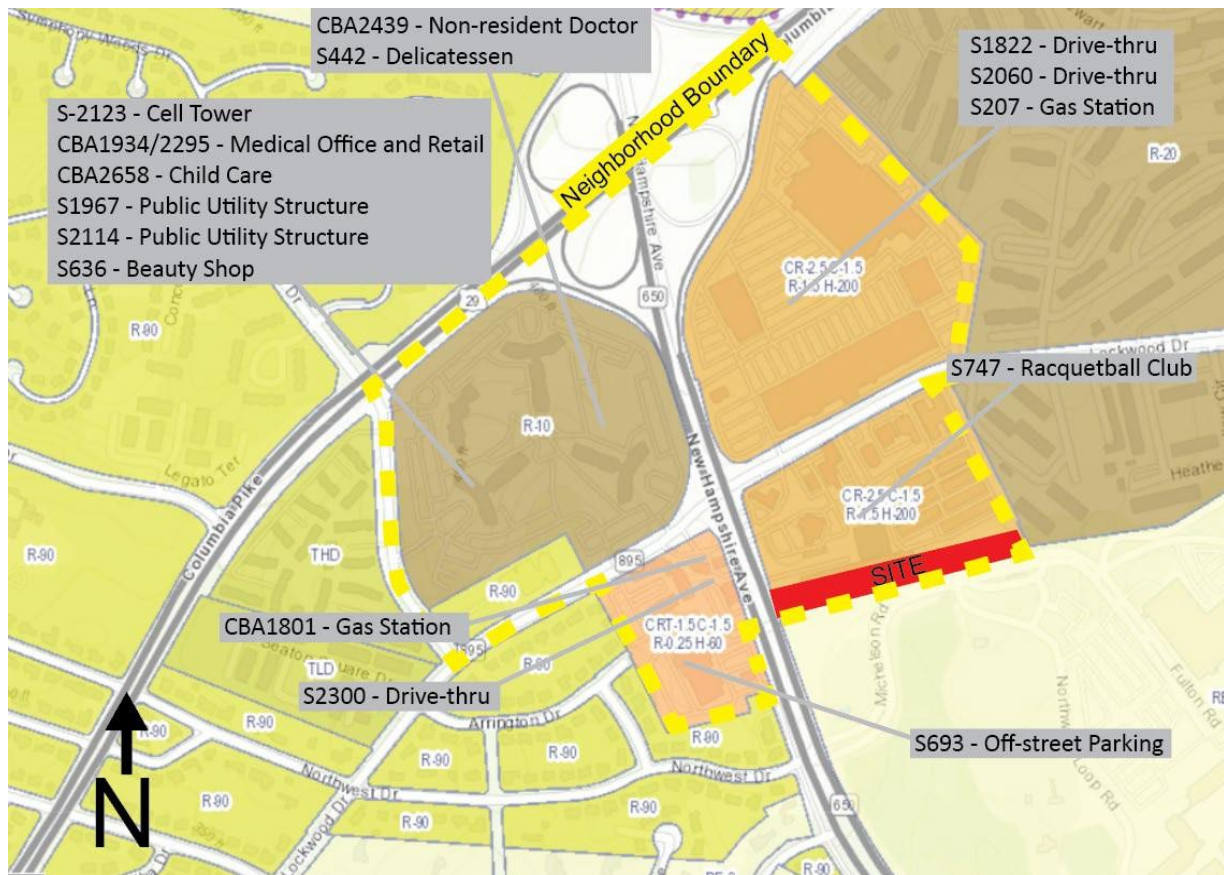


Exhibit 30, pg. 8, Figure 2
Neighborhood CUs and Special

Staff described the character of the area as a “commercial node” *Id.* at 7. The defined neighborhood contains a number of existing approved conditional uses, some in residential properties including medical practices, childcare, telecommunications towers on an apartment building, and others in commercial properties such as drive-thru restaurants. *Id.* The property abuts commercial and self-storage uses to the north, FDA campus to the south and garden apartments to the east. *Id.* pg. 9.

Based on the record, the Hearing Examiner agrees with Staff that the neighborhood is a “commercial node” located near a bustling intersection. In addition, it is undisputed that the property abuts existing commercial uses of similar type and intensity, including the current self-

storage facility.

C. The Applicant's Proposal

The Applicant plans to continue the self-storage use and proposes reinvesting in the existing building through substantial façade improvements with a third-floor cantilevered building addition that will bring the building up to the street and visually conceal the parking. Exhibit 18(b), pg. 4. The building will be re-skinned to have a more modern aesthetic that will improve the building's presence as viewed from the street. *Id.* In addition, the Applicant proposes to construct a new five-story building plus a partial cellar at the rear of the Property, where a large surface parking lot exists today. *Id.*

Mr. Steve Craitin testified on behalf of the owner, Arcland. T. 12. Based in Washington, D.C., Arcland develops, acquires and manages self-storage facilities in the Metro area. T. 13. Arcland acquired this property in 2021 as part of an 8-store acquisition in a joint venture with ASB, a large investment management firm. *Id.* Prior to purchase and since 2018, Arcland has served as the property manager. *Id.* Since 2009, Arcland specialized in self-storage facilities in the DC area and owns 40 facilities and is the 3rd party management for an additional 25 facilities. *Id.* Mr. Craitin testified that during the COVID pandemic the industry in general saw a surge in demand and based on their research he believes there is a shortage of self-storage supply in this area. T. 14.

1. Floating Zone Plan

Under Zoning Ordinance §59.7.2.1.B.2.g., every application for rezoning to a Floating Zone must be accompanied by a Floating Zone Plan (FZP) that contains required information and often a list of "binding elements" that restrict future development of the property. The Applicants have submitted the required plan. Exhibit 20. An excerpt of the FZP showing the proposed building layouts, front building addition, new construction in rear, future trail easement, dumpster

location, parking and loading spaces is reproduced on page 11.

Mr. Patrick La Vay testified on behalf of the Applicant and was admitted as an expert in civil engineering. T. 21. Mr. La Vay explained there will be significant architectural upgrades to the existing building, landscaping, streetscape improvements and the new construction in the rear will also enhance the lot. T. 32. Access to the property will remain the same, a right in and right out from New Hampshire Ave. T. 35. New landscaping and buffering along New Hampshire Avenue will be installed. T. 34. A substantial façade improvement will be made to the existing building by adding a third-floor cantilevered addition that will provide a covered loading area and improve the street view. *Id.* Additional parking and loading will be placed at the rear of the existing building and the large open parking storage area in the rear will be replaced by a new 5 story storage facility with a partial cellar. *Id.*

Binding Elements

The Staff Report includes four binding elements (Exhibit 30):

1. The use of the property will be limited to self-storage.
2. The proposed self-storage facility will not exceed 234,800 square feet of commercial density.
3. Vehicular access to the Site will be limited to the existing access point.
4. The maximum building height on the Subject Property is limited to 55 feet (as measured per Section 4.1.7.C).

2. Access

Mr. La Vay testified that the FZP shows the only access point to the property, that being a right turn in and right turn out only from New Hampshire Avenue. T. 35. The proposed access meets all standards for the Maryland State Highway Administration. T. 36.

3. Environment

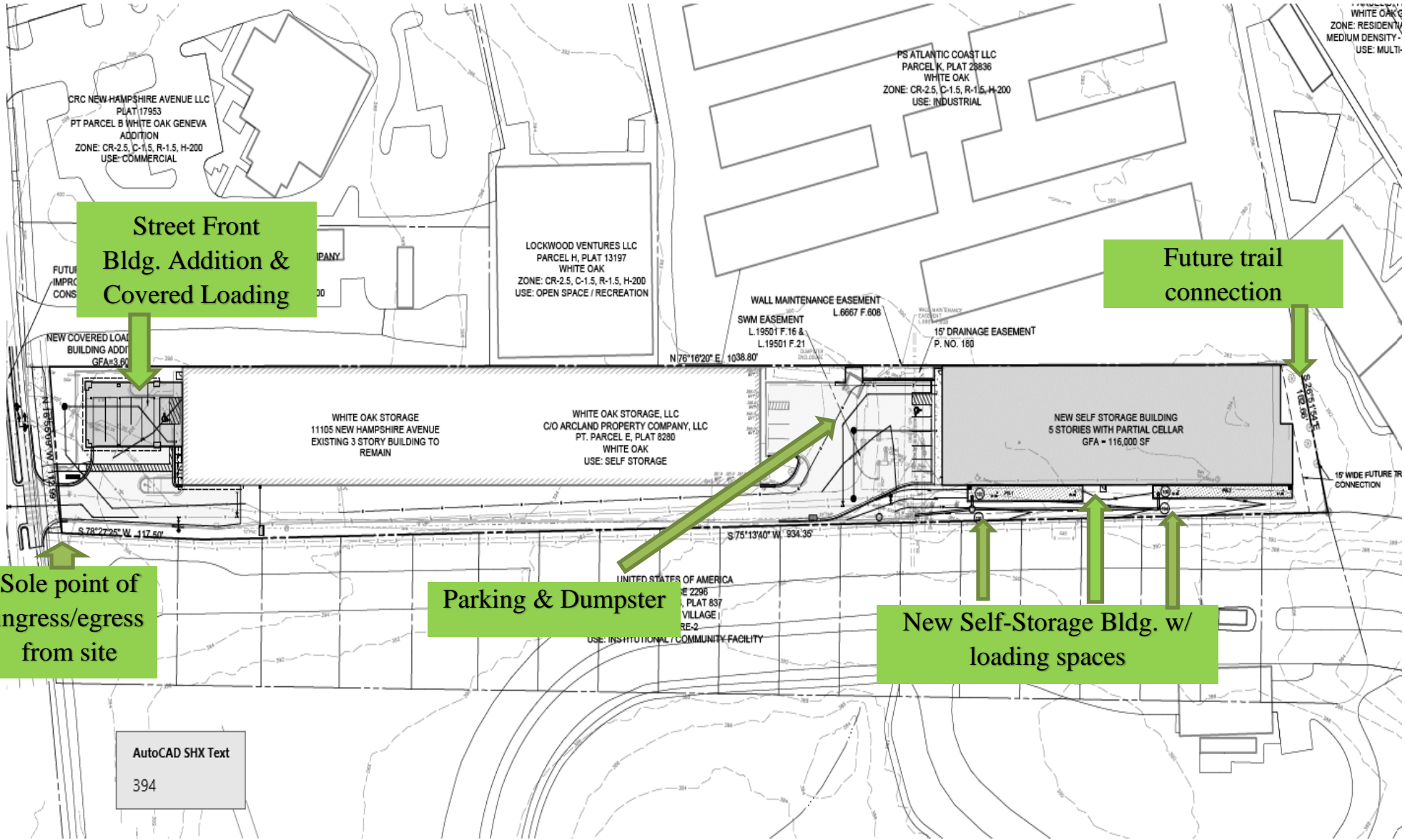
Staff determined there were no forests, wetlands, streams or floodplains on the property. Exhibit 30, pg. 12. Mr. La Vay testified that a bioswale was installed previously on the south surface parking lot as an ESD facility and that area will now contain two new structural micro bioretention areas, which will manage runoff from the new building. T. 36-37. In addition, an underground hydrodynamic device will remain. *Id.* The Site is designed to minimize vehicle impervious area and per Mr. La Vay, the plan is to improve the overall stormwater environment on the Site and manage it to today's standards. *Id.* Montgomery County Department of Permitting Services approved a stormwater management concept for the Site on December 9th of 2022. *Id.*

Mr. La Vay also testified that the forest conservation plan was approved by the Montgomery County Planning Board January 5, 2023. *Id.* The conditions of approval for the Preliminary Forest Conservation Plan requires the Applicant to submit a Final Forest Conservation Plan at the time of site plan. Exhibit 30, pg. 5.

Mr. La Vay testified that new landscaping, buffering will be installed along New Hampshire Avenue which will serve as both a benefit to the public and the environment. T. 34. Additional landscaping will be provided on site to screen the property to the north and also installed at the rear of the lot abutting the future 10-foot-wide trail connection. T. 53; Exhibit 23.

D. Community Concerns

The Hearing Examiner received no letters either in support or opposition of the application from the public. No community members appeared at the hearing.



Street Front
Bldg. Addition &
Covered Loading

Future trail
connection

Sole point of
ingress/egress
from site

Parking & Dumpster

New Self-Storage Bldg. w/
loading spaces

IV. FINDINGS AND CONCLUSIONS

A floating zone is a flexible device that allows a legislative body to establish development standards and uses for a particular district before “attaching” to individual properties. The zone may be applied to individual properties with the approval of a Local Map Amendment.

For approval, the District Council must find that the proposal will meet the standards required by the Zoning Ordinance and that it will be consistent with a coordinated and systematic development of the Regional District. *See, Md. Land Use Art.*, §21-101(a) and (b). While many of the site-specific requirements for development are addressed by later approvals, the Zoning Ordinance contains various standards, or “Necessary Findings” that the Council must make. These standards incorporate the requirements of other sections of the Zoning Ordinance, as set forth below.

A. The “Necessary Findings” Required by Zoning Ordinance §59.7.2.1.E.2.

1. Substantial Conformance with the Master Plan

Several sections of the Zoning Ordinance require an applicant to demonstrate that the proposed rezoning conforms to the applicable Master Plan:

Section 7.2.1.E.2.a. 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;

* * *

Section 59.7.2.1.E.2.b: ...further the public interest...

* * *

Section 59.7.2.2.c: ...satisfy the intent and standards of the proposed zone...

* * *

Section 59.5.1.2.A.1. (Intent of Floating Zones): Implement comprehensive planning policies by... furthering the goals of the general plan, applicable master plan, and functional master plan...

Staff concluded that the project substantially conforms to the *2014 White Oak Science Gateway Master Plan* (Master Plan or Plan). Exhibit 30, pg. 27. According to Staff, the Master Plan's primary goal is to ensure the local community's longevity by "reimagining existing centers – and provided a framework for reinvestment." *Id.* at 17 (quoting Master Plan, pg. 11). While the Master Plan envisioned White Oak's Major centers evolving into vibrant, mixed-use transit-served nodes, the Master Plan also envisioned redevelopment that was carefully integrated with existing residential neighborhoods and adjacent major institutional uses. *Id.*

According to Staff, given the existing mix of uses and ownership, significant property assembly will be needed to achieve the Master Plan's vision for White Oak. Staff believes, however, that an improved storage facility would not preclude the transition envisioned Master Plan. *Id.* Those improvements proposed to the existing use could provide an adequate buffer to the "utilitarian/vehicular uses projected near this area" and that redevelopment would be consistent with the Master Plan's goal of carefully integrating redevelopment with adjacent uses. *Id.* In addition, Staff noted the application also provides for a segment of a future trail connection at the rear of the property as envisioned by the Master Plan. *Id.* at 28. See Exhibit 30, pg. 19 on the next page.

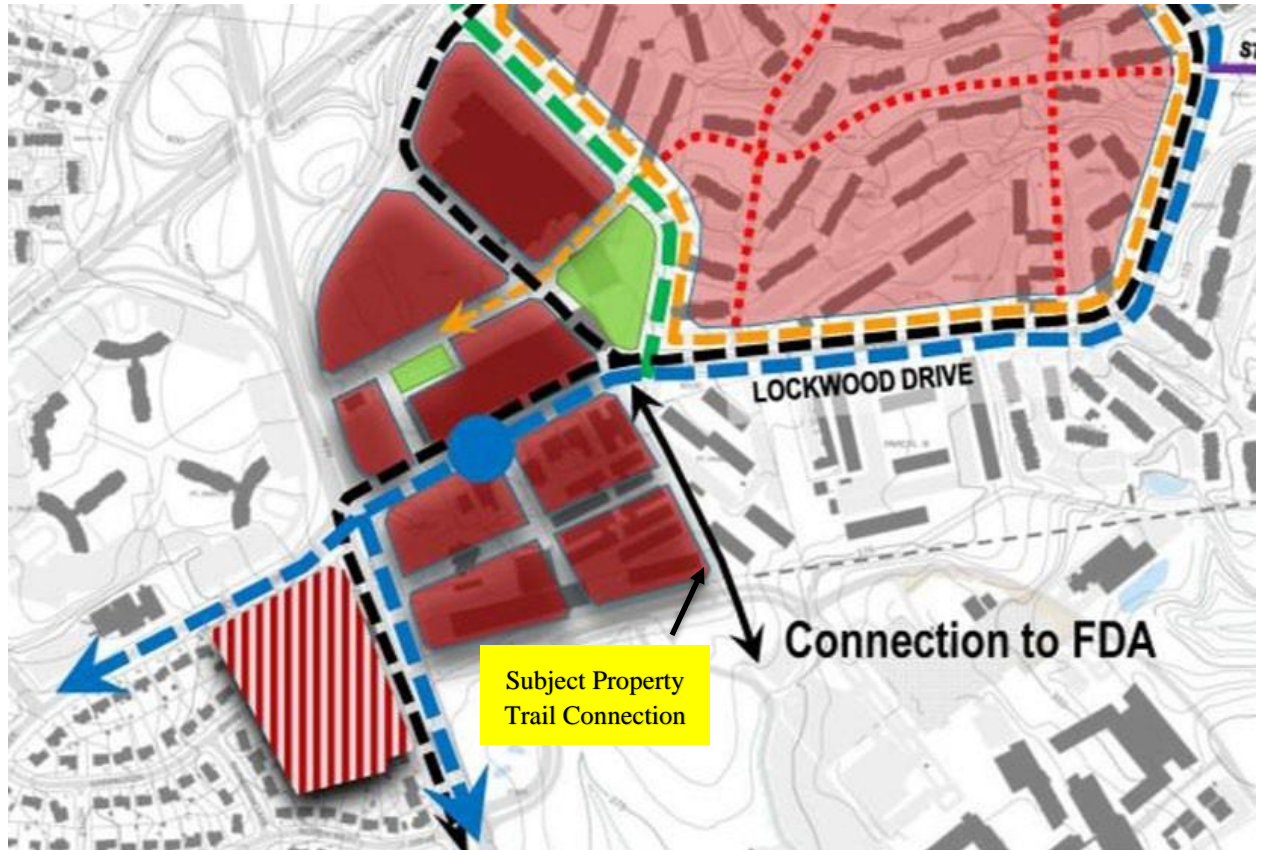


Exhibit 30, pg. 19, FDA-Lockwood Drive Connection as shown in Master Plan

Mr. La Vay opined that the use conformed to the Master Plan because it acknowledges a reaffirmation of existing centers to provide the framework for reinvestment that's vital to the community's longevity. T. 38. In addition, he stated that the master plan envisioned a redevelopment that enhances the area's quality of life, its appearance, walkability, quality of life, appearance and sense of place. *Id.* at 19. Mr. La Vay believes the project meets the Master Plan's goals because the proposal invests in an existing property in a manner that improves the properties appearance and enhances the pedestrian streetscape. *Id.*

Conclusion: Aside from the explicit requirement to “substantially conform” to the Master Plan, OZAH has interpreted the “public interest” requirement as conformance to adopted

County plans and policies, including the relevant master plan. The Hearing Examiner agrees with both Staff's and Mr. La Vay's characterization of the goals and recommendations of the Master Plan, which states (Plan, p. 11):

Reimagining existing centers – and providing a framework for reinvestment – is vital to this community's longevity. This Plan seeks to leverage White Oak's assets and establish the foundation upon which the area can evolve into a community that offers more opportunities to live-work-play locally.

In addition, the Master Plan states that increasing opportunities for new economic development and reinvestment in existing centers to be critical elements to enhancing this area and improving its quality of life. *Id.* at pg. 23. The Master Plan provides, "the best approach for this area is land use and zoning that is inclusive allowing for a wide variety of possibilities that can respond to the market." *Id.* at pg. 24.

The Hearing Examiner agrees with Mr. La Vay's testimony that the proposed continuation of the self-storage facility and the proposed improvements furthers the goals of the Master Plan for "reinvestment in existing centers ... improving quality of life" and the community's longevity. The project will upgrade the existing site's appearance, create a more pedestrian friendly environment and provide for the increased demand for self-storage due to post COVID-19 changes in how and where people work. The Hearing Officer also agrees with Mr. Cratin's testimony that this community's self-storage needs are underserved, many remote workers need to create dedicated office spaces in their homes and that this proposal will provide an important community service. Having no evidence to the contrary, the Hearing Examiner finds that the FZP furthers the Plan's environmental goals and transportation goals for the reasons stated by Staff. The FZP does not limit a future mixed-use transition as envisioned the Master Plan in the remaining part of this quadrant, is consistent with the Plan, and furthers the

public interest.

2. Compatibility²

Several sections of the Zoning Ordinance require the District Council to analyze the compatibility of the proposed FZP with adjacent uses and the surrounding area. The application must:

Section 7.2.1.E.2.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;

* * *

Section 5.1.2.C. (Intent of Floating Zones). 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 5.3.2.C. (Purpose of Commercial/Residential Zones). The purpose of the Commercial/Residential Zones is to ... provide mixed-use development that is compatible with adjacent development.

Section 7.2.1.E.2.d. be compatible with existing and approved adjacent development...

² Section 59.7.2.1.E.2.f also addresses compatibility, but only when the existing zone is a Residential Detached Zone: "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 CR Zone is not a residential detached zone. *Zoning Ordinance*, §59.2.1.3.C.1. For this reason, the Hearing Examiner does not address this standard.

Staff determined that the proposed development is compatible because there is no change to the underlying use. It also concluded that the building will be designed to be compatible with adjacent and surrounding development by elevating the existing exterior façade with attractive and modern finishes to work in concert with new development and reinvestment in the White Oak neighborhood. Exhibit 30, pg. 28. In addition, the construction of the new 5-story facility at the rear of the property, not readily visible from New Hampshire Avenue, was designed to blend with the updated existing structure at the front of the property. *Id.* at 23. Staff concluded that the building design elements and landscaping create a compatible transition to the surrounding properties. *Id.*

Mr. La Vay testified that the existing use is compatible with the surrounding neighborhood and the proposed changes will only further increase that compatibility. T. 32. The rear of the building is setback to accommodate a future trail and an additional 45-110 feet from the garden-style apartments. There are large mature trees along the property line that buffer the use from the apartments. T. 43. Ms. Brown, the Applicant's architectural expert, stated the new building on the rear of the site is more compatible with the surrounding uses because the structure will take the place of the existing outdoor vehicular storage. T. 79. Ms. Brown and Mr. La Vay testified that the proposed building at the rear and the front addition not only comply with the height and setback requirements of the CRTF zone but brings the site "more in alignment with the current codes." T. 76.

Mr. La Vay discussed Section 59.5.3.2.C of the Zoning Ordinance encouraging "flexibility in uses for a site." T. 44. He pointed out the unique shape of the site made it unsuitable for other types of uses and development. T. 44. He further asserted that continuing to use the space as self-storage is a "good thing." Continuing the use at this location frees up other

locations to be used for more suitable purposes. T. 42. In addition, Ms. Brown confirmed the design features for the renovation of the existing building and the new construction will be compatible with existing development. T. 79.

Conclusion: Based on this record, the Hearing Examiner agrees with Staff that the project meets the purposes of the CRTF Zone and that the proposed Floating Zone will provide flexibility due to the property's unique setting. The Applicant has used the design flexibility of the CRTF Zone to ensure compatibility with adjacent and surrounding properties. The redesign of the existing structure at the front of the property provides screening of the parking and loading activities, while the new construction at the rear of the property developed with the same materials will provide a seamless transition so the new building will not be readily visible from the street front. The building at the rear will be more compatible with the adjacent residential use to the east because it will eliminate the vehicular parking. This standard has been met.

3. Adequate Public Facilities/Public Interest

Several sections of the Zoning Ordinance require an applicant for a Floating Zone to demonstrate that public facilities will be adequate to serve the property. The Council must find that the application meets the following standards:

Section 7.2.1.E.2.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...

* * *

Section 7.2.1.E.2.b: further the public interest...

* * *

Section 7.2.1.E.2.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;

* * *

***Section 5.1.2.A.2: (Intent of the Floating Zones).
“...implement comprehensive planning objectives
by...ensuring that the proposed uses are in balance with and
supported by the existing and planned infrastructure...”***

Staff advises that a transportation impact study is not required to satisfy the LATR test because projects within the White Oak Policy Area are exempt from the LATR. The proposed development is, however, subject to the Local Area Transportation Improvement Program (LATIP). Exhibit 30, pg. 25. This requires the Applicant to pay a fee based the project's assumed trip generation impact, as determined by the Montgomery County Department of Transportation (MCDOT). *Id.* In addition, the Applicant submitted a Traffic Statement to demonstrate that the development will generate fewer than 50 new net per person trips in the morning and evening peak times. Exhibit 37; T. 56, 60.

Mr. La Vay testified that other public facilities were adequate. As this is not a residential project, public school adequacy review is not required. T. 60. Mr. La Vay stated “there is adequate water, sewer, electric, and gas services to serve the property. And there have been no noted deficiencies in police, fire, accidents, healthcare facilities to serve the property as well.” T. 64.

Mr. La Vay also testified that a stormwater management concept plan has been approved by the Department of Permitting Services (DPS). T. 36-37. On December 9, 2022, DPS found the stormwater management plan for the property to be acceptable. Exhibit 25. In addition, Mr. La Vay stated the project must provide stormwater in accordance with current regulations and the proposed development will improve the stormwater management on the site. T. 36-37.

Conclusion: Based upon the uncontroverted testimony and evidence in this record, the

Hearing Examiner finds that public facilities will be adequate to serve the proposed use and will be finally determined at a later stage of the development process.

B. The Intent and Standards of the Zone (Section 59.7.2.1.E.2.c)

As already stated, Section 59.7.2.1.E.2.c of the Zoning Ordinance requires the District Council to find that the FZP “satisfy the intent and standards of the proposed zone.” The Zoning Ordinance includes an “intent” clause for all Floating Zones and a “purpose” clause for the particular zone requested. Several of these have already been analyzed in Part IV.A of this Report. The balance of the intent findings for Floating Zones and the purposes of the CRTF Zone are discussed below.

1. Intent of Floating Zones (Section 59.5.1.2)

The intent of Floating Zones is in Section 59.5.1.2 of the Zoning Ordinance. The Hearing Examiner has already discussed whether the application has met the intent Sections 59.5.1.2.A.1 and 2. This section discusses whether the FZP meets the remaining intents of the CRTF Zone.

Section 59.5.1.2.A.3 ... The intent of the Floating zones is to:

A. Implement comprehensive planning objectives by...

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

Staff found that the FZP meets this standard because the “project has been designed to complement the surrounding uses and revitalize community.” Exhibit 30, pg. 27. Staff also found that the proposed modifications will elevate the existing front façade creating an improved street presence and reinvestment in the White Oak neighborhood. *Id.* Mr. La Vay pointed out that the use will remain the same as it is today and remain compatible with the surrounding uses, but bring the property into conformance with current land use policies and urban design objectives. T. 42-43. He also stated that the building addition in the rear is setback to

accommodate the 15-foot-wide future trail connection and further back an additional 45 to 100 feet from the garden style apartments. *Id.*

Conclusion: The Hearing Examiner agrees with Staff and the Applicant that the project has been designed to complement the surrounding uses and revitalize the community. It is important to note the fact that the underlying use will not change and that today the use is compatible with the existing surrounding land uses. In addition, the project design elevating and changing the materials to the front of the existing façade creates a more urban street scape while the rear addition takes the place of the existing vehicle storage lessening the impact of the existing use to the multi-family use at the rear of the property.

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***

Both Staff and the Applicant acknowledge that the Master Plan published prior to the COVID-19 pandemic did not consider new challenges presented to families as a result the changes in working and living conditions. Exhibit 30, pg. 28; T. 14, 42. Staff determined that expansion of the self-storage facility will meet some of these challenges and provide much needed storage opportunities for the community. *Id.* at pg. 28. Mr. La Vay opined that maintaining and

expanding the facility on such a long narrow lot is a “good thing” given other uses would find development on this site difficult. T. 42.

Staff found the project satisfies basic sustainability requirements for the following reasons: 1) introduction of stormwater management on a site where none currently exists; 2) provides additional green space and landscaping which promote sustainably and activate a pedestrian environment; 3) use of cool roof and solar panels on the buildings and 4) providing a segment of the property for future trail connection as envisioned by the Master Plan.

Conclusion: The Hearing Examiner agrees with Staff that the project meets the intent of the floating zones. This project will meet a community need for more storage space in response to today's changing live/work environment. The record clearly demonstrates the need exists and this area suffers from a lack of self-storage sufficient to satisfy community need. The redevelopment of such a long narrow site to continue the existing use is indeed a “good thing” and is an appropriate use of the land. The development satisfies the sustainability goals through creation of stormwater management, landscaping, pedestrian friendly environment and use of cool roofs and solar panels in construction will enhance the environment for years to come.

2. Purpose of the Commercial Residential Floating Zones (Section 59.5.3.2)

In addition to meeting the intent of Floating Zones, the FZP must meet the purpose of the zone requested. The purposes of the CRTF Zone are in Section 59.5.3.2. The Hearing Examiner has already discussed Section

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.

Staff concluded as follows:

The Project meets the purposes of the CRTF zone. The Project's proposed Floating Zone will provide flexibility in response to the Property's unique setting within the White Oak area. The existing and proposed self-storage facility is a neighborhood amenity that has been carefully designed to ensure that building heights, massing, and the proposed use will remain as a compatible use for the community. As part of the Subject Application, the pedestrian realm, and the Property's relationship to its street frontage will be improved and made more compatible with surrounding development.

Exhibit 30, pg. 29.

Conclusion: The Hearing Examiner already found that the FZP furthers the purpose of §59.5.3.2.C in Part IV.A.2 of this Report (relating to compatibility of the use with surrounding development). The remaining purposes listed here are redundant of the findings already made. The FZP has been designed in response to the properties unique setting, maintains the existing use and will remain compatible with the community and surrounding properties. This standard has been met.

C. Applicability of a Floating Zone (§59.5.1.3)

Section 59.5.1.3. of the Zoning Ordinance sets up a series of threshold tests to determine whether a Floating Zone may be applied to properties current in an Agricultural or Residential Zone. Staff advises, and the Hearing Examiner agrees, that there are no prerequisites for property already within the CR Zone. Exhibit 30, pg. 29.

D. Development Standards and Uses Permitted in the CRTF Zone (Div. 59.5.3)

1. Uses and Building Types Permitted (§§59.5.3.3 and 59.3.3.4)

Section 59.5.3.3 of the Zoning Ordinance limits the uses permitted in the CRTF Zone to "only" those uses permitted in the CRT Zone. Self-storage is allowed as a conditional use in the CRT zone. The use is permitted so long as it receives conditional use approval pursuant to the standards as set forth in the Zoning Code. A conditional use plan was submitted

concurrently with the LMA application and has been approved by the Hearing Examiner.

2. Development Standards of the CRTF Zone

Section 5.3.5 Development Standards.

Staff found that the FZP meets the development standards of the CRTF (Zoning Ordinance, §59.5.3.5), as demonstrated in the table from the Staff Report (Exhibit 30, p. 31, shown on the next page).

The Applicant will need to provide public benefits that conform to the Master Plan recommendations during approval of a sketch and site plan. Staff advises that the Applicant identified a list of public benefit categories including minimum parking, quality building design, solar panels and cool roofs. Exhibit 30, pg. 3.

Development Standards Table - White Oak Self-Storage	Permitted	Proposed
Maximum Total Density (FAR)	2.5	2.06
Maximum Commercial Density (FAR)	2.25	2.06
Maximum Residential Density (FAR)	1.5	0
Maximum Height	200 ft	60 ft
Minimum Setback - Front Site Boundary	TBD at Site Plan	25 ft
Minimum Setback - Rear Site Boundary	TBD at Site Plan	15 ft
Minimum Setback - Side Site Boundary	TBD at Site Plan	0 ft
Minimum Lot Size	n/a	2.62 acres
Minimum Open Space	0%	n/a
Minimum Public Benefits (to be finalized at sketch plan)	50 points (3 categories)	52 points (3 categories)
Parking Lot Landscaping - Landscaped Area	5% (549 sf)	569 sf
Parking Lot Landscaping - Tree Canopy	25% (2,747 sf)	2,858 sf
Parking Lot Landscaping - Perimeter Planting Width	6 ft	8 ft 6 in
Parking Lot Landscaping - Perimeter Planting Height	3 ft	>3 ft

**Development Standards of Zone
Permitted and Proposed FZP Ex.
30, pg. 31**

3. Requirements of Article 59.6

Article 59.6 of the Zoning Ordinance contains general development standards for most developments. These standards regulate the number and design of parking spaces, drive aisles, landscaping, lighting, and public and private open space. The proposed development conforms to these standards, except for parking. A table from the Applicant’s Revised Land Use Plan (Exhibit 18b, p. 14), shown on the following page) compares the requirements of Article 6 to the proposed development. The Applicant has requested a waiver of the minimum parking requirements. The Hearing Examiner has approved the parking waiver in the concurrent conditional use application. Thus, the proposed parking will satisfy the development standard.

	Standard	Permitted/Required	Provided Per Plan
Section 59.6.1	Driveway Access		1
Section 59.6.2	Parking Requirements		
	Vehicle Parking Spaces	25 spaces (min)	12 Spaces (<i>see</i> waiver request below)
	Bicycle Parking Spaces	None Required	N/A
Section 59.6.2.5	Vehicle Parking Design Standards		
Section 59.6.2.9	Parking Lot Landscaping and Outdoor Lighting (for more than 10 spaces)		
	Landscaped Area	5% of the total area of the surface parking lot	Complies, See Landscape Plans.
	Tree Canopy	25% at 20 years of growth	Complies. See Landscape Plans.
	Perimeter Planting Width	6 Feet	Complies. See Landscape Plans.
	Perimeter Planting Height	3 Feet	Complies. See Landscape Plans.

Revised Land Use Plan Exhibit 18(b), pg. 14
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V. RECOMMENDATION

For the foregoing reasons, the Hearing Examiner concludes that the proposed reclassification and Floating Zone Plan 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, under State law. Therefore, I recommend that Local Map Amendment Application No. H- 147, requesting reclassification from the existing CR-2.5, C-1.5, R-1.5, H-200 (Commercial Residential) to CRTF 2.25, C-2.25, R-1.5, H-200' (Commercial Residential Town Floating) located at 11105 New Hampshire Avenue, Silver Spring, MD 20904 as part of Lot E in the "White Oak" subdivision recorded as Plat No. 8280 (Tax Account No. 05-00276584), be **approved** in the amount requested and subject to the specifications and requirements of the Floating Zone Plan (Exhibit 20), provided that the Applicant files a final executed Declaration of Covenants reflecting the binding elements 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.

Issued: February 23, 2023.

Respectfully submitted,



Kathleen E. Byrne
Hearing Examiner