

Clerk's Note: The Action section has been corrected in the last line of page 17 to clarify the zoning change.

Resolution No.:	<u>17-502</u>
Introduced:	<u>July 17, 2012</u>
Adopted:	<u>July 17, 2012</u>

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

By: District Council

SUBJECT: APPLICATION NOS. G-862 AND G-863 FOR AMENDMENT TO THE ZONING ORDINANCE MAP (REMAND), Steven A. Robins, Esquire and Patrick O'Neil, Esquire, Attorneys for Applicant, GLENMONT LAYHILL ASSOCIATES, LLC, OPINION AND RESOLUTION ON APPLICATION

Tax Account Numbers are included in an Appendix attached to this Resolution.

OPINION

Local Map Amendment (LMA) Application Nos. G-862 and G-863 were originally filed on November 29, 2006 by the Applicant, Glenmont Layhill Associates, LLC. LMA G-862 requests reclassification from the R-T 12.5, R-30 and O-M Zones to the TS-R Zone of 23.8810 acres of land located at the intersection of Georgia Avenue and Glenallan Avenue in Silver Spring, Maryland, in the 13th Election District. The property subject to LMA G-862 is described as Parcel A Glenmont Park, Plat Book 76, Plat 7512; Parcel B Glenmont Park, Plat Book 79, Plat 7940; Parcel C Glenmont Park, Plat Book 80, Plat 8133; Parcels D & F Glenmont Park, Plat Book 81, Plat 8386; Re-subdivision Plat Parcel G Glenmont Park, Plat Book 177, Plat 19865; Parcel E Glenmont Park, Plat Book 102, Plat 11589; and Lots 1-49 & Parcels A thru F, Block 1 Glenmont Mews, Plat Book 136, Plat 15756, located at the intersection of Georgia Avenue and Glenallan Avenue, Silver Spring, Maryland.

Application No. G-863, filed on the same date by the same applicant, requests reclassification from the R-30 Zone to the TS-R Zone of 7.0514 acres of land adjacent to the land covered by Application No. G-862, known as Parcel A Glenmont Park, Plat Book 76, Plat 7512; Parcel B Glenmont Park, Plat Book 79, Plat 7940; and Re-subdivision Plat G Glenmont Park, Plat Book 177, Plat 19865, located at the intersection of Georgia Avenue and Glenallan Avenue, Silver Spring, consisting of 7.0514 acres in the 13th Election District.

By Resolution 16-424 (*Resolution*), adopted on January 15, 2008, the District Council remanded the original application. The Council found that the application met all standards for rezoning except for the compatibility of site-generated traffic with the surrounding area.

Specifically, the Council found that the intersection of Georgia Avenue/Randolph Road, under then-existing conditions, was heavily congested and did not operate in a manner that “any reasonable person would consider acceptable.” *Resolution*, p. 17. While the traffic study indicated that the intersection operated within the congestion levels permitted by the Local Area Transportation Review (LATR) Guidelines, the Council found that sole reliance on the LATR methodology did not accurately depict existing conditions. This is because the intersection was so congested that traffic did not flow freely through it, resulting in artificially low Critical Lane Volume (CLV) counts. *Resolution*, p. 15. Because the traffic study submitted began with the premise that the intersection operated at acceptable congestion levels, the Council found the Applicant’s evidence that the intersection would operate acceptably with the additional traffic generated by the proposed development was insufficient. Specifically, the Council remanded the case to the Hearing Examiner in order to:

...provide the Applicant with the opportunity to present additional evidence demonstrating that neither Stage 1 nor the combined Stage 1 and Stage 2 of the proposed Glenmont Metrocenter would have a lack of adverse impact on traffic in the surrounding area, including (i) a queuing analysis for the intersection of Randolph Road and Georgia Avenue, under the methodology and standards outlined in Part V.A. of the Local Transportation Review Guidelines approved and adopted by the Planning Board on July 1, 2004, and (ii) an analysis of the mitigation proposed by the Applicant for any adverse traffic impacts identified in the queuing analysis.

Resolution, p. 29.

Pursuant to the Council’s action, the Applicant submitted a Supplemental Traffic Analysis and Technical Appendix dated May 6, 2008. Exhibits 147(e), (f). Shortly thereafter, however, the Applicant requested, and was granted, an indefinite postponement of the case. Exhibits 168, 169. No further action was taken on the application until November 14, 2011, when the Applicant submitted a request to schedule the matter for public hearing. Exhibit 171. The Applicant submitted additional traffic information dated November 7, 2011. Exhibit 171(a). A public hearing was initially scheduled for February 10, 2012, but was continued to March 5, 2012, to permit several individuals opposing the application additional time to review the Applicant’s Supplemental Traffic Analysis as well as the 2011 traffic information submitted. Exhibits 179, 180. The closing of the record was extended to permit an opportunity for the Washington Metropolitan Area Transit Authority (WMATA) to comment on the Application as well and to permit Mr. Richard Kauffunger, an individual opposing the application, to cross-examine Technical Staff on its report. Exhibits 203-205. The additional public hearing proceeded as scheduled on April 16, 2012, and the record closed on May 1, 2012, after submission of closing arguments by the parties. Exhibits 209-214.

On June 15, 2012, the Hearing Examiner issued a Report and Recommendation which is incorporated herein by reference. The Hearing Examiner found that traffic generated by the development would be compatible with the surrounding area.

After a careful review of the entire record, the District Council finds that the application be approved for the reasons stated in the Hearing Examiner's Report and Recommendation.

The Property, Surrounding Area and Zoning History

The property, surrounding area and zoning history were all described in detail both in the Hearing Examiner's Report and Recommendation in the pre-remand case and in District Council's Opinion in Resolution 16-424. The subject property lies on the north side of Glenallan Avenue across from the Glenmont Metro Station and is generally bounded by Layhill Road to the east, Glenallan Avenue to the south, Georgia Avenue to the west, and the WMATA Maintenance Yard to the north. 3/5/12 T. 11. The subject property was developed as a single site during the 1960s with an apartment complex called "Privacy World." The complex contains 352 dwelling units, although the evidence indicates that approximately 40% of the units are currently vacant. 3/5/12 T. 333. The Applicant describes the property as an "island" surrounded by Metro-related facilities. 3/5/12 T. 10-11.

The "surrounding area" was determined in the original application to be the area identified as the Glenmont Village Center in the *Sector Plan for the Glenmont Transit Impact Area and Vicinity, Approved and Adopted September 1997* (the "Sector Plan"), p. 21. The Hearing Examiner in the pre-remand case found this area to be substantially the same as the "Glenmont Center" area shown on Figure 8 from the Sector Plan. *Hearing Examiner's Report and Recommendation*, dated October 18, 2007 (*Original ZHE Report*).

The Council previously characterized the existing area as containing a mix of uses and zones. The Hearing Examiner found that the subject site is bordered to the north and northwest by property owned by WMATA, and on all other sides by busy roadways. *Original ZHE Report*, p. 14.

Proposed Development and Binding Elements

The Applicant's Development Plan proposes a total maximum development (i.e., combined Stage I and II) of 1,550 dwelling units and 90,000 square feet of retail. Exhibit 214(c). Stage I will include 12.5% Moderately Priced Dwelling Units (MPDUs), and the combined development will contain 14.5% MPDUs. The Hearing Examiner in the case before remand found that:

The dwelling units would be made up of townhouses, low-rise and mid-rise multi-family buildings, multi-family dwellings over retail, and possible live/work units. The Applicant anticipates that if the full 1,550 units are built, the breakdown of dwelling unit types will be 190 to 250 townhouses and 1,300 to 1,360 multi-family units. The overall residential density proposed for the site is 50.4 dwelling units per acre, including a 19.3 percent MPDU bonus. This is just under the maximum residential density recommended in the Sector Plan.

Original ZHE Report, p. 19. Post-remand, the Applicant amended some of the binding elements in the development plans which are set forth in the next section.

Binding Elements

The graphic portion (*i.e.*, site layout) of the development plan (Exhibit 214(c)) is illustrative (except as specified in the binding elements). Those textual binding elements revised post-remand are underlined. The binding elements of the Development Plan area as follows:

1. The Development Plan contains “Development Blocks” which identify those areas of the property that will be developed. Within these Development Blocks, the plan reflects product type, density of the development, general building locations, open space, landscaping and recreation areas and parking spaces. The development Block Analysis identifies:
 - a. The Development Block.
 - b. Use types.
 - c. Approximate range of units.
 - d. Approximate range of Retail/Commercial.
 - e. Height Ranges.
 - f. Approximate setbacks from curb to face of buildings.

The precise location, building footprints and square footages of the buildings, and open space, landscaping and recreation space within each Development Block as well as the actual number of parking spaces will be decided at site plan. Minor modifications to the size and shape of the Development Blocks may be made at the time of site plan.

2. The total number of units on the property for Stage 1 and Stage 2 combined shall not exceed 1550 dwelling units including MPDUs (up to 14.5% of the total number of units based on 1550 dwelling units) with no more than 500 new units to be approved as part of Stage 1 of the development (existing units that are replaced with new units do not count toward the 500 unit cap requirement for Stage 1). Stage 1 shall include 12.5% MPDUs. The total number of residential units (including the total number of MPDUs in the development and the percentage requirement of MPDUs as contained in Chapter 25A of the Montgomery County Code) and the amount of retail/commercial uses will be determined at site plan. Units may be shifted between Development Block areas so long as: (i) the range of units within each Development Block does not vary by more than 10% and (ii) The total number of units in the entire development does not exceed 1550. The total amount of retail/commercial shall not exceed 90,000 square feet and will be within the range shown on the Development Block Analysis.
3. At the time of preliminary plan of subdivision approval, the Applicant shall submit for Planning Board review and approval, a revised Local Area Transportation Review analysis that re-evaluates Stage 2 of the development so that the Planning Board can make a determination whether the Georgia

Avenue/Randolph Road intersection will function at an acceptable level to permit all or a portion of Stage 2 to move forward pursuant to the County's established rules and procedures for determining the adequacy of public facilities or the Applicant has committed to the use of the Alternative Review Procedure for Metro Station Policy Areas.

4. No building permit applications for Stage 2 of the development will be applied for until either a grade separated interchange is fully funded for construction or other transit or transportation improvements are under construction that would make the intersection of Randolph Road and Georgia Avenue function at an acceptable level as determined by the Montgomery County Planning Board or the Applicant has committed to the use of the Alternative Review Procedure for Metro Station Policy Areas. The Applicant may incorporate the following mitigation measures as part of the subdivision application: physical roadway improvements, pro rata payments toward the programmed Georgia Avenue/Randolph Road interchange, Local Area Transportation Review mitigation measures (e.g., real-time transit times, pedestrian count-down signals, bike racks, etc.), transit enhancements/incentives, establishing a neighborhood circulator shuttle, pedestrian safety measures and/or other improvements.
5. No building shall exceed 7 stories or 85 feet as measured pursuant to the Montgomery County Zoning Ordinance.
6. All private roads shall meet the Montgomery County standards required for emergency vehicle access.
7. No structures or impervious surfaces shall be located within the Environmental Buffer.
8. The Glenmont Sector Plan, adopted September 1997 (the "Sector Plan") recommends a maximum base density for the entire property of 42 units per acre, which results in a maximum density of 51 units per acre with MPDUs. As shown, Stage 1 reflects a maximum density of 32.45 units per acre with MPDUs and Stage 2 reflects a maximum density of 119.4 units per acre with MPDUs. Collectively, the maximum density for Stage 1 and Stage 2 is 50.1 units per acre with MPDUs, in conformance with the Sector Plan density of up to 51 units per acre.
9. Subject to Textual Binding Element Note 4, the completion of any portion of the project is not necessary to commence any subsequent portion of the project.
10. The Applicant will conduct an operational study at the time of preliminary plan of subdivision to identify and evaluate appropriate operational improvements including: (i) pedestrian crossings between the Glenmont Metrocenter Project and the Glenmont Metro Station, (ii) pedestrian safety along Glenallan Avenue and sight distances for turning movements from the project onto Glenallan

Avenue, (iii) gaps in through traffic to allow cars to enter and exit safely to and from the driveways south of Glenallan Avenue onto Layhill Road and (iv) cut-through traffic along Glenallan Avenue to Randolph Road. Any operational improvements to be provided are subject to the approval of the applicable governmental agencies.

The post-remand revisions to the binding elements permit the Applicant to develop Stage II either if (i) the intersection of Georgia Avenue and Randolph Road operates within acceptable LATR levels or (ii) the project meets the requirements of the Alternative Review Procedures for projects in Metro Station Policy Areas. In the application prior to remand, the Binding Elements then proposed permitted the Applicant to develop Stage II only if the intersection of Georgia Avenue and Randolph Road met LATR congestion standards.

The additional textual binding element (i.e., Binding Element No. 10) was submitted by the Applicant in response to a recommendation from the Planning Board and testimony regarding existing operational issues along Glenallan Road. Exhibit 184. These operational issues stemmed from the sight distance along Glenallan Road at the entrance to the Metro's Kiss and Ride and from problems caused by on-street parking along Glenallan Avenue adjacent to the Glen Way Gardens Condominiums. This binding element commits the Applicant to study operational improvements relating to vehicular and pedestrian safety along Glenallan Avenue at the time of preliminary plan approval.

Standard for Review

A floating zone, such as the TS-R Zone, is a flexible device. Individual property owners may seek to have property reclassified to a floating zone by demonstrating to the Council that the proposed development will be consistent with the purpose and regulations of the proposed zone and compatible with the surrounding development, as required by the case law, *Aubinoe v. Lewis*, 250 Md. 645, 244 A.2d 879 (1967). The Council must also find that the rezoning will be in the public interest as part of the coordinated and systematic development of the regional district, as required by the *Regional District Act, Maryland-National Capital Park and Planning Commission Article (Art. 28), Md. Code Ann., § 7-110*.

Because the scope of the District Council's review is limited to the compatibility of site-generated traffic with the surrounding area, all of the criteria for approval will not be set forth here. Those findings set forth in the Council's original resolution remanding the case (i.e., Council Resolution 16-424), remain binding on this application.

Compatibility of Traffic Impacts of the Proposed Development

An application for a floating zone reclassification must meet the intent of the zone and be compatible with land uses in the surrounding area. *Montgomery County Code*, §59-D-1.61(b). The intent of the TS-R Zone, as expressed by the Council in §59-C-8.22 of the Zoning Ordinance, is set forth below:

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

In the original proceeding, the District Council concluded that the purpose clause of the TS-R Zone encompassed the concept of compatibility with the surrounding area because of its emphasis on preventing detrimental impacts to adjoining property. *Resolution*, p. 22. The District Council found that the pre-remand development plan *was* compatible with the surrounding area *with the exception* of the traffic impacts of the proposed development. *Id.*, p. 24. With regard to these impacts, the Council found that sole reliance on the LATR CLV methodology did not accurately depict existing conditions in the area, and particularly at the intersection of Georgia Avenue and Randolph Road. Because photographs and other evidence demonstrated that traffic was so congested it was not flowing freely through the intersection, the CLV volumes were artificially low. The Council further found that the traffic analysis prepared in the original case did not adequately assess traffic impacts on the surrounding area because it began with the premise that the intersection of Georgia Avenue and Randolph Road operated at acceptable levels of service. *Id.*, pp. 15-17. For these reasons, the Council remanded the case to permit the Applicant to submit additional evidence that development of Stages I and II would be compatible with the surrounding area, and in particular, a queuing analysis (using the LATR methodology) for the intersection of Georgia Avenue and Randolph Road. *Id.*, pp. 28-29.

A significant difference between the pre- and post-remand cases is that a grade-separated interchange at the intersection of Georgia Avenue/Randolph Road is now fully funded for construction in the State's capital program for 2016. Exhibit 184(a), p. 6. While the Council did

permit the Applicant to rely on the interchange as one potential means of mitigation in the original case, it now meets the LATR Guidelines for consideration as mitigation of the traffic impacts of the development. Exhibit 184(a), p. 6. At the time the Council considered the original case, that was not the case, and the Applicant submitted its traffic analysis based both on the grade-separated interchange and alternative at-grade improvements.

On remand, the Applicant presented a Supplemental Traffic Analysis (Exhibit 147(e)) with an accompanying Technical Appendix (Exhibit 147(f), dated May 6, 2008, which utilized several methods for assessing the compatibility of site-generated traffic with the surrounding area. As instructed in the remand, the Applicant did perform a queuing analysis of the intersection of Georgia Avenue and Randolph Road using the method set forth in the LATR Guidelines. The LATR queuing analysis requires the Applicant to observe queues to determine whether the length of the queue exceeds 80% of the distance to the next intersection. 3/5/12 T. 37. It also performed a queuing analysis of nine of the intersections studied in the original traffic report to determine whether there were any additional problematic intersections within the surrounding area. Exhibit 147(e).

Starting with the observed queues at each of the nine intersections, the analysis took into account background traffic (i.e., traffic from developments approved but not constructed), and site-generated trips. The Applicant's queuing analysis identified two intersections where the queue exceeded the maximum 80% distance between intersections. The intersection of Georgia Avenue/Randolph Road exceeded the LATR queue standard both for existing, background and future conditions and the intersection of Georgia Avenue/Layhill Road was projected to exceed the LATR queue standards upon the completion of Stages I and II. Exhibit 147(e), p. 10; 3/5/12 T. 56. In addition, the Applicant included in its queuing analysis the intersection of Georgia Avenue/Glenallan Avenue because of concerns raised by the community. Exhibit 147(e).

As the LATR queue analysis is based on observed queues, the Applicant used an additional methodology, the Highway Capacity Manual (HCM)/Synchro© methodology, to determine the impact of the grade-separated interchange on queues at Randolph Road/Georgia Avenue, Georgia Avenue/Layhill Road, and Glenallan Avenue/Layhill Road. The Applicant's traffic expert testified that the HCM method provides queue information, but only for one intersection. The combined HCM/Synchro© analysis affords review of an entire system and enables input of different variables, including road improvements and signal timing. 3/5/12 T. 33-34. Because the remand required the queuing analysis to be done under the LATR (i.e., observed queue) method, the Applicant stated it used HCM/Synchro© only to ascertain the percentage difference between existing queues, future queues without road improvements and future queues with road improvements. 3/5/12 T. 57. The Applicant then applied the percentage difference between existing and projected queues under the HCM/Synchro© methodology to the LATR observed queue. The Supplemental Traffic Analysis shows that with either the at-grade LATR road improvements previously proposed or the grade-separated interchange, queues at the three intersections studied met the LATR standards, although they did not do so without the future road improvements. Exhibit 147(e), p. 13.

The Applicant's traffic expert also reviewed the project using an Alternative Review Procedure set out in the LATR guidelines. She testified that several approved Local Map

Amendment applications have used this methodology, but it is unnecessary here because of the improvement in existing conditions with the planned grade-separated interchange. 3/5/12 T. 74-75.

Due to the relatively long delay (at the Applicant's request) between submission of the 2008 Supplemental Traffic Analysis and the public hearing on remand, the Applicant submitted additional traffic information in 2011. Exhibit 171(a). Technical Staff requested the Applicant to perform an additional CLV analysis at the intersection of Georgia Avenue and Layhill Road, and the adjacent intersections to the north and south, i.e., Georgia Avenue/Randolph Road, and Georgia Avenue/Urbana Drive. Staff requested the Applicant to study these intersections because the southbound approach on Georgia Avenue at Layhill Road was the worst queue identified in the 2008 Supplemental Traffic Analysis. As a result, Staff required the Applicant to update the count and queue data at these three key intersections to determine whether traffic volumes had changed since the Applicant's 2008 Supplemental Traffic Analysis. Exhibit 184(a). The Applicant's traffic expert performed a CLV analysis for each intersection requested and observed the southbound queue on Georgia Avenue at Layhill Road, which was the significant queuing issue in the 2008 supplement traffic study. 3/5/12 T. 66. Photographs and testimony from the Applicant's traffic expert demonstrate that the southbound queue on Georgia Avenue at Layhill Road has been significantly reduced since 2008 due to changes in signal timing at that intersection. 3/5/12 T. 67-70.

Technical Staff recommended approval of the application, concluding that traffic volumes had not changed, and in fact, that the CLV values had decreased at the intersections studied. Exhibit 184(a), p. 5. Technical Staff reviewed the queuing data for the southbound approach of Georgia Avenue at Layhill Road and found that the southbound queue on Georgia Avenue had decreased from 420 feet in 2008 to 189 feet in 2011 and currently meets the LATR standards. Exhibit 184(a), p. 6.

The Planning Board also recommended approval of the application. In response to requests from opponents to perform additional traffic analysis, the Board found "it was persuaded by testimony and written submissions from transportation planning staff from Area 2 and the Applicant's transportation planner that such additional analysis would contribute little to the understanding of the impacts of the proposed development, given the decreases in traffic volumes in the area between 2008 and 2011 and the significant traffic flow improvements expected from the fully-funded, grade-separated interchange at Georgia Avenue and Randolph Road." Exhibit 184.

WMATA also supported the application, stating that the development is consistent with WMATA's goal to promote transit ridership. While it noted that additional coordination between the Applicant and WMATA was necessary to resolve operational issues, WMATA expressed its confidence that these could be resolved at the time of preliminary plan. Exhibit 207.

Those opposing the application assert that there are several flaws in the Applicant's analysis of the traffic impacts of the proposed use. These are grouped by topic below:

1. Existing Conditions

Those opposing the application argued that existing conditions were significantly worse than depicted by the Applicant's traffic expert and that photographs submitted by the Applicant depicting acceptable conditions were not accurate. They believe that any improvement in conditions is due to the poor economy and that, once the economy improves, the congestion will return to 2006 levels. 3/5/12 T. 197-198. They contend that the 2008 Supplemental Traffic Analysis mischaracterizes the intersections as operating at acceptable levels because, in some cases, a single approach is failing although the overall intersection does not. Because the single approach fails, they reason, severe back-ups and delays are not reflected in the results of the analysis.

The Applicant counters these arguments by asserting that improvements in existing conditions are the result of signal timing changes which have already been made at the intersection of Georgia Avenue and Layhill Road, as well as possibly the completion of the Inter-County Connector, increased transit use, and gas prices. 3/5/12 T. 65-71. In the 2008 Supplemental Traffic Analysis, the cause of the problematic queues on southbound Georgia at Layhill Road were attributable to left turns proceeding southbound on Georgia Avenue and turning eastbound onto Layhill Road. The then-existing signal timing gave insufficient "green time" for those eastbound lefts onto Layhill Road. After the State Highway Administration (SHA) adjusted the signal timing to give more time for the eastbound lefts, the queue was reduced dramatically, i.e., by 232 feet in the a.m. peak hour and 113 feet in the p.m. peak hour. 3/5/12 T. 69-71. The Applicant's traffic expert also submitted photographs of queues at several locations in the surrounding area, all of which showed that queues could be dissipated in a single signal cycle. Exhibits 197, 198.

Both Technical Staff and the Planning Board advise that the 2011 traffic information provided by the Applicant validates the conclusions reached in the Applicant's Supplemental Traffic Analysis, and in fact, state that existing volumes at the problematic intersections identified in 2008 have decreased. This is further confirmed by the fact that the key queue on southbound Georgia Avenue at Layhill Road has decreased due to signal timing changes made by the SHA. Exhibit 184. While Mr. Bronstein testified that the reduced volume of traffic is a result of problems in the economy, he did not provide quantifiable evidence assessing the impact of the economy on decreased traffic volumes or in what way an economic recovery would affect future projected volumes. Nor did those opposing the application submit any photographs or other evidence indicating that congestion levels have increased since the original case. For these reasons, the District Council finds, as did the Hearing Examiner, that existing conditions depicted in the Applicant's traffic report have not changed significantly since the Applicant's 2008 Supplemental Traffic Analysis in a manner which would undermine the conclusions reached therein, and that, in fact, traffic volumes have shown improvement since the first hearing in this case.

2. Trip Generation Rate for WMATA Western Parking Garage

Those opposing the application argue that the Applicant's original traffic study (on which the 2008 and 2011 traffic studies are based) significantly underestimated the trips to be generated by a new garage constructed by WMATA on the west side of Georgia Avenue. In support of this, Ms. Vicki Vergagni performed her own traffic study of the existing garage and concluded a more accurate trip generation rate for the new garage would be .3 trips per parking space. The traffic expert applied this trip generation rate to the 1,112 spaces that will be in the new garage, resulting in 367 trips, almost double the number included in the Applicant's original traffic report. 3/5/12 T. 283-284. Mr. Kauffunger submitted a traffic study prepared for WMATA in 2006 which analyzed two potential locations for the new garage. The 2006 WMATA study used a trip generation rate of .34 cars per parking space for the evening peak hour, resulting in a total of 378 trips. The Applicant's study assumed only approximately half that amount. 3/5/12 T. 253-254.

The Applicant acknowledges that the Applicant's Supplemental Traffic Study may underestimate the volume of trips from the new WMATA garage. It asserts, however, that the 2006 WMATA study reassigns from the eastern garage to the western garage. Exhibit 196. This reassignment mitigates any impact of the additional trips at that intersection. This is because the WMATA consultants felt that traffic southbound on Georgia Avenue would turn right into the new garage rather than take a left onto Glenallan to enter the existing garage. The traffic expert applied the planned intersection improvements, the optimized signal timing and the reassigned traffic volumes to the results of her study and concluded that the intersection levels of service will improve even if at the volumes projected in WMATA's 2006 study and Ms. Vergagni's study. 3/5/12 T. 294-302.

The District Council finds that the weight of evidence in this case supports a finding that the new WMATA garage will generate approximately .34 trips during the evening peak hour for a total of approximately 378 evening peak hour trips, consistent with the traffic study for the parking garage done for WMATA. It also finds, however, that the evidence supports the Applicant's position that the new WMATA garage does not impact the conclusions of the Applicant's traffic study because of planned improvements to the intersection, including optimized signal timing, and the projected reassignment of trips from the existing garage. While it agrees with those in opposition that the Applicant's first traffic report underestimated the trip generation for the new WMATA parking garage west of Georgia Avenue, the Applicant's evidence that this will not have an adverse impact on the area remains uncontroverted. For this reason, the District Council finds that, even with the additional trips generated by the new parking garage, the concurrent reduction due to reassignment will have no impact on the conclusions in the Applicant's 2008 or 2011 traffic studies.

3. Privacy World Vacancy Rate

Mr. Kauffunger argued that the Applicant's 2008 Supplemental Traffic Analysis is inaccurate because it fails to take into account the existing vacancy rate at Privacy World. In the traffic study, the developer receives credit against the estimated number of new trips for those units it is replacing (because theoretically these cars are already on the roadway). He asserts

that, because Privacy World has a large vacancy rate, the development is receiving a credit against trips which do not presently exist. In support of this, Mr. Kauffunger points to the low volumes shown at the access/egress points in the Applicant's original traffic study, although he testified that he doesn't have any information later than 2005. 3/5/12 T. 247. He also believes this is true because when he drives through Privacy World at night, he sees very few cars parked outside of the apartments. He believes that more trips should be added into the projected trip generation because the vacancy rate is much higher than 40%. 3/5/12 T. 250.

The Applicant provided evidence that the Privacy World apartments currently have a vacancy rate of 40%, based on information provided by the owner. 3/5/12 T. 332-333. The Applicant performed a CLV analysis factoring in additional trips which would be generated if the apartments were at 100% occupancy. According to the Applicant, adjusting for the vacancy rate would add 50 trips in the a.m. peak hour and 57 trips in the p.m. peak hours. By the time these trips are dispersed through the different intersections, the Applicant's traffic expert testified that the additional trips (based on 100% occupancy) do not change the levels of service with the grade-separated interchange. 3/5/12 T. 121.

The District Council finds, as did the Hearing Examiner, that the weight of the evidence supports a finding the project will not have an adverse impact on traffic because of the existing vacancy of the apartments at Privacy World. While Mr. Kauffunger stated that he believed the existing vacancy rate is higher than 40%, he had no specific evidence to quantify the extent of the current vacancy rate. The only evidence submitted by the opposition supporting their position that the vacancy rate should be higher is anecdotal observations from driving through the property at night and certain volumes shown on the original traffic report submitted approximately six years ago. Although hearsay, the District Council finds, as did the Hearing Examiner, the evidence provided by the property owner of greater weight than the anecdotal and unquantified evidence provided by Mr. Kauffunger. Based on the 40% vacancy rate, the testimony from the Applicant's traffic expert that there will be no adverse traffic impact from the project is uncontroverted and the District Council so finds.

3. Existing and Future Operational Problems

Those in opposition interpret the Council's directive on remand to require the Applicant to address both vehicular and pedestrian operational problems that exist along Glenallan Avenue and Layhill Road. 3/5/12 T. 220, 277. All those in opposition raised concerns regarding the number of access points shown on the development plan along Glenallan Road. They feel that these access points are unsafe because of the lack of sight distance at the "dog-leg" on Glenallan Avenue and because of Glenallan Avenue's steep grade rising from Georgia Avenue to Layhill Road. 3/5/12 T. 258, 272-273.

Exacerbating this situation, according to Mr. Bronstein, is the number of pedestrians which will be crossing Glenallan Avenue once the development is completed. He believes there will be 1,300 people crossing Glenallan in the morning and the same number in the evening, plus foot traffic to the retail. This pedestrian traffic in combination with the number of commuters, according to Mr. Bronstein, presents a major challenge which mandates affirmative actions by the developer to alleviate the adverse effects from the development. 3/5/12 T. 199-200.

Ms. Vergagni, President of the Board of Directors of Glen Way Gardens Condominium Association and the on-site property manager, testified regarding existing conditions on Glenallan Avenue. 3/5/12 T. 266-269. The community is bounded by Layhill Road to the west, Glenallan Avenue to the north, and Randolph Road to the southeast. T. 269. Glenallan Avenue is four lanes, but goes down to two lanes approximately 150-197 feet east of the intersection with Layhill Road to permit parking on the sides of the roads. 3/5/12 T. 270. On a normal work day, there are 85 cars parked along Glenallan Avenue, most of which belong to Metro riders. The parking causes problems at the intersection of Glenallan Avenue and Layhill Road because cars proceeding eastbound on Glenallan are not aware of the reduction in lanes until after they pass through the light. She also testified that it's difficult to exit from her community for several reasons. The parked cars on Glenallan Road reduce sight distance for those residents trying to exit the condominium community. In addition, there is a heavy volume of traffic on Glenallan Avenue because people use it to cut-through from southbound Georgia Avenue to westbound Randolph Road. 3/5/12 T. 274-275.

During the evening peak hours, Ms. Vergagni testified that residents of Glen Way Gardens Condominiums have difficulty exiting from the access point on Layhill Road. There is a very short left turn lane at the intersection of Layhill Avenue and Glenallan Avenue. People travel very quickly northbound on Layhill toward Glenallan and residents have trouble making a left hand turn out of the community. Most of the residents try to cross the northbound fast-moving lanes on Layhill Road to take a left onto Glenallan Avenue and proceed north on Georgia, or to do a U-turn on Layhill Road to proceed southbound on Georgia. She does not see how even another 1,000 cars can be accommodated at this location. 3/5/12 T. 276-277. She believes that additional traffic from the proposed development is going to make existing conditions even worse.

Ms. Vergagni expressed concern about the number of access points shown on the development plan as well. She believes that any increase in the number of access points along Glenallan will result in a "demolition derby" because of sight distance problems generated by the dog-leg curve on Glenallan Avenue, the steep grade approaching Layhill Road, and the volume of traffic along Glenallan Avenue. 3/5/12 T. 284-287.

Those opposing the application presented specific binding elements which included measures, such as construction of a pedestrian bridge, to resolve operational conflicts between the proposed development, through traffic on Glenallan Avenue, and the Metro Station. 3/5/12 T. 203, 257-261.

The Applicant asserts that operational issues relating to the property's access are not within the scope of the remand, although it acknowledges some of the conditions described by Ms. Vergagni. In response to the concerns she raised, the Applicant proposes a binding element committing it to study operational issues for both pedestrians and vehicular movements at the time of preliminary plan review. 3/5/12 T. 334.

The District Council finds that the operational issues raised by those opposing the application are not within the scope of the remand. As noted, the case was remanded because the

Applicant's traffic study did not accurately depict existing levels of congestion causing delays at various surrounding intersections. Because the Applicant's original traffic study was premised upon incorrect information, its projections for congestion levels in the future were also suspect. *Resolution*, pp. 16-17. In its Resolution, the District Council mentions non-roadway improvements only as a possible means of mitigating then-existing levels of congestion at the intersection of Georgia Avenue and Randolph Road. The construction of the grade-separated interchange, however, eliminates the necessity of studying these non-roadway improvements and does not open the door for detailed consideration of conflicts raised regarding site access and traffic flow around the site because the Council has already concluded that these will be safe and efficient. Both the District Council and the Hearing Examiner in the original case found that:

The proposed development would serve the safety, convenience and amenity of site residents by providing pedestrian-friendly, transit-oriented, urban-style housing options in a development with excellent transit access, extensive streetscaping and open spaces, and the convenience of on-site retail. The Applicant cannot commit to specific pedestrian-safety measures along Glenallan Avenue because of the need for county approval, but the evidence establishes a clear intent to work with the appropriate agencies to develop measures such as pedestrian crossing signals to allow site residents to make use of their convenient Metro access safely, and to allow area residents to access the subject site safely.

Original ZHE's Report, p. 184; *Resolution*, p. 25. In addition, the District Council found that the "evidence supports a finding that the proposed internal vehicular and pedestrian circulation systems and points of external access would be safe, adequate, and efficient." *Resolution*, p. 25. The Hearing Examiner's first report also states that the:

Applicant presented ample evidence that the internal vehicular and pedestrian circulation systems, which are proposed with an extensive network of interconnected streets and sidewalks, would be safe, adequate and efficient. *Less definite information is available about points of external access because these would require county and state approvals. However, the Development Plan proposes points of external access that, if approved, would be safe, adequate and efficient, and there is no evidence to suggest that they would not be approved.*

ZHE Report (May 18, 2007), p. 184 (emphasis supplied).

Based on these prior findings, the failure to include these issues specifically in the remand order, and the rationale for the remand set forth in the District Council's Resolution, the District Council concludes that potential conflicts between traffic from site access points and other uses along Glenallan Avenue are not within the scope of the remand.

Even were these operational issues properly part of the remand, the evidence suggests that resolution of these issues, including adoption of particular binding elements, are premature because these improvements would be subject to review and coordination with other governmental agencies. WMATA submitted comments on the application which indicate that it is in the process itself of studying operations along Glenallan Avenue and has very recently

adopted a pedestrian and bike plan with which the Applicant should comply. As a result, the Council finds that deferring these issues to the time of preliminary plan is an appropriate approach, especially as Binding Element No. 10 requires the Applicant to study the operational issues raised, ensuring that they will be scrutinized.

4. Projected Queues

Those opposing the application assert that the projected queues in the Applicant's 2008 Supplemental Traffic Analysis (Exhibit 147(e) and (f)) show that queuing will be problematic in the future. They point to the fact that some approaches in the Analysis are projected to operate at failing levels of service, even though the overall intersection will operate at acceptable levels of service. According to Mr. Kauffinger, the Applicant's traffic study demonstrates that delays for the westbound left approach (turning left from Layhill Road onto southbound Georgia Avenue) will increase over time, even with the grade-separated interchange in place. He cited to several other examples where the delays for particular approaches worsened even with the grade-separated interchange. 3/5/12 T. 226-242.

The Applicant responds that the HCM analysis showing the failing approaches was done only to determine the percentage change in the queue with the grade-separated interchange in place. In addition, the HCM analysis demonstrates that all intersections will operate at acceptable overall levels of service. Both Technical Staff and the Applicant's traffic expert testified that SHA will optimize the signal timing, not just for the interchange, but for the roadways along the system which includes the intersection (i.e., Georgia Avenue and Layhill Road). 3/5/12 T. 290. According to the Applicant's expert, the grade-separated interchange will free up a significant amount of green time that will be distributed throughout the roadway system. SHA typically makes sure that the main line operates at C or D levels of service, but currently there are a number of functional inefficiencies causing levels of service A or B for certain approaches. The Applicant's traffic expert testified that this is wasted green time that will be redistributed so that more approaches operate at acceptable levels. While this doesn't guarantee that all LOS E or F approaches will be eliminated, the SHA is starting to do this type of analysis to reduce idling time. 3/5/12 T. 289-292. She did not include these in her HCM analysis because she does not know what the signal timing of the grade-separated interchange will be. 3/5/12 T. 292.

In addition, the Applicant's traffic expert opined that having certain approaches operate at failing levels does not mean that cars are not getting through the intersection, which was the problem identified in the initial proceeding. In her opinion, the traffic counts here are not artificially low because the volumes increase and decrease during the three hours studied. If the counts were flat during that time, that would be an indication that there is a demand that is not being met. In addition, Ms. Randall stated, HCM looks at the intersection as a whole because it analyzes the best use of green time throughout an entire system. It does not mandate that every approach operates at LOS C because that has ramifications to other intersections and priorities. 3/5/12 T. 327.

Technical Staff also testified that changes to signal timing made as part of the capital project for the grade separated interchange would make a significant difference in the operation of the failing approaches. 4/16/12 T. 87-89.

Those opposing the application presented no specific evidence to rebut the conclusions of Technical Staff and the Applicant that adjustments to signal timing would address the possibility (in most cases) of the failing approaches. Nor was there evidence that the intersections as a whole operated at failing levels. Finally, the opposition offered no evidence certain failing approaches would have an adverse impact on the surrounding area. Based on the evidence presented, the District Council finds, as did the Hearing Examiner, that the intersections in the surrounding area will operate at acceptable levels.

The Public Interest

The Applicant must show that the proposed reclassification bears sufficient relationship to the public interest to justify its approval. When evaluating the public interest, the District Council normally considers Master Plan or Sector Plan conformity, the recommendations of the Planning Board and Technical Staff, any adverse impact on public facilities, or the environment, and factors such as provision of affordable housing, location near public transportation, and other public amenities.

In 2006, the District Council concluded that the Applicant had failed to prove that Stage I and II of the proposed development would not have an adverse impact on public facilities (i.e., roadways) because of flaws in the traffic study previously described. *Resolution*, pp. 16-17.

The Applicant's response to the Council's directive on remand has been not only to perform the queuing analysis specifically requested in the remand order, but also to provide an analysis of project's impact on system operations upstream from the Georgia Avenue/Randolph Road intersection and in the surrounding area. The Applicant's transportation planner performed an LATR queuing analysis (using observed queues) for nine of the seventeen intersections studied in the Applicant's original traffic report. This queuing analysis identified two intersections with projected queues (without the planned interchange) which would not meet the LATR standards. These were the intersections of Georgia Avenue/Layhill Road, and Georgia Avenue/Randolph Road. The Applicant then studied these intersections as well as a third intersection, Glenallan Avenue and Layhill Road, using the HCM/Synchro© method, enabling them to analyze the effect of the grade-separated interchange on the projected queues. The Applicant used the HCM/Synchro© analysis solely to obtain the percentage difference between the project queues with and without the grade-separated interchange in order to apply that percentage change to the LATR observed queues. The Applicant did not make adjustments to the signal timing other than at the intersection of Georgia Avenue/Randolph Road to reflect the new interchange. The evidence is uncontroverted that all intersections would operate at acceptable overall levels of service using this methodology. Both the Applicant's traffic expert and Technical Staff testified that traffic conditions in the area would improve from that shown in the Applicant's Supplemental Analysis because of the optimization of signal timing that is part of the SHA's capital project for the grade-separated interchange.

Both Technical Staff and the Planning Board recommended approval of the application. Technical Staff requested the Applicant to test whether existing conditions had changed since the 2008 traffic analysis by conducting new CLV counts at the intersections of Georgia Avenue and Layhill Road, Georgia Avenue/Urbana Drive, and Georgia Avenue/Randolph Road. Staff identified these three intersections because the southbound queue on Georgia Avenue at Layhill Road was the worst queue identified in the Applicant's 2008 study, and the remaining two intersections, closest to the north and south of Georgia Avenue/Layhill Road, to determine whether traffic was flowing through these intersections. The Planning Board adopted Technical Staff's approach and recommended approval of the application as well. It did not find additional traffic analysis warranted, especially as the 2011 traffic information showed that several of the intersections had actually improved since the 2008 study.

Those opposing the application did identify one error in the Applicant's 2008 Supplemental Traffic Analysis (Exhibit 147(e) and (f)): the Applicant's Analysis underestimated the number of trips that would be generated by the new WMATA garage located on the western side of Georgia Avenue. There is uncontroverted evidence, however, that the trips will be reassigned and improvements to the intersection made so that conditions at that intersection will actually improve despite the increased volume of trips.

Because both the 2008 and 2011 traffic information demonstrate that, with the grade-separated interchange planned for construction in 2016, intersections in the surrounding area will operate at acceptable levels of service, the District Council finds, as did the Hearing Examiner and the Planning Board, that the Applicant has met its burden of proof that public facilities will be adequate to serve the use and that the application is in the public interest.

Conclusion

Based on the foregoing analysis and the Hearing Examiner's Report and Recommendation dated June 15, 2012, which is incorporated herein, and after a thorough review of the entire record, the District Council concludes that the application, as described in the final version of the development plan, satisfies the requirements of the TS-R Zone and its purpose clause; that the application proposes a form of development that would be compatible with land uses in the surrounding area; and that the requested reclassification to the TS-R Zone is sufficiently related to the public interest to justify its approval. For these reasons and because approval of the instant zoning application, as presently described, will aid in the accomplishment of a coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District, the application will be approved.

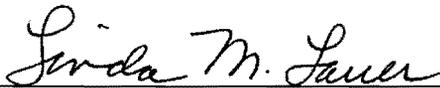
Action

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District located in Montgomery County, Maryland approves the following resolution:

Zoning Application No. G-862 (Remand), requesting reclassification of 23.8810 acres of land described as Parcel A Glenmont Park, Plat Book 76, Plat 7512;

Parcel B Glenmont Park, Plat Book 79, Plat 7940; Parcel C Glenmont Park, Plat Book 80, Plat 8133; Parcels D & F Glenmont Park, Plat Book 81, Plat 8386; Re-subdivision Plat Parcel G Glenmont Park, Plat Book 177, Plat 19865; Parcel E Glenmont Park, Plat Book 102, Plat 11589; and Lots 1-49 & Parcels A thru F, Block 1 Glenmont Mews, Plat Book 136, Plat 15756, and Zoning Application No. G-863 (Remand), requesting reclassification of 7.0514 acres of land from the R-30 Zone to the TS-R Zone, described as Parcel A Glenmont Park, Plat Book 76, Plat 7512; Parcel B Glenmont Park, Plat Book 79, Plat 7940; and Re-subdivision Plat G Glenmont Park, Plat Book 177, Plat 19865, all located at the intersection of Georgia Avenue and Glenallan Avenue, Silver Spring, in the 13th Election District, are hereby **approved** subject to the specifications and requirements of the Development Plan (Exhibit 214(c)), provided that the Applicant submits to the Hearing Examiner for certification a reproducible and three copies of the Development Plan approved by the District Council within 10 days of approval, in accordance with Section 59-D-1.64 of the Zoning Ordinance.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council

Both Technical Staff and the Planning Board recommended approval of the application. Technical Staff requested the Applicant to test whether existing conditions had changed since the 2008 traffic analysis by conducting new CLV counts at the intersections of Georgia Avenue and Layhill Road, Georgia Avenue/Urbana Drive, and Georgia Avenue/Randolph Road. Staff identified these three intersections because the southbound queue on Georgia Avenue at Layhill Road was the worst queue identified in the Applicant's 2008 study, and the remaining two intersections, closest to the north and south of Georgia Avenue/Layhill Road, to determine whether traffic was flowing through these intersections. The Planning Board adopted Technical Staff's approach and recommended approval of the application as well. It did not find additional traffic analysis warranted, especially as the 2011 traffic information showed that several of the intersections had actually improved since the 2008 study.

Those opposing the application did identify one error in the Applicant's 2008 Supplemental Traffic Analysis (Exhibit 147(e) and (f)): the Applicant's Analysis underestimated the number of trips that would be generated by the new WMATA garage located on the western side of Georgia Avenue. There is uncontroverted evidence, however, that the trips will be reassigned and improvements to the intersection made so that conditions at that intersection will actually improve despite the increased volume of trips.

Because both the 2008 and 2011 traffic information demonstrate that, with the grade-separated interchange planned for construction in 2016, intersections in the surrounding area will operate at acceptable levels of service, the District Council finds, as did the Hearing Examiner and the Planning Board, that the Applicant has met its burden of proof that public facilities will be adequate to serve the use and that the application is in the public interest.

Conclusion

Based on the foregoing analysis and the Hearing Examiner's Report and Recommendation dated June 15, 2012, which is incorporated herein, and after a thorough review of the entire record, the District Council concludes that the application, as described in the final version of the development plan, satisfies the requirements of the TS-R Zone and its purpose clause; that the application proposes a form of development that would be compatible with land uses in the surrounding area; and that the requested reclassification to the TS-R Zone is sufficiently related to the public interest to justify its approval. For these reasons and because approval of the instant zoning application, as presently described, will aid in the accomplishment of a coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District, the application will be approved.

Action

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District located in Montgomery County, Maryland approves the following resolution:

Zoning Application No. G-862 (Remand), requesting reclassification of 23.8810 acres of land from the R-T 12.5, R-30 and O-M Zones to the TS-R Zone

described as Parcel A Glenmont Park, Plat Book 76, Plat 7512; Parcel B Glenmont Park, Plat Book 79, Plat 7940; Parcel C Glenmont Park, Plat Book 80, Plat 8133; Parcels D & F Glenmont Park, Plat Book 81, Plat 8386; Re-subdivision Plat Parcel G Glenmont Park, Plat Book 177, Plat 19865; Parcel E Glenmont Park, Plat Book 102, Plat 11589; and Lots 1-49 & Parcels A thru F, Block 1 Glenmont Mews, Plat Book 136, Plat 15756, and Zoning Application No. G-863 (Remand), requesting reclassification of 7.0514 acres of land from the R-30 Zone to the TS-R Zone, described as Parcel A Glenmont Park, Plat Book 76, Plat 7512; Parcel B Glenmont Park, Plat Book 79, Plat 7940; and Re-subdivision Plat G Glenmont Park, Plat Book 177, Plat 19865, all located at the intersection of Georgia Avenue and Glenallan Avenue, Silver Spring, in the 13th Election District, are hereby **approved** subject to the specifications and requirements of the Development Plan (Exhibit 214(c)), provided that the Applicant submits to the Hearing Examiner for certification a reproducible and three copies of the Development Plan approved by the District Council within 10 days of approval, in accordance with Section 59-D-1.64 of the Zoning Ordinance.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council

APPENDIX

The tax account numbers for the property that is the subject of LMA G-862 and G-863 are listed in Binding Element No. 6 on the Development Plan (Exhibit 214(c)):

6. The subject property tax account numbers are: 13-00958966, 13-00959425, 13-00959436, 13-00959447, 13-00959460, 13-03119220, 13-02584817, 13-02584828, 13-02584830, 13-02584874, 13-02584885, 13-02584896, 13-02584908, 13-02584910, 13-02584921, 13-02584932, 13-02584943, 13-02584954, 13-02584965, 13-02584976, 13-02584987, 13-02584998, 13-02585003, 13-02585014, 13-02585025, 13-02585036, 13-02585047, 13-02585058, 13-02585060, 13-02585071, 13-02585300, 13-02585311, 13-02585082, 13-02585322, 13-02585093, 13-02585333, 13-02585105, 13-02585344, 13-02585116, 13-02585355, 13-02585127, 13-02585138, 13-02585140, 13-02585151, 13-02585162, 13-02585173, 13-02585184, 13-02585195, 13-02585207, 13-02585218, 13-02585220, 13-02585242, 13-02585231, 13-02585253, 13-02585264, 13-02585275, 13-02585286, 13-02585297.