

Resolution No.: 16-424
Introduced: January 15, 2008
Adopted: January 15, 2008

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

By: County Council

SUBJECT: APPLICATION NOS. G-862-863 FOR AMENDMENT TO THE ZONING ORDINANCE MAP, Steven A. Robins and Patrick L. O'Neil, Esquire, Attorneys for Applicant Glenmont Layhill Associates, LLC, OPINION AND RESOLUTION ON APPLICATION

Tax Account numbers are listed in attached Appendix 1.

OPINION

Local Map Amendment Application No. G-862, filed on November 29, 2006 by Applicant Glenmont Layhill, LLC, requests reclassification from the R-T 12.5, R-30 and O-M Zones to the TS-R Zone of 23.9 acres of land located at the intersection of Georgia Avenue and Glenallan Avenue in Silver Spring, Maryland, in the 13th Election District. The tract covered by Application No. G-862 consists of Lots 1 through 49 and Parcels A, B and C in the Glenmont Mews Subdivision, zoned R-T 12.5; parts of Parcels A, B and G in the Glenmont Park Subdivision, zoned R-30; Parcels C and F in the Glenmont Park Subdivision, zoned R-30; and Parcel E in the Glenmont Park Subdivision, zoned O-M.

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. The land covered by Application No. G-863 consists of parts of Parcels A, B and G in the Glenmont Park Subdivision, zoned R-30.

The Applicant seeks to develop the combined properties, a total of 30.9 acres referred to herein as the "subject site" or "subject property," as a single development. Two separate applications were filed to respond to phasing recommendations that were specified in the applicable sector plan. The two applications separate the subject property into a Stage 1 area (LMA No. G-862) and a Stage 2

area (LMA No. G-863). At the Applicant's request, the two cases were consolidated for purposes of the public hearing and the Hearing Examiner's Report and Recommendation.

The Hearing Examiner concluded that most of the findings required in the Zoning Ordinance to support approval of the requested rezonings and the submitted Development Plan can be made affirmatively, including substantial compliance with the use and density recommended by the *Sector Plan for the Glenmont Transit Impact Area and Vicinity, Approved and Adopted September 1997* (the "Sector Plan"), and compliance with the purposes, standards and regulations of the TS-R Zone. The Hearing Examiner found, however, that the evidence was not sufficient to demonstrate that the proposed development would not have an adverse impact on local traffic conditions. This rendered the proposed development incompatible with the surrounding area. The Hearing Examiner also found, however, that with an opportunity to provide additional evidence, the Applicant might be able to meet its burden of demonstrating that the development would not have adverse traffic impacts, allowing approval of a development that is otherwise consistent with county policies and in the public interest. Accordingly, the Hearing Examiner recommended that the subject applications be remanded to her to provide the Applicant with the opportunity to present additional evidence concerning traffic impacts.

The Montgomery County Planning Board (the "Planning Board") and its Technical Staff recommended **approval** of the applications on grounds that the proposed development would be in harmony with the recommendations of the Sector Plan, would be compatible with surrounding development and would be in the public interest. The District Council agrees with the conclusions drawn by the Hearing Examiner, as discussed below. The Hearing Examiner's Report and Recommendation dated October 18, 2007 is incorporated herein by reference.

A. Subject Property

The subject property contains a total of approximately 30.9 acres of land located across the street from the Glenmont Metro Station, north of Glenallan Avenue between Layhill Road and Georgia Avenue. The site is slightly north of Georgia Avenue's junction with Layhill Road and its intersection with Randolph Road.

With the exception of a half-acre area that was under separate ownership, the subject property was developed as a single site during the 1960s, for multi-family use. There are currently approximately 352 dwelling units on the site, distributed in about 18 two-and-a-half-story buildings, although many units are unoccupied. The buildings are spread out on the site, with parking lots, roads, grass and, particularly in the western half of the site, trees interspersed among them. The site also has playgrounds, paved roads and a pool, and virtually the entire site is fenced. The apartments have aged, and the evidence suggests that they are in need of replacement or significant renovation. The evidence also suggests that all of the units can be considered affordable under Montgomery County affordability guidelines.

The subject property is irregularly shaped. The high point topographically is in the southeast corner of the site, at the intersection of Glenallan Avenue and Layhill Road. From that point the site slopes down to the west and northwest, reaching its low point where a stream fragment runs through the northwest corner of the site. The only forested areas on the site are in the vicinity of the stream. The vast majority of the site is within a five minute walk of the Glenmont Metro Station, and the entire site is within a ten minute walk.

The subject site carries three separate zoning classifications. Most of the site is classified under the R-30 Zone (multi-family residential). A 4.3-acre portion in the northeast corner is classified under the R-T 12.5 Zone, having been rezoned for 49 townhouses (the townhouse site plan was not implemented and has expired). A very small, half-acre portion of the subject site in the southeast corner, at the intersection of Glenallan Avenue and Layhill Road, is classified under the O-M Zone. It is the location of a former bank building, now unoccupied.

B. Surrounding Area and Zoning History

The surrounding area for this application consists of the area identified as the Glenmont Village Center in the Sector Plan, which focuses on the area around the Glenmont Metro Station and the intersection of Georgia Avenue and Randolph Road. The surrounding area contains a mix of uses and zones. The subject site is bordered to the north and northwest by property owned by the

Washington Metropolitan Transit Authority ("WMATA"), and on all other sides by busy roadways. To the northwest is the terminus of the Metro system's Red Line, on land classified under the R-T 12.5 Zone, and to the north is a Metro maintenance/storage yard in the R-90 Zone. To the east, across Layhill Road, the subject property confronts the Winexburg apartment complex in the R-20 Zone, which has over 600 dwellings on 33 acres, mostly in three-story buildings. South of the Winexburg complex, across Glenallan Avenue and diagonally confronting the subject site to the southeast, is Glen Way Gardens, a condominium complex in the R-30 Zone with 214 units in three-story, multi-family buildings on 15 acres of land.

South of the subject site, across Glenallan Avenue, is the Glenmont Metro Station, including an 1,800-space parking garage and a Kiss and Ride area. The southeast corner of Glenallen Avenue and Georgia Avenue is occupied by a Baptist church, and south of the church are the Metro entrance and a bus loading area. South of the Metro garage, in the northwest corner of the Georgia Avenue/Layhill Road intersection, is an area classified under the RMX-2C Zone, occupied by a small commercial building and a gas station.

Beyond the adjoining and confronting properties, the surrounding area contains large single-family neighborhoods in the R-60 and R-90 zones; townhouses, apartment buildings and a church on Georgia Avenue; a narrow strip of park land on the west side of Georgia Avenue known as the Glenmont Greenway; and the Glenmont Shopping Center, an older shopping center that many people feel is outdated.

The subject property was classified under the R-90 Zone when the zone was enacted and mapped in the 1954 Regional District Zoning. The 1958 County-wide Comprehensive Zoning confirmed the R-90 zoning of the site. Between 1963 and 1984 the District Council granted reclassifications of various portions of the site, resulting in the current zoning scheme. The 1978 Sectional Map Amendment for the Glenmont Transit Area retained the R-90 and O-M zoning existing at that time.

C. Proposed Development

The Applicant proposes to create a mixed-use neighborhood with up to 1,550 dwelling units and 90,000 square feet of retail. 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, with a maximum of 250 townhouses and the remainder in multi-family housing. The overall residential density proposed for the site is 50.1 dwelling units per acre, including a 19.3 percent MPDU bonus. This is just under the maximum residential density recommended in the Sector Plan.

Stage 1 of the project would include up to 500 new dwelling units, the replacement of up to 275 existing dwelling units, and approximately 4,000 square feet of retail space. Stage 2 would consist of up to 698 new units, the replacement of up to 77 remaining older units, and additional retail up to a total of 90,000 square feet.

Pursuant to Code § 59-D-1.11, development under the TS-R Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the TS-R Zone. This development plan must contain several elements, including a land use plan showing site access, the general build and height of proposed buildings and structures and their relationship to one another and to adjacent areas, gross floor area of buildings by type of use, floor area ratio ("FAR") of buildings, a preliminary classification of dwelling units by type and number of bedrooms, parking areas, land to be dedicated to public use, and land intended for common or quasi-public use but not intended to be in public ownership. Code §59-D-1.3. As a general matter, the development plan is binding on the Applicant except where particular elements are identified as illustrative or conceptual. The site plan approved by the Planning Board later in the process must conform to all non-illustrative elements of the development plan approved by the District Council. See Code § 59-D-1.2. The Zoning Ordinance specifies that in the TS-R Zone, building height is to be determined not at the zoning stage, but during site plan review. Code § 59-C-8.51. A maximum height may be established on the development plan, but exact building heights cannot be set at this stage.

The Development Plan in this case divides the site into development blocks that identify the general location and size of buildings while leaving exact building footprints to be developed during site plan review. A binding "Development Block Analysis" table specifies the range of uses, building heights and densities permitted in each block. Some blocks may have multi-family, retail and/or commercial uses, some only multi-family uses and some only townhouses. Two blocks are listed for multi-family or townhouse use, leaving for site plan the resolution of a dispute between the Applicant and Technical Staff concerning whether the corner of Layhill Road and Glenallen Avenue should have townhouses, to ensure lower building heights at the topographical high point of the site, or multi-family uses, so the site's entire Glenallen Avenue frontage will have multi-family buildings. Each block also has a binding height range. The maximum height is 50 feet along most of the Layhill Road frontage, 65 feet at the corner of Layhill Road and Glenallen Avenue, and 85 feet throughout the rest of the site.

The Development Plan has nine Textual Binding elements, as summarized below:

1. The Development Block Analysis identifies use types, density range, height range and approximate setbacks from curb to face of building.
2. The total number of units shall not exceed 1,550 dwellings. MPDUs will equal 12.5 percent of total units in Stage 1, and up to 14.5 percent of the entire development if Stage 2 goes forward. Total number of residential units and amount of retail/commercial space will be determined at site plan. Units may be shifted between development blocks so long as the range within each block does not vary by more than ten percent, and the total number of units does not exceed 1,550. Total retail/commercial shall not exceed 90,000 square feet and will be within the range shown on the Development Block Analysis.
3. The Applicant shall submit a revised Local Area Transportation Review at time of preliminary plan approval, re-evaluating Stage 2 so that the Planning Board can determine whether the intersection of Georgia Avenue and Randolph Road will function at an acceptable level of service to permit all or a portion of Stage 2 to move forward.

4. No building permit applications for Stage 2 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.” Ex. 144(a). 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 (“LATR”) mitigation measures (e.g., real-time transit signs, pedestrian count-down signals, bike racks, etc.), transit enhancement incentives, a neighborhood circulator shuttle, pedestrian safety improvements and/or other improvements.

5. No building shall exceed seven stories or 85 feet, as measured pursuant to the 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 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 the entire project is 50.1 units per acre with MPDUs.

9. Subject to Textual Binding Element No. 4, the completion of any portion of the project is not necessary to commence any subsequent portion of the project.

The Development Plan also contains Binding Design Principles that are intended to demonstrate the Applicant's commitment to carrying out the Sector Plan's vision for this property. These principles are summarized below:

1. Pedestrian Oriented Streets. Continuous and interconnected streets, creating blocks that encourage walkability; parking on streets where practical, in parallel parking spaces, and in parking decks, parking garages and driveways; neighborhood streets radiating from the new Neighborhood Main Street to provide safe access to Metro; and minimum five foot sidewalks on all streets, plus street trees between sidewalk and curb.

2. Public Open Space Elements. Major central public use space in center of site with variety of seating opportunities, passive recreation opportunities, multi-use lawn area and focal design element; naturalized park edge along street valley buffer; major public use space between townhouses and multi-family; minor open spaces throughout the project; open spaces incorporating on-grade rain water bio-filtration strategies to the extent practical.

3. Architectural Elements. Building front entrances shall front onto the streets; special architectural treatments at the terminus of vistas or deflected views along a street; garage access for townhouse units to be primarily rear-loaded and served by alleys.

D. Master Plan

Pages 36 through 58 of the Hearing Examiner's Report and Recommendation contain a detailed discussion of the Sector Plan.

The Sector Plan's vision for Glenmont is a transit-oriented area with a compact, mixed-use center concentrated around the new Metro station, and the existing single-family neighborhoods preserved and protected. Planning Goals include preserving Glenmont as a stable, primarily residential community; focusing development near the Metro station; providing a "Center" for Glenmont to serve as a focal point and gathering place for the community; ensuring that new development is compatible with the existing community; providing attractive, safe and convenient linkages to major destinations including the Metro station and proposed Glenmont Center (of which the subject site is a part); encouraging transit use; and protecting environmentally sensitive areas.

The Sector Plan described Glenmont as standing at a crossroads. The opening of the Metro station and the presence of several redevelopable parcels nearby led to the opportunity to create a viable center for the larger community, and help rejuvenate all of Glenmont.

The Sector Plan's specific recommendation for the subject site (not including the half-acre bank site, which was under separate ownership at the time) was redevelopment under the TS-R Zone to accommodate a variety of residential uses and housing types and some convenience retail. The recommended base density under the TS-R option was 42 dwelling units per acre, which results in a maximum of 51 units per acre with an MPDU bonus. This represented a significantly higher density than the maximum permitted on the site at the time, which was 14.5 units per acre. The Sector Plan stated that a new development on the subject property should be an extension of the Glenmont Center, rather than a neighborhood separated from the rest of Glenmont. To this end, the plan recommends a new street on the site, parallel to Glenallen Avenue, to serve as a neighborhood main street. The plan recommended low-rise housing, as well as high-rise housing up to ten stories. The Applicant proposes low-rise and mid-rise housing, having agreed, in response to community concerns, not to build any high-rises. The plan calls for tree-lined streets, street-oriented buildings with ground level commercial, direct connections to the Metro station, a central open space, and interconnected internal streets.

The Hearing Examiner, the Planning Board, Technical Staff and all hearing participants agree that the proposed development would substantially comply with the specific goals for the subject site and the Sector Plan's more general planning goals. It would create a transit-oriented, pedestrian-friendly, high-density mixed-use community in close proximity to the Glenmont Metro Station, as envisioned in the Sector Plan, within the maximum density proposed in the Sector Plan and in keeping with most of the specific site recommendations. It would provide gathering places for Glenmont residences in its public open spaces and retail area, and would have an interconnected, pedestrian-friendly street network to encourage walking and transit use. It would contribute streetscaping and street activation to Georgia Avenue. It would have at least the potential to benefit the health of the

stream fragment that runs through the site onto Metro property, contributing to the health of the watershed.

Almost all of the subject site was specifically recommended for mixed-use, high-density development under the TS-R Zone. The half-acre area currently zoned O-M was not recommended for a change in zoning or use, probably because it was separately owned, was occupied by a going concern and was not expected to be available for redevelopment. However, the drafters of the Sector Plan had the foresight to include the O-M portion of the site in the area they called the "Glenmont Center," which was later designated as a transit station development area. Redevelopment as part of the proposed mixed-use, transit-oriented development is consistent with that designation. Moreover, a finding of "substantial" compliance with the Sector Plan leaves room to exercise judgment in finding that including this small, but visually prominent parcel in the larger redevelopment would help implement the Sector Plan's vision and intent more fully.

Some members of the community do not like the Sector Plan's vision and do not want rejuvenation in Glenmont – they like their community the way it is, and do not want higher density, more expensive housing. The recommendations for revitalization in Glenmont, intended to take full advantage of the Metro station, represent a policy decision that the County Council and the Planning Board made when the Sector Plan was adopted. The Planning Board reaffirmed this decision in recommending approval of the present applications, and the District Council does so as well.

The site-specific recommendations state that TS-R zoning should not be granted until appropriate staging triggers are met, requiring a separate TS-R application for each stage of development. This recommendation resulted in the two applications before the District Council today. The Sector Plan recommended that Stage 1 allow up to 500 new units and 200 new jobs to proceed immediately, with all other new development delayed "until either a grade separated interchange or other transit or transportation improvement is provided that makes the intersection of Randolph Road and Georgia Avenue function at an acceptable level." Sector Plan at 82. The Sector Plan specifically stated that "no local map amendment or optional method application beyond those necessary for Stage

1 should be approved until the conditions necessary for Stage 2 are realized." *Id.* The Sector Plan anticipated that during each stage, the County Council would determine the amount of development to be accommodated each year through the Annual Growth Policy.

Plans have been underway for some time to construct a grade-separated interchange at Georgia Avenue and Randolph Road, to alleviate what is indisputably a very high level of congestion. This interchange is the County's top priority for projects that will be ready for construction funding in the next six years and are currently in the design or planning stages. It has not, however, been funded for construction at this point.

The Applicant has endeavored to satisfy the Sector Plan's staging recommendations in two ways. First, it has divided the site into two areas, Stage 1 and Stage 2, and proposed to build a maximum of 500 new units and 4,000 square feet of retail in Stage 1 (4,000 square feet of retail would generate about ten jobs, far fewer than the 200 jobs the Sector Plan would permit). The remaining density is reserved for Stage 2. Second, the Applicant has committed to a binding element that resolves the ambiguity inherent in the language of the Sector Plan. This binding element places the onus on the Applicant to refrain from submitting any building permit applications for Stage 2 until either (i) a grade-separated interchange is fully funded for construction; or (ii) transportation or transit improvements that the Planning Board finds make the intersection of Randolph Road and Georgia Avenue function at an acceptable level are under construction. The Applicant has structured this binding element to provide a very strong assurance that Stage 2 will not be built unless improvements that will fix the intersection are underway. The binding element leaves open considerable flexibility regarding what kind of improvements can be considered acceptable, giving the Planning Board the necessary discretion to approve physical roadway improvements, pro rata payments toward the proposed interchange, transit improvements (a favorite of some community members, who would prefer to have a Georgia Avenue busway instead of a grade-separated interchange) and traffic mitigation measures such as pedestrian count-down signals, bike racks or a neighborhood shuttle.

E. Public Facilities

The Hearing Examiner's Report and Recommendation contains a detailed discussion of potential impacts on public facilities, on pages 58 through 85.

The Applicant's traffic study for Stage 1 of the project found that all nine of the intersections studied currently operate below the applicable Critical Lane Volume ("CLV") standard of 1,800. It found that all nine intersections would continue to operate below the CLV standard with background traffic and with the proposed development, except for the intersection of Randolph Road and Georgia Avenue, where CLV would be just over 1,800 with background traffic, and would exceed 1,800 by a fairly small margin with the addition of the proposed development. The Stage 2 traffic study covered 17 intersections, and concluded that all of them currently operate with the 1,800-CLV congestion standard. The study found that with background traffic, all of the intersections would operate within the congestion standard except Georgia Avenue and Randolph Road, which would slightly exceed the congestion standard. With construction of the combined Stage 1 and Stage 2 of the proposed development, all intersections would still operate below the congestion standard except Georgia Avenue and Randolph Road, which would have CLVs substantially above the congestion standard in the peak hours of both the morning and the afternoon peak periods.

The Applicant proposed two at-grade improvements to Georgia Avenue to mitigate its traffic impacts. These improvements were recommended in the Sector Plan as short-term improvements to Georgia Avenue/Randolph Road, and were approved as traffic mitigation in the Planning Board's recent approval of a 773-unit subdivision known as Indian Springs. The two improvements are:

1. Adding a fourth through/right turn lane on the southbound approach of Georgia Avenue to Randolph Road; and
2. Adding an exclusive right turn lane from northbound Georgia Avenue to eastbound Randolph Road.

With these additional lanes, CLV analysis indicates that the intersection of Georgia Avenue and Randolph Road would operate below the congestion standard and, therefore, would satisfy

LATR. The traffic study states that in lieu of the at-grade improvements the Applicant could, at the time of subdivision, make a pro-rata contribution to funding the grade-separated interchange at Georgia Avenue and Randolph Road that has been planned and designed by the SHA. The Applicant is not permitted to rely on the grade-separated interchange for purposes of LATR, however, because the interchange is not fully funded for construction.

The District Council can only consider traffic mitigation measures that are reasonably probable of fruition in the foreseeable future. See *Montgomery County v. Greater Colesville Citizens Association*, 70 Md. App. 374 (1987). The record in this case suggests strongly that there is considerable momentum behind the grade-separated interchange, and that it is more likely to go forward than not. However, it is a major roadway project that may yet face hurdles before funding is in place. Moreover, the record suggests a risk that if the Indian Springs subdivision moves forward more quickly than the funding for the interchange, the developer in that case may build the at-grade improvements, which may decrease the momentum for a grade-separated interchange. The SHA has stated that it does not envision building the at-grade improvements, then ripping them out to build a grade-separated interchange. See Ex. 75. In addition, no specific analysis has been provided in this record to demonstrate that the grade-separated interchange would result in the intersection operating at an acceptable level of congestion. The Hearing Examiner did not consider the grade-separated interchange to be available as a mitigation measure in these cases for all of the above reasons, and because LATR specifically prohibits an applicant from relying on a government sponsored improvement that has not been fully funded for construction within four years. In the District Council's view, that LATR prohibition should not prevent a proposed roadway improvement from being relied upon in a zoning case. Whether a proposed roadway improvement is considered "reasonably probable of fruition in the foreseeable future" should be based on the totality of the facts and circumstances.

Community member Richard Kauffunger introduced considerable testimony and other evidence to support an argument that the proposed at-grade improvements should not be accepted as mitigation because they are not feasible, due to right-of-way and parkland impacts. The District Council

agrees with the Hearing Examiner's conclusion that Mr. Kauffunger's efforts in this regard were unsuccessful. The preponderance of the evidence establishes that the right-of-way needed for the at-grade improvements is similar to what would be needed for the grade-separated interchange, and that with the State and the County behind the plan to improve traffic conditions at Georgia Avenue and Randolph Road, they are likely to use their governmental authority to obtain right-of-way if necessary.

The Applicant reported that during its consideration of these applications, the Planning Board expressed a strong interest in pedestrian and transit-related amenities, such as sidewalks, bike paths, pedestrian countdown signals, bus shelters and real-time transit information signs. LATR permits an applicant to obtain "trip credits" for such amenities, which reduce the number of trips a project is deemed to generate. The Applicant's traffic expert testified that if the Applicant can obtain the maximum 120 trip credits for providing such amenities, it will be able to build approximately 220 townhouses, 300 multi-family units, or some combination of the two, without making any roadway improvements. It could also get permission to build an additional 35 units, without making roadway improvements, in exchange for operating a neighborhood circulator shuttle to bring area residents to the Metro station. These transit-oriented improvements could allow the Applicant to build between 255 and 335 units, plus the 250 replacement units in Phase 1 (replacement units are not considered to increase traffic), while waiting for the grade-separated interchange at Georgia Avenue and Randolph Road to be funded. No evidence was presented, however, as to how much the CLV at the intersection of Randolph Road and Georgia Avenue would increase due to the trips that the 255 to 335 new units would generate, or whether the non-roadway improvements would reduce congestion at that intersection in a way that would partially or fully offset the impact of the new trips.

The evidence points to several flaws in the Applicant's traffic study, including an inadequate explanation for a drop-off in trips on Layhill Road before reaching Georgia Avenue; the use of an average of four traffic counts taken at Randolph Road and Georgia Avenue, rather than the highest available counts; and scant information on whether merging a new southbound lane on Georgia Avenue into the three existing lanes south of Randolph Road would create new delays.

The most important weakness of the traffic study is not, however, related to an error or a faulty assumption. It relates to the CLV methodology that LATR employs. The Applicant's traffic expert, Craig Hedberg, testified on cross-examination that CLV analysis only measures conflicting movements that go through an intersection. If something like an accident prevents the flow of traffic through an intersection, the CLV count will be relatively low because cars are not moving. Mr. Hedberg acknowledged that an intersection with heavy congestion may not have a high CLV because the congestion limits the number of vehicles that can get through. He argued that an intersection with that much congestion will normally exceed the congestion standard when background traffic is added in, because the background traffic is just numbers added to the traffic counts — background traffic cannot be blocked by conditions on the ground. Mr. Hedberg also observed that when intersections are closely spaced, there may be back-ups between them if the signal timing is not well-coordinated.

Mr. Kauffinger described conversations he had with two transportation professionals at the University of Maryland and two SHA officials, all of whom agreed, with varying degrees of vehemence, that the CLV technique has serious limitations, particularly when used at an intersection that is already congested. Although this was hearsay testimony, it is entitled to some credence because it is consistent with Mr. Hedberg's testimony and because hearsay may be admitted in administrative proceedings if it appears to be reliable and probative. See Code §2A-8(e).

More persuasive than the theoretical discussion of the limitations of CLV as a technique is the overwhelming evidence that the intersection of Georgia Avenue and Randolph Road is seriously congested, with lengthy back-ups common during the peak hours. Mr. Hedberg testified that in his two or three peak-hour visits to the intersection, the worst back-up he saw on Georgia Avenue was approaching the Layhill Road intersection, which he estimated to be a distance of about 800 feet. See Tr. July 24 at 82-84. Community member Vicki Vergagni testified that it is not unusual for through traffic on Georgia Avenue back up from Randolph Road past the intersection with Layhill Road and even past the intersection with Glenallan Avenue. See Tr. July 24 at 151. She added that it may take three or four lights to turn left from Georgia Avenue to Layhill, and it is often impossible to turn left from

Layhill onto Georgia Avenue because traffic on Georgia is not moving, and there is no where to go. Community member Susan Lois Johnson described the intersection of Georgia Avenue and Randolph Road as "failing." See Tr. June 29 at 204; Ex. 97. Community members Ann Ambler, Max Bronstein and Michael McAteer complained that the intersection of Randolph Road and Georgia Avenue is heavily congested during peak hours. Mr. Kauffunger testified that lengthy back-ups at this intersection are common during the peak hours.

Mr. Kauffunger submitted several photographs of vehicles waiting to go through the intersection of Georgia Avenue and Randolph Road, which demonstrate persuasively the serious level of congestion at that intersection and its impacts on other nearby intersections and roadways (see Hearing Examiner's report at 74-80). He also stated that studies he and a fellow community member conducted show that during the afternoon peak period, it can take between 8 ½ and 9 ¾ minutes to get from the point on Layhill Road where the congestion starts, usually somewhere between Glenallan Avenue and the Metro rail yard, through the Georgia Avenue intersection. The distance is about four tenths of a mile, which Mr. Kauffunger calculates to be the equivalent of about three miles per hour. His studies also show that on westbound Randolph Road during the afternoon peak, it takes 7 ½ to 8 minutes to go from Tivoli Lakes Boulevard to Georgia Avenue, a distance that the Hearing Examiner estimated at about one mile.

The Applicant did not attempt to refute the testimony and photographic evidence of lengthy back-ups on Glenmont roads caused by congestion at the intersection of Randolph Road and Georgia Avenue, nor did the Applicant attempt to refute the evidence that CLV is a poor technique to measure whether a congested intersection is operating at an acceptable level. The Applicant considers evidence about the limitations of CLV analysis irrelevant to these proceedings, because CLV is the technique prescribed in the LATR Guidelines. The Applicant has chosen to stand on the argument that it satisfied LATR and nothing more is required.

The District Council is persuaded that in these cases, CLV analysis failed to adequately assess traffic conditions at Georgia Avenue and Randolph Road. Even assuming that its flaws are not

enough to undercut its findings, the LATR study concluded that the intersection of Georgia Avenue and Randolph Road operates at an acceptable level currently, and would continue to do so with the proposed development and associated at-grade improvements to Georgia Avenue. Yet, testimony from Mr. Hedberg and community members, supported by Mr. Kauffunger's photographs and unrefuted by any contrary evidence, establishes that under current conditions the intersection is heavily congested, and is not operating in a manner that any reasonable person would consider acceptable.

Starting from the premise that the intersection is working properly, the traffic study goes on to calculate that although background traffic and Stage 1 of the proposed development would cause the intersection to exceed the congestion standard slightly, and Stage 2 would cause the intersection to exceed the congestion standard by a much larger margin, the proposed at-grade improvements would bring the intersection significantly below the congestion standard with Stage 1, and slightly below it with Stage 2. All of these conclusions are based on the faulty premise that the intersection is operating at an acceptable level under current conditions, a premise that is undercut by the unrefuted evidence of serious congestion.

In addition to the evidence related to the traffic study itself, the District Council is concerned by the lack of evidence about conditions at the intersection of Randolph Road and Georgia Avenue if the Applicant is able to build between 255 and 335 new units, as well as the 275 replacement units, based on non-roadway improvements. Such improvements are important, and would undoubtedly be beneficial to pedestrians and transit users – indeed, some of the community members who participated in the hearing would prefer transit improvements to roadway improvements – but the question of whether the net result for the community would be a benefit or an adverse impact has not been explored. It may be that non-roadway improvements would draw people out of their cars and onto transit, taking enough trips off the roads to offset the traffic impact of the new units, but the Applicant did not submit any evidence to that effect.

The District Council finds that the Applicant has not met its burden of demonstrating compatibility with regard to traffic impacts for either Stage 1 or Stage 2.

In addition to roads, a public facilities analysis should also consider utilities and schools. Undisputed testimony indicates that all necessary public utilities would be available and adequate for the proposed development.

The proposed development is expected to generate approximately 103 elementary school students, 75 middle school students and 79 high school students. Montgomery County Public Schools ("MCPS") reports that although school capacity is adequate at the middle and high school levels, enrollment exceeds capacity at the two relevant elementary schools and is projected to exceed capacity in the future. However, Bruce Crispell, MCPS's Director of Long-range Planning, stated in an email to Applicant's counsel that while the County's current Capital Improvement Program does not address overcrowding at the relevant elementary schools, he is "confident that the upcoming capital improvements program (FY 2009-2014) will identify a facility plan that will eliminate the elementary school overutilization at [the two schools] in the coming six-year planning period." See Ex. 110. He added that addressing the elementary school space deficits in the Kennedy Cluster is a high priority for MCPS capital programming.

The Planning Board is required under the County's Growth Policy to determine, for each fiscal year, whether each school cluster has adequate capacity under the Growth Policy test to permit approval of additional subdivisions. The results of the Planning Board's school capacity evaluation for Fiscal Year 2008 indicate that using the 2003-2005 Growth Policy test, which was in effect when the FY2008 evaluation was made, all school clusters have sufficient capacity to approve additional subdivisions in FY 2008.¹ Under the 2003-2005 Growth Policy test with a change to reduce the accepted level of enrollment from 105 percent to 100 percent, all clusters except Clarksburg pass the test. Under the 2003-2005 Growth Policy test with a change to reduce the accepted level of enrollment from 105 percent to 95 percent, the Kennedy cluster (to which the subject development would send students) would fail the capacity test at the elementary level. The Kennedy cluster also would fail if the MCPS capacity test were applied.

At least two community members raised concerns about school overcrowding, but no specific evidence was introduced. With no evidence presented to the contrary, the District Council considers Mr. Crispell's email a sufficient basis to find that additional elementary school capacity is reasonably probable of fruition in the foreseeable future, and that, therefore, the proposed rezonings would not have an adverse impact on and would be adequately served by the public schools.

F. Environment and Stormwater Management

Testimony from two environmental experts indicates that the northern corner, where a stream fragment flows through the site, is the most environmentally sensitive area of the site. The Development Plan and other drawings identify an "environmental buffer" around the stream bed, which is designed to protect the stream from further damage and create conditions conducive to its recovery. All impervious surfaces, including buildings and roads, would be removed from the environmental buffer, and a substantial number of trees would be planted within the buffer. In addition, required stormwater management facilities would improve the quality and decrease the quantity and velocity of stormwater run-off flowing into the stream. All of these elements would, in the opinion of the two environmental experts who testified at the hearing, create at least the potential for the health of the stream to improve.

The subject site currently contains 114 trees that are considered "significant" or "specimen" trees, 91 of which would be cut down in connection with the proposed development. Those that would survive are located in the environmental buffer area, and they include most of the trees that qualify as "forest." The Applicant would comply with the County's forest preservation law by planting 1.7 acres of forest in the environmental buffer area, 514 street trees on site and 4.9 acres of forest off-site. A preliminary forest conservation plan has been approved by Technical Staff, indicating that the Planning Board's staff considers the proposed forestation activities to be reasonable.

Having been developed in the 1960s, the subject site currently has no stormwater controls. Stormwater run-off flows directly into storm drains, untreated, and with its natural volume and

¹ Based on the effective date provisions in the revision to the Growth Policy that was adopted on November 13, 2007, the previous, 2003-2005 Growth Policy applies to the present zoning applications, which were filed before January 1, 2007. See Resolution 16-376, adopted November 13, 2007.

velocity unchecked. This has contributed to poor water quality in the stream fragment that goes through the site, as well as erosion of its banks.

Expert testimony presented at the hearing described the Applicant's intention to use innovative and sustainable stormwater management practices on this site that will mesh with the stream valley corridor, such as vegetative filtering of stormwater run-off, planting in depressed areas, using permeable paving and porous pavement, providing water features that have both an aesthetic component and a stormwater management function, and using green roofs on buildings.

Most of the environmental features discussed in the testimony do not appear in detail on the Development Plan. The Development Plan does delineate, however, the environmental buffer, and a textual binding element states that no structures or impervious surfaces shall be located within the environmental buffer. In addition, the "Binding Design Principles" include several commitments that relate to stormwater management and other environmental features.

G. Development Plan Findings

The District Council finds that the Development Plan submitted with this application does not satisfy all of the requirements for a development plan under Code §59-D-1.61(a)-(e). Each of the required findings is addressed below.

§59-D-1.61(a): substantial consistency with use and density indicated in master plan, no conflict with other county plans and policies. As discussed in Part D above, the District Council concludes, based on the preponderance of the evidence, that the proposed rezoning and development would substantially comply with the use and density recommended in the Sector Plan. On balance, the evidence suggests that the proposed development would not conflict with any established county plan or policy. Moreover, the evidence indicates that the proposed rezoning will be consistent with the Annual Growth Policy and the Capital Improvement Program.

§59-D-1.61(b): purposes of the zone; safety, convenience and amenity of residents; and compatibility with adjacent development.

1. Intent and Purpose of the Zone

Section 59-C-8.21 of the Zoning Ordinance states that the TS-R Zone is intended to be used in transit station development areas and in locations where multiple-family residential development already exists or is recommended by the master plan. The District Council finds that the proposed rezoning will satisfy this intent because the subject property is located within the transit station development area defined in the Sector Plan, most of the subject property is currently in multi-family use, and two confronting properties, at the northeast and southeast corners of Layhill Road and Glenallan Avenue, are also in multi-family use.

The purposes of the TS-R Zone are to promote the effective use of transit station development areas; to provide residential uses within walking distance of transit stations; to provide a range of densities to match the diverse characteristics of the County's several transit station areas; to stimulate coordinated, harmonious development; to prevent detrimental effects on the use or development of adjacent properties or the surrounding neighborhood; to provide housing for persons of all economic levels; and to promote health safety and welfare.

The evidence amply demonstrates that the proposed development would make effective use of the Glenmont transit station development area by increasing the amount and type of housing opportunities in close proximity to the Glenmont Metro. The entire development would be within easy walking distance of the Metro. The site layout as shown on the Development Plan provides direct pedestrian routes to the Metro station from all parts of the site. The Development Plan also provides for ground floor retail uses that would be compatible with the new development and beneficial to Metro commuters and the surrounding community. The residential density proposed in these applications is consistent with the recommendations of the Sector Plan, and would represent a new housing choice in Glenmont, more urban and transit-oriented in character than the existing suburban densities. It would also include housing for persons of various economic levels.

Based on the purpose clause language about “coordinated, harmonious development,” preventing detrimental effects and promoting health, safety and welfare, compatibility is, effectively, an element of the purpose clause. With the exception of traffic impacts, the District Council finds that the proposed development would be compatible with the surrounding area, in terms of both the uses and the physical structures. The primary land use would be a mix of townhouses and multi-family residential buildings. The closest existing residences are similar uses, in the form of condominiums and apartments, making the proposal very compatible. Retail uses would be concentrated on the west side of the site, closer to Georgia Avenue, and would be beneficial for the entire Glenmont community. Adverse impacts between the Metro station and the proposed development are unlikely given the urban setting, the intervening width of the road right-of-way and setbacks, and existing and planned landscaping. The proposed development may also be expected to have positive effects for Metro by increasing ridership and providing convenient, nearby retail for Metro commuters. The church on the corner of Glenallan Avenue and Georgia Avenue likewise might gain additional parishioners, with a higher population density on the site. Churches are often found in both residential neighborhoods and commercial areas, suggesting that the mix of uses proposed in these cases would be compatible with the church and its activities. The rest of the surrounding area is separated from the subject site by major roadways and the Metro station property, so the impact of the proposed uses and associated activity levels would be attenuated.

The building types proposed for the subject site also would be compatible with the surrounding area. While the nearby apartment and condominium complexes primarily have low-rise buildings with two and a half or three stories, they are separated from the subject site by the 120-foot right-of-way of Layhill Road, in addition to a change in grade. The closest dwellings, in the Winexburg community, are screened from both the road and the subject site by significant landscaping. Photographic evidence suggests that with the possible exception of the steeple, the church is significantly lower than the maximum height of 85 feet proposed on the Development Plan. However, the church is separated from the site by the right-of-way of Glenallan Avenue, and would be further separated from the

closest buildings by a minimum building setback of 25 feet from the curb. The visual impact of the new buildings also would be softened by proposed streetscaping. For residential and other uses farther removed from the subject property, the proposed development would be an appropriate transition from the Metro entrance and garage to the Red Line terminus and the Metro train yard.

Several community members argued that the proposed development would not be compatible with the surrounding area because it would introduce new elements to Glenmont: taller buildings, structures built closer together in a more urban form, higher population density and more expensive housing. These elements are precisely what the Sector Plan recommended, in an effort to revitalize an area that has seen little re-investment in recent decades, and to take full advantage of the substantial public investment in the Metro station. With higher density homes close to Metro, more people can adopt a transit-oriented lifestyle that is less dependent on the automobile, which has long been one of the County's primary goals for Metro station areas. Admittedly this represents a change for Glenmont, but this change is driven by a policy decision that the County Council and the Planning Board made when the Sector Plan was approved and adopted. Moreover, with the height limits that community representatives succeeded in negotiating with the Applicant and the extensive Textual Binding Elements and Binding Design Principles, the record provides a high level of assurance that the final plan for the subject site will, if the project goes forward, be an asset for the existing community as well as new residents. Diversity in housing prices and income levels likely would strengthen Glenmont over the long-term, and the evidence suggests that the realities of the market would likely lead to dwellings that are more expensive than the average Glenmont home, but not as high-priced as other areas such as downtown Bethesda. With the minimum setbacks specified, and the roadways separating the site from other residences, even 85-foot buildings are unlikely to "loom" over existing residences. They are more likely to form an agreeable skyline. With a commitment to two major public open spaces and several minor ones, plus five-foot sidewalks and street trees throughout the site, the proposed development is unlikely to give the appearance of an unbroken wall of buildings that some community members fear.

Finally, the retail component of the plan is likely to contribute to a vibrant new Center for Glenmont with attractive, convenient shopping and dining options and spaces for people to gather and interact.

There is no evidence that the existing development on the subject site, surrounded by fencing, contributes in any significant way to the sense of community in Glenmont. The development this Applicant has proposed has the potential to make a significant contribution along those lines because of the open space and retail components. In the District Council's view, because the development is separated from existing residential neighborhoods by major roads and Metro facilities, it is unlikely to detract from the sense of community that Glenmont's residents are fortunate enough to have created.

For all of these reasons and based on the preponderance of the evidence, the District Council concludes that with the exception of traffic impacts, which are discussed separately, the proposed development would be compatible with the surrounding area and would satisfy the purpose and intent of the TS-R Zone.

2. Standards and Regulations of the Zone

The TS-R Zone includes requirements regarding location, which echo the intent of the zone as discussed above. The zone also includes a requirement that development conform to the facilities and amenities recommended by the Sector Plan, including any necessary easements or dedications. The District Council finds that the proposed development would comply with this requirement. The open spaces, pedestrian-friendly streets and streetscaping are assured by binding elements. The internal street parallel to Glenallan Avenue is provided for, although its meandering design – appropriate for a development that stresses pedestrian-friendly streets – is unlikely to relieve traffic pressures on Glenallan Avenue. Moreover, the road right-of-way dedications called for in the Sector Plan are specifically shown on the Development Plan, and the Planning Board would have discretion at site plan to require additional amenities as needed.

All of the uses proposed on the Development Plan are permitted as of right in the TS-R Zone. The proposed development would be consistent with applicable development standards, as shown in the table on page 182 of the Hearing Examiner's Report and Recommendation. The TS-R

Zone further requires off-street parking to be located so as to have a minimal impact on adjoining residential properties. This requirement would be satisfied by locating parking in garages, parking decks, driveways, or parallel-parking spaces on the street, avoiding unattractive surface parking lots.

Streets in the TS-R Zone must have a minimum width of 20 feet for two-way traffic or ten feet for one-way traffic. The Textual Binding Elements specify that all streets will meet county standards for emergency access, which comport with the requirements of the Zone.

The TS-R Zone indicates that ancillary commercial uses must be consistent with master plan recommendations. The proposed commercial uses would be below the maximum FAR specified in the Sector Plan, and would conform to the ground-level retail the plan recommends.

3. Maximum Safety, Convenience and Amenity of the Residents

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, which will allow site residents to make use of their convenient Metro access safely, and will allow area residents to access the subject site safely.

4. Compatibility

For the reasons discussed in Part 1 above, the District Council concludes that with the exception of traffic impacts, the proposed development would be compatible with the land uses in the surrounding area.

§59-D-1.61(c): safe, adequate and efficient internal vehicular and pedestrian circulation systems. 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.

§59-D-1.61(d): preservation of natural features. The site's limited natural resources include a stream fragment in the northern corner, surrounded by a partially forested and partially built area, and a number of trees in various locations throughout the site. The proposed Development Plan would remove all structures and impervious surfaces from an environmental buffer around the stream, which is the most environmentally sensitive portion of the site. The preliminary forest conservation plan, which has won the approval of Environmental Planning Staff at the MNCPPC, provides for the removal of most of the significant specimen trees on site, but requires many more trees to be planted in the environmental buffer area, where they can contribute to improving the health of the stream, and as street trees throughout the site. Moreover, most of the trees that qualify as "forest" would be preserved. The Applicant provided extensive documentation and testimony concerning its intention to employ innovative stormwater management techniques to satisfy the County's water resource protection requirements, which would also contribute to improving the health of the stream. The District Council concludes that the preponderance of the evidence supports an affirmative finding under this provision.

§59-D-1.61(e): common area maintenance. The Applicant has submitted a written outline of its plans for perpetual maintenance of the common areas and quasi-public use space through an owners' association, which was confirmed in testimony. The District Council finds the submitted outline and supporting testimony to be adequate and sufficient evidence that common areas and quasi-public use spaces would be adequately maintained in perpetuity.

H. Public Interest

The District Council concludes that except for traffic impact, the proposed zoning bears sufficient relationship to the public interest to justify its approval. The State Zoning Enabling Act applicable to Montgomery County requires that all zoning power must be exercised:

" . . . with the purposes of guiding and accomplishing a coordinated, comprehensive, adjusted, and systematic development of the regional district, . . . and [for] the protection and promotion of the health, safety, morals, comfort, and welfare of the inhabitants of the regional district."
[*Regional District Act*, Maryland-National Capital Park and Planning Commission Article (Art. 28), Md. Code Ann., § 7-110].

When evaluating the public interest, the District Council normally considers master plan conformity, the recommendations of the Planning Board and Technical Staff, and any adverse impact on public facilities. As discussed in Part D above, the District Council finds that the subject application would be in substantial compliance with the recommendations and objectives of the *Glenmont Sector Plan*. Some community members object fundamentally to the Sector Plan's goal of making Glenmont different from what it has long been: a suburban neighborhood of modest single-family homes and garden apartments in an area with limited retail options, but a great sense of community. Many community members are concerned about bringing in different types of housing and different types of residents. As noted earlier, however, the change represented by the proposed development would carry out a policy decision that was made when the Sector Plan was approved and adopted. Moreover, the District Council is persuaded by the preponderance of the evidence that if the traffic impact problem is resolved, the proposed development will be an asset for the existing Glenmont community, as well as for the new residents.

The evidence supports a conclusion that utilities are adequate to accommodate the proposed development. The District Council further concludes, because (1) all school clusters in the County are considered to have adequate capacity to support additional development under the applicable Growth Policy capacity test; and (2) the school system's director of long-range planning has opined that the next CIP will provide for improvements that will resolve the elementary school capacity problems in the Kennedy cluster; that the public schools would be able to accommodate the proposed development without adverse impact on the school system.

The one important public facility area in which the District Council finds the evidence lacking is roadways. For the reasons discussed in Part E above, the District Council finds that the Applicant has not met its burden of demonstrating that the proposed development would not have an adverse impact on the local roadway network.

Considering the public interest in a more general sense, the evidence supports a finding that apart from the traffic impact, the proposed development would serve the public interest by beginning

the implementation of the Glenmont revitalization plan put forth in the Sector Plan, and would do so in a way that has every indication of being an asset to the existing neighborhood:

Nonetheless, due to the lack of adequate evidence to demonstrate compatibility with regard to traffic, the Hearing Examiner concludes that approval of the requested zoning reclassifications on the existing record would not be in the public interest.

The District Council finds that the Applicant has not met its burden of demonstrating compatibility with regard to traffic impacts for either Stage 1 or Stage 2. It is possible, however, that with an opportunity to provide additional evidence, the Applicant may be able to meet its burden and allow approval of a development that is otherwise consistent with county policies and in the public interest. For these reasons, the applications will be *remanded* in the manner set forth below.

ACTION

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

That (1) Zoning Application No. G-862, which requests reclassification from the R-T 12.5, R-30 and O-M Zones to the TS-R Zone of 23.9 acres of land located at the intersection of Georgia Avenue and Glenallan Avenue in Silver Spring, Maryland, in the 13th Election District, consisting of Lots 1 through 49 and Parcels A, B and C in the Glenmont Mews Subdivision; parts of Parcels A, B and G in the Glenmont Park Subdivision; and Parcels C, E and F in the Glenmont Park Subdivision; and (2) Zoning Application No. G-863, which 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, consisting of parts of Parcels A, B and G in the Glenmont Park Subdivision; be **remanded** to the Hearing Examiner 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.

Dated:

This is a correct copy of Council action.

A handwritten signature in cursive script that reads "Linda M. Lauer". The signature is written in black ink and is positioned above a horizontal line.

Linda M. Lauer, Clerk of Council