

I. CASE SUMMARY

Applicant:	4311 Montgomery Avenue, LLC
LMA No. & Date of Filing:	LMA G-913, filed July 9, 2012, by 4311 Montgomery Avenue, LLC, the property owner
Existing Zone:	R-60 (Residential, Single-family, detached)
Zone Sought:	C-T Zone (Commercial-Transitional Zone)
Existing Development:	Two-story single-family building
Planned Development:	Applicant proposes to use the existing two-story single-family building for a commercial office use.
Property and Location:	Lot 26, Block 5 in the West Chevy Chase Heights Subdivision of Bethesda, located at 4705 West Virginia Ave, on the north side of West Virginia Avenue, approximately 200 feet east of Wisconsin Avenue (MD 355).
Applicable Master Plan:	1994 Bethesda CBD Sector Plan recommends the C-T Zone
Gross Tract Area:	8,550 square feet of land
Density Permitted / Planned:	C-T: 0.5 FAR / Existing Building to be used: 0.475 FAR
Maximum Building Coverage:	30% maximum in CT Zone for this lot size / Existing Building to be used: 29.85%
Green Space Required / Planned:	10% minimum required / 45.55% planned
Parking Required / Planned:	No spaces required because site is in the Bethesda CBD Parking District / 5 spaces are planned
Building Height Limits / Planned:	C-T: 24 feet / Existing Building to be used: 23 feet
Neighborhood Response:	No Opposition
Significant Issue:	None
Technical Staff Recommends:	Approval
Planning Board Recommends:	Approval, with minor modifications accepted by Applicant
Hearing Examiner Recommends:	Approval, as modified per Planning Board recommendations

II. STATEMENT OF THE CASE

Local Map Amendment (LMA) G-913 was filed by 4311 Montgomery Avenue, LLC, on July 9, 2012, to rezone 8,550 square feet of land known as Lot 26, Block 5 in the West Chevy Chase Heights Subdivision of Bethesda, from the R-60 (single-family, residential) Zone to the C-T (commercial-transitional) Zone. The property is located at 4705 West Virginia Ave, on the north side of West Virginia Avenue, approximately 200 feet east of Wisconsin Avenue (MD 355) in Bethesda. It is in the East Bethesda Transition Area of the 1994 Bethesda CBD Sector Plan, which recommends the C-T zone for the subject site. The land is owned by the Applicant under tax account number 07-03457071. Exhibits 10 and 37(a.)

The application was filed under the Optional Method authorized by Zoning Ordinance §59-H-2.5, which permits binding limitations with respect to land use, density and development standards or staging. Applicant proposes to use the existing two-story single-family building for a commercial office use. The proposal is set forth in a revised Schematic Development Plan (SDP), Exhibit 39(a), which contains an illustrative diagram and a specification of the binding elements, as well as other information regarding the development. The binding elements are included in a Declaration of Covenants, which was executed prior to the closing of the record. Exhibit 39(c). If the Council approves this rezoning, the covenants will be filed in the land records of Montgomery County, pursuant to the requirements of Zoning Ordinance §59-H-2.54(d).

Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC) reviewed the plans, and in a report dated October 19, 2012, recommended approval (Exhibit 30). The Montgomery County Planning Board considered the revised application on November 1, 2012, and unanimously voted to recommend approval, as set forth in a memorandum dated November 7, 2011. Exhibit 32. The Planning Board agreed with its Technical Staff that the application satisfied all of the criteria for reclassification to the C-T Zone. In doing so, the Planning

Board also supported deleting a binding element regarding phasing and adding a note to the effect that the parking layout on the SDP is for illustrative purposes only and may be revised at site plan review. Applicant agreed to these changes, and they are reflected in the revised SDP (Exhibit 39(a)).

A public hearing was duly noticed and convened, as scheduled, on November 16, 2012, at which time the Applicant presented testimony from four witnesses in support of the application. There were no opposition witnesses, and no community concerns have been raised in this case. The record remained open until November 26, 2012, to allow Applicant time to file a revised SDP and executed covenants consistent with the recommendations of the Planning Board. Applicant subsequently asked that the record be reopened to allow minor corrections in the SDP and covenants. Exhibit 39. The Hearing Examiner issued an Order on December 3, 2012, granting Applicant's request and reopening the record to receive the corrected filings. Exhibit 40. The record was closed again on the same day, December 3, 2012, since there were no substantive changes made to the documents.

After reviewing the record, the Hearing Examiner concludes that Applicant has demonstrated that the proposed rezoning would be consistent with the purpose and regulations of the C-T Zone, compatible with surrounding development and in the public interest. He therefore recommends approval of LMA G-913.

III. FACTUAL BACKGROUND AND DISCUSSION OF ISSUES

A. Zoning History

Technical Staff provided the following zoning history of the subject site (Exhibit 31):¹

1. 1954 - Countywide Comprehensive Zoning confirmed R-60 Zone
2. 1958 - Countywide Comprehensive Zoning confirmed R-60 Zone
3. F-736 - Adopted 8/25/72 reconfirmed R-60 Zone
4. G-20 - Bethesda CBD adopted 12/6/77 reconfirmed R-60 Zone
5. G-666 - Bethesda Chevy Chase Map Plan adopted 6/26/90 reconfirmed R-60 Zone

¹ The Hearing Examiner corrected a typographical error in the numbering of the zoning history list in Exhibit 31.

- 6. G-711 - Bethesda CBD Sector Plan, adopted 10/11/94 reconfirmed R-60 zone (Plan recommended C-T Zone for subject property)
- 7. G-853 - Woodmont Triangle Amendment to Bethesda CBD Sector Plan, adopted 7/17/06 reconfirmed R-60 zone (Woodmont Triangle Amendment affected 7 acres, SMA rezoned affected area but reconfirmed existing zoning of subject property)

The significant point of the zoning history is that the controlling Sector Plan recommends the subject site for the C-T Zone. The Sector Plan will be discussed in Part III. E. of this report.

B. Subject Property

The subject property is located at 4705 West Virginia Avenue, on the north side of the street, approximately 200 feet east of Wisconsin Avenue (MD 355), as shown on the following map from the Technical Staff report (Exhibit 30, p. 2):



The property is also depicted in photographs supplied by Applicant (Exhibit 13):



North view (front elevation)

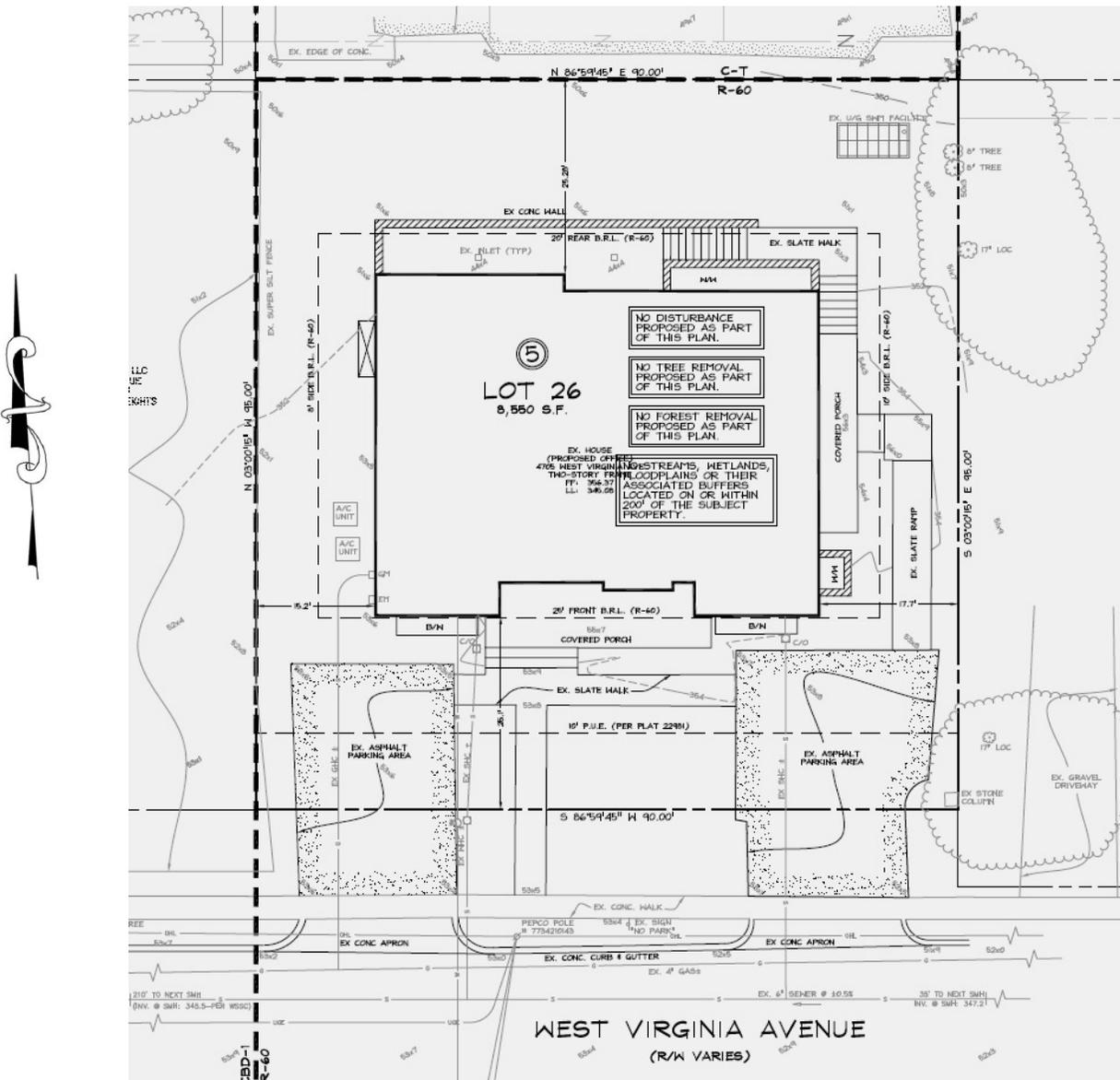


South view (rear elevation)

The site is in the East Bethesda transition area of the Bethesda CBD Sector Plan. Technical Staff described the property and its immediate neighbors as follows (Exhibit 30, pp. 2-3):

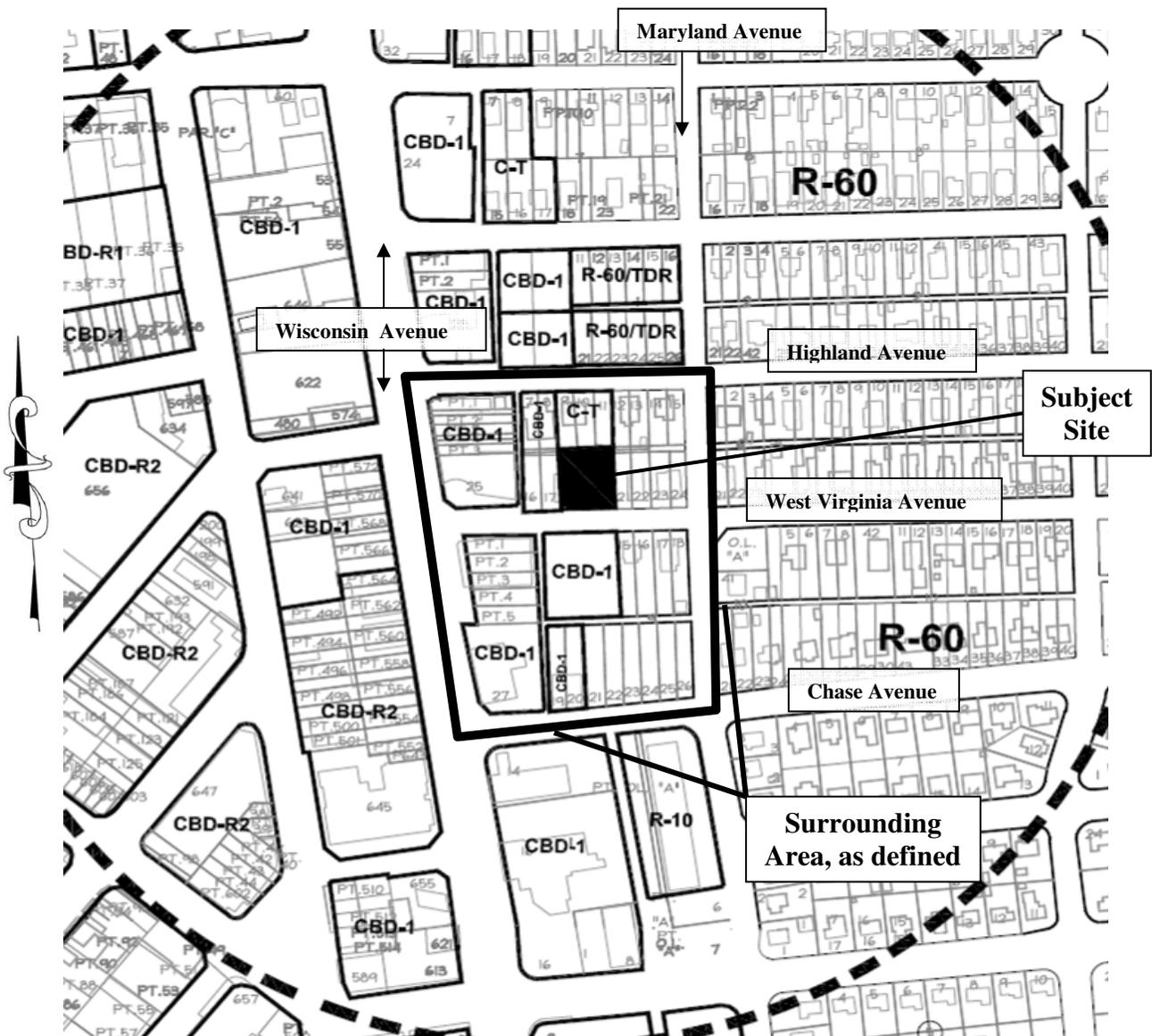
. . . The site, Lot 26, is 8,550 square feet in size and rectangular in shape, measuring approximately 90 feet wide and 94 feet deep, with about 90 feet of street frontage along West Virginia Avenue. The property is relatively flat. The adjacent property to the west of the subject site is used as a parking lot for nearby commercial uses in the CBD-1 zone. Further west are commercial properties also zoned CBD-1. Immediately north of the subject site is a building that is residential in character but used as office space in the C-T zone. The adjacent property to the east is zoned R-60 and contains a one-family detached residential dwelling unit. South of the subject site across West Virginia Avenue is a parking lot, Lot 44, which is owned and operated by Montgomery County. The Bethesda metro station is approximately 1600 feet away.

The site in its present condition is shown in an “NRI/Existing Conditions” plan (Exhibit 15(a)). As can be seen in this plan, there are paved areas in the front for on-site parking of up to five cars:



C. Surrounding Area and Adjacent Development

The surrounding area must be identified in a floating zone case so that compatibility can be evaluated properly. The “surrounding area” is defined less rigidly in connection with a floating zone application than in evaluating a Euclidean zone application. In general, the definition of the surrounding area takes into account those areas that would be most directly affected by the proposed development. In the present case, Technical Staff recommends designating the surrounding area as generally defined by Wisconsin Avenue to the west, Highland Avenue to the north, Maryland Avenue to the east, and Chase Avenue on the south. The Applicant agreed with this definition, depicted below (Exhibit 17). Tr. 40.



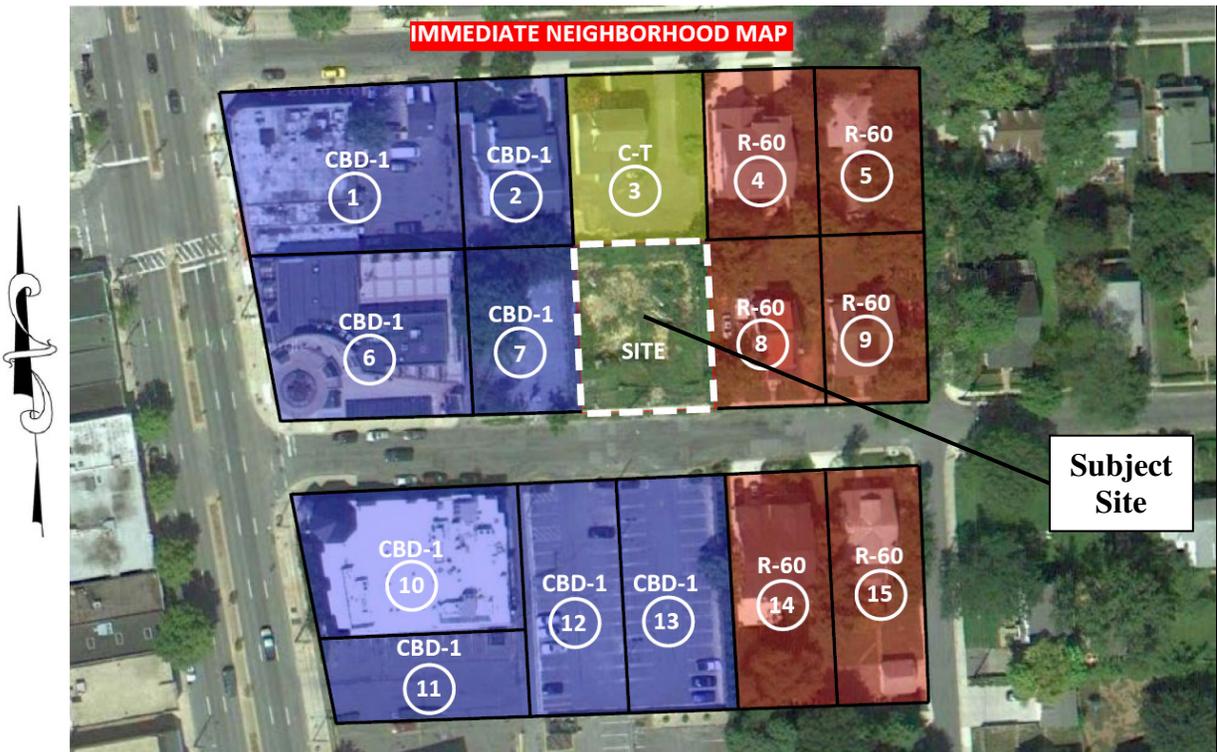
Since the defined area suggested by Technical Staff appears to cover those who will be most affected by the view of the existing building and by traffic its new use will generate, the Hearing Examiner accepts this definition of the surrounding area.

Technical Staff described existing development within the surrounding area as follows (Exhibit 30, p. 4):

. . . This area is appropriate for determining whether the proposed zone will be compatible with surrounding uses because it uses Wisconsin Avenue, which is a major arterial roadway, as a clear demarcation between more dense development to the west of the roadway and less dense development on the east. The boundary also captures surrounding properties that may be affected by the rezoning. . . .

The area to the east of the defined neighborhood is residential in character, made up of a mix of older one-family homes as well as more recently redeveloped lots containing single-family homes zoned R-60. A commercial property zoned C-T is directly north of the subject property. The parking lots on the west and south of the subject property are zoned CBD-1, and further west across Wisconsin Avenue is the Bethesda Central Business District.

The zones adjacent to the site are depicted below in an Immediate Neighborhood Map (Exhibit 27(b)):



D. Proposed Development

1. Development Concept

The Applicant seeks to rezone the property located at 4705 West Virginia Avenue, Bethesda, Maryland from the R-60 Zone to the C-T (Commercial Transitional) Zone so it can use the existing two-story single-family building for a commercial office use. According to Mimi Kress, Applicant's managing member, if the rezoning request is granted, the use will be a combination of a showroom on the main level, similar to a model home look, and offices for the company. Applicant is not planning any changes to the structure or further development of the property after the rezoning is granted. Tr. 13-17.

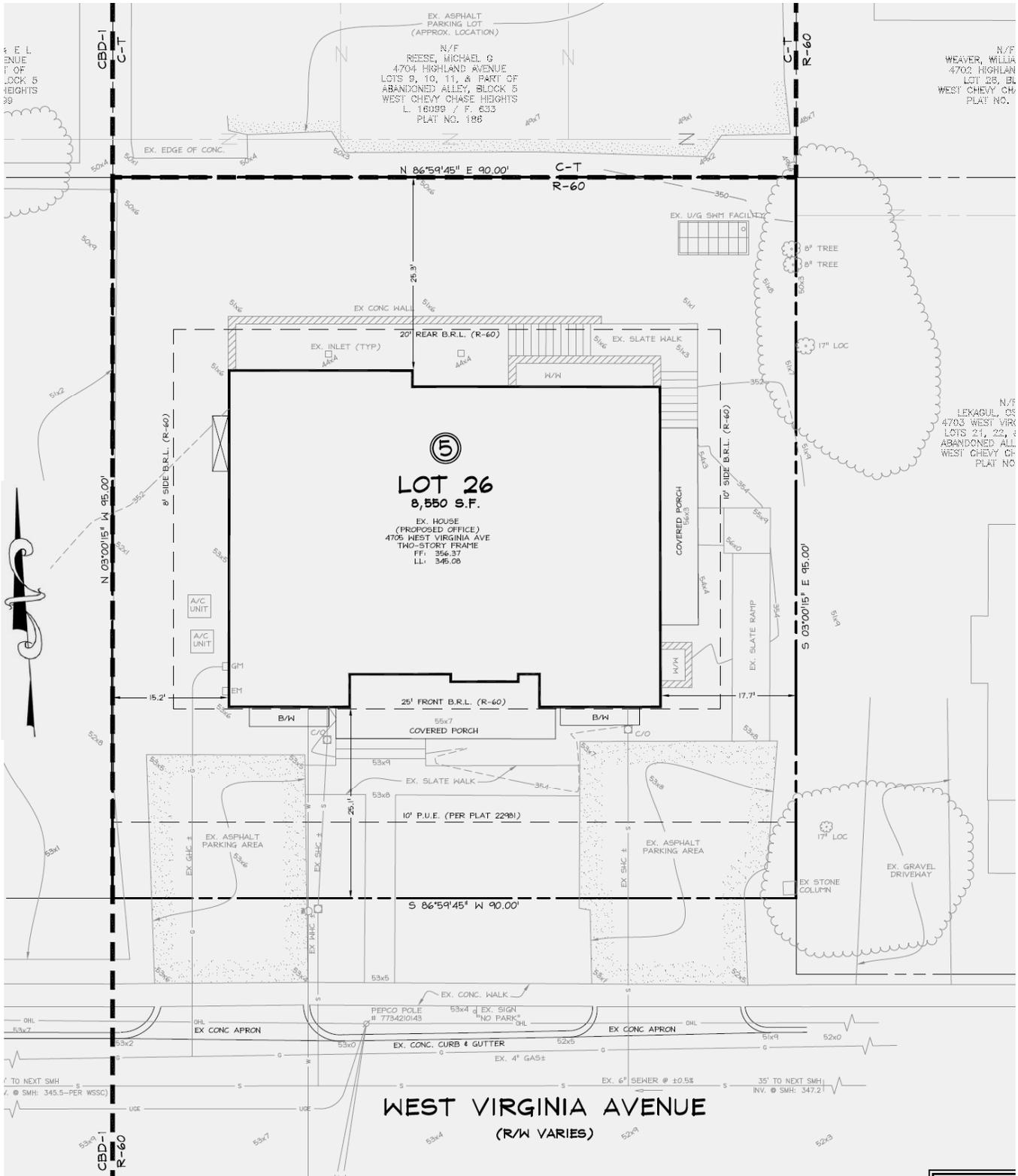
2. Schematic Development Plan & Binding Elements

Pursuant to Code § 59-H-2.52, the Applicant in this case has chosen to follow the "optional method" of application. The optional method requires submission of a schematic development plan (SDP) that specifies which elements of the plan are illustrative and which are binding, *i.e.*, elements to which the Applicant consents to be legally bound. Those elements designated by the Applicant as binding on the SDP must be set forth in a Declaration of Covenants to be filed in the county land records if the rezoning is approved. The Applicant's final SDP (Exhibit 39(a)), which was revised to incorporate changes recommended by the Planning Board, sets forth five binding elements:

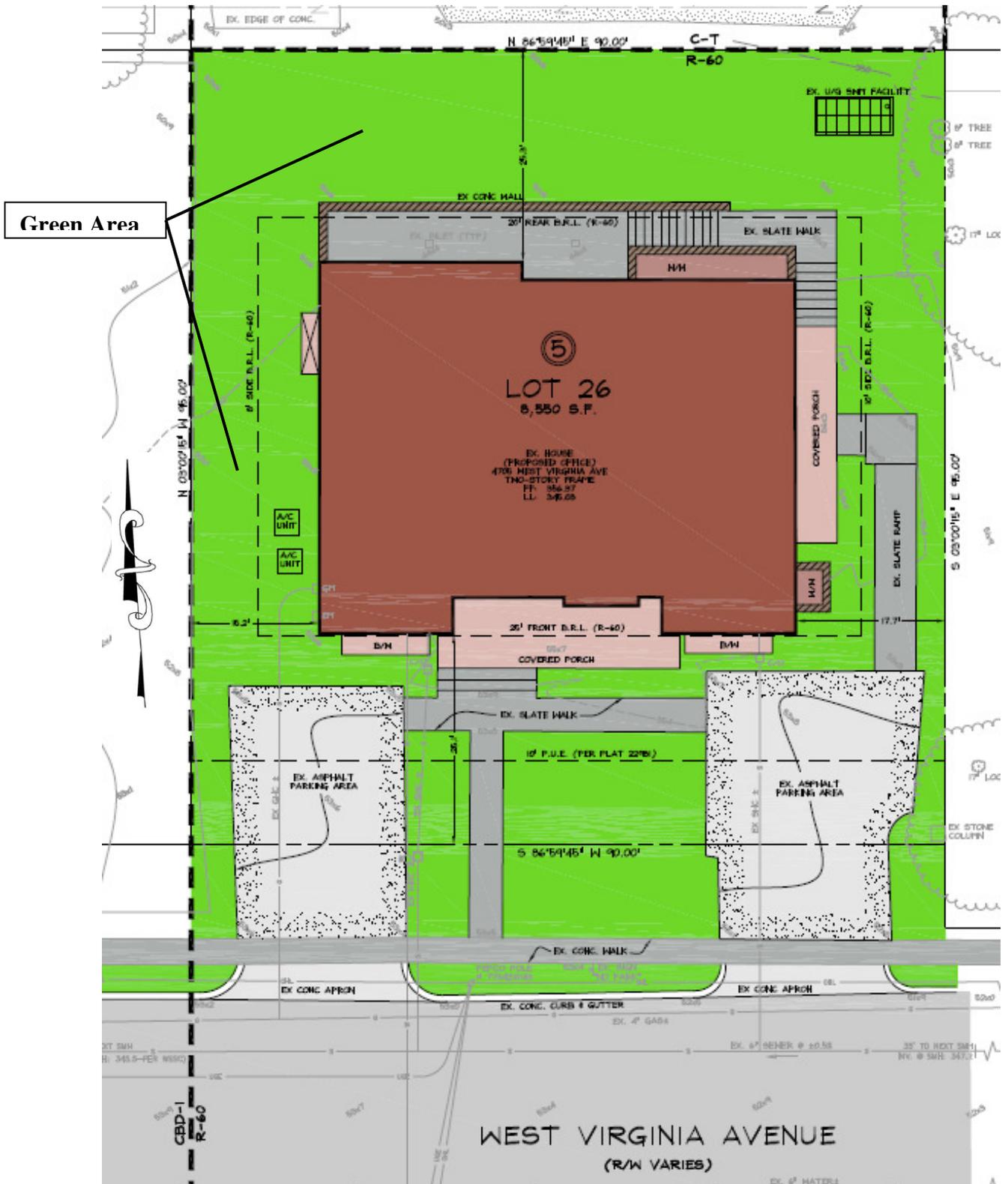
BINDING ELEMENTS

- 1) DEVELOPMENT AND USE SHALL BE LIMITED TO 4,275 SQUARE FEET FLOOR AREA OF DEVELOPMENT, WITH ASSOCIATED SIGNAGE, PARKING, LANDSCAPING, LIGHTING AND INFRASTRUCTURE IMPROVEMENTS.
- 2) THE FOLLOWING HEIGHT LIMITATION SHALL APPLY TO THE DEVELOPMENT: UP TO 24 FEET FOR THE BUILDING.
- 3) THE FOLLOWING MINIMUM BUILDING SETBACKS SHALL APPLY:
 - A) FROM WEST VIRGINIA AVENUE: 10 FEET
 - B) FROM ALL OTHER LOT LINES: 15 FEET
- 4) THE FOLLOWING GREEN AREA REQUIREMENT SHALL APPLY: MINIMUM 10%
- 5) THE PROPERTY INCLUDING OPEN SPACE, WILL BE SUBJECT TO SITE PLAN REVIEW. GENERAL BUILDING, OPEN SPACE, PARKING LOCATIONS, LANDSCAPING/LIGHTING, AND NUMBER OF PARKING SPACES TO BE DETERMINED AT SITE PLAN. THE PARKING LAYOUT IS FOR ILLUSTRATIVE PURPOSES ONLY AND WILL BE REVISED AT SITE PLAN TO IMPROVE RESIDENTIAL SCALE, BUFFERING AND COMPATIBILITY.

The SDP (Exhibit 39(a)) also contains an illustrative diagram (i.e., a site layout), as well as other information regarding the development. The site layout is reproduced below:



The green space on the subject site is depicted in a diagram on the SDP, but it displays more clearly, in green (medium gray in hard copy), on the rendered SDP (Exhibit 39(b)), reproduced below:



Applicant has also filed an executed copy of the Declaration of Covenants in the record of this case as Exhibit 39(c), and it contains the specified binding elements, as required. The legal effect of the covenants is to obligate any future owner of the property to comply with the binding elements specified on the SDP. Thus, the optional method allows an applicant to specify elements of its proposal that the community, reviewing agencies and the District Council can rely on as legally binding commitments. Illustrative elements of the SDP may be changed during site plan review, but the binding elements cannot be changed without a separate application to the District Council for a schematic development plan amendment.

Applicant's land planner, Bill Landfair, testified that the existing structure was built as a single-family home, and it will continue to maintain a strong, attractive appearance as an office use. Tr. 42-43. According to Curt Schreffler, Applicant's civil engineer, the schematic development plan fits the existing building on the lot, which is residential in size and scale. The C-T zone actually requires greater setbacks and shorter height than the adjacent R-60 zone. Thus, one can actually build closer to the property line in the residential zone than in the commercial transitional zone. Mr. Schreffler feels that the existing building is very residential in style, size and scale. There are two driveways in the front for on-site parking of up to five cars, and there is stormwater management on the site. No new construction is proposed. Tr. 22-23.

The Hearing Examiner finds that the proposed Binding Elements will achieve the desired end of keeping the setbacks, scale and size of the structure compatible with other properties in the immediate area, while according the Planning Board sufficient flexibility to adjust parking, open spaces, landscaping and lighting at site plan review.

3. Public Facilities (Water & Sewer Service, School Capacity, Traffic and Parking)

Zoning Ordinance §59-H-2.4(f) requires Applicant to produce “[s]ufficient information to demonstrate a reasonable probability that available public facilities and services will be adequate to

serve the proposed development . . .”

a. Water and Sewer Service

Technical Staff reports that the property is served by public water and sewer. “Since no further building modifications or additions are proposed at this time, the Washington Suburban Sanitary Commission (WSSC) did not comment on the application.” Exhibit 30, p. 14.

b. School Capacity

School capacity is not an issue in this case since no residential buildings are proposed.

c. Traffic, Parking, Access and Site Circulation

Traffic

Under County law in effect at the time this application was filed, there were two aspects to the analysis of transportation facilities, local area transportation review (LATR) and policy area mobility review (PAMR). The local area transportation review looks at the number of peak-hour trips that will impact intersections surrounding the subject site. If the site will generate a net of more than 29 peak-hour trips, then the intersections are subject to analysis under the critical lane volume (CLV) standard that has been adopted for that policy area. The critical lane volume standard for this area is 1,800 critical lane movements. Tr. 50-57.

Craig Hedberg testified as an expert in traffic engineering and transportation planning. His transportation analysis evaluated the net peak-hour trip generation of the proposed use. To do that, Mr. Hedberg used the trip generation rates for both the Bethesda CBD, and the Countywide trip generation rates.

Mr. Hedberg’s analysis, initially prepared on June 22, 2012, and then updated on October 2, 2012, is contained in Exhibit 26. Table A of the exhibit uses trip generation rates for the Bethesda CBD in accordance with Technical Staff’s LATR/PAMR Guidelines. The Table indicates that the new use will generate 8 trips in each peak hour, but after taking credit for the displaced single-

family unit, there would be a net increase of 7 peak-hour trips in the a.m., and 7 peak-hour trips in the p.m. That is well below the 29 trip standard, and therefore the subject application would not have to file a full local area transportation review analysis of intersectional impacts. Tr. 50-52.

Table A is set forth below:

Table A
Net Peak Hour Trip Generation
(4705 West Virginia Avenue)

Density	AM Peak Hour			PM Peak Hour		
	In	Out	Total	In	Out	Total
A. Proposed Rezoning -3,625 SF Office	4	1	5	1	4	5
B. 2,350 SF Showroom (Miscellaneous)	2	1	3	1	2	3
C. Displaced Density - 1 SFDU (Credit)	0	-1	-1	-1	0	-1
Net Trip Increase (A+B+C)	6	1	7	1	6	7

Since the net peak hour trip increase associated with the rezoning is less than 30 peak hour trips, no Local Area Transportation Review (LATR) is required.

According to Mr. Hedberg and Technical Staff, when calculating trips for PAMR, the Applicant is permitted to use Countywide trip generation rates instead of Bethesda CBD trip generation rates, and adjust the results with a credit for having located in the CBD rather than in the outlying area. This adjustment is permitted because locating outside the CBD causes a higher rate of trip generation since public transit is not as available. The reduced number of trips can be credited to the PAMR requirement. Tr. 52-53 and Attachment D to the Technical Staff report (Exhibit 30).

The PAMR calculation is best shown in Table 2 of the Transportation Planning Staff’s Memo (Exhibit 30, Attachment D, p. 4.), reproduced on the next page. Table 2 first shows a calculation of a net of 8 trips in the a.m. and 17 trips in the p.m., using Countywide trip rates. The PAMR requirement in the Bethesda CBD is 25 percent of the trips, based on the Countywide rate. This yields a PAMR mitigation requirement of two trips in the a.m. and four trips in the p.m. The

Applicant then gets a one trip credit in the a.m. and a 10 trips credit in the p.m., by virtue of the project being located in the CBD. After taking out that credit, Applicant is left with an obligation to pay the County’s PAMR fee for one excess trip in the morning. In the evening, the 10 trip credit wipes out any PAMR requirement (leaving a surplus of 6) since the evening PAMR requirement, before the credit, was only 4 trips. Table 2 is reproduced below:

**TABLE 2
PAMR MITIGATION REQUIREMENT CALCULATION
PROPOSED 4705 WEST VIRGINIA AVENUE DEVELOPMENT**

	Morning Peak-Hour	Evening Peak-Hour
Site Trip Generation -(Countywide Rates)		
A. Proposed Density		
3,625 SF Office	5	8
2,350 SF Showroom (Miscellaneous)	4	10
Total Peak-Hour Trips (A1)	9	18
B. Existing Density		
1 Single-Family Dwelling Unit (B1)	1	1
C. Net New Trips (C1 = A1 - B1)	8	17
D. PAMR Mitigation Requirement (D1= C1 x 0.25)	2	4
Site Trip Generation - (CBD Rates)		
E. Proposed Density		
3,625 SF Office	5	5
2,350 SF Showroom (Miscellaneous)	3	3
Total Peak-Hour Trips (E1)	8	8
F. Existing Density		
1 Single-Family Dwelling Unit (F1)	1	1
G. Net New Trips (G1= E1- F1)	7	7
H. Trip Credit for CBD Location (H1 = C1- G1)	1	10
I. Adjusted PAMR Mitigation Requirement {I1 = H1- D1} (PAMR: Excess/Pass = +ve; Deficit/Fail = -ve)	-1 (Fail PAMR)	+6 (Pass PAMR)

Source: Integrated Transportation Solutions, Inc. 4705 West Virginia Avenue Transportation Statement. Revised October 2, 2012.

The current PAMR rate is \$11,700 per trip, and under the current standards, that is what Applicant would be obligated to pay the County for the excess of one trip in the morning. These figures will be evaluated again at site plan review, probably under new “transportation policy area review” (TPAR) regulations. TPAR is scheduled to replace PAMR beginning January 1, 2013, but

the evaluation at the rezoning stage is judged by when the application was filed. Mr. Hedberg feels that this application will be compliant whether or not TPAR is applied, instead of PAMR, to determine adequate public facilities for this project. Tr. 53-58.

Transportation Planning Staff, in a report appended as Attachment D to the Staff report, essentially repeated Mr. Hedberg's findings. Technical Staff noted that "A full APF test for the site will be required at site plan. The proposed development is expected to generate a maximum of eight weekday peak hour trips during the morning and evening weekday periods." Exhibit 30, p. 15.

Based on this record, the Hearing Examiner finds that Applicant has demonstrated a reasonable probability that available transportation facilities and services will be adequate to serve the proposed development.

Parking

Under Zoning Ordinance §59-E-3.2 an office of this size would ordinarily require 11 parking spaces, as recognized in the Parking Tabulation on the SDP; however, the property is within the Bethesda Parking Lot District, and under Zoning Ordinance §59-C-4.307(b), this site may use public parking facilities to satisfy its parking space requirements under §59-E-3. Although the SDP presently calls for five parking spaces on site, the binding elements specify that the number and location of parking spaces on site will be determined at site plan review.

In Mr. Hedberg's opinion, the proposed use will be in harmony with the general character of the existing neighborhood as to traffic and parking. Parking Lot 44 is directly across the street. It has 56 spaces according to the Sector Plan, and there is another parking lot to the north of the site, which would certainly be usable and accessible for patrons coming to the site. There is also metered parking in the area east of Wisconsin Avenue, and further east into the neighborhood, there is permit parking. Thus, the proposed office use will not adversely affect the existing residential community regarding traffic and parking conditions. Tr. 60-61.

Site Access and Circulation

Mr. Hedberg also testified that the proposed site access and circulation systems are safe, adequate and efficient, from a transportation planning standpoint, for both pedestrian and vehicular traffic. There will be a lead-in sidewalk from the public right of way up to the front of the site, and there will be handicapped access from one of the parking lots as well. Tr. 58-60. There is no contrary evidence in the record, and the Hearing Examiner therefore finds that site access and circulation will be safe, adequate and efficient.

4. Environment

Applicant filed a Natural Resource Inventory/Existing Conditions Plan (NRI/ECP) for the site (Exhibit 35), and it was approved by Technical Staff on July 9, 2012, along with Forest Conservation Exemption No. 420121946. According to Mr. Schreffler, the existing stormwater management on the site consists of a dry well in the right rear corner of the property. When the building was constructed, stormwater management and sediment control were approved and permitted by the Department of Permitting Services. These approvals are contained in Exhibit 14. Tr. 23. No new construction is proposed, and subdivision is not required, but there will be site plan review by the Planning Board. Tr. 24-25.

Technical Staff noted that “There are no environmental features of concern on this proposal” (Exhibit 30, p. 15), as evidenced by Environmental Planning Staff’s memorandum recommending approval, appended to the Technical Staff report as Attachment E.

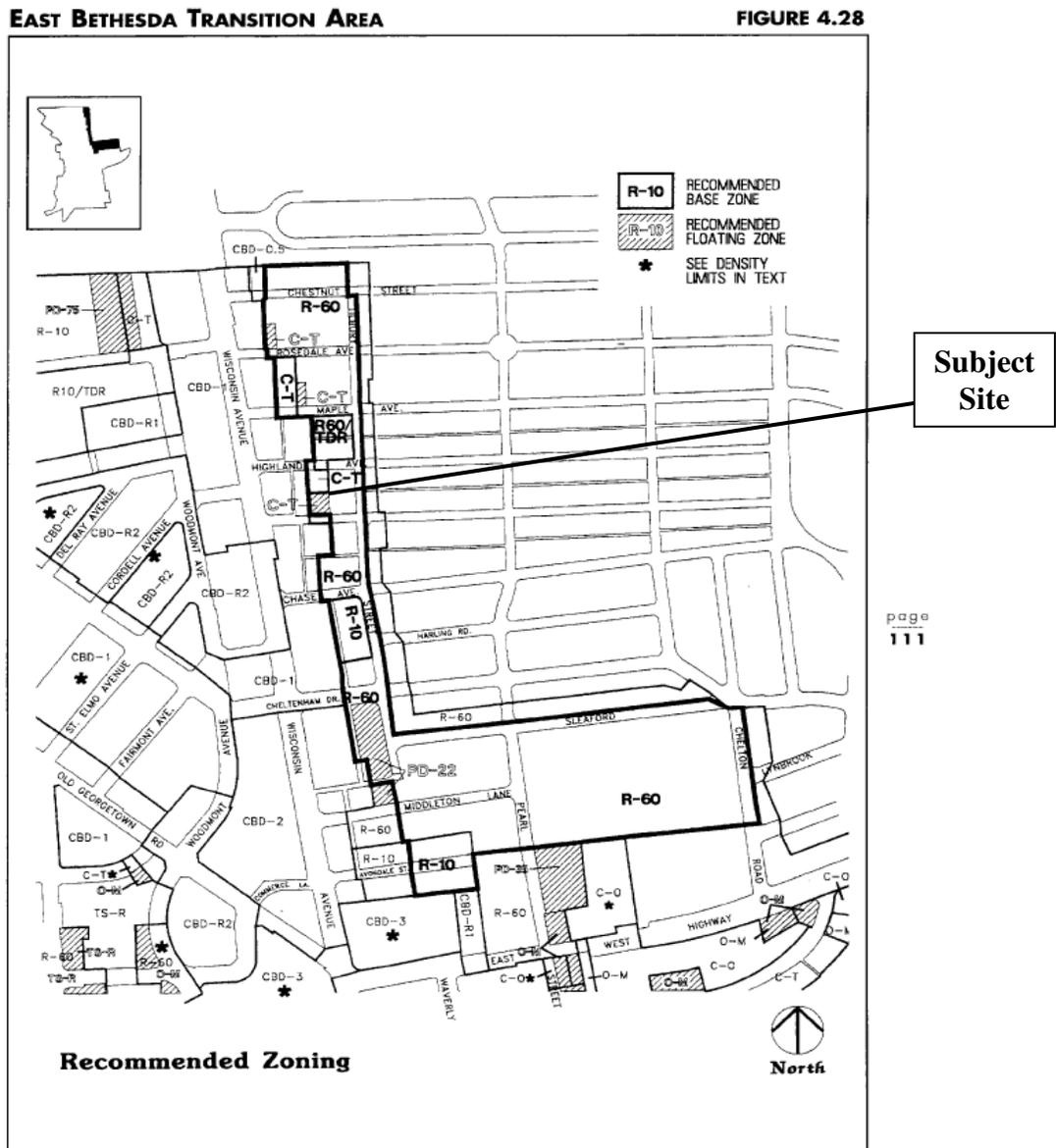
The Hearing Examiner finds that no environmental issues have been raised that would affect approval of this application.

E. Sector Plan Compliance

The subject site is located within the “East Bethesda Transition Area” of the Bethesda CBD Sector Plan, approved and adopted in 1994. Technical Staff provided a very thorough discussion of

the Sector Plan’s application to this case in their report (Exhibit 30, pp. 10-14). Staff’s conclusion is that “the subject property can be rezoned to the C-T zone in accordance with the Master Plan recommendations.” Exhibit 30, p. 14. The Planning Board agreed, stating, “The Planning Board finds that the rezoning application is consistent with the Sector Plan for the Bethesda Central Business District (CBD).” Exhibit 32, p. 1.

Recommended zoning for the East Bethesda Transition Area of the Bethesda CBD Sector Plan is depicted in Figure 4.28 on page 111 of the Sector Plan, and that zoning map is reproduced below:



As is clear from this “Recommended Zoning” map, the Sector Plan clearly calls for the subject site to be rezoned C-T, the zone which is sought in this case. The recommended use for the site is “Office: Low Density,” as indicated in a “Future Land Use” Chart (Figure 4.27) on page 110 of the Sector Plan. The instant proposal clearly satisfies both Sector Plan recommendations. As stated by Technical Staff (Exhibit 30, p. 11):

This proposal to rezone the subject site from the R-60 to the C-T zone will contribute to the stability of land uses by confirming future office use on the site. The applicant improved the property when they replaced an underutilized parking area with the existing residential structure. The 4,062 square foot structure provides a strong street presence and an opportunity to meet the needs of a small business and continue as a stable use in the transition area. . . . The applicant is not providing housing but the proposed use as an office in a one family house serves as an adequate transition to low-density housing. Transitions like this building will add to the aesthetic appeal of West Virginia Avenue as one drives eastward to reach one family homes in the neighborhood.

Staff also mentions that the existing designation of the site as Lot 26 of Block 5 resulted from the May 26, 2004 combination of former Lots 18, 19 and 20 to create the existing Lot 26. Exhibit 30, p. 12. The Sector Plan refers to the old lot designations in stating, “Applications for C-T zoning on these lots will be considered to be in accordance with the Sector Plan for individual parcels.” Sector Plan, p. 109. Technical Staff also suggests that, at site plan review, the Applicant should be required to plant street trees along the site’s West Virginia Avenue street frontage in order to “satisfy the intent of the Urban Design Guidelines of the Sector Plan.” Exhibit 30, p. 13.

The Hearing Examiner agrees with Technical Staff and the Planning Board, and finds that this project is in substantial compliance with the zoning, land use, density and design recommendations of the Bethesda CBD Sector Plan.

IV. SUMMARY OF THE HEARING

Applicant called four witnesses at the hearing – Mimi Kress, Applicant’s managing member; Curt Schreffler, a civil engineer; William R. Landfair, a land planner; and Craig Hedberg, a transportation planner. There were no community witnesses and no opposition witnesses.

1. Mimi Brodsky Kress (Tr. 13-17; 35-36):

Mimi Kress testified that she is the managing member of the LLC that owns the property, 4311 Montgomery Avenue, LLC. Applicant acquired the property in October of 2011. The existing use of the property is a residential R-60 use, a single-family home. If the rezoning request is granted, the property will be a combination of showroom on the main level, similar to a model home look, and offices for the company. Applicant is not planning any changes to the structure or further development of the property after the rezoning is granted. Ms. Kress is not aware of any opposition to the rezoning request. She concurs with the Technical Staff report findings and the Planning Board recommendations. Applicant will comply with that declaration of covenants to be executed. Tr. 13-17.

Ms. Kress also identified photographs of the existing house, the front elevation, the rear, and the two views from the east and the west of the property showing what is adjacent to it (Exhibit 13). Tr. 35. Ms. Kress further testified that she will execute the covenants when they are updated to reflect the recommendations of the Planning Board eliminating the binding element on phasing and adding the note to the schematic development plan that the parking is illustrative and will be finally determined at site plan. Tr. 36.

2. Curt A. Schreffler (Tr. 18-34):

Curt Schreffler testified as an expert in civil engineering. He stated that Applicant’s schematic development plan meets the standards contained in the zoning ordinance for schematic

development plans and the findings that the County Council must make in order to approve the C-T Zone for the property. Tr. 20.

Mr. Schreffler noted that the property is approximately half a block east of Wisconsin Avenue, on the north side of West Virginia Avenue, in downtown Bethesda. Wisconsin Avenue is the north/south street bisecting the surrounding area map (Exhibit 17). It is bordered to the north by C-T zoned property; confronted to the south by CBD-1 property, which is a County-owned parking lot; to the west by development CBD-1 property; and to the east by R-60 zoned property, single family homes. Tr. 21.

According to Mr. Schreffler, the schematic development plan fits the existing building on the lot, which is residential in size and scale. The C-T zone actually requires greater setbacks and shorter height than the adjacent R-60 zone. Thus, you can actually build closer to the property line in the residential zone than you can in the transitional zone. He feels that the building is very residential in style, size and scale. There are two driveways in the front for on-site parking of up to five cars, and there is stormwater management on the site (a dry well in the right rear corner of the property). When the building was built, stormwater management sediment control was approved and permitted by the County. No new construction is proposed. Tr. 22-23.

DPS approved the building permit, site plan, stormwater management plan, and sediment control plan, all contained in Exhibit 14. Tr. 23. Subdivision is not required, but there will be site plan review by the Planning Board. Tr. 24-25.

Mr. Schreffler identified the attachments (Exhibit 27(b)) to Applicant's prehearing statement (Exhibit 27(a)). They include an immediate neighborhood map and photos to show compatibility with the neighborhood. The site is surrounded by CBD-1, C-T and R-60 zoned properties and a mixture of newer homes and older homes. Mr. Schreffler stated that there are many commercial

uses in the immediate neighborhood, as well as residential buildings that are used commercially now, because they are zoned either CBD-1 or CT. He pointed out that several of the newer homes are actually larger than Applicant's building. Tr. 30-32.

Mr. Schreffler further testified that the schematic development plan does not conflict with the general plan, the County Capital Improvements program, or any other applicable County plans or policies from a civil engineering standpoint. In his expert opinion, the proposed development will comply with the purpose clause and development standards and regulations of the CT zone from a civil engineering standpoint. He also opined that the proposed internal vehicular and pedestrian circulation systems and points of external access safe, adequate, and efficient from the civil engineering standpoint. He stated that the proposed development design will prevent erosion of the soil because no new construction is proposed. The proposed development will comply with the applicable requirements from Montgomery County Code chapter 19, erosion and sediment control. Tr. 32-33.

In Mr. Schreffler's expert opinion, the public facilities and services will be adequate to serve the proposed development from a civil engineering standpoint. The site is a well-developed area, so public utilities are available. The house is built and functioning. The stormwater management is in place and still appropriate. From an engineering standpoint, this site is compatible with the surrounding area and in the public interest. Tr. 33-34.

3. William Landfair (Tr. 36-49):

William Landfair testified as an expert in land planning. He stated that the property truly reads as residential in appearance and character. It has a very strong street presence. In his opinion, the redevelopment of the property with the conversion of a single-family home into an office use will establish a very fine transition between the single-family homes further to the east, and the

commercial uses further to the west. The property reads very clearly on all four facades of the building as a residential looking structure. It has a very nice appearance to it and is very compatible with the surrounding land uses. Tr. 38-39.

Mr. Landfair noted that there are commercial uses to the north, to the south in the C-T, and in the CBD-1 zone. There are nearby parking lots and commercial uses to the west, and in the CBD further to the west across Wisconsin Avenue. There are single-family homes to the east as well. Tr. 39.

Mr. Landfair stated that he agrees with the recommendations and the factual findings in the Technical Staff report, including the identification of the surrounding area, which covers all the properties which might be impacted by the proposed rezoning. Tr. 40. The site is in the East Bethesda transition area of the Bethesda CBD Sector Plan (Sector Plan p. 107). Tr. 41-42.

The Bethesda CBD Sector Plan, adopted in 1994, specifically recommends the C-T zone for the property. It makes that recommendation with specific recommendations also for land use, either with retail and service employment, or low density office employment. Mr. Landfair opined that the proposed rezoning application is consistent with these recommendations. Tr. 42.

Mr. Landfair believes that the proposed rezoning will provide this stability recommended in the plan. It is a very attractive structure. It was built as a single-family home, and it will continue to maintain a strong attractive appearance as an office use. It will also provide the kind of transition that the Sector Plan is looking for between the homes in East Bethesda, and the CBD located further to the west. He noted that the property was formerly an underused parking lot, which has been replaced by a very attractive building. In his expert opinion, the zoning that is applied for in the schematic development plan is in substantial compliance with the recommendations in the Sector

Plan, and it does not conflict with the general plan, the County capital improvements program, or any other applicable County plans and policies. Tr. 42-43.

Mr. Landfair also opined that the proposed development comply with the purpose clause of the CT zone, which calls for sites with low intensity commercial buildings which either singularly or in groups will provide an appropriate transition between one-family residential areas and high-intensity commercial development. To satisfy the purpose clause, one of two possible locational requirements must be met, either the proposed rezoning must be designated as being suitable for the CT zone in the relevant master or sector plan, or number two, it must be proposed on property that acts as a buffer between single-family residential homes and high-intensity commercial uses with buildings higher than 40 feet. The site is specifically recommended for the C-T zone in the Sector Plan, and so it is in compliance with the purpose clause. Tr. 44.

In Mr. Landfair's opinion, the building as constructed complies with the development standards and regulations of the C-T zone, including lot coverage, building height, floor area, setbacks, and green area. There are binding elements reflected on the schematic development plan, which are also consistent with the zone, and provide the necessary flexibility in the event that the Applicant desires in the future to make modest additions or alterations to the building. Tr. 45.

The proposed office use is permitted in the C-T zone, and adequate parking will be provided, given that it's in the parking lot district. Tr. 46. In Mr. Landfair's opinion, granting the zoning request will be in the public interest. It complies with all the recommendations of the Sector Plan. It's consistent with the purpose clause of the C-T zone, as well as the schematic development plan findings. It will further the Sector Plan's goal of providing stability, and a suitable transition between the single-family neighborhood to the east, and the commercial uses to the west. Tr. 47.

To his knowledge, public facilities and services will be adequate to serve the proposed development, but a full APF test for the site will be required at time of site plan. Given the commercial nature of the use, it won't have any kind of school impact, and police and fire and rescue facilities are located nearby. Tr. 47.

Mr. Landfair further testified that the proposed development and the use will be compatible with existing and proposed adjacent and surrounding land uses. The existing building is residential in scale and character, and will make a fine transitional use for this neighborhood, for this area, and will be compatible. Tr. 47-48.

4. C. Craig Hedberg (Tr. 48-61):

Craig Hedberg testified as an expert in traffic engineering and transportation planning. He stated that he did the transportation analysis that was required for the submission of this proposal, evaluating the net peak-hour trip generation of the proposed use. To do that, Mr. Hedberg used the trip generation rates for both the Bethesda CBD, and the Countywide trip generation rates. Tr. 50.

Mr. Hedberg noted that there are two aspects to the transportation analysis. One is a local area transportation review [LATR], and one is the policy area mobility review [PAMR]. The local area transportation review looks at the number of peak-hour trips and what will be the impact on intersections surrounding the subject site. If the site will generate a net of more than 29 peak-hour trips, then the intersections are subject to analysis under the standard that has been adopted for that policy area. The critical lane volume for this area is 1,800 critical lane movements, but the intersectional impact analysis is not required because the site will generate under 30 peak-hour trips. Tr. 50-57.

Mr. Hedberg's analysis, initially prepared on June 22, 2012, and then updated on October 2, 2012, to use rounded figures, is contained in Exhibit 26,. Table A of the exhibit indicates that after

taking credit for the displaced single-family unit, there would be a net increase of seven peak-hour trips in the a.m., and seven peak-hour trips in the p.m. That is well below the 29 trip standard. So the subject application would not have to file a local area transportation review. Tr. 50-52.

According to Mr. Hedberg, when calculating trips for PAMR, the Applicant is permitted to use countywide trip rates, and adjust that with a credit for having located in the CBD rather than in the outlying area which would have caused a higher rate of trip generation because transit is not as available. The reduced number of trips can be credited to the PAMR requirement. Tr. 52-53.

On page three of Mr. Hedberg's October 2nd memorandum, Table B first shows a calculation of a net of 8 trips in the a.m. and 17 trips in the p.m., using countywide trip rates. The PAMR requirement in the Bethesda CBD is 25 percent of the trips, based on the countywide rate. This yields a PAMR mitigation requirement of two trips in the a.m. and four trips in the p.m. The Applicant then gets a one trip credit in the a.m. and a 10 trips credit in the p.m., by virtue of the project being located in the CBD. After taking out that credit, Applicant is left with an obligation to pay the County's PAMR fee for one excess trip in the morning. In the evening, the 10 trip credit wipes out any PAMR requirement (leaving a surplus of 6) since the evening PAMR requirement, before the credit was only 4 trips. The current PAMR rate is \$11,700 per trip, and under the current standards, that's what Applicant would be obligated to pay the County. These figures will be evaluated again at site plan review, probably under new "transportation policy area review" (TPAR) regulations. TPAR is supposed to replace PAMR beginning January 1, 2013, but the evaluation at the rezoning stage is judged by when the application was filed. Mr. Hedberg has no concern whether this application at site plan falls within PAMR or TPAR in terms of adequate public facilities for this project. Tr. 53-58.

Mr. Hedberg further testified that the existing transportation network surrounding the property can adequately handle the traffic proposed to be generated, and he agrees with the findings made by Park and Planning transportation planning staff. In his expert opinion, the proposed access and circulation systems are safe, adequate, and efficient, from a transportation planning standpoint, for both pedestrian and vehicular traffic. There will be a lead-in sidewalk from the public right of way up to the front of the site, and there will be a handicapped access from one of the parking lots as well. Tr. 58-60.

In Mr. Hedberg's opinion, the proposed use will be in harmony with the general character of the existing neighborhood as to traffic and parking. Parking lot 44 is directly across the street. It has 56 spaces according to the Sector Plan, and there is another parking lot to the north of the site, which would certainly be usable and accessible for patrons and whoever would come to the site. There is also metered parking in the initial area east of Wisconsin Avenue, and then further east into the neighborhood, there is permit parking. The proposed office use will not adversely affect the existing residential community regarding traffic conditions. Tr. 60-61.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

A floating zone is a more flexible device that allows a legislative body to establish a district for a particular category of land use, with regulations specific to that use, without attaching that district to particular pieces of property. Individual property owners may seek to have property

reclassified to a floating zone by demonstrating 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).

Any zone must also be consistent with a coordinated and systematic development of the regional district and in the public interest, as required by Maryland Land Use Article, Code Ann. § 21-101(a)(4)(i) (2012),²

(i) planning, zoning, or subdivision control powers in the regional district [must be exercised to:]

(1) guide and accomplish a coordinated, comprehensive, adjusted, and systematic development of the regional district;

(2) coordinate and adjust the development of the regional district with public and private development of other parts of the State and of the District of Columbia; and

(3) protect and promote the public health, safety, and welfare.

The C-T Zone contains a post-zoning review process that generally delegates to the Planning Board the details of site specific issues such as building location, stormwater control, vehicular and pedestrian routes, landscaping and screening. We turn now to the three areas of Council review discussed above – the purposes and requirements of the applicable zone, compatibility with land uses in the surrounding area and relationship to the public interest.

A. The Purpose Clause and the Zone’s Requirements

Purpose Clause of the C-T Zone

The purpose clause for the C-T Zone, Zoning Ordinance §59-C-4.301, provides:

The purpose of the C-T zone is to provide sites for low-intensity commercial buildings which, singly or in groups, will provide an appropriate transition between one-family residential areas and high-intensity commercial development.

² Effective October 1, 2012, the Regional District Act, Article 28, Md. Code Ann., was re-codified, without a change in substance, into a new “Land Use Article.” Section § 21-101(a)(4)(i) of the Land Use Article contains the rough equivalent of the previous language in Article 28, Md. Code Ann., § 7-110.

The C-T zone is intended to constitute a margin of limited width at the border between a commercial area and a one-family residential area. For that reason, the C-T zone can only be applied:

(a) In areas designated for the C-T zone on adopted and approved master or sector plans; or

(b) On property so located that it is between and adjoining or separated only by a street, highway, or utility right-of-way from both of the following uses:

(1) Existing or proposed one-family residential uses; and

(2) Existing high-intensity commercial uses. As used herein, the term "high-intensity commercial use" refers to any commercial or central business district development with an existing height that is greater than 40 feet. The term "high-intensity commercial use" does not include development in the C-1 zone.

The fact that an application complies with all specific requirements and purposes set forth herein shall not be deemed to create a presumption that the application is, in fact, compatible with surrounding land uses, and, in itself, shall not be sufficient to require the granting of an application.

Applicant's land planner, Bill Landfair, testified that the proposed development will comply with the purpose clause of the C-T Zone because the site has a low intensity commercial building that will provide an appropriate transition between one-family residential areas and high-intensity commercial development. This proposal also meets the first alternative specified in the Code, in that the subject site is designated as being suitable for the C-T Zone in the relevant Sector Plan. Tr. 44. Technical Staff reached the same conclusion for the same reasons. Exhibit 30, p. 8.

The Planning Board also found that "The application will comply with the purposes, standards and regulations of the C-T zone." Exhibit 32, p. 1.

Based on this record, the Hearing Examiner concludes that the proposed development will serve precisely the goal articulated in the C-T Zone's purpose clause. The existing structure will indisputably serve as a "low-intensity commercial building," and the Hearing Examiner finds that it will "provide an appropriate transition between one-family residential areas and high-intensity

commercial development.” Moreover, the subject site has been designated for the C-T Zone in the Bethesda CBD Sector Plan.

Regulations (i.e., Development Standards) of the C-T Zone

The regulations of the C-T Zone are provided in Zoning Ordinance §§59-C-4.302 to 4.309. Most of the development standards for the C-T Zone were set forth in a Table on the revised SDP (Exhibit 39(a)), which is reproduced on page 12 of this report. A similar table is contained on page 10 of the Technical Staff report (Exhibit 30). As stated by Technical Staff, “The application and associated schematic development plan satisfy the development standards of the C-T zone, . . .”

Mr. Landfair also opined that the building as constructed complies with the development standards and regulations of the C-T zone, including lot coverage, building height, floor area, setbacks and green area. The binding elements reflected on the schematic development plan are also consistent with the zone’s regulations. Tr. 45.

Based on the entire record, the Hearing Examiner finds that the proposed development meets the purposes and requirements of the C-T Zone, and that the proposed development’s binding elements will permit the Planning Board flexibility to approve a design at site plan review which will meet all applicable standards.

B. Compatibility

Applicant’s land planner, Bill Landfair, testified that the proposed development and the use will be compatible with existing and proposed adjacent and surrounding land uses. He stated that the existing building is residential in scale and character, and will make a fine transitional use for this neighborhood. Tr. 47-48. As mentioned earlier in this report, Curt Schreffler, Applicant’s civil engineer, testified that the schematic development plan fits the existing building on the lot, and Applicant’s transportation planner, Craig Hedberg, testified that the proposed use will be in harmony with the general character of the existing neighborhood as to traffic and parking.

Technical Staff also concluded that “The proposal is compatible with adjacent development in the surrounding area with regards to the use and building location,” although Staff suggested that the on-site parking be further reviewed at site plan and that additional screening and landscaping be considered at that time.

The Planning Board stated (Exhibit 32, p. 1):

The development as reflected on the Schematic Development Plan and further refined by the binding elements will be compatible with the surrounding area. . . . The Board also agreed with Chair Carrier’s recommendation that the applicant add a note to the Schematic Development Plan identifying that the parking layout is for illustrative purposes only and will be revised at site plan to improve residential scale, buffering and compatibility.

Based on this record and on the above analysis of the applicable purpose clause, the Hearing Examiner finds that the proposed use would be compatible with the surrounding area, and that the SDP, as currently proposed, is appropriate at this stage of review, and capable, under its binding elements, of producing a project compatible with its surrounding development. The Planning Board will further evaluate compatibility at site plan review.

C. Public Interest

As mentioned above, Maryland law requires that zoning powers be exercised in the public interest. Factors which are usually considered in determining the public interest include Master Plan or Sector Plan conformity, the recommendations of the Planning Board and its staff, any adverse impact on public facilities or the environment, and positive factors such as provision of affordable housing or providing a buffer for an existing residential area.

1. Master Plan Conformity, Technical Staff and the Planning Board:

As discussed in this report, Technical Staff and the Planning Board found that the proposed development, as limited by the binding elements, is appropriate and consistent with the Sector Plan. Exhibits 30 and 32. For the reasons discussed in Part III. E. of this report, the Hearing Examiner also

finds that the proposed SDP is consistent with the Bethesda CBD Sector Plan, approved and adopted in 1994.

2. Public Facilities and the Environment:

The Transportation Planning staff reviewed the SDP and found that it meets all requirements of Local Area Transportation Review and Policy Area Mobility Review, as discussed in Part III. D. 3. c. of this report. As mentioned earlier, the record also supports the conclusion that other public facilities will not be adversely affected by the proposed use.

Environmental issues were discussed in Part III. D. 4 of this report. As mentioned there, a Natural Resource Inventory/Existing Conditions Plan (NRI/ECP) has been approved for the subject property, and Environmental Planning Staff found no environmental issues. A stormwater management plan has also been approved for the site.

3. Other factors:

Technical Staff noted that construction of the primary structure has been completed and there will be no additional demands on public utilities or further adverse environmental impacts. Given the proposal's compliance with the Sector Plan, Technical Staff found the application to be in the public interest. The Hearing Examiner notes that the proposed low density office use will provide a transitional buffer for the nearby residential community, and that would be in the public interest.

In sum, the Hearing Examiner finds that the proposed use will not adversely affect surrounding development, will be consistent with the goals of the Sector Plan, will provide a transitional buffer for the community and will not adversely affect public facilities or the environment. The Hearing Examiner therefore concludes that its approval would be in the public interest and appropriate for the comprehensive and systematic development of the County.

VI. CONCLUSIONS

Based on the foregoing analysis and after a thorough review of the entire record, the Hearing Examiner reaches the following conclusions with respect to LMA G-913:

1. That the requested rezoning complies with the purpose clause and the development standards of the C-T Zone;
2. That the requested rezoning will be compatible with existing and planned land uses in the surrounding area; and
3. That the requested rezoning bears sufficient relationship to the public interest to justify its approval.

VII. RECOMMENDATION

I, therefore, recommend that LMA G-913, requesting reclassification from the R-60 Zone to the C-T Zone of approximately 8,550 square feet of land described as Lot 26, Block 5 in the West Chevy Chase Heights Subdivision of Bethesda, and located at 4705 West Virginia Ave, in Montgomery County's 7th Election District, **be approved** subject to the specifications and requirements of the Schematic Development Plan, Exhibit 39(a); provided that the Applicant submits to the Hearing Examiner for certification a reproducible original and three copies of the Schematic Development Plan within 10 days of approval, in accordance with §59-D-1.64 of the Zoning Ordinance; and that the Declaration of Covenants (Exhibit 39(c)) is filed in the County land records in accordance with § 59-H-2.54 of the Zoning Ordinance, and proof thereof is submitted to the Hearing Examiner within the same time frame.

Dated: December 28, 2012

Respectfully submitted,



Martin L. Grossman
Hearing Examiner