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I. CASE SUMMARY

Applicant:	MHP Forest Glen, LLC
LMA No. & Date of Filing:	H-129, filed 10/31/18; Amended 12/27/18 & 3/4/19
Zoning and Use Sought:	Zone Sought: CRTF-1.75, C-0.25, R-1.5, H-70 Commercial Residential Town Floating Zone - Binding Element - 20% MPDUs Use Sought: Residential Buildings (220 Units) and Structured Parking
Current Zone and Use:	Current Zone: R-10; Current Use: 72 garden apartments
Location:	Forest Glen Apartments, Parcel C, Block A, in the McKenney Hills Subdivision, located at 9920 Georgia Avenue and 2106 Belvedere Boulevard in Silver Spring, Maryland 20902
Acreage to be Rezoned:	Approximately 2.634 acres to be rezoned on a gross tract of 3.59 acres.
Density Permitted in CRTF Zone:	Per §59.5.3.5.A.2, Maximum FAR of 1.75 for a tract exceeding 3 acres in a Pre-Existing R-10 Euclidean Zone
Density Planned:	FAR of 1.75 is the maximum density under the proposed Floating Zone Plan. It includes a residential density of 1.5 FAR and a commercial density of 0.25 FAR, though no commercial is planned
Open Space Required:	10% Minimum per §§59.5.3.5.D.2.b. and 59.4.5.4.B.1.
Open Space Planned:	10% Open Space Planned, subject to Site Plan review
Building Height Required:	70 feet maximum, per the Floating Zone Plan
Building Height Planned:	66 feet planned, subject to change at Site Plan review
Parking Spaces Planned:	250 spaces are planned, but that may be adjusted at Site Plan review
Impact on Schools:	Flora M. Singer Elementary School, Sligo Middle School & Einstein High School serve the site, which is projected to generate 21 elementary school students, 8 middle school students, & 11 high school students
Environmental Issues:	The Site is not in a Special Protection Area. There are no forests or wetlands on site, and the Planning Board approved a tree variance and a Preliminary Forest Conservation Plan
Consistency with Master Plan:	The site is subject to the <i>1996 Forest Glen Sector Plan</i> , and this proposal is consistent therewith, as a compatible residential building that will protect the residential edge along Georgia Avenue and provide new residences close to Metro. A revised Sector Plan is also under consideration by the Planning Department.
Neighborhood Response:	Letter of Support from Partap Verma; No opposition.
Traffic Issues:	A Traffic Study has been completed, and the proposed use meets both Local Area Transportation Review (LATR) and applicable State Highway Capacity Manual (HCM) standards. None of the studied intersections would exceed the Kensington Wheaton Policy Area CLV standard of 1,600 and HCM Delay standard of 80 seconds per vehicle.
Planning Board Recommends:	Approval
Technical Staff Recommends:	Approval
Hearing Examiner Recommends:	Approval

II. STATEMENT OF THE CASE

On October 31, 2018, MHP Forest Glen, LLC, filed LMA Application No. H-129 with the Office of Zoning and Administrative Hearings (OZAH), seeking a Local Map Amendment to reclassify 2.634 acres (out of a gross tract of 3.59 acres) from the existing R-10 Zone to a different Euclidean Zone (Exhibits 1 and 7).¹ On December 27, 2018, the Applicant amended its application to seek reclassification of its R-10 zoned property not to another Euclidean Zone, but rather to a Floating Zone – the CRTF-1.75, C-0.25, R-1.5, H-70 Commercial Residential Town Floating Zone. Exhibits 23 and 26. The property, identified Parcel C, Block A, in the McKenney Hills subdivision, is located at 9920 Georgia Avenue and 2106 Belvedere Boulevard in Silver Spring, Maryland 20902, and is subject to the 1996 Forest Glen Sector Plan.

The property is owned by the Applicant under Tax Account 13-01125413 (Exhibit 3), and is currently developed with 72 garden apartments known as the Forest Glen Apartments. The Applicant seeks to redevelop the property by removing the existing improvements and constructing two new linked residential buildings with approximately 220 residential units, of which most would be affordable and a minimum of 20% would be Moderately Priced Dwelling Units (MPDUs). Structured parking for about 250 vehicles would also be provided.

The Applicant's commitment to 20% MPDUs is included as a binding element in the final Floating Zone Plan (Exhibit 59).

A notice of the hearing (Exhibit 42) was mailed out and posted on OZAH's website on January 18, 2019, establishing an OZAH hearing date of March 1, 2019.

Technical Staff of the Maryland-National Capital Park and Planning Commission ("Technical Staff") reviewed the substance of the application, and recommended approval in a report

¹ A Euclidean Local Map Amendment requires a demonstration of a substantial change in the zoning neighborhood or a mistake in the original zoning or comprehensive rezoning. See *Stratakis v. Beauchamp*, 268 Md. 643, 652-53, 304 A.2d 244, 249 (1973). This doctrine is known as the "change/mistake" rule and is rarely used in this jurisdiction. Much more common are local map amendments seeking a "floating zone," as will be described more fully in Part V of this Report.

dated January 25, 2019 (Exhibit 43). The Montgomery County Planning Board (“Planning Board”) considered the application on February 7, 2019, and the four members present unanimously recommended approval, as set forth in a letter to the Hearing Examiner dated February 19, 2019 (Exhibit 44). The Planning Board letter also recommended that:

1. The Applicant must amend its Floating Zone Plan to show 0' minimum setbacks and a proposed height of 70', consistent with the requirements of Chapter 59§ 5.3.5.B.2
2. The Applicant must submit a Forest Conservation Plan for review and approval prior to securing zoning approval from the Office of the Hearing Examiner.

The Applicant followed both of these recommendations, submitting a Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) (Exhibit 46), a proposed Preliminary Forest Conservation Plan (PFCP)(Exhibit 48) and a Request for a Tree Variance (Exhibit 49) to the Planning Department on February 22, 2019, for review and approval. On February 26, 2019, the Applicant submitted a revised Floating Zone Plan (FZP) (Exhibit 50) to OZAH to reflect the changes in the minimum setbacks and the maximum height of the proposed buildings. On the same day, the Planning Department approved the NRI/FSD as No. 420191310 (Exhibits 51 and 51(a) and (b)).

On February 28, 2019, the Planning Department advised the Hearing Examiner that the Planning Board had scheduled a review of the PFCP for March 14, 2019 (Exhibit 53). On March 1, 2019, Staff recommended conditional approval of the PFCP and the tree variance (Exhibit 61(a)).

A public hearing was convened, as scheduled, on March 1, 2019, at which time the Applicant presented evidence and called five witnesses in support of the application. There was no opposition testimony. In fact, the only response from the community has been a February 27, 2019 letter supporting the application from Partap Verma, Founder of the Friends of Forest Glen and Montgomery Hills, and Founder of the Finding Forest Glen Blog (Exhibit 55).

The record was held open after the hearing to await Planning Board action on the PFCP and to give Applicant’s counsel the opportunity to file a final revised Floating Zone Plan, which the

Applicant did on March 4, 2019 (Exhibit 59). The only change was to note the “Minimum 20% MPDUs as a binding condition.” On March 14, 2019, the Applicant filed an executed Declaration of Covenants (Exhibit 60) regarding its sole binding element, to be filed in County’s land records if the Council approves the rezoning application, in accord with Zoning Ordinance §59.7.2.1.F.3.

The Hearing Examiner’s Report and Recommendation on this application had to await the Planning Board’s action on the PFCP because County Code Section 22A-11(b)(2)(C) provides:

(C) Approval. The Planning Board must review and act on the forest conservation plan concurrently with the development plan, floating zone plan, project plan, sketch plan, preliminary plan of subdivision, or site plan, as appropriate. . . . For a development plan or a floating zone plan, a Planning Board recommendation to the District Council on the preliminary forest conservation plan must be made under Section 59-7.2.1. . . .

The Planning Board conditionally approved the PFCP and tree variance on March 14, 2019. Having received that Resolution (Exhibit 61) the same day, the Hearing Examiner had to hold the record open for 15 days for any comments, as provided in Rule 11.0 of OZAH’s Rules of Procedure for Zoning, Conditional Use & Board of Appeals Referral Cases. Thus, the record closed on March 29, 2019, as the Hearing Examiner announced it would at the hearing. Tr. 126.

Based on the entire record of this case, the Hearing Examiner finds that the requirements for the requested rezoning have been met, and that the application should be granted.

III. FACTUAL BACKGROUND

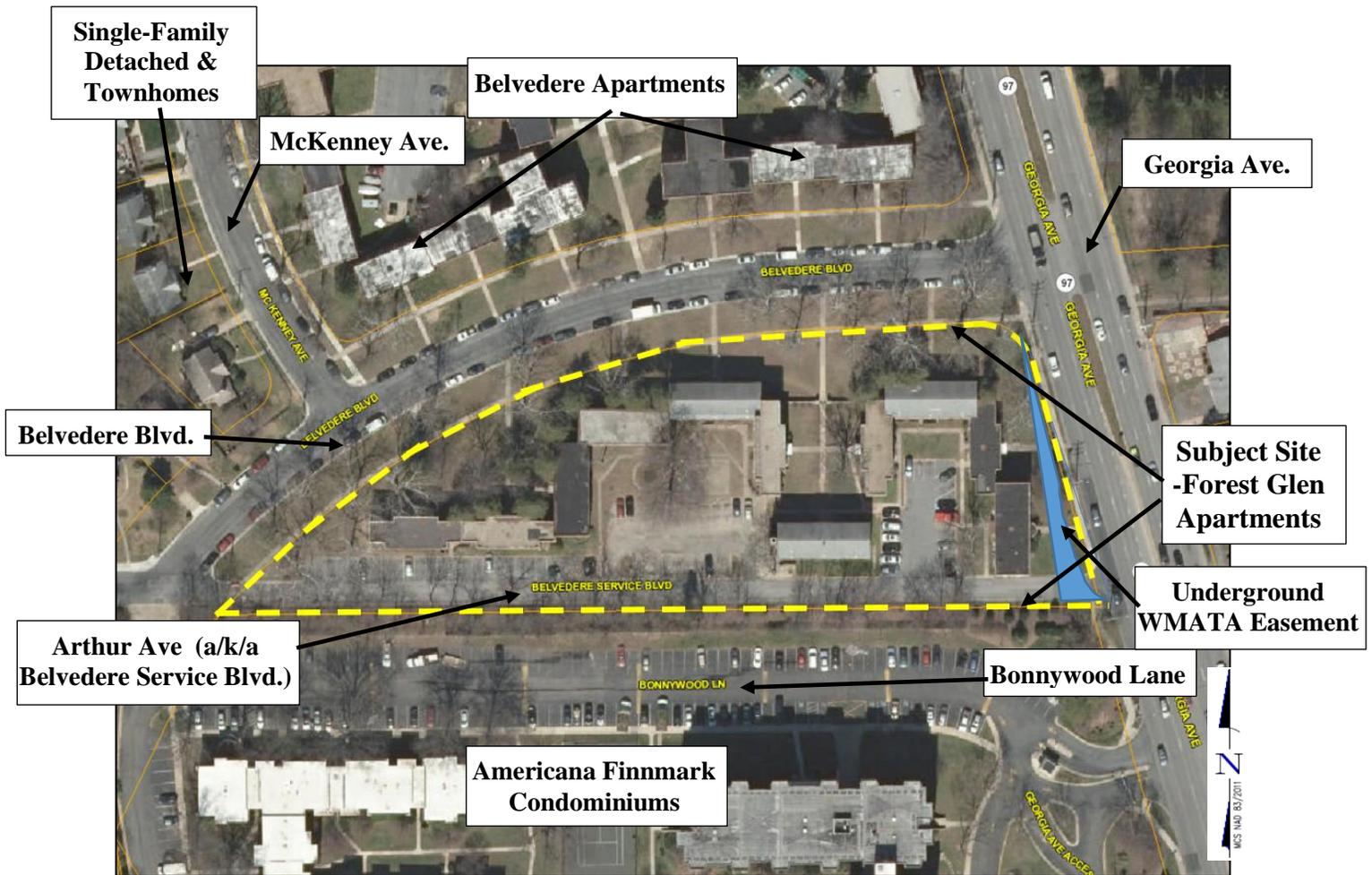
A. Subject Property

Technical Staff sets forth the location and description of the subject property as follows (Exhibit 43, p. 2):

The 2.63-acre (3.59-acre gross tract area) property, outlined in yellow . . . below, is located on the western side of Georgia Avenue in the southwest quadrant of the intersection of Georgia Avenue and Belvedere Boulevard. The Property, Parcel C of the McKenney Hills Subdivision, Plat No. 1775, in Forest Glen, is currently improved with a series of garden-style apartment structures comprising 72

multifamily apartment units [known as the Forest Glen Apartments]. The property contains a double row of mature trees along its frontage on Belvedere Boulevard.

It should be noted that the site is less than one-quarter of a mile from the Forest Glen Metro Station (Tr. 72) and that there is a narrow underground WMATA easement along the eastern side of the property (Tr. 84). Staff provided an aerial photo of the property, outlined in yellow, and the immediate vicinity (Exhibit 43, p. 3). It is reproduced below with labels and the location of the easement added by the Hearing Examiner:



Ms. Praj Kasbekar, the Applicant’s senior project manager, testified that the buildings currently on the site have become obsolete, and it would take an “obscure amount of money to try to bring it to the current code and livable conditions that the residents there deserve.” Tr. 28. They are served by the old original boiler; there is no air conditioning in the units, and there are no

elevators. “So there's a lot of senior, disabled residents there right now who just have no way to get around.” Tr. 28. One other feature of the site is that it slopes uniformly downward to the west from Georgia Avenue, falling about 20 feet. According to the Applicant’s architect, Dave Stembel, that is significant because it affects how the parking can be accommodated and screened. Tr. 46-47.

The Applicant’s Land Planning Report (Exhibit 41(k), pp. 13-14) also provided some photos of the existing site, which are reproduced below:



Figure 4. View of the Subject Property from Georgia Avenue.



Figure 5. View of the Subject Property from Belvedere Boulevard.



Figure 6. View of the Subject Property from Arthur Avenue, looking east.

B. Surrounding Area

The surrounding area must be identified in a Floating Zone case so that compatibility can be evaluated properly. In general, the definition of the surrounding area takes into account those areas that would be most directly affected by the proposed development. The surrounding area was described by Technical Staff (Exhibit 43, p. 3):

The Property is generally bounded to the north by similar garden-style apartments known as the “Belvedere Apartments,” to the south by the Americana Finnmark condominium community, to the west by single-family detached and townhome units, and to the east by Georgia Avenue. Single-family detached structures and General Getty Neighborhood Park are on the east side of Georgia Avenue across from the subject property. Properties fronting the Georgia Avenue corridor between the I-495 Beltway and Wheaton’s commercial district include an eclectic mix of single-family detached dwellings, multifamily structures, churches, office buildings, medical office buildings, storage space, and large-format retailers. . . .

The surrounding neighborhood is depicted in a key map aerial photo supplied by the Applicant (Exhibit 56), which is a blow-up of the map on page 15 of the Land Planning Report (Exhibit 41(k)). It is reproduced on the next page:



The developments keyed on the map are described at pp. 15-16 of Exhibit 41(k), which lists the existing and approved development in the Surrounding Area shown above:

1. Americana Finnmark
 - a. Owner: Multiple (318 total units)
 - b. Zone: R-20
 - c. Land Use: Multi-family–For Sale, plus conditional use for dental office (CBA2565-1965)
 - d. Built: Ca. 1965-1967
 - e. Legal Description: Americana Finnmark Condominiums
2. P/O Forest Glen Station Residential Community (107 total units)
 - a. Owner: Multiple
 - b. Zone: RT-12.5
 - c. Land Use: Townhouses (116)
 - d. Built: 2000-2002
 - e. Legal Description: Belvedere Glen

3. P/O McKenney Hills Subdivision (13 lots in Block A, 3 of which confront the Property)
 - a. Owner: Multiple
 - b. Zone: R-60
 - c. Land Use: Single Family Detached (111)
 - d. Built: Ca. 1947-48
 - e. Legal Description: Plat 1775, Block A, McKenney Hills

4. Belvedere Apartments
 - a. Owner: Belvedere Ltd. Partnership (Tax Account 13-01125377)
 - b. Zone: R-10
 - c. Land Use: Multi-family – Rental (113)
 - d. Built: 1947
 - e. Legal Description: Plat 1775, Pt. of Parcel B, McKenney Hills

5. General Getty Neighborhood Park
 - a. Owner: Maryland National Capital Park & Planning Commission
 - b. Zone: R-60
 - c. Land Use: Parkland (910)

6. P/O Forestvale Subdivision
 - a. Owner: Multiple
 - b. Zone: R-60
 - c. Land Use: Single Family Detached (111), including some conditional uses
 - d. Built: 1955
 - e. Legal Description: Forestvale

7. WMATA Forest Glen Metro Station
 - a. Owner: Washington Metropolitan Transit Authority
 - b. Zone: R-60
 - c. Land Use: Transportation / Infrastructure (111)
 - d. Built: 1976 (approved for construction) to 1990 (completed)
 - e. Legal Description: Lots 2 Thru 28, Blundon Estates (111) and Joseph Park (910)
 - f. Future Development: Currently planned for redevelopment, options under review . . .

The Hearing Examiner finds that the numbered properties depicted on the above aerial photo constitute the boundaries of the properly defined surrounding area. Thus, the surrounding area is bounded by Hildarose Drive on the north; Woodland Drive on the east; Forest Glen Road (MD Rt. 192) on the south; and Greeley Avenue, Clark Place and Darcy Forest Drive on the west.

C. Zoning History

Technical Staff reports the following zoning history (Exhibit 43, pp. 5-6):

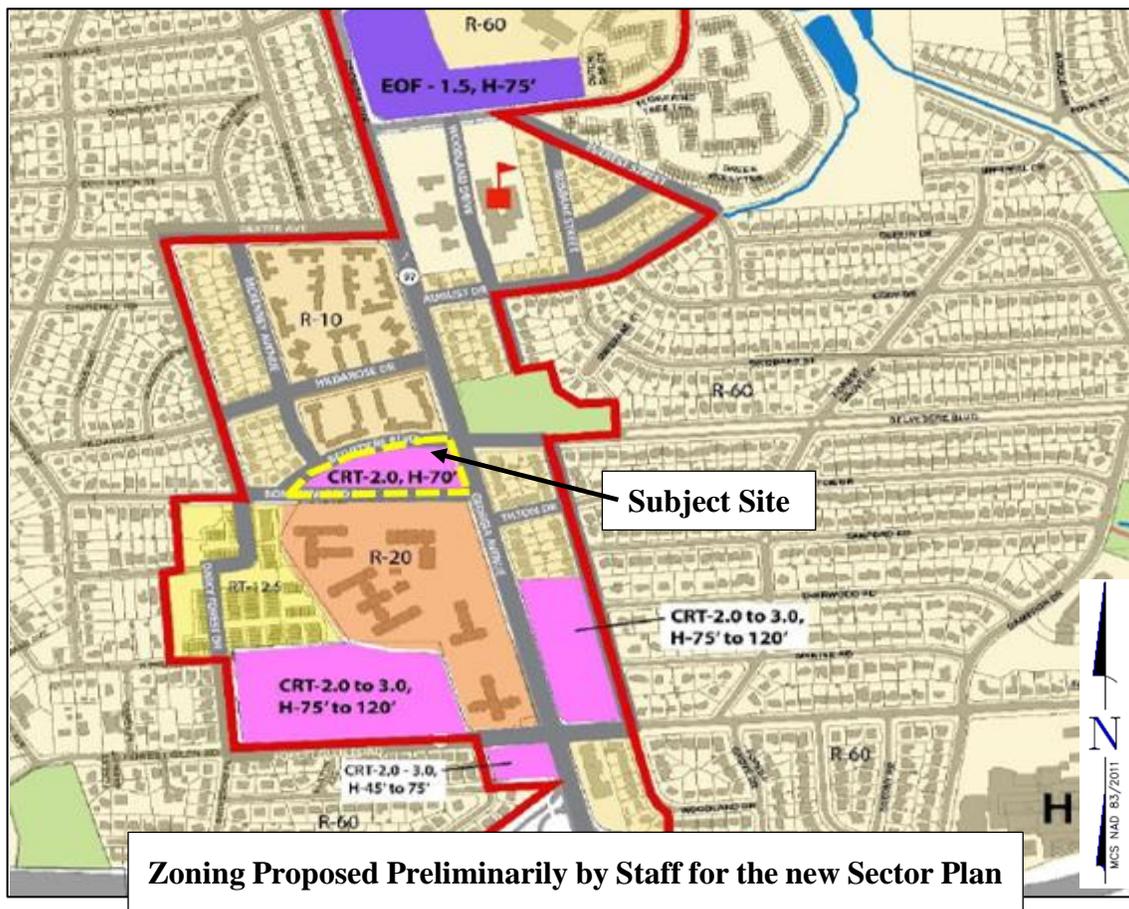
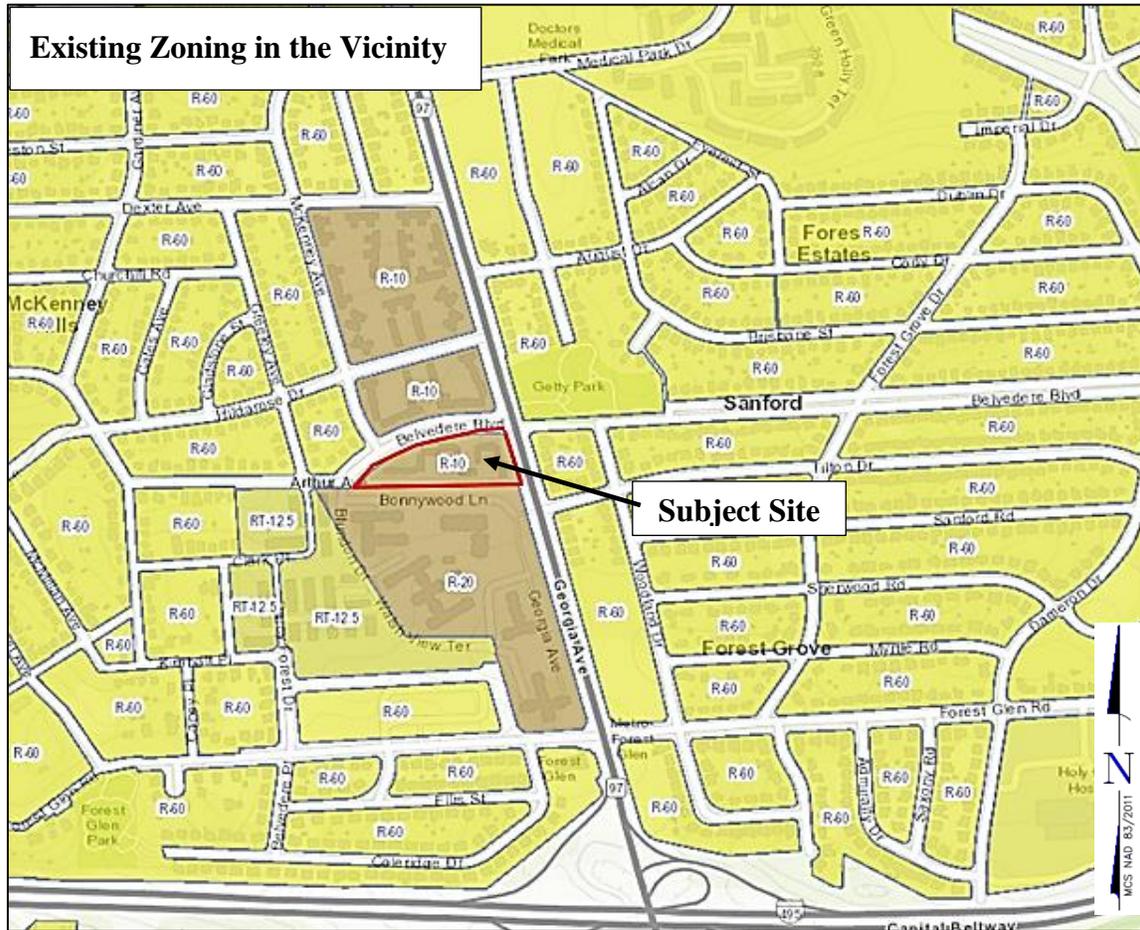
In 1978, the Forest Glen and Vicinity Sector Plan was approved, and Sectional Map Amendments G-134 and G-136 confirmed the existing R-10 zoning and applied it across the entire Property, eliminating a preexisting split zone. Parcel C's R-10 zone was reconfirmed by the 1996 Forest Glen Sector Plan.

The Property falls within the boundary of the ongoing Forest Glen/Montgomery Hills Sector Plan. Staff presented draft preliminary recommendations to the Planning Board on December 6, 2018, [Exhibit 41(c)] which propose the Subject Property be rezoned to CRT 2.0, H-70 (see Figure 3). Based on subsequent discussions and further refinement of the recommendations, Staff anticipate recommending an additional five (5) feet of height and anticipate bringing formal recommendations to the Planning Board in Fall 2019. The rezoning proposed through this application is CRT 1.75—.25 FAR less than what is being analyzed through the Forest Glen/Montgomery Hills Sector Plan. The discrepancy is due to limitations of tract and base zone per Chapter 59 §5.1.3.C.1.

Of course, only the current Forest Glen Sector Plan, approved and adopted in 1996 can be applied to this application. It is worthy of note, however, that the new zone being proposed for the subject site by Technical Staff in its preliminary recommendation to the Planning Board (*i.e.*, the CRT Zone) is the Euclidean version of the CRTF Zone the Applicant has applied for in this case. Moreover, Staff's proposed CRT zone would have allowed a density up to an FAR of 2.0 and a height of 70 feet. It would thus permit the same height limit as the Applicant has proposed, and would have permitted an even greater density than is permitted under the Zoning Ordinance for this property (FAR of 1.75),² which is currently zoned R-10. Thus, the zone requested by the Applicant would restrict development to buildings even more compatible with the nearby single-family dwellings than the density that would be permitted under the zone recommended by Staff in the proposed new Sector Plan under consideration.

The existing zoning on the subject site and in the vicinity is shown on a Map provided by Technical Staff (Exhibit 43, p. 4). It is reproduced on the next page, and then is followed by a Staff-provided map (Exhibit 43, p. 5) showing zoning in the area proposed by Staff's preliminary recommendations for the new Sector Plan.

² As will be discussed in Part V of this Report, Zoning Ordinance §59.5.3.5.A.2. limits density for the proposed floating zone to an FAR of 1.75 because the total tract exceeds three acres and it is currently in the R-10 Zone.



D. Proposed Development

Under the current plans, LMA Application No. H-129, seeks a Local Map Amendment to reclassify 2.634 acres (out of a gross tract of 3.59 acres)³ from the existing R-10 Zone to a Floating Zone – the CRTF-1.75, C-0.25, R-1.5, H-70 Commercial Residential Town Floating Zone. Exhibits 23 and 26. The property, identified as Parcel C, Block A, in the McKenney Hills subdivision, is located at 9920 Georgia Avenue and 2106 Belvedere Boulevard in Silver Spring, Maryland 20902.

The Applicant seeks to redevelop the property by removing the existing garden apartments and constructing two linked residential buildings with approximately 220 residential units, of which most would be affordable and a minimum of 20% would be Moderately Priced Dwelling Units (MPDUs).⁴ Structured parking for up to 250 vehicles would also be provided. Most of the parking structure would be underground. The percent of MPDUs was specified as a “Binding Condition” on the final Floating Zone Plan or FZP (Exhibit 59), which is reproduced on the following pages.

E. Floating Zone Plan

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

- i. building location, density, massing, height, and anticipated use;*
- ii. locations of open spaces and preliminary stormwater management strategy;*
- iii. pedestrian, bicycle, and vehicular circulation, parking, and loading;*
- iv. any binding element on the application. An applicant who proposes a binding element must submit an unexecuted covenant suitable for filing in the land records reflecting any restriction on the development standards, development program, or use that will be applicable to the property if the District Council approves the application; and*
- v. the following additional information:*
 - (a) current and proposed zone;*
 - (b) a plan certified by a licensed professional, showing existing site*

³ “The Applicant’s tract includes the subject property, parcel C, as well as previous dedications including fifty (50) feet of right-of-way (ROW) spanning the frontage of Belvedere Boulevard and twenty (20) feet of ROW spanning the property’s Georgia Avenue frontage.” Exhibits 27 and 43, p. 6. That accounts for the difference between the area to be rezoned (2.634 acres) and the gross tract of 3.59 acres.

⁴ As explained at the beginning of Part IV of this Report, the Applicant corrected Staff’s suggestion that all the units would be affordable. The Applicant indicates that most would likely be affordable, but that at least 20% would be MPDUs. Tr. 38.

conditions and vicinity within 100 feet, including total tract area; existing topography; watershed in which the site is located; Special Protection or Primary Management areas; any floodplain, wetland, or perennial or intermittent stream, and any associated buffers; whether or not rare, threatened, or endangered species were observed on the property; whether or not the property is on the Locational Atlas and Index of Historic Sites; the aerial extent of forest and tree cover on the property; and date(s) field work was conducted;

- (c) existing or approved adjacent land uses, buildings, and rights-of-way;*
- (d) a Traffic Study under the Planning Board’s LATR Guidelines if the incremental increase in vehicular peak-hour trips between the density of the base zoning and the density of the requested floating zone meets the minimum applicability requirement in the LATR Guidelines; and*
- (e) general phasing of structures, uses, rights-of-way, sidewalks, dedications, and future preliminary and site plan applications;*

The Applicant has met these requirements by filing its final Floating Zone Plan (FZP) in Exhibit 59 and related documents (Exhibits 2, 3, 6, 11, 18, 19, 20, 23, 26, 27, 29, 37, 38, 41(a), 41(k) 48, 49, 51, 56 and 57). The FZP (Exhibit 59) is reproduced below, followed by a photo of the area including a simulation of the proposed buildings and conceptual sections (Exhibit 38).

PROPOSED COMMERCIAL RESIDENTIAL TOWN-FLOATING ZONE

CRTF - 1.75, C - 0.25, R - 1.5, H - 70

PROPOSED UNIT COUNT +/- 220 UNITS

MINIMUM 20 % MPDUs AS A BINDING CONDITION

CALCULATIONS

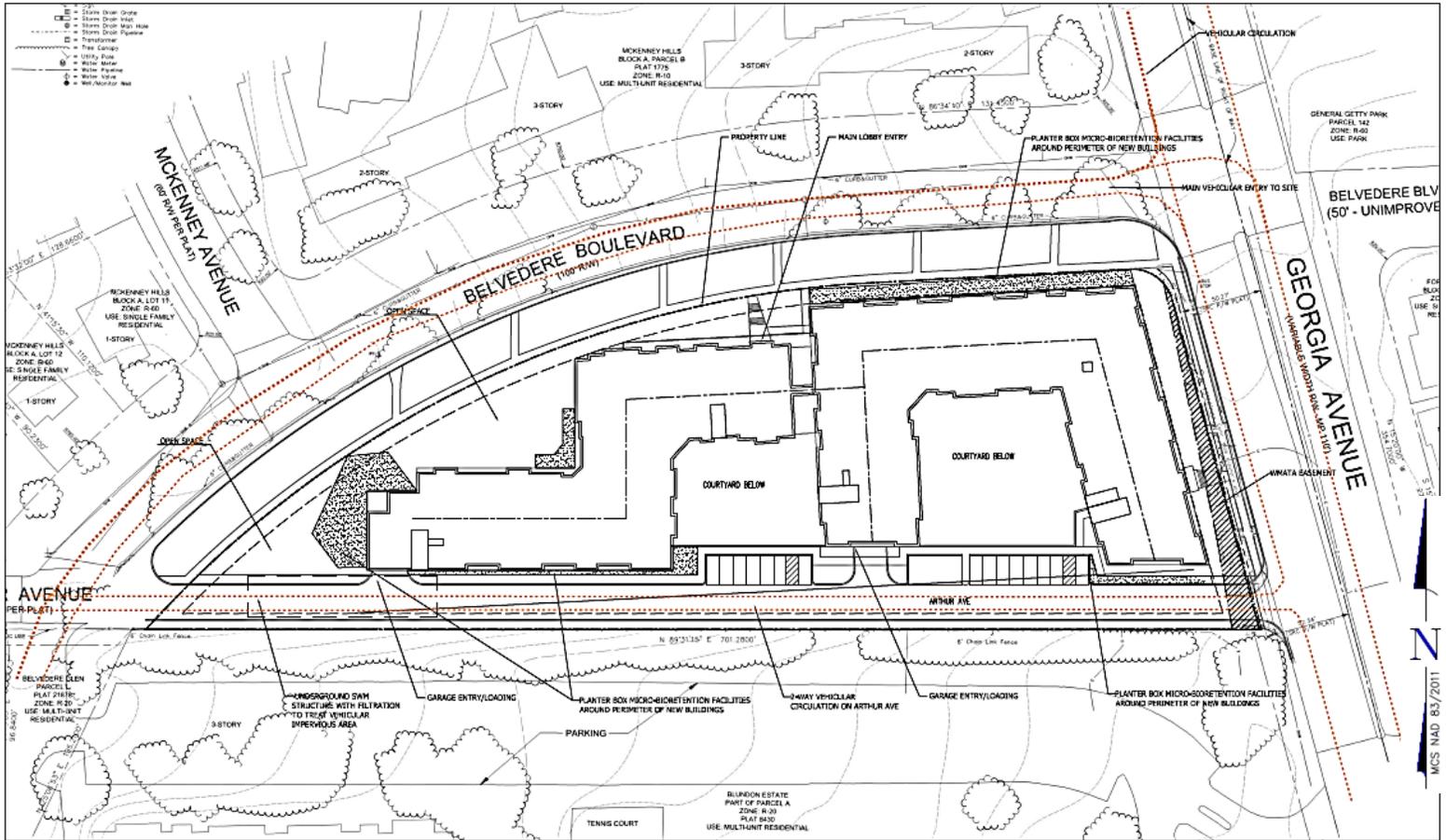
		PROPOSED ZONE: CRTF
FAR:	CRTF	1.75
	CRTF	0.25
	R	1.5
		1.5(Residential proposed)
HEIGHT:	Max. Allowed	70 ft
MIN. OPEN SPACE:		10%
SETBACKS (Min.):	Front	0 ft
	Side	0 ft
	Side, abutting other Zones	0 ft
	Rear, abutting other Zones	n/a
	Rear, alley	n/a

Note: Ultimate Building placement and design to be determined during Site Plan submission.

CONCEPTUAL UNIT MATRIX

Date: 02.22.2019		
UNIT TYPES	TOTAL UNITS	FLOOR GROSS
UNIT GSF AREA		
FIRST FLOOR	20	27,000
SECOND FLOOR	46	49,000
THIRD FLOOR	49	49,000
FOURTH FLOOR	49	49,000
FIFTH FLOOR	28	28,500
SIXTH FLOOR	28	28,500
TOTAL UNITS	220	231,000
TOTAL UNIT GSF	183,260	
TOTAL BUILDING GROSS (SF)	231,000	
TOTAL UNIT COUNT	220	
	PARKING	
PARKING FIRST FLOOR (P1)	88	
PARKING LEVEL P2:	148	
SURFACE PARKING:	14	
PARKING TOTAL:	250	

Note: Unit Matrix is Preliminary and subject to change at Site Plan Submission.



Note: All design features are Conceptual and will be determined during Site Plan Submission.

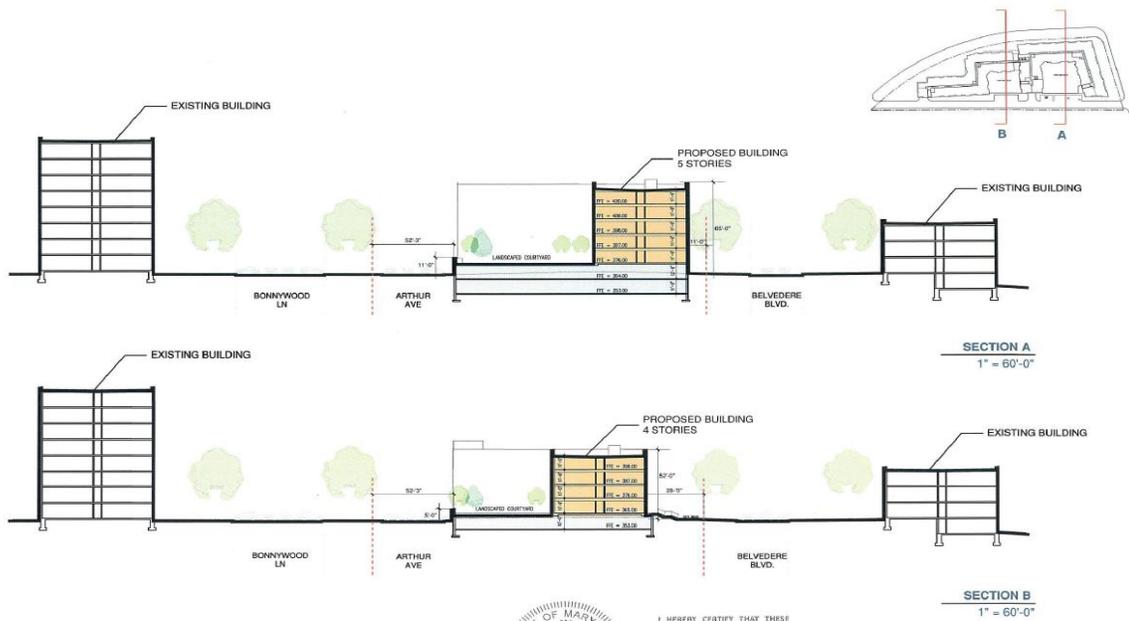
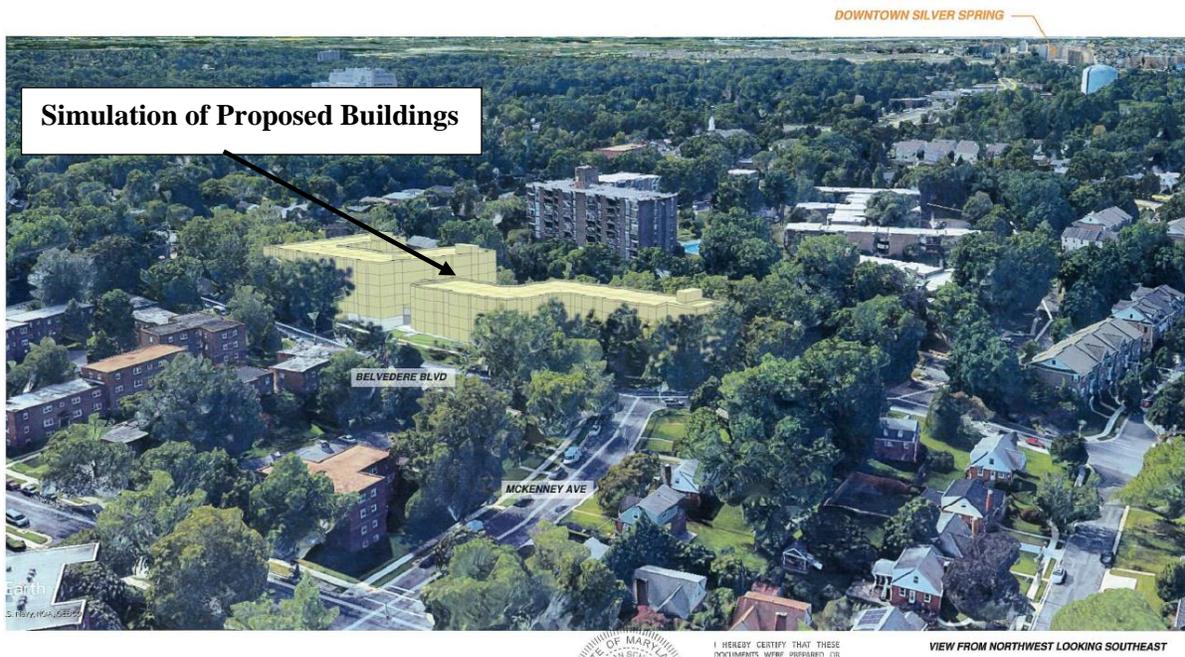
A3 FLOATING ZONE PLAN
7-2016

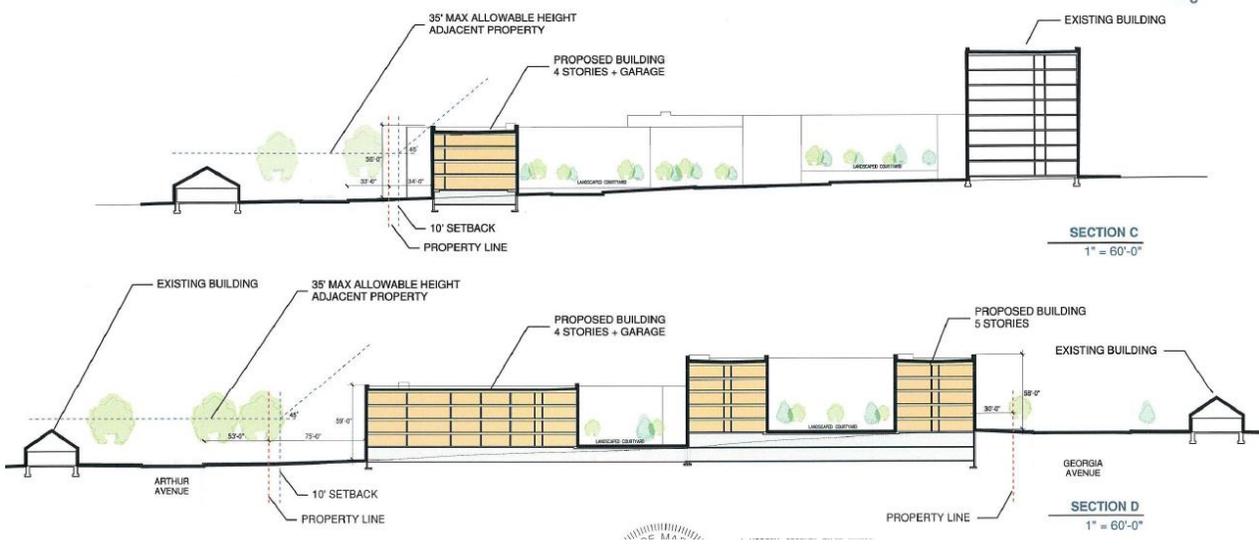
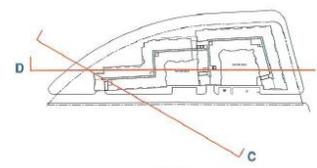
It is important to note that, except for the 20% minimum MPDU Binding Element, “All Design features [on the FZP] are Conceptual and will be determined during Site Pan Submission.” Exhibit 59. The MPDU condition is the only binding element on the plan, and it is reflected in an executed Declaration of Covenants (Exhibit 60), filed on March 14, 2019.

The conceptual plan calls for two linked residential buildings, with a total of approximately 220 apartment units. Dave Stembel, the Applicant’s architect, testified that the plan is for the C-shaped building on the east, adjacent to Georgia Avenue, to be six stories tall, and the Z-shaped building on the west would be stepped down to four stories to reduce the massing near the single-family neighborhood west of the site. Tr. 55-56. The breakdown of the units has not been determined, but Mr. Stembel testified that the plan is for the unit breakdown to include one-bedroom,

two-bedroom, and three-bedroom units, and the projected parking of up to 250 parking spaces was calculated with the assumption of 30 percent three-bedroom units, 30 percent two-bedroom units and 40 percent of the one-bedroom units. All that is subject to change at Site Plan. Tr. 56-57.

The Applicant also provided a photograph of the area, including a simulation of the proposed buildings, and conceptual sections showing the massing of the proposed buildings compared to existing adjacent buildings (Exhibit 38). They are reproduced below:





As can be seen from the photographic simulation and the architectural sections, the massing of the proposed buildings steps down in the vicinity of single family structures. The following is the Applicant's Conceptual Landscape Plan (Exhibit 37), which demonstrates the planned landscape screening, garage entry points, lobby entry, open space and the two south-facing courtyards for the residents atop the planned underground garage. Tr. 53-54.



F. Master Plan (in this case, Sector Plan)

The 2014 Zoning Ordinance has three different approaches that must be satisfied in analyzing rezoning applications in light of applicable master plans. First, the Zoning Ordinance establishes “Necessary Findings” by the Council for approval of rezoning applications, one of which – Section 59.7.2.1.E.2.a. – specifies that the District Council must find that the Floating Zone Plan will “substantially conform with the recommendations of the applicable master plan, general plan, and other applicable County plans.”⁵

Another provision in the 2014 Zoning Ordinance – Section 59.5.1.2.A.1. – provides, *inter alia*, that:

- . . . The intent of the Floating zones is to:
 - A. Implement comprehensive planning objectives by:
 - 1. furthering the goals of the general plan, applicable master plan, and functional master plans; . . .

⁵ A “few” words should be said about the legal definition of the term “substantially conform with the recommendations of the applicable master plan,” as it is used in Zoning Ordinance §59-7.2.1.E.2.a. The Maryland Court of Appeals held, in the case of *Trail v. Terrapin Run*, 403 Md. 523, 548, 569 and 573-574; 943 A.2d 1192 (2008), that legislative words such as “conform to” a master plan and “consistent with” a master plan were intended to convey the concept of being generally “in harmony with” the master plan, unless the legislation specified otherwise. Subsequently, however, the Maryland legislature enacted the *Smart, Green, and Growing - Smart and Sustainable Growth Act of 2009*, effective July 1, 2009. That Act amended Md. Land Use Article, §§1-301 to 1-304, in an express attempt to legislatively overturn the *Terrapin Run* holding by defining the term “consistent with,” as used in land use legislation. Essentially, the Act defines the term “consistent with” as a requirement that proposed legislation or regulations regarding land use “further, and not be contrary to” master plan policies and goals. On the other hand, it appears from the wording of the Act that the state legislature may not have intended to apply its definition of “consistency” to cover actions on individual rezoning applications, because it limited the definition of “action” to “the adoption of a local law or regulation” concerning special exceptions and specified other matters, not to the review of specific rezoning applications. Maryland Code, Land Use Article, § 1-301. The Hearing Examiner therefore concludes that the 2009 legislation arguably does not apply to the instant rezoning application, and that we should still be guided by the holding in *Terrapin Run*. Nevertheless, the Maryland Court of Special Appeals, in *Friends of Frederick County v Town of New Market*, 224 Md.App. 185, 200-201, 120 A.3d 769 (2015), stated :

One effect of LU §§ 1–302 and 1–303 is that a special exception application must “further, and not be contrary to” provisions of the application comprehensive plan regarding matters such as the timing of future development, the pattern of future development, land uses, and development densities. Additionally, LU §§ 1–302 and 3–303, when read together, require that zoning regulations, subdivision regulations and similar statutes must “further, and not be contrary to” provisions of the jurisdiction’s comprehensive plan that implement the visions set out in LU § 1–201 as well as the elements of the plan addressing development regulations and sensitive areas. Further elaboration on this point is not necessary for us to conclude that, with respect to significant aspects of local government land use regulation, comprehensive plans have indeed been “elevate[d] ... to the level of true regulatory devices.”

Fortunately, the issue is moot in this case, because as can be seen in the main text, the Hearing Examiner finds the proposed rezoning in this case meets both the *Terrapin* test and the test set forth in Land Use Article, §§1-301 to 1-304. The proposed project would be “in harmony with” the Sector Plan and it would “further, and not be contrary to” Sector Plan policies and goals.

Finally, in Section 59.5.1.3, the new Zoning Ordinance differentiates between Floating Zones that are recommended for a subject site in the applicable master plan and those that are not. If the proposed Floating Zone is specifically recommended for a site in the master plan, then Section 59.5.1.3.B. provides that “there are no prerequisites for an application.” In contrast, if the proposed Floating Zone is not recommended in the master plan, then Section 59.5.1.3.C. requires that certain density standards be met, and if the subject site has a residential base zone, other requirements must be met as well.

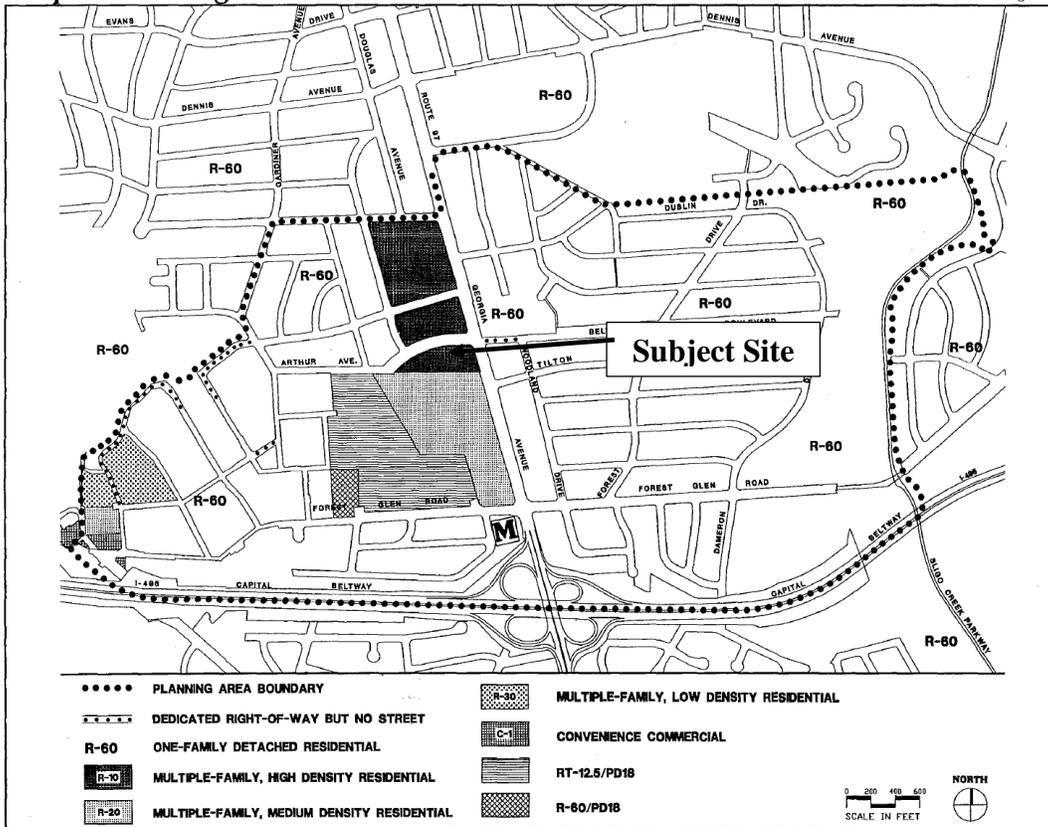
The present section of this report addresses the goals of the applicable *1996 Forest Glen Sector Plan*, and the Applicant’s conformance thereto. Compliance with the specific requirements of Sections 59.5.1, 5.2. and 5.3 will be further discussed in Part V of this report, which reviews the Council findings called for in the Zoning Ordinance.

The subject site lies within the area covered by the *1996 Forest Glen Sector Plan*. The Sector Plan divides the covered area into Forest Glen West (properties within the planning area west of Georgia Avenue) and Forest Glen East (properties within the planning area east of Georgia Avenue). The property in question falls within Forest Glen West. The existing garden apartments on the site are not specifically mentioned in the *1996 Forest Glen Sector Plan*; however, the site is clearly depicted in the existing and proposed land use maps on Sector Plan pp. 17-18, and in the existing and proposed zoning maps on Sector Plan pp. 19-20.

It is notable that both the existing and proposed land uses specify “Residential - Multi Family.” Similarly, both the existing and proposed zoning specifies Multiple-Family, High Density Residential (R-10 Base Zone) for the site. The proposed Zoning and land use maps from the *1996 Forest Glen Sector Plan* are reproduced on the next page.

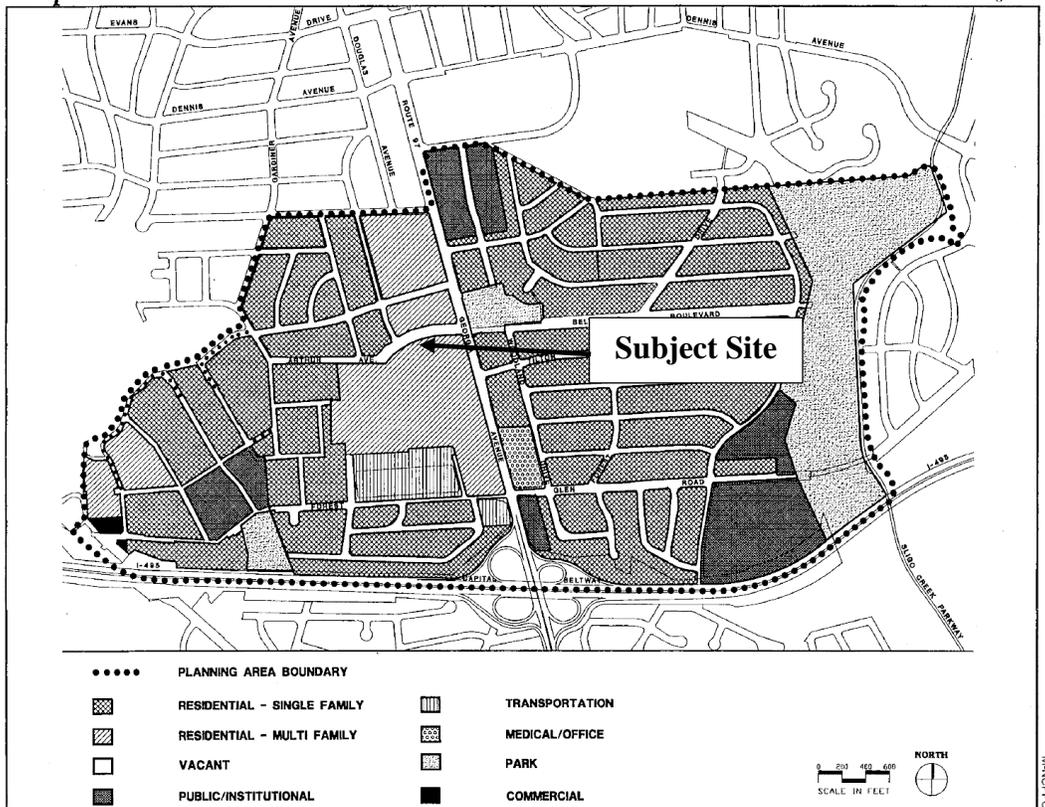
Proposed Zoning

Figure 9



Proposed Land Use

Figure 7



The general vision of the *1996 Forest Glen Sector Plan* is spelled out on Sector Plan pp. 11-12:

This Sector Plan retains the basic aim of the 1978 Forest Glen Sector Plan: the maintenance of a harmonious relationship and balance among the various physical, social, and economic aspects of the Forest Glen area within the context of the Kensington-Wheaton Planning Area and of Montgomery County.

* * *

This Plan reinforces the most desirable existing aspects of the Forest Glen area while accommodating those elements of change which are appropriate. The Plan preserves and strengthens the existing residential communities and the Forest Glen Metro station. The Plan also addresses elements of potential change in Forest Glen including the potentially developable or redevelopable properties near Metro and the nature and location within the community of health care services.

This Plan envisions a community consisting of two stable residential neighborhoods, identified herein as Forest Glen East and Forest Glen West, which are separated by Georgia Avenue. While the prevalent character of the two neighborhoods is that of single-family homes, several multi-family complexes in Forest Glen West round out the range of housing choices.

The Sector Plan lists 14 “Planning Goals” on Plan pp. 12 and 13, recognizing that some of these interests will be “only partly satisfied.” Both the Applicant’s land planning expert, David Ager, and the Technical Staff identify three of those Planning Goals as the Plan’s main objectives. Mr. Ager addressed them in his Land Planning Report (Exhibit 41(k), p. 35) and at the hearing at Tr. 89-91, concluding that the proposed project will satisfy all three main goals.

Technical Staff also discusses the three main objectives of the *1996 Forest Glen Sector Plan* (Exhibit 43, pp. 7-8):

The Subject Property falls within the neighborhood delineated as “Forest Glen West” in the *1996 Forest Glen Sector Plan*. The Plan recommends that the residential character of Forest Glen West be retained by maintaining the neighborhood’s residential zoning and lists three (3) main plan objectives, as discussed below. The proposed rezoning meets the intent of these objectives.

1) Ensure that new development is compatible with the character of the existing residential neighborhood.

Belvedere Boulevard is 100 feet wide, which provides de facto 30-foot setbacks on either side of street, including an approximately 5-foot sidewalk and a 25-foot wide

landscape panel. The three (3) single-family detached homes across from the Property on the north side of Belvedere Boulevard are effectively buffered from the building due to the existing wide section.

2) Protect the edges of the existing residential neighborhoods along Georgia Avenue and soften the impact of major roadways on adjacent homes.

The proposed Floating Zone Plan illustrates that the proposed building will function as an edge to Georgia Avenue, similar to how the existing garden-style apartments exist today.

3) Focus new development at the Metrorail station, consistent with the General Plan.

The proposed affordable and moderately priced units will be located less than a half-mile from the Forest Glen Metro Station.

The key Sector Plan goal that the proposed redevelopment be compatible with the nearby residential development was emphasized by Dave Stembel, the Applicant's architect, who explained why the proposed buildings would be architecturally compatible with the surrounding neighborhood.

Tr. 59-60:

The building as we've envisioned the massing and keeping the parking below grade for the most part so that the parking is not a visual distraction, but in fact is hidden from view for the largest part, and stepping the building down with the largest massing being on Georgia Avenue, main north-south boulevard and closest to the larger structures in the neighborhood stepping down to the single-family to the west means that the development will fit into the character of the neighborhood in terms of the height and the massing. The . . . right of way on Belvedere Boulevard, . . . is a significant right-of-way. So that the planned development is significantly further back from Belvedere Boulevard than it would be in just about any other neighborhood setting. And that contributes to the character and fitting into the neighborhood.

Mr. Stembel further testified that the proposed buildings would serve as a transition between the three-to-four story garden apartments to the north and the eight-story Americana Finnmark Condominium building to the south, as shown on the photograph simulation and sections in Exhibit 38. Tr. 61-62.

In further discussion regarding the Sector Plan (Exhibit 43, p. 15), Technical Staff concluded:

The proposed rezoning and the Applicant's conceptual Floating Zone Plan supports these three (3) objectives. The proposed five-story structure buffers the existing single-family detached community from Georgia Avenue and steps down from the Americana Finnmark's high-rise structures south to the existing garden-style apartments points north. Most importantly, the proposed rezoning would create affordable units and MPDUs within a half mile of a high-quality transit station.

The Hearing Examiner agrees with Technical Staff's observations, but would go even further. Not only does the proposed rezoning conform to the Sector Plan's main objectives for the reasons stated by Staff, it also supports the Plan's general "vision," partially quoted earlier in this section. It does so by preserving and strengthening the existing residential communities, allowing smart redevelopment of properties near Metro and improving the multi-family complexes in Forest Glen West to provide additional housing choices.

The need to improve existing multi-family complex on the site was emphasized by the Applicant's senior project manager, Ms. Praj Kasbekar, who testified that the buildings currently on the site have become obsolete, and it would take an "obscene amount of money to try to bring it to the current code and livable conditions that the residents there deserve." Tr. 28. They are served by the old original boiler; there is no air conditioning in the units, and there are no elevators. "So there's a lot of senior, disabled residents there right now who just have no way to get around." Tr. 28. She also stated that the property is very well located for the planned redevelopment, near a Metrorail stop and a major employer (Holy Cross Hospital).

The benefits of the proposed redevelopment were also documented by a letter of support from Partap Verma, Founder of the Friends of Forest Glen and Montgomery Hills and Founder of the Finding Forest Glen Blog (Exhibit 55). In that letter, Ms. Verma states, *inter alia*:

MHP's project is the first of its kind in our neighborhood and is largely supported by our citizens for a variety of reasons. First, MHP's redevelopment of the existing garden apartments increases affordable housing dramatically. As a county that has prioritized social justice issues, our community recognizes that many residents who need metro access often can't afford to live near mass transit and have disproportionately longer commutes as a result. MHP's project tackles this issue head-on and should be supported accordingly.

Based on this record, the Hearing Examiner concludes that the proposed rezoning substantially conforms with the recommendations of the applicable *1996 Forest Glen Sector Plan*, and will further its policies and goals.

G. Public Facilities

Under the County's Adequate Public Facilities Ordinance ("APFO," Code §50-35(k)), an assessment must be made at subdivision as to whether the transportation infrastructure, area schools, water and sewage facilities, and other services will be adequate to support a proposed development, and in turn, whether the proposed development will adversely affect these public facilities. Both the Planning Board and the Council have roles to play in this assessment process.

The Planning Board reviews the adequacy of public facilities at subdivision, under parameters that are set by the County Council every four years in the Subdivision Staging Policy (SSP).⁶ The final test under the APFO will be carried out at subdivision review. Nevertheless, the District Council must make its own evaluation as to the adequacy of public facilities in a rezoning case, as spelled out for traffic issues in Zoning Ordinance §59.7.2.1.E.2.e, quoted immediately below, and for other public facilities in §59.5.1.2.A.2, which will be discussed at the end of this section.

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

e. generate traffic that does not exceed the critical lane volume or volume/capacity ratio standard as applicable under the Planning Board's LATR Guidelines, or, if traffic exceeds the applicable standard, that the applicant demonstrate an ability to mitigate such adverse impacts . . ."

The principal tool used by the County to evaluate the ability of transportation facilities to handle a proposed development is the Local Area Transportation Review ("LATR"). LATR generally involves a traffic study intended to evaluate whether a proposed development would result

⁶ In 2016, the Council adopted its 2016-2020 Subdivision Staging Policy that applies to preliminary plans filed on or after January 1, 2017. See Subdivision Staging Policy 2016-2020, Res. No 18-671, adopted 11-15-16, eff. 1-1-17.

in unacceptable congestion during the peak hour of the morning and evening peak periods. An LATR traffic study is required, as in this case, when the number of new peak-hour person trips exceeds a threshold of 50. *Planning Department's LATR Guidelines* (2017), pp. 19-21. The current LATR process evaluates not only projected new vehicular driver trips, but also new vehicle passenger trips, new transit trips, and new non-motorized trips.

In the subject case, a full traffic study of the impact of new vehicular driver trips was required under the LATR Guidelines because the new vehicular driver trips that will be generated by the proposed development (57 in the AM peak hour and 72 in the PM peak hour) will exceed the 50-trip threshold. However, as noted by Technical Staff (Exhibit 43, pp. 10-11), the projected new trips for pedestrians, bicycles and transit use did not reach the threshold necessary to require an LATR study for those trips. Glenn Cook, the Applicant's transportation planner, agreed with that conclusion. Tr. 117-118.

Mr. Cook explained the process for the LATR traffic study he conducted, at the hearing: He stated that he prepared a traffic study (Exhibit 11) in accordance with the County's Local Area Transportation Review (LATR) standards. "The first step is to have a scoping agreement worked out with the Staff because the Staff dictates what intersections we should look at. Depending on the policy area you're in it dictates what methodology you use as far as the analysis is concerned. And then trip generation use information from the Institute of Transportation Engineers Trip Generation Report." Tr. 111-112.

The study included intersections along Rt. 97 (Georgia Avenue), from Dennis Avenue to the north down to Forest Glen; and the intersections of Belvedere Avenue and Arthur Avenue. Technical Staff indicated that there were no approved, but not yet built, developments to be considered in the study. Mr. Cook then conducted a trip generation analysis based on the expected 220 units planned for this project. He then subtracted out the traffic generated by the existing units

on the site to determine the number of new trips that would be generated. Mr. Cook noted that Technical Staff took a somewhat different approach to their own calculations, but Staff did not ask him to redo his calculations, so he did not do so. The differences were slight, such as one additional trip in the morning peak hour and one in the evening, based on Staff's calculations. The Staff's numbers are reflected on page 10 of the Staff Report (Exhibit 43). Tr. 112-115.

Mr. Cook further testified that when the new trips were assigned to the various intersections, the results were well within the congestion standard for the applicable Policy Area (Kensington-Wheaton), which has Critical Lane Volume (CLV) standard of 1,600. The Policy Area also requires analysis under the State's Highway Capacity Manual (HCM) methodology, which requires that intersection delays be under 80 seconds in this area. Mr. Cook found that all the intersections meet that criteria for both methodologies, as reflected in the Staff Report (Exhibit 43, p. 11). "So therefore, we concluded that we can comply with the requirements of the LATR and that no intersection improvements are needed to address capacity at these intersections." Tr. 115-116.

Technical Staff agreed with Mr. Cook's conclusion, but since they had slightly different numbers, we have used Staff's charts, which are reproduced below from Exhibit 43, pp. 10-11:

Table 1 – Vehicular Trip Generation

Vehicle Trip Generation	AM	PM
Site Generated Vehicle Trips (Driver) (ITE 10 th Edition - 220 Midrise Units)	74	94
Credited Existing Vehicle Trips (72 apartment units, driveway counts)	-11	-15
LATR Policy Area Adjustment	91% of ITE Rate	
Net New Vehicle Trips (Driver)	57	72
Net New Person Trips (Converted using 51.9% vehicle driver mode share)	96	122
Local Area Transportation Review Required? (Are AM or PM person trips ≥ 50?)	Yes	Yes

(Source: ITE, 10th Edition, revised from Applicant's LATR Review)

Table 2 – Multimodal Trip Generation

Multimodal Trip Generation (LATR Guidelines, Kensington Wheaton Policy Area)	Percentage	AM	PM
New Vehicle Driver Trips (see "Vehicle Trip Generation" Table)	59.1%	57	72
New Vehicle Passenger Trips	25.4%	24	31
New Transit Trips	8.1%	8	10
New Non-Motorized Trips	7.4%	7	9
Net New Person Trips	100%	96	122
Pedestrian Adequacy Test Required? (Are non-motorized + transit trips ≥ 50?)		No	No
Bicycle Adequacy Test Required? (Are non-motorized trips ≥ 50?)		No	No
Transit Adequacy Test Required? (Are transit trips ≥ 50?)		No	No

(Source: ITE, 10th Edition, revised from Applicant's LATR Review)

As noted by both Mr. Cook and the Technical Staff (Exhibit 43, p. 11):

The Property falls within the Kensington Wheaton Policy Area, which requires both Critical Lane Volume (CLV) and Highway Capacity Manual (HCM) delay analyses. The intersection congestion standards for the policy area are a CLV of 1600 and 80 seconds of delay per vehicle. **As demonstrated in Table 3 [below], each of the studied intersections fell below its relevant congestion standards. . .**

[Emphasis added.]

Table 3 – Existing and Future Traffic Impact

	AM				PM			
	Existing CLV	Future CLV	Existing Delay	Future Delay	Existing CLV	Future CLV	Existing Delay	Future Delay
Georgia Avenue and Dennis Avenue	1338	1340	47.8	47.8	1243	1245	40.4	40.4
Georgia Avenue and Belvedere Boulevard	1190	1210	12.9	23.2	979	995	0.6	1.6
Georgia Avenue and Arthur Avenue	1172	1205	0.1	0.7	723	757	0.0	0.1
Georgia Avenue and Forest Glen Road	1402	1411	67.4	67.7	1364	1373	53.1	53.6
Belvedere Boulevard and Arthur Avenue	98	110	7.0	7.0	78	82	6.9	7.0

(Source: Applicant's LATR Review prepared by the Traffic Group)

One additional point was made by Technical Staff (Exhibit 43, p. 12):

The Maryland Department of Transportation's State Highway Administration (SHA) has provided initial input suggesting that operations could be improved through the

creation of a left-turn storage lane at Georgia Avenue's northbound approach to Belvedere Boulevard due to increased queues generated by the development. Staff and the Applicant will work with SHA during the Preliminary Plan review on any appropriate condition(s) to mitigate any impact generated by the Property.

The "bottom line" from all of this uncontradicted evidence is that the proposed rezoning and redevelopment will meet the County's standards for avoiding excessive road congestion from the new development, and the Hearing Examiner so finds. It is interesting to note, in this context, that the current LATR standards go beyond the "critical lane volume [CLV] or volume/capacity ratio standard. . ." specified in Zoning Ordinance §59.7.2.1.E.2.e. as the applicable test. As discussed by both Mr. Cook and Technical Staff, they also considered delay standards from the State's Highway Capacity Manual (HCM), and found that the proposed development would meet those standards as well.

Based on this record, the Hearing Examiner finds that transportation facilities are adequate and will not be unduly affected by the proposed development.

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

The intent of the Floating zones is to: A. Implement comprehensive planning objectives by: . . . 2. ensuring that the proposed uses are in balance with and supported by the existing and planned infrastructure in the general plan, applicable master plan, functional master plan staging, and applicable public facilities requirements; . . . [Emphasis added.]

Thus, the new Zoning Ordinance requires an analysis at rezoning of the adequacy of non-transportation facilities, as well as transportation facilities.

With regard to other public facilities and services other than transportation, the 2016-2020 Subdivision Staging Policy⁷ provides, at p. 14, that we ". . . must consider the programmed services to be adequate for facilities such as police stations, firehouses, and health clinics unless there is

⁷ Adopted by the Council on November 15, 2016, in Resolution No. 18-671.

evidence that a local area problem will be generated.”

There is no evidence of inadequacy in this case, and therefore police stations, firehouses and health clinics will be considered sufficient. The Subdivision Staging Policy also provides (at p. 13) that “. . . applications must be considered adequately served by water and sewerage if the subdivision is located in an area in which water and sewer service is presently available . . .” That is the case here. The Applicant’s civil engineer, Kenneth Jones, testified that there is already water and sewer service on the property (W1 and S1), and he anticipates that existing sources will provide adequate service to the proposed development. Tr. 106-107.

In addition, Technical Staff reports that “Other utilities, public facilities and services, such as electric, telecommunications, police stations, firehouses and health services are currently operating within the standards set by the Subdivision Staging Policy Resolution currently in effect.” Exhibit 43, p. 12.

As to the adequacy of neighborhood public schools, Staff reports the following (Exhibit 43, p. 12):

Flora M. Singer Elementary School, Sligo Middle School and Einstein High School serve the Property. Assuming the redevelopment generates 220 units as presented in the Applicant’s Floating Zone Plan, the Property is projected to generate twenty-one (21) elementary school students, eight (8) middle school students, and eleven (11) high school students. Capacity will be further assessed during subsequent Preliminary Plan review.

Since Technical Staff’s statement did not give a complete picture of the capacity of the local schools to handle the students that may be generated, the Hearing Examiner raised this question at the hearing. The Applicant’s land planner, David Ager, testified that there would be adequate school capacity in all three area schools (elementary, middle and high school) to handle the expected students from the proposed development. Tr. 97.

Based on this record, the Hearing Examiner finds that the proposed use will be served by adequate public services and facilities.

H. Environment

Technical Staff reported that “There are no forests, wetlands, or other environmental features on the Property. The Property is in the Lower Rock Creek watershed but is outside any Special Protection Area. . . . While there is no forest on the Property, there are a number of large and specimen trees that will be impacted with any demolition of the existing buildings or any future development proposals. . . .” Exhibit 43, p. 12.

Under the 2014 Zoning Ordinance, an Applicant for rezoning is not required to submit an approved Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) or a proposed Preliminary Forest Conservation Plan (PFCP) with its rezoning application; however, recent changes to the County Code require that Council action on a rezoning application must await a Planning Board action on the proposed PFCP. This requirement is contained in County Code Section 22A-11(b)(2)(C), which provides:

(C) Approval. The Planning Board must review and act on the forest conservation plan concurrently with the development plan, floating zone plan, project plan, sketch plan, preliminary plan of subdivision, or site plan, as appropriate. . . . For a development plan or a floating zone plan, a Planning Board recommendation to the District Council on the preliminary forest conservation plan must be made under Section 59-7.2.1. . . .

As a result of these changes in the law, the Planning Board, in a letter to the Hearing Examiner dated February 19, 2019 (Exhibit 44), recommended that the Applicant submit a Forest Conservation Plan for review and approval prior to securing zoning approval from the Office of the Hearing Examiner. The Applicant followed this recommendation, submitting a Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) (Exhibit 46), a proposed Preliminary Forest Conservation Plan (PFCP)(Exhibit 48) and a Request for a Tree Variance (Exhibit 49) to the Planning Department on February 22, 2019 for review and approval. On February 26, 2019, the Planning Department approved the NRI/FSD as No. 420191310 (Exhibits 51 and 51(a) and (b)).

On March 1, 2019, Staff recommended conditional approval of the PFCP and the tree variance (Exhibit 61(a)). The Planning Board conditionally approved the PFCP and tree variance on March 14, 2019, by Resolution (Exhibit 61). The specified conditions were:

1. The Applicant must submit a Final Forest Conservation Plan with the subsequent Preliminary Plan and Site Plan submittals.
2. Prior to the start of any clearing, grading, or demolition occurring on the Property, the Applicant must receive approval from the M-NCPPC Office of the General Counsel of a Certificate of Compliance to use an off-site forest mitigation bank for 0.45 acres of mitigation credit.
3. The Applicant must plant twenty-two (22) three (3)-inch caliper native canopy trees within one year of construction completion as mitigation for tree loss.

The Planning Board having addressed the forest conservation issue, the only remaining environmental question relates to stormwater management on the site. Technical Staff did not find it necessary to address stormwater management in its report, but Kenneth Jones, the Applicant's expert in civil engineering and environmental design did so at the hearing. Mr. Jones testified that a full stormwater management plan will be required for Preliminary Plan review, but the Floating Zone Plan indicates some of the stormwater management concept, including bio retention facilities, micro-bio retention facilities in planter boxes which will receive rooftop runoff from the adjacent buildings, and possibly some in the open courtyards which are set above the parking decks. There may also be an underground treatment quality structure to supplement the total storm water treatment for the site. In Mr. Jones' opinion, he will be able to achieve full compliance with the environmental site design requirements. Tr. 105-106. There is no contrary evidence in this case.

Based on this record, the Hearing Examiner is satisfied that the proposed use will not harm the environment, and any impacts will be further addressed at site plan and preliminary plan review.

I. Community Concerns

The only response from the community has been a February 27, 2019 letter supporting the application from Partap Verma, Founder of the Friends of Forest Glen and Montgomery Hills, and Founder of the Finding Forest Glen Blog (Exhibit 55). In that letter, Ms. Verma states:

Dear Office of Zoning and Administrative Hearings:

I am writing to your office in support of Montgomery Housing Partnership's redevelopment project of the Forest Glen Apartments in the Forest Glen neighborhood. As the Founder of the Friends of Forest Glen and Montgomery Hills, I have been actively involved in community related meetings and events – all designed to increase a sense of place, community and address issues facing our neighborhoods like traffic, affordable housing, community amenities, transit support and smart growth.

MHP's project is the first of its kind in our neighborhood and is largely supported by our citizens for a variety of reasons. First, MHP's redevelopment of the existing garden apartments increases affordable housing dramatically. As a county that has prioritized social justice issues, our community recognizes that many residents who need metro access often can't afford to live near mass transit and have disproportionately longer commutes as a result. MHP's project tackles this issue head-on and should be supported accordingly.

Secondly, MHP's project promotes smart growth and sets the example for the community as it goes through the sector plan process and potential redevelopment. As your office may know, Forest Glen has approximately 13 acres of land that can be redeveloped and community members and developers are looking at the feasibility of this project as a data point for future growth for our area.

Finally, MHP's project promotes additional transit use and supports WMATA funding. The Forest Glen metro has one of the lowest uses in the transit system and as a result is often the subject of additional scrutiny. Our community recognizes that additional density is needed to support our metro station and this project supports this principle. Thank you for your time and consideration. Please don't hesitate me at 202-277-0318 if you have any questions.

IV. SUMMARY OF THE HEARING

A public hearing was convened, as scheduled, on March 1, 2019. The Applicant presented evidence and called five witnesses in support of the application— Praj Kasbekar, the Applicant's senior project manager; Dave Stembel, an Architect; David Ager, an expert in land planning; Kenneth Jones, a civil engineer; and Glenn Cook, a transportation planner and traffic engineer. There was no opposition testimony. The following is a summary of significant testimony.

Applicant's counsel also indicated that the Applicant generally accepts the findings of the Technical Staff as part of its proof in the record; however, she noted two areas in which the Applicant

differed from what Staff said in its report. The first is that Staff indicated that the development would provide 220 “affordable” units, while the Applicant is not sure that all of the units will be “affordable,” since the exact mix of apartments has not yet been determined. As stated by Ms. Vaias (Tr. 38), “we are committing to the 20 percent MPDUs, . . . because it is MHP's mission to provide affordable housing. But the 220 affordable dwelling units is not exactly correct. We don't know how many more will be affordable.” She added, “The intent is for this to be a mixed income project with majority ultimately being affordable.”

The second disagreement with Staff noted by the Applicant refers to the distance from the nearest Metrorail station. Technical Staff repeatedly refers to the proposed development being within a half mile walk of the Forest Glen Metrorail stop (Exhibit 43, pp. 2, 8 and 10). The Applicant's land planner, David Ager, testified that the Forest Glen Metro Station is actually under a quarter of a mile from the subject site. Tr. 72. Thus, Staff was technically correct, but did not fully acknowledge the proximity of the subject site to the Metrorail station.

1. Praj Kasbekar (Tr. 18-38):

Ms. Praj Kasbekar, the Applicant's senior project manager, has a degree in architecture from India and a Masters in regional planning from Cornell University. The particular property is owned by the Applicant, MHP Forest Glen, LLC, which is a subsidiary of Montgomery Housing Partnership (MHP). Montgomery Housing Partnership owns 100 percent of the Applicant, MHP Forest Glen, LLC. Tr. 18-23.

Montgomery Housing Partnership is a 501(c)(3) nonprofit organization founded in 1989 with the mission to preserve and expand affordable housing in Montgomery County. As a nonprofit housing developer, MHP provides close to 1800 apartments on 31 properties, mostly in Montgomery County. Its goal is to house the residents, empower families in need, and strengthen vulnerable neighborhoods. MHP also provides preschool programs, after school homework clubs, health

screenings, financial literacy classes, and works with parents to help them navigate the school system, especially parents whose first language is not English. Tr. 21-24.⁸

Ms. Kasbekar further testified that the buildings currently on the site have become obsolete, and it would take an “obscene amount of money to try to bring it to the current code and livable conditions that the residents there deserve.” Tr. 28. They are served by the old original boiler; there is no air conditioning in the units, and there are no elevators. “So there's a lot of senior, disabled residents there right now who just have no way to get around.” Tr. 28. She also that the property is very well located for the planned redevelopment, near a Metrorail stop and a major employer (Holy Cross Hospital). The Applicant currently is looking to put in approximately 220 units, and because the current Zone is R10, the Applicant would need the CRTF 1.75, C 0.25, R 1.50, H-70 to get to that number of units. Tr. 29.

According to Ms. Kasbekar, the Applicant is under a lot of time pressure because it needs Council action by May 8, 2019, in order to apply for a low income housing tax credit financing program that the State of Maryland runs. Tr. 30.

The Applicant met with the condominium association and a group of residents from the Americana Finnmark property (the neighbor to the south), and their reaction to the project was “very encouraging.” Tr. 33-34. She also met with the representatives of the “Finding Forest Glen” organization and they were very supportive. Tr. 35-36.

Finally, Ms. Kasbekar met with the current residents of the subject property. The Applicant “will find an alternative location for them when the redevelopment will happen. And they will be welcomed back to new units . . . , if they so choose.” Tr. 37.

⁸ The Hearing Examiner notes that the court reporter incorrectly attributed the statements on Transcript page 24, lines 6 through 25, to the Hearing Examiner. The statement contained in those lines was made by the witness, Praj Kasbekar.

2. Dave Stembel (Tr. 39-62):

Dave Stembel testified as an expert in architecture. Using a key map (Exhibit 56), Mr. Stembel described the nearby buildings (Tr. 42-45). Directly north of Belvedere Boulevard is the Belvedere Apartment complex (labelled 4 on the key map), which are three and four story garden walkups. Directly to the northwest, and to the west (labelled 3) is an area of single-family homes of one and two stories. Directly to the south of the subject property is the Americana Finnmark condominium community (labelled 1). This community is a mixture of mid-rises and a high-rise of eight stories.

The subject site slopes pretty uniformly downward to the west from Georgia Avenue, falling about 20 feet. According to Mr. Stembel, that is significant because it affects how the parking can be accommodated and screened. Also noteworthy is that Arthur Avenue is a private road on the subject property. Tr. 46-47.

Mr. Stembel noted that for flexibility, the Staff had recommended that the Applicant list the minimum setback as zero and the maximum height as 70 feet on the Floating Zone Plan, even though the maximum building height is conceptually planned for 66 feet in height. Tr. 50-51. He further testified that while the proposed zone is called a CRT zone, the Applicant does not plan any commercial development on the site. Tr. 52.

Mr. Stembel stated that the plan is for the C-shaped building on the east, adjacent to Georgia Avenue, to be six stories tall, and the Z-shaped building on the west would be stepped down to four stories to reduce the massing near the single-family neighborhood west of the site. Tr. 53-56. The breakdown of the units has not been determined, but Mr. Stembel testified that the plan is for the unit breakdown to include one-bedroom, two-bedroom, and three-bedroom units, and the projected parking of up to 250 parking spaces was calculated with the assumption of 30 percent three-bedroom units, 30 percent two-bedroom units and 40 percent of the one-bedroom units. All that is subject to

change at Site Plan. Tr. 56-57. The height of the building on the west will probably be about 55 feet. Tr. 58-59.

Mr. Stembel opined that the proposed buildings would be architecturally compatible with the surrounding neighborhood. Tr. 59-60:

The building as we've envisioned the massing and keeping the parking below grade for the most part so that the parking is not a visual distraction, but in fact is hidden from view for the largest part, and stepping the building down with the largest massing being on Georgia Avenue, main north-south boulevard and closest to the larger structures in the neighborhood stepping down to the single-family to the west means that the development will fit into the character of the neighborhood in terms of the height and the massing. The . . . right of away on Belvedere Boulevard, . . . is a significant right-of-way. So that the planned development is significantly further back from Belvedere Boulevard than it would be in just about any other neighborhood setting. And that contributes to the character and fitting into the neighborhood.

Mr. Stembel further testified that the proposed buildings would serve as a transition between the three-to-four story garden apartments to the north and the eight-story Americana Finnmark Condominium building to the south, as shown on the photograph simulation and sections in Exhibit 38. R 61-63.

3. David Ager (Tr. 64-97):

David Ager testified as an expert in land planning and landscape architecture. Mr. Ager indicated that the current zoning on the site (R-10, high density, multifamily) has been the case since 1954. Tr. 67. He then testified regarding the manner in which the current proposal will satisfy the detailed requirements of the Zoning Ordinance for this floating zone, all of which are discussed at length in Part V of this Report and Recommendation. Tr. 67-83.

In addition, Mr. Ager noted that the site is less than one-quarter of a mile from the Forest Glen Metro Station (Tr. 72) and that there is a narrow underground WMATA easement along the eastern side of the property (Tr. 84). Mr. Ager expects that the Applicant will be required to dedicate an additional area to the right-of-way along Georgia Avenue, and that the eventual setbacks will be greater than the minimum of zero feet specified in the Floating Zone Plan at the suggestion of the

Planning Board. Previous dedications account for the difference between the area to be rezoned and the gross tract area. Mr. Ager also mentioned that there is “an abundance of off-site recreation in this neighborhood,” exceeding the requirements for rezoning. Tr. 84-88.

Mr. Ager further testified that the proposed rezoning and development would be compatible with surrounding development and would comport with the goals of the 1996 Forest Glen Sector Plan. In Mr. Ager’s words (Tr. 89-91):

[T]he 1996 Forest Glen Sector Plan had three main goals and objectives. Number one was to ensure that new developments is [*sic*] compatible with the character of the existing residential neighborhood. There is another objective, number two, to protect the edges of the existing what was referred to if you read the -- read further into the Sector Plan and the single-family detached residential neighborhoods along Georgia Avenue and to soften the impact of major roadways on the adjacent single-family detached homes. And then third focus new development and redevelopment at appropriate locations near the Metro rail station consistent with the General Plan. The specific land use recommendations for the subject property in the Forest Glen plan is high density multifamily. The application -- it is my opinion that the application is consistent with these main goals and objectives of the Sector Plan. And that is it is consistent with the existing land use pattern in the area. It's replacing multifamily with multifamily. The particular proposal before us will actually improve compatibility between land uses along Georgia Avenue and the Forest Glen Metro station.

. . . It actually takes substandard housing and replaces it on the same property with more housing and will actually increase the amount of housing in close proximity to the Metro station.

. . . The compatibility is accomplished through the design of the project as the architect illustrated with his cross-sections. . . . The architect was very careful to create transitional designs in his massing of his buildings so that the building relates to multifamily north and south of the subject property and creates the smallest massing and lowest portion of the building closest to the single-family detached to the west. And also as illustrated on the Floating Zone Plan some of the larger public open space components are located in that area as well.

Mr. Ager also opined that the Applicant’s proposal would help to provide a green corridor along Georgia Avenue and provide an opportunity to upgrade substandard pedestrian facilities, thereby fulfilling other goals of the Sector Plan. Tr. 91.

Mr. Ager further testified that he sees no conflict between the proposed Floating Zone Plan

and the Technical Staff's proposal to amend the current Sector Plan so as to provide for a CRT 2.0, H-70 Zone on the site, since the Applicant's proposal would fit within those parameters. Tr. 92.

In Mr. Ager's opinion, the Floating Zone Plan conforms to the General Plan and the various Master and Sector Plans in the area. Tr. 94. It would also comport with the purpose of the CRT Zone to allow development of mixed-use centers, and communities at a range of densities and heights flexible enough to respond to various settings. Tr. 95.

Mr. Ager noted that he differed from the Staff report in two regards. The Staff report refers to the proposed setback in an earlier version of the Floating Zone Plan, and also suggests that all the units will be affordable housing. Mr. Ager stated that a high percentage of the units would be affordable, but the exact number is not yet known. Tr. 96.

Finally, Mr. Ager testified that there would be adequate school capacity in all three area schools (elementary, middle and high schools) to handle the expected students from the proposed development. Tr. 97.

4. Kenneth Jones (Tr. 100-109):

Kenneth Jones testified as an expert in civil engineering and environmental design. He stated that he calculated the total gross tract area of the property to be 3.59030 acres. The reason for the discrepancy between that gross tract area and the area of the property to be rezoned, which is 2.63 acres, is the prior roadway dedication, which has been granted to the Belvedere Boulevard and Georgia Avenue rights-of-way. Area 1 on Exhibit 27 is the portion previously dedicated to Belvedere Boulevard, and Area 2 on the exhibit is the area previously dedicated to Georgia Avenue. Tr. 103.

Mr. Jones further testifies that, as shown on the NRI/FSD (Exhibit 51), "there are no wetlands, floodplains, streams or associated buffers that exist on the property. There are no rare, threatened, or endangered species observed on the property. It's not considered a historic site. There

are no forests existing on-site, and it is not within a special protection area.” Tr. 104.

He indicated that a full stormwater management plan will be required for Preliminary Plan review, but the Floating Zone Plan indicates some of the stormwater management concept, including bio retention facilities, micro-bio retention facilities in planter boxes which will receive rooftop runoff from the adjacent buildings, and possibly some in the open courtyards which are set above the parking decks. There may also be an underground treatment quality structure to supplement the total storm water treatment for the site. In Mr. Jones’ opinion, he will be able to achieve full compliance with the environmental site design requirements. Tr. 105-106.

Mr. Jones further testified that there is already water and sewer service on the property (W1 and S1), and he anticipates that existing sources will provide adequate service to the proposed development. Tr. 106-107.

In Mr. Jones’ expert opinion, the proposed plan will be compatible with the neighborhood with regard to engineering and public facilities. Tr. 108.

Finally, Mr. Jones testified that the Applicant’s plans will include reconstruction of the sidewalk along Georgia Avenue and installation of sidewalk ramps that are in compliance with ADA. Similarly, if there are sidewalk ramps associated with the public sidewalk that's along Belvedere Boulevard, those existing ramps would also need to be replaced. Tr. 109.

5. Glenn Cook (Tr. 110-122):

Glenn Cook testified as an expert in transportation planning and traffic engineering. He stated that he prepared a traffic study (Exhibit 11) in accordance with the County’s Local Area Transportation Review (LATR) standards. “The first step is to have a scoping agreement worked out with the Staff because the Staff dictates what intersections we should look at. Depending on the policy area you're in it dictates what methodology you use as far as the analysis is concerned. And then trip generation use information from the Institute of Transportation Engineers Trip Generation

Report.” Tr. 111-112.

The study included intersections along Rt. 97 (Georgia Avenue), from Dennis Avenue to the north down to Forest Glen; and the intersections of Belvedere Avenue and Arthur Avenue. Technical Staff indicated that there were no approved, but not yet built, developments to be considered in the study. Mr. Cook then conducted a trip generation analysis based on the expected 220 units planned for this project. He then subtracted out the traffic generated by the existing units on the site to determine the number of new trips that would be generated. Mr. Cook noted that Technical Staff took a somewhat different approach to their own calculations, but Staff did not ask him to redo his calculations, so he did not do so. The differences were slight, such as one additional trip in the morning peak hour and one in the evening, based on Staff’s calculations. The Staff’s numbers are reflected on page 10 of the Staff Report (Exhibit 43). Tr. 112-115.

Mr. Cook further testified that when the new trips were assigned to the various intersections, the results were well within the congestion standard for the applicable Policy Area (Kensington-Wheaton), which has Critical Lane Volume (CLV) standard of 1,600. The Policy Area also requires analysis under the State’s Highway Capacity Manual (HCM) methodology, which requires that intersection delays be under 80 seconds in this area. Mr. Cook found that all the intersections meet that criteria for both methodologies, as reflected in the Staff Report (Exhibit 43, p. 11). “So therefore, we concluded that we can comply with the requirements of the LATR and that no intersection improvements are needed to address capacity at these intersections.” Tr. 115-116.

Mr. Cook also explained the note at the bottom of page 10 and the top of page 11 of the Staff report indicating that “The Applicant’s conceptual Floating Zone Plan did not meet the threshold for pedestrian, bicycle, or transit adequacy analyses.” According to Mr. Cook, Staff was not indicating a violation of LATR in these categories, but rather was just saying that because pedestrian, bicycle, and transit numbers were under the threshold, no further study regarding them was called for by

LATR. In Mr. Cook's opinion, the proposed project satisfies LATR. Tr. 117-118.

Mr. Cook further opined that the site circulation and access to the site, as conceptually planned, are safe and reasonable. He noted, however, that the State Highway Administration was evaluating whether a left turn lane should be added for traffic northbound on Rt. 97 to facilitate turns onto Belvedere Boulevard or U-turns. That issue will be addressed at the next planning stage, but Mr. Cook's preliminary analysis indicates it can be done. Tr. 118-119.

Finally, Mr. Cook addressed the following comment in the Staff report (Exhibit 43, p. 11), "The LATR capacity analysis was consistent with the Department's LATR Guidelines, but the study's results differ from the ongoing Forest Glen/Montgomery Hills Sector Plan's transportation analysis largely because different network and background traffic assumptions are employed under the sector plan study methodology.

Mr. Cook noted that Master Planning traffic analysis includes all possible development in the Plan Area, even that which has not yet been approved, while LATR analysis includes only existing and approved development, as well as the proposed development on the particular site. He said that, therefore, Staff's comment was not pertinent to the traffic analysis in this case. Tr. 120-122.

V. ZONING ISSUES

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

A Floating Zone is a more flexible device that allows a legislative body to establish types of zoning districts for specified uses, without attaching those districts to particular pieces of property

unless and until a local map amendment application is approved. Applications for a Floating Zone can be filed by individual land owners, and approving an application for a Floating Zone attaches that zone and its regulations to that land owner's individual piece of property, without applying that Floating Zone to a larger zoning district. To approve such a rezoning, the Council must find that the proposal will meet the standards set forth in the Zoning Ordinance, and that it will be consistent with a coordinated and systematic development of the regional district, as required by the 2012 Maryland Land Use Article, Code Ann. §§ 21-101(a) and (b).⁹

Montgomery County has many Floating Zones, including the Commercial Residential Town Floating Zone (CRTF). The specific zone sought in this case is the CRTF-1.75, C-0.25, R-1.5, H-70, which would allow a Floor Area Ratio (FAR) of up to 1.75 in total, with a limit on commercial density to an FAR of up to 0.25 and a limit on residential density to an FAR of up to 1.5. The height would be limited to 70 feet. Other development standards must be met, but generally the details of site-specific issues such as building location, stormwater control, vehicular and pedestrian routes, landscaping and screening are addressed, after rezoning, at site plan and preliminary plan reviews by the Planning Board. The Council has a broader discretionary role in determining whether to approve a rezoning; however, the Zoning Ordinance still requires a structured and detailed analysis for the Council's review of rezoning applications, as follows:

Zoning Ordinance §59.7.2.1.E. establishes a set of "Necessary Findings" the Council must make for any Floating Zone application:

Section 59.7.2.1.E. Necessary Findings

- 1. A Floating zone application that satisfies Article 59-5 may not be sufficient to require approval of the application.***
- 2. For a Floating zone application the District Council must find that the floating zone plan will:***
 - a. substantially conform with the recommendations of the applicable master plan, general plan, and other applicable County plans;***

⁹ 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." Sections 21-101(a) and (b) of the Land Use Article contain the rough equivalent of the previous language in Article 28, Md. Code Ann., § 7-110.

- b. further the public interest;*
- c. satisfy the intent and standards of the proposed zone and, to the extent the Hearing Examiner finds it necessary to ensure compatibility, meet other applicable requirements of this Chapter;*
- d. be compatible with existing and approved adjacent development;*
- e. generate traffic that does not exceed the critical lane volume or volume/capacity ratio standard as applicable under the Planning Board's LATR Guidelines, or, if traffic exceeds the applicable standard, that the applicant demonstrate an ability to mitigate such adverse impacts; and*
- f. when applying a non-Residential Floating zone to a property previously under a Residential Detached zone, not adversely affect the character of the surrounding neighborhood.*

As is apparent, Finding 2.c. of these “Necessary Findings” incorporates requirements spelled out elsewhere in the Code—specifically under sections that establish “the intent and standards” of the Zone. Those general standards are found in Zoning Ordinance Sections 59.5.1.2., 5.1.3. and 5.1.4. Specific standards for Commercial Residential Town Floating Zones are spelled out in Sections 59.5.3.1., 5.3.2., 5.3.3., 5.3.4. and 5.3.5. This report will first address the general “Necessary Findings” set forth above, and will then review the specific standards which must be met to rezone to a CRTF-1.75, C-0.25, R-1.5, H-70 Commercial Residential Town Floating Zone.

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

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

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

a. substantially conform with the recommendations of the applicable master plan, general plan, and other applicable County plans;

Conclusion: The subject site is located in the area covered by the *1996 Forest Glen Sector Plan*.

For the reasons set forth at some length in Part III.F. of this report, the Hearing Examiner finds that the proposed Floating Zone Plan will substantially conform with the recommendations of that Sector Plan.

Technical Staff addressed the proposal's consistency with the County's General Plan (Exhibit 43, p. 15):

The proposed rezoning is consistent with the intent of the County's 1964 General Plan in that it supports development in a major corridor with existing transit, water, and sewer service. While Georgia Avenue was not originally planned as a major corridor within the 1964 Plan, the development of WMATA Metrorail's Red Line changed the area's land use patterns, and subsequent master and functional master plans have recognized Georgia Avenue as a major corridor.

The 1969 update to the County's General Plan notes the need for adequate housing opportunities for individuals of all wage levels, and the 1993 Refinement to the General Plan discusses the need to create housing plans that improve transit ridership, reduce travel demand, and make efficient use of capital investments in public services and facilities. This sentiment is reaffirmed in the 2011 Amendment to the Housing Element of the General Plan. Because the proposed rezoning will support affordable housing near transit service, the Application is consistent with longstanding policy grounded in the General Plan and its subsequent updates.

The Hearing Examiner adopts Staff's reasoning in this regard, and finds that the proposed rezoning and development are consistent with the General Plan. Conformance with other County plans is demonstrated in Part III.G., regarding Public Facilities, and in Part III.H., regarding the Environment. Based thereon, the Hearing Examiner finds that the proposed rezoning substantially conforms to other applicable County plans.

b. further the public interest;

Conclusion: The proposed rezoning will allow redevelopment of a residential property that is in significant need of improvement and repair, as testified to by Ms. Praj Kasbekar, the Applicant's senior project manager. Ms. Kasbekar stated that the buildings currently on the site have become

obsolete, and it would take an “obscene amount of money to try to bring it to the current code and livable conditions that the residents there deserve.” Tr. 28. They are served by the old original boiler; there is no air conditioning in the units, and there are no elevators. “So there's a lot of senior, disabled residents there right now who just have no way to get around.” Tr. 28.

The proposed redevelopment would allow the addition of many more apartment units within a quarter mile of a Metrorail station, and most of them will likely be affordable units, including a guaranteed minimum of 20% MPDUs, the latter being a binding element on the Floating Zone Plan. Based on this undisputed evidence, the Hearing Examiner finds that the proposed development will further the public interest.

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

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

d. be compatible with existing and approved adjacent development;

Conclusion: There is ample evidence in this record that the proposed rezoning and development will be compatible with existing and approved adjacent development. The Applicant produced the testimony of two experts on the subject, their architect, Dave Stembel, and their land planner, David Ager.

Mr. Stembel opined that the proposed buildings would be architecturally compatible with the surrounding neighborhood. Tr. 59-60:

The building as we've envisioned the massing and keeping the parking below grade for the most part so that the parking is not a visual distraction, but in fact is hidden from view for the largest part, and stepping the building down with the largest

massing being on Georgia Avenue, main north-south boulevard and closest to the larger structures in the neighborhood stepping down to the single-family to the west means that the development will fit into the character of the neighborhood in terms of the height and the massing. The . . . right of away on Belvedere Boulevard, . . . is a significant right-of-way. So that the planned development is significantly further back from Belvedere Boulevard than it would be in just about any other neighborhood setting. And that contributes to the character and fitting into the neighborhood.

Mr. Stembel further testified that the proposed buildings would serve as a transition between the three-to-four story garden apartments to the north and the eight-story Americana Finnmark Condominium building to the south, as shown on the photograph simulation and sections in Exhibit 38. Tr. 61-63.

Mr. Ager testified that the proposed rezoning and development would be compatible with surrounding development and would comport with the goals of the 1996 Forest Glen Sector Plan. In Mr. Ager's words (Tr. 90-91):

. . . The compatibility is accomplished through the design of the project as the architect illustrated with his cross-sections. . . . The architect was very careful to create transitional designs in his massing of his buildings so that the building relates to multifamily north and south of the subject property and creates the smallest massing and lowest portion of the building closest to the single-family detached to the west. And also as illustrated on the Floating Zone Plan some of the larger public open space components are located in that area as well.

Technical Staff addressed the compatibility issue as follows (Exhibit 43, p. 15):

The proposed height, 70 feet, falls below the 100 feet maximum permitted in the R-10 zone. Additionally, the building will serve as a buffer between the adjacent single-family detached residential community and Georgia Avenue. The flexibility provided through the proposed zone and the optional development process will allow the Planning Department to provide richer design guidance during the Preliminary Plan and Site Plan review approval processes.

Based on this undisputed evidence, the Hearing Examiner finds that the proposed development will be compatible with existing and approved adjacent development.

e. generate traffic that does not exceed the critical lane volume or volume/capacity ratio standard as applicable under the Planning Board's LATR Guidelines, or, if traffic exceeds the applicable standard, that the applicant demonstrate an ability to mitigate such adverse impacts; and

Conclusion: For the reasons set forth at length in Part III.G. of this report, the Hearing Examiner finds that the proposed development will not generate traffic that exceeds the critical lane volume or volume/capacity ratio standard, nor the applicable delay standard, under the Planning Board's LATR Guidelines.

f. when applying a non-Residential Floating zone to a property previously under a Residential Detached zone, not adversely affect the character of the surrounding neighborhood.

Conclusion: This provision (§59.7.2.1.E.2.) is inapplicable since the current zone (R-10) is not a Residential Detached zone, and the Hearing Examiner so finds.

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

The next step in the review process is a determination of whether the proposed development will satisfy the intent and standards of the CRTF-1.75, C-0.25, R-1.5, H-70 Commercial Residential Town Floating Zone. These standards are set forth in **Zoning Ordinance §59.5.1.2:**

The Residential Floating, Commercial/Residential Floating, Employment Floating, and Industrial Floating zones are intended to provide an alternative to development under the restrictions of the Euclidean zones mapped by Sectional Map Amendment (the Agricultural, Rural Residential, Residential, Commercial/Residential, Employment, Industrial, and Overlay zones). To obtain a Floating zone, an applicant must obtain approval of a Local Map Amendment under Section [7.2.1](#). The intent of the Floating zones is to:

A. Implement comprehensive planning objectives by:

- 1. furthering the goals of the general plan, applicable master plan, and functional master plans;*
- 2. ensuring that the proposed uses are in balance with and supported by the existing and planned infrastructure in the general plan, applicable master plan, functional master plan staging, and applicable public facilities requirements; and*
- 3. allowing design flexibility to integrate development into circulation networks, land use patterns, and natural features within and connected to the property; and*

B. Encourage the appropriate use of land by:

- 1. providing flexible applicability to respond to changing economic, demographic, and planning trends that occur between comprehensive District or Sectional Map Amendments;*
- 2. allowing various uses, building types, and densities as determined by a*

property's size and base zone to serve a diverse and evolving population; and
 3. *ensuring that development satisfies basic sustainability requirements including:*

- a. locational criteria,*
- b. connections to circulation networks,*
- c. density and use limitations,*
- d. open space standards,*
- e. environmental protection and mitigation; and*

C. *Ensure protection of established neighborhoods by:*

- 1. establishing compatible relationships between new development and existing neighborhoods through limits on applicability, density, and uses;*
- 2. providing development standards and general compatibility standards to protect the character of adjacent neighborhoods; and*
- 3. allowing design flexibility to provide mitigation of any negative impacts found to be caused by the new use.*

Section 59.5.1.2.A - Implement comprehensive planning objectives . . .

Conclusion: The first test listed under this section essentially asks whether the proposal will comport with the goals of the general plan and the applicable master plan. The standard set forth in §59.5.1.2.A.1. is, of course, repetitive of the previously discussed Master Plan standards, and for the reasons set forth in Part III.F. of this report, and in response to the required finding in §59.7.2.1.E.2.a., the Hearing Examiner finds that the proposed Floating Zone Plan will further the goals of the general plan, Sector plan, and other County plans.

Sections 59.5.1.2.A.2 and A.3, address the adequacy of public facilities and the design flexibility of the planned development. For the reasons set forth in Part III.G. of this report, it is clear that the proposed use is supported by existing infrastructure, and the conceptual nature of all of the Applicant's Floating Zone Plan (except for the binding element of a minimum of 20% MPDUs) maximizes the flexibility of the Planning Department to ensure the implementation of the County's planning objectives at Site Plan Review and Subdivision.

Conclusion: Based on this record, the Hearing Examiner finds that the proposed development will satisfy the intent standards for the CRTF-1.75, C-0.25, R-1.5, H-70 Commercial Residential Town Floating Zone, as set forth in §59.5.1.2.A.

Section 59.5.1.2.B - Encourage the appropriate use of land . . .

Conclusion: The second portion of the intent provision (Section §59.5.1.2.B.) asks whether the proposal will encourage an appropriate, flexible and sustainable use of the land that will serve the community even in changing circumstances. The Applicant's land planner, David Ager, testified that the proposed development will allow flexibility in uses for the site. Tr. 95. The remaining questions are essentially repetitive of provisions previously addressed. It is apparent from this record that a modern building to replace the current outdated development on the site will better serve the community even in changing circumstances.

Based on this undisputed evidence, the Hearing Examiner finds that the proposed development will satisfy the intent standards for the CRTF-1.75, C-0.25, R-1.5, H-70 Commercial Residential Town Floating Zone, as set forth in §59.5.1.2.B., and will encourage the appropriate and flexible use of the land.

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

Conclusion: The third prong of the intent provision (Section §59.5.1.2.C.) seeks to ensure protection of established neighborhoods by requiring design flexibility and compatibility with existing developments. Once again, the requirements of this section are repetitive of the general compatibility findings required by Section 59.7.2.1.E.2.d. As previously mentioned, the proposed development will be compatible with the surrounding area.

Therefore, the Hearing Examiner finds that the proposed development will be compatible with existing and approved adjacent development. The standards set forth in §59.5.1.2.C. have been satisfied.

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

Section 59.5.1.3. of the Zoning Ordinance sets up a series of tests to determine whether the

requested Floating Zone may be applied to the site in question. Each subsection is listed separately below, followed by the Hearing Examiner’s finding on each:

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

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

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

* * *

Conclusion: Subsection “B” is not applicable since the 1996 Forest Glen Sector Plan neither recommends nor opposes a Floating Zone on the subject site. It is silent on the issue.

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

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

Conclusion: Subsection “C” is applicable since the 1996 Forest Glen Sector Plan does not expressly recommend a Floating Zone on the subject site. Subsection “C.1.” requires the maximum density to be calculated in accordance with Section 59.5.3.5, which is done in the next part of this report. As will be shown there, the proposed use will be within the maximum density allowed. No density bonus has been requested in this case.

2. Residential Base Zone

* * *

- c. When requesting a Commercial Residential Floating (CRF) zone, Commercial Residential Town Floating (CRTF) zone, or any Employment Floating zone (NRF, GRF, EOFF, LSCF) for a property with a Residential base zone:***

- i. The property must front on a nonresidential street or must confront or abut a property that is in a Commercial/Residential, Employment, or Industrial zone; and*
- ii. The application must satisfy a minimum of 2 prerequisites for each of the categories under Section 5.1.3.D.*

Conclusion: Subsection “C.2.” is applicable since the application seeks the CRTF Zone, and the site is currently in a Residential Base Zone (R-10). The application satisfies Subsection C.2.c.i. because, as stated by Technical Staff (Exhibit 42, p. 13), “The proposal meets the requirement of §5.1.3.C.2.c.i by fronting on Georgia Avenue, a non-residential street.”¹⁰ The application satisfies Subsection 5.1.3.C.2.c.ii. because, as enumerated below by Technical Staff (Exhibit 43, p. 13), it satisfies at least two prerequisites for each of the required categories in the Table set forth in Section 5.1.3.D. Technical Staff lists the Section 59.5.1.3.D. prerequisites that are satisfied by this application, as follows (Exhibit 43, p. 13):

Category One: Transit and Infrastructure:

- 1) At least 75 percent (75%) of the Property is within .75 miles of a level 1 transit station/stop (Forest Glen WMATA Metrorail Station).
- 2) The Property has frontage on and vehicular, bicycle, and pedestrian access to at least two (2) roads (Belvedere Boulevard and Georgia Avenue), one (1) of which is nonresidential (Georgia Avenue).

Category Two: Vicinity and Facilities:

- 1) The Property is located in a transitional location between property in an existing residential multifamily zone and a residential detached zone.
- 2) The Property is adjacent to a route that provides access to Flora M. Singer Elementary School, which is located approximately .4 miles west of the property. Sidewalks and vehicular pathways are continuous between the school and the Property.

Category Three: Environment and Resources

- 1) The Property does not contain forest, and as such, development will not reduce existing forest cover to an area of 10,000 square feet or width of 35 feet at any point.
- 2) The Property does not contain any rare, threatened, endangered species, or critical habitats listed by the Maryland Department of Natural Resources.

¹⁰ The Hearing Examiner corrected Technical Staff’s citation within the quote. Staff identified the subsection as §5.1.3.C.i., whereas the correct citation is §5.1.3.C.2.c.i.

Conclusion: Based on the foregoing, the Hearing Examiner finds that the application satisfies all of the applicable requirements of §59.5.1.3.C.2.

Section 59.5.1.3.C.3. Non-Residential Base Zone

Conclusion: The Hearing Examiner finds that Subsection “C.3” is not applicable since the site is in a Residential Base Zone.

Based on this undisputed record, the Hearing Examiner finds that the subject Floating Zone application meets all the tests set forth in Section 59.5.1.3 for applying the CRTF-1.75, C-0.25, R-1.5, H-70 Commercial Residential Town Floating Zone to the site in question. Section 59.5.1.4 notes that an application for a Floating Zone must be approved as a Local Map Amendment under Section 59.7.2.1. As discussed in Part V.A. of this report, the application does meet the requirements set forth under Section 59.7.2.1. Section 59.5.1.5 is inapplicable to the zone sought in this case.

D. The Commercial/Residential Floating Zones, their Purpose & Uses, in Division 5.3

Zoning Ordinance Division 59-5.3 lists the Commercial Residential Floating Zones, specifies their purpose, designates the allowed uses and building types and sets forth the applicable development standards. The development standards are discussed in the next part of this report, Part V.E.

Section 5.3.1. Zones

- A. There are 3 categories of Commercial/Residential Floating zones.***
- B. Commercial/Residential Floating zones are mapped using the zone's initials followed by the maximum allowed total, commercial, and residential densities and maximum allowed height as limited by Division 5.3. Zones are established at density increments of 0.25 FAR and height increments of 5 feet.***
 - 1. Commercial Residential Neighborhood – Floating (CRNF# C# R# H#)***
 - 2. Commercial Residential Town – Floating (CRTF# C# R# H#)***
 - 3. Commercial Residential – Floating (CRF# C# R# H#)***

Conclusion: The Zone sought in this case is the CRTF-1.75, C-0.25, R-1.5, H-70 Commercial Residential Town Floating Zone, the type listed as Item No. 2, above. The next section sets forth the purpose of the Commercial Residential Floating Zones.

Section 5.3.2. Purpose

The purpose of the Commercial/Residential Floating zones is to:

- A. allow development of mixed-use centers and communities at a range of densities and heights flexible enough to respond to various settings;***
- B. allow flexibility in uses for a site; and***
- C. provide mixed-use development that is compatible with adjacent development.***

Technical Staff found that the proposed rezoning would satisfy the purpose of the Commercial Residential Floating zones because (Exhibit 43, pp. 13-14):

- 1) The Commercial/Residential Floating Zone is intended to allow the development of mixed-use centers and communities at a range of densities and heights flexible enough to respond to various settings. The Subject Property falls between multifamily high-rise, multifamily garden-style apartments, and single family detached properties and the flexibility provided by a floating zone designation allows for appropriate transitions and responses to the existing built environment.
- 2) The Commercial/Residential Floating Zone is intended to allow flexibility in uses for a site. While the Applicant intends to construct a residential apartment building, the proposed zoning allows for the development of commercial in addition to residential, thereby increasing the range of development possibility for the Property.
- 3) The Commercial/Residential Floating Zone should provide mixed-use development that is compatible with adjacent development. As previously stated, the Applicant intends to construct an all-residential building; however, the proposed zoning increases the development opportunities across the Property. The structure of the proposed development better integrates with a mixed-use environment, while responding to the existing character of the adjacent all-residential neighborhood west of Georgia Avenue.

Conclusion: The Hearing Examiner finds that the proposed rezoning would satisfy the purposes of the Commercial Residential Floating zones for the reasons set forth by the Technical Staff, quoted above, and also for the reasons the Hearing Examiner discussed in Part V.B. of this report, in response to Section 59.5.1.2, concerning the overall intent and purposes of this general category of floating zones.

Section 5.3.3. Land Uses

A. The following land uses are allowed in the Commercial/Residential Floating zones:

- 1. In the CRNF zones, only the uses allowed in the CRN zone are allowed.***
 - 2. In the CRTF zones, only the uses allowed in the CRT zone are allowed.***
 - 3. In the CRF zones, only the uses allowed in the CR zone are allowed.***
- B. An applicant may voluntarily prohibit specific uses or establish binding elements that restrict specific uses to support the necessary findings of approval under Section 7.2.1.***

Conclusion: Subsection 5.3.3.A.2. limits development in the CRTF Zone to uses allowed in the CRT zone. Development in the CRT Zone is described in Zoning Ordinance Division 4.5. As indicated by Technical Staff (Exhibit 43, p. 14), the type of multi-unit building proposed in this case is allowed in the CRT zones. As permitted in Subsection 5.3.3.B, the Applicant in this case has voluntarily imposed a binding element in the final Floating Zone Plan (Exhibit 59) and executed Declaration of Covenants (Exhibit 60), guaranteeing a minimum of 20% MPDUs in the development. Based on this record, the Hearing Examiner finds that the requirements of Section 5.3.3. have been satisfied.

Section 5.3.4. Building Types Allowed

A. Any building type is allowed in the Commercial/Residential Floating zones.

B. An applicant may voluntarily prohibit specific building types or establish binding elements that restrict specific building types to support the necessary findings of approval under Section 7.2.1.

Conclusion: Subsection 5.3.4.A. specifies that “Any building type is allowed in the Commercial/Residential Floating zones,” so the buildings proposed by the Applicant clearly qualify. As allowed in Subsection 5.3.4.B, the Applicant in this case has voluntarily imposed a binding element in the final Floating Zone Plan (Exhibit 59) and executed Declaration of Covenants (Exhibit 60), guaranteeing a minimum of 20% MPDUs in the development. Based on this record, the Hearing Examiner finds that the requirements of Section 5.3.4. have been satisfied.

The next part of this report, Part V.E., addresses the applicable development standards for the CRTF-1.75, C-0.25, R-1.5, H-70 Commercial Residential Town Floating Zone.

E. Development Standards for the Zone as set forth in Section 59.5.3.5.

Development Standards for the CRTF-1.75, C-0.25, R-1.5, H-70 Commercial Residential Town Floating Zone are spelled out in Zoning Ordinance §59.5.3.5., which is set forth below:

Section 5.3.5. Development Standards

A. Density

1. If a Floating zone is recommended in a master plan, density must not exceed

that recommendation.

2. If a Floating zone is not recommended in a master plan, the following density limits apply.

Conclusion: Because the proposed floating zone is not specifically recommended in the applicable Sector Plan, §5.3.5.A.2. specifies that the density limits allowed are those spelled out in the following Table. As can be seen in the bolded row of the Table, where the pre-existing Euclidean Zone on the site is R-10, as is the case here, and the gross tract area of the site exceeds 3 acres, as is the case here, the prescribed density limits are 1.75 total FAR, with a maximum of 1.5 Residential FAR and 1.5 Commercial FAR. The Hearing Examiner finds that the Applicant is requesting density within those limits.

Density Allowed						
Pre-Existing Euclidean Zone	Maximum Density Allowed in FAR Based on Size of Tract in Acres					
	Up to 0.5 acres		0.51 acres - 3.00 acres		Greater than 3 acres	
	Total Density	C or R Density	Total Density	C or R Density	Total Density	C or R Density
RE-2, RE-2c, RE-1, R-200	0.75 FAR	0.5 FAR	1.0 FAR	0.75 FAR	1.25 FAR	1.0 FAR
R-90, R-60, R-40, TLD, TMD, THD	1.0	0.75	1.25	1.0	1.5	1.25
R-30, R-20, R-10	1.25	1.0	1.5	1.25	1.75	1.5
CRN	1.0	0.75	1.25	1.0	1.5	1.25
CRT	2.0	1.5	3.0	2.0	4.0	3.0
CR	4.0	3.0	6.0	4.5	8.0	6.0
Employment	2.0	1.5	3.0	2.0	4.0	3.0
IL, IM	0.75	0.5	1.0	0.75	1.5	1.25

3. An applicant may limit density below the maximum allowed by Section 5.3.5.A to support the necessary findings of approval under Section 7.2.1.

Conclusion: The Applicant has opted for the maximum permitted residential FAR of 1.5, and a commercial density not to exceed 0.25 FAR, bringing the total density requested to an FAR of 1.75, as permitted in the Table. As noted elsewhere in this report, the Applicant’s conceptual plans do

not presently include any commercial development on the site. Based on this record, the Hearing Examiner finds that the density requirements of Section 5.3.3.A. have been satisfied.

B. Setback and Height

1. If a Floating zone is recommended in a master plan, height must not exceed that recommendation.

2. Setbacks from the site boundary and maximum height are established by the floating zone plan. All other setbacks are established by the site plan approval process under Section 7.3.4.

3. Height must satisfy the compatibility standards for the applicable building type under Section 4.1.8.B.

Conclusion: Since the Floating Zone is not expressly recommended in the applicable Sector Plan, Subsection 59.5.3.5.B.1. is not applicable. Applying Subsections 59.5.4.5.B.2. and 3., setbacks from the site boundary and maximum height are established by the Floating Zone Plan. As recommended by the Planning Board (Exhibit 44), the Applicant revised its Floating Zone Plan (FZP) to specify a minimum setback of zero feet and a maximum height of 70 feet (Exhibit 59); however, as discussed elsewhere in this report, a number of actual setbacks established at Site Plan review will likely exceed the minimum specified in the FZP, and the actual building height will likely not exceed 65 feet, with an even lower height on the western end of the site, in the vicinity of the single-family residences.

The Hearing Examiner also finds that the proposed development will be compatible with existing development in the area for the reasons stated in Part V.A, of this report (at pp. 46-47) in response to the findings called for in §59.7.2.1.E.2.d. The precise height and angle measurements called for in Section 4.1.8.B will be addressed by the Planning Board at Site Plan review.

C. Lot Size

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

Conclusion: This section provides that lot sizes “are established at the site plan approval process under Section 7.3.4.” Technical Staff notes, in response (Exhibit 43, p. 14), that “The Applicant proposes to maintain the existing lot. The segment of Arthur Avenue that is currently private may

need to be subdivided at Preliminary Plan.” In any event, the Hearing Examiner finds that this provision is satisfied because the Applicant’s proposal will have to go through Site Plan Review, if the Council approves the rezoning.

D. General Requirements

1. Parking, recreation facilities, screening, and landscaping must be provided under Article 59-6 as required for the Euclidean zone that establishes uses under Section 5.3.3.

Conclusion: As stated by Technical Staff (Exhibit 43, p. 14),

Parking space, parking screening, and open space requirements will be assessed to be consistent with development requirements of the proposed CRT Zone during Preliminary Plan and Site Plan review. Based on its current development scheme, the Applicant anticipates providing roughly 250 parking spaces, partially below grade, and will provide a minimum of ten (10) percent of the Property to meet Public Open Space requirements.

The number of parking spaces required will ultimately be determined by the breakdown of the apartment units, which has not yet been finalized, but the Applicant’s architect, Dave Stembel testified that the plan is for the unit breakdown to include one-bedroom, two-bedroom, and three-bedroom units, and the projected parking of up to 250 parking spaces was calculated with the assumption of 30 percent three-bedroom units, 30 percent two-bedroom units and 40 percent of the one-bedroom units. All that is subject to change at Site Plan. Tr. 56-57. Applicant’s land planner, David Ager, testified that there is “an abundance of off-site recreation in this neighborhood,” exceeding the requirements for rezoning. Tr. 84-88. There is no contrary evidence in this record.

The Applicant’s Conceptual Landscape Plan (Exhibit 37) demonstrates the planned landscape screening, garage entry points, lobby entry, open space and the two south-facing courtyards for the residents atop the planned underground garage. Tr. 53-54. It is reproduced on page 18 of this report. Because the Applicant’s plans are conceptual at this stage, the final determination of the adequacy of parking, recreation, screening and landscaping will have to await the Planning Board’s Site Plan review. The Hearing Examiner finds, based on the undisputed

evidence at this stage, that the Applicant's proposal is sufficient to meet the standards for rezoning with regard to parking, recreation, screening and landscaping, subject to review and modification of the particulars during the Site Plan process.

2. Open Space

a. If public benefits are not required under Section 5.3.5.E, open space must be provided under Section 4.5.3.C.1 (for standard method) as required for the Euclidean zone that establishes uses under Section 5.3.3.

b. If public benefits are required under Section 5.3.5.E, open space must be provided under Section 4.5.4.B.1 (for optional method) as required for the Euclidean zone that establishes uses under Section 5.3.3.

Conclusion: Section 5.3.5.E., below, does require public benefits for this project because this project calls for a density of greater than 1.0 FAR. Therefore, under Section 5.3.5.D.2.b., above, “*open space must be provided under Section 4.5.4.B.1 (for optional method) as required for the Euclidean zone that establishes uses under Section 5.3.3.*” Section 4.5.b.1. provides that for a site with a tract area of 3.01 to 6.00 acres (which subsumes the tract in question) and two or more frontages (as is the case under consideration), there is a requirement for a minimum of 10% open space. The Hearing Examiner finds that the Applicant's Floating Zone Plan (Exhibit 59) complies with this requirement by specifying a minimum of 10% open space for the project.

3. The floating zone plan may provide for additional parking, open space, recreation facilities, screening, or landscaping or further restrict lighting to allow the District Council to make the necessary findings of approval under Section 7.2.1.

Conclusion: The Applicant has not sought to add additional elements beyond the Floating Zone Plan and Declaration of Covenants guaranteeing a minimum of 20% MPDUs.

E. Public Benefits

1. Public Benefits Required

a. Development above the greater of 1.0 FAR or 10,000 square feet of gross floor area in the CRTF zone requires public benefits.

b. Development above the greater of 0.5 FAR or 10,000 square feet of gross floor area in the CRF zone requires public benefits.

c. When public benefits are required by development in the Commercial/Residential Floating zones, a sketch plan must be submitted under Section 7.3.3.

2. Public Benefit Points and Categories Required

a. Public benefits under Division 4.7 must be provided according to zone and tract size or maximum total mapped FAR, whichever requires more public benefit points:

Zone	Tract Size OR Max Total FAR	Public Benefit Points (min)	Number of Benefit Categories (min)
CRTF	< 10,000 SF OR < 1.5 max FAR	25	2
	≥ 10,000 SF OR ≥ 1.5 max FAR	50	3
CRF	< 10,000 SF OR < 1.5 max FAR	50	3
	≥ 10,000 SF OR ≥ 1.5 max FAR	100	4

b. In the CRF zone, the purchase of BLTs is required under Section 4.7.3.F.1.a.

Conclusion: As discussed in responding to the previous section, Section 5.3.5.E. does require Public Benefits for this project because this project calls for a density of greater than 1.0 FAR. The number of Public Benefit Points needed and the number of categories of benefits is determined by the above Table. The bolded row in that Table shows that a project in the CRTF Zone, with a tract size of 10,000 square feet or more or a density equal to or exceeding 1.5 FAR, requires a minimum of 50 Benefit Points in at least 3 Benefit Categories. However, as noted by Technical Staff (Exhibit 43, p. 14), the number of required Benefit Categories is reduced to one under §4.7.3.D.6.e.¹¹ because the Applicant anticipates supplying at least 20% MPDUs.

Staff also indicates that the Public Benefits categories will be approved at Preliminary Plan, and point values will be assessed and approved at Site Plan. However, it is clear without even getting to that stage that the Applicant will have more than enough Benefit Points, under Sections 4.7.3.D.6.a. and e., based on its commitment to a minimum of 20% MPDUs alone.

¹¹ The Hearing Examiner corrected Staff's citation. The correct section citation is §4.7.3.D.6.e., not §4.7.D.6.a.v., as referenced by Staff.

Section 4.7.3.D.6. provides:

Section 4.7.3.D.6.

Moderately Priced Dwelling Units: There is no limitation on the number of points for providing more than 12.5% of the residential units as MPDUs as required under Chapter 25A. Points are calculated as follows:

- a. 12 points are granted for every 1% of MPDUs greater than 12.5%. Any fraction of 1% increase in MPDUs entitles the applicant to an equal fraction of 12 points.***
- b. An additional 2 points are granted for every 1% of 2-bedroom MPDUs not otherwise required.***
- c. An additional 5 points are granted for every 1% of 3-bedroom MPDUs.***
- d. In any case, for points to be awarded, at least one more MPDU than would be required at 12.5% must be provided to take advantage of the MPDU public benefit points in any zone.***
- e. For a project providing a minimum of 15% MPDUs, one less benefit category than is required under Section 4.5.4.A.2 and Section 4.6.4.A.2 must be satisfied. A project that provides a minimum of 20% MPDUs does not have to satisfy any other benefit category under Section 4.5.4.A.2 and Section 4.6.4.A.2.***

Conclusion: As noted above, §4.7.3.D.6.e. reduces the number of Public Benefit Categories for the Applicant to one because “A project that provides a minimum of 20% MPDUs does not have to satisfy any other benefit category . . .” Looking at §4.7.3.D.6.a., it is apparent that “12 points are granted for every 1% of MPDUs greater than 12.5% . . .” Since the Applicant will provide a minimum of 20% MPDUs, (*i.e.*, 7.5% above 12.5%), it is entitled to 7.5 X 12 points (*i.e.*, 90 Public Benefit Points) based on MPDUs alone. Thus, the Hearing Examiner finds that the Applicant will more than meet its public Benefit Point Minimum of 50 Points.

Conclusion Regarding All Development Standards: Based on this undisputed record, the Hearing Examiner finds that the subject Floating Zone application meets all the development standards set forth in Section 59.5.3.5. of the Zoning Ordinance.

VI. CONCLUSIONS

Based on the foregoing analysis and after a thorough review of the entire record, the Hearing Examiner concludes that the proposed reclassification and development will meet the standards set

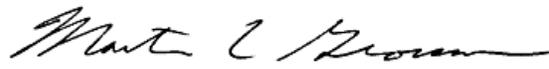
forth in the Zoning Ordinance, and that it will be consistent with a coordinated and systematic development of the regional district, as required by the Maryland Land Use Article, Code Ann. (2012) §§ 21-101(a) and (b). More specifically, the evidence demonstrates compliance with Zoning Ordinance §59.7.2.1.E., which spells out the general requirements for approval of a rezoning to a Floating Zone, and with Sections 59.5.1.2., 59.5.1.3., 59.5.1.4., 59.5.3.1., 59.5.3.2., 59.5.3.3., 59.5.3.4. and 59.5.3.5, which together detail the intent, purposes, and standards of the proposed CRTF-1.75, C-0.25, R-1.5, H-70 Commercial Residential Town Floating Zone.

VII. RECOMMENDATION

I, therefore, recommend that Local Map Amendment Application No. H-129, requesting reclassification from the existing R-10 Zone to the CRTF-1.75, C-0.25, R-1.5, H-70 Commercial Residential Town Floating Zone, of Parcel C, Block A, in the McKenney Hills subdivision, located at 9920 Georgia Avenue and 2106 Belvedere Boulevard in Silver Spring, Maryland, and consisting of 2.634 acres (out of a gross tract of 3.59 acres), be **approved** in the amount requested and subject to the specifications and requirements of the Floating Zone Plan, Exhibit 59; provided that the Applicant files an executed Declaration of Covenants (Exhibit 60) reflecting the binding element in the land records and submits to the Hearing Examiner for certification a true copy of the Floating Zone Plan approved by the District Council within 10 days of approval, in accordance with §§59.7.2.1.H.1.a. and b. of the Zoning Ordinance.

Issued: April 2, 2019

Respectfully submitted,



Martin L. Grossman
Hearing Examiner