

**BEFORE THE COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THE MARYLAND-
WASHINGTON REGIONAL DISTRICT IN
MONTGOMERY COUNTY, MARYLAND
Office of Zoning and Administrative Hearings
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 200
Rockville, Maryland 20850
(240) 777-6660**

IN THE MATTER OF:

Hong Cheng, LLC and Dong Ya, LLC
Applicant

Anthony Kuo Chien Cheng
Kevin Foster
Timothy Longfellow
Anne M. (Nancy) Randall

For the Application

Pat Harris, Esquire
Christopher S. Cohen, Esquire
Attorneys for the Applicant

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OZAH Case No. H-134

Before: Lynn Robeson Hannan, Hearing Examiner

HEARING EXAMINER'S REPORT AND RECOMMENDATION

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I. CASE SUMMARY

Applicant: Hong Cheng, LLC and Dong Ya, LLC

LMA No. & Date of Filing: H-134, filed May 8, 2019.

Current Zone: CRN-1.5, C-1.0, R-0.5, H-45 (Commercial/Residential Neighborhood Zone)

Current Use: Automobile filling station/convenience store (a 7-Eleven) and commercial retail building (a mattress store) on two separate parcels.

Zoning Sought: CRTF-1.5, C-1.0, R-0.5, H-45 (Commercial Residential Town Floating Zone); certain uses permitted in the CRTF Zone are prohibited by binding elements;

Use Sought: Existing gas station/convenience store is non-conforming under the CRN Zone; the applicants seek to legalize that use to expand and upgrade the property and permit wider array of commercial uses under CRTF Zone than currently available under the CRN Zone.

Location: 15585 and 15595 Old Columbia Pike, Burtonsville, MD; Southwest quadrant of the intersection of Columbia Pike and Md. Rte. 198:



Acreage to be Rezoned: 3.46 acres +/- (tract area)

Density Permitted: 1.5 FAR; no change from existing zoning.

Open Space Required/Provided:	10% /10%
Maximum Building Height:	45 feet; no change from height permitted under existing zoning.
Environmental Issues:	Stormwater management will be implemented on the site; 50-foot wide forest conservation easement/buffer will be established on the southern property line.
Consistency with Master Plan:	Consistent with the Burtonsville Crossing Neighborhood Plan
Neighborhood Response:	No Opposition
Traffic Issues:	<p>The eastern access to the site has experienced accidents caused by westbound left turns from Route 198 into the site and by westbound left turns leaving the site. Recent improvements by SHA restricting these turns are expected to significantly reduce or eliminate the number of accidents at this location</p> <p>Northbound average LATR delays at the intersection of the western site access/Burtonsville Town Shopping Center/Md. Rte. 198 cannot be measured. The installation of a signal at that location would eliminate any deficiency and is more likely than not to occur. Even if SHA does not signalize the intersection, LATR average delays may be met if the western access is limited to right-in, right-out movements. LATR will be studied in detail at applicable site plan, conditional use, or building permit stages.</p>
Planning Board Recommends:	Approval
Technical Staff Recommends:	Approval
Hearing Examiner Recommends:	Approval
District Council Votes Needed to Approve:	5

II. STATEMENT OF THE CASE

Hong Cheng LLC and Dong Ya LLC filed LMA Application No. H-134 on May 8, 2019. The application seeks to rezone approximately 3.46 acres of property from the CRN (Commercial Residential Neighborhood Zone)-1.5, C-1.0, R-0.5, H-45 to the CRTF (Commercial Residential Town Floating Zone) 1.5, C-1.0, R-0.5, H-45. Exhibit 1. The subject property is located at 15585 and 15595 Old Columbia Pike, Burtonsville, MD 20866, further identified as Parcel C (N913) and Parcel D (N924) in the “Parcels C and D Burtonsville” subdivision (Tax Account Nos. 05-01988445 and 05-01988434). *Id.*

Notice of the public hearing (Exhibit 33) was mailed out and posted on OZAH’s website on August 16, 2019. The notice established a hearing date of September 30, 2019.

The Applicant submitted revisions to its Preliminary Forest Conservation Plan (PFCP), Open Space Exhibit, Fire Access Plan, Circulation Exhibit, and Floating Zone Plan (FZP) on August 6, 2019. In response to comments from the Hearing Examiner and the Staff of the Planning Department (Staff), the Applicant revised its FZP again on September 26, 2019. Exhibit 42.

The public hearing proceeded as scheduled on September 30, 2019. The Applicant presented four witnesses; three of them were experts in land planning, civil engineering, and transportation planning. The Applicant submitted revised covenants reflecting the changes to the binding elements made in the revised FZP. Exhibit 44. No one appeared in opposition to the application. The Hearing Examiner held the record open to receive the Planning Board’s written approval of the PFCP and to receive comments from Staff on the revised FZP. Both were received and the record closed on October 14, 2019. Exhibit 48.

The FZP does not increase the height or density of the property’s existing zoning. It does make the existing gas station/convenience store on the site legally conforming. The Applicant seeks to add four fueling positions (for a total of 12) to the gas station and to approximately double the

size of the existing convenience store (to approximately 5,000 square feet.) Grant of the rezoning would also expand the number of commercial uses permitted on the site. Based on the evidence of record, 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

The subject property consists of two recorded parcels totaling approximately 3.46 acres located in the southwest quadrant of the intersection of Columbia Pike (Business 29) and Md. Rte.

198. The Staff Report contains an aerial photograph of the subject property (Exhibit 40(b), below):



Currently, Parcel C is developed with a 2,496 square foot convenience store and gas station with 8 fueling stations (a 7-Eleven). Exhibit 42. Parcel D is improved with a retail building (a mattress store) of approximately 8,208 square feet. *Id.* The subject property has no stormwater management. T. 43. Other than the 0.38 acres of forest stand along the southern boundary, Staff

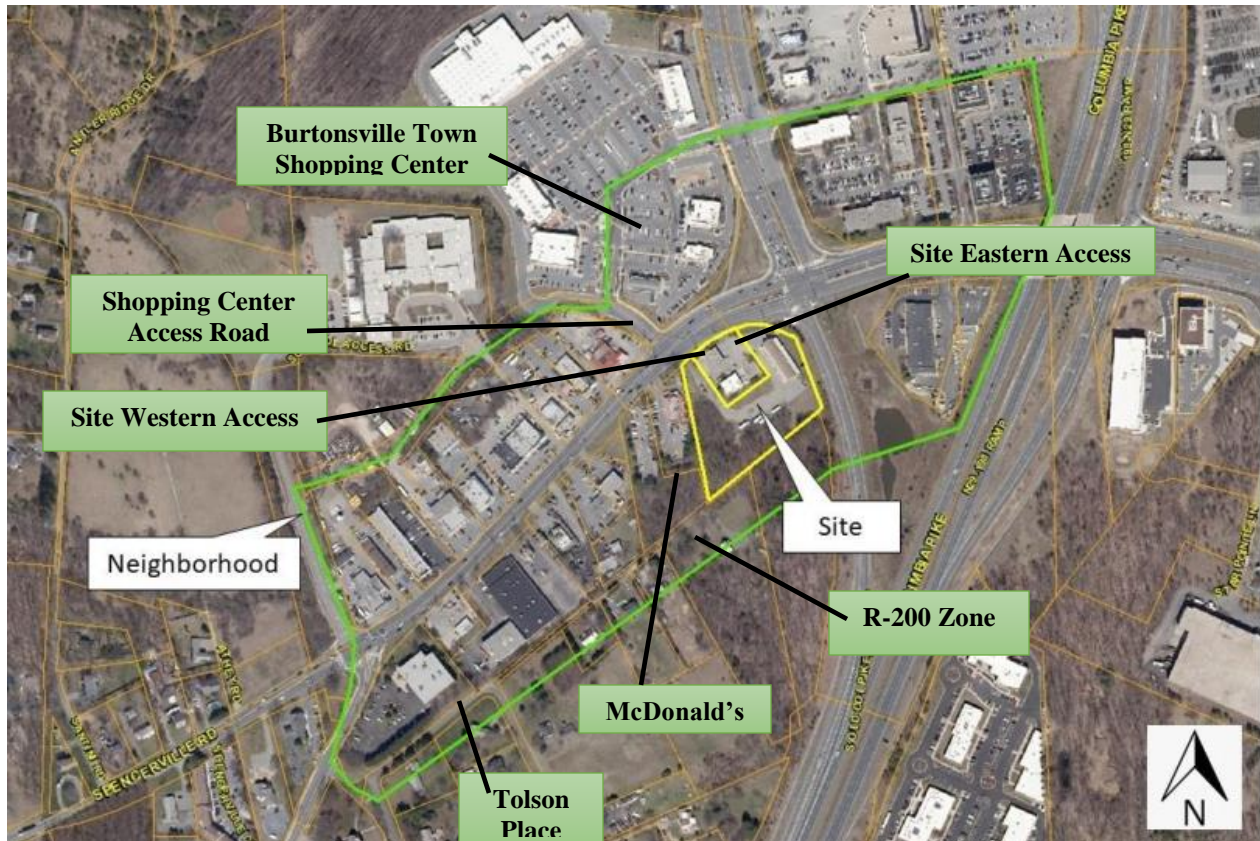
advises that there are no protected environmental features on the site. Exhibit 40(b), p. 4. Uses immediately adjacent to the subject property include a McDonald's restaurant to the west and properties in the R-200 Zone to the south. The adjacent residentially-zoned property directly to the south is undeveloped and owned by the Applicant. The property to the southwest is improved with a single-family detached dwelling accessed via a right-of-way extending from Tolson Place. T. 50.

B. Surrounding Area

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

Staff and the Applicant agree that the surrounding area for the subject property is bounded by properties on both sides of Md. Rte. 198 between Route 29 and the intersection of Old Columbia Pike/Tolson Place. It also includes a strip of properties zoned R-200 along Tolson Place and an extended right-of-way. These border the commercial properties south of Md. Rte. 198. Properties in the immediate environs include two residential zoned parcels to the south (Parcel P60 and a 3.3-acre Parcel P47 owned by the Applicant), and a McDonald's adjacent to the western site boundary. Exhibit 40(b), p. 4; T. 33-35. The boundary of the surrounding area identified is shown in an aerial photograph included in the Staff Report (*Id.*, p. 4, on the next page).

The commercial properties on the south side of Md. Rte. 198 are zoned CRN (Commercial/Residential Neighborhood). The Burtonsville Town Shopping Center confronts the subject property on the north side of Md. Rte. 198 and is zoned CRT (Commercial/Residential Town). The Burtonsville Crossing Office Park is located to the northeast across Old Columbia Pike (Business 29) and is also zoned CRT. T. 33; Exhibit 40(b), p. 6. The property immediately to the east across Columbia Pike is zoned NR (Neighborhood Retail) and improved with a



Surrounding Area (Ex. 40(b), p. 5)

hardware store. The properties zoned R-200 are improved with single-family dwellings that are accessed via Tolson Place. The residential property on the southern site boundary is vacant.

Staff characterizes the area as “mix of zones and development patterns with each of the four high visibility corners having distinct commercial features.” *Id.*, p. 5. Mr. Kevin Foster, the Applicant’s expert in land planning, testified that the area contains multiple small businesses, including restaurants, auto-related uses, and several churches. A small strip of R-200 residential properties are located along the southern edge, along Tolson Place. He included those because of the Master Plan’s goal to protect the residential character of these properties from the impact of the commercial properties bordering the south side Md. Rte. 198. T. 34-35. Mr. Foster characterized the surrounding area as a “vibrant, commercial hub” that is beginning to coalesce in accordance with the Burtonsville Crossing Master Plan. T. 35.

Having no evidence to the contrary, the Hearing Examiner accepts the neighborhood boundaries shown in the Staff Report. The Hearing Examiner characterizes the area a mix of commercial neighborhood retail and auto-related uses that culminate at the intersection of Md. Rte. 198 and Columbia Pike or Business 29. She also finds that there is a sharp transition from the commercial uses on the south side of Md. Rte. 198 to the R-200 properties adjacent to the south.

C. Zoning History

Technical Staff reports the following zoning history (Exhibit 40(b), p. 6):

- Prior to 1974 the property was zoned C-2.
- The 1974 Rural East Sectional Map Amendment (F-926) confirmed the C-2 zoning.
- The 2012 Burtonsville Crossroads Neighborhood Plan (G-955) rezoned the Property from C-2 to CRN 1.5, C-1.0, R-0.5, H-45.
- The zoning remained the same (CRN 1.5, C-1.0, R-0.5, H-45) with the District-wide rezoning in 2014 (District Map Amendment G-956).

Mr. Foster testified that the gas station became non-conforming when rezoned to the CRN Zone. T. 31.

D. The Applicant's Proposal

Presently, the Applicants propose to add four fueling positions to the existing eight (for a total of 12) and expand the convenience store by approximately 2,500 square feet (for a total of 5,000 square feet.) The rezoning would also expand the number of commercial uses permitted on both parcels. As noted, the gas station/convenience store is currently non-conforming under the existing CRN zoning.

A representative of the Applicant, Mr. Anthony Kuo Chien Cheng, testified that the Applicant purchased Parcel C in 1997. He stated that he did not participate in the Burtonsville Master Plan process because notice of the rezoning went to the existing tenant, Southland Corporation, which is based in Texas. T. 12-13. The Applicants did not purchase Parcel D

(improved with the retail building) until 2015, after the Master Plan had been adopted. *Id.* Mr. Cheng testified that the lease for the gas station/convenience store expires in 2024, and he is trying to legalize and upgrade the uses so that he may retain the existing tenant or prepare for a new tenant. T. 13.

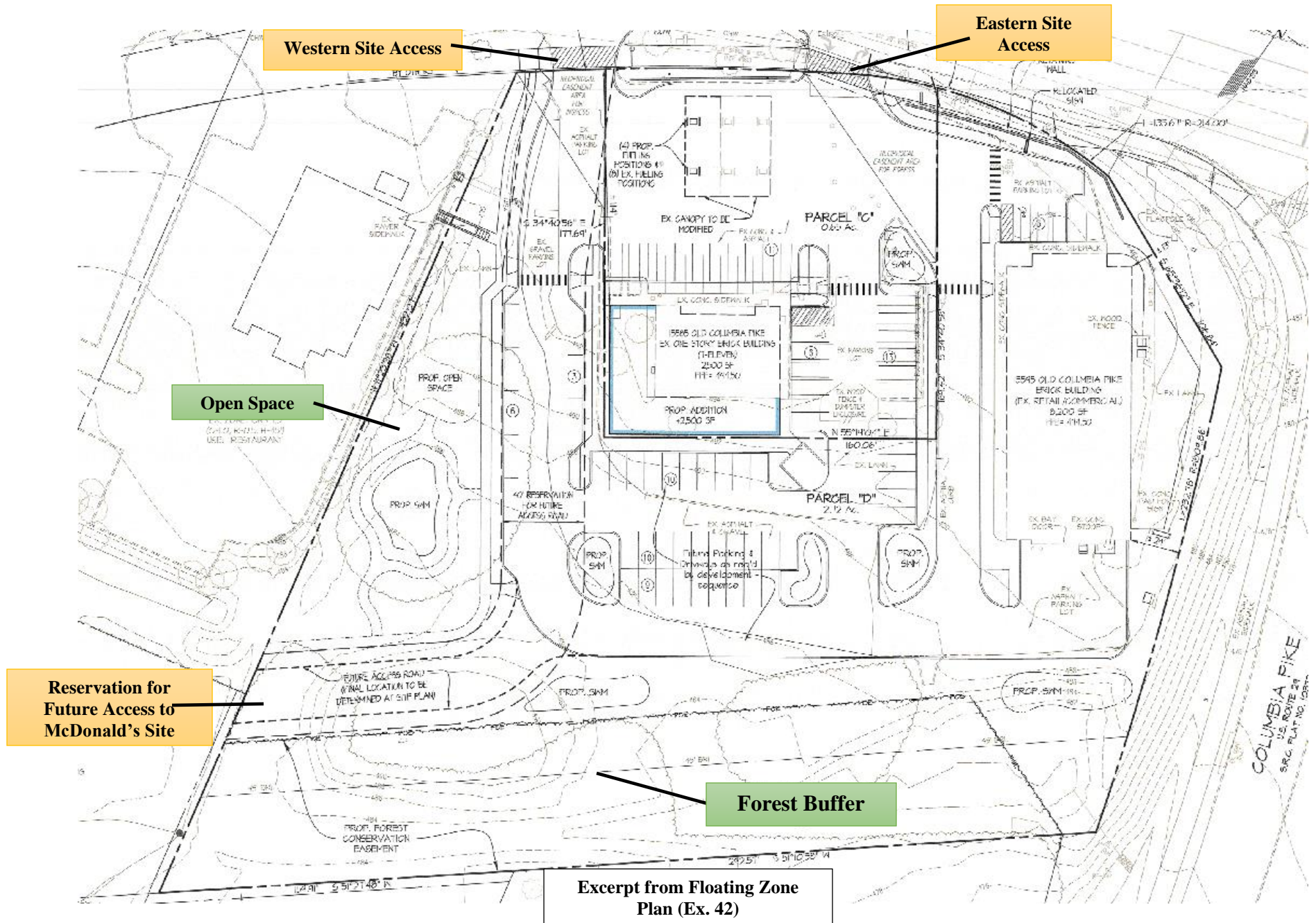
1. Floating Zone Plan

Under Zoning Ordinance §59-7.2.1.B.2.g., every application for rezoning to a Floating Zone must be accompanied by a Floating Zone Plan that contains required information and often a list of “binding elements” that restrict future development of the property. The Applicants have submitted the required plan. Exhibit 42. An excerpt of the FZP showing the proposed building layouts, drive aisles, road reservations, and forest conservation areas is reproduced on the following page. A conceptual or illustrative view of the FZP is shown on page 12.

2. Binding Elements

The FZP includes five binding elements, shown on page 13. The first binding element prevents the property from being developed with 22 uses normally permitted in the CRTF Zone. Staff advises that this binding element serves to fulfill this property’s designation in the master plan as a transitional use between the commercial area along Rte. 198 and the residentially-zoned property immediately to the south. Exhibit 40(b), p. 9. Mr. Foster testified that the uses were restricted to ensure development appropriate for the surrounding area. T. 26.

Binding element No. 5 reserves a road connection between the subject property and the adjacent McDonald’s site to the west. SHA is currently conducting the Rte. 198 Corridor Study to examine potential road and safety improvements along the corridor. The road reservation would give McDonald’s a second access to Md. Rte. 198 in the event SHA decides to reduce the number of access points and signalize the intersection of the property’s western site access with the Burtonsville Town Shopping Center and Md. Rte. 198. T. 27-32. Other binding elements





**Illustrative Rendering of Floating Zone Plan
Exhibit 34(g)**

BINDING ELEMENTS:

1. **Limitation on Uses.** The following uses, otherwise permitted in the CRT zone, are prohibited:
 - a. Nursery (retail)
 - b. Ambulance, rescue squad (private)
 - c. Hospital
 - d. Funeral home
 - e. Hotel
 - f. Research and development
 - g. Structured parking
 - h. Conference center
 - i. Recreation and Entertainment facility major (over 1,000 person capacity)
 - j. Combination retail store (a department store with more than 85,000 sf)
 - k. Retail service establishment greater than 50,001 square feet
 - l. Light vehicle sales and rental (indoor)
 - m. Light vehicle sales and rental (outdoor)
 - n. Car wash
 - o. Vehicle service repair (major).
 - p. Dry cleaning
 - q. Medical scientific manufacturing and production
 - r. Bus, rail terminal/ station
 - s. Taxi/ limo facility
 - t. Utility distribution line
 - u. Self-storage facility
 - v. Warehouse storage facility
2. **Buffer zone.** 50' buffer zone abutting R-200 property. (May include SWM facilities).
3. **Frontage Improvements.** Project frontage improvements shall include the following: 10' shared-use path and street trees.
4. **Controlled Access.** Eastern access will prohibit left turns; i.e., motor vehicles can only make right turns into the Property and right turns to exit the Property.
5. **Future Access Road.** The Floating Zone Plan shall include a reservation for 40 foot wide future private access road on the west side of the Property. No development shall be permitted within the reservation area. Final location to be determined at Site Plan.
6. **The required Public Open Space** shall be provided on-site and meet the design requirements of zoning code Section 6.3.6.B.I. Final location to be determined at Site Plan.

Binding Elements (Ex. 42)

ensure that a 50-foot forested buffer will be retained along the southern portion of the site, adjacent to the residentially-zoned properties, that all open space will be provided on-site, that future road frontage improvements will include a 10-foot wide shared pathway and street trees, and that the eastern access will be restricted to right-in, right out turns only. Exhibit 42; T. 27-32.

E. Public Facilities

1. Traffic

a. LATR Guidelines

The District Council must find that the application either meets the criteria in the Planning Board’s Local Area Transportation Review (LATR) Guidelines or be able to mitigate traffic impacts where they do not meet the required levels.

The Applicant in this case submitted a traffic study using the LATR procedures. Ms. Nancy Randall, the Applicant’s expert in transportation planning, testified that the study employed a “worst-case” test redevelopment scenario given the existing site constraints. T. 65. It estimated trips based on a total of 19,750 square feet of retail and 12 fueling stations. *Id.* The Applicant based its estimate for Parcel C on the number of fueling stations because this resulted in a higher estimate of future trips than doubling the size of the convenience store. T. 66. Using this test scenario, new trips generated by the proposed development are shown in the following table from the Applicant’s traffic study (Exhibit 25, p. 27, Exhibit 40(b), p. 13, below):

Trip Generation	Morning Peak Hour			Evening Peak Hour		
	In	Out	Total	In	Out	Total
Proposed						
Convenience Market with Fueling Pumps (12)	124	123	247	137	136	273
Pass By (Credit)	(77)	(76)	(153)	(77)	(76)	(153)
19,750 SF Retail	12	7	19	78	84	162
Pass By (Credit)				(27)	(29)	(55)
Total	59	54	113	112	115	227
Existing (Credit)						
Convenience Market with Fueling Pumps (12)	(82)	(82)	(164)	(92)	(92)	(184)
Pass By	51	51	102	51	51	102
8,100 SF Mattress Store	(1)	(1)	(2)	(2)	(2)	(4)
Pass By				1	1	1
Total	(84)	(84)	(168)	(94)	(94)	(188)
Net New Trips	27	22	49	71	74	144

Source: Wells and Associates. Traffic Statement, dated April 15, 2019

The scope of the traffic study included five intersections (Exhibit 40(b), p. 11), shown

below. Intersections 3 and 4 are the subject property's eastern and western access points, both of which are currently unsignalized. Exhibit 25, p. 27.



Staff determined that the Applicant's traffic study demonstrates that all but one of the intersections studied meets the LATR average delay standards (Exhibit 40(b), p. 12, on the following page).

The Applicant could not provide average PM delays at the northbound approach to the western site access because "the HCM methodology does not return a delay calculation for the northbound approach." Exhibit 25, p. 24. The Applicant's traffic study states that the delay average cannot be calculated due to the "high levels of conflict in turning movements, particularly for left turns." Exhibit 25, p. 14. In Staff's opinion, it is probably "infeasible to safely make such movements during the PM peak commuting hours." Exhibit 40(b), p. 14.

Intersection	Operating Condition	Policy Area HCM Congestion Threshold	Average Delay AM	Average Delay PM
1) MD 198 / US 29 NB Ramp	Signalized	59 Seconds	29 (C)	33.3 (C)
2) MD 198/ Old Columbia Pike/ US 29 SB Ramp	Signalized	71 Seconds	24.6 (C)	49.4 (D)
3) MD 198/ East Site Access	Unsignalized	71 Seconds	0.3 (A)	0.4 (A)
4) MD 198/ Burtonsville Town Square Access/ West Site Access	Unsignalized	71 Seconds	13.4 (B)	Unavailable*
5) MD 198/ Burtonsville elementary School access/Old Columbia Pike (west)	Signalized	71 Seconds	34.44 (C)	31.6 (C)

**Intersection Delay under Future Conditions
Exhibit 40(b), p. 16**

Because no result could be returned, the Applicant conducted a preliminary warrant study to determine whether the Burtonsville Shopping Center/Md. Rte. 198/Site Western Access intersection would qualify for signalization under SHA standards. Staff concluded (Ex. 40(b), p. 11):

This limited peak-period analysis confirmed that the intersection would meet three warrants for peak period traffic: four-hour vehicular volume, peak hour delay, and peak hour volume. Additional limited analysis suggested the intersection would likely meet additional warrants. The applicant has agreed to perform a full signal warrant analysis as part of any subsequent development application to be submitted to the State Highway Administration (SHA) for determination of the need for a signal at this location. Staff recognizes that this section of MD 198 through downtown Burtonsville is heavily congested during the peak travel hours and offers limited safe pedestrian and bike movement. Given the level of congestion through this corridor and following community requests for traffic calming, Staff recommends that SHA approve any request for a signal at this location and requests the Board send a letter of support. Staff additionally cautions that additional development on the subject property may be contingent on the placement of a signal at this location.

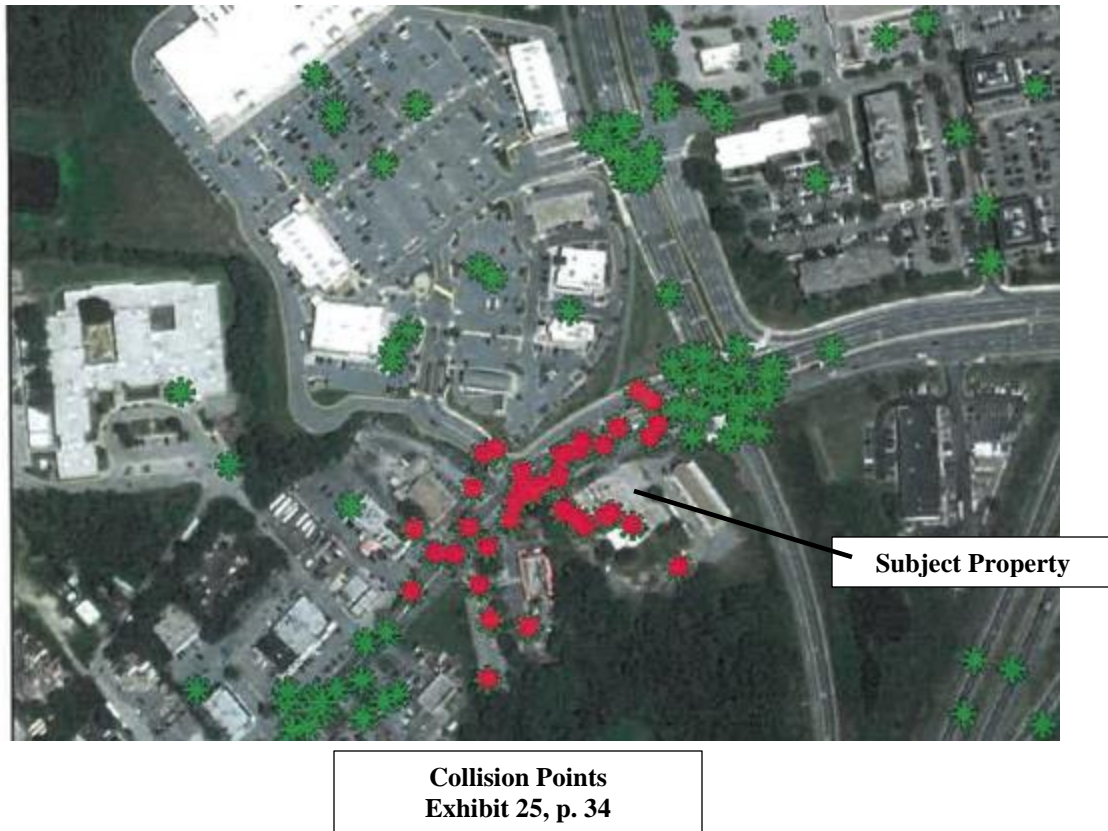
Ms. Randall opined that SHA will likely approve a signal at this location. This is because the SHA is currently studying this area and reviewing opportunities for signalized intersections. This intersection meets not only the volume warrants studied, but possibly additional warrants, and the owners of the Burtonsville Town Shopping Center also support a signal at this location. Even if a warrant were not granted, however, LATR could be met by restricting the site's western access to a limited movement (right-in, right out) access. T. 67-74.

A binding element of the FZP reserves an access to the McDonald's site along the southern portion of the property. Mr. Foster testified that the road reservation is intended to preserve access to the McDonald's property if the SHA decides to install a signal at the site's western access and reduce the number of access points on Md. Rte. 198. Maintaining access to the McDonald's site has been an issue in getting a signal at the western access. T. 32.

Mr. Foster also testified that any new development on the site would be subjected to a full adequate public facilities test at later stages of the development process. Depending on the development scenario, adequate public facilities will be tested at either the conditional use, site plan, or building permit stages. T. 16-23.

b. Traffic Safety Issues

Ms. Randall presented an accident history in the area immediately proximate to the property. Accident locations are shown in a graphic from the Traffic Study (Exhibit 25, p. 34, on the following page). Ms. Randall testified that SHA has recently taken steps to decrease the number of accidents at the site access. SHA installed bollards in front of the property's eastern access to prevent left turns into and out of that access. In her opinion, this improvement will resolve the site-specific safety issues. Most of the accidents related to the subject property were caused by lefts into and out of the eastern access. T. 79.



SHA correspondence attached to the traffic study (Exhibit 25, Appendix B) indicates that SHA does not believe additional turn restrictions are presently needed. T. 69-70.

Ms. Randall testified that she also evaluated whether there was sufficient queuing space at the western site access. The only queue the proposed development would impact is the westbound left into the site. She opined that there is a stacking distance of 150 feet for these left turns. They have queues in the a.m. peak hour of 23 feet and in the evening, 80 feet. Therefore, there is sufficient room to handle the queues under future conditions. T. 76. As part of the Rte. 198 Corridor Study, SHA is looking at whether to signalize a school intersection further west, which would provide more gaps to make left turns along the corridor. T. 77.

2. Other Public Facilities

Mr. Timothy Longfellow, the Applicant's expert in civil engineering, testified that the site is already adequately served by other public facilities, including public water, gas, electric, telephone, and cable. T. 59. Staff advises that fire service is located at 13900 Old Columbia Pike

in Burtonsville, and the 3rd District Police Station is located approximately 6 miles from the site. Exhibit 40(b), p. 9.

F. Environment

Staff reports that there are no streams, floodplains, or wetlands on the site. There is a forest stand consisting of approximately 0.38 acres. Under the Planning Board's Environmental Guidelines, 0.28 acres of forest retention and afforestation is required. The Planning Board has approved a Preliminary Forest Conservation Plan (PFCP) for the property which requires this amount to be placed in a Category I environmental easement running along the southern boundary. Development will impact three specimen trees off-site. The approved PFCP grants a variance for the impact to these trees. Exhibit 48.

Mr. Foster testified that the property lies within the Little Paint Branch watershed, which is known for having a fairly high water quality. No stormwater management currently exists on the property; the Applicant's goal is to provide 100% stormwater management on-site in the future. T. 40-41.

G. Community Concerns

There is no comment from the community, either for or against, in the record of this case.

IV. FINDINGS AND CONCLUSIONS

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

For approval, the District Council must find that the proposal will meet the standards required by the Zoning Ordinance and that it will be consistent with a coordinated and systematic development of the Regional District. *See, Md. Land Use Art.*, §21-101(a) and (b). While many of the site specific requirements for development are addressed by later approvals, the Zoning

Ordinance contains various standards that the Council must decide. Section 59.7.2.1.E. establishes a set of “Necessary Findings” the Council must make for any Floating Zone application. These standards incorporate the requirements of other sections of the Zoning Ordinance, as set forth below.

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

1. Substantial Conformance with the Master Plan

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

Section 7.2.1.E.1.a. For a Floating zone application the District Council must find that the floating zone plan will:

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

* * *

Section 59-7.2.1.E.1.b: ...further the public interest...

* * *

Section 59-7.2.1.c: ...satisfy the intent and standards of the proposed zone...

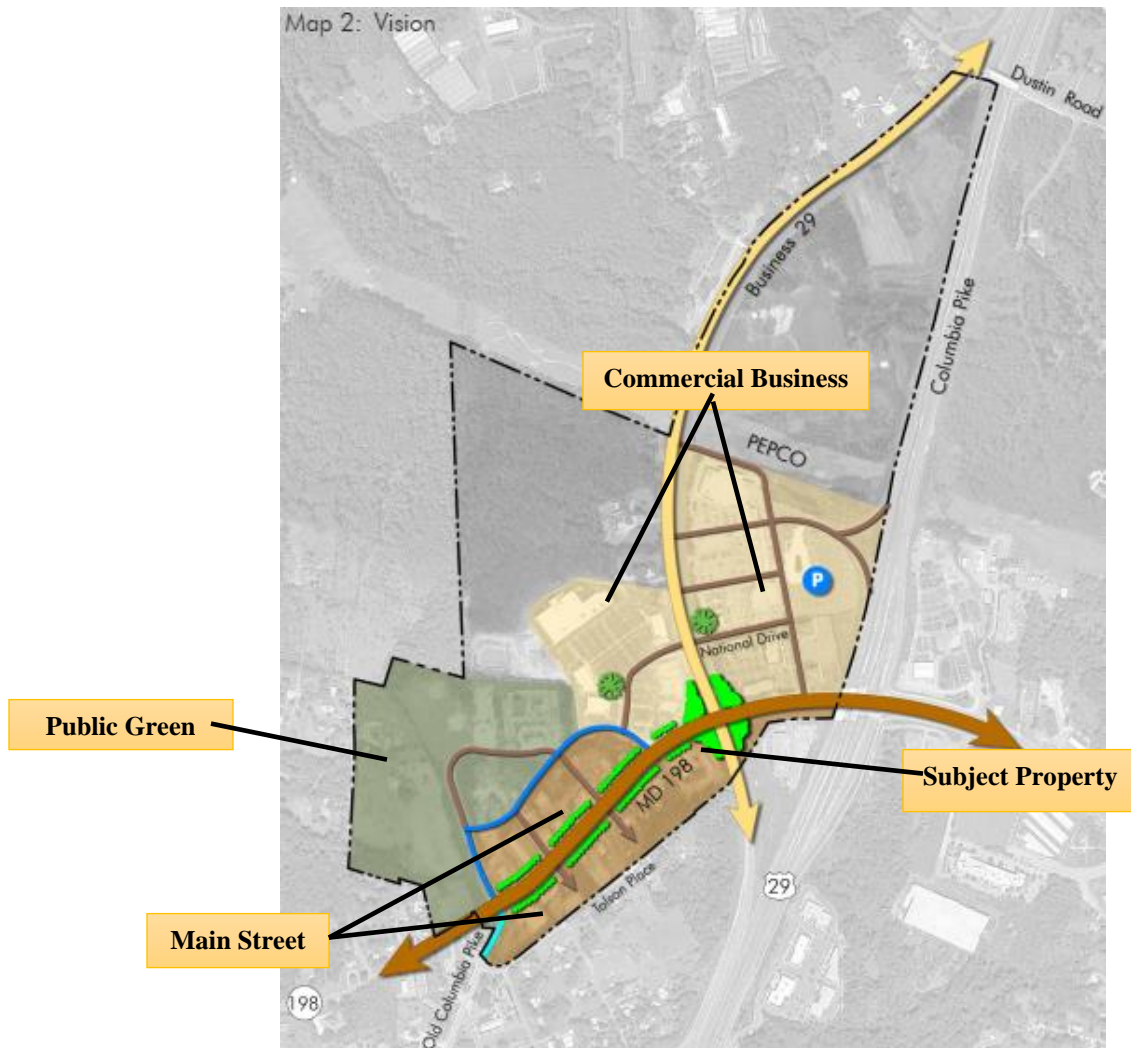
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Section 59-5.1.2.A.1. (Intent of Floating Zones): Implement comprehensive planning policies by... furthering the goals of the general plan, applicable master plan, and functional master plan...

Conclusion: Conformance with the applicable master plan under all of these sections is discussed here. The subject site lies within the area covered by the *2002 Approved and Adopted Burtonsville Crossroads Neighborhood Plan* (Master Plan or Plan). The Plan’s central goal is:

...the creation of a complete community designed at a scale to serve the surrounding area with small businesses, retail, local services, offices, residential, and open spaces for local events, conservation, and recreation. The community will be connected together by a system of enhanced local streets, sidewalks and trails.

Plan, p. 5. This vision is illustrated in a graphic on page 5 of the *Plan*, shown below:



Staff advises that the Master Plan recommended CRN zoning for the subject property to “assure adequate transitions to the residential neighborhoods along Tolson Place.” Ex. 40(b), p. 9. Staff concluded that the proposed rezoning does not contravene this goal because the property is 425 feet from the closest dwellings, 625 feet from the homes the Plan was trying to protect, and includes a substantial tree buffer. Exhibit 40(b), p. 9. In Staff’s opinion, the property is similar to the CRT-zoned properties on the north side of Md. Rte. 198 that have extensive frontage on Columbia Pike (Business 29). Due to the amount of frontage on Business 29, Staff likened this property to the “highly visible” properties in the CRT Zone to the north, whose location and access

can support the wider range of uses allowed in the CRT Zone. *Id.*

To implement its overall vision, the Plan recommended reviewing new development under four inter-related themes (*Plan*, p. 7):

- connectivity – create an expanded network of streets, bikeways, and pedestrian route
- design – create an identity that will help to foster a sense of place
- economy – improve the local economy with a mix of uses and new implementation tools
- environment – preserve tributary headwaters and maintain rural character.

Staff determined that the FZP fulfills the Plan’s goal for connectivity because it would “provide for the enhancement of the streetscape along the south side of Old Columbia Pike...and the opportunity for a future dedication that will improve circulation between sites for vehicles, bicycles, and pedestrians.” Exhibit 40(b), p. 10. Staff found that the FZP achieves the design goals of the Plan because the Applicant will have greater flexibility to “implement a design that attracts potential tenants and facilitates a pedestrian environment via public open space, and frontage improvements.” *Id.* According to Staff, the FZP would improve the economy because the CRT Zone has a wider range of uses and will encourage adaptive reuse of the existing retail building. *Id.* Finally, Staff determined that the FZP will further the environmental goals of the Plan because it introduces stormwater management to the property where none currently exists. Exhibit 40(b).

Mr. Foster reinforced Staff’s opinion. He pointed out that the permitted height does not change from that recommended by the Master Plan, preserving the transitional role called for in the Plan. T. 47-48. He also pointed out that the subject property is not connected to or abut Tolson Place, even with the redevelopment of the parcel. T. 49. He also cited to the permanent forested buffer that will be established on the southern boundary, thus further protecting the residential properties to the south. T. 50-51.

The Hearing Examiner agrees with Staff and the Applicant that the FZP furthers the overall

goal and specific themes of the Master Plan. The property's transitional role under the Plan is maintained by binding elements limiting the height and density to what is currently permitted under the CRN Zone. The establishment of a permanent forested buffer adjacent to the residentially zoned properties reinforces this and protects the adjacent residentially zoned properties. At the same time, the FZP expands the range of uses to serve the public and creates new opportunities for business owners. Binding elements requiring the open space to be located on-site, along with the enhanced streetscape and pathway improvements, furthers both connectivity in the area and contributes to a community sense of place. Finally, the FZP will further environmental goals by introducing stormwater management where none currently exists and by permanently preserving forest on the site.

2. Compatibility

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

Section 7.2.1.E.1.c.: satisfy the intent and standards of the proposed zone and, to the extent the Hearing Examiner finds it necessary to ensure compatibility, meet other applicable requirements of this Chapter;

* * *

Section 5.1.2.C. (Intent of Floating Zones). Ensure protection of established neighborhoods by:

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

* * *

Section 5.3.2.C. (Purpose of Commercial/Residential Zones). The purpose

of the Commercial/Residential Zones is to ... provide mixed-use development that is compatible with adjacent development.

Section 7.2.1.E.1.d. be compatible with existing and approved adjacent development...

Conclusion: Staff found that the FZP would be compatible with existing and approved adjacent development (Exhibit 40(b), p. 24):

...the proposed uses are appropriate given the Property's auto-oriented location at the southwest corner of the prominent Old Columbia Pike/Business 29 intersection. From a land use perspective and in terms of operation and orientation, the Property is more similar to the CRT-zoned shopping center that confronts the Property to the north as well as the other CRT properties to the northeast, than the commercial properties to the west that are also zoned CRN. Given the existing uses on the Property, the rezoning will not result in a significant change to the operation, use or physical layout of the Property. Any development pursuant to the CRT Zone will continue to be compatible with the surrounding neighborhood.

Staff also relied on the distance of the property from the residential uses on Tolson Place and the permanent, forested buffer that will be established on the southern portion of the property. Exhibit 49(b), p. 25.

The Hearing Examiner finds that the application meets all the required compatibility standards in the Zoning Ordinance. In the immediate surrounds, the property is located relatively far from the developed residential uses on Tolson Place and site operations do not directly impact those properties. The approved PFCP will require a Category I forest conservation easement on the southern portion of the property as a permanent buffer. The FZP reserves a road right-of-way to serve the McDonald's site, paving the way for signalization of the site's western access and potentially reducing existing traffic congestion. In addition, the FZP retains the density and height of its current (*i.e.*, CRN) zoning, thus ensuring the transition between the shopping center to the north and the R-200 properties to the immediate south.

For similar reasons, the Hearing Examiner finds that the FZP is compatible with the surrounding neighborhood and therefore fulfills the intent of the Floating Zones (Section 59-

5.1.2.C) and the purpose of the Commercial/Residential Floating Zones (Section 59-5.3.2.C). The limitations on height and density continue the property's existing transitional role, at the same time expanding and limiting uses allowed to ensure that they will be compatible and further the goals of the "Main Street" envisioned by the Plan. The auto-oriented use on site will continue along with expanded retail uses, and open space, forested buffer, and pedestrian/bicycle improvements will ensure that the uses work in harmony, thus meeting the purpose of the Commercial/Residential Floating Zones.

As discussed in Part IV.D. of this Report, the FZP demonstrates that the proposed FZP can accommodate all of the relevant development standards of the CRTF Zone (in Article 5.3.5) on the property. Nothing in this record demonstrates that the FZP contravenes any of the requirements of Article 6 of the Zoning Ordinance, which will be addressed at the time of site plan, conditional use or building permit review.

Section 7.2.1.E.1.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 is not applicable as the property is currently zoned CRN, which is not a Residential Detached zone.

3. Adequate Public Facilities/Public Interest

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

Section 7.2.1.E.1.e: generate traffic that does not exceed the critical lane volume or volume/capacity ratio standard as applicable under the Planning Board's LATR Guidelines, or, if traffic exceeds the applicable standard, that the applicant demonstrate an ability to mitigate such adverse impacts; and...

* * *

Section 7.2.1.E.1.b: further the public interest...

* * *

Section 7.2.1.E.1.c.: satisfy the intent and standards of the proposed zone and, to the extent the Hearing Examiner finds it necessary to ensure compatibility, meet other applicable requirements of this Chapter;

* * *

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

Conclusion: The traffic study in this case demonstrates that all but one of the studied intersection meet the average delay standards under the LATR Guidelines, as discussed in Part III.E.1 of this Report. Signalization of the Burtonsville Shopping Center/Md. Rte. 198/western site access intersection would address this. Expert testimony in this case, along with the warrant analysis in the record, supports a finding that SHA’s approval of a signal for the intersection is likely to occur. Even if, however, the signal is not approved, development can proceed if the western access is restricted to a limited movement access permitting only right-in and right-out turns. Based on this evidence, the Hearing Examiner finds any average delays that exceed the required standards may be mitigated either by a traffic signal at the intersection or by restricting lane movements.

Conclusion: Whether a property furthers the public interest is determined by whether the FZP furthers the “coordinated and systematic” development of the area in accordance with State law and adopted County plans and policies.

Staff concluded that the FZP furthers the public interest because it will fulfill a high demand for the existing uses in that location, which will be upgraded to current requirements. Mr. Foster testified that the FZP will enable an upgrade of the site, provide additional opportunities for small business activity at a renewing commercial hub, and will mitigate and modify existing problematic traffic patterns. T. 51.

The Hearing Examiner agrees that the FZP furthers the public interest. As already

explained, she finds that it conforms to the goals of the master plan under Section 7.2.1.E.1.a. In this section, she finds that it meets the County's adequate public facilities requirements and fulfills the intent and purpose of Commercial/Residential Floating Zones. The FZP will bring the property into conformance with current stormwater management requirements and forest conservation laws and potentially may introduce transportation measures that will improve traffic flow and safety in the immediate environs.

The Hearing Examiner has already found that the property meets the intent of Floating Zones expressed in Section 5.1.2.A.2 of the Zoning Ordinance, which is to "implement comprehensive planning objectives by...ensuring that the proposed uses are in balance with and supported by the existing and planned infrastructure..."

Conclusion: The Hearing Examiner has already found that public facilities will be adequate to serve the property as rezoned and that it conforms to the Burtonsville Crossing Neighborhood Plan. Therefore, the application meets the above intent of Floating Zones.

B. The Intent and Standards of the Zone (Section 59-7.2.1.E.2.c)

As already stated, Section 59-7.2.1.E.2.c of the Zoning Ordinance requires the District Council to find that the FZP "satisfy the intent and standards of the proposed zone." The Zoning Ordinance includes an "intent" clause for all Floating Zones and a "purpose" clause for particular Floating Zones. these have already been analyzed in Part A of this Report. The balance of the intent findings for Floating Zone and the purposes of the CRTF Zone, are discussed below.

1. Intent of Floating Zones (Section 59-5.1.2)

The intent of Floating Zones in general is stated in Section 59-5.1.2 of the Zoning Ordinance:

Section 59-5.1.2.A.3 ... The intent of the Floating zones is to:

A. Implement comprehensive planning objectives by...

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

Conclusion: Staff found that the FZP utilizes design flexibility to integrate the development into its surrounding environs (Exhibit 40(b), p. 17):

...the Master Plan aims to revitalize and activate the Main Street Neighborhood with commercial uses, while preserving the existing residential character of the community to the west. The Project will not deter or frustrate the execution of this vision. Retention and redevelopment of the existing filling station and convenience store is logical given the Property's prominent and convenient location at the southwest corner of the Old Columbia Pike/Business 29 intersection. Furthermore, as discussed in Section IV, the public facilities will be adequate to accommodate the proposed development.

The Hearing Examiner agrees with Staff that the project meets this intent of Floating Zones.

The FZP will provide open space on the site, improve the streetscape, retain and preserve much of the existing forest, provide bicycle and pedestrian connections, and expand the uses permitted on the site. At the same time, the height limitation and forested buffer retain the property's function as a transition between the shopping center to the north and the residential property to the south.

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***

Conclusion: Staff determined that the wider range of uses permitted in the CRTF Zone will encourage economic development on the property and provide more flexibility to address future populations. Exhibit 40(b), p. 17. The Hearing Examiner agrees, particularly with the binding

element that prohibits development of inappropriate uses on the property. The FZP will greatly improve on the sustainability of development on the property by introducing stormwater management under current standards, improve pedestrian and bike connections, preserve forest, and provide a connection for the McDonald's property that would reduce the need for all of the existing access points on Md. Rte. 198.

Based on this undisputed evidence, the Hearing Examiner finds that the proposed development will satisfy the intent standards for the CRTF Floating Zone, as set forth in §59.5.1.2.B., and will encourage the appropriate and flexible use of the land.

2. Purpose of the Commercial Residential Floating Zones (Section 59-5.3.2)

Section 59-5.3.2 of the Zoning Ordinance describes 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.***

Conclusion: The Hearing Examiner already found that the FZP further the purpose in Section 5.3.2.C. Staff found that the FZP fulfilled the remaining purposes because the purpose of the existing CRN Zoning is identical to that of the CRF Zone. Exhibit 40(b), p. 21. The Hearing Examiner agrees with Staff that the FZP in this case meets the purpose of the Commercial Residential Floating Zones. The cap on height and density gives the Applicant flexibility to continue to function as a transition between retail to the north and residential uses to the south while at the same time expanding the uses permitted on the site. The binding elements limiting the uses permitted on the property, establishing the forest buffer, and making improvements to the streetscape also enhance compatibility with adjacent properties.

C. The Applicability of the Zone (Section 59-5.1.3)

Section 59.5.1.3. of the Zoning Ordinance sets up a series of threshold tests to determine whether a particular site may apply for a Floating Zone. Each subsection is listed 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: The subject property is currently within the CRN Zone; therefore, this provision does not apply.

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: Staff advises that the Master Plan does not recommend a Floating Zone for the property, therefore, the Hearing Examiner must review whether the FZP complies with the standards that follow.

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: The maximum density permitted is analyzed in Part IV.D of this Report (below). The proposed use will be within the maximum density allowed.

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: The Hearing Examiner agrees with Staff that no pre-requisites are required because the existing zoning (*i.e.*, the CRN Zone) is not residential. Exhibit 40(b), p. 19.

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

When requesting a Floating zone for a property with a non-Residential base zone there are no prerequisites for an application.

Conclusion: Again, under the above section, the FZP does not need to meet pre-requisites to apply for the CRTF Zone. Based on this undisputed record, the Hearing Examiner finds that the Floating Zone application meets all the tests set forth in Section 59.5.1.3 for applying the CRTF-1.5, C-1.0, R-0.5, H-45.

D. Development Standards and Uses Permitted in the CRTF Zone (Division 59-5.3)

1. Uses Permitted (Section 59-5.3.3)

Section 59-5.3.3 of the Zoning Ordinance limits the uses permitted in the CRTF Zone to “only” those uses permitted in the CRT Zone.

Conclusion: The Applicant testified that he wishes to continue the gas station/convenience store use on Parcel C and retail on Parcel D. Both uses are permitted in the CRTF Zone, although any change to the gas station/convenience store will require approval of a conditional use application. The Applicant has voluntarily restricted a number of uses that could be permitted under the CRT Zone to ensure compatibility with the surrounding area. As the use proposed for Parcel C is permitted in the CRTF Zone, and future uses on both parcels must comply with those permitted in the CRT Zone and the FZP, the FZP meets this approval standard.

2. Development Standards of the CRTF Zone

Section 5.3.4. Building Types Allowed

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

Conclusion: The Zoning Ordinance permits “[a]ny building type” in the Commercial/Residential Floating zones.” Therefore, the existing buildings (and any potential expansion) clearly meet this standard.

Section 5.3.5. Development Standards.

Staff found that the FZP meets the development standards of the CRTF-1.5, C-1.0, R-0.5, H-45 Zone, (Zoning Ordinance, §59.5.3.5), as demonstrated in the table from the Staff Report (Exhibit 40(b), p. 20), shown below and on the following page.

Public benefit points are not currently required because the development proposed does not exceed 1.0 FAR or 10,000 square feet. *Zoning Ordinance*, §59-5.3.5.E. Mr. Foster testified that if

Division 5.3	Development Standard	Permitted/ Required	Provided
5.3.5.A	Density of Development	Established by Pre-Existing Euclidean Zone (CRN)	CRTF-1.5, C-1.0, R-0.5, H-45
	(a) Maximum Overall FAR	1.5 FAR X 3.46 Ac = 226,076 SF	0.087 FAR – 13,200 SF
	(b) Commercial or Residential Density	Total Density: 1.5 FAR 226,076 SF	Total Density: 0.87 FAR 13,200 SF
		C – 1.25 FAR x 3.46 Ac = 188,3978 SF	C - .087 FAR – 13,200 SF
		R – 1.25 FAR x 3.46 Ac. = 188,3978 SF	R - 0.0 FAR
5.3.5.B	Height	Established by Floating Zone Plan	45’maximum building height

5.3.5.B	Setbacks (minimum)	Site Boundary -Established by Floating Zone Plan All other setbacks to be establish by site plan approval process	Front – 0' Side Street – 0' Side (Abutting CRN) – 0' Rear (abutting R-200) – 45' All other setbacks established at site plan
5.3.5.C	Lot Size	Established by Floating Zone Plan	0.50 Ac. Minimum – Commercial Lot
5.3.5.D	General Requirements <ul style="list-style-type: none"> • Parking, screening, and landscaping. • Open Space 	As required under Article 59-6 10% Public Open Space = 0.35 Ac.	As proposed, Project will meet parking, screening & landscape requirements in Article 59-6 10% minimum, 0.35 Ac.
5.3.5.E	Public Benefits	Required if development greater of 1.0 FAR or 10,000 sf of GFA in CRTF Zone	As proposed, Project will not exceed 1.0 FAR. If Project exceeds 1.0 FAR, public benefit points will be required.

development does exceed that threshold in the future, the Public Benefit Points will be reviewed at site development plan, conditional use, or building permit. T. 24-25.

The FZP demonstrates that the subject property can meet parking, open space, screening, and landscaping requirements on-site. A binding element requires the open space to be located on-site and parking is located to the rear of the commercial uses. Final layout of the parking, open space, screening and landscaping will be determined at the time of site plan approval. While setbacks will be determined at site plan as well, a binding element establishes a 50-foot buffer with the residential properties to the south. Section 59-4.1.8.B of the Zoning Ordinance contains precise

roof height and angle measurements to ensure compatibility. This will be addressed by the Planning Board during site plan review.

Based on the undisputed evidence at this stage, 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.

V. RECOMMENDATION

For the foregoing reasons, the Hearing Examiner concludes that the proposed reclassification and Floating Zone Plan will meet the standards set forth in the Zoning Ordinance and that it will be consistent with a coordinated and systematic development of the Regional District, under State law. Therefore, I recommend that Local Map Amendment Application No. H-134, requesting reclassification from the existing CRN-1.5, C-1.0, R-0.5, H-45 to the CRTF-1.5, C-1.0, R-0.5, H-45 of Parcel C (N913) and Parcel D (N924) in the "Parcels C and D Burtonsville" subdivision (Tax Account Nos. 05-01988445 and 05-01988434) at 15585 and 15595 Old Columbia Pike, Burtonsville, Maryland, be **approved** in the amount requested and subject to the specifications and requirements of the Floating Zone Plan (Exhibit 42), provided that the Applicant files an executed Declaration of Covenants (Exhibit 44) reflecting the binding elements in the land records and submits to the Hearing Examiner for certification a true copy of the Floating Zone Plan approved by the District Council within 10 days of approval, in accordance with §§59.7.2.1.H.1.a. and b. of the Zoning Ordinance.

Issued: October 31, 2019.

Respectfully submitted,



Lynn Robeson Hannan
Hearing Examiner