

**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  
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**IN THE MATTER OF:  
PARK MONTGOMERY LP**

Applicant

For the Application:

Louis Kiang  
Fernando Bonilla Verde Soto  
David O'Brien  
Mark Keeley

Heather Dlhopolosky, Esquire  
Attorney for the Applicant

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Local Map Amendment  
Application No. H-140

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Before: Derek J. Baumgardner, Hearing Examiner

**HEARING EXAMINER'S REPORT AND RECOMMENDATION**

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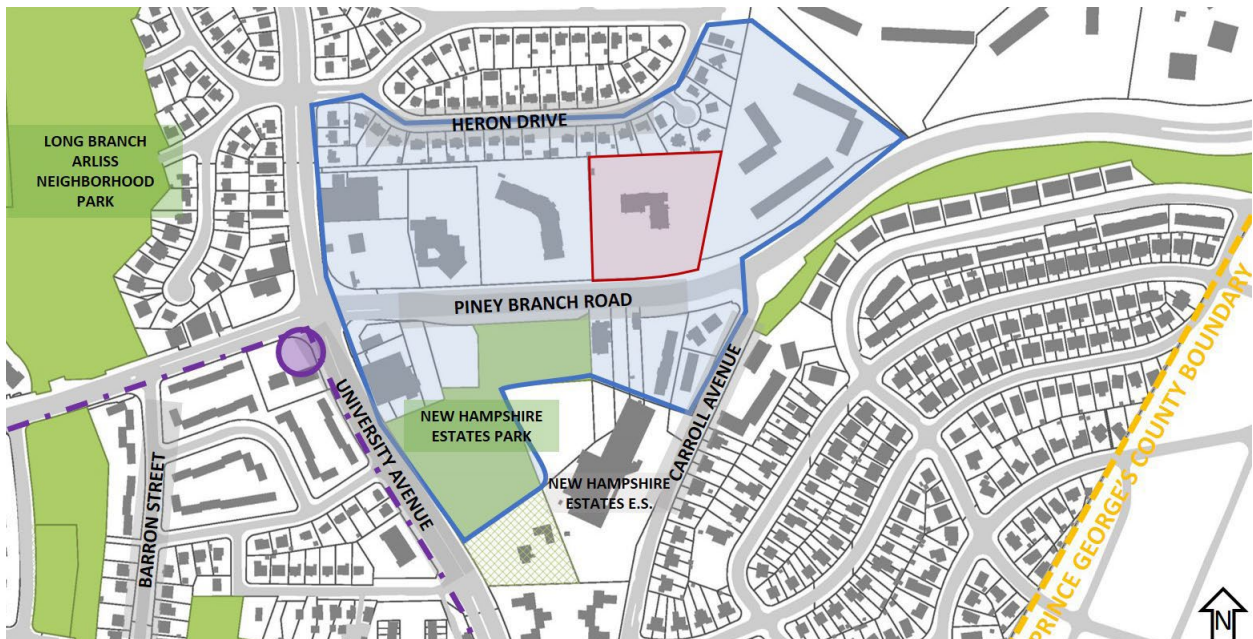
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## I. CASE SUMMARY

Applicant: Park Montgomery LP (“Applicant” or “Park Montgomery”)

Property: Lot 1, Park Montgomery, as shown at Plat No. 9626

Location: Northern side of Piney Branch Road (MD 320) approximately 800 feet east of the intersection at University Boulevard (MD 193), shown on Figure 1 below (Staff Report, p. 3):



**Figure 1: Vicinity Map/Staff Defined Neighborhood in blue, with Property in red**

Acreage: 3.29 acres

Current Zoning: R-H Zone (Multiple-Unit, high-rise planned residential)

Proposed Zoning: CRTF Zone (Commercial Residential Town- Floating): CRTF-1.6, C-0, R-1.6, H-140

Current Use: Multi-family residential dwelling with 141 existing units located in a 14-floor high-rise building

Proposed Use: Add 76 multi-family dwelling to the existing 141 units; renovate the existing units for a total of 217 units

Affordability: Existing units funded by the Housing Initiative Fund, which restricts incomes in 50% of the units to 60% of the Average Median Income (AMI); new units will be funded by Low-

Income Housing Tax Credits (LIHTC), which restricts occupancy of all units to 20-80% of the AMI for 15 years; after expirations of the 15 years, 15% of the units (33 units) will be Moderately Priced Dwelling Units (MPDUs)

Current Density Permitted: R-H zone permits 42.9 units/acre

Density Proposed: 1.6 FAR of Residential, no commercial

Environmental Issues: There are no other environmentally sensitive features such as wetlands, 100-year floodplain or stream valley buffers, and the Site is not located within a Special Protection Area. There are no cultural facilities or historic sites located within or adjacent to this Site or any known endangered species or critical habitats.

Master Plan: The Property is subject to the *Long Branch Sector Plan*, approved and adopted in November 2013 (the "Sector Plan"). While the Sector Plan does not contain any specific recommendations relative to the Property, it identifies that one of the challenges faced by the Sector Plan area is "to ensure that rental and ownership costs, for either homes or businesses, remain affordable, while also providing mechanisms to strengthen code enforcement and provide incentives to encourage reinvestment" (p. 8).

Neighborhood Response: No community input was received.

Water/Sewer: The site is served by existing water and sewer infrastructure that will not require either an upgrade to the service line or installation of a pump station due to the proposed development. WSSC service categories S-1, W-1.

Planning Staff Recommends: Approval

Planning Board Recommends: Approval

Hearing Examiner Recommends: Approval

District Council votes required for approval: 5

## II. PROCEDURAL HISTORY

On December 15, 2020, Park Montgomery LP (“Applicant”) filed Local Map Amendment (LMA) application (H-140) requesting the rezoning of the property located at 8860 Piney Branch Road (the “Property”) in Silver Spring, Maryland from its current R-H Zone (Multiple-Unit, high-rise planned residential) to the CRTF Zone (Commercial Residential Town Floating). Exhibit 1. The zoning specifically requested is CRTF-1.6, C-0, R-1.6, H-140. The Property is currently improved by an affordable, multiple-family residential dwelling with 141 dwelling units located in a 14-floor high-rise building. Exhibit 4, p. 1. The Applicant proposes to rezone the Property to develop a second multi-family residential building with 76 dwelling units. The Applicant asserts that “Additional affordable housing in this location - near the future Piney Branch Road Purple Line Station - and at this time, will provide middle- and low-income families housing in a high cost of living area with all the amenities - schools, shopping, employment - that can be accessed through the nearby public transit options.” *Id.*

On March 12, 2021, Staff of the Montgomery County Planning Department (Planning Staff or Staff) issued its report recommending approval of the application with binding elements. Exhibit 37. The Planning Board agreed with Staff and with corrections to binding elements #4 and #5, recommended approval on March 26, 2021. Exhibit 40.

On April 11, 2021, the Applicant notified OZAH that the public posting was verified as of March 19, 2021, but sometime prior to the hearing the posting was removed. Exhibit 43. Due to the posting issue, the record was held open for 24 days after the hearing to account for the time when the sign may have been down. No further comment was received and the record closed on May 6, 2021.

On April 12, 2021, a public hearing was conducted by OZAH. Five witnesses testified on behalf of the Applicant: Louis Kiang (Applicant), Fernando Bonilla Verde Soto (architect), David

O'Bryan (civil engineer), Mark Keeley (traffic engineer), and Michael Loe (land planner).

No one appeared to oppose the application.

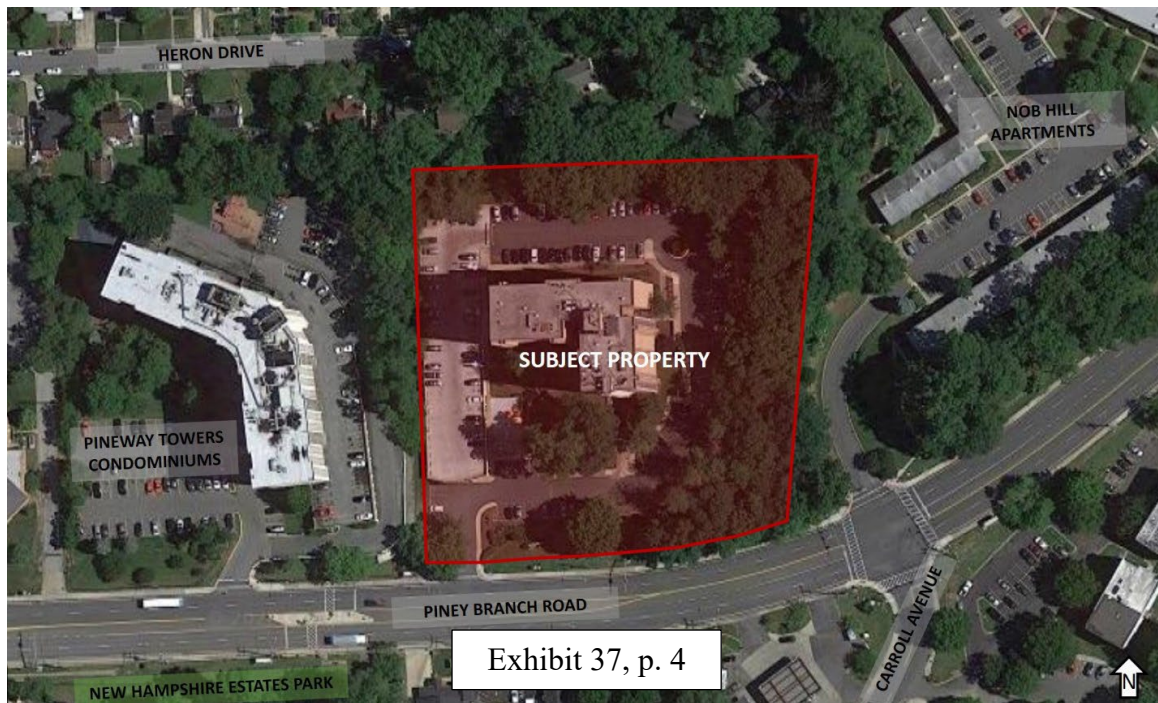
Following the conclusion of the hearing, counsel for the Applicant submitted a draft Declaration of Covenants to be fully executed and filed within the Land Records of Montgomery County pending Council's approval of this application and adoption of H-140. Exhibit 44.

### **III. FACTUAL BACKGROUND**

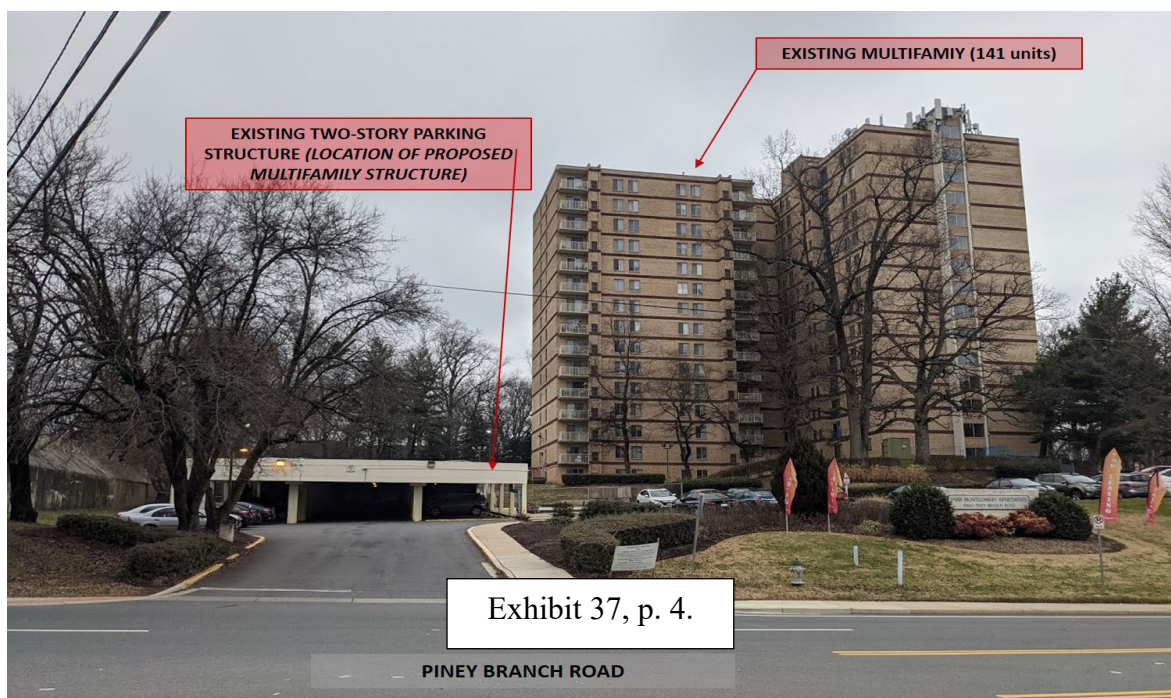
#### **A. Subject Property**

The subject site is approximately 3.29 acres in size and is improved with a 15-story multi-family residential building, 131 feet in height, with 141 dwelling units at approximately 150,000 gross square feet. Exhibit 4, p.1. The property is also improved by a two-level structured parking garage, along with surface parking, drive aisles, and landscaping. *Id.* The property is located on the north side of Piney Branch Road approximately 1,000 feet east of the intersection of Piney Branch Road and University Boulevard. *Id.* A new Purple Line Station (Piney Branch Road Station) is currently under construction along University Boulevard south of its intersection with Piney Branch Road, just over 1,000 feet walking distance from the property. The topography of the property falls significantly from the rear (north and east) of the site to the front (south and west). *Id.* The proposed mid-rise building will be located on the lowest portion of the site, buffering views from surrounding neighborhoods "particularly the single-family homes directly north of the Property." *Id.* An aerial view of the property is provided below, noted as Figure 2 in the Staff Report, with the existing and adjacent garden-style apartments (Nob Hill), high-rise condominium tower (Pineway), residential neighborhood to the north (Heron Drive), and public park (New Hampshire Estates) all visible. Exhibit 37, p. 4. A street view of the property as it presently exists is also provided below, noted as Figure 3 in the Staff Report, showing the existing multi-family residential building and two-story parking garage. *Id.*





**Figure 2: Aerial View of Property and Property outlined in red**

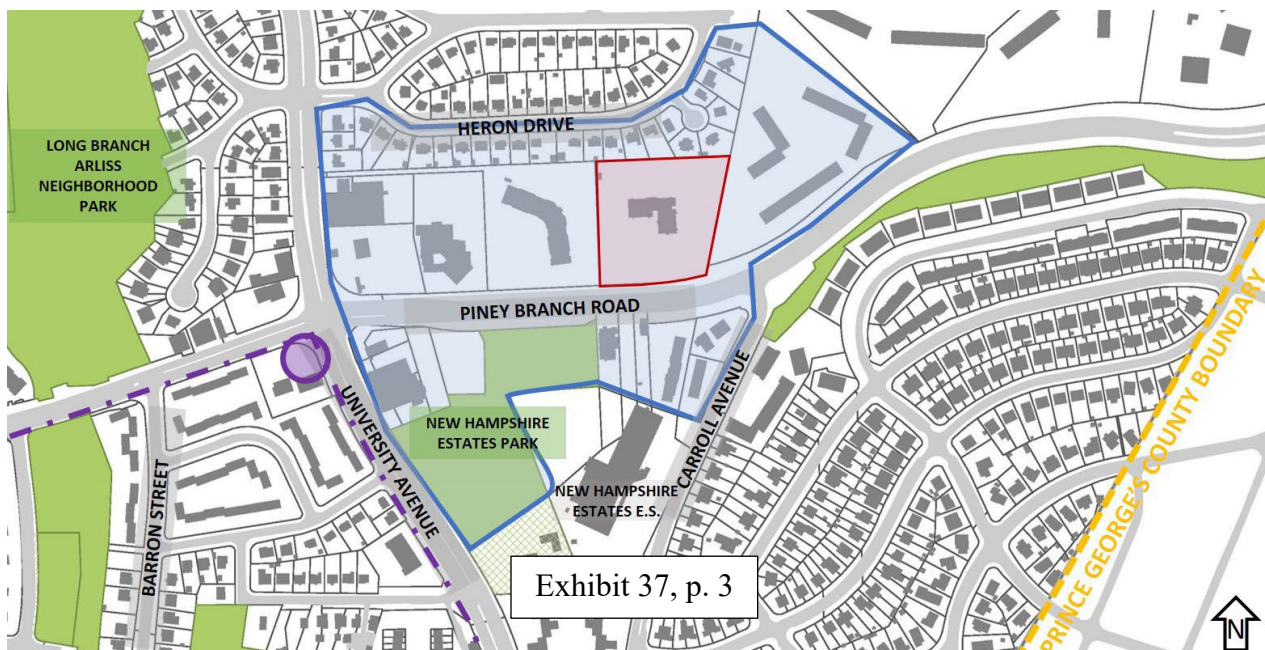


**Figure 3: Street View of existing Site from Piney Branch Road, looking north**

## B. Surrounding Area

The “surrounding area” in a Floating Zone case includes the area that will be most directly impacted by the proposed development. It is identified and characterized to assess whether the new development will be compatible with that area.

Staff defines the neighborhood as “properties fronting on Piney Branch Road between the main intersections of University Boulevard to the west and Carroll Avenue to the east, as well as the single-family neighborhood abutting in the rear.” Exhibit 37, p. 3. Figure 1 below shows this area as outlined in blue.



**Figure 1: Vicinity Map/Staff Defined Neighborhood in blue, with Property in red**

The Applicant defines the boundaries of the impacted area as Clifton Park Village development to the north, Carroll Avenue to the east and south, and University Avenue to the west. Exhibit 12, p. 2. The property itself is flanked by the Pineway Towers Condominiums, a high-rise condominium building, to the west, and the Nob Hill Apartments, a series of garden-style apartment buildings, to the east. Directly behind the property, to the north, are single-family homes located in the R-60 Zone. Confronting the property to the south, across Piney Branch Road, are a variety



of mixed residential and commercial uses located in the R-30 Zone, and a Sunoco gas station located in the CRT-1.5, C-0.25, R-1.5, H-60 Zone. Exhibit 12, p.1. The Applicant further states that “Commercial and mixed-use[s] dominate the west toward the Piney Branch and University Boulevard intersection” while “Single family development exists to the north and townhomes and apartments fill in the remaining areas.” *Id.* at 2. The Applicant further notes that two churches, a gas station, and a grocery store are located nearby and across Piney Branch Road is a large neighborhood park and an elementary school. *Id.* Structures in the vicinity include high rise condominium buildings, apartment towers, and 1- and 2-story brick and wood framed commercial and residential buildings. *Id.* Staff concurred with the Applicant’s defined neighborhood as the area most impact by the proposed Floating Zone Plan (“FZP”). *See* Exhibit 37, p. 3.

The Hearing Examiner concludes that the surrounding area is defined by the boundaries shown in Figure 1, above, to include both northern and southern portions along Piney Branch Road. The Hearing Examiner characterizes the area as including mixed-use commercial, residential, and public park development with apartment towers and 1-2 story residential and commercial structures as well as single-family detached homes.

### **C. Proposed Development and Floating Zone Plan (“FZP”)**

#### **1. Proposed Development**

The Applicant proposes to rezone the property from the existing R-H zone (which is no longer a recognized zoning district designation) to CRTF 1.6 C 0.5 R 1.6 H 140. The developer for this application, Enterprise Community Development Inc. (“Enterprise”), is the real estate arm for Enterprise Community Partners, a national non-profit organization created by the Rouse Company to end housing insecurity. Exhibit 37, p. 7. Enterprise is the product of a merger between Enterprise Homes and Community Preservation and Development Corporation (CPDC). T. 20. Mr. Kiang, on behalf of the Applicant, testified that Enterprise is a “long-term holder” of property which it owns

and manages. T. 27.

Staff reports that the purpose of this rezoning is to allow the site to increase allowable density for the construction of a second multi-family building with structured parking for affordable housing.<sup>1</sup> Exhibit 37, p. 6. Funding for the proposed development stems from the County Housing Initiative Fund (HIF), which loans funds to non-profit developers to rehabilitate existing units and build new affordable dwelling units, and Low-Income Housing Tax Credits (LIHTC). The developer also plans to renovate the existing multi-family building on site with affordable housing tax credits through LIHTC. Exhibit 37, p. 8; T. 24-25, 37. Affordability must comply with three programs, restrictions placed by HIF funding, LIHTC funding, and the County's Moderate Priced Income Dwelling Unit (MPDU) program. Exhibit 37, p. 7-8. HIF funding requires 50% of the units to be at or below 60% of the Average Median Income (AMI) for the area. According to Staff, the new building will be funded with Low-Income Housing Tax Credits, and restricts units to "20% - 80% affordability" for 15 years. *Id.* To receive the density bonus to construct the second building, 15% of the units will be subject to the County's Moderately Priced Dwelling Unit (MPDU) program, which restricts units to occupancies at 65-75% of the AMI for 99 years. The MPDU restrictions will begin after the LIHTC restrictions expire. *Id.*

The proposed building will be a maximum of 98 feet in height and will provide up to 76 multifamily dwelling units. "As noted, the existing development on the property is comprised entirely of affordable housing units, ranging from one-bedroom units to three-bedroom units. Approximately one-half of the existing units are at 50% area median income (AMI) and the rest are at 60% AMI." Exhibit 4, p. 2. In total, between the existing building and the proposed building,

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<sup>1</sup> To accommodate the full density proposed, the Applicant seeks the bonus density permitted for making 15% of the units MPDUs.

the site would provide up to 217 affordable housing units.<sup>2</sup> Exhibit 37, p. 6. Figure 6, below, shows an architectural rendering of the proposed completed development. Exhibit 37, p. 7.



**Figure 6: Schematic Rendering of Proposed Addition from Piney Branch Road, looking north**

## **2. Floating Zone Plan and Binding Elements**

A Floating Zone Plan (FZP) must show details of the proposed development, including building locations, height, preliminary stormwater management strategies, and on-site circulation. *Zoning Ordinance*, §59.7.2.1.B.2. A FZP may also include binding elements that permanently restrict future development of the property. *Zoning Ordinance*, §59.1.4.2. Binding elements may restrict building types, density, or height, among other aspects of the development. *Id.* The binding elements recommended by Staff and accepted by the Applicant include the following:

1. The use of the property will be limited to multifamily residential and associated garage and surface parking.
2. Maximum building height on the Property will be 140' for existing building, however new development will be limited to 98 feet in height.

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<sup>2</sup> Some (about 20) of the existing units do not comply with this requirement and will be removed from the HIF program. However, Staff advises that the Applicant is working to subject these units to income limits through refinancing and tax credit awards. Exhibit 37, pp. 7-8.

3. Total residential units onsite will not exceed 217 units.
4. Vehicular access to the Site will be limited to the existing driveway.
5. Fifteen percent of total units onsite will be regulated as Moderately Priced Dwelling Units, per Chapter 25A of the County Code, subsequent to the expiration of the LIHTC restrictions. Exhibit 37, p. 2.

The Planning Board recommended revised binding elements 4 & 5, to reflect the following:

4. Vehicular access to the Site will be limited to the existing driveway (access point).
5. Fifteen percent of total units onsite will be regulated as Moderately Priced Dwelling Units, per Chapter 25A of the County Code, subsequent to the expiration of the LIHTC restrictions and any other State restricted-use covenants. Exhibit 40, p. 1.

At the hearing, the Applicant incorporated the revised binding elements recommended by the Planning Board into the FZP. T. 1.

The Applicant states that the Property's R-H zoning was retained during the most recent comprehensive rezoning in 2014, even though the R-H Zone is no longer a zoning classification in the Zoning Ordinance. Exhibit 4, p. 2. "The Applicant is seeking reclassification to the CRTF Zone, to bring the Property's zoning into compliance with the current Zoning Ordinance and to permit development of additional affordable housing units on the Property." *Id.* The Applicant met with representatives of the Montgomery County Department of Housing and Community Affairs ("DHCA") and were "strongly encouraged by DHCA officials to seek rezoning of the Property in order to add affordable housing units to the site." *Id.* With respect to the schedule of construction if the FZP is approved, Mr. Kiang stated that:

"...my hope is to close on the financing, which is key, end of the first quarter, early second quarter of 2022. The new building will take approximately 16 months to build. The existing tower, the renovation there will be a little bit less than that. If we start it at about the same time we should be done by the third quarter of 2023 with leasing to start sometime in that third, last quarter of 2023."

T. 25. Figure 5 below shows the proposed floating zone with existing and proposed improvements and features of the lot.



Staff advised that the Property does not contain any forest or rare, threatened, or endangered species or critical habitats listed by the Maryland Department of Natural Resources. Exhibit 37, p. 16. Staff further noted that the proposed development will not impact the existing forest cover on the site to less than an area of 10,000 square feet or a width of 25 feet. *Id.* There was no further evidence submitted to indicate any degradative environmental effects from the proposed rezoning



and floating zone plan. The Applicant's civil engineering and environmental report notes that "[t]he limits of disturbance do not overlap any stream, floodplain, wetland or environmental buffer. The Property is not within a Montgomery County Special Protection Area." Exhibit 13, p. 2. A Preliminary Forest Conservation Plan (FCP) was submitted and approved by M-NCPPC. *See* Exhibit 38. A tree variance request was submitted along with the FCP and was approved. *See* Exhibit 17.

### **E. Community Concerns**

No comments were received from the community. Staff noted that the Applicant has complied with the notification requirements for this rezoning and has informed all of the adjacent property owners, community organizations, and homeowners associations within one-half mile of the Property. Exhibit 37, p. 11. Mr. Kiang testified that the Applicant conducted at least two meetings with residents of the existing apartment building on site and with community members from adjacent neighborhoods. T. 26.

## **IV. FINDINGS AND CONCLUSIONS**

A floating zone is a flexible device that allows a legislative body to establish development standards and uses for a zoning district before "attaching" it to a specific property. The zone is applied to properties via the approval of an LMA.

To approve an LMA, the District Council must find that the proposal will meet the standards required by the Zoning Ordinance and that it will be consistent with the 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, or "Necessary Findings," that the Council must make. *See, Zoning Ordinance*, §59.7.2.1.E. These standards incorporate the requirements of other sections of the Zoning Ordinance, and most fall within three main categories: (1) conformance with the Master

Plan, (2) compatibility with the surrounding area and adjacent properties, and (3) whether the project is supported by adequate public facilities.

**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.2.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.2.b: ...further the public interest...<sup>3</sup>***

\* \* \*

***Section 59.7.2.1.E.2.c: ...satisfy the intent and standards of the proposed zone...***

\* \* \*

***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...***

Staff advised that the proposed Floating Zone Plan substantially conforms and is consistent with the goals and recommendations of the *2013 Long Branch Sector Plan* (“Sector Plan” or “Plan”). Exhibit 37, p. 12. Staff highlights that the Sector Plan identifies four goals on p. 24 of the Plan:

- (1) Community: Creating a strong sense of place and identity through design, parks, and public facilities;

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<sup>3</sup> OZAH has interpreted the “public interest” to address whether the property conforms to adopted County plans and policies and whether there are adequate public facilities to support the use.

- (2) Land Use and Zoning: Addressing compatibility issues and providing redevelopment incentives;
- (3) Sustainability: Creating a place for people that also supports and enhances natural systems;
- (4) Mobility: Providing options for getting around and integrating connections.

The Applicant's Land Use Report states that this property is included in the Long Branch Sector Plan and is identified as the "Park Montgomery Site." Exhibit 12, p. 3. The Plan does not recommend rezoning of this property, but Staff and the Applicant agree that one of the underlying goals of the sector plan is to provide more affordable housing. *See* Plan at p. 19 (Exhibit 14); Exhibit 37, p. 7. The Plan also references the future Purple Line Station currently being constructed at Piney Branch Road and University Avenue, as it "...may well result in increased housing values and raised rents however, the Plan seeks to address affordability and displacement issues through a comprehensive strategy that includes the MPDU program, increased funding and programming to create affordable housing, and introducing housing where it currently doesn't exist—on historically commercial properties." *See* Plan at p. 20 (Exhibit 14). The Applicant further asserted that "the Plan recommends enhancing and preserving existing residential neighborhoods, while at the same time revitalizing commercial centers to further its vision" including "enhance[ing] public facilities and environmental resources and creat[ing] multi-modal transportation options within the area." Exhibit 12, p. 3.

Staff advised that the property was acquired by CPDC (the forerunner to Enterprise Community Partners) in 2000 to prevent the property from converting to market rate apartments. Exhibit 37, p. 7. Staff opined that the proposed development will increase available affordable housing through the federal Low-Income Housing Tax Credit program and the County MPDU program. Exhibit 37, p. 7. Staff concluded that the "rezoning will provide redevelopment

opportunities for the Property and reinvestment in the community to provide additional affordable housing near public transit” and “the proposed redevelopment will allow reinvestment in the Property and community with an increase in low- and middle-income housing, without displacing any existing residents, and will be in proximity to the future Purple Line, allowing future residents a wide range of mobility options.” *Id.* at 13.

According to Staff, the Long Branch Sector Plan intentionally limited the rezoning of properties and this property was not rezoned or recommended for a floating zone to avoid displacement of current residents. Exhibit 37, p. 13. Citing the Sector Plan at p. 20, the Applicant noted that “the Sector Plan expressed concern that ‘implementing the Purple Line could impact real estate values and drive up prices,’ and that in order ‘[t]o prevent the loss of[,] market affordable units and potential displacement of lower-income residents, the Plan recommends retaining the zoning on most of the existing multifamily developments.” Exhibit 4, p. 3. Notwithstanding this, Staff concluded that since the purpose behind this redevelopment is to increase affordable housing in the Sector Plan area, and the plan includes binding elements requiring the development of affordable housing, the requested rezoning is consistent with the intent of the Sector Plan. Exhibit 37, p. 12. Mr. Loe testified that:

“...[the application]...will bring much needed affordable housing to the county, and specifically to the Long Branch area. It provides affordable housing within walking distance to the new purple line station. It's not going to alter the character of the neighborhood, and it's compatible with the existing land uses and surrounding area. And the improvements will help improve the Long Branch, University Boulevard area with the needed capital and reinvestment....” T. 102.

Conclusion: The Hearing Examiner agrees with Staff and the Applicant that the proposed rezoning for the purposes of creating new affordable housing on a site that already supports affordable housing substantially conforms to the recommendations of the *2013 Long Branch Sector*

*Plan*, furthers the public interest in expanding the indentified need for affordable housing, and satisfies the intent and standards of the floating zone by furthering the goals of the Plan to provide affordable housing near public transit and mixed-use nodes. The evidence supports a finding that this standard has been met.

## 2. Compatibility

Several sections of the Zoning Ordinance require an analysis of 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 7.2.1.E.2.d. be compatible with existing and approved adjacent development...***

\* \* \*

Staff found that the FZP would be compatible with existing and approved adjacent development and the surrounding area (Exhibit 37, p. 18):

...the new construction and use will be compatible with existing and approved development as the Property is already developed with a multi-family residential building approximately 140 feet in height. The adjacent properties to the east and west are similarly developed with medium and high-density multi-family buildings. To the rear is a single family detached residential neighborhood, and therefore the Proposal must be in conformance with the Residential Compatibility standards of Section 59.4.1.8, which are met by the proposed height and rear setbacks...



The Applicant states the following with respect to compatibility with adjacent development (Exhibit 4, p. 8):

The proposed mid-rise is a multi-family apartment building, consistent with the existing apartment building on the lot, as well as the use type of the two adjacent properties to the east and west. The proposed building will sit generally on the same footprint as the existing parking structure (which will be demolished), and new parking will be incorporated into the lower levels of the proposed building, therefore maintaining the existing 30-foot separation between the existing high-rise and adjacent structure (currently, the existing parking structure and, as proposed, the new mid-rise building).

Mr. Soto, the project's lead architect, testified that "we [are] using some materials and in architectural language that [are] very similar to the existing building to the right. We have a good setback between our building and the existing building to the left or to the west. We would measure that to be at about 100 feet between both buildings." T. 40. Mr. Soto further testified that no exterior trash receptacles will be used as a trash chute will connect all of the floors with a trash compactor at the bottom, and that trash truck and loading and unloading will occur inside the building with vehicles entering the building through the front garage door. T. 42. The development will also improve the fire truck access that presently exists at the site. *Id.* Mr. Soto concluded by stating that "the application is in compliance with the CRT floating zone and is compatible with the character and the massing of the existing neighborhood." T. 51-52. Mr. Loe testified that "We are doing everything we can to limit impact to the single-family to the north and any impacts to the East and West properties; but they are all similar uses all of Piney Branch Road, and I believe we meet all of those requirements." T. 87.

Conclusion: The Hearing Examiner finds that the proposed development will be compatible with adjacent properties and the surrounding area for the reasons stated by Staff and the Applicant. The proposed multi-family apartment building will occupy the same lot as the existing and taller multi-family apartment building and is of similar size and density to multi-family buildings on either side of the subject lot. The FZP utilizes the site's topography to mitigate the height of the second

building. The surrounding area is characterized by a mix of commercial and residential uses, including other multi-family buildings.

### **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...”*

#### **1. Adequate Public Facilities -- Traffic**

The Planning Board's Local Area Transportation Review Guidelines (LATR) establish the threshold for adequate roadway, transit, and pedestrian network. These Guidelines implement the applicable growth policy adopted every four years by the County Council. The Guidelines are used to forecast the travel demand generated by the proposed development and compare it to the capacity of existing and programmed roads and transit. According to the Guidelines, the Applicant must “show that adequate transportation facilities will be in place within a specified period of time.” *LATR Guidelines, p. 17.* Applications that will generate more than 50 peak hour person trips are required to submit a Traffic Study that conforms with the Guideline's requirements. *Id.*

The Applicant submitted a Traffic Study (Exhibit 15) conforming to the LATR requirements. The Applicant's original Traffic Impact Study concluded that "the study intersections will continue to operate within the established standards after the build-out of the proposed second residential building on the Park Montgomery site." Exhibit 15, p. 15. Based on comments from SHA and MCDOT, the Applicant submitted a revised Traffic Impact Study. T. 62; *See* Exhibit 36. Staff determined that "[the Applicant's] traffic study demonstrates that there is adequate capacity on the adjacent roadways to accommodate the additional vehicle traffic estimated to be generated by the Project." Exhibit 37, p. 10. A table from the Staff Report (Exhibit 37, p. 11, below) demonstrates that the intersections required to be studied meet the delay standards for the policy area:

*Table 3: Summary of Transportation Impact Study*

Intersection	Operating Condition	Policy Area Congestion Standard	AM Peak Period (Avg. vehicle delay in seconds)		PM Peak Period (Avg. vehicle delay in seconds)	
			Existing	Future	Existing	Future
1. Piney Branch Road/ University Blvd	Signalized	80 sec.	46.2	46.3	49.7	49.7
2. Piney Branch Road/ Carroll Avenue	Signalized	80 sec.	9.5	9.5	11.5	11.6
3. Piney Branch Road/ Site Driveway	Unsignalized	80 sec.	0.3	0.6	0.2	0.5

*Source: Transportation Impact Study conducted by Traffic Concepts, Inc., dated November 2020.*

Staff concluded that "[t]he submitted study demonstrates that all of the studied intersections will operate within acceptable levels and no mitigation is required." Exhibit 37, p. 18. Mr. Keeley, Applicant's transportation planner, testified that "the application meets all the thresholds that are outlined in the LATR for intersection level service." T. 64. Mr. Keeley further concluded that the "project's internal vehicular and pedestrian circulation systems, site visibility, and points of external access [are] safe, adequate, and efficient." T. 65. Mr. Keeley also concluded that "the floating zone plan will generate traffic that does not exceed the critical lane volume or volume capacity ratio standard as applicable under the Planning Boards LATR guidelines." *Id.*

## 2. Other Public Facilities

While the findings necessary for approval of an LMA specifically require an analysis of whether the proposed development complies with the traffic and transit congestion standards in the LATR Guidelines, the adequacy of other public facilities will be determined by the Planning Board at preliminary or site plan approval. Nevertheless, the Applicant and Staff determined preliminarily that other facilities would be adequate. Staff advises that the property is located within the Down County Consortium (Blair) school cluster and is served by Blair High School, Eastern Middle School, and Pine Crest and Montgomery Knolls Elementary Schools. Exhibit 37, p. 13. Because the new building will be financed through Low-Income Housing Tax Credits, the developer “anticipates being exempt from any Utilization Premium Payments that would typically be required due to the capacity issues for Blair High School.” Exhibit 37, p. 13.

Currently, there is no formal Stormwater Management existing for the site. Exhibit 13, p. 2. The Applicant’s civil engineering report states that runoff from the existing site flows toward Piney Branch Road and is “picked up on-site by storm drain inlets and piped into existing storm drain within Piney Branch Road.” Exhibit 13, p. 2. The proposed development will have the same drainage pattern and conveyance. *Id.* The proposed FZP adds stormwater management for the new building “utilizing Environmental Site Design techniques to the Maximum Extent Practicable (ESD to the MEP). A combination of green roof, biofiltration, and porous paving is proposed.” *Id.*

Lastly, the property is classified as Water Category W-1 and Sewer Category S-1, serviced by an 8-inch public sewer and a 16-inch water main in Piney Branch Road, provided by the Washington Suburban Sanitary Commission (WSSC). Exhibit 13, p. 2. Mr. O’Bryan, Applicant’s civil engineer, testified that “we confirmed with WSSC that there is adequate water and sewer to service the proposed building.” T. 57. Mr. O’Bryan also noted that there is detailed review conducted by DPS for stormwater management requirements and the Fire Marshal for fire access

requirements at the time of sketch and site plan review. T. 58. Staff concurred that other public facilities are sufficient to meet the demands of the proposed development as “the property is serviced by existing water and sewer and is located within water and sewer categories W-1 and S-1. Electric, gas, and telecommunications services are also be available. Other public facilities and services – including police stations, firehouses, and health care facilities – are currently operating in accordance with the Growth and Infrastructure Policy and will continue to be sufficient following construction of the Project.” Exhibit 37, p. 13.

### **3. Public Interest**

Staff opined that the “proposed rezoning seeks to respond to the market demand for more affordable dwelling units in the vicinity, given the close proximity to the future Purple Line currently under construction.” Exhibit 37, p. 12. Staff further concluded that the proposed development will further the public interest without burdening existing infrastructure. *Id.* The Applicant asserts that the development “is in balance with existing and planned infrastructure in the area.” Exhibit 4, p. 5.

Conclusion: Having no evidence to the contrary, the Hearing Examiner finds that adequate public facilities are met under this application and that the FZP furthers the public interest by implementing the comprehensive planning objection of increasing affordable housing density near public transit at this site. At the rezoning stage, the Council must determine only that the development complies with traffic and transit congestion standards set by the LATR and the Annual Growth Policy, unless there is some evidence that other public facilities cannot be provided. The record reveals that the Applicant demonstrated that the proposed building meets the LATR Guidelines and there is no evidence suggesting that other public facilities will not be provided.

#### **B. The Intent and Purposes of the Zone (Section 59.7.2.1.E.2.c)**

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 the zone requested. Some of the intent or purpose clauses have already been analyzed above. The balance of the intent findings for Floating Zone and the purposes of the CRTF Zone, are examined here.

### **1. Intent of Floating Zones (Section 59.5.1.2)**

The intent of Floating Zones is to ensure (1) the FZP complies with the Master Plan, (2) is supported by adequate public facilities, and (3) achieves the following goals:

#### ***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...***

The first two goals of Section 59.1.2.A (compliance with the Master Plan and adequacy of public facilities) are addressed above. The third intent standard of Section 59.5.1.2 is addressed below.

Staff opined that the new building will be oriented towards Piney Branch Avenue, which will integrate the new development within the existing circulation network. Exhibit 37, p. 13. The Applicant confirmed their intended participation in the Sector Plan and Bicycle Master Plan for Piney Branch Road, which includes enhanced sidewalks, bicycle lanes, and streetscape improvements. Exhibit 4, p. 5. The Applicant states that “the proposed design concept uses the existing circulation pattern and natural topography to integrate the proposed building” into the surrounding neighborhood. Exhibit 4, p. 6. While the existing two-story parking garage will be razed or modified to allow for construction of the new mid-rise building, a new two-story parking garage will be built in its place and the existing surface parking area will remain. *Id.*

Conclusion: From this record, the Hearing Examiner finds that the FZP utilizes the design flexibility provided by the Floating Zones to integrate the development compatibly with

surrounding uses. The project is oriented toward Piney Branch Road to incorporate existing circulation patterns, uses of topography to reduce height impact, and reuses existing paved areas to prevent further impervious area on the site.

***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***

As noted, Staff advised that the Sector Plan recommended the property remain zoned R-H but recognized that the Purple Line construction “could impact real estate values and drive up prices”. Exhibit 37, p. 14. For that reason, the Plan recommended “retaining the zoning on most of the existing multifamily developments” with the intent to prevent the loss of market affordable units and potential displacement of lower-income residents. Exhibit 37, p. 14 (citing the Plan). The Applicant opines that the Sector Plan did not recommend rezoning of this property “primarily due to the fact that the Sector Plan was concerned that upzoning could reduce affordable housing in the area.” Exhibit 4., p. 6. Staff advises that the requested rezoning “will allow the construction of a new building to increase affordable housing opportunities for low and middle-income families, while maintaining the existing multifamily building and affordable units onsite, thereby not resulting in displacement.” Exhibit 37, p. 14. The Applicant notes that “the entire mission of the [non-profit] Property owner (Applicant) is to create housing opportunities for low and middle income families” and that the rezoning of the Property to the CRTF Zone “is a chance for the Sector

Plan's fundamental goals to be achieved." Exhibit 4, p. 6.

As the underlying zoning district remained R-H, a zoning district no longer recognized under the Zoning Ordinance, Staff and the Applicant agreed to use the R-10 zoning district as a stand-in designation to calculate density. Exhibit 4, p. Staff advised that a FAR of 1.52 is appropriate for this Property, however, the Applicant is seeking bonus density of .1 FAR resulting in a FAR of 1.6. Exhibit 37, p. 14. Mr. Loe, Applicant's land planner, testified that the requested density is appropriate considering that the dwelling units being requested will be affordable housing units, and a much higher density could be requested. T. 94.

As required under Section 59.5.3.5.E (Public Benefits), Staff further noted that the Project will be required to provide 5% of the site as public open space, per the standards in Section 59.6.3 of the Zoning Ordinance. Exhibit 37, p. 14. The Applicant states that they will satisfy this requirement by creating a central courtyard "that will help link the two buildings and provide a community gathering space." Exhibit 4, p.7.

Staff advised that the development has been designed to limit impact to the existing slope and mature trees by locating the new building within the existing footprint of the two-story parking garage, which will be razed and rebuilt. Exhibit 37, p. 1. Staff further notes that four specimen trees will be removed to allow for the surface parking lot expansion for proper Fire Access movement and additional parking. *Id.* Staff advises that the Forest Conservation Plan (FCP) "will require 0.13 acres of afforestation and the removal of two specimen trees, for which 17 caliper inches of mitigation plantings will be required." Exhibit 37, p. 14. Staff recommends approval of the FCP with conditions. Exhibit 38. Applicant submitted an approved Natural Resources Inventory (NRI) contained in the record as Exhibit 16, and an approved Forest Conservation Plan (FCP) (with tree variance request) contained in the record as Exhibit 18. The Applicant civil engineering report further states that the existing forest cover on the east side of the site will be minimally impacted

and will not decrease the forest stand to less than 10,000 square feet and the “limits of disturbance do not overlap any stream, floodplain, wetland or environmental buffer.” Exhibit 13, p. 2. The Property is not within a Montgomery County Special Protection Area. Mr. Loe also testified regarding the implementation of screening, the impacts of existing topography, and the satisfaction of forestation requirements. T. 84-85.

Conclusion: The Hearing Examiner finds that these requirements are satisfied. The FZP will provide new affordable units in a Zone that is currently recognized by the Zoning Ordinance to support Plan goals for affordable housing. It anticipates and addresses potential changes in the real estate market due to construction of the Purple Line by preserving and adding to affordable housing stock and uses flexibility of design to limit new grading and reuse existing impervious area.

## **2. Purpose of 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 59.5.3.2. (Purpose of Commercial/Residential Floating Zones)***

***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.***

Staff concluded that the proposed Floating Zone Plan will allow the Property to provide more affordable housing as it permits increased density with the construction of a new multi-family residential building with 76 dwelling units. Exhibit 37, p. 16. Staff further advises that the “height, setback, and density limitations proposed are commensurate with the size and location of the Property in relation to the existing development.” *Id.* With regard to meeting the purpose of the Commercial/Residential floating zone, Mr. Loe testified that “We are meeting those purposes by – we are keeping the same land use as existing on the

site, multifamily. We are really limiting the impact to the neighborhood. We're providing a benefit, additional affordable housing in the area.” T. 87.

Conclusion: The Hearing Examiner finds that the FZP furthers the purpose of commercial/residential floating zones. Binding elements limiting the use of the property to affordable housing, density, and height will further ensure compatibility with adjacent development and the surrounding area. The CRTF Zone allows the flexibility to incorporate a new building into a developed site in a manner compatible with the surrounding area while minimizing environmental impacts.

### **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 property may apply for a Floating Zone. These subsections are addressed as follows:

***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 property to be rezoned is currently within the R-H Zone, a Residential Detached Zone; therefore, this provision does not apply.

***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.***

***2. Residential Base Zone***

\* \* \*

***c. When requesting a ..., Commercial Residential Town Floating (CRTF) zone... 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.***

***Section 59.5.1.3. D. Prerequisites [see table]***

Sections 5.1.3.C.2.c and 5.1.3.D apply to this application. The Applicant states that the application complies with §59.5.1.3.C.2.c as the development fronts on Piney Branch Road, a non-residential street classified as a major highway, and abuts and confronts properties located in residential multi-unit and commercial/residential zones. Exhibit 4, p. 10. The Applicant further asserts that the development satisfies all the prerequisites listed under Section 5.1.3.D in the following manner [as paraphrased by the Hearing Examiner]:

Transit & Infrastructure: The development is located within ½ mile of a Level 2 Transit Station/Stop currently being constructed (the Purple Line); an existing water line is located along Piney Branch Road and water service will be determined by WSSC at a later stage in development.

Vicinity & Facilities: The property is located between properties in the R-60, R-10, and R-30 and non-residential CRT zones; the property is adjacent to a pedestrian route along Piney Branch Road.

Environment & Resources: The limits of disturbance do not overlap any stream, floodplain, wetland, or environmental buffer; will not impact any existing forest cover; no rare, threatened, or endangered species or critical habitats are located on the property.

Exhibit 4, pp. 10-11. Mr. Loe also testified that the development will satisfy at least two prerequisites for each category, as stated above. T. 90. Staff concurred with the Applicant's assessment that the application meets these standards and does not note any deficiencies in the application. *See* Exhibit 37, pp. 15-16.

Conclusion: Having no evidence to the contrary, the Hearing Examiner finds that the subject property meets the prerequisites to filing a Floating Zone application.

**D. Development Standards and Uses Permitted in the Commercial/Residential Floating Zones**  
**(Division 59.5.4)**

**1. Uses and Building Types Permitted (Sections 59.5.3.)**

Section 59.5.3.3A.2 of the Zoning Ordinance permits “only” those uses permitted in the

CRT Zone in the CRTF Zone. As multi-unit living is permitted in the CRT Zone, the application meets this requirement. Exhibit 37, p. 16; Exhibit 4, p. 11. Under 59.5.3.4.A., “[a]ny building type” is permitted in the Commercial/Residential Floating Zone, therefore, the FZP meets this standard as well. *Id.* Staff and the Applicant concur that the use of the property as multi-family is permitted in the CRT zone and that the proposed building satisfies the requirements of “any building type” under this provision. *Id.*

Conclusion: The Hearing Examiner finds that the proposed use and building type satisfy the standards under this requirement.

## **2. Development Standards of the CRTF Zone (Section 5.3.5.A-D)**

Staff concluded that the FZP meets the development standards of the CRTF Zone. The Staff Report includes a table, marked as Table 4, comparing the development standards of the Zone with those proposed (Exhibit 37, p. 17, shown below). Mr. Loe testified that that all development standards are met under this application with respect to density, setbacks, building height, open space, parking, and public benefit points (satisfied as the FZP proposes “100 percent affordable housing”). T. 92-95.

Conclusion: Having no evidence to the contrary, the Hearing Examiner finds that all development standards of the CRTF zone have been satisfied under this application.



Development Standards	Required	Proposed
<b>Tract Area</b>		150,087 sf
Prior Dedications	n/a	6,740 sf
New Dedication		0 sf
Site		143,347 sf
<b>Section 59.5.3.5.A: Density</b>		
Total FAR/GFA	1.5 (225,130 sf)	1.6 (240,140 sf)
Commercial	1.5 (225,130 sf)	0 (0 sf)
Residential	1.5 (225,130 sf)	1.6 (240,140 sf) <sup>1</sup>
<b>MPDUs</b>	12.5%	15% <sup>2</sup>
<b>Section 59.5.3.5.B: Building Height</b>		
Existing Building	Established by Plan	140 ft
Proposed Building	Established by Plan <sup>2</sup>	98 ft
<b>Section 59.5.3.5.C: Building Setbacks</b>		
Public Street	Established by Plan	75 ft
Adjoining Lot		
Side	Established by Plan	10 ft
Rear	Established by Plan <sup>3</sup>	30 ft
<b>Open Space</b>	5% of site	7,168 sf
<b>Parking<sup>4</sup></b>		
Vehicle		
Studio	Min 0.5 space per unit / Max 1 space per unit	
1 Bed	Min 0.5 space per unit / Max 1.25 space per unit	
2 Bed	Min 0.5 space per unit / Max 1.5 space per unit	
3 Bed	Min 0.5 space per unit / Max 2 spaces per unit	
<b>Total</b>	<b>109 min / 343 max</b>	<b>220 spaces</b>
Bicycle	Min 0.5 per unit / Max 100	100
Motorcycle	Min 2% of total parking	5
Loading	1	2
<b>Public Benefit Points</b>	50 points / 3 categories	50 points / 3 categories

**Table 4: Proposed Floating Zone Standards**

### **E. General Development Requirements (Article 59.6)**

Staff found that the plans provided with the application show that the development “will comply with parking requirements (Division 59.6.2), recreation facility requirements (Division 59.6.3), general landscaping and outdoor lighting requirements (Division 59.6.4), and screening requirements (Division 59.6.5).” Exhibit 37, p. 17. Mr. Loe testified that “we will comply with the recreation facility requirement per division 59-6.3, the general landscaping and outdoor and lighting requirements per division 59-6.4, and then we will comply with the screening requirements per division 59-6.5.” T. 96.

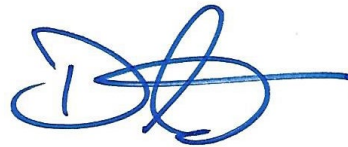
## **V. RECOMMENDATION**

For the foregoing reasons, I conclude 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-140, requesting reclassification from the R-H Zone to the CRTF-1.6, C-0, R-1.6, H-140 zone be **approved** subject to the specifications and requirements of the Floating Zone Plan (Exhibit 9), provided that the Applicant files an executed Declaration of Covenants 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: June 17, 2021

Respectfully submitted,



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Derek J. Baumgardner  
Hearing Examiner