

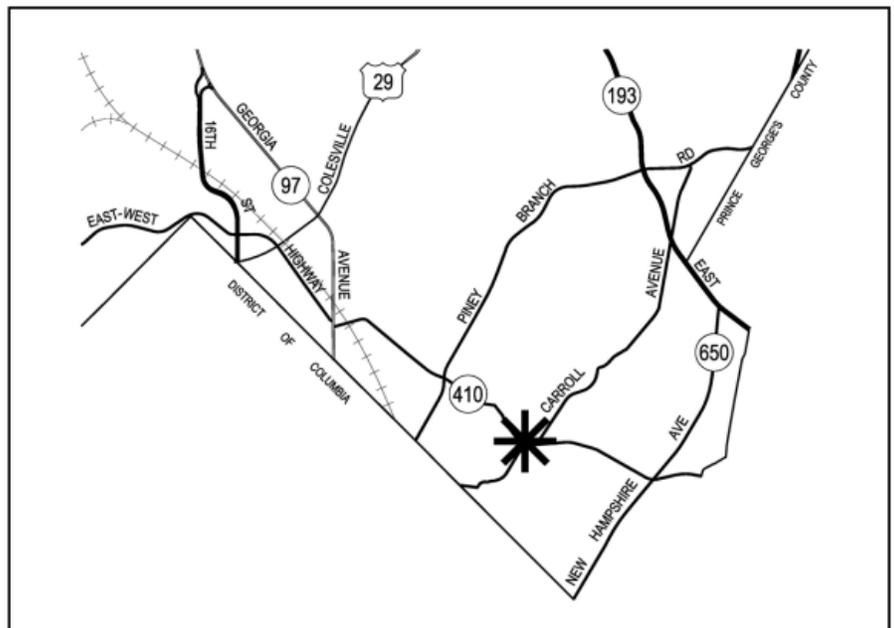
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I. CASE SUMMARY

Applicant: Nachel Enterprises, LLC (Nachel or Applicant).

Property: 4,435 square feet of land that has combined by administrative subdivision, identified as Parcels N923 (no address) and N968 of Section 1, S.S. Carroll's Addition to Takoma Park (7212 Carroll Avenue) and Part of Lot P2, Section 3, S.S. Carroll's Addition to Takoma Park (7206 Carroll Avenue).

Location: Part of 7206 and all of 7212 Carroll Avenue, Takoma Park, MD, on the north side of Carroll Avenue in the City of Takoma Park, between the intersection of Philadelphia Avenue and Ethan Allen Avenue:



Acreage: 4,435 square feet.

Current Zoning: 1,400 square feet (Parcel N923) is zoned R-60. The balance of the property is in the NR-0.75 H-50 Zone. The property is subject to the Takoma Park/East Silver Spring Commercial Revitalization Overlay Zone (TPESS).

Proposed Zoning: NRF (Neighborhood Retail Floating)-0.75 H-50/TPESS.

Current Use/Improvements: Takoma Montessori School housed in 960-square foot building.

Proposed Use: Approximately 2,000 square foot addition to the Takoma Montessori School. 1,200 square feet of the addition will be

in the area currently zoned R-60.

Environmental Issues: None. There are no forested areas, specimen trees, or steep slopes onsite.

Master Plan: The Takoma Park Master Plan contains no site-specific reference. The proposed use satisfies the Plan's goal to support existing residential communities by providing a needed service in a commercial area.

Neighborhood Response: The property is within the city limits of Takoma Park, Maryland. Planning Staff advises that the "City Council has chosen not to vote on the proposal at this time" and will review the development during site plan review. Exhibit 30(b), p. 1. No opposition appeared at the public hearing.

Technical Staff Recommends: Approval.

Planning Board Recommends: Approval.

Hearing Examiner Recommends: Approval.

District Council votes required for approval: 5

II. PROCEDURAL HISTORY

Nachel Enterprises LLC (Nachel or Applicant) initially filed a Local Map Amendment (LMA) application (H-136) for a Euclidean Zone, NR 0.75 H-50. This application would not have required a detailed Floating Zone Plan.¹ That application was dismissed on June 30, 2020 at Nachel's request. Exhibit 15. On August 12, 2020, OZAH accepted a second rezoning application from Nachel, this time for the NRF (Neighborhood Retail Floating) 0.75 H-50 Zone. Exhibit 1. The property to be rezoned consists of three parcels of land: Parcels N923 (zoned R-60) and Parcel N968 (zoned NR 0.75 H-50) and part of Lot P2, Section 3, S.S. Carroll's Addition to Takoma Park (also zoned NR 0.75 H-50). *Id.* Parcels N923 and N963 are located at 7212 Carroll Avenue; Lot P2 is located at 7206 Carroll Avenue.

OZAH scheduled a public hearing on the application for December 11, 2020. Exhibit 34. Staff of the Montgomery County Planning Department (Planning Staff or Staff) issued its report recommending approval of the application on October 15, 2020. Exhibit 30(b). The Report is premised on a maximum enrollment of 47 students for the existing school and proposed addition. *Id.*, p. 1. The Planning Board agreed with Staff and recommended approval on October 23, 2020. Exhibit 30(b). Prior to the public hearing, the Hearing Examiner requested that Nachel consider adding binding elements that would support the findings necessary for approval, including limiting the use to a child day care center with a maximum enrollment of 47 students. Exhibits 38, 41.

The December 11th hearing proceeded as scheduled.² Four witnesses testified on behalf of the Applicant, one of whom, Mr. Robert Tjaden, qualified as an expert in land planning. T. 9. No one appeared to oppose the application.

¹ Rezoning to a Euclidean Zone requires the Applicant to demonstrate a change in the character of the neighborhood or a mistake in the last comprehensive rezoning. *Zoning*

² Due to the COVID-19 pandemic, and Governor Hogan's order limiting the number of people in groups, the hearing was held remotely on Microsoft Teams.

At the public hearing, Nachel agreed to a binding element limiting the use to a day care center for over 30 children but did not wish to limit the number of students enrolled at the school until site plan approval. Planning Staff echoed this desire. Exhibits 41(a), 43, 44. Because Nachel had not submitted a traffic study, which would be required if the enrollment were increased, much of the discussion at the public hearing centered on crafting a binding element to support the necessary finding that the application meets the LATR guidelines. *See, Zoning Ordinance, §59.7.2.1.E.2.e.* The Hearing Examiner referred a suggested binding element to Planning Staff and left the record until December 28, 2020 to receive the transcript, allow Planning Staff and the Applicant to comment on additional binding elements, and to submit a revised Floating Zone Plan.

T. 25. Staff did not support the binding element suggested by the Hearing Examiner, and the Hearing Examiner proposed a second binding element, which Staff supported. Exhibits 44. All comments were timely received, and the record initially closed on December 28, 2020. Exhibits 43-46. Subsequently, the Hearing Examiner reopened the record to accept a draft declaration of covenants containing the binding elements, required by Section 59.7.2.1.H.1 of the Zoning Ordinance. Exhibit 49. The record closed on January 12, 2021. The Hearing Examiner reopened the record again to clarify with Staff and the Applicant the exact area of the property to be rezoned. The Staff Report listed the property to be rezoned as only the 1,400 square feet in the R-60 Zone; the application lists the larger 4,435 square foot lot created by the administrative subdivision. *Compare*, Exhibits 1, 30(b, p. 1). The Applicant responded that the area to be rezoned is 4,435 square feet (as described in this report). Exhibit 50. Staff responded “[m]y staff report focused on the portion of the site that was not already zoned NR...[t]he inclusion of the remaining portions of the site already zoned NR in the FZP being rezoned to NRF does not change our findings or recommendation.” Exhibit 51. The Hearing Examiner issued an Order Re-Opening and Closing

the Record to admit these communications. Exhibit 52. The record closed again on January 21st, 2021.

III. FACTUAL BACKGROUND

A. Subject Property

Consisting of 4,435 square feet, the property to be rezoned is a combination of small parcels that have been combined by administrative subdivision into one lot. Exhibits 1, 50. Approximately 1,400 square feet of the property is in the R-60 Zone; the remainder is in the NR 0.75 H-50 Zone. The property is also subject to the Takoma Park/East Silver Spring Commercial Revitalization Overlay Zone (TPRESS). Exhibit 30(b), p. 1. A graphic from the Staff Report shows the NR Zoning in red and the R-60 portion of the property in yellow (Exhibit 30(b), p. 5, below):



Figure 5: Existing Zoning Diagram

Existing Zoning
Exhibit 30(b), p. 5.

Located in the Takoma Park Historic District, the property is improved with a 960 square-foot one-story “shop building”, a surface driveway, and a fenced play area that is part of the Takoma Park Historic District. Exhibit 30(b), p. 2. Nachel also owns the adjacent property to the west, 7206 Carroll Avenue, a portion of which is included in this application. Both lots are used for the

school and function as one lot for its operation. T. 44. Mr. Tjaden, Nachel’s expert land planner, testified that the school’s administration is housed primarily on the adjacent lot. *Id.* Aerial and street views of the subject property and the adjacent property are shown below (Exhibit 30(b), p. 3). In December 2019, the Planning Director approved an administrative subdivision that combined the subject property into one lot . Exhibit 30(b), p. 4.

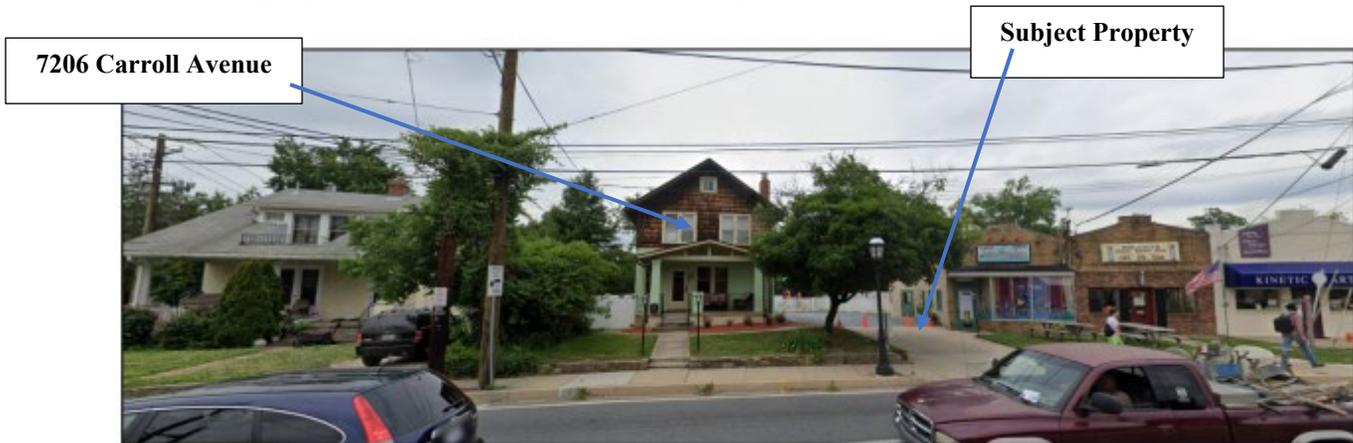


Figure 3: Street View Showing Adjacent Properties – Carroll Avenue looking north



Figure 2: Aerial View of Property, outlined in red, with rezoning area in white

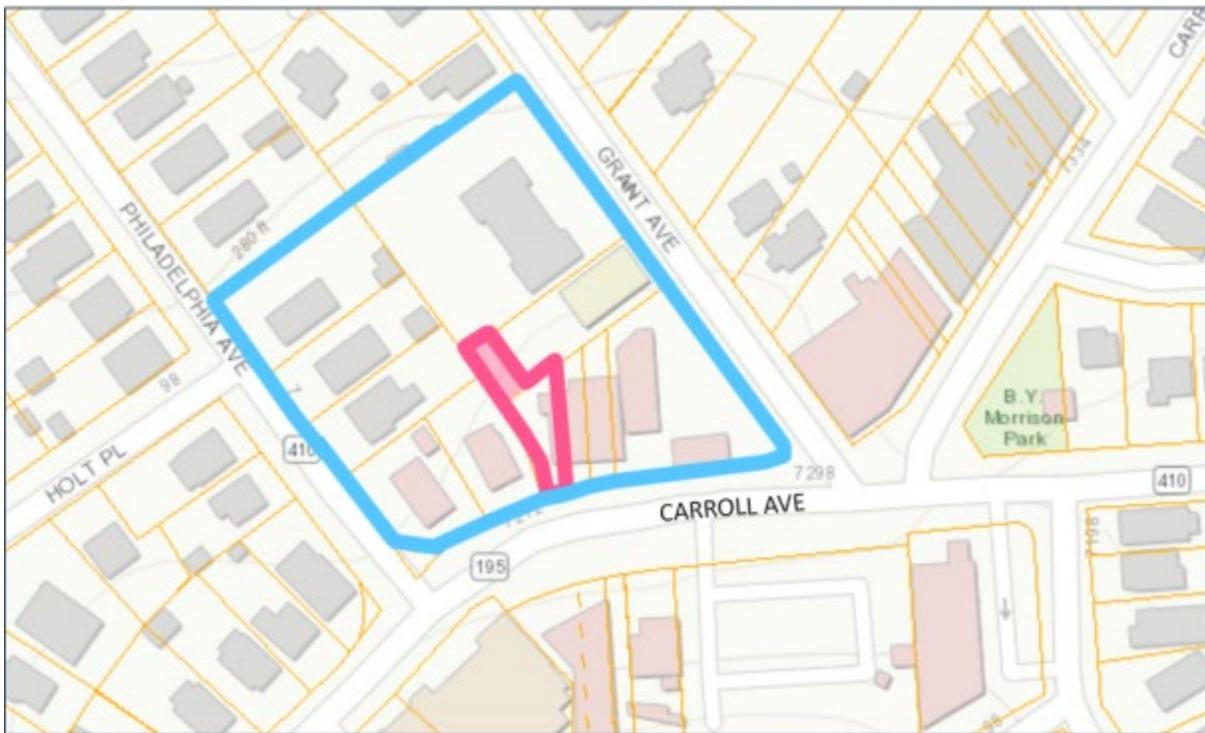
B. Surrounding Area

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 and the Applicant agree that the surrounding area in this case includes only the “immediately surrounding” properties, bounded by Grant Avenue to the east, Carroll Avenue to the south, Philadelphia Avenue to the west, and a multi-story residential building to the north. Staff justifies these boundaries due to the small size of the property to be rezoned. Exhibit 30(b), p. 3.

A graphic from the Staff Report outlines the surrounding area defined by Staff in blue (*Id.*, below):



Staff describes the surrounding area as (Exhibit 30(b), p. 2) as:

This section of Carroll Avenue, between Ethan Allen Avenue and Philadelphia Avenue, is also MD Route 410. Surrounding the Property along this section of MD 410 are low-density commercial uses, including Roland’s Barber Shop, Kinetic Artistry Dramatic Supply, the Takoma Park-Silver Spring Co-Op market, the Spring Mill Bread Company, and restaurant Seoul Food DC, the Takoma Park Volunteer Fire Department, and three automotive-related uses including the Takoma Auto Clinic, the Healey Surgeons, and the County’s only full electric vehicle charging “gas” station, RS Automotive. The blocks surrounding these uses are primarily occupied by single-family residential uses, as well as a 3-story office condominium building and several garden-style apartment buildings. The Property is also located in the Takoma Park Historic District.

Because the FZP would more than double the size of the existing Montessori School, the Hearing Examiner finds these boundaries of the surrounding area to be too confined. Traffic from the school will at a minimum affect properties across Carroll Avenue. However, given the eclectic mix of neighborhood and residential uses in the surrounding area, there is no evidence that expansion of the defined boundary would alter Staff's characterization of the area.³ The Hearing Examiner characterizes the area as a mix of smaller retail and service uses and some institutional uses along Carroll Avenue with multi-family and single family residential uses to the north.

C. Proposed Development and Floating Zone Plan

1. Proposed Development

Currently, Nachel operates the Takoma Park Montessori School on two adjacent parcels located at 7206 (the bulk of which is not included in this application) and 7212 Carroll Avenue. While they are separate parcels, the school functions as one use on both parcels. T. 44-45. Nachel proposes to expand the existing school by approximately 2,000 square feet. Approximately 1,200 square feet of the addition is in the area zoned R-60. The remaining 800 square feet of the addition is in the NR 0.75 H-50 Zone. T. 41-42. An architectural rendering of the proposed addition is shown below (Exhibit 30(b), p. 11):



³ Some of the uses listed by Staff are outside of the defined surrounding area.

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. An 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.* An excerpt from the FZP (Exhibit 46(b)) is shown on the following page.

The FZP here includes three binding elements (Exhibit 46(b)):

- 1) The maximum height of any building shown on the plan shall be twenty-five feet (25').
- 2) The use of the property is restricted to day care center (over 30 persons) under Section 59.3.4.4.F of the Zoning Ordinance.
- 3) Student enrollment is limited to 47 students unless the Applicant performs a traffic study meeting the LATR Guidelines at the time of site plan review.

D. Environment

Staff advises that there are no impacts to environmentally sensitive aspects of the property, such as forest or rare, threatened, or endangered species or critical habitats listed by the Maryland Department of Natural Resources. Exhibit 30(b), p. 10. The Applicant submitted a Forest Conservation Exemption letter from the Planning Department stating that the property is exempt from the requirements of the Montgomery County Forest Conservation Law. Montgomery County Code, Chapter 22A; Exhibit 7.

E. Community Concerns

There is no comment from the community, either for or against, in the record of this case. Staff advises that the City Council of Takoma Park elected not to vote on the FZP until site plan review. Exhibit 30(b), p. 1.

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.1.b: ...further the public interest...⁴

* * *

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

⁴ 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.

* * *

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: The property lies within the area guided by the *2000 Takoma Park Master Plan* (Master Plan or Plan). The Master Plan envisions the area as a “vibrant mix of interesting neighborhoods, viable commercial centers, appropriate community facilities, and a circulation system that provides easy access to shops, services, parks, and transportation. *Plan*, p. 3.

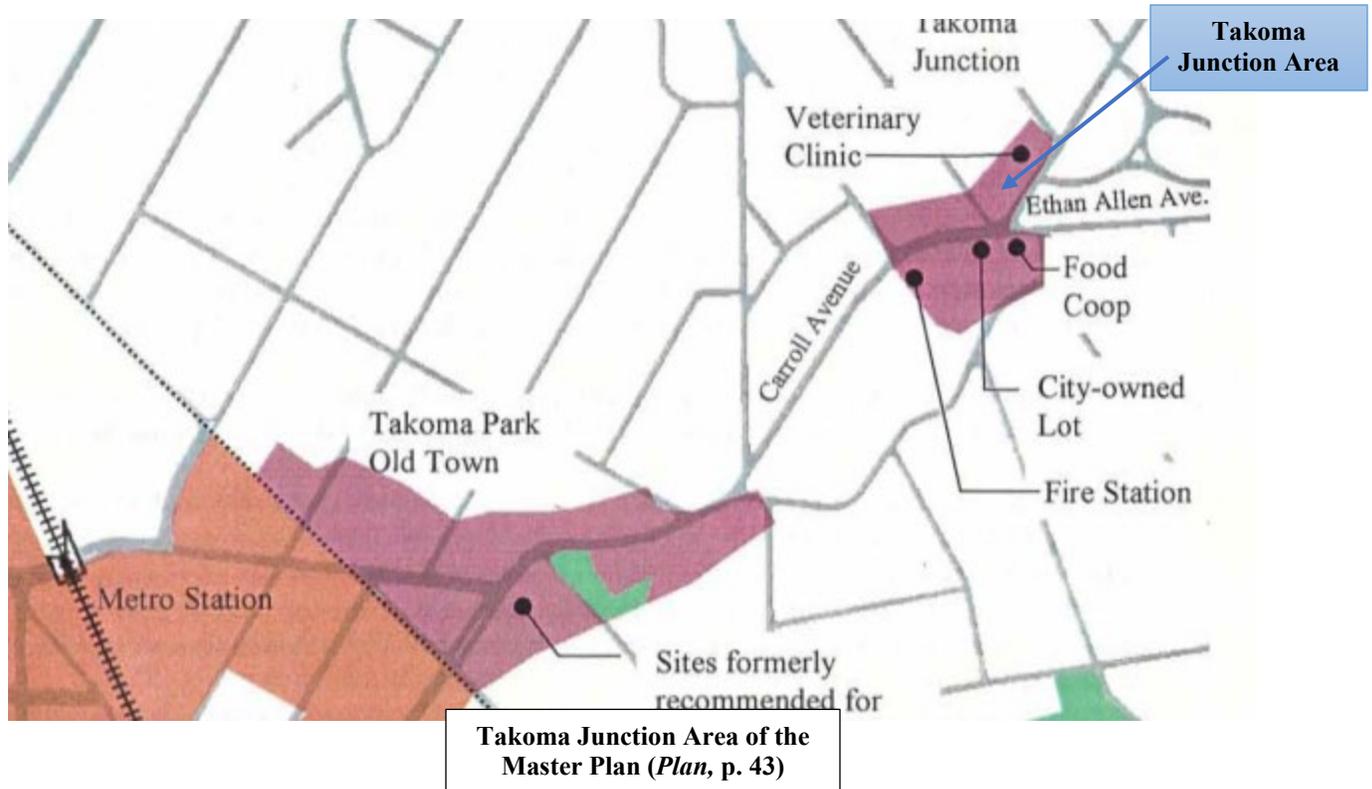
The Plan recommends enhancing and preserving existing residential neighborhoods, while at the same time revitalizing commercial centers to further its vision. To reinforce community identity, it seeks to enhance public facilities and environmental resources and create multi-modal transportation options within the area. *Id.*

The property falls within the “Takoma Junction” subdistrict of the Plan, which is described as the “commercial heart” of Takoma Park. *Plan*, p. 44. A graphic from the plan shows its location (*Plan*, p. 43, on the next page). The Plan’s vision for the area is below (*Id.*, p. 44):

The vision for Takoma Junction is of a village center with a traditional small town charm. The area should be an extension of Takoma Old Town, providing unique stores and services to both nearby neighborhoods and regional visitors. The strengths of the area include neighborhoods within walking distance, visibility to pass-by traffic, and existing public spaces.

The Plan recommended the subject property for inclusion in a “Commercial Revitalization Overlay Zone”. *Plan*, p. 45. Staff found that the proposed project furthers the goals of the Master Plan (Exhibit 30(b), p. 8):

The proposed redevelopment will provide a valuable community-serving use that is compatible with the surrounding neighborhood and community. With the relatively modest 1,200-square foot expansion, the increased student population will have only a minimal impact on circulation through the area. The Property is located in the Takoma Junction area identified in the Plan (p. 44). Recommendations for this area



include supporting community-oriented uses in scale with the overall residential character of the neighborhood. The proposed rezoning will facilitate the expansion of a successful existing community-oriented daycare use on the Property. Both the expansion and the existing storefront commercial building on the Property are one story, and the Historic Preservation Commission has approved the design for expansion. If the Local Map Amendment is approved, the expansion of the daycare use will be reviewed by the Planning Board for Site Plan approval prior to Historic Area Work Permit and building permit.

Mr. Tjaden, the Applicant's expert in land planning, testified that many children walk to the day care center with their parents. T. 15. He opined that, in accordance with the Master Plan, the project will encourage a walkable community without requiring additional impermeable infrastructure. T. 44-45.

Conclusion: The Hearing Examiner agrees with Staff that the proposed development furthers the goals of the Master Plan. The day care service provided will sustain an existing neighborhood commercial use within the Takoma Junction commercial area. At the same time, the use supports and maintains the surrounding residential community. The proposed development will provide a walkable service to the surrounding area, furthering the Plan's goal to encourage multi-modal

transit. The binding element limiting the height of the addition ensures that the scale of the use will fulfill the Plan’s vision for a “traditional small town.” 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 59.5.4.2. (Purpose of Employment Floating Zones)
The purpose of the Employment Floating Zones is to:***

* * *

C. provide development that is compatible with adjacent development.

Section 7.2.1.E.2.d. be compatible with existing and approved adjacent development...

* * *

Section 7.2.1.E.2.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.

Staff found that the FZP would be compatible with existing and approved adjacent development and the surrounding area (Exhibit 30(b), pp. 11):

The proposed expansion will match the scale and character of the existing commercial storefront building housing the existing school. The Historic Preservation Commission has reviewed the architectural design and voted approval in 2018. The expansion is designed to occupy the entirety of the rear portion of the Property adjacent to the existing single-family home. The approved building elevation shows the architectural treatment along the shared property line to include a solid masonry façade with brick “window” detailing.

Staff determined it was compatible with the surrounding area for the same reasons (Exhibit 30(b), p. 12), adding that:

At the time of Site Plan, the Applicant will need to pursue Alternative Compliance under Section 59.8.6.1 for the Screening Requirements of Section 59.6.5.3. Staff supports the use of Alternative Compliance as the proposed expansion will minimize the noise associated with the current playground on that portion of the site, and the one-story structure presents a reduced visual impact for the adjacent homeowner. Staff will continue to work with the Applicant to finalize the treatment of that shared boundary at the time of Site Plan.

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. The binding element limiting the height retains the scale of the existing building and is consistent with the other local retail located along Carroll Avenue. Enrollment will be capped at 47 students, exempt from LATR, ensuring that the traffic impact will be minimal unless and until a traffic study can be performed.

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...”

Staff concluded that public facilities are adequate to serve the use (Exhibit 30(b), p. 9, 12):

The public facilities are adequate to accommodate the proposed use. The Project will not generate enough trips to warrant a traffic study. 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 Subdivision Staging Policy (SSP) and will continue to be sufficient following construction of the Project.

* * *

The Project proposes a total enrollment of 47 students. Applying the methodologies in the *2017 Local Area Transportation Review Guidelines*, the proposed total enrollment is estimated to generate 49 morning peak hour trips 49 evening peak hour trips. Since neither the morning or evening peak hour trip estimates are greater than 50, no additional study of the potential impact on the adjacent transportation is required.

Staff made this recommendation without a binding element restricting the maximum enrollment. Initially, Staff did not want to limit enrollment at this time and wished to defer setting the maximum enrollment to site plan. The Applicant also wished to defer the maximum enrollment to site plan because it may do a traffic study at that time. Exhibits 41(a), 43. Both Staff and the Applicant ultimately agreed to a binding element, proposed by the Hearing Examiner, limiting enrollment to 47 students in both the proposed and existing school unless a traffic study was performed. Exhibits 41(a), 43, 44, 45.

Conclusion: Under the Planning Board’s Local Area Transportation Review Guidelines (LATR Guidelines), projects that generate fewer than 50 peak hour person trips do not need to perform a traffic study to determine whether roadway, bicycle, and pedestrian facilities have adequate capacity to serve the use. *2017 Local Area Transportation Review Guidelines*, p. 8. In this case, according to Staff, a maximum enrollment of 47 students for the entire facility would generate 49 trips, one under the threshold requiring a traffic study. Without the binding element limiting enrollment to 47 students unless a traffic study at site plan warrants a higher number, the Hearing Examiner could not make the necessary finding that the application meets the applicable critical lane volume or volume/capacity ratio standard of the LATR Guidelines. Such a binding element, however, has been added to the revised Floating Zone Plan, limiting total enrollment for the school to 47 students unless a traffic study is performed. With this binding element, the Hearing Examiner finds that the proposed development will meet the applicable LATR standards.

The evidence in this case also warrants a finding that other public facilities are adequate to serve the proposed development. Staff advises that dry and wet facilities are currently available, and police and fire services are nearby. Exhibit 30(b), p. 8. The FZP includes the stormwater management concept plan that includes two micro-bioretenion facilities on-site. T. 17. Staff advises that Nachel will have to comply with stormwater requirements of the City of Takoma Park at the time of site plan. Exhibit 30(b), p. 10.

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 NRF 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) have already been addressed. The third intent is addressed here.

Conclusion: Staff did not explicitly comment on whether the Applicant utilized the design flexibility available in a Floating Zone to integrate the development in the manner according to this standard. However, a review of the entire Staff Report demonstrates that it does so. A binding element limits the height of the addition to 25 feet, less than the 30-feet permitted under the TPESS Zone. Staff concluded that this limitation will “retain the scale and character” of the existing building. Exhibit 30(b), p. 9. The development proposes no setback along the rear property line (not permitted by the existing zoning), that allows the expansion with additional room for upgraded stormwater management facilities.⁵ Exhibit 46(b). With the binding element limiting enrollment, the development meets the standards of the LATR Guidelines. According to Staff, the proposed development will have “minimal impact” on the surrounding community. Exhibit 30(b). 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.

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

⁵ The Applicant submitted an email from the property owner whose property abuts Nachel’s rear property line. The email states that the property owner does not object to this setback. Exhibit 36(d).

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***

Staff determined that the FZP meets this standard (Exhibit 30(b), pp. 9-10):

Approval of the requested Local Map Amendment will allow the expansion of an existing community-serving daycare. Located in the mixed-use Takoma Junction area, the Takoma Montessori occupies an existing one-story shopfront building in the Takoma Park Historic District. The envisioned expansion will retain the scale and character of the existing building.

Staff also reports that there are no open space requirements for this development due to the small size of the area to be rezoned and points out that the Planning Department confirmed a Forest Conservation Exemption for the use. *Id.*

Conclusion: The Hearing Examiner finds that the development proposed meets this intent. It will allow an expansion to sustain an existing business in an appropriate commercial location and at the same time supports the residential community. Not only are there no environmentally sensitive feature of the site, joint use with the adjacent parcel reduces the need for additional impervious area. Additional stormwater facilities will be provided with the new development and the property has existing access to a non-residential street (Carroll Avenue).

2. Purpose of the Employment Floating Zones (Section 59.5.4.2)

Section 59.5.4.2 of the Zoning Ordinance describes the purpose of the Employment Floating Zones.

Section 59.5.4.2. (Purpose of Employment Floating Zones)

The purpose of the Employment Floating zones is to:

- A. allow development of commercial centers and communities, at a range of densities and heights flexible enough to respond to various settings.***

- B. allow limited residential development and flexibility in uses for a site;
and
C. provide development that is compatible with adjacent development.***

Staff determined that the development fulfills the purpose of Employment Floating Zones for the same reasons it determined that the development is with compatible adjacent uses and the surrounding area. Exhibit 30(b), p. 11.

Conclusion: The Hearing Examiner already found that the FZP furthers the purpose of Section 5.4.2.C. She also finds that the proposed development fulfills the remaining purposes of the Employment Floating Zones. The design flexibility of the Floating Zone permits the Applicant to have no rear setback, allowing it to locate most of the expansion in the rear of the lot, not readily viewed from the street. This also allows room for on-site stormwater facilities. The binding element limiting the height ensures that the addition remains in scale with the existing building and the surrounding area.

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. 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 property to be rezoned is currently within the R-60 Zone, a Residential Detached 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:

* * *

The Master Plan does not recommend a Floating Zone for this property. Therefore, the property must prerequisites to apply:

Section 59.5.1.3.C.2c. (Prerequisites for An Employment Floating Zone with a Residential base zone)

When requesting ... 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](#).**

Staff advises that Carroll Avenue (Md. Rte. 410) is a non-residential street, meeting the first prerequisite. Exhibit 30(b), p. 10. Staff determined that it met the following prerequisites required in Section 59.5.1.3.C.2.c (*Id.*):

Transit & Infrastructure: The entirety of the Property fronts on Carroll Avenue, which hosts several Level 2 transit (bus) stops. Additionally, the site is served by existing water and sewer infrastructure that is not expected to require either an upgrade to the service line or installation of a pump station due to the proposed development.

Vicinity & Facilities: The R-60 portion of the Property that is proposed for rezoning is in a transitional location between property in an existing non-Residential Employment zone, NR, and property in a Residential Detached zone, R-60. Additionally, the sidewalk in front of the site is provides access to an existing grocery store, the Takoma Park-Silver Spring Co-Op, within ¼ mile.

Environment & Resources: The site does not contain any forest or rare, threatened, or endangered species or critical habitats listed by the Maryland Department of Natural Resources.

Conclusion: Having no evidence to the contrary and based on this record, 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 NRF Zone (Division 59.5.4)

1. Uses and Building Types Permitted (Sections 59.5.4.3 and 59.5.4.4)

Section 59.5.4.3 of the Zoning Ordinance permits “only” those uses permitted in the NR

Zone in the NRF Zone. A daycare center for over 30 persons is a permitted use in the NR Zone. Because “[a]ny building type” is permitted in the NRF Zone, the FZP meets this standard as well.

2. Development Standards of the NRF Zone (Section 5.3.5.A-D)

Staff found that the FZP meets the development standards of the NRF-0.75 H-50 Zone, (Zoning Ordinance, §59.5.4.5). The Staff Report includes a table comparing the development standards of the Zone with those proposed (Exhibit 30(b), p. 11, shown below). While the table lists a building height of 50 feet, the TPESS limits heights to 30 feet and a binding element of the Plan further limits the building height to 25 feet.

Standard	Maximum/Minimum	Proposed
Density	1.0 FAR Max.	0.75 FAR Max.*
Setbacks from site boundary	Set by Floating Zone Plan	0’ Min.
Building Height	Set by Floating Zone Plan	50’ Max.*
Minimum Lot Size	Set at Site Plan	Set at Site Plan
Parking	0.25-0.5 Spaces per Employee	Must Meet Minimum
Open Space	N/A	N/A

*The maximum density and height for the floating zone are proposed to match those for the current Euclidean NR zone on the rest of the property. The maximum density and height for the proposed addition will be less and set at Site Plan.

At the public hearing, the Hearing Examiner questioned whether the parking requirements could be met as the Floating Zone Plan does not contain parking spaces on-site. The parking is located on the adjacent parcel (also owned by Nachel and used for the day care center). Given that the application does not meet the on-site parking requirements, the Hearing Examiner asked Staff for a recommendation whether it would support a waiver of the on-site parking requirements at site plan. Exhibit 44. Staff replied that, “Staff does not have a specific proposal to review regarding parking, but Staff is generally supportive of parking waiver requests in support of the Master Plan as guided by the CROZ [the Takoma Park/East Silver Spring Commercial Revitalization Overlay

Zone].”⁶ Exhibit 43. Development standards for the TPESS Zone permit the Planning Board to waive the requirements for parking setbacks and the number of spaces at site plan “where it finds that such waivers will accomplish the goals of the master plan, including revitalization, enhancing the pedestrian environment, and encouraging the use of transit...” *Zoning Ordinance*, §4.9.16.D.2.a.

Conclusion: The FZP demonstrates that the subject property meets or can accommodate most of the development standards on the property. The Hearing Examiner agrees with Staff that a parking waiver is supported by both the Master Plan and the TPESS and finds that it is more probable than not a waiver will be approved.⁷ Final layout screening and landscaping will be determined at the time of site plan approval.

E. Takoma Park/East Silver Spring Commercial Revitalization Overlay Zone (TPESS)

Development of the subject property must also meet standards of the TPESS Overlay Zone. *Zoning Ordinance*, §59.4.9.16. While Staff did not address these standards in its Report, the Applicant’s land planner did. The standards and Mr. Tjaden’s responses to each are below (Ex.42).

1. Purpose of the TPESS Overlay Zone

Section 59.4.9.16. Purpose.

A. Purpose

The purpose of the TPESS Overlay zone is to:

- 1. Foster economic vitality and attractive community character in areas needing revitalization.***
- 2. Promote an enhanced pedestrian environment and an improved circulation system to pedestrians and bicycles as well as motor vehicles.***
- 3. Substantially conform with the master plan vision for specific existing commercial areas.***

⁶ The parking on the adjacent parcel is shown on the Floating Zone Plan. Exhibit 46(b).

⁷ Section 59.6.2.4.G of the Zoning Ordinance also permits off-site parking where, as here, the parking is located on another lot owned by the same entity.

4. Provide for the combination of residential with commercial uses.

As to the first purpose, Mr. Tjaden opined, “The Takoma Montessori School is commercial and serves the neighborhood by providing a top- of-the-line day care facility.” Exhibit 42. He testified that the school provides “economic vitality” to the Takoma Junction area because it is a commercial enterprise. T. 15. Mr. Tjaden found that the FZP met the second purpose of the TPESS because the day care center is centrally located to residential communities, and most parents walk their children to and from the school. A sidewalk already exists along Carroll Avenue and on-site bicycle spaces will be included in the development. T. 15; Exhibit 42. Mr. Tjaden agreed with Staff that the FZP substantially conforms to the Master Plan’s vision for the Takoma Junction area. T. 15. He opined that it is consistent with the last purpose of the TPESS Zone because it is a small commercial use that provides an important service to the surrounding residential area. T. 15.

Conclusion: The Hearing Examiner agrees with Mr. Tjaden that the proposed development furthers the purpose of the TPESS Overlay Zone. Compliance with the Master Plan has already been discussed. The expansion of a compatible use that serves the surrounding area clearly fosters revitalization of both the commercial and residential neighborhoods. Development under the FZP will add bicycle spaces to the property without additional impervious area for the creation of sidewalks.

2. Land Uses Permitted in the TPESS Overlay Zone (Section 59.4.9.16.B)

The TPESS permits some uses in addition to what is permitted in the underlying NR Zone. *Zoning Ordinance*, §59.4.9.16.B. The day care center proposed is already permitted in the NR Zone, so this provision does not affect the development.

3. Development Standards (Section 59.4.9.16.C)

Section 49.4.9.16.C contains the following development standards for the TPESS Overlay

Zone:

C. Development Standards

- 1. The maximum building height is 30 feet; however, the Planning Board may allow a building height:**
 - a. up to 42 feet for commercial development; and**
 - b. up to 50 feet to accommodate residential development if the Planning Board finds that such buildings are compatible with the neighborhood and substantially conform with the intent of the applicable master plan.**

* * *

- 3. In the NR zone, surface parking must be behind the front building line.**

Mr. Tjaden testified that the binding element limits the height of the new addition to 25 feet, 5 feet less than permitted under the TPESS. Parking is located off-site on the adjacent parcel, and both the Master Plan and the TPESS encourage waivers of parking where appropriate.

The last applicable section of the TPESS Overlay Zone (Section 59.4.9.16.D) requires site plan review before construction of the new addition. The Applicant acknowledges that it must go through site plan review. T. 16.

Conclusion: The Hearing Examiner agrees with Mr. Tjaden that the proposed development will meet the purpose and development standards of the TPESS Commercial Revitalization Overlay Zone, with the details of the development to be finalized at site plan.

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-138, requesting reclassification from the R-60 and NR 0.75 H-50 Zones to the NRF 0.75 H-50 Zone be **approved** in the amount requested and subject to the specifications and requirements of the Floating Zone Plan (Exhibit 46(b)),

provided that the Applicant files an executed Declaration of Covenants (Exhibit 48(a)) 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: January 21st, 2021.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Lynn Robeson Hannan', with a long horizontal flourish extending to the right.

Lynn Robeson Hannan
Hearing Examiner