

BEFORE THE COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THE MARYLAND-
WASHINGTON REGIONAL DISTRICT IN
MONTGOMERY COUNTY, MARYLAND

Office of Zoning and Administrative Hearings
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 200
Rockville, Maryland 20850
(240) 777-6660

IN THE MATTER OF:
EYA DEVELOPMENT, LLC
BL STRATHMORE, LLC

Applicants

For the Application:

Jack Lester
Brenda Bacon
Jeff Amateau
Josh Sloan
Katie Wagner
Jack McLaurin
Katy Prebble
Sister Ruth Marie Nikerson

Erin Girard, Esq.
Attorney for the Applicant

Opposed to the Application:

Kip Edwards
Cynthia Wertz
Douglas Burdin
Vanessa Lide
Gerilee Bennett

David Shaffer, Esq.
Attorney for Garrett Park Estates
and White Flint Civic Association

Exhibit 69(b)
OZAH Case No: H-159

Local Map Amendment
Application No. H-143

Before: Derek J. Baumgardner, Hearing Examiner

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I. CASE SUMMARY

Applicant:	EYA Development, LLC and BL Strathmore LLC (“Applicants” or “EYA”)
Property:	4920 Strathmore Avenue, more particularly known as Parcel No. 045, Parcel B, Garrett Park Academy of the Holy Cross, as shown on Plat No. 20824, and all of the property located at 4910 Strathmore Avenue, more particularly known as Parcel N875, Parcel A, Garret Park- Holy Cross Convent, as shown on Plat No. 9347
Location:	The Site is located at 4910-4920 Strathmore Avenue (MD 547), which is approximately 1,500 feet east of Rockville Pike (MD 355) and is adjacent to both the Strathmore Music Hall and the Holy Cross School and Church, as shown in Figure 1, below. Directly to the west of the Site is a stream valley and the Symphony Park townhouse development, which includes open space that visually links the Property to Rockville Pike.



Figure 2: Overall Site

Acreage:	15.36 acres
Current Zoning:	R-60 Zone (residential detached)
Proposed Zoning:	CRNF 0.75, C 0.25, R 0.75, H 50 (Commercial Residential

	Neighborhood- Floating)
Current Use:	School buildings, athletic fields, and a former group home for retired nuns (St. Angela's Hall)
Proposed Use:	125 single-family dwelling units (including a minimum of 15% MPDUs) and a 145-bed residential care facility
Affordability:	Minimum of 15% MPDUs
Current Density Permitted:	R-60 zone permits up to 1.5 FAR
Density Proposed:	.75 FAR
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:	1992 North Bethesda/Garrett Park Master Plan
Neighborhood Response:	Significant community input was received. Multiple community members testified at the public hearing in opposition to the proposed LMA.
Water/Sewer:	W-1/S-1 with no upgrades required
Planning Staff Recommends:	Approval
Planning Board Recommends:	Approval
Hearing Examiner Recommends:	Approval
District Council votes required for approval:	5

II. PROCEDURAL HISTORY

On August 4, 2021, EYA Development, LLC (“Applicant” or “EYA”) filed Local Map Amendment (LMA) application (H-143) requesting the rezoning of the property located at 4910/4920 Strathmore Avenue (the “Property”) in North Bethesda, Maryland from its current R-60 Zone (detached residential) to CRNF 0.75, C 0.25, R 0.75, H 50 (Commercial Residential Neighborhood- Floating). Exhibit 1. The property is currently improved by Garrett Park Academy of the Holy Cross (Parcel B), and Garret Park- Holy Cross Convent, or St. Angela’s Hall (Parcel N875/Parcel A), a vacant and unoccupied retirement home for nuns.

On December 6, 2021, Staff of the Montgomery County Planning Department (Planning Staff or Staff) issued its revised report recommending approval of the application with binding elements. Exhibit 62. The Planning Board agreed with Staff and recommended approval on December 17, 2021. Exhibit 61.

On November 26, 2021, OZAH issued a hearing notice schedule this LMA for a public hearing on December 27, 2021.

On December 22, 2021, David Shaffer, on behalf of Garrett Park Estates & the White Flint Civic Association, filed a request to postpone the scheduled hearing.

On December 23, 2021, all parties were notified by email that the Motion to Postpone would be granted, but the case would be called on the scheduled hearing date of December 27, 2021, for the purposes of postponing the hearing. The hearing was formally postponed on December 27, 2021.

On January 3, 2022, OZAH issued a Hearing Notice rescheduling the public hearing for January 31, 2022, through February 2, 2022.

On January 31, 2022, the public hearing was conducted over two (2) days by OZAH Hearing Examiner Derek Baumgardner. Erin Girard, Esq., represented the Applicant. Six (6) witnesses

testified in support of the application either as the Applicant or as an expert witness of the Applicant: Jack Lester (Applicant), Brenda Bacon (Brandywine Living), Jeff Amateau (civil engineer), Joshua Sloan (land planner), Katie Wagner (traffic engineer), and Jack McLaurin (architect). Community members Katie Prebble and Sister Ruth Marie Nickerson also testified in support of the application.

Mr. David Shaffer, Esq. appeared on behalf of Garrett Park Estates and White Flint Civic Association. Community members testifying in opposition included: Douglas Burdin, Kip Edwards, Arthur Ribeiro, Vanessa Lide, Cynthia Weitz, and Gerilee Bennett, as town councilmember representing the Town of Garrett Park. The Hearing Examiner left the record open for 10 days following the conclusion of the two-day public hearing, or until February 11, 2022. Several additional exhibits were received during this period and marked and admitted without objection as evidentiary exhibits.

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-143. Exhibit 87. The record was re-opened on April 5, 2022, to receive a corrected Floating Zone Plan and closed immediately thereafter. Exhibit 88.

II. FACTUAL BACKGROUND

A. Subject Property

The subject property is located at 4910/4920 Strathmore Avenue, immediately south of the intersection of Strathmore Avenue and Stillwater Avenue. Exhibit 62, p. 4. The two areas proposed for rezoning under this LMA are Parcel A, which is currently improved with the former St. Angela's Hall (approximately 38,000 square feet) with two driveway entrances on Strathmore Avenue, surface parking, outdoor amenity spaces, pedestrian paths, and open lawn areas, and a portion of Parcel B, which is currently improved by a school site known as the Academy of the Holy Cross, a

Catholic high school for girls, consisting of various school buildings and athletic fields. *Id.* See Figure 2 below for an aerial image of the demarcated subject property.

The entire property including all of parcels A and B is approximately 38.22 acres in size. Exhibit 62, p. 4. The portion subject to this rezoning application (hereinafter the “site”), which is comprised of all of Parcel A and a portion of Parcel B, is approximately 15.36 acres (669,082 square feet) in land area, all areas under common ownership. *Id.* The building and driveways for the existing but closed and vacant St. Angela’s Hall are located on the high point of the site and slope down to a nearby tributary of Rock Creek and associated wetlands along the western, southern, and eastern sides of the property. *Id.* The main existing school site, which will remain unchanged under this application and is not subject to rezoning, is further improved by buildings, lawn, athletic fields, driveways, and parking areas. The property is currently zoned R-60. *Id.* An aerial of the property, including the site (outlined in red) is shown below (Exhibit 62, p. 4):



The subject property and site are subject to the 1992 North Bethesda/Garrett Park Master Plan (the “Master Plan”) and was not recommended for rezoning. Exhibit 62, p. 5. The Master Plan recommended that “the zoning for all parcels in North Bethesda, outside of [the above areas], remain unchanged with the single exception of White Flint Neighborhood Park” (page 35). *Id.* After

the adoption of the Master Plan, Montgomery County adopted a new Zoning Ordinance in 2014, which also retained the R-60 Residential Detached zoning district for the Subject Property which allows development under either the Standard or Optional Methods of Development. *Id.*

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.

The Staff-defined neighborhood is shown in Figure 1 from the Staff Report, below (Exhibit 62):



The area identifies the properties that contribute to the community character and may experience the most direct impacts of the proposed rezoning. The Staff-defined neighborhood is primarily defined by the community of single-family detached homes that front the property to the north across Strathmore Avenue (Garret Park Estates), the single-family attached neighborhood to the west (Symphony Park townhouse community), institutional uses abutting the property to the south and east (The Music Center at Strathmore and The Mansion at Strathmore), and a public transit station (Grosvenor-Strathmore Metro Station). Exhibit 62, p. 4; Exhibit 34, p. 5. Other surrounding uses include nearby public and private schools and a church. Exhibit 34, p. 5. Three public parks or

playgrounds are also nearby: Garrett Park Estates Local Park, Druid Drive Neighborhood Park, and Garrett Park – Waverly Park. Exhibit 62, p. 4.

The Hearing Examiner accepts the staff-defined neighborhood as defined by the boundaries shown in Figure 1, above. The Hearing Examiner characterizes the area as predominantly residential with single-family detached and single-family attached homes with institutional uses to serve the surrounding community.

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

1. Proposed Development

The subject application seeks to rezone this R-60 property to CRNF 0.75 C-0.25 R-0.75 H-50, (Commercial Residential Neighborhood-Floating). Private roads, open spaces, environmental conservation areas, and infrastructure will also be implemented through the redevelopment process with access to the Academy of the Holy Cross maintained but redesigned through the redevelopment. Exhibit 34, p. 4. Following approval of the rezoning, future development on the site will relocate the entry drive, replace St. Angela’s Hall on Parcel A with a 145- bed residential care facility owned and operated by Brandywine Living, and locate up to 10 detached single-family dwellings and 115 attached townhouse units on the area currently occupied by athletic fields and landscaped lawns, for a total of 125 single-family dwelling units (including a minimum of 15% MPDUs). Exhibit 34, p. 9. No commercial uses are proposed and a prohibition on commercial uses is listed as a binding element to this application. Exhibit 34, p. 19. The property’s existing R-60 zone only allows townhouses by limited or conditional use and residential care facilities by conditional use only, therefore, the Applicant is seeking to rezone the property to the CRNF zone to permit both uses by right as a comprehensive project. Exhibit 53, p. 2.

The planned 145-bed residential care facility will be owned and operated by Brandywine Living, a senior housing and care provider. Exhibit 53, p. 2. Brandywine Living was founded in

1996 and is headquartered in Mt. Laurel, New Jersey. *Id.* The proposed residential care community would provide a wide array of services and amenities that are “unique to Brandywine.” *Id.* Brandywine plans to also provide memory care services at this location and supervision for individuals with dementia that allows residents to age in place by broadening the continuum of care. *Id.* “Brandywine communities also provide highly trained licensed nurses on site all day and night every day of the year.” *Id.* While the design of the proposed residential care facility is yet to be determined, the Applicant states that Brandywine designs each of its buildings to “fit the context of the neighborhood around it and uses architectural styles compatible with the surrounding area.” *Id.* The Applicant asserts that the development as a whole proposes a “unique multi-generational community, where families, students of the adjacent schools, and seniors can interact and benefit from proximity to one another.” *Id.* Ms. Brenda Bacon, President and CEO of Brandywine Living testified:

The opportunity to develop an intergenerational place for people to be is very attractive to us, particularly for our seniors, for our parents. We’ve done two communities like that before where they were townhouses and then a senior living, assisted living community...it really fosters the opportunity for empty nesters, for example, to have their grandchildren come over and also to have their moms and dads next door. So is a great opportunity. Is almost a perfect situation for just the quality of life that it brings to all of the generations. T. 46-47.



Figure 6: Conceptual Architectural Precedents

2. Floating Zone Plan and Binding Elements

A Floating Zone Plan (FZP) shows the 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. Permitted uses on the Site include up to 125 single-family detached and attached dwelling units (including a minimum of 15% MPDUs) and a residential care facility (with up to 145 beds).
2. Commercial uses are not permitted on the Property, except permitted accessory uses associated with the residential care facility.
3. A natural surface trail must be provided along the western side of the Site that is subject to a public access easement
4. The Property is limited to no more than three points of vehicular access from Strathmore Avenue.
5. The Property must be subdivided to formally delineate the boundary of the area subject to the rezoning at the time of Preliminary Plan.
6. A Phase I Noise Analysis must be submitted with the Preliminary Plan to identify noise levels that might impact interior and exterior spaces subject to the Planning Department's Noise Guidelines. The analysis must be performed by a qualified acoustical engineer. If a combined Preliminary/Site Plan is submitted, the Site Plan must include recommendations from a qualified acoustical engineer to mitigate excessive noise levels per the Noise Guidelines.

Staff advised that since the requested floating zone was not recommended in the Master Plan, requested density cannot exceed 1.25 FAR, as the tract is greater than 3 acres and the existing zoning is R-60. Exhibit 62, p. 18. The application requests 0.75 in overall FAR and all residential units and the residential care facility are within the 50-foot height limit established by the CRNF Zone. *Id.*

Staff noted that the Master Plan “urges special attention to the design of existing and proposed streetscapes to encourage pedestrian usage, particularly along corridors that are within walking distance to transit.” Exhibit 62, p. 18. To improve the condition of existing

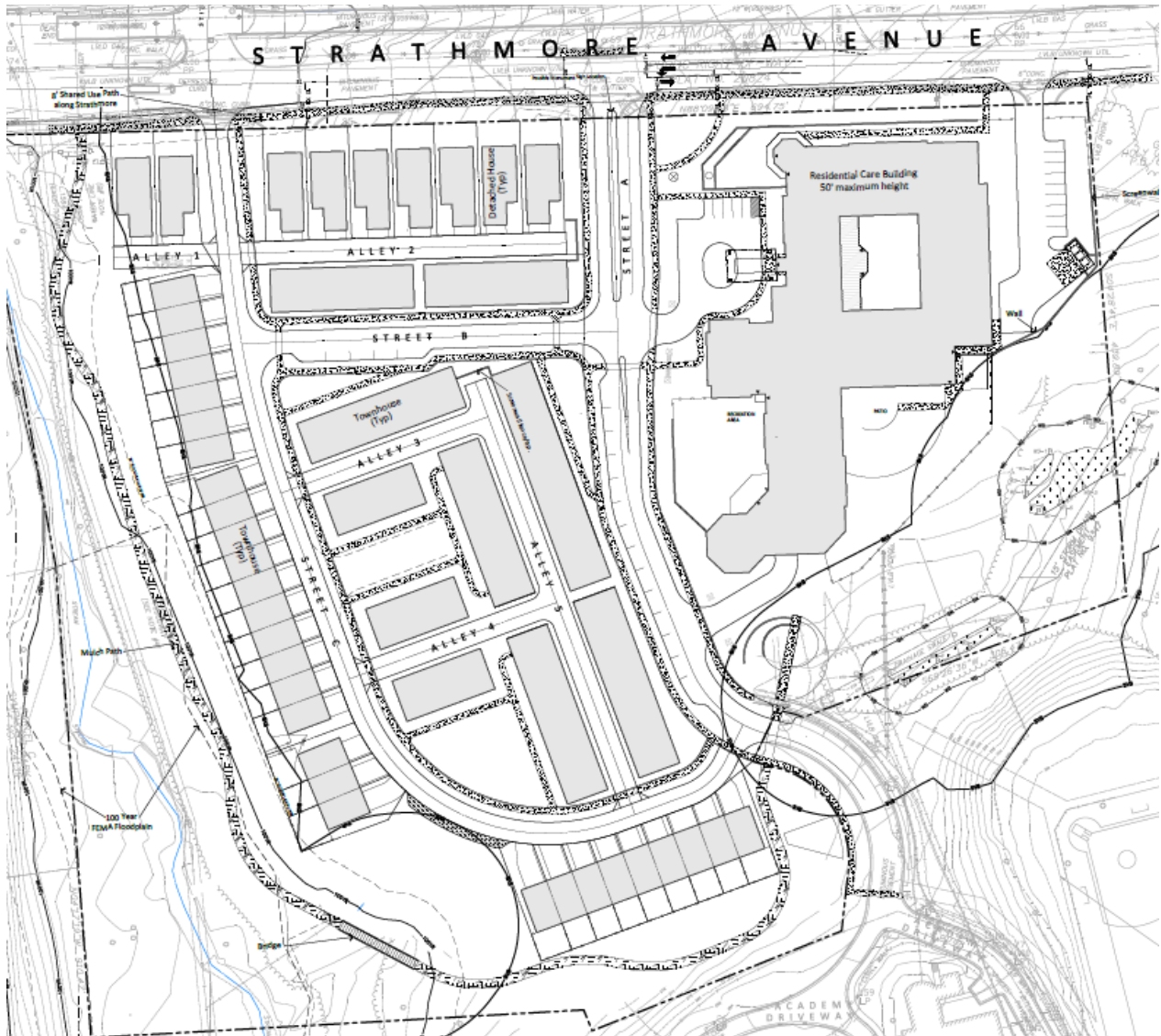
streets, the Master Plan recommends that addition of street trees to create an appropriate buffer and the widening of sidewalks, and where necessary, additional special design treatment. *Id.* The subject application proposes upgrades to the Strathmore Avenue frontage through the construction of the master-planned 10-foot-wide shared use path with 6-foot-wide green buffer which, according to Staff, will “improve the pedestrian experience along this stretch of road to reach various surrounding destinations, including Holy Cross School and the Garrett Park Middle School.” *Id.* at 19. The application further provides for the construction of new internal streets to the site that “will contain street trees between the curb and sidewalk and, wherever possible, on-street parking.” *Id.*

Figure 5 from the Staff Report (below) shows the proposed floating zone with proposed improvements and features of the lot and neighboring properties (Exhibit 62, p. 8):



Figure 5: Proposed Floating Zone Plan [rendering]

An excerpt from the Floating Zone Plan with binding elements is depicted below (Exhibit 88(a)):



D. Environment

Staff advised that Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) No. 420211410 was approved on July 27, 2021 for the property. Exhibit 62, p.11; *See* Exhibits 19 & 20. The NRI/FSD illustrates that more than 10 acres of the 35+ acres that make up the subject property is encumbered by stream valley buffer, with approximately four acres of the property lying in stream valley buffers. *Id.* The 2021 Environmental Guidelines require that these stream valley

buffers are preserved and restored as part of the subject application and the Applicant proposes minor encroachments into the stream valley buffer for a natural surface trail. *Id.* Joshua Sloan stated in his report that the proposed new residential uses will be “enveloped with stream valley buffer plantings, including new conservation areas replacing the existing lawns.” Exhibit 34, p. 11.

The property is within the Rock Creek watershed and streams run along the eastern, southern, and western edges where three (3) non-tidal wetlands are present. Exhibit 62, p.11. Staff notes that after being piped under the driveway, the tributary from Parcel A runs into the western stream, which continues to the south, and a portion of this stream is within a FEMA 100-year floodplain. *Id.*

According to Staff, the site contains 4.06 acres of forest with 152 significant and specimen trees on-site and/or within 100 feet. Exhibit 62, p. 11. There is 0.64 acres of forest and 46 significant and specimen trees, and one soil type (16D) classified as highly erodible, along with areas of steep slopes (15% to 25%) with erodible soil, and steep slopes greater than 25%. *Id.* The Applicant states that there are no observed or known rare, threatened, or endangered species, nor historic resources on the Property. Exhibit 34, p. 24.

Staff notes that due to the shape and topography of the site, protective buffers create challenges for the site’s new layout. Exhibit 62, p. 11. The development proposes a nature trail that “will traverse the primary open space area behind residential units on the western side of the Property.” *Id.* Along this trail, Category I and II Conservation Easements are proposed and a second area of Category I and II Conservation Easements is proposed along the southeastern tributary. *Id.* “Other encroachments into the stream valley buffer include some stormwater management features, a small portion of Street C for fire access that is permeable pavement, and rear yards and fencing, all as allowed by the Environmental Guidelines.” *Id.* Staff advises that to meet reforestation and afforestation requirements a total of 2.84 acres is required for new plantings. Exhibit 62, p.11. To

meet this requirement, the Applicant proposes to plant 3.0 acres and an “extra area of plantings as enhanced forestation for mitigation for proposed stream buffer encroachments.” *Id.* With respect to the Master Plan’s stated objectives of preserving green and open space, the Applicant states that the development supports the objective of protecting green areas and open spaces “through the preservation of approximately 5.7 acres in stream valley, 2.7 acres of which is already forested and 3 acres of which will be reforested, and the provision of a minimum of 10% open space throughout the Project.” Exhibit 53, p. 6.

E. Stormwater Management

The property does not currently utilize stormwater management best practices. Under this application, the Applicant proposes to implement micro-bioretenion features “to the maximum extent practicable to meet the current stormwater requirements.” Exhibit 62, p. 12. Staff advises that due to the topography and location of streams around the site, new stormwater management facilities will be placed at low points to capture and filter roadway runoff. *Id.*

The Applicant’s Land Planner, Mr. Sloan, in his Land Planning Report, states that the proposed development is subject to the Maryland Stormwater Management Act of 2007 and the Montgomery County Bill No. 40-10 which requires managing stormwater runoff by using “Environmental Site Design” (ESD) to the “Maximum Extent Practicable” (MEP). Exhibit 34, p. 25. Mr. Sloan describes ESD as “utilizing small scale stormwater management practices, non-structural techniques, and better site planning to mimic natural hydrologic runoff characteristics and minimize the impact of development on water resources,” like the planter box style Micro-Bioretenion facilities proposed in this application. *Id.* Mr. Amateau testified that the volume of stormwater to be managed on site was 44,491 cubic feet. T. 85. The site will be developed with large areas of impervious surface and porous surfaces contain a mixture of soils in both hydrologic group “B” and “C”, therefore, the site will be required to implement micro-bioretenion structures

to the maximum extent practicable (MEP) to meet the stormwater requirements. Exhibit 34, p. 25. Mr. Amateau estimated the amount of impervious surface proposed to be 6.18 acres of the 15-acre site. T. 85. Mr. Sloan stated that “the project development team will work with the County at each Phase through the Stage 3 process, to ensure ESD to MEP implementation.” Exhibit 34, p. 25.

F. Public Facilities

According to Staff, the 2020-2024 Growth and Infrastructure Policy went into effect on January 1, 2021. Since Staff approved scoping for the Applicant’s traffic study in November 2020, Staff advised that the study was subject to the previous 2016-2020 Subdivision Staging Policy. Exhibit 62, p. 14. The property was previously located within the North Bethesda orange policy area, as determined under the 2016-2020 Subdivision Staging Policy, which required both Critical Lane Volume (CLV) and Highway Capacity Manual (HCM) delay analyses. *Id.* LATR compliance is required, therefore and the Applicant submitted a traffic impact study to determine multimodal adequacy. *Id.* Staff advised that future traffic analysis will be completed in accordance with the 2020-2024 Growth and Infrastructure Policy will review the project under the Grosvenor Policy Area if this LMA is approved and implemented. *Id.*

A traffic study was completed in accordance with LATR standards and admitted into the record as Exhibit 47 and a supplemental analysis admitted into the record as Exhibit 58(c). The analysis was conducted and the report was prepared by traffic engineer Katie Wagner, Director of Planning and Engineering with Gorove Slade. Ms. Wagner testified that the results of the original LATR analysis indicated “that the surrounding network can adequately support traffic generated by the proposed project without any roadway improvements or mitigation.” T. 157. Ms. Wagner further commented that taking into account the impacts of the COVID-19 pandemic, her team “included a growth factor to assume that schools were not in session and people were telecommuting. In addition to that, “we had to balance traffic volumes along the roadway as well

as take into consideration the schools that were in the study area that were not operating at [regular] capacity.” T. 158. While Planning staff accepted the conclusions of that original study, Maryland Department of Transportation (MDOT) and State Highway Administration (SHA) staff expressed concerns regarding the application of low traffic numbers, and so the traffic study was supplemented:

“In response to this, the Applicant team prepared a supplemental analysis using historic traffic counts that were available at study area intersections from 2016 and 2013. This analysis provided a conservative analysis as the traffic counts higher than those used in the LATR analysis. In addition, the analysis not only incorporated counts and that were higher than what we collected in 2020, but we also applied background growth to bring the counts from 2013 and 2016 up to 2020 rates and these rates were based on historical counts collected by SHA to account for growth year over year in the area.” T. 159.

As a result of the supplemental analysis, Ms. Wagner testified that “[mitigation] was needed at the Strathmore Avenue and the center site driveway intersection.” This was needed in the form of “[a] traffic signal, as well as a westbound left turn lane into the new site, primarily to mitigate the traffic [and] generated by the school.” T. 159-160. Community members questioned the validity of the traffic analysis based upon the counts, timing, volume, and the growth factor applied, coupled with their practical experience living in the community, including concerns regarding “significant traffic heading east from Rockville Pike traveling towards the Connecticut Avenue corridor.” T. 170-205, 206, 215. Mr. Kip Edwards testified that community members were concerned that “planning board staff based their conclusions and recommendations on traffic reports which the community felt were inherently flawed.” T. 246. Ms. Vanessa Lide, a community member, stated that, “I also find it very, very difficult to accept that if you are putting that many people, that many staff into an assisted living facility and that many new homes” that traffic counts would be that low. T. 299. Mr. Edwards also expressed concern regarding, “The notion that the Applicant will relieve the burdens of traffic that their development creates by encroaching upon that green buffer space

was very concerning for people” referring to the 1-3 ft. portion of Strathmore Avenue shoulder that would be encroached upon for the planned turn lane, a traffic mitigation component proposed to alleviate delays on Strathmore Avenue. T. 247-248. Ms. Lide echoed these sentiments, as her property fronts on the Strathmore Avenue access drive adjacent to the proposed lane widening. T.

380. Responding to those concerns expressed previously, Ms. Wagner testified, in part:

In existing conditions, the delays at this specific intersection, Stillwater and Strathmore, drastically exceed the congestion standard due to a number of reasons. Primarily being the offset of the HCA driveway and the Stillwater Avenue intersection. This caused significant vehicular delays. The current driveway only has one outbound lane causing delays due to any vehicle wanting to turn left and needing gaps in traffic in both directions. And then, a significant delay is decreased because we have taken away that shift and aligned Stillwater and site driveway intersections as well as shifted all of the school driveway traffic volumes.

T. 160.

In further response to community comments and concerns, Ms. Wagner explained:

We collected traffic counts in December of 2021 in response to community concerns that were raised at meetings as well as received in correspondence to really have a better understanding of making sure that we conducted a traffic study in the most appropriate manner given the ongoing pandemic. And when we collected traffic counts the pandemic was not where it is now and there was -- schools were really back in session and we found that traffic counts were -- traffic counts that we collected in 2021 were [s]till less than what were used in the supplemental analysis to address the SHA and MCDOT concerns.”

T. 160-161.

Based upon the Applicant’s transportation study and supplemental study, Staff found that each of the studied intersections remain within acceptable levels of congestion and the LATR capacity analysis was consistent with the Department’s LATR Guidelines. Exhibit 62, p.14. “While existing delay for the Stillwater Avenue and Strathmore Avenue intersection exceeds the 71 second delay per vehicle standard,” traffic mitigation measures proposed by the Applicant including the realignment of the driveway for the Academy of the Holy Cross and construction of a new driveway at the Stillwater Avenue approach will better accommodate school traffic during the AM peak hour.

Circulation

[illegible]

With respect to public transit, Ride-On Routes 5 and 37 operate along the Strathmore

Avenue frontage and both the Grosvenor-Strathmore Metrorail and Garrett Park MARC stations are located within a 1/2 of mile from the Site. Exhibit 62, p. 15. Staff notes that a formal determination of adequacy is required at the time of Preliminary Plan. *Id.*

Water and Sewer

Staff advises that the property is “served by a 12” water line along Strathmore Avenue and a 15” sewer line running north-south through the Property.” Exhibit 62, p. 15. Existing water and sewer infrastructure will not require upgrades to the service line or installation of a pump station due to the proposed development. Exhibit 53, p. 10. Electric, gas, and communications utilities will be provided via a public utility easement connected to Strathmore Avenue and running along the central drive, alleys, and behind the proposed front-load townhouses. *Id.*

Schools

Staff advises that the property is located within the Walter Johnson School cluster, which includes the nearby Garrett Park Elementary School, Tilden Middle School, and Walter Johnson High School. Exhibit 62, p. 15-16. While the proposed residential care facility will not generate any school-aged children to impact school capacity, the remaining residential portion of the proposed development “may require a Utilization Premium Payment at the time of building permit for one or all the schools.” Exhibit 62, p. 16. Staff notes that further assessment of school capacity will be conducted at the time of Preliminary Plan.

Staff concluded that a preliminary analysis indicates that public facilities will be adequate for the proposed development while the Planning Board will make a final determination at the time of Preliminary Plan. Exhibit 62, p. 16.

G. Community Concerns

This application has generated significant community participation and comment. Staff advises that the Applicant has complied with the required notification signage and has informed all

the adjacent property owners, community organizations, and homeowners' associations within one-half mile of the Property about the Application and the proposed Project. Exhibit 62, p. 27. Staff summarized the Applicant's public outreach as follows:

- January 19, 2021 - Virtual meeting with Garrett Park Mayor and Staff
- February 12, 2021 - Virtual meeting with Garrett Park Estates and Friends of White Flint
- February 26, 2021 - Virtual Meeting with Symphony Park Homeowners Association
- March 30, 2021 - Virtual Meeting with Holy Cross Community
- October 4, 2021 - Virtual Meeting with Representatives of Garrett Park Estates and White Flint Park Citizens Association
- November 8, 2021 - Virtual Meeting with Holy Cross Parish and School Community
- email correspondence with Grosvenor III Park Condominium Association, Stoneybrook Homeowners Association, Grosvenor Citizens Association, Parkside Condominium, and Strathmore Park Condominium.

Exhibit 62, p. 27-28.

Staff noted additional concerns related by community members with respect to the overall change of the school property, traffic impacts, and pedestrian safety concerns. Exhibit 62, p. 27-32. Staff also received correspondence in support for the proposed rezoning. Community concerns raised prior to the LMA hearing are comprehensively addressed in the Staff Report, p. 27-32. *See* Exhibit 62. Mr. Shaffer, on behalf of the community associations, in his opening remarks on the second day of testimony, stated that residents' concerns primarily had to do with traffic and the environment, as the testimony from community members confirmed. T. 244. Ms. Gerilee Bennett, councilperson for the Town of Garrett Park, testified as to a common theme from other community members that "We haven't been shown what other options were considered and what the pros and cons of those options were." T. 313.

Staff noted that many questions and concerns raised by community members will be addressed through subsequent preliminary plan and site plan review processes, which are independent of this LMA process by the Hearing Examiner. Specific community testimony will be referenced throughout the following findings and conclusions.

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...¹

* * *

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...

The entirety of the subject property falls within the boundaries of the 1992 North Bethesda/Garrett Park Master Plan (“Master Plan” or “Plan”). Exhibit 62, p. 17. The Master Plan area is bordered by I-270 to the west, the City of Rockville to the north, Rock Creek Park to the east, and I-495 to the south. *Id.* The subject property is listed as one of the “Key Vacant or Redevelopable Parcels” in the Plan area, or Parcel #14. Exhibit 34, p. 12.

The Master Plan lays out both general recommendations for the Master Plan area and specific recommendations for the subject property. According to Staff, the proposed rezoning will support the objectives of the plan “to encourage land use patterns that preserve and increase the variety of the housing stock particularly with elderly housing, provide safe and efficient transportation, provide facilities to meet the recreational needs of the public, and reduce environmental impacts.” Exhibit 62, p. 17. General recommendations of the Plan include: focusing future development at Metrorail stops, new transit stations, and areas best served by transportation infrastructure, with more emphasis on housing; reduction in block sizes in the vicinity of Metro areas; improvements to the pedestrian friendliness of streets, particularly near transit nodes; and provision of a landmark quality and sense of place for nodal areas and districts. *Id.* Staff opined that the proposed development supports these objectives as it “achieve[s] this critical land use and

¹ 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.

transportation linkage” by providing residential housing to replace a vacant retirement home and “deliver more housing than was previously on the Site” while accessible to nearby rail service at the Grosvenor-Strathmore Metrorail Station, public bus stops and routes that traverse Strathmore Avenue, coupled with the construction of an “internal system of new private roads that create short, walkable blocks.” *Id.* Based on her experience with other Brandywine sites, Ms. Bacon testified that many employees of the Brandywine residential care facility will likely use public transit for their daily travel to and from work. T. 57. The Applicant stated that the provision of housing is repeated as a primary objective throughout the plan, which calls for development of “[a] wide range of housing types within each neighborhood...to avoid large concentrations of any single type and increase the potential for pedestrian connection between diverse housing types,” “preserv[ing] and increase[ing] the variety of housing stock, including affordable housing” and “encourag[ing] a mixture of land uses in redeveloping areas to promote variety and vitality.” Exhibit 53, p. 5, citing the Master Plan at pp. 12, 33, 35.

In addition to general recommendations, the Master Plan also includes recommendations specific to 4910/4920 Strathmore Avenue. Exhibit 62, p. 18. Listed as Parcel No. 14, the Plan specifically identifies the 35+ acre tract for the Academy of the Holy Cross which includes the school buildings, athletic fields, and a former group home for retired nuns. Exhibit 62, p. 18 (citing the Master Plan, pp. 80-81). Also linking to nearby transit, Staff notes that the Plan “supports the continued existence of the Academy and the retirement home at this location and recommends that the existing R-60 zoning be confirmed.” *Id.* Staff opines that the application satisfies this specific objective by retaining the Academy of the Holy Cross School but replacing the now vacant retirement home with a new but analogous use as a residential care facility for seniors, and adding residential housing as infill development in a previously unimproved portion of the lot, all within

proximity to a transit node. Exhibit 62, p. 18. The Plan specifically recommended retaining the Academy of the Holy Cross because of its proximity to excellent transit. Exhibit 34, p. 13.

The Master Plan also emphasizes other objectives for 4910/4920 Strathmore Avenue including “preserving green areas and institutional open space for environmental protection, wildlife sanctuary, recreation, and visual relief.” *Plan*, p. 81. Staff notes that portions of the existing open lawn areas on the property are proposed to be protected through Conservation Easements with native plantings that can provide water quality protection, wildlife habitat, and visual relief from the surrounding development. Exhibit 62, p. 18. Portions of these conservation easements are proposed to be located along a planned nature trail located along the western edge of the property which will be open to the public during daylight hours. *Id.*

Staff further noted that the proposed development will “complement the existing sense of place” created by the surrounding residential neighborhoods to the north and west and educational and institutional spaces to the southwest and east. Exhibit 62, p. 17. Staff concluded that the proposed development “aims to fit within the existing neighborhood fabric of this well-established community while also delivering exceptional urban design and architectural detailing to further articulate quality.” *Id.*

Transportation

According to Staff, the Master Plan “makes significant recommendations to encourage and support transit use, including expansion to the public transportation system.” Exhibit 62, p. 19. The Master Plan recommends that “future development be focused on Metrorail (Metro) stops, new transit stations, and areas best served by transportation infrastructure, with more emphasis on housing.” *Id.*; citation to Master Plan, unknown. Staff notes that the proposed site is in close proximity to existing transit services including bus and rail services and the application includes: improving access to transit services through upgrading pedestrian and bicycle infrastructure along

the corridor; constructing a new master-planned 10-foot-wide shared use path along Strathmore Avenue to support walking to the nearby Grosvenor-Strathmore Metrorail Station; construction of a new internal road and pathway system with five-foot wide asphalt sidewalks throughout the Site's new roads and natural surface trail along the western edge of the Property. *Id.* With respect to public transit, Mr. Sloan added that Ride-On Routes 5 and 37 run along Strathmore Ave while Routes 37 & 46 run along Rockville Pike. Exhibit 34, p. 6. Further, he estimated that "the Garrett Park MARC station is a 12-minute walk to the northwest and the Grosvenor-Strathmore Metro Red Line Station is a 10-minute walk along the trails in Symphony Park and the Music Center at Strathmore." *Id.* Mr. Douglas Burdin, a community member, testified that because of the site layout, residents living in this new development would be required to use Strathmore Avenue and a walking path in Symphony Park to access the Metro station, as the planned development does not contain a cut-through connecting to Cloister Drive or Tuckerman Lane. T. 340-341. Mr. Burdin estimated this walk-time to be between 13-18 minutes. *Id.* Mr. Burdin estimated this same walk-time to the Garrett Park MARC station. *Id.*

Senior Care Housing

Staff notes that the Master Plan recommends supporting adult day-care facilities and affordable elderly housing including through the special exception process, and encouraging the location of elderly housing and elderly support services along public transit. Exhibit 62, p. 20. Staff opines that the subject application supports these recommendations by replacing the vacant St. Angela's Hall with a new senior care facility located in close proximity to public transit and serving the needs of seniors as identified in the Plan. *Id.*

In sum, Staff concluded that the underlying application furthers the public interest by supporting the goals and recommendations of the Master Plan through the project's proposed uses, land improvements including stormwater management and conservation easements, and the design

of the residential care facility and residential housing as a complement to the surrounding residential neighborhoods. Exhibit 62, p. 21.

Conclusion: The Hearing Examiner agrees with Staff and the Applicant that the proposed rezoning supports the general objectives of the North Bethesda/Garrett Park Master Plan, and satisfies the intent and standards of the floating zone by furthering the goals of the Plan to provide housing near public transit and mixed-use nodes, and furthers the public interest by advancing the goals and objectives of the Master Plan. In closing argument, Mr. Shaffer makes the assertion, based on the testimony offered at the hearing, that the proposed development is not a transit-oriented development as envisioned by the Master Plan. The Hearing Examiner disagrees, and finds that the proposed residential development restricts commercial uses as a binding element and its location within 15 minutes of Metro, MARC, and public bus lines will service the single-family residential and residential care facility (residents and staff), in furtherance of the goals of the Plan. Therefore, the preponderance of 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...

* * *

The existing community is comprised predominantly of attached (e.g. townhouse) and detached residential homes and condominiums as well as nearby institutional uses such as the Music Center at Strathmore, public transit at the Grosvenor-Strathmore Metro stop, and neighborhood schools. Exhibit 62, p. 3; Exhibit 34, p. 5. The proposed development includes single-family detached homes, single-family attached homes, and a residential care facility to serve seniors all with a maximum height of 50 feet. *Id.* The rezoning of the property to the CRNF zone would allow for the development of the residential care facility portion of this application by right, in addition to increased density for single-family housing. Staff concluded that the proposed mix of residential uses was compatible with adjacent development, which includes a townhouse development to the west, institutional uses to the south and east, and a single-family residential neighborhood to the north. Exhibit 62, p. 22. Mr. McLaurin testified that “when we create infill communities like this which have surrounding context around our immediate site, it's important that we focus on compatibility. And one aspect of compatibility is height and scale. So I think we, after studying the property, we come up with a land plan that I believe addresses that.” T. 231. Under the requested CRNF zone, up to 1.25 FAR is permissible while the application requests 0.75 FAR with no commercial uses except for permitted accessory uses associated with the residential care facility. Exhibit 62, p. 18. Staff found this density more consistent with the abutting and confronting existing residential uses. Exhibit 62, p. 23.

Staff noted that the closure of St. Angela's Hall and major mixed-use redevelopment proposals on parcels nearby or adjacent to the Grosvenor-Strathmore Metrorail Station make

rezoning an appropriate land use tool rather than a scheduled Master Plan update “to meet the intent of the governing plan that prioritizes housing.” Exhibit 62, p. 22. Staff further noted that according to the 2020 housing needs assessment, Montgomery County currently faces a housing shortage and estimates that more than 60,000 new housing units are needed by 2040. Exhibit 62, p. 22. Staff concluded that this application and proposal will help meet an acute need for diverse housing within Montgomery County. *Id.* The Applicant’s Land Planning Report, prepared by Joshua Sloan at VIKA, stated that:

...the proposed development will not have any adverse impact to the existing character of the neighborhood: detached lots will face onto Strathmore Avenue enhancing the residential character of the street; the existing institutional use will be replaced with a residential building ensuring compatible uses and maintaining the feel of the clustered civic, institutional, and cultural building types to the east; and the townhouses to the west are complemented by the proposed interior townhouse uses with similar block and open space patterns.

Exhibit 34, p. 5-6.

Regarding the planned design of the residential care facility, Ms. Brenda Bacon of Brandywine testified:

“The thing that I think is important is that sometimes people think that senior living communities or nursing homes are institutional settings, [but] our communities are never institutional looking. They are more residential looking because these are indeed residences for seniors.” T. 48.

Conclusion: The Hearing Examiner finds that the proposed development will be compatible with adjacent properties and the surrounding area. The proposed residential care facility will replace and provide necessary improvements to the previous retirement home with an updated residential care facility to serve seniors. The FZP utilizes the site’s topography to mitigate the height, size, and impact of the proposed buildings, as the lot slopes east to west. T. 150; *See* Exhibit 40. The proposed residential housing serves the needs of increased residential housing demand as identified in the Master Plan, by providing single-family housing specifically located in close proximity to

public transit at the Grosvenor-Strathmore Metro station, Garrett Park MARC station, and bus routes. For these reasons, the Hearing Examiner finds that these standards are satisfied.

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...”

LATR & Traffic

According to Staff, the 2020-2024 Growth and Infrastructure Policy went into effect on January 1, 2021. Exhibit 62, p. 14. The scope of the Applicant's traffic impact study was approved by Staff in November of 2020 and as such, the transportation study for the Local Map Amendment was subject to the previous 2016-2020 Subdivision Staging Policy. *Id.* At the time of the review, the subject property was located within the North Bethesda orange policy area, as determined under the 2016-2020 Subdivision Staging Policy. *Id.* Under the North Bethesda orange policy area, LATR compliance is required, and the Applicant submitted a traffic impact study to determine multimodal adequacy including both Critical Lane Volume (CLV) and Highway Capacity Manual (HCM) delay

analyses. *Id.*

In accordance with the 2016-2020 *Subdivision Staging Policy*, a transportation study was conducted by Ms. Katie Wagner, Applicant's traffic engineer, to analyze the congestion levels at nearby intersections to satisfy the LATR test, as preliminary analysis determined that peak a.m. and peak p.m. trips generated by the proposed land uses would exceed the 50-trip threshold. Exhibit 62, p. 14. *See* Table 2 below for site generated trips. Staff notes that Preliminary Plan will be subject to the 2020-2024 *Growth and Infrastructure Policy* (GIP) and a new transportation study will be required as part of that analysis. *Id.* Critical Lane Volume (CLV) and Highway Capacity Manual delay analysis (HCM) conducted by Ms. Wagner are described below.

With respect to Critical Lane Volume (CLV) and Highway Capacity Manual (HCM) delay analysis, the intersection congestion standards for the policy area are a CLV of 1,550 and 71 seconds of delay per vehicle. Exhibit 62, p. 14. As demonstrated in Table 3, provided in the traffic engineer's report and reproduced below, each of the studied intersections remain "within acceptable levels of congestion." *Id.* The traffic study further concluded, as did Staff, that the LATR capacity analysis was consistent with the Department's LATR Guidelines in that while existing delay for the Stillwater Avenue and Strathmore Avenue intersection exceeds the 71 second delay per vehicle standard, the proposed realignment of the driveway for the Academy of the Holy Cross and construction of a new driveway at the Stillwater Avenue approach will accommodate school traffic during the AM peak hour sufficient to mitigate the capacity delay. Exhibit 62, p. 14. Staff concluded that the traffic study demonstrates that "all intersections within the study area will operate within the policy area's congestion standards." *Id.*

Mr. Kip Edwards, a member of the community, testified that the community had concerns regarding the credibility of the traffic study and therefore purchased a traffic counting software service called Camlytics that uses "machine learning to count cars which enter and exit the frame"

to conduct their own lay analysis. T. 249. Mr. Edwards testified that the Camlytics analysis resulted in a traffic count that was “much higher than the numbers used in the August 2021 LATR supplemental report, which is what planning board staff ultimately relied on when they met their conclusions.” T. 250. Ms. Wagner responded that she reviewed the video and compared the video recorded by the community with her own analysis and “found that the spreadsheet overexaggerated the number of vehicles traveling along Strathmore Avenue.” T. 162. Ms. Wagner also noted that the video was “not collected on a typical weekday as required by the park and planning staff.” *Id.* Staff noted that future traffic analysis will be completed in accordance with the updated 2020-2024 Growth and Infrastructure Policy, with the property now being located in the Grosvenor Policy Area and subject to those requisite standards. *Id.*

Mr. Douglas Burdin, a community member, testified that despite measures taken by the Academy of the Holy Cross to assist with traffic control, “...the traffic still backs up and the delays are still significant. And I have also, occasionally, been stuck trying to get out of my development, either going east or west and had delays from traffic. And I have been personally in that traffic occasionally that gets backed up on Strathmore.” T. 342. Mr. Burdin also expressed concern about the “massive delays” noted in the LATR study and the supplemental analysis with respect to the studied intersections, and the reliability of the proposed traffic mitigation measures (e.g. traffic signal, turn lane, realignment of Stillwater) proposed to alleviate that delay and congestion.

Land Uses	Square Feet, Units, or Beds	Site-Generated Peak-Hour Person Trips	
		Morning	Evening
Former Use			
Assisted Living	38,000 sf.	12	15
Total Existing Person Trips		22	28
Proposed Land Uses under this application			
Townhomes	115 Units	45	56
Detached Single Family Residential	10 Units	10	9
Assisted Living	150 Beds	24	32
Proposed Subtotal Vehicular Trips		79	97

Proposed Subtotal Person Trips	127	154
Net Increase in Peak-Hour Person Trips	+105	+126

Table 2: Site-Generated Peak-Hour Person Trips

	AM				PM			
	Existing CLV	Future CLV	Existing Delay	Future Delay	Existing CLV	Future CLV	Existing Delay	Future Delay
Rockville Pike and Strathmore Avenue	716	1,289	16.8	21.4	964	1,538	23.3	29.1
Stillwater Avenue and Strathmore Avenue	862	1,033	445.2	2.0	757	1,102	5.3	1.7

Table 3: Existing and Future Traffic ImpactOther 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, a final determination of the adequacy of other public facilities will be determined by the Planning Board at preliminary or site plan approval. Exhibit 62, p. 15. However, Sections 7.2.1.E.1.b and 7.2.1.E.1.c, as well as Section 5.1.2.A.2, permit the Hearing Examiner to evaluate other public facilities in which compatibility, the public interest, and the intent of the floating zone are satisfied. Staff concluded that “a preliminary analysis indicates that public facilities will be adequate for the proposed development.”

With respect to circulation, existing and future vehicular access to the site is provided primarily from three access points on Strathmore Avenue. The primary entrance/exit will be utilized for the proposed residential care facility and the Academy of the Holy Cross, and secondarily for the single-family residential portion of the development. The second access/exit on Strathmore Avenue will be located more proximate to the single-family homes, and is intended to primarily serve those residences and only secondarily for the school and residential care facility. And the third access/exit will be located proximate to the rear of the residential care facility and will only

be used for loading/unloading, deliveries, and other servicing for the residential care facility including limited employee parking. Exhibit 34, p. 10. This third access point will not be connected to the internal roadway system proposed throughout the site, and therefore cannot be utilized for the other uses or for school traffic. *See* Exhibit 37. Staff found that the vehicular access points along Strathmore Avenue were adequate to accommodate vehicular traffic anticipated by the proposed redevelopment while internal roadways and sidewalks will be upgraded under this application including the addition of a shared use path proposed along Strathmore Ave. Exhibit 62, p. 15. Staff noted that property's frontage currently lacks sidewalks and that "future roadways and sidewalks will be constructed to provide additional infrastructure along the frontage and internal to the Site." *Id.* Members of the community testified to their preference for access to the site be from Tuckerman Lane or Cloister Drive, at the southern end of the property. Jeff Amateau, the Applicant's civil engineer, testified that while that option was considered, site conditions including a steep slope, a stream valley buffer, floodplain and other topographic conditions made vehicular access from the southern portion of the property unfeasible. T. 75.

With respect to water and sewer services, Staff states that the property is currently served by a 12" water line along Strathmore Avenue and a 15" sewer line running north-south through the Property. Exhibit 62, p. 15. "Electric, gas, and communications will be provided via a public utility easement connected to Strathmore Avenue and running along the central drive, alleys, and behind the proposed front-load townhouses." *Id.*

With respect to public services like schools, police, and fire access, due to the proposed residential use, a subsequent Preliminary Plan will be subject to the FY21 Annual School Test under the 2020-2024 Growth and Infrastructure Policy (GIP). Exhibit 62, p. 15. Staff notes that the property falls within the Walter Johnson School cluster, which includes the nearby Garrett Park Elementary School, Tilden Middle School, and Walter Johnson High School. *Id.* at 16. Staff opines

that further assessment of school capacity will be conducted at the time of Preliminary Plan. *Id.* The Applicant submitted a fire access plan into the record (Exhibit 9) and a formal determination for fire access adequacy will be issued by the Montgomery County Department of Fire and Rescue Service.

Conclusion: 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 objectives contained in the Master Plan to support diverse residential housing options in close proximity to public transit. The concerns expressed by community members during this two-day hearing were real, sincere, well-considered, and reasonable, but 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. While the Hearing Examiner shares the reservations of community members with regard to traffic congestion on an instinctual level, as the development proposes dense residential uses on previously unimproved land and a vacant building, Ms. Wagner's methodology was sound and her testimony was credible with regard to the LATR study, the supplemental analysis, and the conclusions drawn from that study. Without evidence or compelling argument to the contrary, the Hearing Examiner accepts the LATR and supplemental analysis as satisfying this standard. The record reveals that the Applicant has demonstrated that the proposed development meets the LATR Guidelines and there is no credible evidence suggesting that other public facilities will be insufficient to meet demand.

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 Zones 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 proposed uses include single-family detached and single-family attached, as well as a residential care facility, “provide an appropriate mix of uses for the Property’s context, and the maximum height of 50 feet for all uses ensures compatibility within the Property’s setting.” Exhibit 62, p. 22. Staff further stated that “the proposed mix of residential uses is compatible with adjacent development, which includes a townhouse development to the west, institutional uses to the south and east, and a single-family residential neighborhood to the north.” *Id.* According to Staff, the arrangement of density and uses as proposed is more consistent with the abutting and confronting existing residential uses than the current state of the property, and the replacement of the currently vacant retirement home and parking lot with an updated building with amenities will be a “productive use that fits within the residential character and provides minimal parking spaces with direct view from the public realm.” *Id.* at 23. Mr. Sloan testified that the FZP meets the intent standard as:

“One, it provides a residential care facility, replacing the vacant building now for our aging

population. It provides housing including moderately priced dwelling units at a time when we are facing a housing shortage. It does place density appropriately near transit and other services. And it will significantly improve the environmental conditions of these two tributaries that drain to the Rock Creek by placing conservation easements on them and enhancing the habitat and forest in those areas.” T. 119.

With regard to integrating development into circulation networks, there was some community testimony questioning the purpose behind multiple access points to the property versus limiting access to one primary access point. Mr. Sloan responded that:

“Working with staff they required a second entrance to disperse traffic and give different options for people to access Strathmore Avenue, both pedestrians and drivers. So we took that requirement and worked on maintaining the primary entrance as our focal point for the community where it will sort all three different uses, where it will serve for fire and emergency access, and where it is the most safe, effective, and efficient for our primary point to get into and around the site. The secondary access, we worked with staff to align it with Stillwater and keep it at a size that would not impact any environmental areas, but otherwise we were working under a requirement of agency review for that. We think it does provide some benefits. It does get us closer to the Metro access at Strathmore Avenue that way and some other elements. But I think from a land planning perspective it was really driven by that dispersal of traffic required by staff.”

T. 374. Ms. Wagner’s testimony supported this reasoning by adding:

“We worked for months prior to developing this plan for the access scenarios with park and planning staff and determined that each access point was needed for a very specific reason. The Stillwater connection was adamantly proposed by staff that they wanted to have that as a secondary access point for residents, for emergency vehicles to connect to the community.”

T. 354

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, employing design strategies to mitigate the visual impact of the proposed single-family homes and the residential care facility, and expanding access points for vehicular and pedestrian safety and efficiency of access to eliminate queuing and traffic congestion, thereby satisfying the intent of a floating zone in furtherance of the public interest.

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***

Staff noted that the Master Plan confirmed the continuance of the institutional uses on the property (St. Angela's Hall and The Academy of the Holy Cross). Exhibit 62, p. 22. The Applicant reiterated that the Master Plan that recommended retention of the property's R-60 zoning is now almost 20 years old, and as stated on page VII of the Master Plan, "[m]aster plans generally look ahead to a time horizon of about 20 years from the date of adoption....[i]t is recognized that the original circumstances at the time of plan adoption will change over time, and the specifics of a master plan may become less relevant as time goes on." Exhibit 53, p. 8. As St. Angela's Hall has closed and major mixed-use redevelopment proposals for other properties adjacent to the Grosvenor-Strathmore Metrorail Station have progressed, Staff found that a rezoning was appropriate to address the surrounding changes as well as to meet the intent of the Master Plan that prioritizes housing. Exhibit 62, p. 22. Under the new CRNF zone, the property will help mitigate a housing shortage identified by a 2020 housing needs assessment, and locating that housing near public transit. *Id.* Staff noted that the FZP and accompanying application indicate that all open space and environmental requirements are satisfied. *Id.* The density proposed (.75 FAR) is half of the permitted density (1.50), and the application contains a binding element prohibiting commercial uses on site. *Id.*

Conclusion: The Hearing Examiner finds that these requirements are satisfied. The FZP will provide diverse housing options for families and seniors which supports Master Plan goals for single-family residential and senior housing, and self-limits with a restriction on commercial uses and a density below the maximum permitted under zone regulations.

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.***

The Applicant's Land Planning Report asserts that the purposes of the CRNF Zone are met under this application as the proposed development will "create a neighborhood appropriate to the setting with compatible uses and site design." Exhibit 34, p. 17. The uses allowed in the CRNF Zone are the same as those allowed in the CRN Zone including the proposed single-family and senior residential housing, while no commercial uses or commercial building types are proposed. *Id.* The Applicant proposes a "unique multi-generational community, where families, students of the adjacent schools, and seniors can interact and benefit from proximity to one another." Exhibit 53, p. 3.

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 density, height, and restriction on commercial uses will further ensure compatibility with adjacent development and the surrounding area. The CRNF Zone allows the flexibility to incorporate a new building to replace an aging one, and to provide diverse infill housing to

a previously unimproved site in a manner compatible with the surrounding area while minimizing environmental impacts through open space requirements, conservation easements, and protection of two stream valley buffers.

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-60 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

* * *

b. When requesting a Townhouse Floating (TF) zone, Apartment Floating (AF) zone, or Commercial Residential Neighborhood Floating (CRNF) 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 Residential Townhouse, Residential Multi-Unit, 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]

Per Section 59-5.1.3.C.2.b of the Zoning Ordinance, to request the CRNF zone for a property with a residential base zone, the property must “front on a nonresidential street” and “satisfy a minimum of two (2) prerequisites for each of the categories under Section

59.5.1.3.D.” The subject property fronts on Strathmore Avenue, which, according to Staff, is designated as an arterial road in the Master Plan, meeting the first requirement. Exhibit 62, p. 23. Further, Staff found that the LMA Application meets the following prerequisites in the three (3) categories listed below:

1. Transit and Infrastructure:

- a. At least 75% of the site is within $\frac{1}{4}$ mile of a Level 3, $\frac{1}{2}$ mile of a Level 2, or $\frac{1}{4}$ mile of a Level 1 transit station/stop.
- b. 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.

2. Vicinity and Infrastructure:

- a. The site is adjacent to a route that provides access to an existing or master-planned school within $\frac{1}{2}$ mile.
- b. The site is adjacent to a pedestrian route that provides access to existing public park and recreation facilities that satisfy a minimum of 30% of the recreation demand under the Planning Board’s Recreation Guidelines, as amended, within $\frac{3}{4}$ mile.

3. Environment and Resources:

- a. The limits of disturbance for the development will not reduce the forest cover to less than an area of 10,000 square feet and width of 35 feet at any point.
- b. The site does not contain any rare, threatened, or endangered species or critical habitats listed by the Maryland Department of Natural Resources.

Exhibit 62, p. 23; *See* Section 5.1.3.D (and Table 5.1.3.D) for a full list of eligible prerequisites.

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 CRN Zone in the CRNF zone. Detached residential, attached residential, and residential care

facilities are all permitted uses in the CRN and, therefore, the CRNF zone, as proposed under this application.

Under Section 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.

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

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

Section 5.3.5.A-E sets out the development standards for floating zones including: density, setback and height, lot size, general requirements, and public benefits requirements. Staff concluded that the FZP meets the development standards of the proposed CRNF 0.75 C-0.25 R-0.75 H-50’ (Commercial Residential Neighborhood-Floating) Zone. The Staff Report includes a table, marked as Table 4 and reproduced on the next page, comparing the development standards of the Zone with those proposed. Exhibit 62, p. 24. Development beyond 1.0 FAR is not requested under this application and therefore no public benefits are requested or required, and therefore Section 5.3.5.E. does not apply.

In accordance with Section 59-5.3.5.D.2.a, the application must provide common open space for the townhouses and public open space for the residential care facility. Exhibit 62, p. 9. The Applicant proposes to provide a combined total of 10% or 63,463 square feet of public open space and common open space spread across the site including 19,451 square feet (0.44 acres) of linear pathway along proposed “Street A” (to be constructed), lawn area with terraced seating and other amenities, a 1.01 acre natural surface trail that traverses the rear of the townhouse units to the west of the site and within two smaller areas adjacent to proposed “Street C.” Exhibit 62, p.10. The

	Required/Permitted	Proposed
Site		
Gross Tract Area (Overall Site)		38.55 acres

Gross Tract Area (Subject Property)	N/A	15.36 acres 688,877 sf.
Previous ROW Dedications		19,952 sf.
Proposed ROW Dedications		0 sf.
Net Lot Area (Subject Property)		668,925 sf.
Maximum Density of Development (CRNF-0.75, C-0.25, R-0.75, H-50)	Residential - 0.75 FAR/ (516,658 sf.) Commercial - 0.25 FAR (172,219 sf.)	Residential - 0.70 FAR/ (482,000 sf.) Commercial - 0 FAR (0 sf.)
Public Open Space	10%	44,012 sf. (1.01 acres)
Common Open Space	10%	19,451 sf. (0.44 acres)
Lot Coverage (max.)	Set at Site Plan	To be determined at Site Plan
Building Height (max.)	50 feet	50 feet
Principal Building Setbacks (min.)		
Front setback from public street	Set at Site Plan	To be determined at Site Plan
Side street setback		
Side setback		
Rear setback		
Parking*		
Townhouse	1 space per unit; 2 per unit max	297-313 spaces
Townhouse MPDU	minimum reduced by 50%	
Single-Family Residential	1 space per unit; 2 per unit max	
Residential Care Facility	0.25 per bed min./max. 0.5 space per employee min./max.	To be determined at Site Plan

Applicant submitted an Open Space Plan, shown on the next page, which provides a color-coded site plan indicating where the proposed common open space (blue shade) and public open space (red shade) may be located. *See* Exhibit 41, shown below. Mr. Sloan testified that the purpose of the conceptual design of the open space areas was to:

“...focus people and get them down and engaged with the natural conservation areas where we are going to be planting different types of habitat species and provide screening to the school. And also maintain no impervious area really, so that we can keep the environmental quality there. So it's very unique in those aspects. It's focused on the environmental open spaces.” T. 116.

Staff noted that these defined areas will be further reviewed at Preliminary Plan. Exhibit 62, p. 9.



E. General Development Requirements (Article 59.6)

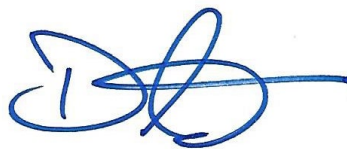
Staff found that the plans provided with the application show that the development “will comply with parking requirements (Division 59.6.2), recreation facility requirements (Division 59.6.3), general landscaping and outdoor lighting requirements (Division 59.6.4), and screening requirements (Division 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, the undersigned 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, we recommend that Local Map Amendment Application No. H-143, requesting reclassification from the R-60 Zone to the CRNF-0.75 C-0.25 R-0.75 H-50 zone be **approved** subject to the specifications and requirements of the Floating Zone Plan (Exhibit 88(a)), 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: April 6, 2022

Respectfully submitted,



Derek J. Baumgardner
Hearing Examiner

Issued by:



Lynn Robeson Hannan
Hearing Examiner