

HEARING EXAMINER'S REPORT AND RECOMMENDATION

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I. STATEMENT OF THE CASE

Application No. G-846, filed on January 3, 2006 by Applicant FF Realty, LLC, requests reclassification from the R-30 Zone to the R-T 15 Zone of 6.7 acres of land known as Parcel A, Block A, Glenmont Woods Subdivision and located at 12207 Georgia Avenue in Silver Spring, Maryland, in the 13th Election District. Application No. G-847, also filed on January 3, 2006 by Applicant FF Realty, LLC, requests reclassification from the R-20 Zone to the R-T 15 Zone of 4.6 acres of land known as Parcel A, Shorefield Manor Subdivision, located at 2301 Shorefield Road in Silver Spring, Maryland, in the 13th Election District. The two applications were consolidated for hearing purposes, at the Applicant's request, because the applications are part of a single redevelopment plan, request the same zone, involve related entities, and were anticipated to present the same witnesses and very similar evidence, apart from a few exceptions related to each specific property. Applicant's counsel represented that if the two parcels of land involved were contiguous, a single local map amendment application would have been filed. In light of the foregoing, and to simplify the Council's review of these related applications, the Hearing Examiner has prepared this single report and recommendation, which recommends approval of both applications. All references to exhibit numbers in this report refer to the record in G-846 unless otherwise noted.

The applications were initially reviewed by Technical Staff of the Maryland-National Capital Park and Planning Commission ("MNCPPC") who, in two reports dated May 5, 2006, recommended *approval* of both applications.¹ See G-846 Ex. 32, G-847 Ex. 29. The Montgomery County Planning Board ("Planning Board") considered the applications on May 18, 2006 and voted unanimously to recommend *approval* of both applications. See G-846 Ex. 41, G-847 Ex. 41. A public hearing was convened on May 26, 2006, at which time the Applicant presented evidence and testimony in support of the application. One community member spoke in support of the application, while voicing a concern about traffic issues. No opposition is reflected in the file. The record was held open for one week to receive the transcript and closed on June 2, 2006.

¹ The two, substantially identical, Staff Reports are quoted and paraphrased liberally in Part II of this report.

II. FINDINGS OF FACT

For the convenience of the reader, findings of fact are grouped by subject matter. Any conflicts in the evidence are resolved under the preponderance of the evidence test.

A. Subject Property

The sites of the two rezoning requests at issue here are part of an existing apartment community with 570 units, Oakfield Apartments, which was built in the 1960s and purchased by the Applicant in late 2005.² The complex has operated as a single development, although it occupies three separate parcels of land: the northern parcel (phase one), which is the subject of LMA No. G-846 and contains 97 apartments; the southern parcel (phase three), which is the subject of LMA No. G-847 and contains 102 apartments; and the middle parcel (phase two), which contains 371 apartments and is not proposed for rezoning.

The subject property in G-846 consists of 6.69 acres of land located at 12207 Georgia Avenue, classified under the R-30 Zone. The property is occupied by ten multi-family rental buildings containing a total of 76 town homes and 21 garden apartments, with approximately 160 parking spaces. The topography is generally flat along Georgia Avenue and the northern boundary of the property. There is a grade difference along the eastern boundary, where a stream crosses the property and the site is adjacent to Wheaton Regional Park. To the north, the property abuts an apartment complex in the R-30 Zone, the Americana Glenmont Apartments, and the Lutheran Church of St. Andrew, which fronts on Georgia Avenue and is classified in the R-90 Zone. The southern boundary of the property abuts phase two of the Oakfield Apartments, in the R-30 Zone. To the west, the property fronts on Georgia Avenue.

The subject property in G-847 consists of 4.64 acres of land located at 2301 Shorefield Road, classified under the R-20 Zone. The property is occupied by five multi-family rental buildings containing a total of 102 dwelling units, with approximately 136 parking spaces. The topography is

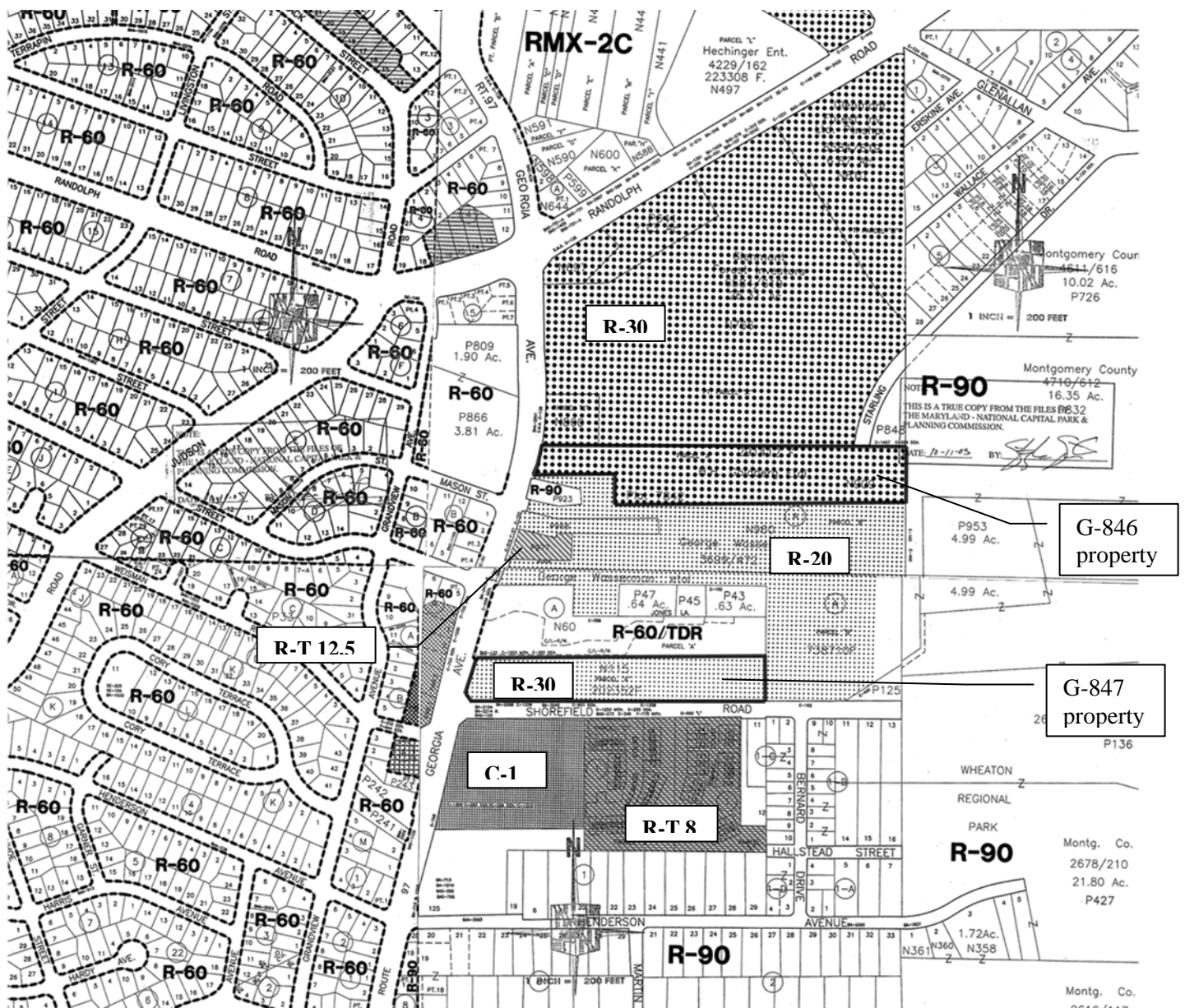
² The complex was formerly called the Georgian Woods Apartments and is now called the Oakfield Apartments. Separate names were used during the hearing to refer to the two proposed townhouse developments, Glenmont Woods (G-846) and Shorefield Manor (G-847). For the sake of simplicity, this report refers to the entire complex as Oakfield Apartments.

generally flat along Shorefield Road. There is a slight grade difference between Georgia Avenue and the eastern boundary of the property, which abuts Georgian Woods Place, an internal road serving the Oakfield Apartments. To the north, the property abuts a rental apartment complex (separate from Oakfield Apartments) in the R-60/TDR Zone. The property abuts Georgia Avenue to the west and Shorefield Road to the south.

The term "subject site" will be used to refer to the two properties jointly. When there is a need to refer to one of the two properties separately, the case number will be used as a reference.

The zoning map below shows the location of the subject site and surrounding zoning.

Zoning Map, Ex. 38



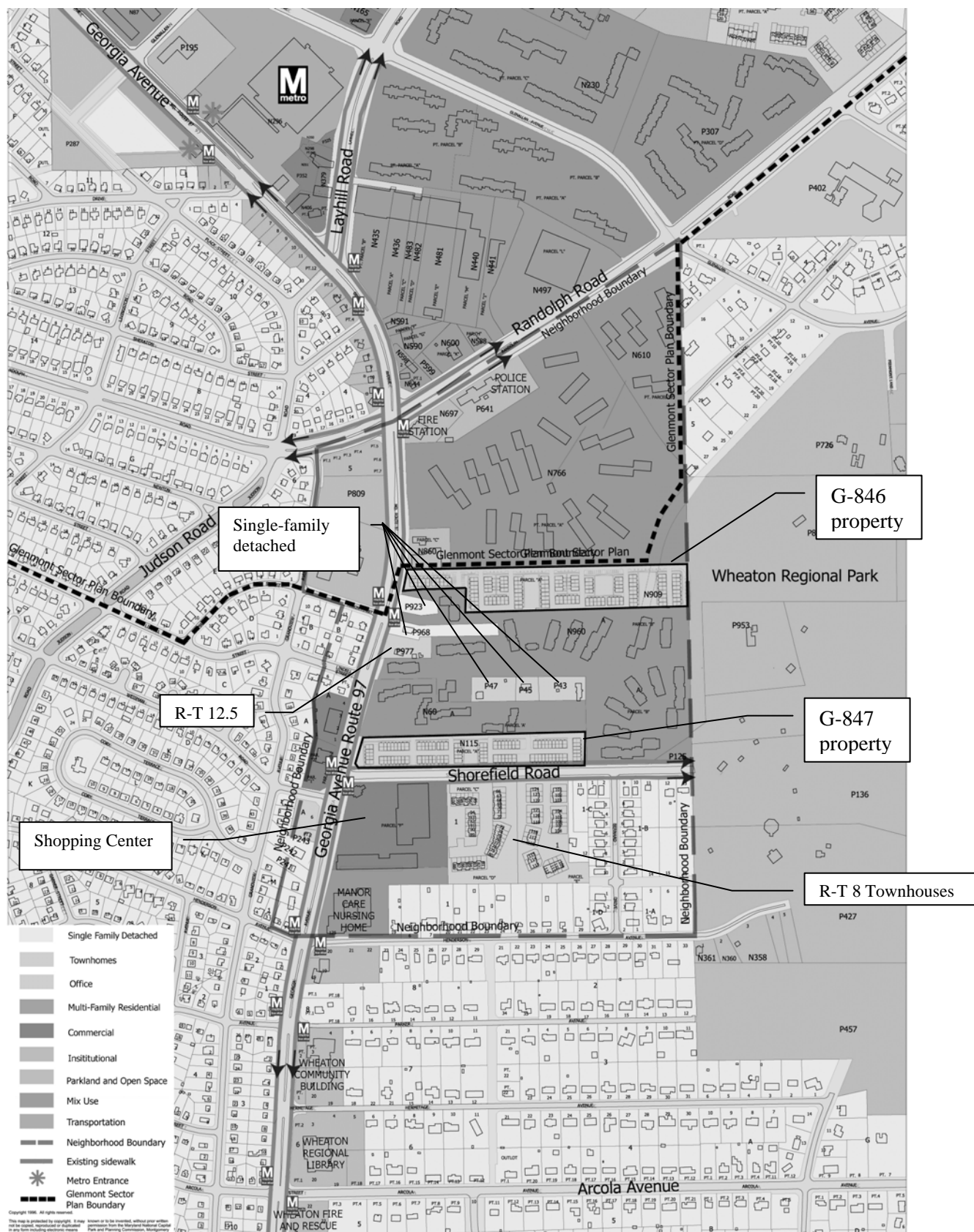
B. Surrounding Area

The surrounding area must be identified in a floating zone case so that compatibility can be evaluated properly. The “surrounding area” is defined less rigidly in connection with a floating zone application than in evaluating a Euclidean zone application. In general, the definition of the surrounding area takes into account those areas that would be most directly affected by the proposed development. In the present case, the Hearing Examiner accepts the recommendation of Technical Staff and the Applicant’s land planner to designate a surrounding area bounded generally by Wheaton Regional Park to the east, Henderson Avenue to the south, the rear of lots fronting on the west side of Georgia Avenue to the west, and Randolph Road to the north. This area and the relationships among its land uses may be seen on the map on the next page, which also includes zoning recommendations from the applicable master plan.

The surrounding area has a mixed-use character with a significant residential component. The Applicant’s land planner, Stephen Gang, estimates that 80 to 85 percent of the land uses in the surrounding area are residential. Existing uses include a fire station and a police station at the southeast corner of Randolph Road and Georgia Avenue, and a former public school site at the southwest corner of the same intersection (currently open space). Between the fire station/police station and the subject site are a large apartment complex and a church. Interspersed among the buildings of the Oakfield Apartments are five single-family detached homes on separate parcels, plus a half-acre parcel that was rezoned to the R-T 12.5 Zone in 2004, and received preliminary plan approval in 2005. Confronting the southwest corner of the subject site across Shorefield Road is a shopping center with entrances on both Georgia Avenue and Shorefield Road. It includes a grocery store, a bank and a number of small retail establishments. East of the shopping center, the subject site confronts a townhouse community and the northeastern edge of a neighborhood of single-family detached residences that stretches east to the park and south to Henderson Avenue. Finally, there is a nursing home at the northeast corner of Henderson and Georgia Avenues.

On the west side of Georgia Avenue, south of the former school site, are about ten single-family detached homes, two retail buildings and an office townhouse under construction.

Land Use Plan with Surrounding Area Designation and Master Plan Recommendations, Ex. 34



C. Zoning History

Technical Staff reports that the subject site was classified under the R-90 Zone in the 1954 Regional District Zoning, and was recommended for continued R-90 zoning in a 1959 master plan. Shortly thereafter, local map amendment requests for the C-2, R-10, R-20 and R-30 zones were denied. In a 1964 land use study, Technical Staff recommended that R-T zoning be permitted along Georgia Avenue and extending back 500 feet east of the road, with the balance of the land west of Wheaton Regional Park in the R-60 Zone. In 1964, both components of the subject site were rezoned: the G-846 property was reclassified to the R-30 Zone via local map amendment No. C-1338, and the G-847 property was reclassified to the R-20 Zone via local map amendment No. C-1457.

D. Proposed Development

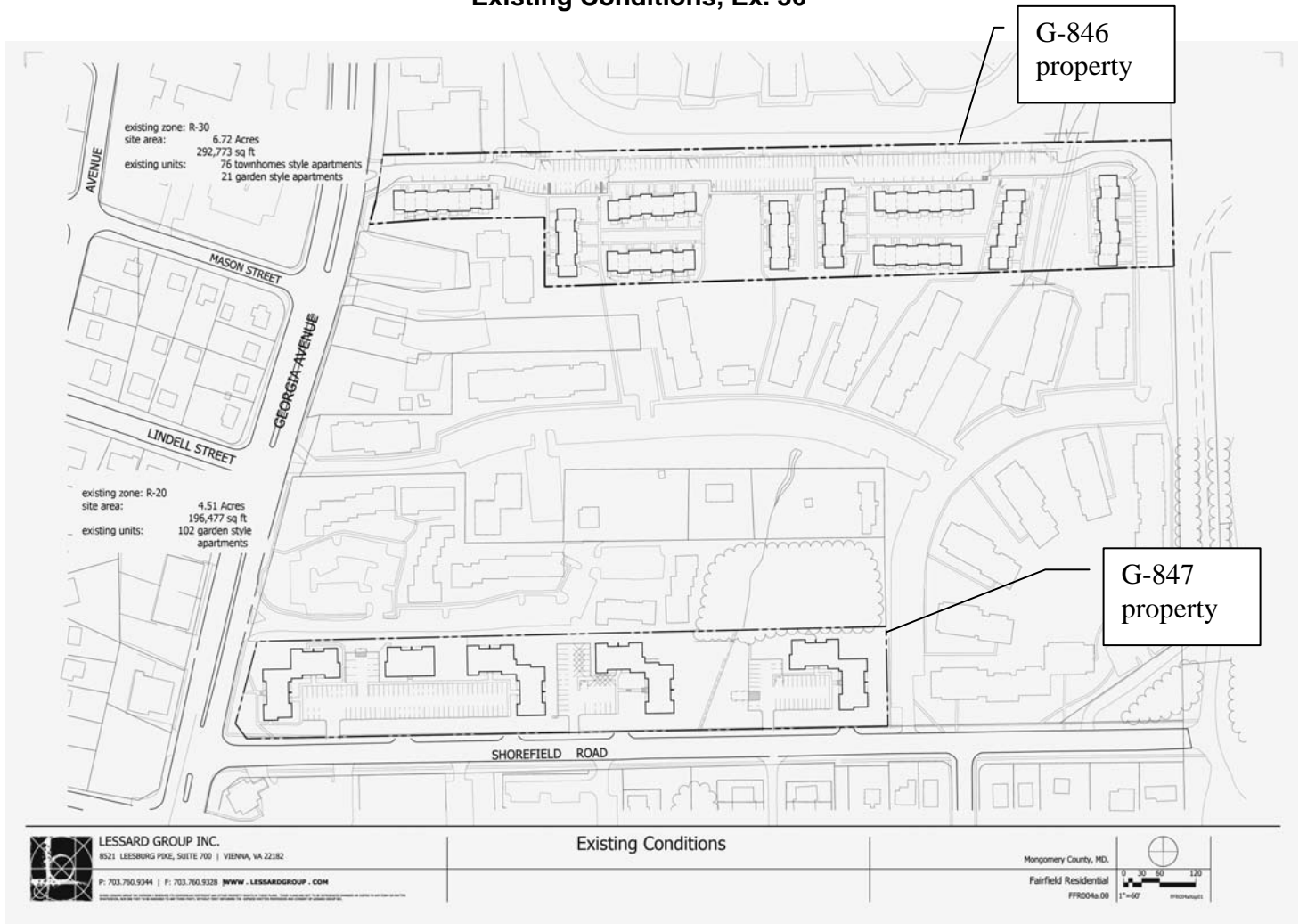
The Applicant proposes to replace the existing buildings on the subject site with new housing. The present applications were filed under the standard method of application, which does not require the Applicant to provide specific details or binding elements for the proposed development. Based on the acreage of the parcels, the maximum number of dwellings that would be permitted under the requested zoning is 85 units on G-846, and 122 units on G-847. Technical Staff proposes to require a stream valley buffer area on each of the two parcels, which could make it impossible to attain the maximum number of units. The Applicant's conceptual plans call for three-story townhouses, to be sold in fee simple, including 12.5 percent Moderately Price Dwelling Units as required under Chapter 25 of the Montgomery County Code. See Ex. 11. The Applicant seeks the requested rezonings so that the townhouses can be offered for sale, which is not permitted in the R-20 and R-30 Zones, and to allow three full stories, which would exceed the 30-foot height limit of the R-20 Zone (which currently applies to the G-847 property). See *id.*

The Applicant's conceptual plans also include landscaping along Georgia Avenue, green space areas, and garage parking in the rear of each dwelling, which would avoid the current visual appearance of large parking areas along the street frontages. Along Shorefield Road, the

proposed rezoning and development holds the potential to develop a more attractive gateway into Wheaton Regional Park. The conceptual plans envision retaining the two existing entrances onto the G-846 property, one from Georgia Avenue and one via a private easement that connects to Shorefield Road. The G-847 property currently has three entrances along Shorefield Road and none from Georgia Avenue. The conceptual plans contemplate maintaining this pattern, with three to four entrances along Shorefield Road and none from Georgia Avenue.

The map below depicts existing site conditions. An illustrative site plan is reproduced on the next page.

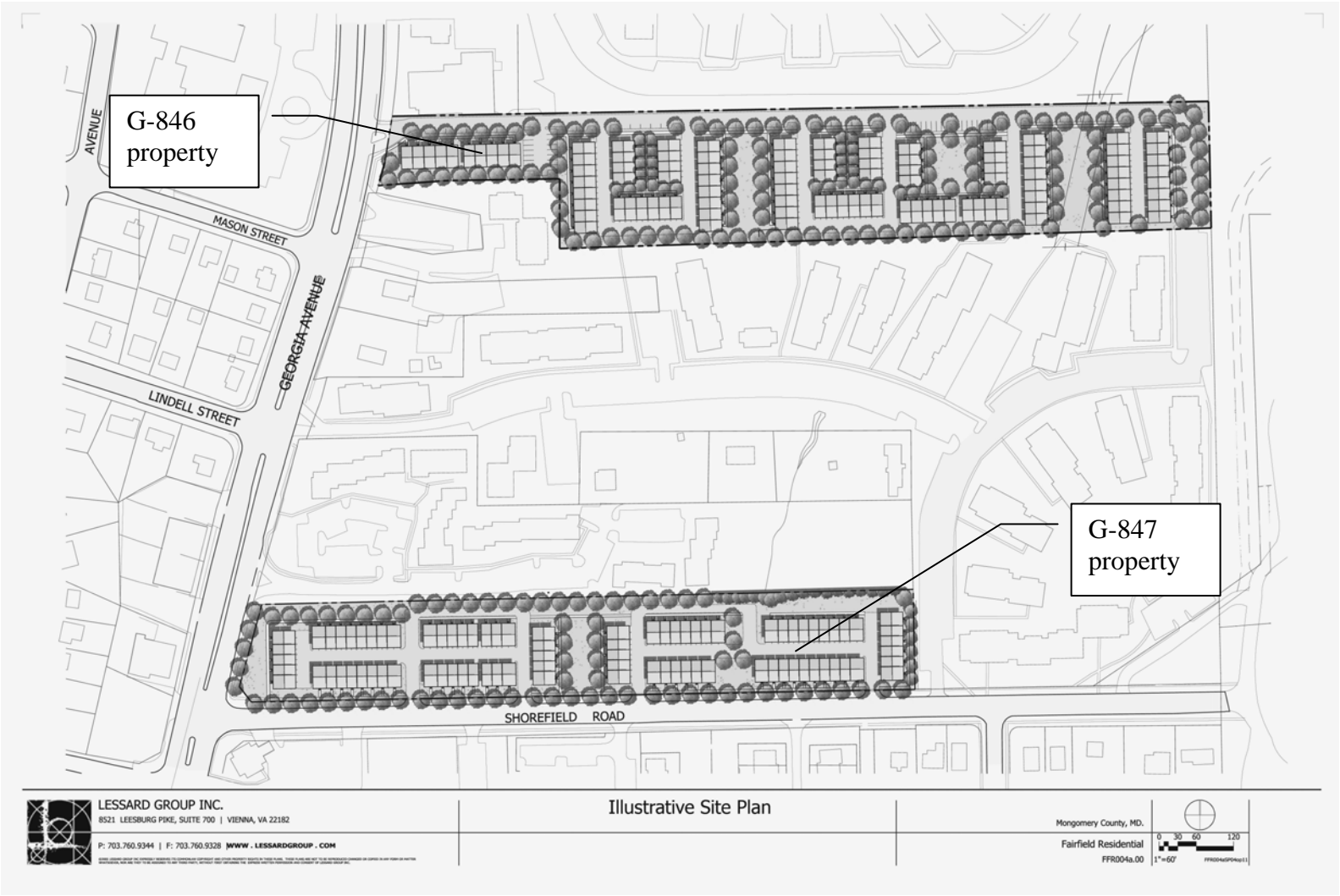
Existing Conditions, Ex. 36



Although the present rezoning applications apply only to phases one and three of the Oakfield Apartments, the Applicant presented testimony about its plans to rehabilitate the existing apartments located in phase two of the development and offer them as rental units for low-income

households. The Applicant purchased phase two with the assistance of tax credits and subordinate financing from the State of Maryland and Montgomery County, which impose income limits on future residents. The Applicant has begun implementing a relocation plan for renters in phases one and three who meet the income qualifications and other screening requirements, and has offered them priority status to apply for rehabilitated units in phase two, if they are available, before the general public.

Illustrative Site Plan, Ex. 37



E. Master Plan

The subject property is located within the area covered by the *1989 Approved and Adopted Master Plan for the Communities of Kensington – Wheaton* (the “Master Plan”). Mr. Gang identified four major goals of the Master Plan (Ex. 11 at 5-6, citing Master Plan at 28) :

- To protect and stabilize the extent, location and character of existing residential and commercial land uses.
- To maintain a well-established low- and medium-density residential character that prevails over most of the planning area.
- To ensure that zoning and land use recommendations for sites with future development potential are consistent with the goals of land use stabilization, compatibility with the nearby existing development.
- To preserve the identity of residential areas along major highway corridors, to soften the impact of major highways on adjacent homes and to strengthen the distinction between commercial and residential uses.

Technical Staff focused on the second of these goals, as well as an additional Master Plan policy “that all infill residential development be similar in character and compatible in density with the immediate neighborhood within which it is contained.” See Community Based Planning Memorandum of April 25, 2006, attached to Staff Report (“Community Based Planning Memo”), at 2, citing Master Plan at 50. Staff observes that these policies are reflected in the Master Plan’s recommendations for two “critical parcels and areas” near the subject site that the Master Plan examined closely. (The subject site, which was fully developed and, at the time of the Master Plan adoption 17 years ago, probably not yet in a deteriorated condition, was not among the sites that drew individual attention.) For the first area, a collection of eight parcels on Georgia Avenue and Jones Lane surrounded by the Applicant’s properties, the Plan recommended increasing density from five units per acre to 12 or 15 units per acre, with the use of transferable development rights. It recommended multi-family units for the resulting development, recognizing that these properties were

literally surrounded by the Oakfield Apartments.³ For the second critical area, a 3.46-acre parcel on the south side of Shorefield Road, in the R-90 zone, the Master Plan recommended redevelopment under the R-T 8 Zone, to provide a suitable transition from single-family development in the R-90 Zone, to the east, to more dense residential and commercial development nearer Georgia Avenue. The subject site and the rest of the Oakfield Apartments property were in an area that the Master Plan recommended for medium density residential use. See Master Plan's Land Use Plan.

Technical Staff found that the density proposed by the Applicant for the subject site is roughly equivalent to the densities permitted under the existing R-20 and R-30 zoning. With MPDUs, the R-T 15 Zone allows a maximum of 18.3 units per acre; the R-20 Zone allows 26.5 units to the acre and the R-30 Zone allows 17.7 units per acre. Technical Staff concluded that the density proposed in the present cases would not diminish the medium-density residential character that prevails in this section of the planning area. Staff noted, moreover, that the 1964 local map amendments that placed the subject properties in their current classifications "played a significant role in creating the medium-density residential character that prevails in this area." Community Based Planning Memo at 2.

Mr. Gang opined that the proposed redevelopment project would be consistent with the Master Plan's general goals. In particular, he reviewed the existing densities and Master Plan recommendations for nearby properties. He noted that recommended densities start higher near Randolph Road and decrease moving south, with the Applicants' properties recommended for continued medium-density, multi-family zoning, several parcels surrounded by the Applicant's properties recommended for densities between 12 and 15 units per acre, and land on the south side of Shorefield Road recommended for the R-T 8 Zone, followed by R-90 zoning (approximately 5 units per acre) further south and east.

F. Other Public Policy Issues

In addition to Master Plan compliance, Technical Staff considered two other public policy issues: whether the proposed redevelopment of the subject site would diminish the inventory of

³ At least three of these parcels are still occupied by single-family detached homes, which are accessed through the parking lots of the existing apartment complex. Tr. at 36-37.

affordable housing in this part of the County, and whether the relative proximity of the site warrants increasing densities at this location. See Community Based Planning Memo at 2.

Affordable Housing. Technical Staff notes that although they were built before the County developed a moderately priced dwelling unit program, the Oakfield Apartments are rented at levels that are affordable for households with moderate incomes. The development proposed in these LMA applications would replace a total of 199 rental units in phases one and three with up to 206 for-sale townhouses, which would sell mostly for market rates and would likely be less affordable than the units in the existing apartment complex (except for MPDUs, which would comprise at least 12.5 % of the unit total). Staff notes that the Applicant plans to refurbish the units in phase two while the new townhouse units in phases one and three are being built. Staff reports that due to lending and financing obligations, ten percent of the 371 units in phase two would have to be set aside for households earning 40 percent or less of the County's median income, and an additional 87.5 percent would be aimed at households earning 60 percent or less of the median income. In addition, the Applicant intends to encourage current residents of phases one and three to seek rehabilitated units in phase two if they become available.

Staff observes that while the proposed development would result in the loss of units now considered affordable, the community as a whole would continue to be substantially affordable, with as many as 70 percent of the units, including MPDUs, targeted for moderate-income households. Staff finds that this mitigates the loss of the existing affordable units, and that the economic integration that would result from completion of this project should be considered an important benefit. Staff also notes that the existing units "are rented at the rate the market will bear for this type and age of unit, making them a reasonable price for this market, but" there is no legal or contractual mechanism requiring rents to be maintained at any particular level. Staff Report at 7. The terms of the Applicant's financing for the purchase of phase two require rent controls on almost all of the units, and Chapter 25 of the County Code will require at least 12.5 percent MPDUs on the subject site if the proposed rezonings are approved. As currently envisioned, the complex would have market rate for-sale

townhouses, affordable rental units, and a small number of affordable, for-sale townhouses, with the latter two unit types subject to legally binding affordability requirements.

Densities. Staff notes that maintaining densities at approximately the current level would allow this community to remain largely affordable, even with the addition of market-rate units for sale. Community Based Planning Staff observes that the G-846 property is about one-half mile from the Glenmont Metro Station, suggesting that higher density than the current R-30 level might be appropriate. R-30 is the County's lowest-density multi-family zone, with a maximum density of 17.7 units per acre; the R-20 and R-10 zones allow densities of 26.5 and 53 units per acre, respectively, when MPDUs are included. The latter two density levels are considerably higher than the maximum density proposed on the subject site, which is 18.3 units per acre. Staff notes that it is uncertain whether increased density could be accommodated under the development standards of the R-T 15 Zone. Finally, Staff concludes that the proposed development would be consistent with the Master Plan recommendations to maintain prevailing densities in the area of the subject site. As noted on page 7 of the Staff Report, a policy decision was made to include the G-846 property in the Kensington-Wheaton Master Plan area, rather than in the Glenmont Sector Plan just to the north, which might have facilitated other zoning options with higher density. As Staff concluded, the densities proposed in the present applications are consistent with the currently applicable Master Plan.

G. Development Standards for the Zone

Consistent with the standard method application, the case at hand is presented without a site plan or binding elements. Technical Staff notes that the acreage for each of the subject properties exceeds the minimum tract area for the R-T 15 Zone, and that the development would be required to satisfy all of the other development standards for the zone at the time of subdivision and site plan review. These standards include a maximum 35 foot building height, a minimum of 30 percent green area, and at least two parking spaces per dwelling unit. Technical Staff and Mr. Gang both opined that the illustrative site plan would satisfy the development standards for the zone.

H. Public Facilities

Under the County's Adequate Public Facilities Ordinance ("APFO," Code §50-35(k)), an assessment must be made as to whether the transportation infrastructure, area schools, water and sewage facilities, and police, fire and health services will be adequate to support a proposed development, and in turn, whether the proposed development would adversely affect these public facilities. Both the Planning Board and the Council have roles to play in this assessment process. The Planning Board reviews the adequacy of public facilities at subdivision, under parameters that the County Council sets each year in the Annual Growth Policy ("AGP") and biennially in the two-year AGP Policy Element.⁴ While the final test under the APFO is carried out at subdivision review, the District Council must first make its own evaluation as to the adequacy of public facilities in a rezoning case, because the Council has primary responsibility to determine whether the reclassification would be compatible with the surrounding area and would serve the public interest. The Council's evaluation of public facilities at the zoning stage is particularly important because of the discretionary nature of the Council's review, and the fact that the Council's review is much broader at the zoning stage than what is available to the Planning Board at subdivision, a process designed to more intensively examine the "nuts and bolts" of a development. The District Council is charged at the zoning stage with determining whether the proposed development would have an adverse impact on public facilities and, if so, whether that impact would be mitigated by improvements reasonably probable of fruition in the foreseeable future.

1. Transportation

Under the 2003-05 AGP Policy Element, which remains in effect, subdivision applications are subject to only one transportation test, Local Area Transportation Review ("LATR").⁵ The Planning Board recognizes its LATR Guidelines as the standard to be used by applicants in the preparation of reports to the Hearing Examiner for zoning cases. LATR Guidelines at 1. LATR

⁴ See 2003-05 Annual Growth Policy – Policy Element, Resolution No. 15-375, adopted October 28, 2003, which remains in effect. The Hearing Examiner hereby takes official notice of the 2003-05 AGP Policy Element.

⁵ See 2003-05 AGP Policy Element at 6-7; *Local Area Transportation Review Guidelines Approved and Adopted July 2004* ("LATR Guidelines") at 1. The Hearing Examiner hereby takes official notice of the LATR Guidelines.

involves a traffic study intended to evaluate whether a proposed development would result in unacceptable congestion at nearby intersections during the peak hours of the weekday morning and evening peak periods (6:30 to 9:30 a.m. and 4:00 to 7:00 p.m.).

The Applicants performed a traffic study as required in this case, taking into account existing roads, programmed roads and available or programmed mass transportation, as well as existing traffic, traffic anticipated from nearby development that is approved but unbuilt ("background" traffic), and trips expected to be generated by the proposed development. In addition to the traffic generated by the existing dwellings on the subject site, the proposed development is expected to generate a total of 12 new trips during the weekday morning peak period and 43 new trips during the weekday evening peak period. The traffic study concluded, and Technical Staff agreed, that with the proposed development in place, critical lane volumes ("CLVs") at two of the key intersections studied (Georgia Avenue at Arcola Avenue and Shorefield Avenue) would remain below the applicable CLV standard of 1,600. See Ex. 27(b) at 21; Transportation Staff Memorandum dated May 2, 2006 attached to Staff Report ("Transportation Staff Memo"). At the third intersection studied, however (Georgia Avenue and Randolph Road), the additional traffic expected from the proposed development would worsen already serious traffic congestion. With background traffic, this intersection is already expected to exceed the applicable CLV of 1,800 by more than 300 during the morning peak hour, and by 15 during the evening peak hour. See *id.* The development proposed here is expected to make only a small contribution to the congestion, increasing the CLV by two during the morning peak hour, and by only one during the evening peak hour. The Applicant's traffic planner explained that based on trip distribution parameters in the LATR Guidelines, 70 percent of the traffic leaving the subject site in the morning is expected to head south on Georgia Avenue, and to return to the site in the evening without passing through the Georgia Avenue/Randolph Road intersection. Only 30% of the site traffic is expected to pass through the Randolph Road intersection during the peak hours.

If the project moves forward, the Applicant will be required to provide mitigation for its contribution to the failing conditions at the Georgia Avenue/Randolph Road intersection.⁶ The Applicant initially proposed to upgrade an existing bus stop on the east side of Georgia Avenue, just south of the G-846 property. The Transportation Staff Memo reports that the County's Department of Public Works and Transportation ("DPWT") is no longer accepting shelters as a form of mitigation. Transportation Staff suggests, as an alternative, that the Applicant might fund the installation of a real-time schedule display at an existing bus shelter in the neighborhood. While the Hearing Examiner fails to see the policy distinction between these two alternatives, there is no reason to expect that the latter would be less acceptable to the Applicant than the former.

The President of one of the local homeowners' associations, Gwen Garrison of nearby Branford Park, raised a traffic issue that was not addressed in the submitted traffic study, the Staff Report or the Transportation Staff Memo. She stated that homeowners living south of Shorefield Road often find it difficult to exit Shorefield Road onto Georgia Avenue because of traffic congestion. Ms. Garrison explained that traffic gets backed up at the intersection of Shorefield Road and Georgia Avenue, particular on days of high park usage, such as weekend days that were not covered in the submitted traffic study. She also noted that during weekday peak hours, the traffic back-up at Randolph Road and Georgia Avenue often extends back to Shorefield Road. To avoid joining that back-up, Ms. Garrisons states that neighborhood residents often use side streets further south on Georgia Avenue, then continue on local streets to reach their destination, or they cut through the shopping center at Shorefield and Georgia, by-passing the congested traffic light.

Ms. Garrison is concerned that increased traffic from the proposed development may worsen already difficult traffic conditions for neighborhood residents, and that the existing traffic problems have escaped notice in this case because (i) in part, they take place on weekends and holidays, outside the time periods the LATR Guidelines prescribe for traffic counts; and (ii) the traffic

⁶ Transportation Planning Staff at the MNCPPC reports that a potential grade-separated interchange at this intersection is under project planning at the State Highway Administration. Staff states that the project has been designed and awaits construction funding. The Hearing Examiner has not taken this potential improvement into account due to a lack of information about its certainty.

counts underestimated the volume of traffic in the area because the counts were limited to intersections, missing all the traffic using side streets and cutting through the shopping center.

The Applicant's traffic planner, Mike Workosky, suggested that traffic congestion on Shorefield Road might be improved by changing the signal timing to allow longer periods for westbound traffic to turn onto Georgia Avenue, or by changing the striping to allow left turns from both westbound lanes. He opined that the relatively small number of additional trips expected from the proposed development would not have an adverse effect on traffic conditions in the surrounding area.

Ms. Garrison also noted that construction is nearly complete on a shopping center at the southwest corner of Shorefield Road and Georgia Avenue, and asked whether the additional traffic to be expected from these new commercial uses was taken into account in the Applicant's traffic study. Mr. Workosky indicated that he did not believe the background development Technical Staff instructed him to take into account included new construction at that location. Ms. Garrison stated that local traffic sometimes uses the parking lot for that shopping center as a cut-through to avoid the traffic light at Shorefield and Georgia, just like they use the shopping center in the southeast corner of the intersection. This suggests that there is already a commercial center of some kind at this location, which is consistent with maps in the traffic study that show a shopping center parking lot opposite Shorefield Road on the west side of Georgia Avenue. See Ex. 27(b) at 8-10.

The record is unclear on this point, but it may be that the new construction Ms. Garrison observed was an addition to an existing commercial center that Technical Staff did not consider significant enough to include in background traffic. The intersection that would be most directly affected, Shorefield Road and Georgia Avenue, has estimated CLVs, with background traffic, more than 200 lower than the applicable congestion standard. With so much room for additional CLVs before the intersection fails, it seems highly unlikely that a new shopping center small enough to have been excluded from background traffic (or overlooked) would generate enough traffic to cause the intersection to exceed the maximum CLV. Under these circumstances, the Hearing Examiner does not consider the uncertainty surrounding this shopping center significant enough to undercut the

otherwise persuasive evidence that the proposed development would not have a material adverse effect on traffic.

2. Utilities

The subject property is currently served by public sewer and water that would be available to the new development and adequate for its needs. See Ex. 16 in both cases; Staff Report at 5. Electric and telephone service are available via overhead lines along Georgia Avenue. See *id.*

3. Schools

The subject site is located within the service areas of Kemp Mill Elementary School, Col. E. Brooke Lee Middle School and Northwood High School. Technical Staff states that based on average yield factors, the proposed development is expected to generate approximately 16 new elementary school students, 14 new middle school students and 18 new high school students. Staff Report at 5. Montgomery County Public Schools ("MCPS") expects Lee Middle School and Northwood High School to remain within capacity. MCPS anticipates that Kemp Mill Elementary School will exceed capacity in the future, but that this overcrowding will be relieved by the construction of a new elementary school in the area, which is scheduled to open in August 2007. See Ex. 40. Per the FY03-05 AGP Policy Element, the current AGP schools test finds capacity adequate to support additional residential development in all clusters.⁷

I. Environment and Stormwater Management

The subject property does not have any forested areas. Environmental Planning Staff at the MNCPPC indicates that afforestation or replanting, probably off site, would be used to satisfy the Applicant's obligations under the County's Forest Conservation Law. Staff also suggests a Tree Save Plan to protect existing significant and specimen trees both on site and immediately adjacent to

⁷ The applicant cited Exhibit 39, a May 11, 2006 letter from Karl Moritz of the MNCPPC to Applicant's counsel, which states that the Planning Board determined on June 23, 2005 that all public school facilities were considered adequate to support development during fiscal 2006, which ended on June 30, 2006. The Hearing Examiner takes official notice of the Planning Board's memorandum to the County Council that conveys the Planning Board's June 22, 2006 finding that school capacity is adequate, under the Growth Policy, to support subdivision approval in all clusters in FY 2007, which began on July 1, 2006.

the site. See Environmental Staff Memorandum dated April 26, 2006, attached to Staff Report (“Environmental Staff Memo”).

Environmental Staff notes that the Oakfield Apartments were built on top of what were once the headwaters of the south branch of the Glen Allen tributary. Stream protection was not a priority at the time, and the stream was redirected into underground conduits for portions of its length, to allow construction to take place on top of it. As a result, the stream runs underground beneath the G-847 property, emerges above ground through two lots immediately north of G-847, goes back underground beneath part of phase two and all of the G-846 property, then re-emerges at the northeastern tip of the G-846 property. Environmental Staff describes the stream as severely degraded, and notes that a stream restoration project by the Department of Environmental Protection is underway. Environmental Planning Memo at 3. Staff believes that environmental buffers should be imposed on the subject site to protect the stream valley and floodplain areas, and that the Applicant “should investigate low impact development techniques to protect” the stream. *Id.* Environmental Staff concludes that the proposed redevelopment would be “marginally better” from an environmental perspective than redevelopment under the existing zoning, and recommends approval. *Id.* at 2.

The Applicant's engineer, James Ruff, described the tributary that crosses the subject site as an urban stream that would be difficult to restore to a natural condition, in part because of the large volume of water that flows through it. Mr. Ruff stated that the drainage area flowing into this stream has about 30 acres of land with no stormwater management. Thus, all the run-off from that area flows, uncontrolled, into the stream. As a result, the banks of the above-ground parts of the stream are steeply cut from erosion. Mr. Ruff did not directly indicate whether the Applicant has agreed to provide the stream valley buffers recommended by Staff, leaving the implication that this would be an item for discussion at later stages of approval, assuming that the rezonings are granted.

Mr. Ruff testified that the Applicant intends to meet stormwater management requirements through a combination of above-ground and below-ground facilities, addressing both channel protection and water quality control. He observed that installing stormwater management

facilities on the subject site would make only an incremental difference in overall conditions in the drainage basin, but that anything would be an improvement over what exists today.

J. Community Support

The record in this case contains two letters in support of the requested rezoning. Ms. Garrison, whose concerns are summarized in Part II.H. above and again in the Part III below, wrote to express the support of the Branford Park Homeowners' Association for the proposed rezonings. See Ex. 33. Ms. Garrison acknowledged the Applicant's efforts to conscientiously respond to questions and concerns from residents, and stated that the proposal to replace some apartment buildings with new townhouses and refurbish the remainder of the apartments is consistent with her organization's aspirations for the area. She specifically limited her association's support, however, to an endorsement of the rezoning requests, not a full endorsement of the project, given that only concept plans and a general outline of the redevelopment are currently available. Finally, Ms. Garrison noted that neighborhood residents have concerns about existing traffic congestion at the intersection of Georgia Avenue and Shorefield Road, as well as local susceptibility to electrical power outages. She suggested that the proposed redevelopment offers an opportune time for the community and the Applicant to jointly explore options with Montgomery County and nearby commercial properties.

The second letter in support of the present applications is from Detective Mark Poole of the Montgomery County Police Department. See Ex. 35. Detective Poole writes to give his "strong support and endorsement" for the proposed rezonings. *Id.* He states that the Oakfield Apartments property is severely deteriorated, suffering from years of deferred maintenance and on-going crime issues. He notes that since purchasing the property in September of 2005, the Applicant has hired off-duty Montgomery County police officers to help address crime issues and improve residents' quality of life, and that in the last seven months, working together, the police and the Applicant have successfully broken up a prostitution ring and put an end to open-air drug dealing at the property.

Mr. Poole states that Montgomery County Police and the Applicant have worked together effectively to address safety and crime issues in other affordable apartment communities, as well. He observes that the plan to develop new for-sale housing and rehabilitate remaining apartment

units will create an attractive, mixed income community with increased stability and security for the community, and will provide an opportunity to revitalize this section of the Georgia Avenue corridor.

III. SUMMARY OF TESTIMONY

A. Applicant's Case in Chief

1. Jay Johnson, Applicant's representative. Tr. at 7-9; 74-75.

Mr. Johnson has been a development manager with the Applicant's parent company, Fairfield Residential, for six years, and has 14 years of related experience. He described the Applicant's contacts with local citizens associations concerning this project, which included two meetings with the homeowners' associations for Branford Park and Arcola Woods, the communities immediately south of the subject property. He described the homeowners' association's principal concern as "not why but when," and expressed the Applicant's intention to continue working with these groups as the project moves forward. Mr. Johnson stated that a notice was sent to the apartment community immediately north of the site, but no response was forthcoming.

Mr. Johnson also testified regarding an access easement that the Parks Department holds along the Shorefield Road frontage of the G-847 property. He noted that the easement is 30-feet wide, which is deeper than the setback for the structures. It dates back to the 1950s, and based on his discussions with Parks Department personnel, no one has a clear understanding of why it was put in place. Mr. Johnson believes, based on these discussions, that the Parks Department supports the proposed development and will modify the easement as needed to accommodate the project.

2. Gwen Garrison, Branford Park Homeowners Association. Testimony at Tr. pp. 10-13, 84; questioning of Applicants' witnesses at pp. 75-91.

Ms. Garrison testified that her organization supports the proposed rezoning and looks forward to the redevelopment of the subject site, which has been a problem area in the neighborhood. She stated that her association has very much appreciated working with the Applicant, which has addressed a number of the association's concerns.

The principal remaining concern Ms. Garrison raised is a traffic flow problem for vehicles coming out of Shorefield Drive, particularly on days of high park usage. Shorefield Drive is one of the three main arterials into Wheaton Regional Park, and Ms. Garrison observed that when the weather is good, especially on weekends, it is difficult for homeowners to make their way around. She noted that the Applicant's traffic study only examined traffic counts during weekday morning and evening peak periods, which are not the times when the neighborhood experiences the greatest problems. Ms. Garrison testified that residents approaching her neighborhood from the south on Georgia Avenue tend to use roads other than Shorefield Road, to avoid the congestion at Georgia and Shorefield and the back-up from the Randolph Road/Georgia Avenue intersection. In addition, people often cut through the shopping center on the southeast corner of Shorefield Road to avoid the traffic light, particularly when the traffic back-up from Randolph Road extends past the shopping center, as it typically does during peak hours.

The Hearing Examiner suggested that Ms. Garrison continue to participate in the planning for this project, if the rezoning is granted, and make sure that Technical Staff is aware of her organization's position that the Applicant should be required to perform weekend traffic studies.

3. Sharon Knuth, Applicant's representative. Tr. at 13-19.

Ms. Knuth is employed by the Applicant as an acquisitions officer. Her role in the present case was to help perform the initial underwriting and due diligence for the Applicant's purchase of the property in September, 2005. She described the Applicant's purchase of what is now Oakfield Apartments, and its plans to redevelop phases one and three and rehabilitate phase two.

Ms. Knuth testified that the Applicant has worked with the Montgomery County Police Department to increase security at the Glenmont Woods Apartments and address community safety issues. She noted that the Applicant has hired off-duty police officers to provide on-site security, and has received a letter of support for the proposed redevelopment from the police department. See Ex. 35, G-846.

4. Stephen Gang, land planner. Tr. at 19-47.

Mr. Gang was designated an expert in land planning and urban design. He first described the subject property for each case and the surrounding area. He noted the mixed-use character of the surrounding area, which includes everything from office to retail to single family townhouses to multi-family and institutional uses. Tr. at 23-24. He estimated that residential uses occupy 80 to 85 percent of the surrounding area. Mr. Gang described the existing development as a combination of townhouse-style apartment and garden apartments, with entrances off of Georgia Avenue and Shorefield Road, connected via an internal roadway. He noted that the parking areas along Shorefield Road are between the buildings and the road, which is not an attractive condition for this gateway to Wheaton Regional Park.

Referring to the illustrative site plan, Mr. Gang stated that as currently envisioned, the proposed development of phases one and two (on the land that is the subject of the present applications) would basically replicate the current layout in the northern area (G-846), and would create a more attractive gateway to the park on Shorefield Avenue (G-847), with townhouses fronting on the road and their parking in the rear. The illustrative plan also anticipates parking in the rear along Georgia Avenue.

Turning to the Master Plan, Mr. Gang outlined four major goals of the plan:

- To protect and stabilize the extent, location and character of existing residential and commercial land uses;
- To maintain a well-established low- and medium-density residential character that prevails over most of the planning area;
- To ensure that zoning and land use recommendations for sites with future development potential are consistent with the goals of land use stabilization, compatibility with the neighborhood; and
- To preserve the identity of residential areas along major highway corridors to soften the impact of major highways on adjacent homes and strengthen the distinction between commercial and residential land uses.

Mr. Gang noted that the Master Plan recommends, as a general rule, that development on vacant or redevelopable parcels surrounded by fully development parcels is often preferable to similar development at the fringe areas of the County, producing a more compact, urbanized area that is more easily served by existing public infrastructure and amenities. The subject site was not identified in the Master Plan as having future development potential because it was not vacant and, when the Master Plan was adopted 17 years ago, had not been identified for redevelopment. As a result, the Master Plan did not make specific recommendations for the site. Mr. Gang opined that the proposed redevelopment project would be consistent with the Master Plan's general goals.

Mr. Gang reviewed the existing densities on nearby properties, as well as Master Plan recommendations for those properties. He noted that several parcels located in the middle of the subject site were recommended for development under the R-60/TDR Zone with densities between 12 and 15 units per acre. Mr. Gang also noted a variety of zoning classifications recommended nearby: C-1 in the shopping center on the south side of Shorefield Road, R-T 8 and R-90 for residential uses on the south side of Shorefield Road, C-1 to C-4 zoning on the far side of Georgia Avenue, and continued R-30 zoning (17 units/acre) north of the subject site and south of Randolph Road. Mr. Gang noted the recommended densities increase north of Randolph Road, providing for a transition in density from north to south, starting at the Glenmont Shopping Center and decreasing southwards to the R-90 areas.

Mr. Gang also addressed the Glenmont Sector Plan, whose southern boundary abuts the G-846 property. In particular, he cited four major policies stated in that plan:

- To preserve the Glenmont community as a stable, predominantly residential community.
- To ensure that new development is compatible with the existing community.
- To provide attractive, safe and convenient linkages to major destinations, including the Metro.
- To protect the edges of the residential neighborhoods along busy highways.

Mr. Gang opined that the proposed development would contribute to the cited goals of the adjacent Glenmont Sector Plan, in addition to being consistent with the Master Plan that directly applies to the subject site. He noted that the subject site is in close proximity to two bus stops and the Metro, and that it would be bordered by sidewalks on both Georgia Avenue and Shorefield Road.

Turning to public facilities, Mr. Gang referred to a letter from Technical Staff stating that the Planning Board has found all public school facilities in the County adequate for Fiscal 2006. He also discussed an email from MCPS stating that although the local elementary school is over capacity, a new elementary school is expected to open in 2007, relieving the current overcrowding at the elementary level. Mr. Gang noted that both fire and police stations are located a short distance from the subject site.

Mr. Gang testified that the proposed rezoning would satisfy the purpose of the R-T Zone because the subject site is an appropriate location for R-T Zone density. He observed that the proposed density is consistent with nearby density on properties classified under the R-20 and R-30 Zones, as well as property classified under the R-T Zone to the south, and is consistent with the Master Plan's density recommendations. Mr. Gang stated that the site satisfies the minimum tract area for the zone, and that the development would satisfy all of the remaining development standards, including setbacks, building height, green space and row design.

With regard to the public interest, Mr. Gang noted that the proposed development would have no adverse impact on public facilities, would increase the supply of housing, including MPDUs, and would be an appropriate infill development. He stated that site plan review would address elements such as building design and layout, landscaping, and parking orientation and location, and that the final design is expected to provide an opportunity for an attractive gateway to Wheaton Regional Park.

5. Michael Workosky, traffic engineer. Tr. at 48-60; 75-87.

Mr. Workosky was designated an expert in traffic engineering and transportation planning. He described his firm's efforts in carrying out a traffic analysis under the LATR Guidelines, including a traffic scoping meeting, background development, traffic forecast and calculation of critical

lane volumes at nearby intersections. The intent of the analysis was to identify the cumulative effects of the development proposed in G-846 and G-847.

Mr. Workosky provided the number of additional trips that he expects the proposed development to generate. The combined total for both zoning applications is 12 additional trips during the morning peak hour and 43 during the evening peak hour. Applying those trips to the existing and background traffic at the three intersections he studied, Mr. Workosky found that two of the three would continue to operate within the applicable congestion standard with the proposed development in place. The third intersection, Georgia Avenue and Randolph Road, would exceed the applicable CLV standard of 1,800. Mr. Workosky noted that the proposed development would make only a very small contribution to the congestion at this intersection: based on trip distribution standards in the LATR Guidelines, the additional traffic from the proposed development is expected to increase the CLV at Randolph Road and Georgia Avenue by only two during the morning peak hour, and one during the evening peak hour. Mr. Workosky explained that applying the trip distribution standards to the subject site, roughly 70 percent of the traffic exiting the subject site in the morning is expected to head south on Georgia Avenue, and 30 percent is expected to head north. In the evening, the 70 percent that headed south in the morning are expected to return from the south and enter the subject site without going through the Randolph Road intersection.

To mitigate the additional CLV burden the proposed development would impose on the Randolph Road/Georgia Avenue intersection, the Applicant first proposed to upgrade an existing bus stop on the east side of Georgia Avenue, just south of the G-846 parcel. The Staff Report indicates that DPW&T is not currently accepting that form of traffic mitigation. Staff suggests, in the alternative, that the Applicant might provide a real-time transit sign at the existing bus stop and shelter on the west side of Georgia Avenue, just south of Shorefield Road. (The Hearing Examiner assumes that the Applicant would be willing to provide the type of mitigation suggested by Staff.)

Turning to the neighborhood concern voiced by Ms. Garrison about park-related traffic, Mr. Workosky noted that the Applicant was not required in this case to analyze traffic outside the weekday peak hours. He suggested, however, that measures could be taken to improve the flow of

traffic at the intersection of Shorefield Road and Georgia Avenue. One way would be to identify whether the signal timing could be modified to allow a longer green time for westbound traffic on Shorefield Road. Another might be to modify the lane striping to allow left turns from both westbound lanes, rather than just one.

Mr. Workosky opined that the proposed development satisfies the LATR Guidelines, and therefore would have no adverse impact on transportation facilities. When asked by the Hearing Examiner for his professional opinion on the impact of the proposed development, putting LATR to one side, Mr. Workosky testified that he does not believe there would be an adverse impact on traffic. He noted that the number of new trips expected is not dramatic, because the Applicant would essentially be replacing existing housing. He stated that there would not be any changes in access or road connections that might impact the surrounding community, so with the small increase in traffic anticipated, the majority of the intersections and driveways would continue to operate very similarly to their current conditions.

Mr. Workosky further opined that the proposed development would not have a detrimental effect on vehicular or pedestrian safety and traffic and would be suitable for the site.

Ms. Garrison asked Mr. Workosky whether his traffic study took into account commercial traffic coming onto Shorefield Road from the grocery store and the bank across the street. Tr. at 76. He replied that his traffic counts took into account all traffic going through the intersection of Shorefield Road and Georgia Avenue, regardless of whether it came from the residential properties on the north side, the commercial properties on the south side, or the park. He did not, however, analyze critical lane volume at the driveways from the residential and commercial uses onto Shorefield Road. Mr. Workosky acknowledged that his traffic counts did not take into account any traffic using Shorefield Road that did not go through its intersection with Georgia Avenue, e.g. local residents who may take alternative routes to avoid the crowded intersection. Mr. Workosky opined that local driving patterns are not expected to change due to the proposed development – if local residents are taking alternative routes today, they will continue to do so with the proposed

development in place. He stated that he did not see any apparent cut-through route during his field visits.

Under continued cross-examination, Mr. Workosky stated that he does not believe that the background traffic Technical Staff directed him to include in his analysis includes a new shopping center that Ms. Garrison described as “nearly completed,” on the southwest corner of Shorefield Road and Georgia Avenue. He had no explanation for why such a development would not have been included in the list of background development provided to him by Technical Staff.

Mr. Workosky further stated that vehicles making a U-turn at the intersection of Georgia Avenue and Shorefield Road would have been counted among the left-turn movements.

6. James A. Ruff, civil engineer. Tr. at 60-74; 87-91.

Mr. Ruff was designated an expert in civil engineering. He stated that utilities are available on site or immediately adjacent, and that no major changes to vehicular access are proposed. With regard to a statement in the Staff Report indicating that dedications would be necessary along both Georgia Avenue and Shorefield Road, Mr. Ruff stated that the full width necessary to provide for a 120-foot right-of-way for Georgia Avenue was dedicated in 1965, and the full width necessary to provide for a 70-foot right-of-way for Shorefield Road was dedicated in 1966. He suggested that Staff’s comment was an oversight.

Mr. Ruff noted that an approved Natural Resources Inventory/Forest Stand Delineation (“NRI/FSD”) has been submitted into the record, and that the subject site contains no features of environmental significance. He stated that there are some trees on the perimeters of each of the properties that make up the subject site, some of which are significant but have already been impacted by existing development. Mr. Ruff acknowledged that a stream runs through the subject site, but noted that it is mostly underground. He described it as an urban stream that would be difficult to restore to a natural condition, in part because of the large volume of water that flows through it. Mr. Ruff stated that the drainage area flowing into this stream has about 30 acres of land with no stormwater management. Thus, all the run-off from that area flows, uncontrolled, into the stream. As a result, the parts of the stream that are above-ground have steeply cut banks due to erosion, and

some stabilization work appears to be going on. The stream runs underground through the G-847 parcel, then emerges above-ground through part of the existing phase 2 apartment complex, and continues above-ground through one of the parcels with a single-family detached home. The stream then goes back underground through the rest of the phase 2, and stays underground through the G-846 property. Mr. Ruff stated that Technical Staff has indicated an intention to require the Applicant to reserve two stream valley buffer areas, in the form of 125-foot semi-circles: one at the point where the stream emerges above-ground just north of the G-847 property, and another where it emerges on the northern property line of the G-846 property. Mr. Ruff expressed some skepticism as to the value of these buffer areas, in light of the stream's condition.

Mr. Ruff testified that the Applicant intends to meet stormwater management requirements through a combination of above-ground and below-ground facilities, addressing both channel protection and water quality control. He observed that installing stormwater management facilities on the subject site would make only an incremental difference in overall conditions in the drainage basin, but that anything would be an improvement over what exists today.

Mr. Ruff declared that the illustrative site layout has been developed to accommodate existing utility easements along Shorefield Road, although there is some uncertainty about the extent of an access easement held by the Parks Department. Based on discussions to date, none of the parties involved have figured out what the purpose of the access easement is. Mr. Ruff seemed confident that in light of the Parks Department's support for the proposed development, they will permit the proposed use or perhaps abandon the easement.

Mr. Ruff opined that the proposed development would be served by adequate public facilities, including water, sewer, storm drainage and other public amenities, and would be suitable for the site and compatible with the neighborhood from an engineering perspective.

In response to questioning by Ms. Garrison, Mr. Ruff explained that not having any stormwater management system in the neighborhoods near the subject site does not mean there are no storm sewers. It means that there are no facilities to remove pollutants from the water that runs off of impervious surfaces, or to control the rate at which run-off is discharged into streams and

groundwater. Mr. Ruff was not aware of stormwater management controls that Ms. Garrison indicated are currently under construction for Wheaton Regional Park, at the end of Shorefield Drive, together with a new turnaround area and gates. Based on Ms. Garrison's description of the activities she has observed, Mr. Ruff stated that construction of the turnaround probably triggered the need to install stormwater quality controls, and that the lake in the park probably provides quantity storage.

IV. ZONING ISSUES

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

A floating zone is a more flexible device that allows a legislative body to establish a district for a particular category of land use, with regulations specific to that use, without attaching that district to particular pieces of property. Individual property owners may seek to have property reclassified to a floating zone by demonstrating that the proposed location is appropriate for the zone, i.e., it satisfies the purpose clause for the zone, the development would be compatible with the surrounding area, and it would serve the public interest.

Montgomery County has many floating zones, including the R-T Zones. The R-T 15 Zone contains development standards and a post-zoning review process that delegate to the Planning Board site specific issues such as building location, landscaping and screening. The application of the zone to the subject property involves an evaluation of eligibility under the purpose clause, compatibility with existing and planned land uses in the surrounding area, and relationship to the public interest.

A. The Purpose Clause

The intent and purpose of the R-T Zone as stated in Code §59-C-1.721 is set forth below.

The purpose of the R-T Zone is to provide suitable sites for townhouses:

- (a) In sections of the County that are designated or appropriate for residential development at densities allowed in the R-T Zones; or
- (b) In locations in the County where there is a need for buffer or transitional uses between commercial, industrial, or high-density apartment uses and low-density one-family uses.

It is the intent of the R-T Zones to provide the maximum amount of freedom possible in the design of townhouses and their grouping and layout within the areas classified in that zone, to provide in such developments the amenities normally associated with less dense zoning categories, to permit the greatest possible amount of freedom in types of ownership of townhouses and townhouse developments, to prevent detrimental effects to the use or development of adjacent properties in the neighborhood and to promote the health, safety, morals and welfare of the present and future inhabitants of the district and the County as a whole. The fact that an application for R-T zoning complies with all specific requirements and purposes set forth herein shall not be deemed to create a presumption that the resulting development would be compatible with surrounding land uses and, in itself shall not be sufficient to require the granting of the application.

The R-T Zone may be applied (1) in areas that are designated for R-T Zone densities (implying a master plan designation); (2) in areas that are appropriate for residential development at densities that are allowed in the R-T Zones; or (3) where there is a need for buffer or transitional uses. The present application satisfies the second of these alternatives.

The Applicant seeks the highest-density R-T Zone, R-T 15, which permits up to 18.3 units per acre with MPDUs. The Master Plan recommended continued R-30 zoning for the G-846 property, which permits a maximum density of 17.7 units per acre, and continued R-20 zoning for the G-847 property, which permits up to 26.47 units per acre. In addition, the Master Plan recommended densities of 12 to 15 units per acre for several parcels in the immediate vicinity, and R-T 8 zoning directly across Shorefield Road from the subject site. A small parcel just south of the G-846 property, fronting on Georgia Avenue, was rezoned to R-T 12.5 in 2004 (LMA No. G-818) and received preliminary plan approval in 2005 (Preliminary Plan No. 1-05052). Immediately north of the subject site is a large apartment complex in the R-30 Zone, which, as noted, permits densities consistent with

those allowed in the R-T Zones. Moreover, as Technical Staff noted, the 1964 rezoning and development of the Oakfield Apartments site played a large role in establishing the prevailing medium-density character of the surrounding area, and the rezoning and redevelopment now proposed would be consistent with that medium-density character. For all of these reasons, the Hearing Examiner concludes, based on the preponderance of the evidence, that the subject site is appropriate for densities permitted in the R-T Zones.

Evidence concerning the history of deterioration and crime at the Oakfield Apartments, as well as the support for the proposed rezoning in the neighborhood and from the Police Department, demonstrate that the proposed rezoning and development would be consistent with the intent of the R-T Zones to prevent detrimental effects to adjacent properties and to promote the health, safety, morals and welfare of the present and future inhabitants of the district and the County. This conclusion is also supported by the findings of Community Based Planning Staff, who concluded that although the proposed redevelopment would replace some of the existing, affordable, rental housing with more expensive owner-occupied housing, the resulting economic integration would be beneficial.

For all of the above reasons, the Hearing Examiner agrees with the conclusions of the Planning Board and Technical Staff that the proposed rezonings satisfy the purpose clause of the zone requested.

B. Compatibility

An application for a floating zone reclassification must be evaluated for compatibility with existing and planned uses in the surrounding area. The proposed development would involve a change from multi-family dwellings to single-family attached dwellings, with little change in the overall density and no change in the nature of the use, which would remain residential. This development would take place within a surrounding area that has significant mixed use components but, as Mr. Gang pointed out, is predominantly residential in character. Development of the G-846 property with townhouses would likely be a benefit to the property that was rezoned to R-T 12.5 in 2004, placing the small number of townhouses planned on that parcel next to a larger townhouse community on one side, rather than surrounded by apartment buildings on three sides. On the G-847 property, replacing

apartment buildings with townhouses would mirror the existing townhouse complex on the south side of Shorefield Road, and would provide a use that is more similar to the neighboring single-family detached community than the existing apartments.

Technical Staff found that the proposed development would be compatible with the surrounding mix of multi-family dwellings, single-family detached dwellings and non-residential uses, and would serve as a transition from one-family detached dwellings to higher-intensity uses on Georgia Avenue. The Planning Board made a similar finding, based on the reasons set forth in the Staff Report. For all of the above reasons, the Hearing Examiner concludes, based on the preponderance of the evidence, that the proposed reclassifications to the R-T 15 Zone would be compatible with existing and planned land uses in the surrounding area.

C. Public Interest

The applicant must show that the proposed reclassification bears sufficient relationship to the public interest to justify its approval. The State Zoning Enabling Act applicable to Montgomery County requires that all zoning power must be exercised:

“ . . . with the purposes of guiding and accomplishing a coordinated, comprehensive, adjusted, and systematic development of the regional district, . . . and [for] the protection and promotion of the health, safety, morals, comfort, and welfare of the inhabitants of the regional district.” [*Regional District Act*, Maryland-National Capital Park and Planning Commission Article (Art. 28), Md. Code Ann., § 7-110].

When evaluating the public interest, the District Council normally considers master plan conformity, the recommendations of the Planning Board and Technical Staff, and any adverse impact on public facilities.

The proposed reclassification and redevelopment would be consistent with the Master Plan's goals to protect and stabilize existing uses, maintain the well-established medium-density residential character of the surrounding area, and provide for infill development that is similar in character and compatible in density with its immediate neighborhood. As discussed in Part IV.A. above, the proposed redevelopment under the R-T 15 Zone would be consistent with the Master Plan's recommendations for medium-density residential uses on the subject site and nearby parcels,

and for R-T zoning on Shorefield Road to provide a transition between single-family detached neighborhoods and higher-intensity uses nearer to Georgia Avenue. Moreover, the present applications are consistent with the Master Plan's general recommendation for medium-density residential use in this area. For all of these reasons, the Hearing Examiner agrees with the Planning Board's and Technical Staff's conclusions that the proposed development would be consistent with the Master Plan.

Although anecdotal evidence suggests that traffic mitigation measures may be appropriate at site plan review, the preponderance of the evidence supports a finding that due to the relatively small number of new trips that would be generated, the proposed development would have no adverse impact on traffic or local roadways that is sufficient to warrant denial of the rezonings. The submitted traffic study shows a very minor impact on existing congestion levels at Randolph Road and Georgia Avenue during the weekday peak hours, which can be easily mitigated. The Hearing Examiner is persuaded by the testimony of the Applicant's traffic planner, who quickly identified two measures that might improve traffic circulation on Shorefield Road, that traffic mitigation can be required during site plan review to address the proposed development's contribution to existing congestion on Shorefield Road, if it was not adequately measured by the traffic study submitted at the zoning stage.

The uncontroverted evidence concerning school capacity indicates that under both the Growth Policy's interpretation of school capacity and the MCPS view of school capacity, the schools that would serve the proposed development have adequate capacity to accept the additional students this development would generate without adverse impact.

The evidence also indicates that public utilities are adequate to serve the proposed development. For all of these reasons, the Hearing Examiner concludes, based on the preponderance of the evidence, that the proposed reclassifications and development would have no adverse effect on public facilities that warrants denial of the application.

Community Based Planning Staff at the MNCPPC raised two additional public policy issues, which can be framed thus, in the context of the present zoning applications: does either (1)

the reduction in the inventory of affordable housing in this part of the County that would result from the proposed redevelopment, or (2) the County's policy of encouraging higher densities in close proximity to Metro warrant denial of two otherwise meritorious rezoning applications? The Hearing Examiner concludes that the answer must be no. The proposed rezonings would be part of an overall redevelopment that would replace a dilapidated 570-unit rental apartment complex, which is affordable only by virtue of the type and age of its units, with a mixed-income community providing roughly 370 units of affordable, refurbished rent-controlled housing, 180 new, owner-occupied, market-rate townhouses, and 20 new, owner-occupied townhouses subject to MPDU requirements. As Technical Staff concluded, the benefits of the resulting economic integration and affordability controls can be considered to mitigate the reduction in affordable dwelling units.

Staff suggests that the proximity of the G-846 property to the Glenmont Metro Station, about half a mile away, argues for higher density on this site than what is currently proposed. The Hearing Examiner sees little of persuasive value behind this argument, however. The zoning and density proposed for the subject site is consistent with the existing development of the site itself and surrounding properties, and is consistent with the recommendations of the applicable Master Plan. Moreover, it is consistent with the general trend of higher densities north of Randolph Road, in the area covered by the Glenmont Sector Plan, and decreasing densities south of Randolph Road, closer to the R-90 single-family neighborhoods to the east and south. Absent some particular justification, the Hearing Examiner is not persuaded that a theoretical preference for higher density on the G-846 property warrants denial of two applications for medium-density development that would be compatible with surrounding land uses.

For all of the above reasons, the Hearing Examiner concludes, based on the preponderance of the evidence, that the proposed reclassifications and development bear sufficient relationship to the public interest to warrant their approval.

V. CONCLUSIONS

Based on the foregoing analysis and after a thorough review of the entire record, I make the following conclusions:

1. The applications satisfy the requirements of the purpose clause.
2. The applications propose a form of development that would be compatible with existing and planned land uses in the surrounding area.
3. The requested reclassifications to the R-T 15 Zone bear sufficient relationship to the public interest to justify their approval.

VI. RECOMMENDATION

I, therefore, recommend that Zoning Application No. G-846, requesting reclassification from the R-30 Zone to the R-T 15 Zone of 6.7 acres of land known as Parcel A, Block A, Glenmont Woods Subdivision and located at 12207 Georgia Avenue in Silver Spring, Maryland, in the 13th Election District, and Zoning Application No. G-847, requesting reclassification from the R-20 Zone to the R-T 15 Zone of 4.6 acres of land known as Parcel A, Shorefield Manor Subdivision and located at 2301 Shorefield Road in Silver Spring, Maryland, in the 13th Election District, be **approved in the amount requested**.

Dated: July 7, 2006

Respectfully submitted,

Françoise M. Carrier
Hearing Examiner