



Committee: Directly to Council
Staff: Livhu Ndou, Legislative Attorney
Purpose: Final action – vote expected
Keywords: #LMA H-140, #ParkMontgomery

AGENDA ITEM #3D
July 20, 2021
Action

SUBJECT

Local Map Amendment (LMA) H-140

EXPECTED ATTENDEES

Derek Baumgardner, Hearing Examiner

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

Approve, disapprove, or remand the Hearing Examiner's recommendation to approve Local Map Amendment H-140

DESCRIPTION/ISSUE

Local Map Amendment H-140 is an amendment to the Zoning Map to rezone 3.29 acres of land from the R-H (Multiple-Unit, high-rise planned residential) zone to the CRTF (Commercial Residential Town Floating) zone. The specific zoning requested is CRTF-1.6, C-0, R-1.6, H-140. The property is located on the northern side of Piney Branch Road (MD 320) approximately 800 feet east of the intersection at University Boulevard (MD 193). The property address is 8860 Piney Branch Road, Silver Spring, Maryland. The Floating Zone Plan (FZP) includes five binding elements regarding use of the property, height, total residential units, vehicular access, and the number of Moderately Priced Dwelling Units (MPDU).

SUMMARY OF KEY DISCUSSION POINTS

This LMA is for the development of affordable housing. The current use is a multi-family residential dwelling with 141 dwelling units located in a 14-floor high-rise building. The applicant is seeking to add 76 multi-family dwelling units to the existing 141 units and renovate the existing units. Existing units are funded by the Housing Initiative Fund, which restricts incomes in 50% of the units to 60% of the Average Median Income (AMI). The new units will be funded by Income Housing Tax Credits (LIHTC), which restrict occupancy of all units to 20-80% of the AMI for 15 years; after expiration of the 15 years, 15% of the units (33 units) will be Moderately Priced Dwelling Units (MPDUs).

The District Council must find that the proposal will meet the standards required by the Zoning Ordinance and that the local rezoning will be consistent with the coordinated and systematic development of the regional district. These standards 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.

No opposition appeared at the public hearing. The Planning Board, Planning Staff, and Hearing Examiner recommend approval. A simple majority vote (5) from District Council is required for approval.

This report contains:

Hearing Examiner Report and Recommendation
Staff Report
Planning Board Recommendation
Draft Resolution

Pages

© 11-42
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Resolution No.: _____
Introduced: _____
Adopted: _____

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT
IN MONTGOMERY COUNTY, MARYLAND**

By: District Council

SUBJECT: APPLICATION NO. H-140 FOR AMENDMENT TO THE ZONING ORDINANCE MAP, Heather Dlhopolosky, Esquire, Attorney for the Applicant, Park Montgomery, LP; OPINION AND RESOLUTION ON APPLICATION; Lot 1, Park Montgomery, Plat No. 9626.

OPINION

On December 15, 2020, Park Montgomery LP ("Applicant") filed a Local Map Amendment (LMA) application (H-140) requesting the rezoning of the property located at 8860 Piney Branch Road (the "Property") in Silver Spring, Maryland from its current R-H Zone (Multiple-Unit, high-rise planned residential) to the CRTF Zone (Commercial Residential Town Floating). Exhibit 1. Park Montgomery LP proposes a Floating Zone to permit the development of a multi-family residential building with 76 dwelling units.

On March 12, 2021, staff of the Montgomery County Planning Department (Planning Staff or Staff) issued its report recommending approval of the application. Exhibit 37. The Planning Board agreed with Staff and with revisions to binding elements #4 and #5, and recommended approval on March 26, 2021. Exhibit 40. OZAH's public hearing proceeded as noticed on April 12, 2021. No one appeared in opposition to the application. The Hearing Examiner issued a report recommending approval on June 17, 2021. The Hearing Examiner reopened the record to receive the revised Floating Zone Plan with binding elements, entered into the record as Exhibit 45. Exhibit 46.

To avoid unnecessary detail in this Opinion, the Hearing Examiner's Report is incorporated herein by reference. Based on its review of the entire record, the District Council finds that the application meets the standards required for approval of the requested rezoning for the reasons set forth by the Hearing Examiner.

Subject Property

The subject site is approximately 3.29 acres in size and is improved with a 15-story multi-family residential building, 131 feet in height, with 141 dwelling units at approximately 150,000 gross square feet. Exhibit 4, p.1. The property is also improved by a two-level structured parking garage, along with surface parking, drive aisles, and landscaping. *Id.* The property is located on the north side of Piney Branch Road, approximately 1,000 feet east of the intersection of Piney Branch Road and University Boulevard. *Id.* A new Purple Line Station (Piney Branch Road Station) is currently under construction along University Boulevard south of its intersection with Piney Branch Road, just over 1,000 feet walking distance from the property. The topography of the property falls significantly from the rear (north and east) of the site to the front (south and west). *Id.*

Surrounding Area

The “surrounding area” is identified and characterized in a Floating Zone application to assess whether the development proposed by the Floating Zone Plan (FZP) will be compatible with the properties directly impacted by the use. The boundaries of the surrounding area include those properties. Once delineated, the surrounding area is “characterized” to compare the compatibility of the development proposed by the Floating Zone with the character of the area.

Staff defines the neighborhood as “properties fronting on Piney Branch Road between the main intersections of University Boulevard to the west and Carroll Avenue to the east, as well as the single-family neighborhood abutting in the rear.” Exhibit 37, p. 3. The Applicant defines the boundaries of the impacted area as Clifton Park Village development to the north, Carroll Avenue to the east and south, and University Avenue to the west. Exhibit 12, p. 2. The property itself is flanked by the Pineway Towers Condominiums, a high-rise condominium building, to the west, and the Nob Hill Apartments, garden-style apartment buildings, to the east. Directly behind the property, to the north, are single-family homes located in the R-60 Zone. Confronting the property to the south, across Piney Branch Road, are a variety of mixed residential and commercial uses located in the R-30 Zone, and a Sunoco gas station located in the CRT-1.5, C-0.25, R-1.5, H-60 Zone. Exhibit 12, p.1.

The Hearing Examiner concurred with the delineation of the surrounding area as described by Staff and the Applicant. The Hearing Examiner further characterized the surrounding area as “including mixed-use commercial, residential, and public park development with apartment towers and 1-2 story residential and commercial structures as well as single-family detached homes.” *Hearing Examiner’s Report*, p. 9.

Proposed Development

The Applicant proposes to rezone the property from the existing R-H zone (which can no longer be placed on any properties) to CRTF 1.6, C-0, R-1.6, H-140. The developer for this application, Enterprise Community Development Inc. (“Enterprise”) is the real estate arm for Enterprise Community Partners, a national non-profit organization created by the Rouse Company to end housing insecurity. Exhibit 37, p. 7. Staff reports that the purpose of this rezoning is to

allow the site to increase allowable density for the construction of a second multi-family building with structured parking for affordable housing. Exhibit 37, p. 6. Funding for the proposed development stems from the County Housing Initiative Fund (HIF), which loans funds to non-profit developers to rehabilitate existing units and build new affordable dwelling units, and Low-Income Housing Tax Credits (LIHTC). The developer also plans to renovate the existing multi-family building on site with affordable housing tax credits through LIHTC. Exhibit 37, p. 8; T. 24-25, 37. The FZP contains five binding elements that will permanently restrict future development:

1. The use of the property will be limited to multifamily residential and associated garage and surface parking.
2. Maximum building height on the Property will be 140' for existing building, however new development will be limited to 98 feet in height.
3. Total residential units onsite will not exceed 217 units.
4. Vehicular access to the Site will be limited to the existing driveway (access point).
5. Fifteen percent of total units onsite will be regulated as Moderately Priced Dwelling Units, per Chapter 25A of the County Code, subsequent to the expiration of the LIHTC restrictions and any other State restricted-use covenants.

Criteria for Approval

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.

Conformance with the Master Plan¹

The property is subject to the 2013 Long Branch Sector Plan ("Sector Plan" or "Plan"). Staff found that the proposed Floating Zone Plan substantially conforms and is consistent with the goals and recommendations of the Sector Plan. Exhibit 37, p. 12. Staff highlights that the Sector Plan identifies four goals on p. 24 of the Plan: (1) Community: Creating a strong sense of place and identity through design, parks, and public facilities; (2) Land Use and Zoning: Addressing compatibility issues and providing redevelopment incentives; (3) Sustainability: Creating a place for people that also supports and enhances natural systems; (4) Mobility: Providing options for getting around and integrating connections.

¹ Section 59-7.2.1.E.2.a. of the Zoning Ordinance requires the District Council to find that the FZP "substantially conforms with the recommendations of the applicable master plan, general plan, and other applicable County plans." Section 59-7.2.1.E.2.b requires the FZP to be "in the public interest," which includes a review of conformity with County plans and policies and whether the development will be consistent with the coordinated and systematic development in the Regional District under State law. Section 59-7.2.1.E.2.c requires the application to satisfy the intent of Floating Zones. The intent of Floating Zones incorporates compliance with the applicable master plan. *Zoning Ordinance*, §59-5.1.2.A.1.

The Plan does not recommend rezoning of this property, but Staff and the Applicant agree that one of the underlying goals of the sector plan is to provide more affordable housing. See Plan at p. 19 (Exhibit 14); Exhibit 37, p. 7. The Plan also references the future Purple Line Station currently being constructed at Piney Branch Road and University Avenue, as it "...may well result in increased housing values and raised rents however, the Plan seeks to address affordability and displacement issues through a comprehensive strategy that includes the MPDU program, increased funding and programming to create affordable housing, and introducing housing where it currently doesn't exist - on historically commercial properties." See Plan at p. 20 (Exhibit 14). The Applicant further asserted that "the Plan recommends enhancing and preserving existing residential neighborhoods, while at the same time revitalizing commercial centers to further its vision" including "enhance[ing] public facilities and environmental resources and creat[ing] multi-modal transportation options within the area." Exhibit 12, p. 3. According to Staff, the Long Branch Sector Plan intentionally limited the rezoning of properties and this property was not rezoned or recommended for a floating zone to avoid displacement of current residents. Exhibit 37, p. 13. Citing the Sector Plan at p. 20, the Applicant noted that "the Sector Plan expressed concern that 'implementing the Purple Line could impact real estate values and drive up prices,' and that in order '[t]o prevent the loss of[,] market affordable units and potential displacement of lower-income residents, the Plan recommends retaining the zoning on most of the existing multifamily developments." Exhibit 4, p. 3. Notwithstanding this, Staff concluded that since the purpose behind this redevelopment is to increase affordable housing in the Sector Plan area, and the plan includes binding elements requiring the development of affordable housing, the requested rezoning is consistent with the intent of the Sector Plan. Exhibit 37, p. 12.

Both the Hearing Examiner and Staff agreed that the proposed development substantially conforms to the Master Plan. The Hearing Examiner concluded that the proposed rezoning for the purposes of creating new affordable housing on a site substantially conforms to the recommendations of the 2013 Long Branch Sector Plan, furthers the public interest in expanding the indentified need for affordable housing, and satisfies the intent and standards of the floating zone by furthering the goals of the Plan to provide affordable housing near public transit and mixed-use nodes. Based on this record, the District Council agrees with the Hearing Examiner and so finds.rtf

Compability

Several sections of the Zoning Ordinance require the District Council to decide whether the FZP is compatible with adjacent uses and the surrounding area.² The Hearing Examiner found

² The application must 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. *Zoning Ordinance*, §59.7.2.1.E.1.c. The intent of the Floating Zones requires the applicant to "ensure protection of established neighborhoods" by "establishing compatible relationships between new development and existing neighborhoods through limits on applicability, density, and uses" and "providing development standards and general compatibility standards to protect the character of adjacent neighborhoods." *Id.*, Section 59.5.1.2.C.1 and 2. One purpose of the Employment Floating Zones (which includes the NRF Zone), is to "provide development that is compatible with adjacent development." *Id.*, 59.7.2.1.E.2.d. Finally, §59.7.2.1.E.2.f states that "when applying a non-Residential Floating zone to a property previously under a Residential Detached zone, [it must] not adversely affect the character

that the FZP would be compatible with both adjacent properties and the surrounding area because the proposed multi-family apartment building will occupy the same lot as the existing and taller multi-family apartment building and is of similar size and density to multi-family buildings on either side of the subject lot. *Hearing Examiner's Report*, p. 19. The FZP also utilizes the site's topography to mitigate the height of the second building. *Id.* at 20. Further, the FZP's binding elements restricting the residential use to affordable housing with density and height limits further promotes compatibility with the surrounding area. The District Council agrees and finds that the FZP will be compatible with the surrounding area.

Adequacy of Public Facilities/Public Interest

The District Council must also find that public facilities will be adequate to serve the FZP. While a more detailed review will occur later in the development process, a threshold analysis must be performed at the rezoning stage.³

The FZP must comply with the Planning Board's Local Area Transportation Review (LATR) Guidelines. *Zoning Ordinance*, 59.7.2.1.E.1.c. The Applicant's Traffic Study (Exhibit 15) found that the FZP conforms to LATR requirements concluding that "the study intersections will continue to operate within the established standards after the build-out of the proposed second residential building on the Park Montgomery site." Exhibit 15, p. 15. Based on comments from SHA and MCDOT, the Applicant submitted a revised Traffic Impact Study. T. 62; See Exhibit 36. Staff determined that "[the Applicant's] traffic study demonstrates that there is adequate capacity on the adjacent roadways to accommodate the additional vehicle traffic estimated to be generated by the Project." Exhibit 37, p. 10. Staff further concluded that "[t]he submitted study demonstrates that all of the studied intersections will operate within acceptable levels and no mitigation is required." Exhibit 37, p. 18. The Applicant's transportation planner found that "the application meets all the thresholds that are outlined in the LATR for intersection level service" concluding that "the floating zone plan will generate traffic that does not exceed the critical lane volume or volume capacity ratio standard as applicable under the Planning Boards LATR guidelines." T. 65.

Uncontroverted evidence establishes that other public facilities are adequate as well. Staff advises that the property is located within the Down County Consortium (Blair) school cluster and is served by Blair High School, Eastern Middle School, and Pine Crest and Montgomery Knolls Elementary Schools. Exhibit 37, p. 13. Because the new building will be financed through Low-Income Housing Tax Credits, the developer "anticipates being exempt from any Utilization

of the surrounding neighborhood." Because a portion of the property falls within a Residential Detached Zone (the R-60 Zone), this provision applies as well.

³Section 59.7.2.1.E.2.e requires that an Applicant demonstrate that traffic generated from the proposed development "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 . . ." The adequacy of other facilities is part of the Council's determination that an application will be "in the public interest..." and that it be "it will be consistent with a coordinated and systematic development of the Regional District" under State law. *Zoning Ordinance*, §59-7.2.1.E.1.b; *Md. Land Use Art.*, §21-101(a) and (b). The intent of the Floating Zones is to "implement comprehensive planning objectives by...ensuring that the proposed uses are in balance with and supported by the existing and planned infrastructure..." *Zoning Ordinance*, §59-7.2.1.E.1.b; 59-5.1.2.A.2.

Premium Payments that would typically be required due to the capacity issues for Blair High School.” Exhibit 37, p. 13. The proposed FZP adds stormwater management for the new building “utilizing Environmental Site Design techniques to the Maximum Extent Practicable (ESD to the MEP). A combination of green roof, biofiltration, and porous paving is proposed.” Exhibit 13, p. 2. The property is classified as Water Category W-1 and Sewer Category S-1, serviced by an 8-inch public sewer and a 16-inch water main in Piney Branch Road, provided by the Washington Suburban Sanitary Commission (WSSC). Exhibit 13, p. 2. The Applicant “confirmed with WSSC that there is adequate water and sewer to service the proposed building.” T. 57. Based on this evidence, the District Council finds that public facilities are adequate to serve the proposed development.

The Intent of Floating Zones (§59.5.1.2)

The District Council must determine whether the FZP fulfills the intent of the Floating Zones. Several of these have already been addressed.⁴ The remaining include (from Section 59-5.1.2):

Section 59-5.1.2.A.3. 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; and

The Hearing Examiner found that the FZP utilizes the design flexibility provided by the Floating Zones to integrate the development compatibly with surrounding uses. The project is oriented toward Piney Branch Road to incorporate existing circulation patterns, uses existing topography to reduce height impact, and reuses existing paved areas to prevent further impervious area on the site. From this record, the District Council finds, as did the Hearing Examiner, that the FZP utilizes the design flexibility provided by the Floating Zones to integrate the development compatibly with surrounding uses.

Section 5.1.2.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;

⁴ The intent of Floating Zones contained in Sections 59-5.1.2.A.1 and 2 and 59-5.1.2.C of the Zoning Ordinance has already been addressed in the Council's findings relating to the compatibility of the FZP with surrounding uses and the adequacy of public facilities. The balance of the Floating Zone intent clauses are discussed here.

3. *ensuring that development satisfies basic sustainability requirements, including open space standards and environmental protection and mitigation; and*

The FZP will allow for new affordable housing units in a Zone that is currently recognized by the Zoning Ordinance to support Plan goals for affordable housing. It anticipates and addresses potential changes in the real estate market due to construction of the Purple Line by preserving and adding to affordable housing stock and uses flexibility of design to limit new grading and reuse existing impervious area. The District Council finds that the development proposed meets this intent, as did the Hearing Examiner.

Purpose of Commercial/Residential Floating Zones (Section 59.5.3.2)

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 District Council has already addressed the third purpose (*i.e.*, providing compatible development) above. The Hearing Examiner found that the proposed development fulfills the remaining purposes of the Commercial/Residential Floating Zone. The FZP furthers the purpose of commercial/residential floating zones with binding elements that limit the use of the property for affordable housing and provide density and height restrictions that will further ensure compatibility with adjacent development and the surrounding area. *Hearing Examiner's Report*, p. 28. The CRTF Zone allows the flexibility to incorporate a new building into a developed site in a manner compatible with the surrounding area while minimizing environmental impacts. The District Council agrees with this analysis and finds that the FZP proposed meets the purposes of the Commercial/Residential Floating Zone.

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 site may apply for a Floating Zone.⁵ Because the Master Plan does not recommend a Floating Zone for this property and a portion of the property is in a Residential Detached Zone, it must meet the following prerequisites (*Zoning Ordinance*, §59.5.1.3.C.2.c):

- i. The property must front on a nonresidential street or must confront or abut a property that is in a Commercial/Residential, Employment, or Industrial zone; and
- ii. The application must satisfy a minimum of 2 prerequisites for each of the categories under Section 5.1.3 D.

⁵ Section 59-5.1.3.A prohibits placement of a Floating Zone on property currently in an Agricultural or Rural Residential Zone. As this property is zoned R-60, a Residential Detached Zone and NR, and Employment Zone, that section does not apply.

The Hearing Examiner found that the FZP meets these prerequisites. This development fronts on Piney Branch Road, a non-residential street classified as a major highway, and abuts and confronts properties located in residential multi-unit and commercial/residential zones. Exhibit 4, p. 10. Staff concurred with the Applicant's assessment that the application meets these standards and does not note any deficiencies in the application. See Exhibit 37, pp. 15-16. The Staff Report and the Hearing Examiner's Report set forth in detail the reasons the application meets the additional requirements of Section 59.5.1.3.D. Having no evidence to the contrary, the District Council finds that the FZP meets the applicability standards of the Zoning Ordinance.

Uses and Building Types Permitted (Section 59.5.4.3 and 59.5.4.4)

Section 59.5.3.3A.2 of the Zoning Ordinance permits "only" those uses permitted in the CRT Zone in the CRTF Zone. As multi-unit living is permitted in the CRT Zone, the application meets this requirement. Exhibit 37, p. 16; Exhibit 4, p. 11. Under 59.5.3.4.A., "[a]ny building type" is permitted in the Commercial/Residential Floating Zone, therefore, the FZP meets this standard. Staff and the Applicant concur that the use of the property as multi-family is permitted in the CRT zone and that the proposed building satisfies the requirements of "any building type" under this provision. The District Council finds that the use and building type proposed meet these standards.

Development Standards of the Zone (Section 5.3.5)

Staff concluded and the Hearing Examiner found that the FZP meets the development standards of the CRTF Zone. The Applicant's expert witness testified that that all development standards are met under the application for density, setbacks, building height, open space, parking, and public benefit points (satisfied as the FZP proposes "100 percent affordable housing"). T. 92-95. Based on this evidence, the District Council agrees with the finding of the Hearing Examiner that the application meets the development standards of the NRF Zone.

Conclusion

Based on the foregoing analysis and after a thorough review of the entire record, including the Hearing Examiner's Report issued June 17, 2021, the District Council concludes that the proposed reclassification and development will meet the standards set forth in the Zoning Ordinance, and that it will be consistent with the coordinated and systematic development of the Regional District under State law.

ACTION

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District located in Montgomery County, Maryland, approves the following resolution:

8

Local Map Amendment Application No. H-140, requesting reclassification from the existing R-H Zone, for property located at 8860 Piney Branch Road, Silver Spring, Maryland 20903, further described as Lot 1, Park Montgomery, as shown at Plat No. 9626, is hereby **approved** subject to the specifications and requirements of the revised Floating Zone Plan (Exhibit 45), provided that the Applicant files an executed Declaration of Covenants (Exhibit 44) reflecting the binding elements in the land records and submits to the Hearing Examiner for certification a true copy of the Floating Zone Plan approved by the District Council within 10 days of approval, in accordance with §§59.7.2.1.H.1.a. and b. of the Zoning Ordinance.

This is a correct copy of Council action.

Selena Mendy Singleton, Esq.
Clerk of the Council

10

**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:
PARK MONTGOMERY LP**

Applicant

For the Application:

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

Heather Dlhopolosky, Esquire
Attorney for the Applicant

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Local Map Amendment
Application No. H-140

Before: Derek J. Baumgardner, Hearing Examiner

HEARING EXAMINER'S REPORT AND RECOMMENDATION

TABLE OF CONTENTS

Page No.

TABLE OF CONTENTS

I. CASE SUMMARY	3
III. FACTUAL BACKGROUND	6
A. SUBJECT PROPERTY	6
B. SURROUNDING AREA	8
C. PROPOSED DEVELOPMENT AND FLOATING ZONE PLAN ("FZP")	9
1. Proposed Development.....	9
2. Floating Zone Plan and Binding Elements.....	11
D. ENVIRONMENT	13
E. COMMUNITY CONCERNS	14
A. THE "NECESSARY FINDINGS" REQUIRED BY ZONING ORDINANCE §59.7.2.1.E.2.	15
1. Substantial Conformance with the Master Plan.....	15
2. Compatibility	18

3. Adequate Public Facilities/Public Interest20

1. Adequate Public Facilities – Traffic.....20

2. Other Public Facilities.....22

B. THE INTENT AND PURPOSES OF THE ZONE (SECTION 59.7.2.1.E.2.C).....23

1. Intent of Floating Zones (Section 59.5.1.2).....24

2. Purpose of Commercial/Residential Floating Zones (Section 59.5.3.2).....27

C. THE APPLICABILITY OF THE ZONE (SECTION 59.5.1.3)28

D. DEVELOPMENT STANDARDS AND USES PERMITTED IN THE COMMERCIAL/RESIDENTIAL
FLOATING ZONES (DIVISION 59.5.4).....29

1. Uses and Building Types Permitted (Sections 59.5.3.)29

2. Development Standards of the CRTF Zone (Section 5.3.5.A-D).....30

E. COMPLIANCE WITH ARTICLE 59.6 (GENERAL DEVELOPMENT REQUIREMENTS.....31

V. RECOMMENDATION31

I. CASE SUMMARY

Applicant: Park Montgomery LP ("Applicant" or "Park Montgomery")

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

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



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

Acreage: 3.29 acres

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

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

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

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

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

13

	Income Housing Tax Credits (LIHTC), which restricts occupancy of all units to 20-80% of the AMI for 15 years; after expirations of the 15 years, 15% of the units (33 units) will be Moderately Priced Dwelling Units (MPDUs)
Current Density Permitted:	R-H zone permits 42.9 units/acre
Density Proposed:	1.6 FAR of Residential, no commercial
Environmental Issues:	There are no other environmentally sensitive features such as wetlands, 100-year floodplain or stream valley buffers, and the Site is not located within a Special Protection Area. There are no cultural facilities or historic sites located within or adjacent to this Site or any known endangered species or critical habitats.
Master Plan:	The Property is subject to the <i>Long Branch Sector Plan</i> , approved and adopted in November 2013 (the "Sector Plan"). While the Sector Plan does not contain any specific recommendations relative to the Property, it identifies that one of the challenges faced by the Sector Plan area is "to ensure that rental and ownership costs, for either homes or businesses, remain affordable, while also providing mechanisms to strengthen code enforcement and provide incentives to encourage reinvestment" (p. 8).
Neighborhood Response:	No community input was received.
Water/Sewer:	The site is served by existing water and sewer infrastructure that will not require either an upgrade to the service line or installation of a pump station due to the proposed development. WSSC service categories S-1, W-1.
Planning Staff Recommends:	Approval
Planning Board Recommends:	Approval
Hearing Examiner Recommends:	Approval
District Council votes required for approval:	5

II. PROCEDURAL HISTORY

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

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

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

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

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

No one appeared to oppose the application.

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

III. FACTUAL BACKGROUND

A. Subject Property

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

16



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

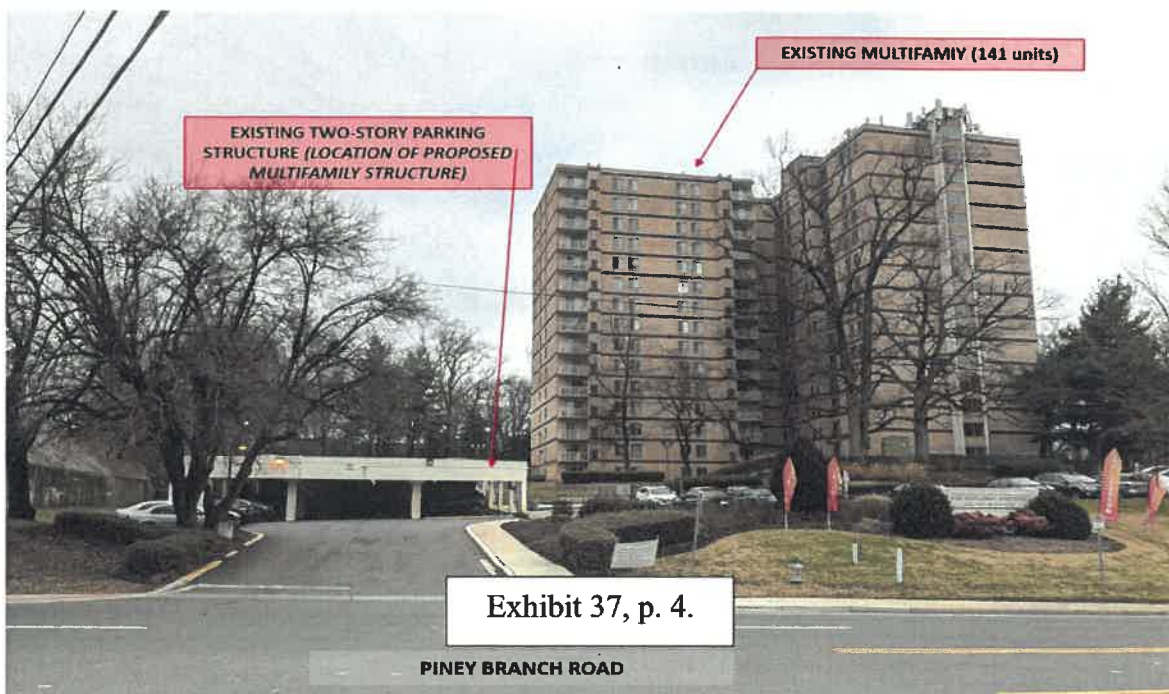


Figure 3: Street View of existing Site from Piney Branch Road, looking north

B. Surrounding Area

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

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



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

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

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

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

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

1. Proposed Development

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

and manages. T. 27.

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

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

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

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



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

2. Floating Zone Plan and Binding Elements

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

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

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

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

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

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

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

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

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

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



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

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

E. Community Concerns

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

IV. FINDINGS AND CONCLUSIONS

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

To approve an LMA, the District Council must find that the proposal will meet the standards required by the Zoning Ordinance and that it will be consistent with the coordinated and systematic development of the Regional District. *See, Md. Land Use Art.*, §21-101(a) and (b). While many of the site-specific requirements for development are addressed by later approvals, the Zoning Ordinance contains various standards, or "Necessary Findings," that the Council must make. *See, Zoning Ordinance*, §59.7.2.1.E. These standards incorporate the requirements of other sections of the Zoning Ordinance, and most fall within three main categories: (1) conformance with the Master

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

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

1. Substantial Conformance with the Master Plan

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

Section 7.2.1.E.2.a. For a Floating zone application the District Council must find that the floating zone plan will:

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

* * *

Section 59.7.2.1.E.2.b: ...further the public interest...³

* * *

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

* * *

Section 59.5.1.2.A.1. (Intent of Floating Zones): Implement comprehensive planning policies by... furthering the goals of the general plan, applicable master plan, and functional master plan...

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

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

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

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

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

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

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

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

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

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

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

2. Compatibility

Several sections of the Zoning Ordinance require an analysis of the compatibility of the proposed FZP with adjacent uses and the surrounding area. The application must:

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

* * *

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

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

* * *

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

* * *

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

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

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

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

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

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

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

3. Adequate Public Facilities/Public Interest

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

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

* * *

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

* * *

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

* * *

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

1. Adequate Public Facilities -- Traffic

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

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

Table 3: Summary of Transportation Impact Study

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

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

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

2. Other Public Facilities

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

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

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

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

3. Public Interest

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

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

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

Section 59.7.2.1.E.2.c of the Zoning Ordinance requires the District Council to find that

the FZP “satisfy the intent and standards of the proposed zone.” The Zoning Ordinance includes an “intent” clause for all Floating Zones and a “purpose” clause for the zone requested. Some of the intent or purpose clauses have already been analyzed above. The balance of the intent findings for Floating Zone and the purposes of the CRTF Zone, are examined here.

1. Intent of Floating Zones (Section 59.5.1.2)

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

Section 59.5.1.2.A.3 ... The intent of the Floating zones is to:

A. Implement comprehensive planning objectives by...

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

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

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

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

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

B. Encourage the appropriate use of land by:

- 1. providing flexible applicability to respond to changing economic, demographic, and planning trends that occur between comprehensive District or Sectional Map Amendments;***
- 2. allowing various uses, building types, and densities as determined by a property's size and base zone to serve a diverse and evolving population; and***
- 3. ensuring that development satisfies basic sustainability requirements including:***
 - a. locational criteria,***
 - b. connections to circulation networks,***
 - c. density and use limitations,***
 - d. open space standards,***
 - e. environmental protection and mitigation; and***

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

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

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

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

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

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

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

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

Section 59.5.3.2 of the Zoning Ordinance describes the purpose of the Commercial/Residential Floating Zones.

Section 59.5.3.2. (Purpose of Commercial/Residential Floating Zones)

The purpose of the Commercial/Residential Floating zones is to:

- A. allow development of mixed-use centers and communities at a range of densities and heights flexible enough to respond to various settings;***
- B. allow flexibility in uses for a site; and***
- C. provide mixed-use development that is compatible with adjacent development.***

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

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

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

C. The Applicability of the Zone (Section 59.5.1.3)

Section 59.5.1.3. of the Zoning Ordinance sets up a series of threshold tests to determine whether a property may apply for a Floating Zone. These subsections are addressed as follows:

Section 59.5.1.3. A. A Floating zone must not be approved for property that is in an Agricultural or Rural Residential zone.

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

Section 59.5.1.3. C. If a Floating zone is not recommended in a master plan, the following apply:

1. The maximum allowed density is based on the base zone and on the size of the tract as stated in Division 5.2 through Division 5.5. Any density bonus requested under Chapter 25A may be added to the density allowed under Division 5.2 through Division 5.5 and included in the units per acre or FAR of the zone requested.

2. Residential Base Zone

* * *

c. When requesting a ..., Commercial Residential Town Floating (CRTF) zone... for a property with a Residential base zone:

- i. The property must front on a nonresidential street or must confront or abut a property that is in a Commercial/ Residential, Employment, or Industrial zone; and***
- ii. The application must satisfy a minimum of 2 prerequisites for each of the categories under Section 5.1.3.D.***

Section 59.5.1.3. D. Prerequisites [see table]

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

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

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

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

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

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

D. Development Standards and Uses Permitted in the Commercial/Residential Floating Zones**(Division 59.5.4)****1. Uses and Building Types Permitted (Sections 59.5.3.)**

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

31

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

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

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

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

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

Development Standards	Required	Proposed
Tract Area		150,087 sf
Prior Dedication	n/a	6,740 sf
New Dedication		0 sf
Site		143,347 sf
Section 59.5.3.5.A: Density		
Total FAR/GFA	1.5 (225,130 sf)	1.6 (240,140 sf)
Commercial	1.5 (225,130 sf)	0 (0 sf)
Residential	1.5 (225,130 sf)	1.6 (240,140 sf) ¹
MPDUs	12.5%	15% ²
Section 59.5.3.5.B: Building Height		
Existing Building	Established by Plan	140 ft
Proposed Building	Established by Plan ²	98 ft
Section 59.5.3.5.C: Building Setbacks		
Public Street	Established by Plan	75 ft
Adjoining Lot		
Side	Established by Plan	10 ft
Rear	Established by Plan ³	30 ft
Open Space	5% of site	7,168 sf
Parking⁴		
Vehicle		
Studio	Min 0.5 space per unit / Max 1 space per unit	
1 Bed	Min 0.5 space per unit / Max 1.25 space per unit	
2 Bed	Min 0.5 space per unit / Max 1.5 space per unit	
3 Bed	Min 0.5 space per unit / Max 2 spaces per unit	
Total	109 min / 343 max	220 spaces
Bicycle	Min 0.5 per unit / Max 100	100
Motorcycle	Min 2% of total parking	5
Loading	1	2
Public Benefit Points	50 points / 3 categories	50 points / 3 categories

Table 4: Proposed Floating Zone Standards**E. General Development Requirements (Article 59.6)**

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

V. RECOMMENDATION

For the foregoing reasons, I conclude that the proposed reclassification and Floating Zone Plan will meet the standards set forth in the Zoning Ordinance and that it will be consistent with a

coordinated and systematic development of the Regional District under State law. Therefore, I recommend that Local Map Amendment Application No. H-140, requesting reclassification from the R-H Zone to the CRTF-1.6, C-0, R-1.6, H-140 zone be **approved** subject to the specifications and requirements of the Floating Zone Plan (Exhibit 9), provided that the Applicant files an executed Declaration of Covenants reflecting the binding elements in the land records and submits to the Hearing Examiner for certification a true copy of the Floating Zone Plan approved by the District Council within 10 days of approval, in accordance with §§59.7.2.1.H.1.a. and b. of the Zoning Ordinance.

Issued: June 17, 2021

Respectfully submitted,



Derek J. Baumgardner
Hearing Examiner

<https://montgomerycountymd.gov/ozah/>

**Local Map Amendment
Application No. H-140**

On July 7, 2021, the Applicant submitted a revised Floating Zone Plan (Exhibit 45) listing the following binding elements:

1. The use of the property will be limited to multifamily residential and associated garage and surface parking.
2. Maximum building height on the Property will be 140' for existing building, however new development will be limited to 98 feet in height.
3. Total residential units onsite will not exceed 217 units.
4. Vehicular access to the Site will be limited to the existing driveway (access point).
5. Fifteen percent of total units onsite will be regulated as Moderately Priced Dwelling Units, per Chapter 25A of the County Code, subsequent to the expiration of the LIHTC restrictions and any other State restricted-use covenants.

The Hearing Examiner finds that the Applicant's revised Floating Zone Plan with binding elements (Exhibit 45) is identical to the binding elements accepted by the Applicant and evaluated by the Hearing Examiner.

The Hearing Examiner issued an Order Opening and Closing the Record on July 9, 2021, to allow the admittance of Exhibit 45 into the record in this case. That Order also found that the revised FZP (Exhibit 45) did not change the substance of the Hearing Examiner's Report recommending approval and constituted a technical correction to the record. Exhibit 46.

II. FINDINGS

The Hearing Examiner finds that the revised FZP with binding elements (Exhibit 45) does not change the substance of the Hearing Examiner's Report recommending approval and constitutes a technical correction to the record, superseding Exhibit 9. The Hearing Examiner further finds that this application, including the revised FZP (Exhibit 45) and draft covenant

44

(Exhibit 44) continue to meet all standards for approval under the Montgomery County Zoning Ordinance and State law. The amendment has no substantive effect on the Hearing Examiner's recommendation issued on June 17, 2021.

III. RECOMMENDATION

For the foregoing reasons, the Hearing Examiner concludes that the proposed reclassification and Floating Zone Plan will meet the standards set forth in the Zoning Ordinance and that it will be consistent with a coordinated and systematic development of the Regional District under State law. Therefore, I recommend that Local Map Amendment Application No. H-140, requesting reclassification from the existing R-H zone to the to the CRTF 1.6, C-0, R-1.6, H-140 be approved in the amount requested and subject to the specifications and requirements of the revised Floating Zone Plan (Exhibit 45), provided that the Applicant files an executed Declaration of Covenants (Exhibit 44) reflecting the binding elements in the land records and submits to the Hearing Examiner for certification a true copy of the Floating Zone Plan approved by the District Council within 10 days of approval, in accordance with §§59.7.2.1.H.1.a. and b. of the Zoning Ordinance.

Issued this 9th day of July, 2021.

Respectfully submitted,



Derek J. Baumgardner
Hearing Examiner

45

46

**LOCAL MAP AMENDMENT APPLICATION
DISCLOSURE STATEMENT**
(Revised February 7, 2019)

State law requires that each and any Applicant for a local zoning map amendment, or Party of Record, who has made a contribution to a candidate for County Executive or County Council of \$500.00 or more, calculated cumulatively for the four-year election cycle either before the filing of the application or during the four-year cycle within which the application is pendent, must disclose the name of the candidate to whose treasurer, political committee, or slate the contribution was made, the amount and the date of the contribution.

A Disclosure Statement must be filed when the application is filed or within two weeks after entering the proceeding by a Party of Record and be updated within 5 business days of any contribution made after the filing of the initial disclosure and before final disposition of the application by the District Council. If more than one contribution is made, please specify in the space provided below each contribution and to whom it was made. **If more than one applicant is involved in a single application, each applicant must file this statement.**

Subject to the penalties of perjury, I, Suzanne Welch, VP, CPDC, Inc.

**(NAME OF APPLICANT FOR LOCAL MAP AMENDMENT
OR PARTY OF RECORD)**

HEREBY AFFIRM that the contents of this statement are true to the best of my

knowledge, information and belief, and that: **(SELECT EITHER 1 OR 2 BELOW AND CHECK
APPROPRIATE STATEMENT)**

1. ☐ I HAVE made a contribution of _____
**(FILL IN AMOUNT OF CONTRIBUTION IF \$500
OR MORE, OR STATE N/A IF NOT APPLICABLE)**

on _____
(FILL IN DATE (MONTH, DAY AND YEAR) OF CONTRIBUTIONS),

to the following candidate's treasurer, political committee, or slate:

(FILL IN NAME OR NAMES OF CANDIDATE, OR STATE N/A IF INAPPLICABLE)
(If more space is required, use the back of this form.)

2. ☒ I HAVE NOT made a contribution requiring disclosure.

Suzanne Welch

SIGNATURE OF DECLARANT

This Statement is filed in compliance with the public ethics requirements of Md. Code Ann. General Provisions, §§5-842 through 5-845; 2014 Md. Laws Ch. 94. A person who knowingly and willfully violates this part is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$ 1,000.

For convenience, several definitions in State law are contained on the next page.

Subscribed and sworn to me, a Notary Public for Montgomery County, Maryland, this

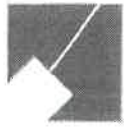
04 day of August, 2020

NANCY HARMAN RODRIGUEZ
NOTARY PUBLIC
MONTGOMERY COUNTY
MARYLAND
My Commission Expires May 11, 2022

[Signature]
NOTARY PUBLIC
My Commission Expires:

Exhibit 3
H-140

47



MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

March 26, 2021

Ms. Lynn Robeson Hannan, Director/Hearing Examiner
Montgomery County Office of Zoning and Administrative Hearings
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 200
Rockville, Maryland 20850

SUBJECT: Local Map Amendment H-140
Park Montgomery

Dear Ms. Robeson Hannan:

On March 25, 2021, the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission reviewed Local Map Amendment H-140, a request to rezone the property located at 8860 Piney Branch Road, Silver Spring from R-H to CRTF 1.6, C-0 R-1.6 H 140 to allow a new multifamily structure for up to 76 units with an existing 141-unit apartment building to remain, with 15% of 217 total units as MPDUs.

During staff's presentation, the following corrections to recommended binding elements #4 and #5 were presented with additions shown in underline:

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

The Planning Board received one letter of written testimony ahead of the hearing that opposed the Project (Attachment 3). Staff addressed these concerns regarding the proposed setbacks, massing, height of the new building, and conformance with the Sector Plan during the presentation. Staff explained that the proposed setbacks are greater than required in the CRT zone, and that the massing and height will be less than the existing onsite 14-story apartment building and the neighboring 15-story apartment building, and generally appropriate to the site. The building massing and architecture will be further analyzed during the Sketch and Site plan reviews were the LMA to be approved. The Applicant also presented an additional exhibit (Attachment 4) demonstrating the Project's relation to the western property and compatibility with height and setbacks.

The letter also stated concern regarding conformance with the 2013 *Long Branch Sector Plan*, which did not recommend new zoning for this property. Staff does not dispute this but notes that the Sector Plan acknowledged that many of the multifamily zoned properties were not rezoned in an attempt to keep the existing "naturally occurring" affordable housing. This proposal conforms

Ms. Lynn Robeson Hannan
March 26, 2021
Page Two

to this goal of the Sector Plan by allowing the redevelopment to keep the existing onsite affordable housing and add 76 more affordable units.

Following discussion with staff and the Applicant's attorney, the Planning Board unanimously recommends **APPROVAL** of the CRTF 1.6, C-0 R-1.6 H-140 rezoning application and the associated Floating Zone Plan for the reasons set forth in the technical Staff Report and modified binding elements as presented, which is hereby incorporated by reference in this recommendation.

The Planning Board recommends approval of the rezoning application in that the application is consistent with the purpose clause and all applicable standards for the CRTF 1.6, C-0 R-1.6 H-140 Zone, including density; satisfies the prerequisites, intent statement, and necessary findings of the CRTF 1.6, C-0 R-1.6 H-140 Zone; and is in harmony with the general intent and objectives of the 2013 *Long Branch Sector Plan*.

The Board finds that the CRTF 1.6, C-0 R-1.6 H-140 Zone is appropriate at this location and that the proposed redevelopment of this site to allow the construction of a new multifamily building for up to 76 units, with the existing apartment building to remain, for a maximum of 217 units, with 15% of total units as Moderately Priced Dwelling Units, is compatible with the existing and approved development and the surrounding neighborhood.

On a motion by Vice Chair Fani-González, seconded by Commissioner Cichy, with Chair Anderson, and Commissioners Patterson and Verma voting in favor, the Board recommends (5-0) that Local Map Amendment H-140, Park Montgomery, be approved with the binding elements and conditions enumerated in the Staff Report and modified in the Staff presentation.

We hope the Planning Board's recommendations and the Staff Report will be helpful to your proceedings.

Sincerely,



Casey Anderson
Chair

CA: gb

Attachment 1: Staff Report for Local Map Amendment H-140 with Attachments
Attachment 2: Staff Report for Preliminary Forest Conservation Plan H-140 with Attachments
Attachment 3: Correspondence received following Staff Report Posting
Attachment 4: Applicant's Hearing Exhibit

50

Montgomery Planning

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB

Item No. 7

Date: 03.25.2021

Park Montgomery, Local Map Amendment H-140

[8] Grace Bogdan, Planner Coordinator, DownCounty, Grace.Bogdan@montgomeryplanning.org, 301.495.4533

[SD] Stephanie Dickel, Supervisor, DownCounty, Stephanie.Dickel@montgomeryplanning.org, 301.495.4527

[] Elza Hisel-McCoy, Chief, DownCounty, Elza.Hisel-McCoy@montgomeryplanning.org, 301.495.2115

Completed: 3.12.2021

Description

Request to rezone a 3.29-acre property from R-H to CRTF-1.6, C-0, R-1.6, H-140 to allow the construction of a new multi-family structure for up to 76 units with an existing 141 unit apartment building to remain, with 15% of total units (217) as MPDUs.

Location: 8860 Piney Branch Avenue approximately 900 feet east of University Boulevard

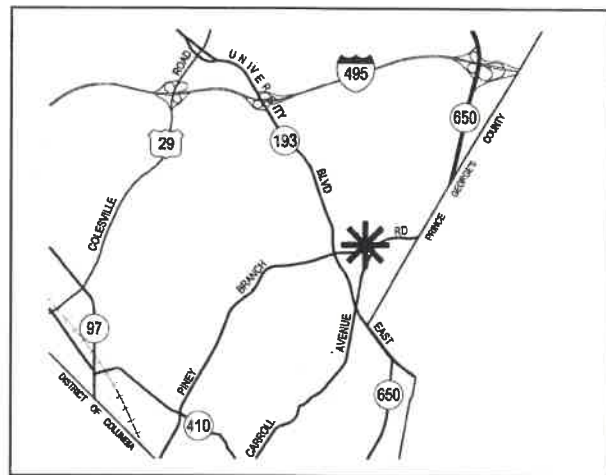
Master Plan: 2013 Long Branch Sector Plan

Applicant: Park Montgomery Limited Partnership

Application Accepted: December 4, 2020

Public Hearing by the Hearing Examiner: April 12, 2021

Review Basis: Chapter 59, Zoning Ordinance



Summary

- Staff recommends approval of the Local Map Amendment (LMA) to rezone the 3.29-acre property to CRTF-1.6, C-0, R-1.6, H-140, with conditions, to be transmitted to the Hearing Examiner.
- The Property is currently developed with one 14-story multi-family building containing 141 affordable units, a two-story parking structure, and surface parking.
- The proposed rezoning would increase the maximum density onsite, to allow future development of a second 98-foot tall multi-family structure for up to 76 units for the sole purpose of affordable housing.
- The Proposal will provide affordable housing in the existing and proposed buildings covered by three separate programs: Housing Initiative Fund, Low-Income Housing Tax Credits, and Moderately Priced Dwelling Unit program.
- An associated Preliminary Forest Conservation Plan and Tree Variance is recommended for approval and discussed in a separate staff report.
- The Property is not recommended for a floating zone in the 2013 Long Branch Sector Plan, therefore the application must meet the prerequisites as specified in Section 59.5.1.3.C & D of the Zoning Ordinance.
- Subsequent Sketch and Site Plan reviews will be required if the Local Map Amendment is approved.
- Staff has not received any correspondence regarding this Application.

Exhibit 37
H-140

51

SECTION 1: STAFF RECOMMENDATION

Staff recommends approval of Local Map Amendment H-140 and the associated Floating Zone Plan with the following binding elements:

1. The use of the property will be limited to multifamily residential and associated garage and surface parking.
2. Maximum building height on the Property will be 140' for existing building, however new development will be limited to 98 feet in height.
3. Total residential units onsite will not exceed 217 units.
4. Vehicular access to the Site will be limited to the existing driveway.
5. Fifteen percent of total units onsite will be regulated as Moderately Priced Dwelling Units, per Chapter 25A of the County Code, subsequent to the expiration of the LIHTC restrictions.

At the time of Sketch Plan and Site Plan approval, the Applicant must address the following:

1. The Applicant will participate in the implementation of the 2-way separated bikeway along the north (Site) side of Piney Branch Road, as envisioned by the 2018 *Bicycle Master Plan*.
2. The Applicant will provide a 10-foot sidewalk behind the curb along the Site's Piney Branch Road frontage in compliance with the 2013 *Long Branch Sector Plan*.
3. Before the issuance of access permits, the Applicant must satisfy the Maryland State Highway Administration's requirements for access and improvements.
4. Submit a public open space design in conformance with Section 59.6.3 of the Zoning Ordinance.

SECTION 2: PROPERTY AND PROJECT DESCRIPTION

Vicinity

The 3.29-acre Property is located on the northern side of Piney Branch Road (MD 320) approximately 800 feet east of the intersection at University Boulevard (MD 193). Many of the properties fronting on Piney Branch Road are developed with multifamily residential buildings at varying densities and setback far from the road. Directly to the west of the Site is a 13-story condominium building, and directly to the east are three-story garden apartments. A detached single-family neighborhood is located to the rear of the Property. Confronting the Property on the south side of Piney Branch Road is El Calvario Church, a gas station, townhouses, and New Hampshire Estates Park and Elementary School.

The Staff-defined Neighborhood, outlined in blue in Figure 1 below, is primarily defined by properties fronting on Piney Branch Road between the main intersections of University Boulevard to the west and Carroll Avenue to the east, as well as the single-family neighborhood abutting in the rear.

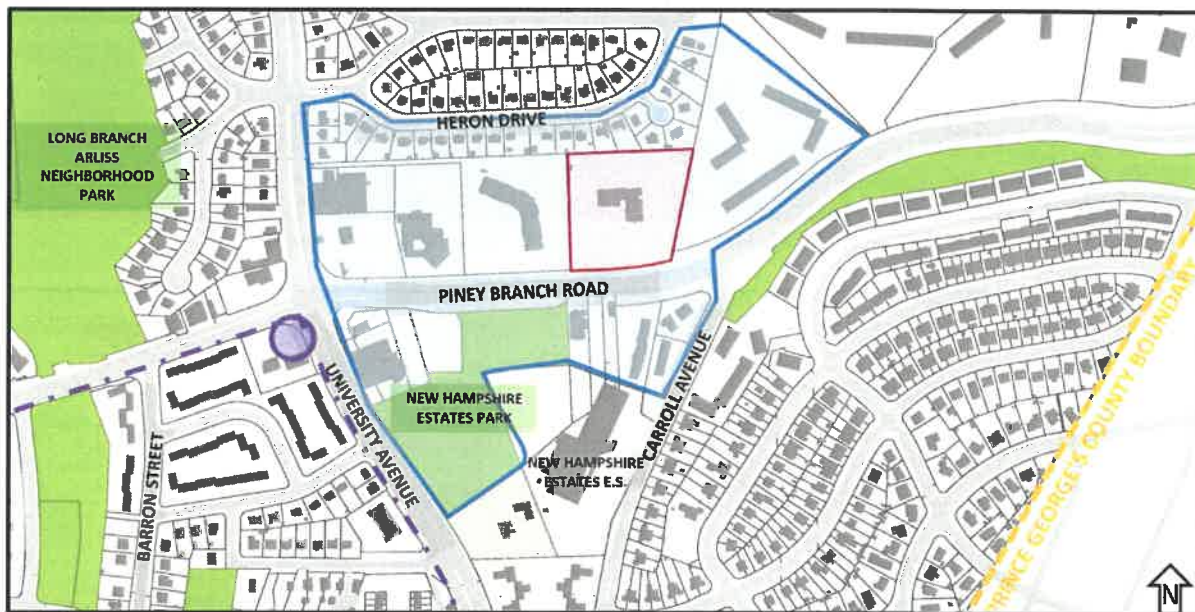


Figure 1: Vicinity Map/Staff Defined Neighborhood in blue, with Property in red

Property Description

The Property is currently zoned R-H (multiple-unit, high-rise planned residential), and improved with a 14-story multi-family building containing 141 units with one access point from Piney Branch Road with surface parking and a two-story parking structure. The existing building is supported by the County Housing Initiative Fund, and a large portion of those units are reserved for households at 60% area median income (AMI), while some units are market rate affordable. For further discussion on affordable housing, see Page 7.

The Property topography slopes significantly from north to south (rear to front) with the grade dropping approximately 36 feet towards the Piney Branch Road frontage. The Property contains a small portion of forest (approximately 12,875 square feet) located along the eastern boundaries, which features several mature trees. 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 nor any known endangered species or critical habitats.



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



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

Existing Transportation Access and Transit Service

The Property has direct access from Piney Branch Road (MD 320), which is classified as a 4-lane major highway with a master-planned 120-foot right-of-way. Immediately adjacent to the western boundary of the Property is a bus stop served by Montgomery County Ride On routes 16, 20, and 24, providing connections between the Silver Spring Central Business District and the City of Takoma Park. The Purple Line light-rail transit service, currently under construction, will include a station at University Boulevard and Piney Branch Road, approximately 800 feet west of the Site. Within the vicinity of the Purple Line transit station is a planned station for the University Boulevard Bus Rapid Transit (BRT) route, which will connect the Takoma/Langley Transit Center to the Wheaton Metro Station.

Zoning Context

The Property is located within the 2013 *Long Branch Sector Plan*, which did not recommend any changes to this Site, nor did it recommend this Site for a floating zone.

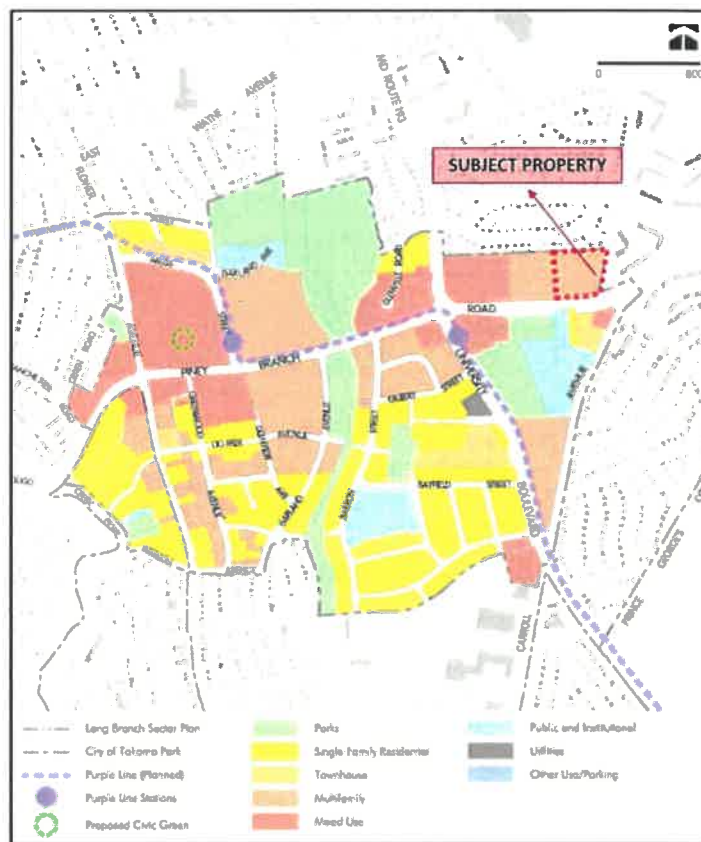


Figure 4: 2013 Long Branch Sector Plan Proposed Land Use (Subject Property highlighted in red)

In 2014, subsequent to the adoption of the Sector Plan, the County Council adopted a new Zoning Ordinance. As part of this update, the new Zoning Ordinance removed several zoning designations and introduced other. Previous zones that had been replaced were updated on the Zoning Map as generally equivalent conversions to new zones. Some zones, including the R-H zone of the Subject Property, were retained from the old Zoning Code. The R-H zone development standards regulate density and maximum dwelling units based on lot size, not FAR. Based on these development standards, the current zoning on the Subject Property has been maximized and no further density is allowed.

Proposal

The Applicant proposes to rezone the Property from the existing R-H zone to CRTF 1.6 C 0.5 R 1.6 H 140'. The purpose of this rezoning is to allow the Site to increase allowable density for the construction of a second multi-family building with structured parking for affordable housing. The new building will be a maximum of 98 feet in height and will provide up to 76 multifamily dwelling units. In total, the Site would allow up to 217 housing units within two buildings.

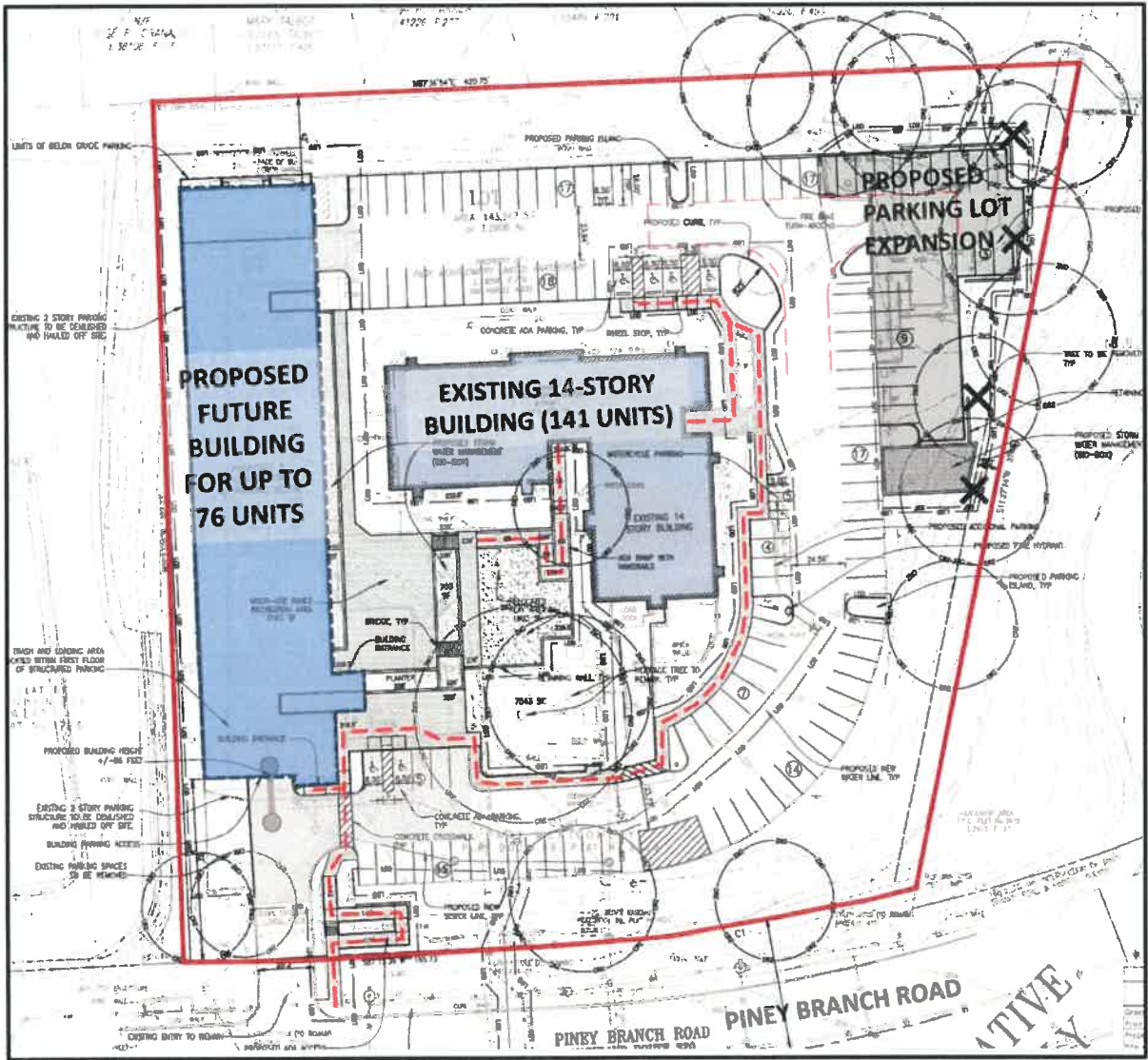


Figure 5: Proposed Floating Zone Plan



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

As shown in Figure 6 above, the new building is proposed mostly within the existing footprint of the two-story parking structure, which will be demolished to accommodate the new building. The proposed building location will limit impacts to undeveloped portions of the Property and provide a building footprint closer to Piney Branch Road, enhancing the relationship of the Site to the street.

Affordable Housing

In 2000, the Subject Property was acquired by Community Preservation and Development Corporation (CPDC) to prevent the Property from converting to market rate apartments. The existing building maintains affordable housing through assistance from the County Housing Initiative Fund. The developer for this subject application is Enterprise Community Development Inc, which is the real estate arm for Enterprise Community Partners, a national non-profit organization created by the Rouse Company to end housing insecurity. The proposed development will increase available affordable housing onsite through the federal Low-Income Housing Tax Credit program and the County MPDU program. In total, the affordable housing onsite will range in affordability and will be restricted and monitored through different programs. Each of these programs are described below:

County Housing Initiative Fund (HIF):

Montgomery County's Housing Initiative Fund (HIF) is a locally funded housing trust fund that provides loans to the Housing Opportunities Commission (HOC), nonprofit developers, experienced rental property owners, and for-profit developers to build new housing units, renovate deteriorated multi-family housing developments, preserve existing affordable housing, and provide special needs rental housing.

As a condition for use of HIF funding, 50% of existing units at Park Montgomery are restricted to 60% AMI. A handful of the existing units (20) became out of compliance due to increased income

and will be removed from the HIF program, however the Applicant is working to have new restrictions placed on these units through refinancing/tax credit awards. The existing building is also restricted by the Community Development Administration (CDA), a state-run program, which requires 100% of the units be 60% or less of AMI.

Low-Income Housing Tax Credit (LIHTC)

This program is funded by the IRS and administered through state housing financing agencies and provides funding for the development costs of low-income housing rental units. The LIHTC program restricts units to 20-80% affordability for a 15-year compliance period. The Applicant has received these tax credits for the construction of the new building that will contain 76 units and is applying for additional tax credits to renovate the existing building.

Moderately Priced Dwelling Unit (MPDU)

A Montgomery County specific program with a mandatory set aside of 12.5%-15% units in new developments greater than 20 units. The MPDU program serves households at 65-75% AMI, dependent on construction type, for a 99-year control period. This Property is only required to provide 12.5% MPDUs, however, to receive the requested density bonus the Applicant is proposing 15% MPDUs based on the entire Site unit count (217 units), resulting in 33 MPDUs. The MPDU regulations will begin subsequent to the expiration of the LIHTC restrictions. Essentially, for the first 15 years after construction, 100% of the new building (76 units) will be restricted under the LIHTC program to 20-80% AMI, and then for the subsequent 99 years, 33 units will be restricted to 65-75% AMI through the MPDU program.

Circulation

Access for all modes of transportation is provided by the existing full-movement driveway on Piney Branch Road, located approximately 360 feet west of the intersection of Carroll Avenue and Piney Branch Road. The Application proposes no substantial changes to the Site's existing access configuration. The driveway is approximately 28-feet wide, in compliance with the minimum (20-feet) and maximum (32-feet) width of a driveway within the CRT zones (Section 59.6.1.4.A).

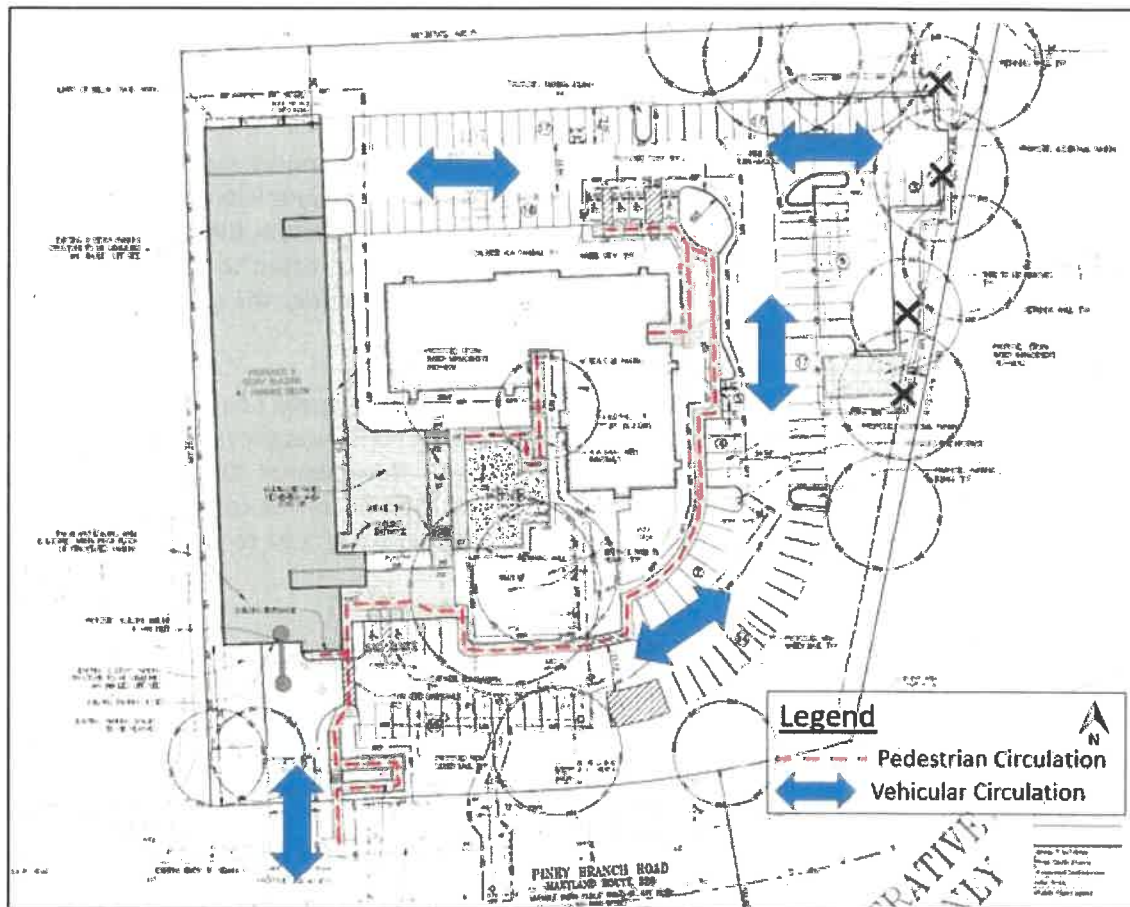


Figure 7 – Site Circulation and Access

Master-Planned Roadways, Bikeways, and Transitways

Piney Branch Road is classified as a 4-lane major highway with a master planned 120-foot right-of-way (ROW). As demonstrated per Plat 9626 (1970) 60-feet has been dedicated between the roadway centerline and the Property frontage. The proposed Floating Zone Plan shows that the existing and master-planned cross section of Piney Branch Road can be accommodated within the existing dedicated ROW, therefore no further dedication will be required.

The Applicant proposes widening the existing 5-foot sidewalk along the Piney Branch Road frontage, in compliance with the 2013 *Long Branch Sector Plan* vision for a 10-foot pedestrian pathway between University Boulevard and Carroll Avenue.

The 2018 *Bicycle Master Plan* recommends a 2-way separated bike lane along the north side of Piney Branch Road between Flower Avenue and Carroll Avenue. The Applicant has worked closely with MCDOT and MDOT SHA to ensure the frontage improvements proposed along the Piney Branch Road frontage uphold and do not preclude the master-planned bikeway. The Applicant will participate in the construction of the planned bikeway in one of two ways, to be determined at future development stages. The Applicant will have the choice of paying a fee in-lieu of constructing the bikeway, based on a cost estimate reviewed and approved by MCDOT, or, will construct an interim condition of the Ultimate Roadway Design, as approved by MDOT SHA and MCDOT. The interim condition requires widening of the northern section of roadway by 5-feet to provide the necessary curb alignment for the future road diet and construction of the 2-way, 8-foot wide separated bikeway. The additional 5-feet along the frontage

will be striped in accordance with MDOT SHA standards to serve as a shoulder until MCDOT reconfigures the Piney Branch Roadway for the separated bikeway, currently under design.

Local Area Transportation Review (LATR)

The Application submitted a traffic study in November of 2020¹ as the Project is estimated to generate more than 50 person trips in the evening peak hour. Although an Adequate Public Facilities finding for transportation is not required at this time, the study demonstrates that there is adequate capacity on the adjacent roadways to accommodate the additional vehicle traffic estimated to be generated by the Project. The Project is estimated to generate 42 total new person trips during the morning peak hour and 51 total new person trips in the evening peak hour.

The Project is estimated to generate 22 new vehicle trips in the morning peak hour and 28 in the evening peak hour and was therefore required to study one tier of intersections, as approved by Planning, MCDOT and MDOT SHA staff. The identified intersections were studied in November of 2020 and shown in Figure 8 below. In accordance with the Planning Department's adjusted policy for conducting traffic counts during the COVID 19 pandemic, the Applicant applied a growth rate of 1.07 to the evening peak hour traffic volumes.

Table 1: Summary of Site Trip Generation

Trip Generation	Morning Peak Hour			Evening Peak Hour		
	ITE	Policy Area Adjustment	Person Trips	ITE	Policy Area Adjustment	Person Trips
Proposed 76 units	27	22	42	33	28	51

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

Table 2: Net New Person Trips by Travel Mode

Peak Travel Period	Auto Driver	Transit	Pedestrian ¹	Bicycle	Total Person Trips
AM	22	4	10	6	42
PM	27	5	13	8	51

¹ Pedestrian trips subtotal represents the combined total of transit trips and non-motorized trips, as required by the 2016-2020 LATR.

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

¹ The Application was accepted in November of 2020 and therefore is subject to the 2016-2020 LATR.



Figure 8 – Map of Study Intersections

Table 3: Summary of Transportation Impact Study

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

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

All intersections studied show an average vehicle delay that is fewer than 80 seconds in both the morning and even peak hours. Therefore, a finding can be made that the adjacent network has adequate capacity today and can accommodate the vehicle trips estimated to increase by the Project. As per the 2016-2020 LATR, no mitigation will be required by the Applicant.

Community Outreach

The Applicant has complied with the required notification signage and has informed all of the adjacent Property owners, community organizations and homeowners associations within one-half mile of the Property about the Application and the proposed Project. Staff has not received any correspondence about this Application.

SECTION 3: FINDINGS

For a Floating zone application, the District Council must find that the floating zone plan will:

Section 59.7.2.1.E.2.a. substantially conform with the recommendations of the applicable master plan, general plan, and other applicable County plans;

The Floating Zone Plan substantially conforms with the recommendations of the 2013 *Long Branch Sector Plan* (Sector Plan). The Sector Plan identifies four goals (p. 24):

- **Community:** Creating a strong sense of place and identity through design, parks, and public facilities;
- **Land Use and Zoning:** Addressing compatibility issues and providing redevelopment incentives;
- **Sustainability:** Creating a place for people that also supports and enhances natural systems; and
- **Mobility:** Providing options for getting around and integrating connections.

The proposed redevelopment will allow reinvestment in the Property and community with an increase in low- and middle-income housing, without displacing any existing residents, and will be in proximity to the future Purple Line, allowing future residents a wide range of mobility options.

The Sector Plan encourages reinvestment and new development while minimizing potential displacement of residents. Therefore, the Sector Plan intentionally limited rezonings and specifically, this Property was not rezoned nor recommended for a floating zone. However, given the nature of this proposal being an affordable housing project, the requested rezoning consistent with the intent of the Sector Plan.

Master-Planned Bikeways and Bicycle Parking

The Sector Plan specifically recommends right-of-way improvements for Piney Branch Road, including upgraded sidewalks and bicycle lanes, and the 2018 *Bicycle Master Plan* specifies the bicycle lanes should be two-way separated lanes located on the north side of Piney Branch Road. The Subject Property has previously dedicated to the 120-foot master planned ROW, and the Applicant has committed to participate in the master planned vision for Piney Branch Road. There have been several meetings with Staff, Montgomery County Department of Transportation (MCDOT), Bicycle and Pedestrian Priority Areas (BiPPA), and State Highway Administration (SHA) to discuss design and various constraints within the existing right-of-way. Further discussion on participation will be conditioned to occur at the Sketch and Site Plan phase.

Section 7.2.1.E.2.b. further the public interest;

The proposed rezoning seeks to respond to the market demand for more affordable dwelling units in the vicinity, given the close proximity to the future Purple Line currently under construction. The proposed development will build upon and enhance existing improvements resulting in a Project that furthers the public interest without burdening the existing infrastructure.

Section 59.7.2.1.E.2.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 59.5.1.2. Floating Zone Intent Statement

The intent of the Floating zones is to:

A. Implement comprehensive planning objectives by:

- 1. furthering the goals of the general plan, applicable master plan, and functional master plans;*
- 2. ensuring that the proposed uses are in balance with and supported by the existing and planned infrastructure in the general plan, applicable master plan, functional master plan staging, and applicable public facilities requirements; and*
- 3. allowing design flexibility to integrate development into circulation networks, land use patterns, and natural features within and connected to the Property; and*

As described above, the proposed development is consistent with the goals and recommendations of the 2013 *Long Branch Sector Plan*. The rezoning will provide redevelopment opportunities for the Property and reinvestment in the community to provide additional affordable housing near public transit.

The public facilities are adequate to accommodate the proposed use. Based on the potential trips generated, the Project was required to submit a Transportation Impact Study, which was reviewed by Planning Staff, MCDOT, and SHA. The TIS concluded that all of the studied intersections will operate within acceptable levels and no mitigation is required.

The Project is subject to the Growth and Infrastructure Policy for Fiscal Year 2021. The Property is located within the DownCounty Consortium (Blair) school cluster and is served by Blair High School, Eastern Middle School, and Pine Crest and Montgomery Knolls Elementary Schools. Given that the Proposal for the new building will be affordable and constructed through the Low-Income Housing Tax program, the Project anticipates being exempt from any Utilization Premium Payments that would typically be required due to the capacity issues for Blair High School. The full evaluation will be determined at the Adequate Public Facility Stage during the Site Plan application review.

The Property is serviced by existing water and sewer and is located within water and sewer categories W-1 and S-1. Electric, gas, and telecommunications services are also be available. Other public facilities and services – including police stations, firehouses, and health care facilities – are currently operating in accordance with the Growth and Infrastructure Policy and will continue to be sufficient following construction of the Project.

The proposed design will demolish an existing two-story parking structure and locate the new 98-foot tall building generally within this footprint. The new building will be oriented towards Piney Branch Avenue, which will integrate the new development within the circulation network. The Applicant will be required to participate in the Sector Planned and Bicycle Master Planned vision for Piney Branch Road, which includes enhanced sidewalks, bicycle lanes, and streetscape improvements. The final design and participation will be evaluated during the Sketch and Site Plan application process.

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 open space standards and environmental protection and mitigation; and

While the Sector Plan recommended the Property remain zoned R-H, at that time the Sector Plan recognized that the Purple Line construction “could impact real estate values and drive up prices” so ultimately, the Plan recommended “retaining the zoning on most of the existing multifamily developments” with the intent to prevent the loss of market affordable units and potential displacement of lower-income residents. However, the requested rezoning will allow the construction of a new building to increase affordable housing opportunities for low and middle-income families, while maintaining the existing multifamily building and affordable units onsite, thereby not resulting in displacement. The rezoning and future development proposal addresses the very concerns of the Sector Plan while allowing flexibility to respond to changing economic, demographic, and planning trends.

Section 59.5.2.5.A.1.b provides criteria for applying density to floating zones for Properties that were not recommended by the Sector Plan for rezoning. Based on these provisions, an FAR of 1.5² is appropriate for this Property, however the Applicant is seeking bonus density per the provisions of Section 59.5.1.3.C.1 & 59.4.5.2.C. The Project is only requesting to utilize a small portion of the potential bonus density (0.1), resulting in a FAR of 1.6.

The Project will be required to provide 5% of the site as public open space, per the standards in Section 59.6.3 of the Zoning Ordinance, which will be reviewed during the Sketch and Site Plan application process. The Project has been designed to limit further impact to the existing slope and mature trees onsite by locating the new building within the existing footprint of the two-story parking garage. However, the Project will require the removal of 4 specimen trees to allow for the surface parking lot expansion for proper Fire Access movement and additional parking. These impacts have been evaluated with the associated Preliminary Forest Conservation application. The FCP will require 0.13 acres of afforestation and the removal of two specimen trees, for which 17 caliper inches of mitigation plantings will be required.

- C. 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.*

The proposed floating zone will allow for the construction of a new multifamily residential building which will achieve compatible relationships between the new and existing development. The density proposed is the minimum necessary to financially support an affordable housing project, which is significantly less than the potential allowed density per the density bonus provisions of the Zoning Ordinance. The new building will contain a maximum of 76 affordable units, increasing affordable housing onsite. The Floating Zone Plan proposes a new amenity space between the two buildings to strengthen the relationship

² Section 59.5.2.5.A.1.b specifies density for pre-existing Euclidean zones which does not include the R-H zone, as the R-H zone was retained in the updated Zoning Ordinance. Therefore, the R-10 zone was utilized as an equivalent zone based on the Property's existing density.

between the new and existing development and providing proximate amenity space to the residents.

The Floating Zone Plan will set development standards and general compatibility standards to protect the character of the adjacent neighborhoods. The Property is adjacent to an existing single-family detached neighborhood in the rear and therefore must meet the residential compatibility standards of Section 59.4.1.8 of the Zoning Ordinance. The new building is proposed to be a maximum 98 feet in height, which will step down in the rear to conform to the residential compatibility standards. Additionally, the existing slope onsite increases towards the rear, further reducing the perceived height from the single-family neighborhood. The existing building onsite is approximately 140' in height, and the neighboring property contains a 13-story condominium building. The Floating Zone plan specifies minimum side setbacks which are more generous than the required setbacks for a typical CRT development, thereby setting the standard for compatibility which will be further reviewed for design in the Sketch and Site Plan application process.

As noted in the associated Preliminary Forest Conservation Plan, the Subject Property contains several mature trees and areas of steep slope particularly around the edges of the Property. The proposed new construction will avoid many of these sensitive areas by locating the new building with the existing developed footprint, however where impacts cannot be avoided, the PFCP requires appropriate mitigation for any negative impacts.

Section 59.5.1.3. Applicability

The Property is currently classified as a Multi-Family Residential Zone, rather than an Agricultural or Rural Residential zone, so a floating zone can be approved on this Property. A floating zone is not recommended for the Property in the Sector Plan, so prerequisites are required for this Application. The Applicant is requesting a Commercial Residential Town Floating zone, CRTF, so the Property must front on a nonresidential street or must confront or abut a property that is in a Commercial/Residential, Employment, or Industrial zone; and the application must satisfy a minimum of 2 prerequisites for each of the categories under Section 5.1.3.D. The Property fronts onto Piney Branch Road, a nonresidential street. The Application meets the following prerequisites:

Transit & Infrastructure:

- 1. At least 75% of the site is within ¼ mile of a Level 3, ½ mile of a Level 2, or ¾ mile of a Level 1 transit station/stop.*
- 2. 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.*

The entirety of the Property fronts on Piney Branch Road and is entirely within a ½ mile of a Level 2 transit station/stop, the Piney Branch Road Purple Line Station currently under construction at the intersection of University Boulevard just west of the Site. Additionally, the site is served by existing water and sewer infrastructure that is not expected to require either an upgrade to the service line or installation of a pump station due to the proposed development.



Vicinity & Facilities:

- 1. The site is in a transitional location between property in an existing Residential Multi-Unit, Residential Townhouse, or non-Residential zone and property in a Residential Multi-Unit, Residential Townhouse, or Residential Detached zone.*
- 2. 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 ¼ mile.*

The Property is located between properties in a residential detached zone (R-60) directly to the north, and properties in residential multi-unit (R-10, R-30) and non-residential (CRT) zones to the west, south, and east. New Hampshire Estates Neighborhood Park confronts the Property to the southwest. There are sidewalks on the north and south side of Piney Branch Road and a pedestrian crossing to the southwest, resulting in a 300-foot travel distance from the Property to the Park.

Environment & Resources:

- 1. The site does not contain any forest or, if forest is present, 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.*
- 2. The site does not contain any rare, threatened, or endangered species or critical habitats listed by the Maryland Department of Natural Resources.*

The proposed development will not impact the existing forest cover on the site to less than an area of 10,000 square feet and width of 25 feet. The Site does not contain any forest or rare, threatened, or endangered species or critical habitats listed by the Maryland Department of Natural Resources.

Section 59.5.3.2. Purpose

The purpose of the Commercial/Residential Floating zones is to:

- A. allow development of mixed-use centers and communities at a range of densities and heights flexible enough to respond to various settings;*
- B. allow flexibility in uses for a site; and*
- C. provide mixed-use development that is compatible with adjacent development.*

The proposed Floating Zone Plan will allow the Property to increase in density for the purposes of affordable housing, with the construction of a new multi-family residential building affordable units will increase by 76. The height, setback, and density limitations proposed are commensurate with the size and location of the Property in relation to the existing development.

Section 59.5.3.3. Land Uses

In the CRTF zone, only the uses allowed in the CRT zone are allowed. Pursuant to Section 59.3.1.6 (Use Table), multi-unit living, as proposed, is a permitted use in the CRT zone.

Section 59.5.3.4. Building Types Allowed

The CRTF Zone allows any building type.

Section 59.5.3.5. Development Standards for CRTF Zone

As detailed in Table 1 below, the proposed Floating Zone will meet the standards listed in Section 59-5.3.5.A - Density, 5.3.5.B - Height, and 5.3.5.C - Setback.

Table 4: Proposed Floating Zone standards

Development Standards	Required	Proposed
Tract Area		
Prior Dedications	n/a	150,087 sf
New Dedication		6,740 sf
Site		0 sf
		143,347 sf
Section 59.5.3.5.A: Density		
Total FAR/GFA	1.5 (225,130 sf)	1.6 (240,140 sf)
Commercial	1.5 (225,130 sf)	0 (0 sf)
Residential	1.5 (225,130 sf)	1.6 (240,140 sf) ¹
MPDUs	12.5%	15% ²
Section 59.5.3.5.B: Building Height		
Existing Building	Established by Plan	140 ft
Proposed Building	Established by Plan ²	98 ft
Section 59.5.3.5.C: Building Setbacks		
Public Street	Established by Plan	75 ft
Adjoining Lot		
Side	Established by Plan	10 ft
Rear	Established by Plan ³	30 ft
Open Space	5% of site	7,168 sf
Parking⁴		
Vehicle		
Studio	Min 0.5 space per unit / Max 1 space per unit	
1 Bed	Min 0.5 space per unit / Max 1.25 space per unit	
2 Bed	Min 0.5 space per unit / Max 1.5 space per unit	
3 Bed	Min 0.5 space per unit / Max 2 spaces per unit	
Total	109 min / 343 max	220 spaces
Bicycle	Min 0.5 per unit / Max 100	100
Motorcycle	Min 2% of total parking	5
Loading	1	2
Public Benefit Points	50 points / 3 categories	50 points / 3 categories

¹ The proposed density reflects the entire Site, including existing and proposed multi-family structure. The Applicant proposes new units as affordable housing and therefore may achieve an additional 8.45 FAR in bonus density, however the Applicant is proposing to only receive a portion of that density bonus (0.1) for a total of 1.6 FAR.

² 15% of total units onsite will be regulated by DHCA subsequent to the expiration of LIHTC restrictions.

³ Height and rear setbacks are established by the Plan and must be in conformance with Residential Compatibility standards of Section 59.4.1.8.

⁴ Parking is calculated for the existing and proposed building. Final unit count to be determined at Site Plan.

Section 59.5.3.5.D, General Requirements

Parking, recreation facilities, screening, and landscaping must be provided under Article 59.6 as required for the Euclidean zone that establishes uses under Section 59.5.3.3. Therefore, the Project will be required to comply with the CRT Zone requirements for these categories. As shown on the plans included with the Application, the Project 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). With regard to loading and trash, there is a loading space proposed on the first level of the parking garage. Trash will also be collected from this location, so both loading and trash removal will occur interior to the garage. It should also be noted that the existing playground, currently located at

the rear of the site in the northeast corner, as part of the Project will be relocated closer to the front of the Property.

Section 59.7.2.1.E.2.d. be compatible with existing and approved adjacent development;

As stated in previous findings, the new construction and use will be compatible with existing and approved development as the Property is already developed with a multi-family residential building approximately 140 feet in height. The adjacent properties to the east and west are similarly developed with medium and high density multi-family buildings. To the rear is a single family detached residential neighborhood, and therefore the Proposal must be in conformance with the Residential Compatibility standards of Section 59.4.1.8, which are met by the proposed height and rear setbacks specified in Table 4.

Section 59.7.2.1.E.2.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

The Application for 76 new multi-family units will generate 42 total new person trips during the morning peak hour and 51 total new person trips in the evening peak hour. The Project is estimated to generate 22 new vehicle trips in the morning peak hour and 28 in the evening peak hour and was therefore required to submit a Transportation Impact Study covering one tier of intersections, as approved by Planning, MCDOT and MDOT SHA staff. The submitted study demonstrates that all of the studied intersections will operate within acceptable levels and no mitigation is required.

Section 59.7.2.1.E.2.f. when applying a non-Residential Floating zone to a Property previously under a Residential Detached zone, not adversely affect the character of the surrounding neighborhood.

Not applicable, as the existing zoning is not a Residential Detached zone.

SECTION 4: CONCLUSION

The proposed CRTF Zone complies with the standards and requirements for approval of a Local Map Amendment. The proposed zone and use are consistent with the goals and recommendations of the 2013 *Long Branch Sector Plan*, are in the public interest, and will not alter the character of the surrounding neighborhood. Staff recommends approval of the Local Map Amendment and the associated Floating Zone Plan with the proposed binding elements.

ATTACHMENT

- A. Floating Zone Plan
- B. Architectural supplements
- C. Statement of Justification