

Resolution No.: 16-1189  
Introduced: November 10, 2009  
Adopted: November 10, 2009

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

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By: County Council

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**SUBJECT:** APPLICATION NO. G-877 FOR AMENDMENT TO THE ZONING ORDINANCE MAP, Steven A. Robins, Esquire and Martin J. Hutt, Esquire, Attorneys for Applicant, Kensington Heights 2, LLC, OPINION AND RESOLUTION ON APPLICATION Tax Account No. 13-03550751

**Opinion**

Application No. G-877, as amended by Applicant Kensington Heights 2, LLC,<sup>1</sup> requests reclassification of Outlot "B," Kensington Heights, from the existing R-60 and C-T Zones to the RT-8 Zone. The property consists of 3.0157144 acres of unimproved land (131,364.52 square feet) located at West University Boulevard and Findley Road, in Kensington, Maryland.

The application was filed under the Optional Method authorized by Code § 59-H-2.5, which permits binding limitations with respect to land use, density and development standards or staging. Applicant proposes to build a development that consists of twenty-four new townhomes, including four moderately priced dwelling units (MPDUs), and three single-family detached homes. The proposal is set forth in a revised Schematic Development Plan (SDP), Exhibit 95(a), which contains an illustrative diagram and a specification of the binding elements, as well as other information regarding the development.

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<sup>1</sup> The application was filed on June 18, 2008, and amended on March 19, 2009 (Exhibit 43(a)). A corrected version of the amended application, with an accurate acreage description, was filed on October 13, 2009 (Exhibit 96).

The application initially had requested rezoning to the RT-10 Zone, with a plan to build 36 townhouses (Exhibit 1), but the Montgomery County Planning Board (“Planning Board”) voted on November 13, 2008, to deny the application at that density (Exhibit 40). Thereafter, on March 19, 2009, Applicant amended its application to request rezoning to the RT-8 Zone, with 24 townhouses and 3 single-family detached homes. *See* Exhibit 43(a), later corrected in Exhibit 96.

Technical Staff of the Maryland-National Capital Park and Planning Commission (“M-NCPPC”), reviewed the revised plans, and in a report dated July 6, 2009, recommended approval (Exhibit 58). The Planning Board considered the revised application on July 16, 2009, and by a vote of 2 to 1, recommended disapproval, as set forth in a memorandum dated July 17, 2009 (Exhibit 60). Although the Planning Board recognized that “the amended application presented an improved design,” the voting majority felt that any reclassification differing from the current 1990 Wheaton Central Business District and Vicinity Sector Plan should await completion of a sector plan update. The update process is in its beginning stages, as it is now being formulated by Technical Staff.

A public hearing was duly noticed and convened on July 31, 2009, at which time the Applicant presented evidence and testimony in support of the application. Martin Klauber, the People’s Counsel, participated in the hearing, but he did not call any witnesses. Two members of Technical Staff, Khalid Afzal and Renée Miller, testified at the request of the parties. A number of community witnesses, including the Kensington Heights Citizens Association, appeared at the hearing. Although all were initially opposed to the application, this situation changed dramatically after the first day of the hearing. When the hearing resumed on August 19, 2009, the parties announced that an agreement had been reached between the Applicant and the community, and all but one community witness withdrew their opposition to the application. 8/19/09 Tr. 5-7 and Exhibit 88.<sup>2</sup>

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<sup>2</sup> There were two hearing dates. The transcript from the first is denoted “7/31/09 Tr. xx” and the second, “8/19/09 Tr. xx.”

The Hearing Examiner recommended approval of the application on the basis that the R-T 8 Zone at the proposed location would satisfy the requirements of the zone and its purpose clause; that the proposed reclassification and development would be compatible with land uses in the surrounding area; and that the proposed reclassification bears sufficient relationship to the public interest to justify its approval. To avoid unnecessary detail in this Resolution, the Hearing Examiner's Report and Recommendation dated October 20, 2009 is incorporated herein by reference. Based on its review of the entire record, the District Council finds that the application does meet the standards required for approval of the requested rezoning for the reasons set forth by the Hearing Examiner.

### **The Property, Surrounding Area and Zoning History**

The subject property (Outlot B), which has an area of about 131,364.52 square feet (3.0157144 acres), is located just west of Westfield Wheaton Mall (commonly known as "Wheaton Plaza"), at the southwest corner of Valley View Avenue and University Boulevard West. Vehicular access to this site is via Findley Road, an existing 50-foot right-of-way, which terminates at the western boundary of the property. The vast majority of the subject site is in the R-60 Zone, with only a small sliver (3,242 square feet) on the northeastern border in the C-T Zone. The rest of the existing C-T Zone, adjacent to Outlot B, is used as a service road that accesses Wheaton Plaza.

According to Technical Staff, the site is generally higher in elevation than most of the surrounding development. The lowest elevation is along University Boulevard and at the University Boulevard intersection with a service road into Wheaton Plaza. The site increases in elevation from these two points towards the southeast corner of the property, which is at the highest elevation.

There is a stand of trees in the southern portion of the property, which contains 1.02 acres of forest. According to M-NCPPC's Environmental Planning Division, that forest constitutes the largest remaining forested area within the Wheaton CBD Sector Plan area, and it is designated with a moderate priority for retention. The remainder of the site is an open grassy field. There are no streams, wetlands, floodplains or

associated buffers on the site, and the property is not within a Special Protection Area or a Primary Management Area. There are no steep slopes or highly erodible soils on the property, and the site is currently unimproved and vacant.

The subject site is within half a mile (about 2,300 feet) of the Wheaton Metro Station, and about 3,078 feet walking distance from that Metro station. Various witnesses for Applicant testified that they had walked to the Metro from the site, along two different routes in from 10 to 15 minutes. 7/31/09 Tr. 62-63 and 183; 8/19/09 Tr. 105-106. The area is also served by both Metrobus and RideOn bus routes. Pedestrian access will be provided by lead-in sidewalks to the site. The adjacent service road for Wheaton Plaza intersects with University Boulevard, which is a six-lane divided highway, with left turn storage lanes. University Boulevard (MD Route 193) has a 120-foot right-of-way, and is a major highway.

The surrounding area must be identified in a floating zone case so that compatibility can be evaluated properly. The "surrounding area" is defined less rigidly in connection with a floating zone application than in evaluating a Euclidean zone application. In general, the definition of the surrounding area takes into account those areas that would be most directly affected by the proposed development. Technical Staff proposed to define the surrounding area as bordered by College View Drive to the north, Veirs Mill Road to the east, McComas Avenue to the south, and Hobson Street to the west. The Hearing Examiner accepted Technical Staff's surrounding area definition, as does the District Council. Technical Staff describes land use in the surrounding area as follows (Exhibit 58, pp. 2-3):

Important nearby land uses near the site include the Giant Grocery Store at Wheaton Plaza, zoned C-2, and the Kensington Heights and the Kensington View neighborhoods, zoned R-60. There are also several small businesses zoned C-T and C-2 located near the site. The surrounding area is characterized by one-family detached and multi-family housing, and several non-residential uses, including professional offices and service-related retail. There are also several special exceptions in the area that were mostly approved in the 1970s and 1980s.

Wheaton Plaza, now Westfield Shopping Mall or Wheaton Mall, which is adjacent to the subject site along part of its eastern border, has at least 1.25 million square feet of retail space. Except for Wheaton Mall, its access road to the east and University Boulevard to the north, the adjacent and confronting properties are single-family, detached homes in the R-60 Zone; however, the confronting homes on the north side of University Boulevard have numerous special exceptions for nonresidential uses.

The subject property was classified under the R-60 Zone in the 1958 Countywide Comprehensive Zoning. In 1989, a small portion of the site (3,242 square feet along the eastern side) was rezoned to C-T in LMA G-594. The remainder of the site continued in the R-60 Zone, which is its existing classification. In 1990, most of the R-60 part of the subject site was designated by the Wheaton Central Business District and Vicinity Sector Plan as suitable for the RT-6 Zone. The remaining 22,242 square feet of site, some of which is already in the C-T Zone, was designated by the Sector Plan as suitable for the C-T Zone.

### **Proposed Development**

The Applicant proposes to construct twenty-four, three-story townhouse units, including four MPDUs, and three detached, single-family units, on the 3.02 acre site. Applicant's vision is for a "smart growth" project that will serve as a bridge between the community and the good services that are nearby, as well as a buffer for the existing community. Many services are within a short walking distance of the subject site, such as a pool and a supermarket 4 minutes away, Wheaton Plaza 10 minutes away and the Wheaton Metro 14 minutes away. Major roads, such as University Boulevard, are also nearby.

The proposed density of the development is 8.94 dwelling units per acre. The RT-8 Zone allows a density of 8 units per acre, but that density may be increased when MPDUs are provided on site. Zoning Ordinance §59-C-1.74 permits a density of up to 9.76 du/acre, depending on the number of MPDUs provided, as prescribed in Montgomery County Code § 25A-5(c)). To achieve a density bonus allowing up to a density of 8.94 du/acre, Applicant must provide 13.7% of the dwelling units as MPDUs (*i.e.*, more than the 12.5% minimum). Providing 13.7% MPDUs would allow up to a 12% bonus density, pursuant to

Code § 25A-5(c), which amounts to a permitted density of up to 8.96 dwelling units per acre (*i.e.*, 8 du/acre +12% bonus = 8.96 du/acre). Since Applicant's proposal calls for a density of 8.94 du/acre (*i.e.*, less than 8.96 du/acre)<sup>3</sup>, it is sufficient for Applicant to provide 13.7% MPDUs. On a 27 dwelling unit project, 13.7% MPDUs amounts to a minimum of 4 MPDUs, which is what Applicant plans to provide. The final number of MPDUs and bonus density will be determined at Subdivision.

Pursuant to Code § 59-H-2.52, the Applicant in this case has chosen to follow the "optional method" of application. The optional method requires submission of a schematic development plan that specifies which elements of the plan are illustrative and which are binding, *i.e.*, elements to which the Applicant consents to be legally bound. Those elements designated by the Applicant as binding must be set forth in a Declaration of Covenants to be filed in the county land records if rezoning is approved. The Applicant has filed the required Declaration of Covenants in the record of this case as Exhibit 95(b).

The legal effect of the covenants is to obligate any future owner of the property to comply with the binding elements specified on the SDP. Thus, the optional method allows an applicant to specify elements of its proposal that the community, reviewing agencies and the District Council can rely on as legally binding commitments. Illustrative elements of the SDP may be changed during site plan review, but the binding elements cannot be changed without a separate application to the District Council for a schematic development plan amendment. The graphic portion of the revised SDP (Exhibit 95(a)), is illustrative (except as specified in the binding elements).

The plan shows three single-family detached homes located adjacent to the single-family, detached homes in the existing neighborhood to the west and south of the site. The closest existing home will be 40 feet from the nearest proposed single-family, detached home, and 112 feet from the nearest row of proposed townhouses. Applicant proposes seven rows (or sticks) of townhouses, none of which exceed

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<sup>3</sup> The 8.94 du/acre figure is derived from dividing the number of proposed dwelling units (27) by the number of acres on the site, rounded to two decimal places (3.02 acres). When the more precise acreage figure of 3.0157144 acres is divided into the number

four units. Rows of four units and three units face University Boulevard and the Wheaton Mall access. The two internal townhouse rows contain only three units each. The MPDUs will be located among the townhouse units.

### **Binding Elements**

The layout of the development and limits on the townhouse units are spelled out in the seven binding elements contained in both the SDP (Exhibit 95(a)) and in the covenants (Exhibit 95(b)):

## **BINDING ELEMENTS**

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1. The maximum number of dwelling units shall be 27 including moderately priced dwelling units (MPDU's). The final number of dwelling units including a minimum 12.5% MPDU's will be established at site plan review.
2. Any units that have lot frontage and direct access on the proposed cul-de-sac and are contiguous to the existing R-60 neighborhood (or are separated from that neighborhood only by a common area) shall be one-family detached homes.
3. The maximum number of units in a townhouse row shall not exceed four units except for any townhouse units facing the proposed Findley Road cul-de-sac, which must not exceed three units per row. Likewise, any townhouse units directly confronting the common property line with houses that front on Faulkner Place must not exceed three units per row. If townhouse rows are located around the Findley Road cul-de-sac or confront the common property line with houses that front on Faulkner Place, these particular units shall be designed to have the appearance of one-family dwelling units with one front door per elevation. The final design, layout and location will be established during site plan review.
4. The one-family detached units identified on the Schematic Development Plan as Units 1, 2 and 3 shall be set back a minimum distance from the common property line as follows:
 

Unit 1:	25 feet (side)
Unit 2:	30 feet (side) and 35 feet (rear)
Unit 3:	35 feet (rear)
5. Vehicular access to this site shall be limited to Findley Road.
6. Building coverage shall not exceed 25% of the gross tract area.
7. Green area provided shall not be less than 55% of the gross tract area.

These binding elements were negotiated between Applicant and the community, and resulted in all but one of the community members participating in the hearing withdrawing their opposition. 8/19/09 Tr. 5-7 and Exhibit 88. Technical Staff had no substantial objections to the proposed binding elements (Exhibit 89). It is noteworthy that, as a result of these binding elements, all but one of the dwelling units to be placed near existing homes in the neighborhood will themselves be detached, single-family homes.

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of units (27), the result is a density of 8.953 du/acre, which is still within the 8.96 du/acre density which can be achieved with a 12% bonus density.

These are located to south and west of the site since there are no existing detached homes adjacent to the site, on the north and east.

In addition to these binding elements, there are General Notes on the SDP which further describe the subject site and Applicant's intentions. These proposals are subject to Site Plan and subdivision review and modification.

These General Notes also address concerns raised by Technical Staff and the community, as well as issues raised at the hearing. Staff's concerns were addressed in General Note #6, which requires a forest conservation plan to be submitted at subdivision, and General Note #7, which requires a noise analysis, also to be submitted at subdivision. General Notes Numbered 8 through 11 were included as part of the negotiated agreement between Applicant and the community, and they address visitor parking, construction of a sidewalk on Findley Road and other amenities such as a "tot lot."

As proposed, all units have rear-entry garages. The Schematic Development Plan shows that the market-rate units will have two-car garages, and the 4 MPDUs will each have one-car garages. The detached homes will have room in their driveways for two additional cars, and there will be 14 visitor spaces along the inner circulation system, yielding a total of 70 parking spaces for the development (16 more than are required).

Vehicular access will be limited to Findley Road. A pedestrian circulation system is provided, including a sidewalk on Findley Road and a walkway between townhouse rows on the east to allow easy pedestrian access to the Wheaton Mall area. Trees would provide additional screening for the existing neighborhoods on the west and south.

### **Standard for Review**

A floating zone, such as the RT-8 Zone, is a flexible device. Individual property owners may seek to have property reclassified to a floating zone by demonstrating to the Council that the proposed development will be consistent with the purpose and regulations of the proposed zone and compatible with



the surrounding development, as required by the case law, *Aubinoe v. Lewis*, 250 Md. 645, 244 A.2d 879 (1967), and that it will be consistent with a coordinated and systematic development of the regional district and in the public interest, as required by the *Regional District Act, Maryland-National Capital Park and Planning Commission Article (Art. 28)*, Md. Code Ann., § 7-110.

### **Requirements and Purpose of the Zone**

Under the “purpose clause” set forth in Zoning Code §59-C-1.721, the R-T Zone may be applied if a proposal meets any one of three alternative criteria: (1) it is in an area designated for R-T Zone densities (implying a master plan designation); (2) it is in an area that is appropriate for residential development at densities that are allowed in the R-T Zones; or (3) it is in an area where there is a need for buffer or transitional uses between commercial, industrial, or high-density apartment uses and low-density one-family uses.

The subject site is located in the area subject to the *1990 Wheaton Central Business District and Vicinity Sector Plan*. The Sector Plan calls for over 80% of the subject site (*i.e.*, Outlot B) to be classified in the RT-6 Zone, with the remainder in the C-T Zone. Since the Sector Plan did not designate the subject site for the RT-8 Zone, the Purpose Clause cannot be satisfied under the first criterion.<sup>4</sup> However, there are three alternative methods of satisfying the Purpose Clause, and an Applicant is required to satisfy only one of them. Accordingly, the Purpose Clause may also be satisfied by development in areas “*appropriate for residential development at densities allowed in the R-T Zones*” or in areas “*where there is a need for buffer or transitional uses between commercial, industrial, or high-density apartment uses and low-density one-family uses.*”

The evidence in this case supports Applicant’s contention that the subject site satisfies both the “appropriateness” and the “transitional” criteria. In this regard, Technical Staff stated (Exhibit 58, p. 6):

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<sup>4</sup> As discussed in Part III. G of the Hearing Examiner’s report, Applicant argues that the Sector Plan did designate this site for development in the R-T Zones, just at a different density. For the reasons discussed by the Hearing Examiner, the District

The subject site is specifically identified in the sector plan as a suitable location for townhouse development at six dwelling units per acre. Although the application is not in strict conformance with the sector plan density recommendation, it satisfies the purposes of the zone. The site is appropriate for townhouse development at densities permitted in the RT-8 zone and provides an appropriate transitional land use from the Wheaton Shopping Center to the adjacent one-family detached residential development.

It should be noted that the proposed development does not request the full density which could be achieved under the RT-8 Zone with MPDUs. Rather, Applicant proposes a density of 8.94 dwelling units to the acre, which is the midpoint between the RT-6 and the RT-8 maximum densities, with MPDUs. The District Council agrees with the Hearing Examiner and Technical Staff in finding that the subject development, at the proposed density of 8.94 dwelling units per acre, is clearly appropriate for the area, and the townhouses to be located in the northern and eastern parts of the development will serve as a transitional buffer for the existing single-family detached homes. The purpose clause for the RT-8 Zone is therefore satisfied.

The intent clause of for the R-T Zones will also be fulfilled by allowing the maximum freedom possible in the design of townhouses and the grouping and layout. By designing the townhouse units in rows of three and four, as opposed to the eight-per-row design that is permitted in the zone, Applicant will provide compatibility with the community and a good design. The proposal would provide the development with amenities normally associated with less dense zoning categories, such as open space, a small sitting area, sidewalks and connectivity. The stormwater management facility will be under ground, so it will provide additional open space, covered with grass. By limiting the access to Findley Road and creating the cul-de-sac and turnaround, this development will become a part of the overall community, which will prevent any kind of detrimental effect on use or development of adjoining properties. Likewise,

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Council finds that the Sector Plan's designation, which included a recommendation for part of the site to be classified in the C-T Zone, is not sufficient to satisfy the first alternative of the purpose clause.

it will promote the health, safety and welfare of the present and future inhabitants of the district by providing a connecting sidewalk system which will improve walkability in proximity to Metro.

Applicant's proposal also meets and even exceeds all the development standards and special regulations of the RT-8 Zone, as demonstrated in Part III. F. of the Hearing Examiner's report. Most significantly, the maximum amount of building coverage is specified in the Zoning Ordinance as 40 percent in the RT- 8 Zone when MPDUs are provided, and Applicant is binding itself to no more than 25 percent building coverage, considerably less than the maximum permitted. In the same way, the Zoning Ordinance specifies a minimum of 45 percent green area when MPDUs are provided, and Applicant is proposing a binding element to provide no less than 55 percent green area.

In sum, the District Council finds that the subject application meets the purpose and requirements of the RT-8 Zone.

### **Compatibility**

An application for a floating zone reclassification must be evaluated for compatibility with land uses in the surrounding area.

Technical Staff set forth its reasons for finding that the proposed development would be compatible with surrounding development (Exhibit 58, pp. 6-7):

. . . Development of the site as proposed by the applicant under the RT-8 zone would increase the overall density of the block by about 1.3 dwelling units per acre . . . The difference in density between the RT-6 and RT-8 zones is not a substantial increase for the block. Based in part on this density analysis, staff concludes that development of the site under the RT-8 zone would be compatible with development elsewhere in the block.

In addition, the site is located immediately adjacent to the service road of a major retail shopping center and fronts on a major roadway with a 120-foot right-of-way and six travel lanes. The site is also within ½-mile of the Wheaton Metro Station, 1/3-mile of the Central Business District, and is served by multiple bus routes.

The applicant is proposing townhouses that are in groups of 3-4 attached units, which will look similar to a larger single-family detached home. The heights of the townhouses will also be consistent with single family-detached homes and be no taller than 35-feet. . . . The lots for the detached homes are similar in size to the adjacent lots along Findley Street. . . .

As discussed at length in Part III. J. of the Hearing Examiner's report, the Applicant has also gone a long way towards alleviating the concerns about compatibility raised by the community, and almost all have withdrawn their opposition.

The District Council finds that the subject proposal will create a development that is compatible with the nearby single-family residential uses, as well as adjacent commercial uses.

### **Public Interest**

The Applicant must show that the proposed reclassification bears sufficient relationship to the public interest to justify its approval. When evaluating the public interest, the District Council normally considers Master Plan or Sector Plan conformity, the recommendations of the Planning Board and Technical Staff, any adverse impact on public facilities or the environment and important policy goals such as the provision of affordable housing and proximity to Metro stations.

As mentioned above, the *1990 Wheaton Central Business District and Vicinity Sector Plan* does not recommend the RT-8 Zone. However, compliance with Sector Plan recommendations is not mandatory in this case because the R-T Zones do not require it; rather, the courts have held that the Master Plan or Sector Plan should be treated only as a guide in rezoning cases like this one. As stated in *Trail v. Terrapin Run*, 403 Md. 523, 527, 943 A.2d 1192, 1195 (2008),

We also acknowledge our statement in *Mayor and Council of Rockville v. Rylyns Enterprises, Inc.*, 372 Md. 514, 530, 814 A.2d 469, 478 (2002) (citing *Richmarr*, 117 Md. App. at 635-51, 701 A.2d at 893-901, [1997] that:

We repeatedly have noted that [master] plans, which are the result of work done by planning commissions and adopted by ultimate zoning bodies, are advisory in nature and have no force of law absent statutes or local ordinances linking planning and zoning. . . .<sup>5</sup>

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<sup>5</sup> Because the proposed RT-8 Zone does not require conformance or consistency with the Sector Plan, this case is not affected by legislation aimed at modifying *Terrapin Run's* interpretation of the words, "conformance" and "consistency." See Smart, Green, and Growing - Smart and Sustainable Growth Act of 2009, effective July 1, 2009.

The Sector Plan and the recommendations of the Planning Board and Technical Staff were considered, at length, in Part III.G. of the Hearing Examiner's report. Although the Sector Plan does not specifically recommend the zoning change sought by Applicant, the requested rezoning is consistent with its objectives and general language. The Development Review Division of Technical Staff supports the proposed rezoning, believing that the development will be compatible with surrounding uses and compliant with the purposes and standards of the RT-8 Zone. The Planning Board did not examine compatibility issues because it addressed only the question of Sector Plan conformity. It therefore voted, 2 to 1, to deny the application, so that the area can be rezoned in accordance with a revised Sector Plan (Exhibit 60). The District Council rejects that position, as did the Hearing Examiner and Technical Staff, because the record in this case establishes that the new Sector Plan will likely not be available for two years, and Applicant's present application proposes a development which would be in the public interest now.

The impact on public facilities was discussed in Part. III. H. of the Hearing Examiner's report. The evidence indicates that, although the local elementary school experiences some overcrowding, an addition is scheduled to open in the same general time frame that the proposed development would be completed. Moreover, "[t]he current growth policy school test (FY 2009) finds capacity adequate in the Einstein Cluster." See April 3, 2009 letter from Bruce H. Crispell, the Director of Long-range Planning for the Montgomery County Public Schools (Attachment 9 to the Technical Staff report, Exhibit 58). Given Mr. Crispell's conclusion and the plan for added capacity for elementary school students, the District Council finds that there is sufficient school capacity for the proposed development.

The evidence also supports the conclusion that the impact on local traffic from this development would be minimal and will clearly meet LATR and PAMR standards. Based on the record, the District Council concludes, as well, that the proposed development would have no adverse effect on utilities or other public services.

The potential for any adverse environmental impact was discussed in Part III. I. of the Hearing Examiner's report. As noted there, the site is not in a special protection area, and a forest conservation plan will be required at subdivision to preserve on-site forest, to the extent possible. A stormwater management concept plan has been submitted to the Department of Permitting Services, and it will be reviewed at subdivision. Neither Technical Staff nor the Planning Board noted any adverse effect on the environment, nor is there any other such evidence of record.

Significantly, the proposed development would provide housing opportunities, including four MPDUs, and would be a walkable, smart-growth project, near a Metro station and retail outlets. It will have no adverse effects on the surrounding area, and it will provide a buffer from commercial development for the nearby single-family detached homes.

For all of these reasons, as more fully discussed in the Hearing Examiner's report, the District Council concludes, based on the preponderance of the evidence, that the proposed reclassification and development would have no adverse effects on public facilities or the environment, and that approval of the requested zoning reclassification would be in the public interest.

### **Conclusion**

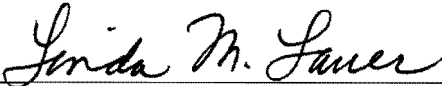
Based on the foregoing analysis and the Hearing Examiner's report, which is incorporated herein, and after a thorough review of the entire record, the District Council concludes that the application satisfies the requirements of the RT-8 Zone and its purpose clause; that the application proposes a form of development that would be compatible with land uses in the surrounding area; and that the requested reclassification to the RT-8 Zone bears sufficient relationship to the public interest to justify its approval. For these reasons and because approval of the instant zoning application will aid in the accomplishment of a coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District, the application will be approved in the manner set forth below.

**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:

Zoning Application No. G-877, requesting reclassification from the R-60 and C-T Zones to the RT-8 Zone of 3.0157144 acres (131,364.52 square feet) of land known as Outlot "B," Kensington Heights and located at West University Boulevard and Findley Road, in Kensington, Maryland, is hereby approved in the amount requested and subject to the specifications and requirements of the revised Schematic Development Plan, Exhibit 95(a); provided that the Applicant submits to the Hearing Examiner for certification a reproducible original and three copies of the Schematic Development Plan approved by the District Council within 10 days of approval, in accordance with §59-D-1.64 of the Zoning Ordinance, and that the revised Declaration of Covenants (Exhibit 95(b)) is filed in the County land records in accordance with § 59-H-2.54 of the Zoning Ordinance.

This is a correct copy of Council action.

  
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Linda M. Lauer, Clerk of the Council