

Clerk's Note: Footnote 1 was added to correct Tax ID for Lot 18, Block HH.

CORRECTED

Resolution No.: 17-246
Introduced: September 13, 2011
Adopted: September 13, 2011

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

By: District Council

SUBJECT: NONCOMPLIANCE REVIEW NO. G-858-SC FOR REVERSION TO THE R-60 ZONE UPON A FINDING OF NONCOMPLIANCE WITH THE BINDING ELEMENTS OF THE REZONING IN LMA G-858, ESTABLISHED IN COUNCIL RESOLUTION NUMBER 16-290 (SEPTEMBER 11, 2007), OPINION AND RESOLUTION ON REVIEW Tax Account Nos. 1301099346, 1301099357, 1301099368, 1301099370, 1301099381, 1301099392, 1301099404, 1301099415, 1301099426 and 1301099437.¹

OPINION

The subject property (2.53 acres located in the northwest quadrant of Georgia Avenue and Evans Drive, in Silver Spring) was rezoned from the R-60 Zone to the RT-12.5 Zone in LMA G-858 (*In Re: Kaz Development, LLC*), by action of the District Council on September 11, 2007, in Resolution Number 16-290. Exhibit 5. In connection with this rezoning, binding elements were included in the Schematic Development Plan (SDP) approved by the District Council and recorded in the County's land records in a formal Declaration of Covenants. Exhibit 2. On February 8, 2011, the Department of Permitting Services (DPS) found that there has not been compliance with these binding elements. Exhibit 1.

The crux of this case is the conflict between the binding elements, which specify a townhouse use for the property, and private restrictive covenants,² in place since 1948, which restrict the use of the site to single-family detached residences. Exhibit 25(a).

¹ The Tax Account Number for Lot 18, Block HH was incorrectly listed as 1301103427 on Resolution 16-290 of September 11, 2007, which rezoned this site from R-60 to RT-12.5. The correct Tax Account Number for Lot 18, Block HH is 1301099437, as indicated in the Subject heading, above.

² The term "private restrictive covenants" as used in this sentence is not to be confused with the "covenants" which were filed by the Applicant as required under the optional method of rezoning. Zoning Ordinance §59-H-2.54. The zoning covenants incorporate the binding elements approved by the Council during the rezoning; while the restrictive private covenants operate independently of the zoning process.

The private restrictive covenants were not considered in the 2007 rezoning proceedings because, under the controlling case law, such private covenants are not enforceable in rezoning proceedings; however, once a court actually rules on them, that ruling must be followed by the zoning authorities. As stated in *Perry v. County Board of Appeals for Montgomery County*, 211 Md. 294, 299-300, 127 A.2d 507 (Md. 1956),

The enforcement of restrictive covenants is a matter for the exercise of the discretion of an equity court in the light of attendant circumstances. Many times the covenant relied on may not have been originally effective or for many reasons, may have ceased to be effective at the time relief is sought. 2 *Rathkopf, The Law of Zoning and Planning*, p. 387, says: "The validity of the zoning ordinance, the grant of a variance or 'exception' should be considered independently of its effect upon covenants and restrictions in deeds."

* * *

Such private restrictions controlled by contract and real estate law are entirely independent of zoning and have no proper place in proceedings of this character, notwithstanding if in a proper proceeding the restrictions contended for are shown to be binding upon the properties mentioned, zoning cannot nullify them.

Kaz Development, LLC, the applicant in the 2007 rezoning case, sought a ruling from the courts confirming that the private restrictive covenants had been waived. It succeeded in the Circuit Court in obtaining a February 6, 2008 judgment (Exhibit 4(a)), but that ruling was overturned by the Maryland Court of Special Appeals on February 9, 2009. *Theresa Jackson et al. v. Kaz Development, LLC*, Case No. 3019 (Unreported Opinion). Exhibit 4(b).

The result of the final appellate court decision is that the 1948 private restrictive covenants remain in place and prevent development of the townhouses required by the binding elements and rezoning covenants filed in the 2007 rezoning case. The owner of the subject site, Montgomery College Foundation, reported this problem to the Department of Permitting Services (DPS) in a letter from its attorney, Jody Kline, Esquire, dated December 15, 2010. Exhibit 1(a). The owner seeks reversion of the property to the R-60 Zone so it can be efficiently developed with single-family detached homes in accordance with the restrictive private covenants. The developer-applicant in the 2007 rezoning case, Kaz Development, LLC, has terminated its contract with Montgomery College Foundation and has no further interest in the property. Exhibits 17 and 23.

The procedure to be followed in this kind of situation is outlined broadly in Zoning Ordinance §59-H-2.53(i), which provides:

(i) Compliance with binding elements. *The binding elements approved by the district council are binding upon the applicants, successors, and assigns, unless amended in accordance with the provisions of Section 59-D-1.7.*

(1) Allegations of noncompliance. Whenever a complaint is filed alleging substantial noncompliance with any or all of the binding elements of an approved schematic development plan, the director must investigate the complaint and, if the complaint is found to have reasonable cause, provide a written summary of the investigation to the complaining party, the zoning applicant or a successor in interest, the Planning Board, and the zoning hearing examiner. Complaints may be filed by government agencies and individuals.

(2) Upon receipt of the director's investigative report, the hearing examiner must schedule a show cause hearing to determine whether noncompliance with the binding elements exists and whether it merits sanctions including reversion to the previous zoning category. The hearing will be conducted after providing the parties and the public with 30 days' notice. The hearing examiner must provide the District Council with a report and recommendation within 30 days after the close of the hearing record. A hearing is not required if the complaint is withdrawn or the alleged noncompliance is corrected to the satisfaction of the director.

(3) If the District Council finds, after consideration of the hearing examiner's report and recommendation, that noncompliance exists with respect to any or all of the binding elements of an approved schematic development plan, it may adopt a resolution providing appropriate sanctions including reversion of the zoning to the previous zoning classification applicable to the property. Upon reversion to the previous zoning classification, the property will be subject to all development standards of the previous zone. The reversion sanction will not apply where the District Council finds substantial compliance with the binding elements.

Upon receipt of the letter dated February 8, 2011, from Susan Scala-Demby, Zoning Manager for the Department of Permitting Services, the Hearing Examiner issued a Notice of Show Cause Hearing establishing a hearing date of June 17, 2011, and directing the property owner, Montgomery College Foundation and the rezoning applicant, KAZ Development LLC, and any party claiming through them, "to show cause whether there is noncompliance with the binding elements of the schematic development plan (SDP) approved by the District Council on September 11, 2007, in Resolution Number 16-290, and whether it merits sanctions, including reversion to the previous zoning category." Exhibit 6.

This February 28, 2011, notice was sent to the parties to the 2007 rezoning case, local civic associations, adjoining and confronting property owners, the County Attorney, the Council's Staff Attorney, DPS, the Montgomery County Planning Board and the Planning Board's Technical Staff. It was also published in two newspapers of general circulation in the County. Exhibits 7 and 8.

The only responses to the notice were from Jody Kline, the attorney for Montgomery College Foundation (Exhibit 9), and Technical Staff of the Maryland-National Capital Park and Planning Commission. Exhibit 20. Technical Staff's letter of June 13, 2011, contained only one paragraph of substance:

In response to your inquiry regarding the Show Cause hearing for G-858, staff does not see any way that the applicant can meet the binding elements that were placed on this property as a result of the rezoning to RT-15. Since the highest Court in Maryland³ has found that the covenant restricting development on the property to single family detached dwelling units is valid, until such time as the beneficiaries of the covenant release their rights, the Property cannot be developed in accordance with the approved Development Plan. Moreover, staff can think of no other remedy than to return the property to its original zoning, which was R-60.

The hearing proceeded as scheduled on June 17, 2011. Ms. Scala-Demby testified on behalf of DPS, and Montgomery College Foundation called two witnesses, Kenneth Becker, a member of the Foundation's Board of Directors, and Perry Berman, a land use planner and real estate agent hired by the Foundation to market and sell the property in question. The record closed on June 27, 2011. There is no opposition in this case.

The Hearing Examiner filed his report on July 20, 2011, and recommended that the Council find that noncompliance exists with respect to the binding elements of the approved schematic development plan; that the subject site should revert back to the R-60 Zone; and that the binding elements and related materials in both the SDP accompanying the rezoning and the covenants filed in connection with the rezoning be declared null and void. To avoid unnecessary detail in this Resolution, the Hearing Examiner's Report and Recommendation, dated July 20, 2011, is incorporated herein by reference.

The subject property, which has an area of about 110,315 square feet (2.53 acres), is located at 10500 Georgia Avenue, in the northwest quadrant of Georgia Avenue and Evans Drive, in Silver Spring. It is comprised of Lots 1 - 9 in Block C, Lot 18 in Block H-H, and portions of adjacent rights-of-way which were to be abandoned by the State and County, all in the Carroll Knolls Subdivision. Although the County approved the proposed abandonments (Exhibits 22(a), (b) and (c)), they never went into effect because post-approval conditions were not met.⁴ Tr. 22-24; 31-32.

Technical Staff reports that the intersection of Georgia Avenue and Plyer's Mill Road is 900 feet to the north of the site. The Wheaton Metro Station is about 4000 feet to the north, and the Forest Glen Metro Station is about same distance to the south. The subject property is irregular in shape and fairly flat. The eastern portion (Lots 1 through 9), where the townhouse development had been proposed, is roughly rectangular. The western portion (Lot 18 and the County right-of-way), which is forested and contains wetlands, is highly irregular in shape. A storm drain easement runs diagonally through the property. The property has about 242.27 feet of frontage along Georgia Avenue and 223.32 feet along Evans Drive. The eastern portion of

³ Actually, the ruling was by the second highest court in Maryland, but it is a final decision.

⁴ Paragraph two on page 2 of each resolution specifies that the abandonment shall not become effective until, within 24 months after the date of the abandonment, a new record plat of abandonment is recorded assembling the land into lots or HOA parcels, and the applicant obtains an approved preliminary plan of development. Those steps were not taken within the specified 24 month period, and the abandonment resolutions have thus expired. Tr. 22-25: 31-32.

the property (Lots 1 through 9) contains the Montgomery College of Art and Design (MCAD), which is a one-story institutional building of approximately 13,500 square feet with a 60 car parking lot, lawn, and some perimeter landscaping.

Lots 1 through 9 and Lot 18 are owned by Montgomery College Foundation, Inc. Since the abandonments never went into effect, the original lot configuration will remain, following restoration of the R-60 Zone to the site, and Montgomery College Foundation plans to develop the lots in accordance with the way they are platted today. Tr. 25-26.

Currently, vehicular access to the subject property is via Evans Drive, a primary residential road with a 100-foot right-of-way. Evans Drive connects to Georgia Avenue (MD 97), which is a major highway with a 120-foot right-of way and six travel lanes. The intersection of Georgia Avenue and Evans drive is not signalized, but in the part of Georgia Avenue adjacent to the subject property, there is a median. There is pedestrian access to the site from a "lead walk," off of the sidewalk that runs along the Georgia Avenue frontage. The Georgia Avenue sidewalk immediately abuts the street, and no tree panels separate it from the roadway. There is also a footpath that runs through the western undeveloped portion of the property.

Technical Staff described the surrounding area, in its 2007 rezoning report, as follows:

The defined surrounding area is mainly developed with single-family homes on land zoned R-60, plus townhomes to the north of the subject property on land zoned R-T 15 and R-T 12.5. The single-family homes to the west of Georgia Avenue are located within the Plyers Mill Estates subdivision and the Carroll Knolls subdivision. The single-family homes within the surrounding area to the east of Georgia Avenue are within the Glenview and Evans Parkway subdivisions. The townhouse development right at the corner of Plyers Mill Road and Georgia Avenue is zoned R-T 15 and has 30 lots on 81,467 s.f (1.87 acres) of land, for an approximate density of about 16 units per acre. The older townhouse development that surrounds the corner townhouse development to the south and west has 93 lots on 328,599 s.f. (7.54 acres), for an approximate density of 12 units per acre. Both of these townhouse developments were once on land zoned R-60, and were rezoned pursuant to Zoning Applications G-786 (adopted 3/27/2001) for the northernmost development, and F-951 (adopted 9/21/76) for the southernmost, older development.

Also within the surrounding area is a church in the southeast quadrant of Georgia Avenue and Plyers Mill Road on land zoned R-60. Directly opposite the subject property to the east, across Georgia Avenue, is the Evans Parkway Neighborhood Park, which was recently expanded to include the parcel at the corner of Georgia and Evans Parkway.⁵

⁵ Montgomery College Foundation, Inc., also owned three vacant lots west of Douglas Avenue, across from the subject site, at the time of the 2007 rezoning. They were not part of that application, and the record in this review does not reflect their present ownership.

The subject property was classified under the R-60 Zone in the 1958 Countywide Comprehensive Zoning. The R-60 Zone was reconfirmed by Sectional Map Amendments (SMA) G-136 and 137 (10/24/78); SMA G-744 (6/24/97); SMA G-761 (7/14/98); and SMA G-795 (4/16/02). The site was granted a special exception, S-493, on August 4, 1976, to run a private educational institution (MCAD). The Board of Appeals revoked the special exception in 2004, because Montgomery College, which acquired the property, is a public entity and does not need a special exception to operate a school in the R-60 Zone. The subject property was rezoned from the R-60 Zone to the RT-12.5 Zone in LMA G-858 (*In Re: Kaz Development, LLC*), by action of the District Council on September 11, 2007, in Resolution Number 16-290.

The MCAD site is located in the area subject to the *Master Plan for the Communities of Kensington-Wheaton* (May 1989, as amended April 1990). The Master Plan makes no site-specific recommendation for the site, other than to show it as “quasi public” on its Land Use Plan, presumably because MCAD was located there. The Master Plan, in general, recommends low-to-medium density residential use for the area around the subject site.

On page 28 of the Master Plan, the goals and objectives include protecting and stabilizing the extent, location and character of existing residential and commercial land uses. The objective is to maintain the well-established, low and medium density residential character, which prevails over most of the planning area, and preserve the identity of residential areas along major highway corridors, to soften the impact of major highways on adjacent homes.

Some of the key land use indicators are referred to on page 18 of the Master Plan. Existing land use is predominantly low-density, single-family residential, except for major intersections along the corridor. The Master Plan recommends that residential areas along major highways should be reinforced and protected by a land use and landscaping approach called “green corridors.” Plan page 70.

The Master Plan (page 36) seeks to protect water quality of the streams, and to prevent erosion and flood damage in the Kensington/Wheaton area. It also seeks to promote the conservation of selected areas in their natural undeveloped state, with active recreation uses in some instances.

Community-Based Planning (CBP) Staff also analyzed this matter in a memorandum dated May 2, 2007. CBP Staff, in concluding that the rezoning application was consistent with the Master Plan, pointed out that:

The return of the college property to residential uses conforms to the Plan’s objective of redevelopment that stabilizes and maintains the residential character of this portion of Georgia Avenue. It will also help to preserve the existing generally residential identity of the area.

The Hearing Examiner noted that this evaluation is consistent with either the 2007 rezoning to the RT-12.5 Zone or the reversion back to the R-60 Zone.

The subject site was rezoned to RT-12.5 in 2007, pursuant to the “optional method” of application permitted under Code § 59-H-2.52. The optional method requires submission of a schematic development plan (SDP) 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 Declaration of Covenants (Exhibit 2) was filed in the county land records, as required.

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 failure to comply with the binding elements due to the previously mentioned appellate court decision resulted in this show-cause proceeding. The binding elements, as listed on the revised SDP approved by the Council (Exhibit 21), and in the Covenants filed pursuant to the rezoning (Exhibit 2), are reproduced below.⁶

Binding Elements - IN ADDITION TO THOSE SHOWN IN THE ZONING STANDARDS TABLE:

1. TOWNHOUSE UNITS THAT FACE ON A PUBLIC RIGHT-OF-WAY SHALL HAVE BRICK FRONTS, AND THE END UNITS OF EACH ROW OF TOWNHOUSES THAT FACE ON A PUBLIC RIGHT-OF-WAY SHALL HAVE BRICK SIDES AS WELL.
2. ALL STREET TREES INSTALLED WITHIN THE PUBLIC RIGHT-OF-WAY AROUND THE PERIMETER OF THE SITE SHALL BE A MINIMUM OF 3-1/2" CAL AT INSTALLATION.
3. LANDSCAPE BUFFER AND OR FENCING SHALL BE INSTALLED ALONG THE NORTHERN PROPERTY LINE BETWEEN GEORGIA AVENUE AND DOUGLAS AVENUE. FINAL DESIGN SHALL BE DETERMINED AT THE TIME OF SITE PLAN.
4. CONSTRUCT A PEDESTRIAN CONNECTION FROM THE END OF DOUGLAS AVENUE TO THE COMMUNITY TO THE NORTH WITH THE WIDTH AND LOCATION TO BE DETERMINED AT SITE PLAN.
5. AT THE TIME OF RECORD PLAT, DEDICATE OR PROVIDE A 20' PUBLIC USE EASEMENT FROM END OF DOUGLAS AVENUE TO NORTHERN PROPERTY LINE.
6. USE - TOWNHOUSE
7. PROVIDE A PEDESTRIAN CROSSWALK ACROSS GEORGIA AVENUE AT EVANS DRIVE, SUBJECT TO DPW&T AND SHA APPROVAL (IF DPW&T AND SHA DO NOT APPROVE THE CROSSWALK, THEN NO CROSSWALK IS REQUIRED). THIS CROSSING WILL INCLUDE A PEDESTRIAN REFUGE ISLAND IN THE MEDIAN, ALONG WITH THE APPROPRIATE CURB DEPRESSIONS AND RAMPS TO COMPLY WITH ADA REQUIREMENTS FOR THE CROSSING. SUBJECT TO DPW&T AND SHA APPROVAL.
8. IN ACCORDANCE WITH 'STAFF GUIDELINES FOR THE CONSIDERATION OF TRANSPORTATION NOISE IMPACTS IN LAND USE PLANNING AND DEVELOPMENT', BUILDING ENVELOPES WILL BE DESIGNED TO ALLOW THE AVERAGE INTERIOR DNL TO BE REDUCED TO 45 dBA[Ldn] OR LOWER, AND PROJECTED EXTERIOR DNL FOR UNIT REAR DECK OR PATIO SPACES WILL BE 65 dBA[Ldn] OR BELOW.
9. APPLICANT WILL ALLOW PUBLIC ACCESS TO THE FOREST CONSERVATION EASEMENT AREA TO THE EXTENT ALLOWED BY THE MARYLAND-NATIONAL CAPITAL PARK & PLANNING COMMISSION STAFF, WITH SUCH ACCESS BEING DETERMINED AT SITE PLAN.

⁶ One additional binding element is listed in the SDP's Development Standards Table, establishing the maximum density of 27 dwelling units, including 12.5% MPDUs. Thus, the Covenants list a total of 10 binding elements.

As is evident, Binding Element 6 restricts the use to “Townhouse.” That use cannot be carried out given the court’s upholding of the 1948 restrictive covenants (Exhibit 25(a), p.2), which specify, *inter alia*,

* * *

(A) All lots in the aforementioned subdivisions shall be used, known and described as residential lots. No structure shall be erected, altered, placed or permitted to remain on any residential building plat other than one detached single family dwelling not to exceed two and one-half stories in height and a private garage for not more than two cars and other outbuildings incidental to the residential use of the plot. [Emphasis added.]

* * *

The undisputed evidence in this case is that the binding elements imposed by the District Council on September 11, 2007, in Resolution Number 16-290, as part of the approval of the rezoning of the subject site from R-60 to RT 12.5, have not been, and cannot be, carried out. Although most of the binding elements reproduced on page 15 of this report do not refer to the townhouse configuration, Binding Element 6, which limits the development to a townhouse use, clearly is the central tenet of the binding elements and controls the nature of any prospective development. No development has occurred on the site since the rezoning because the 1948 restrictive private covenants do not permit a townhouse use, and thus none of the binding elements have been carried out.

In sum, the District Council finds that there has not been compliance with the binding elements, and there is no prospect that there will be compliance because the 1948 restrictive private covenants, upheld by the Maryland courts, required single-family detached housing and the binding elements call for townhouses. This finding is supported by DPS, Technical Staff, the evidence produced at the hearing, and the Hearing Examiner.

The only other substantive question is, what is the appropriate remedy. Zoning Ordinance §59-H-2.53(i)(3) permits (but does not require) the Council, upon a finding of substantial noncompliance, to order reversion to the R-60 Zone.⁷ As discussed above, there clearly was not substantial compliance with the binding elements. Both DPS and Technical Staff recommended, as the appropriate remedy, that the Council order reversion to the R-60 Zone, and they proposed no other alternatives. Exhibit 20 and Tr. 10-11. Jody Kline, counsel for the property owner, candidly admitted that there is one other option, though it is impractical and is not favored by any party to this action. Tr. 35-40.

The Zoning Ordinance allows one to build single-family houses in the RT-12.5 zone. It says, however, they are subject to the R-60 zone standards. Zoning Ordinance §59-C-1.71(a), fn. 1. Thus, theoretically, the RT 12.5 Zone could remain in place and the SDP amended to call

⁷ The Maryland “change/mistake” rule, as outlined in *Stratakis v. Beauchamp*, 268 Md. 643, 652-53, 304 A.2d 244, 249 (1973), does not apply here because there is no effort to vary from the 1958 comprehensive zoning which classified the site and the surrounding area into the R-60 Zone. Rather, this is a statutorily authorized procedure to undo a recent local map amendment which reclassified the site to a floating zone.

for detached homes. The binding elements, both on the SDP and in the covenants filed after the rezoning in 2007, would have to be correspondingly changed.

Mr. Kline noted that such a project would be a practical impossibility because projects in the RT Zones have to go through the site plan review process, which would be an unusual process for 10 single-family houses that normally can be built as a matter of right in the R-60 Zone. Questions would arise as to how to apply the R-60 Zone standards in an RT-12.5 Zone through the site plan route. The traditional, conventional development industry would have trouble understanding why it is building single-family houses on townhouse zoned land. Moreover, the costs and delays of going through a revised schematic development plan review, possibly a hearing pertaining thereto and site plan review, all to build 10 single-family homes, would make it unattractive for developers. Tr. 35-36.

The Montgomery College Foundation's real estate agent, Perry Berman, agreed that although there is another possible legal way to handle this matter, it is not practical, and it would end up being much, much more costly without eliminating the issue of attractiveness to developers. It thus is not a viable solution. For example, if a property owner wanted to put a porch on his house, he might have to go through a site plan amendment. Mr. Berman feels that a builder would look at the situation and conclude that it could not live with that kind of potential. Tr. 37-38.

There was no opposition and no contrary evidence presented in this case, and the District Council therefore finds that the appropriate remedy, which is specifically authorized by Zoning Ordinance §59-H-2.53(i)(3), is reversion back to the R-60 Zone. To effectuate this remedy, the Council will also declare the binding elements and related materials in both the SDP and the covenants filed in connection with the 2007 rezoning to be null and void. In order to ensure that the County's land records reflect the voiding of the previously filed rezoning covenants, the Council's resolution will also require the property owner, Montgomery College Foundation, to submit satisfactory evidence to the Hearing Examiner that it has filed a copy of the Council's Resolution in the land records of Montgomery County, Maryland, within 20 days of its issuance.

As observed by Mr. Kline, this remedy would be in the public interest because it would allow the Foundation to maximize the yield of the property so it can underwrite more of the college's operations. Tr. 38-40. As noted by the Hearing Examiner, the reversion to the R-60 Zone is also in the public interest because it corrects the noncompliance with the binding elements approved by the Council in connection with the 2007 rezoning and would result in a development which is consistent with the Kensington-Wheaton Master Plan's goal of maintaining the well-established, low and medium density residential character of the area.

Based on the foregoing analysis and after a thorough review of the entire record, the District Council reaches the following conclusions:

1. There has not been substantial compliance with the binding elements of the 2007 rezoning, and there is no prospect that there will be compliance;

2. The only practical remedy is reversion of the land back to the R-60 Zone and voiding of the binding elements and related materials in both the SDP and the covenants filed in connection with the 2007 rezoning;
3. The requested reversion to the R-60 Zone would be in the public interest; and
4. The Council is authorized to take this action pursuant to Zoning Ordinance §59-H-2.53(i)(3).

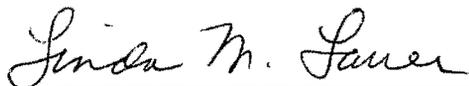
For these reasons, and because this resolution will aid in the accomplishment of a coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District, this noncompliance review will be resolved in the manner set forth below.

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:

The District Council hereby finds substantial non-compliance with the binding elements imposed on September 11, 2007, by Council Resolution Number 16-290, in LMA No. G-858, **and directs that the subject site**, consisting of 2.53 acres of land known as Lots 1 - 9, Block C, Lot 18, Block H-H, and portions of adjacent rights-of-way previously proposed to be abandoned by the State and County, and located at 10500 Georgia Avenue in Silver Spring, on the site of the Montgomery College of Art and Design, in the Carroll Knolls Subdivision of Silver Spring, which were reclassified by the aforementioned Resolution from the R-60 Zone to the R-T 12.5 Zone, **is hereby reverted back to the R-60 Zone**; that the property is henceforth subject to all development standards of the R-60 Zone; **and that the binding elements** and related materials in both the SDP accompanying the rezoning and the covenants filed in connection with the rezoning **are declared null and void**; provided that the property owner, Montgomery College Foundation, submits to the Hearing Examiner, satisfactory evidence that it has filed a copy of this Resolution in the land records of Montgomery County, Maryland, within 20 days of its issuance.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council