

Resolution No.:	<u>20-86</u>
Introduced:	<u>March 21, 2023</u>
Adopted:	<u>March 21, 2023</u>

**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-147 FOR AMENDMENT TO THE ZONING ORDINANCE MAP, Elizabeth Rogers, Esquire, Attorney for the Applicant, White Oak Storage, LLC; OPINION AND RESOLUTION ON APPLICATION; Tax Account No. 05-00276584.

OPINION

White Oak Self Storage (Applicant or White Oak) filed two applications on September 15, 2022. The first, LMA Application No. H-147, seeks to rezone approximately 2.62 acres of property from the CR-2.5, C-1.5, R-1.5, H-200 (Commercial Residential) to CRTF 2.5, C-2.25, R-1.5, H-200' (Commercial Residential Town Floating). The second seeks Conditional Use Approval for a self-storage use. Exhibit 1. On February 23, 2023, the Hearing Examiner granted the Conditional Use for self-storage subject to certain conditions. The subject property is located at 11105 New Hampshire Avenue, Silver Spring, MD 20904, and is further identified as part of Lot E in the "White Oak" subdivision recorded as Plat No. 8280.

Staff of the Montgomery County Planning Department recommended approval of the application, as did the Planning Board. Exhibits 30, 29. The Planning Board approved a Preliminary Forest Conservation Plan (PFCP) at a meeting on January 5, 2023. Exhibit 29. The Hearing Examiner held a public hearing on January 13, 2023. No one appeared in opposition to the application. The Hearing Examiner left the record open for completion of the hearing transcript. The record closed on January 24, 2023.

The Hearing Examiner issued her report on February 23, 2023. She recommended approval of the application because it meets the standards for rezoning in the Zoning Ordinance and will be consistent with the coordinated and systematic development of the Regional District under State law. *Md. Land Use Art.*, §21-101(a) and (b). To avoid unnecessary detail in this Opinion, the Hearing Examiner's Report and Recommendation 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 property contains 114,234 square feet of land and is improved with a 115,200 square foot self-storage building. In addition to the existing building, the property hosts a surface parking area used for short term parking and long-term vehicle storage. The property is bounded by New Hampshire Avenue to the west, existing commercial and self-storage uses to the north, the FDA campus to the south, and garden apartments to the east. The property contains no forests, wetlands, streams or floodplains.

Surrounding Area

The “surrounding area” is identified and characterized in a Floating Zone application to measure whether the FZP will be compatible with those properties directly impacted. Once delineated, the surrounding area is “characterized” to compare the Floating Zone with the character of the area.

The Hearing Examiner agreed with Planning Staff and the Applicant that the surrounding area is bounded by Columbia Pike to the north, Oak Leaf Drive to the west and south, where the commercial uses terminate on either side of New Hampshire Avenue, White Oak Shopping Center to the east and where the commercial uses south of Lockwood Drive transition to multifamily. Staff characterized the area as a “commercial node,” containing several existing approved conditional uses, various commercial uses including other self-storage facilities, the FDA campus and garden apartments.

The Hearing Examiner agreed that the area is “commercial node” located near a bustling intersection. The property abuts existing commercial uses of similar type and intensity. The District Council agrees with the Hearing Examiner’s characterization and so finds.

Proposed Development

The Applicant plans to continue the self-storage use and proposes substantial façade improvements to the existing building including a third-floor cantilevered building addition that will bring the building up to the street and visually conceal the parking. Exhibit 18(b), pg. 4. In addition, the Applicant proposes to construct a new five-story building plus a partial cellar at the rear of the Property. *Id.* The new building will sit on the land at the rear of the lot, eliminating the current long-term vehicle storage use. *Id.*

Criteria for Approval

Every application for rezoning to a Floating Zone must be accompanied by a Floating Zone Plan (FZP) that meets certain requirements. *Zoning Ordinance*, §59-7.2.1.B.2.g. The Applicant has filed an FZP (Exhibit 20(a)) and related documents.

As stated, a Floating Zone application must meet the standards required by the Zoning Ordinance and State law. Generally, these standards fall into five categories: (1) conformity to the applicable Master Plan, (2) compatibility with adjacent uses and the surrounding area, (3) the adequacy of public services to support the proposed development, (4) technical requirements regarding whether the property is eligible to apply for a Floating Zone, and (5) whether the FZP meets the development standards of the zone requested.

Substantial Conformance with the Master Plan¹

The 2014 White Oak Science Gateway Master Plan (Master Plan or Plan) guides development of this property. The Plan's primary goal is to ensure the local community's longevity by "reimagining existing centers – and providing a framework for reinvestment." *Plan*, p.11. The Plan also envisioned White Oak's major centers evolving into vibrant mixed-use trans-served nodes that are carefully integrated with existing residential neighborhoods and adjacent major institutional uses. *Id.*

Planning Staff determined that the existing mix of uses and ownerships would require significant property assembly to achieve the Master Plan's vision for White Oak. Exhibit 30, pg. 17. However, Planning Staff concluded that this FZP meets the goals of the Master Plan because an improved storage facility would not preclude the planned transition and that the proposed improvements could provide an adequate buffer to the "utilitarian/vehicular uses projected near this area." In addition, the project would be consistent with the Master Plan's goal of carefully integrating redevelopment with adjacent uses. *Id.*

The Applicant's expert in land development and civil engineering testified that the Master Plan calls for redevelopment that continues to provide a significant amount of neighborhood services and that this project provides a self-storage service much needed in the area especially due to recent trends of people working from home. T. 32, 39. The expert opined that this redevelopment would create a more "urban form" in keeping with the Master Plan vision by significantly enhancing the frontage of the existing building along New Hampshire Avenue. T. 39. He further stated this creates not only an improvement in appearance but enhances the pedestrian streetscape providing walkability and overall enhancing the quality of life for residents. T. 38. In addition, Applicant's expert identified the recommendation in the Master Plan for a connection from the FDA property up through Lockwood Drive. The proposal provides for that the future trail connection with a dedication at the rear of the lot. T. 39.

The Applicant's expert also opined that certain features of the project satisfy the environmental recommendations in the Master Plan. Specifically, providing stormwater management on the interior of the site rather than the perimeter, minimizing imperviousness

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 further 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.

through compact development, reduction in vehicular impervious area, and the incorporation of solar panels on the roof and the use of cool roofs. T. 40.

The District Council finds that the FZP conforms to the Master Plan, as did the Hearing Examiner. The proposed improvements provide reinvestment in an existing center in line with “reimaging of an existing center” Master Plan goal. The service provided to the community also is in furtherance of the Master Plan’s goals. The improvement to the street front and existing building meets the Master Plan’s goals creating a more “urban form” and walkability leading to quality-of-life improvements for residents. In addition, the proposed environmental improvements to the site also align with the Master Plan goals.

Compatibility with Adjacent Uses and the Surrounding Area

Multiple standards for approval require the District Council to find that the FZP be compatible with adjacent uses and the surrounding area.² The existing indoor self-storage use will not change but will expand. Exhibit 30, pg. 33. Planning Staff found that the FZP would be compatible with development adjacent and the surrounding commercial area because of the proposed design including new landscaping and changes to building materials along with changes to horizontal and vertical elements of the buildings. Exhibit 30, pgs. 23, 33. The Applicant’s expert opined that the use itself will not change and will remain compatible with the surrounding uses. T. 22, 43. In addition, the expert opined that the building addition in the rear is set back from the property line to accommodate the future trail connection and is further setback from the garden style apartments to east. T. 43, 96-97. Further, the renovation of the existing building and new building is designed specifically to be compatible with the surrounding properties through enhancements the existing building and the limited visibility of the new building at the rear from the street. T. 55-56. The Hearing Examiner agreed with this analysis.

The District Council finds that the proposed development will be compatible with adjacent properties and the surrounding area in terms of scale, density, and design for the reasons stated by the Hearing Examiner. The project design complements the surrounding uses and revitalizes the site. The change in elevation and materials creates an urban streetscape feel and the elimination of the existing outdoor storage will lessen the impact of the use to the multi-family property to the east. In addition, the underlying use will remain the same and continue to be compatible with the surrounding commercial uses.

Adequacy of Public Facilities/Public Interest

² The FZP must further the intent of Floating Zones in general and the CRTF Zone in particular. *Zoning Ordinance*, §§59-7.2.1.E.2.c; 59-5.1.2.C; 59-5.3.2. Floating zones are intended to (1) establish compatible relationships between new development and existing neighborhoods through limits on applicability, density, and uses, (2) provide development standards and general compatibility standards to protect the character of adjacent neighborhoods; and (3) allow design flexibility to mitigate any negative impacts found to be caused by the new use. *Id.*, §59-5.1.2.C. One purpose of the CRTF Zone is to provide “provide mixed-use development that is compatible with adjacent development.” *Id.*, §59-5.3.2.C. Similarly, Section 59-7.2.1.E.2.d of the Zoning Ordinance requires the Council to find that the FZP is “compatible with existing and approved adjacent development.”

To approve a Floating Zone, the District Council must find that public facilities will be adequate to serve the FZP.³ The Applicant submitted an Exemption Statement for the development pursuant to 2020-2024 Growth and Infrastructure Policy and the LATR Guidelines. *Zoning Ordinance*, §59.7.2.1.E.2.e; Exhibit 12. The Applicant conducted a trip generation study and determined that pursuant to LATR guidelines the project generates less than 50 new peak hour trips making the site exempt from providing quantitative auto, transit, bicycle, or pedestrian analysis. Exhibit 12, Exhibit 30, pg. 25, T. 64. Having no evidence to the contrary, the District Council determines that there is adequate traffic and transit capacity to serve the proposed development, as did the Hearing Examiner.

Uncontroverted evidence establishes that most other public facilities are adequate as well. The Applicant's expert in civil engineering testified that gas, electric, water and sewer utilities are located at the property. He also testified that fire and police stations are within an acceptable distance from the site. T. 64. The District Council finds that these public facilities are adequate to support the proposed development.

Stormwater Management/Environmental Issues

Stormwater management and environmental issues factor into the rezoning review for several reasons: (1) stormwater management is a public facility that must be adequate to serve the use, (2) an intent of Floating Zones is to ensure that development meets basic sustainability requirements such as "environmental protection and mitigation," and (3) the County Code requires approval of a Preliminary Forest Conservation Plan before the Council may act on a rezoning application. *See, Zoning Ordinance*, §§59-5.1.2.B.3.e, 59.7.2.1.E.2.b; *Montgomery County Code*, §22A-11(a)(1).

Currently, no stormwater management exists on the Property. Exhibit 30, pg. 28. The Applicant received approval of their stormwater management concept plan from the Department of Permitting Services, Water Resources on December 9, 2022. *Id.* at 35. The concept meets required stormwater management goals using a combination of environmental site designs. *Id.* The Applicant's expert opined that the proposed development improves the stormwater management on the site by the introduction of new stormwater management structures and removal of vehicular impervious area. T. 36-37.

The Applicant will provide additional green space and landscaping to promote sustainability and activate the pedestrian environment. Exhibit 30, pp. 28. In addition, the Applicant proposes a cool roof and solar panels on the self-storage buildings, furthering the

³Section 59.7.2.1.E.2.e requires that an Applicant demonstrate 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.2.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.

sustainability goals of the County. *Id.* A segment of a future trail connection is reserved at the rear of the property. *Id.*

No forests, wetlands, streams, floodplains or large specimen trees exist on the property. Exhibit 30, pp. 12. Planning Staff determined the proposed forest conservation plan conforms with environmental guidelines. *Id.* pp. 37. The Planning Board approved the Preliminary Forest Conservation Plan on January 5, 2023. Exhibit 29.

The Hearing Examiner concluded that the application met the intent of the Floating Zone to maximize sustainable development. Hearing Examiner found that this purpose of the Commercial/Residential Town Floating Zones has been sufficiently met at the rezoning stage.

The Intent and Standards of the Zone as set forth in Section 59.5.1.2.⁴

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

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

Staff concluded that the FZP meets this goal because the “project has been designed to complement the surrounding uses and revitalize community.” Exhibit 30, pg. 27. Expert testimony established that the FZP uses the flexibility of the floating zones to allow the continuation of the existing use on a uniquely shaped site, not suitable for other uses and development. T. 44. The District Council finds that the FZP meets this intent of the Floating Zones for these reasons, as did the Hearing Examiner.

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, the adequacy of public facilities, and creation of a sustainable development. The balance of the Floating Zone intent clauses is discussed here.

Planning Staff and the Applicant point out that the Master Plan was published prior to the ongoing Covid-19 Pandemic and does not consider new challenges presented to families because of changes to work and living environments. Exhibit 30, pp. 28, T. 42. Staff concluded that the FZP met this intent through expansion of the self-storage facility providing much needed storage opportunities for the community. Exhibit 30 pp. 28. Staff and the Applicant's expert testimony identified the site's long and narrow geometry is well suited for this particular use. *Id.* The District Council finds that the FZP meets this intent of the Floating Zone, as did the Hearing Examiner.

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. No prerequisites are required, however, if the floating zone is recommended by the Master Plan. Prerequisites are not required for a property with a non-Residential base zone. *Zoning Ordinance*, §5.1.3.B.

Planning Staff determined that the Master Plan does not recommend CRTF Floating Zone for this property and the base zone for the subject property is CR, non-residential, and therefore, this section is inapplicable. Exhibit 30, pg. 29. The District Council agrees with the Hearing Examiner that there are no prerequisites required for this FZP.

The Purpose of Commercial/Residential Floating Zones (Purpose, Permitted Uses, and Permitted Building Types, Sections 59.5.3.2 through 59.5.3.4)

Zoning Ordinance Division 59-5.3 lists the Commercial Residential Floating Zones, specifies their purpose, lists the allowed uses and building types and sets forth the applicable development standards. Section 59.5.3.1. establishes the Commercial/Residential Town Floating Zone.

Purpose. The District Council has already found that the FZP is compatible with adjacent development, one of the purposes of the Commercial/Residential Zones. *Zoning Ordinance*, §5.3.2.C. The remaining purposes are:

Section 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 comparable with adjacent development.*

The Hearing Examiner found that the FZP was designed in response to the property's unique settings, maintains the existing use and will remain compatible with the community and surrounding properties. The FZP fulfills this purpose.

Uses and Building Types Permitted (Section 59.5.3.3 and 59.5.3.4): The CRTF Zone permits only the uses allowed in the CRT (Commercial/Residential Town Zone) and permits any building type. *Zoning Ordinance*, §§5.3.3.3, 59.5.3.4. The binding elements of the FZP limit the

use of the property to self-storage, which is permitted as a conditional use in the CRTF Zone and any building type is permitted. *Zoning Ordinance*, §59.3.1.6. The FZP meets this standard.

Development Standards of the Zone (Section 5.3.5)

Density. Where a floating zone is not recommended in a Master Plan, density limits set forth in §59.5.3.5.A.2. apply. The proposed density is 2.06, within the limits of the permitted density.

Height and Setbacks. Where a floating zone is not recommended in a Master Plan, setbacks are established by the site plan approval process and height must satisfy the compatibility standards for the applicable building type under Section 4.1.8.B. *Zoning Ordinance*, §59.5.3.5.B. The Applicant presented expert testimony that the buildings comply with height and setback requirements of CRTF Zone and bring the site more in alignment with current codes, and goals as expressed in the Master Plan. T. 76. The Hearing Examiner included a maximum building height on the subject property be limited to 55 feet as measured per Section 4.1.7.C as a binding element. The Hearing Examiner found the standards for height and setback to be met. The District Council does as well.

Lot size, parking, recreation and open space. Lot sizes are not part of the District Council's review at the rezoning stage. *Id.*, §59.5.3.5. C. This site has a tract area of less than 3 acres and only one right of way frontage. T. 46. No open space or recreation is required for this application. *Id.*, See §59.5.3.5.D. Article 59.6 of the Zoning Ordinance contains standards that regulate the number and design of parking spaces among other elements. The Hearing Examiner found the proposed development conformed the required standards in all areas except for parking. The Hearing Examiner granted a waiver to the parking requirement concurrent with Conditional Use application approval. See *Hearing Examiner's Report and Recommendation*, pg. 26. With the grant of the parking waiver, the District Council finds the FZP shows adequate parking.

Conclusion

Based on the foregoing analysis and after a thorough review of the entire record, 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 a 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:

Local Map Amendment Application No. H-147, requesting reclassification from the existing CR-2.5, C-1.5, R-1.5, H-200 (Commercial/Residential Zone) to the CRTF-2.5, C-2.25, R-1.25, H-200 (Commercial Residential Town Floating Zone), of property described as 11105 New

Hampshire Avenue, Silver Spring, MD 20904, and is further identified as part of Lot E in the “White Oak” subdivision recorded as Plat No. 8280, (Tax Account No. 05-00276584) is hereby **approved** in the amount requested and subject to the specifications and requirements of the Floating Zone Plan, Exhibit 20(a), provided that the Applicant files an executed Declaration of Covenants reflecting the binding elements in the land records and submits to the Hearing Examiner for certification a true copy of the Floating Zone Plan approved by the District Council within 10 days of approval, in accordance with §§59.7.2.1.H.1.a. and b. of the Zoning Ordinance.

This is a correct copy of Council action.



Judy Rupp
Clerk of the Council