

Resolution No.:	<u>19-945</u>
Introduced:	<u>July 20, 2021</u>
Adopted:	<u>July 20, 2021</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-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 Plan<sup>1</sup>**

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.

---

<sup>1</sup> 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.<sup>2</sup> The Hearing Examiner found

---

<sup>2</sup> 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.<sup>3</sup>

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.

<sup>3</sup>Section 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.<sup>4</sup> 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;*

---

<sup>4</sup> 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.<sup>5</sup> 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.

---

<sup>5</sup> 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.

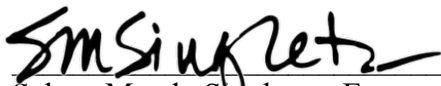


### ACTION

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:

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.

A handwritten signature in black ink, appearing to read "Sm Singleton", written over a horizontal line.

Selena Mendy Singleton, Esq.  
Clerk of the Council