

Resolution No.:	<u>19-752</u>
Introduced:	<u>March 2, 2021</u>
Adopted:	<u>March 2, 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**

Lead Sponsor: District Council

SUBJECT: APPLICATION NO. H-138 FOR AMENDMENT TO THE ZONING ORDINANCE MAP, David Brown, Esquire, Attorney for the Applicant, Nachel Enterprises, LLC; OPINION AND RESOLUTION ON APPLICATION; Tax Account Nos. 13-01063775, 13-01063786, and 13-10063797

OPINION

Nachel Enterprises, LLC (Nachel or Applicant) filed Local Map Amendment (LMA) Application No. H-138 on August 12, 2020. The LMA seeks to rezone approximately 4,435 square feet of property from the R-60 and NR 0.75 H-50 Zones to the NRF (Neighborhood Retail Floating) 0.75 H-50 Zone. Exhibit 1. The subject property includes part of 7206 and all of 7212 Carroll Avenue, Takoma Park, MD 20912 and is further described as Parcels N923 and N968 of Section 1 and part of lot P2, Section 3, S.S. Carroll's Addition to Takoma Park (Tax Account Nos. 13-01063775, 13-01063786, and 13-10063797). Nachel proposes a Floating Zone to permit a 2,000 square foot expansion to an existing building operated as Montessori School.

Staff of the Montgomery County Planning Department (Planning Staff or Staff) recommended approval of the application on October 15, 2020. Exhibit 30(b). The Planning Board recommended approval for the reasons stated by Staff on October 23, 2020. Exhibits 30(a) and (b). OZAH's public hearing proceeded as noticed on December 11, 2020. No one appeared in opposition to the application. The Hearing Examiner issued her report recommending approval on January 21, 2021.

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

Approximately 4,435 square feet in area, the subject property consists of smaller parcels that were combined by administrative subdivision into one lot. Exhibits 1, 50. About 1,400 square feet is of the property is zoned R-60 (Residential Detached); the remainder is in the NR 0.75, H-50 Zone. The property also lies within the Takoma Park/East Silver Spring Commercial Revitalization Overlay Zone (TPESS). Exhibit 30(b), p. 1.

Located in the Takoma Park Historic District, the property is improved with a 960 square-foot one-story “shop building,” a surface driveway, and a fenced play area. Exhibit 30(b), p. 2. Nachel owns the adjacent property to the west, 7206 Carroll Avenue. A portion of that property is included in this application. Both lots are used for the school and function as one lot for its operation. T. 44. Mr. Robert Tjaden, Nachel’s expert land planner, testified that the school’s administration is housed primarily on the adjacent lot. *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 and the Applicant felt that the surrounding area in this case includes only the “immediately surrounding” properties, bounded by Grant Avenue to the east, Carroll Avenue to the south, Philadelphia Avenue to the west, and a multi-story residential building to the north. Staff justifies these boundaries due to the small size of the property to be rezoned. Exhibit 30(b), p. 3. Staff characterized the area as consisting of low-density commercial uses, institutional uses (a fire station and electric vehicle charging stations) along Carroll Avenue with single-family and multi-family uses to the west and north.

The Hearing Examiner found that the surrounding area should be expanded south of Carroll Avenue due to the impact of traffic generated by doubling the size of the existing school. She found, however, that this did not significantly alter the character of the area. *Hearing Examiner’s Report*, p. 10.

Proposed Development

Nachel proposes to expand the 960 square-foot existing school by approximately 2,000 square feet. Twelve hundred square feet of the addition will be in what is now the R-60 portion of the property. The remaining 800 square feet of the addition is in the NR 0.75, H-50 zoned part of the property. T. 41-42. Nachel submitted a Floating Zone Plan (FZP) showing building locations, preliminary stormwater management strategies, on-site circulation, and other information required by the Zoning Ordinance. Exhibit 46(b). The FZP contains three binding elements that will permanently restrict future development (*Id.*):

1. The maximum height of any building shown on the plan shall be twenty-five feet (25').
2. The use of the property is restricted to a day care center (over 30 persons) under Section 59.3.4.4.F of the Zoning Ordinance.
3. Student enrollment is limited to 47 students unless the Applicant performs a traffic study meeting the LATR Guidelines at the time of site plan review.

Criteria for Approval

To approve an LMA, the District Council must find that the proposal will meet the standards required by the Zoning Ordinance and that it will be consistent with the coordinated and systematic development of the Regional District. See, *Md. Land Use Art.*, §21-101(a) and (b). While many of the site specific requirements for development are addressed by later approvals, the Zoning Ordinance contains various standards, or “Necessary Findings,” that the Council must make. See, Zoning Ordinance, §59.7.2.1.E. These standards incorporate the requirements of other sections of the Zoning Ordinance, and most fall within three main categories: (1) conformance with the Master Plan, (2) compatibility with the surrounding area and adjacent properties, and (3) whether the project is supported by adequate public facilities.

Conformance with the Master Plan¹

The *2000 Takoma Park Master Plan* (Master Plan or Plan) guides the development of this property. The Master Plan envisions the area as a “vibrant mix of interesting neighborhoods, viable commercial centers, appropriate community facilities, and a circulation system that provides easy access to shops, services, parks, and transportation as well as enhancing and preserving existing residential neighborhoods.” Plan, p. 3. The subject property falls within the “Takoma Junction” subdistrict of the Plan, described as the “commercial heart” of Takoma Park. The Plan sees Takoma Junction as an extension of Takoma Old Town, “providing unique stores and services to both nearby neighborhoods and regional visitors,” stressing walkability and visibility to pass-by traffic. Plan, p. 44.

Both the Hearing Examiner and Staff agreed that the proposed development substantially conforms to the Master Plan. The Hearing Examiner concluded that the day care service provided will sustain an existing neighborhood commercial use within the Takoma Junction commercial area. At the same time, the use supports and maintains the surrounding residential community. The proposed development will provide a walkable service, furthering the Plan’s goal to encourage multi-modal transit. The binding element limiting the height of the addition ensures that the scale of the use will fulfill the Plan’s vision for a “traditional small town.” Based on this record, the District Council agrees with the Hearing Examiner and so finds.

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

Compatibility

Several sections of the Zoning Ordinance require the District Council to decide whether the FZP is compatible with adjacent uses and the surrounding area.² The Hearing Examiner found that the FZP would be compatible with both adjacent properties and the surrounding area because the binding element limiting the height retains the scale of the existing building and is consistent with the other local retail located along Carroll Avenue. Enrollment will be capped at 47 students, exempt from LATR, ensuring that the traffic impact will be minimal unless and until a traffic study can be performed. *Hearing Examiner's Report*, p. 17. Planning Staff concluded that the expansion would minimize noise from the current playground and presents a reduced visual impact for the adjacent homeowner. Exhibit 30(b), p. 12. The District Council agrees and finds that the FZP will be compatible with the surrounding area.

Adequacy of Public Facilities/Public Interest

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

The FZP must comply with the Planning Board's Local Area Transportation Review (LATR) Guidelines. *Zoning Ordinance*, 59.7.2.1.E.1.c. Staff advised that if enrollment for the school is limited to 47 students, the project is exempt from the LATR test. Exhibit 30(b), p. 9. As Nachel has not performed a traffic study to add more trips, it agreed to a binding element limiting enrollment to a total of 47 students unless it submits a traffic study at site plan. Exhibit 46(b). With this binding element, the application is exempt from LATR review. Exhibit 30(b), p. 9. The binding element leaves open the possibility of increasing enrollment above the 47-student cap if Nachel submits a traffic study at site plan.

² The application must satisfy the intent and standards of the proposed zone and, to the extent the Hearing Examiner finds it necessary to ensure compatibility, meet other applicable requirements of this Chapter. *Zoning Ordinance*, §59.7.2.1.E.1.c. The intent of the Floating Zones requires the applicant to "ensure protection of established neighborhoods" by "establishing compatible relationships between new development and existing neighborhoods through limits on applicability, density, and uses" and "providing development standards and general compatibility standards to protect the character of adjacent neighborhoods." *Id.*, Section 59.5.1.2.C.1 and 2. One purpose of the Employment Floating Zones (which includes the NRF Zone), is to "provide development that is compatible with adjacent development." *Id.*, 59.7.2.1.E.2.d. Finally, §59.7.2.1.E.2.f states that "when applying a non-Residential Floating zone to a property previously under a Residential Detached zone, [it must] not adversely affect the character of the surrounding neighborhood." Because a portion of the property falls within a Residential Detached Zone (the R-60 Zone), this provision applies as well.

³Section 59.7.2.1.E.2.e requires that an Applicant demonstrate that traffic generated from the proposed development "does not exceed the critical lane volume or volume/capacity ratio standard as applicable under the Planning Board's LATR Guidelines, or, if traffic exceeds the applicable standard, that the applicant demonstrate an ability to mitigate such adverse impacts . . ." The adequacy of other facilities is part of the Council's determination that an application will be "in the public interest..." and that it be "it will be consistent with a coordinated and systematic development of the Regional District" under State law. *Zoning Ordinance*, §59-7.2.1.E.1.b; *Md. Land Use Art.*, §21-101(a) and (b). The intent of the Floating Zones is to "implement comprehensive planning objectives by...ensuring that the proposed uses are in balance with and supported by the existing and planned infrastructure..." *Zoning Ordinance*, §59-7.2.1.E.1.b; 59-5.1.2.A.2.

Uncontroverted evidence establishes that other public facilities are adequate as well. The Staff Report states that electric, gas and telecommunications services are available to the site and that police stations, firehouses, and health care facilities are all operating in accordance with the Subdivision Staging Policy. Exhibit 30(b), p. 12. Based on this evidence, the District Council finds that public facilities are adequate to serve the proposed development.

The Intent of Floating Zones (§59.5.1.2)

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

Section 59-5.1.2.A.3. Implement comprehensive planning objectives by:

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

The Hearing Examiner found that the FZP met this standard because a binding element limits the height of the addition to 25 feet, less than the 30-feet permitted under the TPESS Zone. Staff concluded that this limitation will “retain the scale and character” of the existing building. Exhibit 30(b), p. 9. The development proposes no setback along the rear property line (not permitted by the existing zoning), which allows the expansion with additional room for upgraded stormwater management facilities. Exhibit 46(b). With the binding element limiting enrollment, the development meets the standards of the LATR Guidelines, and traffic will have a minimal impact on the community. 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;

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

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

The District Council finds that the development proposed meets this intent, as did the Hearing Examiner. The FZP will allow an expansion to sustain an existing business in an appropriate commercial location. At the same time, the proposed use supports the residential community. Not only are there no environmentally sensitive feature of the site, joint use with the adjacent parcel reduces the need for additional impervious area. Additional stormwater facilities will be provided with the new development and the property has existing access to a non-residential street (Carroll Avenue).

Purposes of the Employment Floating Zones (§59.5.4.2.)

The Employment Floating Zones have three purposes:

- A. allow development of commercial centers and communities, at a range of densities and heights flexible enough to respond to various settings.*
- B. allow limited residential development and flexibility in uses for a site; and*
- C. provide 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 that the proposed development fulfills the remaining purposes of the Employment Floating Zones. The design flexibility of the Floating Zone permits the Applicant to have no rear setback, allowing it to locate most of the expansion in the rear of the lot, not readily viewed from the street. This also allows room for on-site stormwater facilities. The binding element limiting the height ensures that the addition remains in scale with the existing building and the surrounding area. The District Council agrees with this analysis and finds that the FPZ meets the purposes of the Employment Floating Zones.

The Applicability of the Zone (Section 59.5.1.3.)

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

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

The Hearing Examiner found that the FZP meets these prerequisites. Planning Staff advised that Carroll Avenue (Md. Rte. 410) is a non-residential street, meeting the first prerequisite. The Staff Report and the Hearing Examiner's Report set forth in detail the reasons the application meets the

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

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)

The NRF Zone permits only the uses allowed in the Euclidean NR (Neighborhood Retail Zone) and permits any building type. *Zoning Ordinance*, §§5.3.3.3, 59.5.3.4. The FZP includes a binding element limiting the use to a Daycare (over 30 persons) under Section 59.3.4.4.F of the Zoning Ordinance. This is a permitted use in the NR Zone. These standards have been met.

Development Standards of the Zone (Section 5.3.5)

Planning Staff and the Hearing Examiner detailed the reasons for their findings that the property met the development standards of the NRF Zone. The FZP does not show any on-site parking (parking is on the adjacent property); Staff indicated that they would support a waiver as “guided by the CROZ [the Takoma Park/East Silver Spring Commercial Revitalization Overlay Zone].” Exhibit 43. The TPESS Zone, which will overlay the NRF Zone, permits the Planning Board to waive the requirements for parking spaces at site plan “where it finds that such waivers will accomplish the goals of the master plan, including revitalization and enhancing the pedestrian environment.” *Zoning Ordinance*, §4.9.16.D.2.a. The Hearing Examiner found it probable that the FZP would qualify for a waiver at site plan, as it is supported both by the Master Plan and the TPESS. Based on this evidence, the District Council agrees with the finding of the Hearing Examiner that the application may meet the development standards of the NRF Zone.

Compliance with the Takoma Park/East Silver Spring Commercial Revitalization Overlay Zone (TPESS Overlay Zone)

Development of this property must also comply with the TPESS Overlay Zone. The purpose of the Zone is to foster economic vitality, promote an enhanced pedestrian environment, and substantially conform with the master plan’s vision for the commercial area. *Id.* §59.4.9.16.A. Nachel’s expert land planner opined that the FZP meets this purpose because it sustains a commercial business that also provides a valuable service to the surrounding residential area. It is centrally located to the surrounding residential communities, and most parents walk their children to the school, falling within the goal to enhance the pedestrian environment. The Hearing Examiner found that the expansion of a compatible use that serves the surrounding area clearly fosters revitalization of both the commercial and residential neighborhoods.

The Hearing Examiner concluded that the FZP also complies with the development standards of the TPESS Zone. The Zone limits building height to 30 feet; a binding element of the FZP restricts it to 25 feet. Parking for the development is located off-site, and the TPESS encourages waivers of parking where appropriate. For these reasons, the District Council finds that the application complies with the development standards of the TPESS Zone, as did the Hearing Examiner.

Conclusion

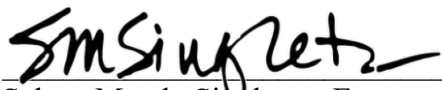
Based on the foregoing analysis and after a thorough review of the entire record, including the Hearing Examiner's Report issued January 21, 2021, the District Council concludes that the proposed reclassification and development will meet the standards set forth in the Zoning Ordinance, and that it will 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-138, requesting reclassification from the existing R-60 and NR 0.75 H-50 Zones, for property located at 7206 and 7212 Carroll Avenue, Takoma Park, MD 20912, further described as Parcels N923 and N968 of Section 1 and part of lot P2, Section 3, S.S. Carroll's Addition to Takoma Park (Tax Account Nos. 13-01063775, 13-01063786, and 13-10063797) is hereby **approved** in the amount requested and subject to the specifications and requirements of the Floating Zone Plan, Exhibit 46(b), provided that the Applicant files an executed Declaration of Covenants (Exhibit 48(a)) reflecting the binding elements in the land records and submits to the Hearing Examiner for certification a true copy of the Floating Zone Plan approved by the District Council within 10 days of approval, in accordance with §§59.7.2.1.H.1.a. and b. of the Zoning Ordinance.

This is a correct copy of Council action.



Selena Mendy Singleton, Esq.
Clerk of the Council