

APPENDIX A

Resolution No.: 15-740
Introduced: September 14, 2004
Adopted: September 14, 2004

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

By: County Council

SUBJECT: APPLICATION NO. G-818 FOR AMENDMENT TO THE ZONING ORDINANCE MAP,
Anne C. Martin, Esquire, Attorney for Sarah G. Mirtaghavi and Mirali Mirtaghavi,
Applicants, OPINION AND RESOLUTION ON APPLICATION
Tax Account No. 00980080

OPINION

Application No. G-818, filed on December 29, 2003 by Applicants Sarah and Mirali Mirtaghavi, requests reclassification from the R-90 Zone to the R-T 12.5 Zone of 0.54 acres of land known as Parcel P977, Tax Map JQ13, located at 12129 Georgia Avenue in Silver Spring, Maryland, in the 9th Election District. The application was considered under the Optional Method authorized by Code §59-H-2.5, which permits binding limitations with respect to land use, density and development standards or staging.

The Hearing Examiner recommended approval of the application on the basis that the R-T 12.5 Zone at the proposed location would satisfy the requirements of the purpose clause; that the proposed reclassification and development would be compatible with existing and planned land uses in the surrounding area; and that the proposed reclassification bears sufficient relationship to the public interest to justify its approval. The Montgomery County Planning Board ("Planning Board") and its Technical Staff provided similar recommendations. The District Council agrees with these conclusions.

The subject property measures approximately 0.54 acres, or 23,547 square feet, and is located at 12129 Georgia Avenue in Silver Spring, about 1,200 feet south of Georgia Avenue's intersection with Randolph Road. The property is an unrecorded lot, generally rectangular in shape, with

117 feet of frontage along Georgia Avenue and a depth of 255 feet. It is generally flat and contains mostly open lawn. There are three specimen trees on the property and scattered rows of smaller trees, but no forest, wetlands, streams, floodplain or steep slopes. The property is developed with a single-family, detached house and associated garage, and has a horseshoe-shaped driveway with two access points onto Georgia Avenue.

The surrounding area for this application has been designated as that area encompassed by a circle 1,000 feet in radius with the subject property as its center. This surrounding area contains a mix of uses. The portion of the surrounding area on the east side of Georgia Avenue contains multi-family uses, townhouses and institutional uses – the house on the subject property is the last remaining single-family home within the surrounding area on that side of Georgia Avenue. Most of this area, including the property abutting to the south and east, is classified under the R-20 or R-30 zone (low and medium density multi-family residential) and developed with townhouses or garden apartments. Immediately north of the subject property is a lot that is classified under the R-20 Zone and used as a parking lot for St. Andrew Lutheran Church. The church itself is located a short distance to the north on the east side of Georgia Avenue. There are apartments between the church and its parking lot, and parishioners travel between the church and the parking lot on pedestrian paths that run between the apartment buildings. The church is one of the exceptions to the prevailing zoning pattern, as it is located on land classified under the R-90 Zone. Another exception is an area slightly south of the subject property, which is classified under the R-60/TDR Zone and developed with a Housing Opportunities Commission apartment complex. South of Shorefield Road is a shopping center classified under the C-1 Zone. Just north of the surrounding area, at the southeast corner of Randolph Road and Georgia Avenue, are the Wheaton-Glenmont Police Station and Kensington Fire Station 18.

Most of the surrounding area west of Georgia Avenue, including the portion confronting the subject property, is developed with single-family, detached homes in the R-60 Zone. South of the subject property, the Georgia Avenue frontage across from the HOC apartment complex and the shopping center is developed with small office and retail uses in the C-2 and C-4 Zones. North of the

subject property, approaching the Georgia Avenue/Randolph Road intersection, is a former elementary school that currently houses county functions including a youth services project. This property is slated for future use in connection with intersection improvements.

The subject property was classified under the R-90 Zone in the 1954 Regional District Zoning. The R-90 Zone was reaffirmed in the 1958 Countywide Comprehensive Zoning, and by Sectional Map Amendment (SMA) in 1989 (SMA G-642) and 1998 (SMA G-761).

The Applicant proposes to raze the existing dwelling on the site and build six townhouses in two groups of three. One group would face Georgia Avenue and the other would be at the opposite end of the property. The layout as submitted, while illustrative only, suggests that the space between the two groups of units would be used for driveways, two-car garages and green space. The units facing Georgia Avenue would have garages at the rear, creating a more residential face along the roadway and a more pedestrian-friendly environment. Each unit is expected to have a two-car garage on the ground floor and two stories above the garage. Site access would be provided via a single right-turn-in/right-turn-out driveway onto Georgia Avenue. At the time of subdivision, the Applicant would be required to dedicate a 12.5-foot strip of land along Georgia Avenue to accommodate future right-of-way needs.

Technical Staff notes that three specimen trees and two significant trees have been identified on the subject property, and one specimen tree is located off-site. A field study found that a 44-inch white oak near the middle of the site is in very good condition, despite being surrounded by compacted earth. The illustrative site layout shown on the schematic development plan would not tend to preserve this tree or any of the specimen trees. Accordingly, Technical Staff expects to make significant changes to the illustrative elements of the plan during the development process to preserve significant and specimen trees. Such changes likely would include shifting units and reducing or realigning pavement. In addition, a Tree Save Plan would be required. The proposed development is exempt from forest conservation requirements because the property is less than one acre and the project would not result in clearing more than 30,000 square feet of existing forest.

Technical Staff notes that a stormwater management concept plan would be required at the preliminary plan stage, and that it appears stormwater management requirements can be satisfied on site. The Applicant expects to receive a waiver from stormwater quantity control requirements due to the small size of the property, and plans to satisfy quality control requirements on site.

The schematic development plan ("SDP") submitted in the present case proposes six binding elements, which are shown in the table below. These binding elements limit development to six townhouses with a maximum of 25% building coverage, plus green space, setbacks and building height that satisfy the requirements for the RT Zone.

Binding Elements of Schematic Development Plan, from Ex. 33(a)

Zone development standard To RT-12.5

Item	Required/Permitted	Proposed	Binding Element
Gross Tract Area	20,000 S.F.	23,547 S.F.	---
Development Density	12.5 DU/AC, 6.75 DU	11.0 DU/AC, 6 DU	6 D.U.
Building Coverage	35% Max. (GTA)	23% (GTA)	25% (GTA)
Green Area	50% Min. (GTA)	50% (GTA)	50% (GTA)
Building Height	35 Ft. Max.	35 Ft.	35 Ft.
Building Setbacks:			
From Street	25 Ft. Min.	25 Ft.	25 Ft.
From Adjoining Lots:			
Side	10 Ft.	10 Ft.	10 Ft.
Rear	20 Ft.	20 Ft.	20 Ft.
From Detached Residential Unit Zone	30 Ft.	N/A	---

(GTA) = Gross Tract Area

NOTE:

PER SECTION §59-H-2.53(e) THE FOOTPRINT OF THE BUILDINGS AND THE DIMENSIONS OF THE PARKING AND CIRCULATION AREAS ARE CONCEPTUAL, NOT BINDING ELEMENTS, AND MAY BE ADJUSTED, SHIFTED, REALIGNED AND/OR REDUCED DURING THE SUBSEQUENT SITE PLAN REVIEW PROCESS IN ORDER TO EFFECT TREE PRESERVATION..

As shown on page 15 of the Hearing Examiner's Report and Recommendation, the proposed development would be consistent with applicable development standards for the R-T 12.5 Zone.

The District Council concludes that the proposed rezoning would comply with the purpose clause of the R-T 12.5 Zone. The purpose of the R-T Zone is to provide suitable sites for townhouses (1) in areas that are designated for R-T Zone densities (implying a master plan designation); (2) in areas that are appropriate for residential development at densities that are allowed in the R-T Zones; or (3) where

there is a need for buffer or transitional uses. The present application satisfies the second of these alternatives.

The District Council agrees with the findings made by the Hearing Examiner and Technical Staff that the proposed development would be compatible with surrounding land uses. The character of the east side of Georgia Avenue in the immediate vicinity of the subject property has become medium-density residential, as demonstrated by the fact that the subject property is surrounded by multi-family development in the R-20 Zone and is one of only two remaining parcels east of Georgia Avenue classified under the R-90 Zone. The surrounding area east of Georgia Avenue is developed with garden apartments, townhouses and institutional uses. Thus, the proposed townhouse use would be fully compatible with existing uses on the east side of the street in terms of both use and density.

The surrounding area west of Georgia Avenue contains commercial uses, institutional uses and a substantial neighborhood of single-family detached homes. Much of the Georgia Avenue frontage in the surrounding area is zoned and developed for small commercial uses that are compatible with the mix of uses in the surrounding area, including townhouses. The most sensitive uses in the area are the single-family detached homes that confront the subject property. Currently, these homes view the existing single-family home on the subject property sandwiched between a parking lot and multi-family developments -- a single-family home that has become out of character with neighboring uses. The proposed townhouse development would replace this with a view of a row of townhouses with garages to the rear and a pedestrian-friendly, residential face on Georgia Avenue. This project would fill in the last developable parcel on this stretch of Georgia Avenue at the lower range of densities commonly found on the east side of the street, and with a use that would fit well in the framework of the neighborhood. Moreover, the impact on single-family homes west of Georgia Avenue would be reduced by Georgia Avenue itself, which is a six-lane, divided highway and is recommended for a 120-foot right-of-way. For all of these reasons, the District Council concludes, based on the preponderance of the evidence, that the subject property is appropriate for residential development at densities allowed in the RT Zones.

The provision of landscaping at both ends of the property and a green area in the middle, between the two rows of townhouses, would be consistent with the intent of the R-T Zone to provide amenities normally associated with less dense zoning categories. For the reasons discussed in the previous paragraph, the proposed development would be compatible with existing and planned land uses in the surrounding area. Accordingly, the evidence demonstrates that the proposed rezoning and development would be consistent with the intent of the R-T Zone to prevent detrimental effects to adjacent properties and to promote the health, safety, morals and welfare of the present and future inhabitants of the district and the County.

As discussed above, the District Council finds that the proposed development would be compatible with existing and planned land uses in the surrounding area. The surrounding area contains a mix of uses including townhouses, and the proposed townhouse development would be consistent with that mix, in terms of both the nature of the use and the density proposed. The record contains no information concerning architectural compatibility, but this can be addressed at site plan review.

The District Council further determines that the proposed reclassification bears sufficient relationship to the public interest to justify its approval. The Planning Board and Technical Staff opined, and the Hearing Examiner agreed, that the proposed development would substantially comply with the *Master Plan for the Communities of Kensington-Wheaton, Approved and Adopted 1990* (the "Master Plan"). The Master Plan's Land Use Plan designates all of the properties on the east side of Georgia Avenue between Shorefield Road and the *Glenmont Sector Plan* area to the north, including the subject property, for medium density residential use. The text of the Master Plan does not make specific recommendations for the subject property, but it recommends densities higher than proposed here – 12 to 15 dwelling units per acre – for two nearby properties. The Master Plan's general land use objectives include maintaining the well-established low- to medium-density residential character of the planning area, and ensuring that infill development is similar in character and compatible in density with the immediate neighborhood. The development proposed here is consistent with those objectives. It would reinforce the existing medium-density residential character of the area, and would be similar in character

and compatible in density with the multi-family uses and townhouses that occupy most of the immediate neighborhood. The visual impact of the proposed development on the confronting single-family neighborhood would be no different from the visual impact of the existing multi-family and townhouse uses on the east side of Georgia Avenue, and could result in an improvement by constructing a use that fits into its surroundings more harmoniously than the existing single-family home.

The District Council agrees with the Hearing Examiner's finding that the proposed development would also promote the goals of the nearby *Glenmont Sector Plan* to preserve the area near the Glenmont Metro station as a stable, predominantly residential community.

The evidence demonstrates that the proposed rezoning and development would have no adverse effect on public facilities. While the local elementary school experiences some overcrowding and is expected to do so for the next several years, the County Council made the judgment in the current AGP Policy Element that adequate school capacity exists in the planning area. Moreover, the six dwelling units proposed here are expected to generate only two elementary school students. Under these circumstances, the minimal evidence of potential adverse effects on school overcrowding is not sufficient to warrant denial of the application.

No evidence was presented to suggest that the proposed development would have any adverse effect on public roads, utilities or other public services.

For these reasons and because to grant the instant zoning application would aid in the accomplishment of a coordinated, comprehensive, adjusted and systematic development of the Maryland-Washington Regional District, the application will be granted in the manner set forth below.

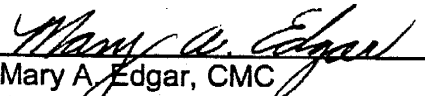
ACTION

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District located in Montgomery County, Maryland approves the following resolution:

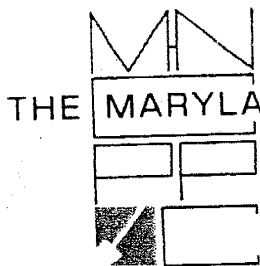
Zoning Application No. G-818, requesting reclassification from the R-90 Zone to the R-T 12.5 Zone of 0.54 acres of land known as Parcel P977, Tax Map JQ13, located at 12129 Georgia

Avenue in Silver Spring, Maryland, in the 9th Election District, is hereby approved in the amount requested subject to the specifications and requirements of the final schematic development plan, Exhibit 33(a); provided that, within 10 days of receipt of the District Council's approval resolution, the Applicant must submit to the Hearing Examiner for certification a reproducible original and three copies of the approved schematic development plan, in accordance with §59-D-1.64.

This is a correct copy of Council action.


Mary A. Edgar, CMC
Clerk of the Council

APPENDIX B



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

Date Mailed: APR 08 2005

Action: Approved Staff
Recommendation

Motion of Commissioner Bryant,
seconded by Commissioner
Wellington, with a vote of 5-0.
Chairman Berlage and
Commissioners Perdue, Bryant,
Wellington and Robinson voting in
favor.

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-05052
NAME OF PLAN: Loneoak Townes

APR 08 2005

The date of this written opinion is _____ (which is the date this Opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this written opinion, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules of Court - State).

On 11/19/04, Mirali Mirtaghavi ("Applicant") submitted an application for the approval of a preliminary plan of subdivision of property in the R-T 12.5 zone. The application proposed to create 6 lots on 0.54 acres of land located at the east side of Georgia Avenue (MD 97) ("Subject Property"), approximately 60 feet south of Mason Street in the Kensington-Wheaton master plan area. The application was designated Preliminary Plan 1-05052. On 3/17/05, Preliminary Plan 1-05052 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application.

The record for this application ("Record") closed at the conclusion of the public hearing, upon the taking of an action by the Planning Board. The Record includes: the information on the Preliminary Plan Application Form; the Planning Board staff-generated minutes of the Subdivision Review Committee meeting(s) on the application; all correspondence and any other written or graphic information concerning the application received by the Planning Board or its staff following submission of the application and prior to the Board's action at the conclusion of the public hearing, from the applicant, public agencies, and private individuals or entities; all correspondence and any other written or graphic information issued by Planning Board staff concerning the application, prior to the Board's action following the public hearing; all evidence, including written and oral testimony and any graphic exhibits, presented to the Planning Board at the public hearing.

This is an application to create six (6) residential lots for the construction of six (6) one-family attached dwellings. The Subject Property is located in an area identified in the Kensington-Wheaton Master Plan for development of infill and under developed parcels. The existing surrounding residential properties consist primarily of multi-family dwellings and townhomes. The Subject Property will have direct access from Georgia Avenue (MD 97) and is not subject to a local area traffic review (LATR). There are no streams, wetlands, floodplains or environmental buffers on the property, and it is exempted from forest conservation plan requirements.

The site was recommended in the master plan to be rezoned to R-60/TDR. However, the site was rezoned to R-T 12.5 pursuant to Rezoning Application #G-818 which was adopted by the Montgomery County Council by resolution on September 14, 2004. The Applicant, represented by legal counsel, appeared at the public hearing and testified in support of the staff's recommendation of approval and staff's recommended conditions of approval. No other speakers appeared and testified at the hearing, and the record contains no evidence of opposition to staff's recommendation of approval, or to the recommended conditions.

FINDINGS

Having given full consideration to the recommendations of its Staff; the recommendations of the applicable public agencies¹; the applicant's position; and other evidence contained in the Record, which is hereby incorporated in its entirety into this Opinion, the Montgomery County Planning Board finds, based on the uncontested evidence of record, that:

¹ The application was referred to outside agencies for comment and review, including (but not limited to) Washington Suburban Sanitary Commission, the Department of Public Works and Transportation, the Department of Permitting Services and other public agencies. All of reviewing agencies recommended approval of the application.

- a) The Preliminary Plan No. 1-05052 substantially conforms to the Kensington-Wheaton master plan.
- b) Public facilities will be adequate to support and service the area of the proposed subdivision.
- c) The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision.
- d) The application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A. This finding is subject to the applicable condition(s) of approval.
- e) The application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by the Montgomery County Department of Permitting Services ("MCDPS") that the Stormwater Management Concept Plan meets MCDPS' standards.
- f) The Record of this application does not contain any contested issues; and, therefore, the Planning Board finds that any future objection, which may be raised concerning a substantive issue in this application, is waived.

CONDITIONS OF APPROVAL

Finding Preliminary Plan No. 1-05052 in accordance with the purposes and all applicable regulations of Montgomery County Code Chapter 50, the Planning Board approves Preliminary Plan No. 1-05052, subject to the following conditions:

- 1) Approval under this preliminary plan is limited to six (6) dwelling units.
- 2) Compliance with the specifications and requirements of the approved development plan for Zoning Application No. G-818, County Resolution No.15-740.
- 3) Final approval of the number and location of buildings, dwelling units, on-site parking, site circulation, sidewalks, and bike paths will be determined at site plan.
- 4) The applicant shall submit a detailed tree save plan as part of site plan for staff review and approval.
- 5) Compliance with the conditions of approval of the MCDPS stormwater management approval dated December 10, 2004.

- 6) Access and improvements as required to be approved by MDSHA prior to issuance of access permits.
- 7) Compliance with conditions of MCDPWT letter dated February 24, 2005, unless otherwise amended.
- 8) Record Plat shall reflect all areas under Homeowners Association and stormwater management parcels.
- 9) Other necessary easements.

This Preliminary Plan will remain valid for 36 months from its Initiation Date (as defined in Montgomery County Code Section 50-35(h), as amended). Prior to the expiration of this validity period, a final record plat for all property delineated on the approved preliminary plan must be recorded among the Montgomery County Land Records or a request for an extension must be filed.

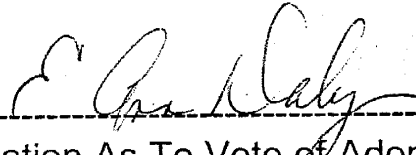
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[CERTIFICATION OF BOARD VOTE ADOPTING OPINION ON FOLLOWING PAGE]

MR 3/25/08
Approved for legal sufficiency
M-NCPPC Office of General Counsel

CERTIFICATION OF BOARD ADOPTION OF OPINION

At its regular meeting, held on **Thursday, March 31, 2005**, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, by unanimous consent **ADOPTED** the above Opinion which constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law for **Preliminary Plan No. 1-05052, Loneoak Townes**. Commissioner Perdue was absent.

A handwritten signature in cursive script, appearing to read "E. Ann Daly", is written over a horizontal dashed line.

Certification As To Vote of Adoption
E. Ann Daly, Technical Writer