

# MAYOR & COUNCIL AGENDA COVER SHEET

**MEETING DATE:**

April 21, 2008

**CALL TO PODIUM:**

**Fred Felton**  
Assistant City Manager

**RESPONSIBLE STAFF:**

**Fred Felton**  
Assistant City Manager

**Erica Shingara**  
Environmental Services  
Director

**AGENDA ITEM:**

(please check one)

<input type="checkbox"/>	Presentation
<input type="checkbox"/>	Proclamation/Certificate
<input type="checkbox"/>	Appointment
<input type="checkbox"/>	Public Hearing
<input type="checkbox"/>	Historic District
<input type="checkbox"/>	Consent Item
<input type="checkbox"/>	Ordinance
<input checked="" type="checkbox"/>	Resolution
<input type="checkbox"/>	Policy Discussion
<input type="checkbox"/>	Work Session Discussion Item
<input type="checkbox"/>	Other:

**PUBLIC HEARING HISTORY:**

(Please complete this section if agenda item is a public hearing)

Introduced	
Advertised	
Hearing Date	
Record Held Open	
Policy Discussion	

**TITLE:**

Resolution of the Mayor and City Council Authorizing the City Manager to Negotiate and Execute an Agreement for Stream Restoration and Repair with Asbury Atlantic, Inc. (\$158,000)

**SUPPORTING BACKGROUND:**

Pursuant to Section 33 of the *Environmental Standards for Development Regulation* and as part of the mitigation for an environmental waiver, Asbury was required to design and construct approximately 1,200 linear feet of stream stabilization on site.

For your review, we have attached a copy of Asbury's environmental waiver. At the time the waiver was approved, it was contemplated that the City would contribute \$158,000 to the cost of the stream restoration project. These funds had been previously collected from other developers.

As you know, a significant portion of Olde Towne was developed prior to the implementation of storm water management regulations. The majority of storm water from Olde Towne ultimately flows into the stream at the Asbury campus. This run off has contributed to the degradation of Asbury's stream, and it is appropriate for the City to contribute to the cost of the stream restoration at Asbury.

Under the terms of the attached agreement, Asbury is required to expend up to \$250,000 on the stream restoration and the City is required to expend up to \$158,000. The agreement has been reviewed and approved by the City Attorney.

**Attachments**

**DESIRED OUTCOME:**

**Vote on Resolution**



RESOLUTION NO. \_\_\_\_\_

RESOLUTION OF THE MAYOR AND CITY COUNCIL AUTHORIZING THE CITY  
MANAGER TO NEGOTIATE AND EXECUTE AN AGREEMENT FOR STREAM  
RESTORATION AND REPAIR WITH ASBURY ATLANTIC, INC.

WHEREAS, Asbury Atlantic, Incorporated is required to design and construct approximately 1,200 linear feet of stream stabilization at the Asbury Methodist Village; and

WHEREAS, a significant portion of Olde Towne was developed prior to the implementation of storm water management regulations. The majority of storm water from Olde Towne ultimately flows into the stream at the Asbury campus; and

WHEREAS, the storm water run-off from Olde Towne has contributed to the degradation of Asbury's stream; and

WHEREAS, at the time Asbury's *Environmental Standards for Development Regulation* waiver was approved, it was contemplated that the City would contribute \$158,000 of public funds (previously collected from other developers) to the cost of the stream restoration project; and

WHEREAS, the Mayor and City Council has determined that it is appropriate to expend public funds to assist in the costs of Asbury's stream restoration project:

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of Gaithersburg, that the City Manager be and he hereby is authorized to negotiate and execute an agreement for stream restoration and repair with Asbury Atlantic, Inc.

ADOPTED by the Mayor and City Council this 21<sup>st</sup> day of April, 2008.

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SIDNEY A. KATZ, MAYOR and  
President of the Council

THIS IS TO CERTIFY that the foregoing  
Resolution was adopted by the City Council  
in public meeting assembled on the 21<sup>st</sup>  
day of April, 2008

---

James D. Arnoult, Acting City Manager

RESOLUTION NO. R-81-07

RESOLUTION OF THE MAYOR AND CITY COUNCIL APPROVING A WAIVER OF  
THE ENVIRONMENTAL STANDARDS FOR DEVELOPMENT REGULATION  
TO PERMIT APPROXIMATELY ONE ACRE OF DISTURBANCE WITHIN  
THE STREAM VALLEY BUFFER AT ASBURY METHODIST VILLAGE

WHEREAS, the *Environmental Standards for Development Regulation* was adopted by the Mayor and City Council on November 19, 2001, providing the Mayor and City Council the authority to grant a waiver; and

WHEREAS, a condition of concept plan approval of Asbury Methodist Village- North Village (SP-07-0001) is for the applicant to obtain approval of an environmental waiver from the Mayor and City Council for intrusions into the stream buffer, as required by the *Environmental Standards for Development Regulation*; and

WHEREAS, pursuant to Section 33, Stream Quality Enhancement, of the *Environmental Standards for Development Regulation*, in cases where an existing stream on the site is degraded and experiencing erosion, bank failure, undercutting of adjacent trees or other problems related to the integrity of the stream channel, a plan addressing bioengineering or stream stabilization must be submitted for Planning Commission approval; and

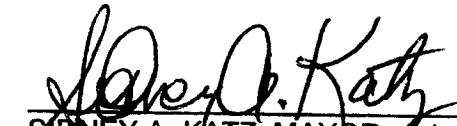
WHEREAS, staff has reviewed the proposed waiver and determined that this circumstance warrants a waiver because the public interest benefits outweigh the risks to the environment, there are no other feasible alternatives, and the proposed mitigation measures will compensate for the disturbance to the stream valley buffer:

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and City Council of Gaithersburg, that the request for a waiver of the *Environmental Standards for Development Regulation* to permit approximately one acre of disturbance within the stream valley buffer at Asbury Methodist Village, including three storm drain outfalls, is hereby approved subject to the following conditions:

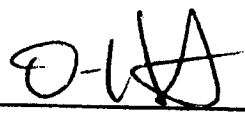
1. The limits of disturbance and concept designs outlined in the waiver application are not absolute and may be modified by staff during final engineering and field coordination to minimize clearing, grading, tree removal, and encroachments into stream and wetland buffers;
2. The applicant will obtain all necessary approvals and permits from all local, State, and Federal findings agencies prior to disturbing the stream valley buffer;

3. Pursuant to Section 33 of the *Environmental Standards for Development Regulation* and as part of the project's onsite mitigation plan, the applicant shall work with staff to design and construct approximately 400 linear feet of stream stabilization in the vicinity of the south pond (area designated as "Emergency Stabilization" in Exhibit 2c) prior to the release of bonds for this development. In addition, the applicant shall work with staff to develop an agreement that would implement a plan to restore approximately 800 linear feet of stream (area designated as "Stream Restoration" in Exhibit 2c). It is anticipated that this agreement would provide for the expenditure of \$158,000 of public funds (previously collected from other developers), and would require the City to seek grant funds from outside sources that would reduce the cost to both parties. In any event, the applicant's total stream improvement obligation under this development approval shall not exceed \$250,000; and
4. Storage or deposition of equipment, trucks, materials, waste, or debris within the stream buffer is prohibited.

ADOPTED by the Mayor and City Council this 23rd day of July, 2007.

  
\_\_\_\_\_  
SIDNEY A. KATZ, MAYOR and  
President of the Council

THIS IS TO CERTIFY that the foregoing  
Resolution was adopted by the City Council  
in a public meeting assembled on the 23rd day  
of July, 2007.

  
\_\_\_\_\_  
David B. Humpton, City Manager

## **AGREEMENT FOR STREAM RESTORATION AND REPAIR**

This Agreement ("Agreement") made and entered into this 25<sup>th</sup> day of March, 2008, by and between Asbury Atlantic, Inc., a Maryland not-for-profit corporation, whose principal address is 20030 Century Boulevard, Suite 300, Germantown, Maryland 20874, hereinafter referred to as "Asbury," and the City of Gaithersburg, Maryland, whose principal address is City Hall, 31 South Summit Avenue, Gaithersburg, Maryland 20877, hereinafter referred to as "City."

### **WITNESSETH:**

WHEREAS, Asbury owns and operates Asbury Methodist Village ("AMV"), a continuing care retirement community located in the City of Gaithersburg, Maryland; and

WHEREAS, there is a stream located on the AMV campus, which stream is further identified on Attachment 1 hereto (the "Stream"); and

WHEREAS, as a result of increased water flow in the Stream from development in the City of Gaithersburg, off the AMV campus and unrelated to Asbury or AMV, approximately 1,200 lineal feet of the Stream bed requires some restoration and/or repair; and

WHEREAS, the City is the governmental body responsible for assuring that the Stream meets applicable environmental standards; and

WHEREAS, the City currently has \$158,000 identified to be used for the restoration and repair of the Stream bed; and

WHEREAS, Asbury currently has \$80,000 identified to be used for the restoration and repair of the Stream bed; and

WHEREAS, the parties wish to work together to restore and repair the approximately 1,200 lineal feet of the Stream bed which requires restoration and/or repair work; and

WHEREAS, that Environmental Waiver Resolution (R-81-07) required certain stream improvements as mitigation for the Environmental Waiver; and

WHEREAS, pursuant to Section 33 of the Gaithersburg Environmental Standards for Development Regulation, property owners are required to submit a plan addressing bioengineering or stream stabilization when developing property that has an existing stream that is degraded;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and for the mutual covenants contained herein, Asbury and the City (sometimes collectively referred to as the "Parties") hereby agree as follows:

**ARTICLE I**  
**DEFINITIONS**

For the purposes of this Agreement, the following terms shall have the following meanings. Terms previously defined shall have the meanings ascribed to them above.

1.1 "Agreement" shall mean this Agreement by and between Asbury and the City for the restoration and/or repair of the Stream bed.

1.2 "Available Funds" shall mean the sum of the \$158,000 identified by the City and the \$80,000 identified by Asbury

1.3 "Contractor" shall mean the contractor(s) to be selected and engaged by Asbury to perform the Phase 1 and/or Phase II Restoration and Repair work.

1.4 "Engineering Firm" shall mean Rummel, Klepper & Kahl, LLP (RK&K), the engineering firm selected and engaged by the City for work on the Stream bed.

1.5 "Execution Date" shall mean the day upon which the last party to this Agreement shall duly execute this Agreement.

1.6 "Phase I" shall mean the Restoration and Repair work necessary for the approximately 400 linear foot portion of the Stream bed, identified in red on Attachment 1.

1.7 "Phase II" shall mean the Restoration and Repair work necessary for the approximately 800 linear foot portion of the Stream bed, identified in yellow on Attachment 1.

1.8 "Restoration and Repair" of the Stream bed shall refer to the approximately 1,200 linear feet of the stream bed identified by the City as requiring restoration and/or repair work.

1.9 "Staff" shall mean the employees of the City.

**ARTICLE II**  
**ENGINEERING DRAWINGS**

2.1 Upon execution of this Agreement, Staff, if they have not already done so, shall immediately commence the process of obtaining a 30% conceptual design drawing for the Restoration and Repair work for Phase I and Phase II from the Engineering Firm.

2.2 The City shall pay for the 30% conceptual design drawing.

2.3 In addition to the 30% conceptual design drawing, the Staff shall obtain separate quotes from the Engineering Firm for the following:

2.3.1 Final engineering drawings for Phase I.

2.3.2 Final engineering drawings for Phase II.

2.3.3 Final Engineering drawings for Phases I and II, if done at the same time.

2.3.4 The Phase I work.

2.3.5 The Phase II work.

2.3.6 The Phase I and Phase II work, if done at the same time.

2.4 An Asbury representative, Mike Reynolds or his delegate, will be invited to attend and participate in all meetings with the Engineering Firm, and all meetings with the Engineering Firm will be set for times for which Mr. Reynolds has advised the Staff that he, or his delegate, is available.

2.5 Any engineering plan for the Repair and Restoration of the 1,200 linear feet of the stream bed, or any portion thereof, will be mutually agreed to in writing by Asbury and the City.

2.6 If required, prior to commencement of the Restoration and Repair work for Phase I, the City will have the Engineering Firm bring the 30% conceptual design drawings for Phase I to Final Engineering drawings.

2.6.1 The City shall pay for the cost of bringing the 30% conceptual design drawings for the Restoration and Repair work for Phase I to Final Engineering drawings.

### **ARTICLE III**

#### **PERMITTING FOR RESTORATION AND REPAIR WORK**

3.1 City shall apply for, be responsible for obtaining, and be the named holder of any and all licenses and/or permits or other state or county approvals (collectively the "Permit") required for the Restoration and Repair work (Phases I and II). Asbury shall be responsible for obtaining a grading permit from the City of Gaithersburg but the City will not charge a fee for this grading permit.

3.2 All Restoration and Repair (Phases I and II) work shall be performed by the Contractor in accordance with the engineering plans approved by the State of Maryland.

3.3 Asbury shall be responsible, subject to the provisions of Article V and Article VI, for the performance of the agreed upon Restoration and Repair work in accordance with the

Engineering plans, including the performance of any corrective work required by the State of Maryland under the permits issued to the City.

**ARTICLE IV**  
**ADDITIONAL HOUSING ON THE AMV CAMPUS**

4.1 Asbury is planning to build additional housing on the AMV campus. The additional housing will be built as multiple separate projects, for which approval by the City will be required.

4.2 Asbury has applied for approval for the first phase of additional housing, and has received the necessary approval of the City, including an environmental waiver (the "Environmental Waiver") granted in connection with the execution of this Agreement. A copy of the Environmental Waiver is attached hereto as Attachment 2.

4.3 The second phase of additional housing which Asbury intends to build consists of approximately 60 units of residential housing in Manor Home, and some common facilities, possibly including a community center (low density, multi-unit buildings with garages) (collectively the "Manor Homes").

**ARTICLE V**  
**PHASE I RESTORATION AND REPAIR WORK**

5.1 Asbury will contract with the Contractor and set the timeframe and construction schedule for the Phase I Restoration and Repair work.

5.2 The Phase I Restoration and Repair work will be paid for as follows:

5.2.1 Asbury will pay the first \$80,000 of expenses (exclusive of expenses paid by the City for the 30% conceptual design drawings and the Final Engineering drawings) for the Phase I Restoration and Repair work.

5.2.2 The City shall pay the balance of the expenses of the Phase I Restoration and Repair work in excess of \$80,000, provided however, that the maximum amount the City will be required to pay for the Phase I Restoration and Repair work, inclusive of the funds paid by the City for the 30% conceptual design drawings and the Final Engineering drawings, will not exceed \$158,000.

5.2.3. If the costs of the work for Phase I exceeds the amount of Available Funds, the City shall pay to Asbury, within ten (10) days following submission of an application for payment, its pro-rata share of the costs agreed to be paid by the City under Section 5.3., below, in order to permit Asbury to make timely payment to the Contractor. If Asbury incurs any expense, liability, interest or penalty to its Contractor as a result of the City's

failure to make any payment required hereunder within the time provided, the City will indemnify Asbury for any such expense, liability, interest or penalty.

5.3 If the estimate for the cost of the Phase I Restoration and Repair work obtained by the City pursuant to Section 2.3.4., taking into account the limitations on the payment obligations of the parties under Section 5.2, exceeds the Available Funds, as set forth in Section 1.2 above, the parties shall enter into good faith negotiations regarding the payment of the balance of the actual costs to complete the Phase I Restoration and Repair work, prior to commencing the Phase I Restoration and Repair work.

5.4 The Phase I Restoration and Repair work must be completed prior to the release of Asbury's construction bonds for the first phase of additional housing for which the Environmental Waiver was granted.

**ARTICLE VI**  
**PHASE II RESTORATION AND REPAIR WORK**

6.1 Asbury will contract with the Contractor and set the timeframe and construction schedule for the Phase II Restoration and Repair work; provided, however, that Asbury shall not be required to proceed with the Phase II Restoration and Repair work prior to receipt of written notice from the City that the City has its share of the estimated expenses for the Phase II Restoration and Repair work as provided below. Notwithstanding the foregoing, in the event grant funds are available for the Phase II Restoration and Repair Work Asbury shall work with the City to mutually agree on the timing for the work.

6.2 The Phase II Restoration and Repair work will be paid for as follows:

6.2.1 The City, operating in good faith, shall use its best efforts to obtain grant funds for the Phase II Restoration and Repair work on the Stream bed, and shall provide Asbury with copies of all grant applications submitted. The City shall commence applying for grant funds at the earliest opportunity (the "Grant Funds").

6.2.2 If 100% engineering drawings are required for Phase II of the Restoration and Repair work, and if such drawings are not already existing, the City will contract for and pay for the Final Phase II engineering drawings.

6.2.3 Any and all Grant Funds received by the City shall be taken into account in determining the funds to be contributed by Asbury and the City for the Phase II Restoration and Repair work.

6.2.4 The balance of the cost of the Phase II Restoration and Repair work (the cost of the work less the Grant Funds) shall be paid as follows:

6.2.4.1 Asbury will contribute up to \$250,000, less any funds paid by Asbury on the Phase I Restoration and Repair work and on the Phase II 100% engineering drawings. In no event shall the total amount contributed by Asbury for engineering drawings and the Restoration and Repair work for Phases I and II exceed \$250,000 in conjunction with the Stream Restoration required for SP070001 and SP070010.

6.2.4.2 If the estimate for the cost of the Phase II Restoration and Repair work obtained by the City pursuant to Section 2.3.5, or if applicable, 2.3.6., taking into account the limitations on the payment obligations of Asbury under Section 6.2.4.1, Asbury and the City shall enter into good faith negotiations regarding the payment of the balance of the funds, prior to commencing the Phase II Restoration and Repair work.

6.2.4.3 Asbury shall contribute its share of the funds (\$250,000, less funds spent on Phase I construction for the Phase II Restoration and Repair work, upon receipt of written notice from the City that the City has its share of the funds.

6.2.4.4. If the costs of the work for Phase II exceeds the amount of Asbury's maximum contribution, as set forth above, the City shall pay to Asbury, within ten (10) days following submission of an application for payment, its pro-rata share of the costs agreed to be paid by the City under Section 6.2.4.2., above, in order to permit Asbury to make timely payment to the Contractor. If Asbury incurs any expense, liability, interest or penalty to its Contractor as a result of the City's failure to make any payment required hereunder within the time provided, the City will indemnify Asbury for any such expense, liability, interest or penalty.

6.3 Regardless of whether the Phase II Restoration and Repair work is completed prior to Asbury's application for the necessary approvals to Manor Homes, the City shall not require that Asbury contribute any additional sums to the Stream Restoration and Repair work beyond the \$250,000, as set forth in Section 6.2.4.1 above as a condition of the development approvals issued for Asbury's current development and for Manor Homes , nor shall the City withhold or delay the necessary approvals and permits to enable Asbury to commence construction and/or occupation of said Manor Homes. Nothing herein shall preclude the City from requiring or conditioning approval of any future development applications submitted by Asbury on further Stream Restoration and Repairs, it being the intention of the parties that the provisions of this Agreement shall fully satisfy the obligations of Asbury with respect to the stream repair and restoration as a condition of the existing development approvals referenced in sections 4.2 and 4.3 herein.

**ARTICLE VII**  
**MISCELLANEOUS PROVISIONS**

7.1 **Supervening Law.** The parties recognize that this Agreement may be subject to applicable state, local, and federal law. The parties further recognize that the Agreement may also be subject to amendments in such laws and regulations and to new legislation. Any provision of law that invalidates or is otherwise inconsistent with the terms of this Agreement or that would cause either or both of the parties to be in violation of law shall be deemed to have superseded the terms of this Agreement. The parties shall use their best efforts to accommodate the terms and intent of this Agreement to the greatest possible extent and consistent with the requirements of law. If the parties fail to reach such an accommodation after ninety (90) days following written requests by either of the parties to discuss such an accommodation, then either party may terminate this Agreement upon thirty (30) days' written notice.

7.2 **Complete Agreement.** This Agreement constitutes the complete and exclusive statement of the understanding among the Parties. It supersedes all prior written oral statements, including any prior representation, statement, condition, or warranty. Except as expressly provided otherwise herein, this Agreement may not be amended without the written consent of all of the Parties.

7.3 **Applicable Law.** All questions concerning the construction, validity, and interpretation of this Agreement and the performance of the obligations imposed by this Agreement shall be governed by the internal law, not the law of conflicts, of the State of Maryland.

7.4 **Binding Provisions.** This Agreement is binding upon, and inures to the benefit of the parties hereto and their successors, and permitted assigns.

7.5 **Separability of Provisions.** Each provision of this Agreement shall be considered separable; and if, for any reason, any provision or provisions herein are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this Agreement which are valid.

7.6 **Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, and all of which, when taken together, constitute one and the same document. The signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed under proper authority:

Witness:


CITY OF GAITHERSBURG, MARYLAND

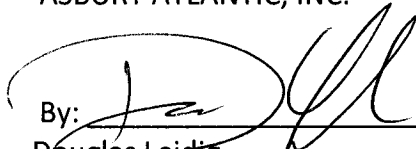
\_\_\_\_\_  
Printed name: \_\_\_\_\_

By: \_\_\_\_\_  
James D. Arnoult  
Acting City Manager

Witness:

ASBURY ATLANTIC, INC.

  
\_\_\_\_\_  
Printed name: Lori Sonnefeld

By:   
\_\_\_\_\_  
Douglas Leidig  
President

STATE OF MARYLAND )  
 ) ss:  
COUNTY OF MONTGOMERY )

I, HEREBY CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 2008, before me, a notary public in and for the aforesaid State and County, personally appeared James D. Arnoult, known to me and (or satisfactorily proven to me to be) the Acting City Manager of City of Gaithersburg, Maryland and that such corporate officer, being authorized to do so, executed the foregoing instrument for the purpose contained therein by signing the name of the corporation.

IN WITNESS THEREOF, I hereunto set my hand and official seal:

\_\_\_\_\_  
Notary Public

(Seal)

My Commission Expires: \_\_\_\_\_

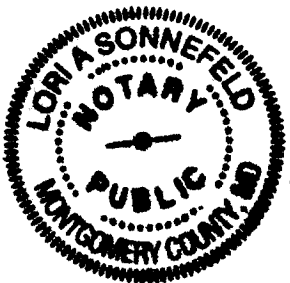
STATE OF MARYLAND )  
 ) ss:  
COUNTY OF MONTGOMERY )

I, HEREBY CERTIFY that on this 31<sup>st</sup> day of March, 2008, before me, a notary public in and for the aforesaid State and County aforesaid, personally appeared Douglas Leidig, known to me and (or satisfactorily proven to me to be) the President of Asbury Atlantic, Inc. and that such corporate officer, being authorized to do so, executed the foregoing instrument for the purpose contained therein by signing the name of the corporation.

IN WITNESS THEREOF, I hereunto set my hand and official seal:

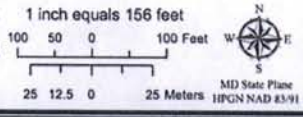
Lori Sonnefeld  
Notary Public

(Seal)



My Commission Expires: 05/19/2009

# Asbury Methodist Village Proposed Stream Restoration Project ~ 1,200 Linear Feet



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www.istar.com. Property boundaries and planimetric base map ©2007 M-NCPPC and  
City of Gaithersburg. All rights reserved. Aerial photo acquired April 2006.  
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RESOLUTION NO. R-81-07**RESOLUTION OF THE MAYOR AND CITY COUNCIL APPROVING A WAIVER OF THE ENVIRONMENTAL STANDARDS FOR DEVELOPMENT REGULATION TO PERMIT APPROXIMATELY ONE ACRE OF DISTURBANCE WITHIN THE STREAM VALLEY BUFFER AT ASBURY METHODIST VILLAGE**

WHEREAS, the *Environmental Standards for Development Regulation* was adopted by the Mayor and City Council on November 19, 2001, providing the Mayor and City Council the authority to grant a waiver; and

WHEREAS, a condition of concept plan approval of Asbury Methodist Village- North Village (SP-07-0001) is for the applicant to obtain approval of an environmental waiver from the Mayor and City Council for intrusions into the stream buffer, as required by the *Environmental Standards for Development Regulation*; and

WHEREAS, pursuant to Section 33, Stream Quality Enhancement, of the *Environmental Standards for Development Regulation*, in cases where an existing stream on the site is degraded and experiencing erosion, bank failure, undercutting of adjacent trees or other problems related to the integrity of the stream channel, a plan addressing bioengineering or stream stabilization must be submitted for Planning Commission approval; and


WHEREAS, staff has reviewed the proposed waiver and determined that this circumstance warrants a waiver because the public interest benefits outweigh the risks to the environment, there are no other feasible alternatives, and the proposed mitigation measures will compensate for the disturbance to the stream valley buffer:

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and City Council of Gaithersburg, that the request for a waiver of the *Environmental Standards for Development Regulation* to permit approximately one acre of disturbance within the stream valley buffer at Asbury Methodist Village, including three storm drain outfalls, is hereby approved subject to the following conditions:

1. The limits of disturbance and concept designs outlined in the waiver application are not absolute and may be modified by staff during final engineering and field coordination to minimize clearing, grading, tree removal, and encroachments into stream and wetland buffers;
2. The applicant will obtain all necessary approvals and permits from all local, State, and Federal findings agencies prior to disturbing the stream valley buffer;

3. Pursuant to Section 33 of the *Environmental Standards for Development Regulation* and as part of the project's onsite mitigation plan, the applicant shall work with staff to design and construct approximately 400 linear feet of stream stabilization in the vicinity of the south pond (area designated as "Emergency Stabilization" in Exhibit 2c) prior to the release of bonds for this development. In addition, the applicant shall work with staff to develop an agreement that would implement a plan to restore approximately 800 linear feet of stream (area designated as "Stream Restoration" in Exhibit 2c). It is anticipated that this agreement would provide for the expenditure of \$158,000 of public funds (previously collected from other developers), and would require the City to seek grant funds from outside sources that would reduce the cost to both parties. In any event, the applicant's total stream improvement obligation under this development approval shall not exceed \$250,000; and
4. Storage or deposition of equipment, trucks, materials, waste, or debris within the stream buffer is prohibited.

ADOPTED by the Mayor and City Council this 23rd day of July, 2007.

  
\_\_\_\_\_  
SIDNEY A. KATZ, MAYOR and  
President of the Council

THIS IS TO CERTIFY that the foregoing  
Resolution was adopted by the City Council  
in a public meeting assembled on the 23rd day  
of July, 2007.

  
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David B. Humpton, City Manager