

RESOLUTION NO. R-18-14

RESOLUTION OF THE MAYOR AND CITY COUNCIL OF GAITHERSBURG  
GRANTING APPROVAL OF SCHEMATIC DEVELOPMENT PLAN SDP-3878-2013,  
KNOWN AS WASHINGTONIAN NORTH, FOR APPROXIMATELY 26.94 ACRES OF  
LAND IN THE 10000 BLOCK OF WASHINGTONIAN BOULEVARD IN THE MIXED  
USE DEVELOPMENT (MXD) ZONE, GAITHERSBURG, MARYLAND

**SDP-3878-2013**

OPINION

Schematic development plan (SDP) application SDP-3878-2013, zoned Mixed Use Development (MXD), has come before the Mayor and City Council for approval. The City Council's authority in this matter is pursuant to § 24-160D.9(b)(2) of the City of Gaithersburg Zoning Ordinance (Chapter 24 of the City Code), which authorizes the Council to conduct public hearings on a schematic development plan application following appropriate notification procedures and to take action on the application following receipt of a recommendation by the City Planning Commission.

The subject case involves approximately 26.94 acres of land and concerns the property located in the 10000 Block of Washingtonian Boulevard, Gaithersburg, Maryland, in the MXD (Mixed Use Development) Zone. The property is known as Lots 4, 5 and 6 and Outlot B, Block D as shown on a plat of subdivision entitled "Lots 4, 5 and 6 and Outlot B, Block D, Washingtonian Center" and recorded among the Land Records of Montgomery County, Maryland, as Plat Number 21656. The property is located off Sam Eig/Interstate I-370, south of its intersection with Interstate I-270 and north of the intersection of Fields Road. The schematic development plan application was initially submitted to the City Department of Planning and Code Administration on November 7, 2013. This application was designated as SDP-3878-2013.

OPERATIVE FACTS

A. Background

A joint public hearing was held by the Mayor and City Council and the Planning Commission regarding this application on February 3, 2014. Scott Wallace of Linowes and Blocher, counsel for the applicant, introduced the application for schematic development plan and the proposed redevelopment. Presentations were made by the development team, Jake Stroman, Boston Properties, Jay Johnson, Camden Property Trust and Aaron Koehler, Lifetime Fitness. The Mayor and City Council and Planning Commission discussed the application with the development team. There was one speaker from the public, Joe Allen supporting the plan and discussing connectivity concerns. The Planning Commission voted to leave the record open for 30 days and the Mayor and City Council voted to leave the record open for 45 days.

On March 19, 2014, the Planning Commission considered the plan at its public meeting and recommended approval of Schematic Development Plan SDP-3878-2013, finding the application is in conformance with the MXD (Mixed Use Development) Zone of the City's Zoning Ordinance with the following conditions:

- 1) The Ingress-Egress Easement for the City and the public from the proposed Malcolm King Park Bike Path Connection and the adjoining entrance to Malcolm King Park to Washingtonian Boulevard shall be approved by the City and formalized by agreement and shown on the Final Subdivision (Record) Plat;
- 2) Applicant shall provide safe conveyance for all storm drain outfalls on to City property prior to the release of site development permit bonds;
- 3) Applicant shall receive approval of Development Easements, or other means of access, over any existing Washington Suburban Sanitary Commission (WSSC) Easements, prior to approval of each Final Site Plan by the Planning Commission;
- 4) Applicant is to receive City approval for and record Easements for WSSC Sewer line, storm drain outfalls, and Wall construction and maintenance within Malcolm King Park prior to the issuance of any permits;
- 5) All construction drawings of retaining walls and their footing design shall be submitted and approved by the Department of Public Works (DPW) prior to Final Site Plan Review by the Planning Commission;
- 6) Applicant shall ensure that the faces of the concrete retaining walls on site and next to Malcolm King Park shall be textured & colored at the time of Final Site Plan Review;
- 7) Prior to the Planning Commission review of the first Final Site Plan for the project, Applicant shall coordinate with City staff on an access plan for pedestrian and bicycle traffic through the park during construction of the sites and the stream restoration project. The access plan shall provide for (1) timely notice to the public of construction activities that impact pedestrian and bicycle access through the park; (2) alternative routes through the park, if practical, to address temporary path closures; and (3) signage for user safety;
- 8) Applicant shall provide a Tree replacement Formula for the removal of any tree  $\geq 12$  inches DBH) in the stream valley buffer area, outfall areas and easement areas in Malcolm King Park shall be a minimum of \$120 per tree replacement fee-in-lieu payment to the City; the applicant shall provide an inventory of trees for review and approval by the City in these areas and payment prior to the prior to the issuance of a grading permit;

- 9) Applicant is to finalize and receive approval of the relocation and reconstruction of City paths and safety features (fencing and guard rails) near the pond outfall and sewer line construction by DPW prior to final site plan approval;
- 10) Applicant shall provide path paving section of four-inch, 12.5mm bituminous concrete surface course and a four-inch GAB base course for all park path installation and replacement;
- 11) Developer is to submit a draft Master Developer' Association Documents (which include responsibilities for maintenance of the pond, pathways, roadway, stormwater management facilities, etc.) at the time of Final Site plan review for review and approval by the City prior to the issuance of any building permits;
- 12) Applicant is to receive access permit from Montgomery County Department of Transportation prior to the issuance of any permits:
- 13) Applicant is to install property line markers at all pathway entrances into Malcolm King Park prior to the release of Site Development bonds;
- 14) Applicant is to comply with the terms and conditions of the Third Amendment to Annexation Agreement X-159 - Washingtonian North L.48231 F. 031.
- 15) Turning radii for vehicles on Lot 7 to be approved by DPW prior to Final Site Plan Review by the Planning Commission;
- 16) Prior to the Planning Commission review of the first Final Site Plan for the project, Applicant shall coordinate with City staff on a plan and schedule for the maintenance of any trees in Malcolm King Park with critical root zones (as defined by the City's *Tree Manual*) extending within (1) the limit of disturbance of the project; (2) the 12-foot maintenance and construction easement; or (3) the outfall easements. Any maintenance obligations for such trees shall not extend beyond two years from the date of the final inspection of the grading permit (prior to the issuance of a use and occupancy of the subject buildings) for the project by the City for both Phase II (multi-family) and Phase III;
- 17) Applicant to include root pruning plan adjacent to City Park land on on any Final Forest Conservation Plan;
- 18) Applicant is to work with City and Montgomery County Department of Transportation (MCDOT) to respond to the request of the letter dated 3-5-2014 from Greg Leck.

- 19) Applicant is to submit a Stream Restoration Improvement Plan including, but not limited to the following items: stream geometry sheet, typical sections, profile sheets, plan sheets, stream stabilization details, stormwater management, erosion and sediment control plans, notes and details to the City for review by May 12, 2014.
- 20) Applicant is to provide distinctive architectural elevations of the office and health club garages at the time of final site plan.
- 21) Prior to the submission of any Final Site Plan applications, the applicant shall obtain approval of the Utility Plan from all utilities.

B. Evaluation and Findings

The City Council, upon careful review of the evidence of record, which includes 94 exhibits and the testimony that were presented at the joint public hearing, agrees with the findings, conclusions and the recommendation of approval for schematic development plan SDP-3878-2013 by the City Planning Commission and City staff. The City Council finds those recommendations to be well reasoned and adopts and incorporates their findings as part of this action.

In reviewing the subject application for the approval of Schematic Development Plan SDP-3878-2013, the City Council finds the application and development proposal meets or accomplishes the purposes, objectives, and minimum standards and requirements of the MXD Zone that are set forth in Chapter 24 (Zoning), Article III, Division 19 of the City Code.

Furthermore, the City Council finds from the evidence of record that the application for schematic development plan approval, SDP-3878-2013, as submitted, fulfills the findings required under § 24-160D.10(b):

- (1) The plan is substantially in accord with the approved sketch plan.

The schematic development plan is consistent with the Sketch Plan (Exhibit #8) for the Washingtonian North Property, which is part of 3<sup>rd</sup> Amendment to the Annexation Agreement X-159, approved by the Mayor and City Council and executed November of 2013. The proposed densities of land use are within the range of permitted densities in both the Sketch Plan and the Annexation Agreement. Therefore the SDP is substantially in accord with the approved sketch plan.

2. The plan meets or accomplishes the purposes, objectives and minimum standards and requirements of the zone.

Purposes, Objectives and Intent:

- a) The 2009 City of Gaithersburg Land Use Master Plan recommends that the subject property be designated as Commercial/Industrial-Research-Office with a zoning classification of MXD. However, the 3<sup>rd</sup> Amendment to the Annexation Agreement X-159, approved by the Mayor and City Council and executed November of 2013, revised the Sketch Plan (Exhibit #8) for the Washingtonian North Property to allow for mixed uses of Commercial, Residential and Multi-family. The schematic development plan (SDP) is consistent with the purposes of MXD Zone and consistent with Sketch Plan by allowing 240,000-square foot office building, 128,200-square foot Health Club and 366 Multi-family Dwelling Units on approximately 26.94 acres of land located in the MXD (Mixed Use Development) Zone. The City Council agrees with the statement by the Applicant, *"The Project will also add high-quality, multi-family housing and a new recreational amenity within the City."*
- b) The project, including all exhibits, has been evaluated for compliance with purposes, objectives, standards and requirements of the MXD zone and the City Code and has been found to provide adequate circulation and access for the office building, the health club and the multi-family dwelling units as well as the pond and access to Malcolm King Park. The zone provides a higher standard of development than under a conventional zoning category by requiring a higher amount of green space (55 percent). The Applicant is proposing to build the property in orderly phases to establish staged development.
- c) The property is zoned in accordance with the 2009 Master Plan and the plan is designed to allow flexibility. This plan establishes architecture that is compatible within the development and the surrounding neighborhoods and developments. The City Council agrees with the applicant's statement:

*"The Project includes attractive, contemporary architecture and materials that will complement the surrounding area. The Office Development is proposed to be constructed of glass and masonry, in a contemporary architectural style and is designed to be attractive to Class A employers. The Residential Development will be developed as a 4 to 5 story structure encircling different green spaces and patios and will be designed using contemporary materials such as glazing, cementitious siding and paneling that will complement the Office and Health Club Developments. The Health Club Development will also be designed in a contemporary style. It will be located at the entrance to the Project at Sam Eig Highway and will provide a recreational amenity that will animate the Project."*
- d) The development will complement the surrounding uses and provide a variety of uses for the property which connects to the rest of the

Washingtonian Center mixed use development. The project proposed an appropriate buffer area next to adjoining residential development. The mix of uses will allow for continuous use of the property.

- e) The SDP provides a higher standard of development than that of a conventional zone by using enhanced site design, high quality architectural elements, buffers, structured parking and significant landscaping. The design includes buffers, environmental design standards and a pond. The project also includes pedestrian, bicycle and roadway connections to adjoining properties. Development of this property will increase the use and care of the Malcolm King Park not only by the residents but also by providing a bicycle link to other areas in the City.
- f) As stated in the applicant's statement,

*"The Amendment efficiently uses the Property by co-locating office, residential and recreational uses on a compact, 27-acre site. The Property is also proximate to other commercial uses at a highly-accessible location. Additionally, the Project is accessible by an internal sidewalk system as well as a bridge that connects the site to the Washingtonian Center commercial and office areas. The internal sidewalk will also connect to the pedestrian paths around the SWM Pond and into the Park. The Applicant has designed enhancements at the entrance to the Park, including benches and landscape treatments that encourage use of the Park by residents."*

The location of the property provides several transportation alternatives to single occupancy automobiles, including bus, pedestrian access, and Metro.

- g) The SDP plan provides fifty-five percent of the property in green space, more than the forty percent required by the MXD Zone and proposes several environmental standard design measures to reduce the impact of water runoff from the property. All these measures will enhance the environment of the property.
- h) This SDP is the four phase development. This application complies with the requirements of the City's adequate public facilities ordinance by not increasing the number of vehicle trips originally proposed (850,000 square feet of office) from the property. Additionally, the property is served by adequate water and sewer facilities and emergency services as shown in the Preliminary Staff Report (Exhibit #54.)

Minimum Standards:

1. As stated the Preliminary Report, the property was annexed and zoned MXD (Mixed Use Development) in 1991. This zoning designation is in conformance with the 2009 Master Plan Land Use Element.
2. The property includes 26.94 acres of land of MXD zoned land which is above the 10 acre minimum size for MXD-zoned area.
3. As noted on the plan and discussed in the applicant's statement, the property is in immediate proximity to Sam Eig Highway which connects to both I-370, MD 200 (InterCounty Connector), MD 119 (Great Seneca Highway), and I-270 and in addition Great Seneca Highway. The property has direct access to Washingtonian Boulevard via a bridge designed and built by the original developer to provide access for this size or greater traffic counts for this development. The property is served by the RideOn bus, and there is a pedestrian path on the west side of Sam Eig Highway which connects to local sidewalks and paths. Therefore, the property is readily accessible to existing highways and other means of transportation. The internal circulation system has been designed to promote efficient and safe circulation for the site.
4. The property is currently serviced by all utilities, including water and sewer. The utilities have been given the opportunity to review the plans.
5. A sign package has not been submitted by the applicant, but they have stated the following on the justification statement: *"Signage will be attractively designed and thematic in approach in accord with the purposes of the MXD Zone and the overall character of the surrounding neighborhood."*
6. The lots are designed to have access to the public roadways via a private entry roadway. As stated above this will allow access to the property via Washingtonian Boulevard, and Sam Eig Highway/I-370. Fifteen percent (15%) of the units of the residential development will be Moderately Priced Dwelling Units. These units are accessed from the private access road.
7. The proposed uses of multi-family, office and health club conform to the purposes of the MXD Zone and are compatible with the area uses.
8. The Schematic Development plan complies with the right-of-way requirements for Sam Eig Highway in both the *Transportation Element* of the 2009 Master Plan and also the *Great Seneca Science Corridor Master Plan* adopted by Montgomery County.
9. The office building and associated parking garage are setback a minimum of 100 feet from the adjoining single family detached development

property line. The other properties adjoin the Malcolm King City Park, which is zoned as R-A (Low Density Residential) Zone. As a part of the 3<sup>rd</sup> Amendment to the Annexation Agreement X-159, approved by the Mayor and City Council and executed November of 2013, the Mayor and City Council agreed to allow a minimum setback of 32 feet for the multi-Family units. During the design of the Schematic Development Plan, the minimum setback of the unit is now 33.6 feet. Additionally, the Agreement approved a minimum setback of 33 feet for the parking garage for the health club. This setback reduction was agreed to because the Park will not be developed with single-family homes.

10. The applicant has provided amenities of open space with the pond and the landscaped and reforestation areas surrounding the site. Additionally they are providing a bike path and a shared road bicycle lane (Sharrow) system for connectivity of the Malcolm King Park pedestrian and bicycle route to Washingtonian Boulevard and Washingtonian Center. The applicant in accordance with the 3<sup>rd</sup> Amendment to the Annexation Agreement X-159, will be constructing a new bicycle path in the Park to improve the connectivity to other parts of the City.

- (3) The application is in accord with the area master plan and any accompanying special conditions or requirements contained in said master plan for the area under consideration:

As stated above, the 2009 City of Gaithersburg Land Use Master Plan recommends that the subject property be designated as Commercial/Industrial-Research-Office with a zoning classification of MXD. However, the 3<sup>rd</sup> Amendment to the Annexation Agreement X-159, approved by the Mayor and City Council and executed November of 2013, revised the Sketch Plan (Exhibit #8) for the Washingtonian North Property to allow for mixed uses of Commercial, Residential and Multi-family. The schematic development plan (SDP) is consistent with the purposes of MXD Zone. The use as stated by the applicant also complies with a number of strategies of the 2009 Process and Overview Element by providing development in areas that are presently served by adequate public facilities and promoting economic development.

- (4) The plan will be internally and externally compatible and harmonious with existing and planned land uses in the MXD zoned area and adjacent areas;

The SDP is compatible to the adjoining commercial, residential and park sites by providing similar land uses with appropriate buffers where necessary. This plan will *“reactivate and revitalize the Property”* and the surrounding area. The site will continue to be compatible and harmonious to the adjoining properties.

- (5) The existing or planned public facilities are adequate to service the proposed development contained in the plan;

As mentioned in the Preliminary Staff Report (Exhibit #54), the property is currently served by all utilities, water and sewer and complies with the City's Adequate Public Facilities requirement, including requirements for traffic and emergency services.

- (6) The development staging or phasing program is adequate in relation to the provision of public facilities and private amenities to service the proposed development;

As discussed above, this SDP is a five phase development to provide for orderly staging of the property. As stated in the Preliminary Staff Report, this application complies with the requirements of the City's adequate public facilities requirements by not increasing the number of vehicle trips from the property. Additionally, as stated above the property is served by adequate water and sewer facilities and emergency services and schools.

- (7) The plan, if approved, would be in the public interest.

The revitalization of this property will remove a vacant building and provide a viable use for the property. The proposed development will increase the City's tax base and provide jobs and housing in close proximity to one another. The buildings are attractively designed using durable materials that will stand the test of time. Additionally, the SDP will enhance that area by improving the site with fifty-five percent green space that includes landscaping and environmental design to reduce the stormwater runoff and improve the air and water quality.

### Conclusion

In summary, the City Council finds that the schematic development plan is substantially in accord with the Sketch Plan approved as part of Annexation Agreement. The plan meets and accomplishes the purposes, objectives and minimum standards and requirements of the MXD Zone, as shown by the exhibits submitted into the record. The plan is in accord with the applicable master plan recommendations of the 2009 Master Plan. The plan is internally and externally compatible with existing and planned land uses in the MXD-zoned area and adjacent areas. The existing and planned public facilities are adequate to service the proposed development contained in the plan. The development phasing program is adequate in relation to the provision of public facilities and private amenities to service the proposed development. Finally, the schematic development plan is in the public interest as it will increase the economic value of the property and provide connectivity by various forms of transportation.

## SCHEMATIC DEVELOPMENT PLAN SDP-3878-2013

### RESOLUTION

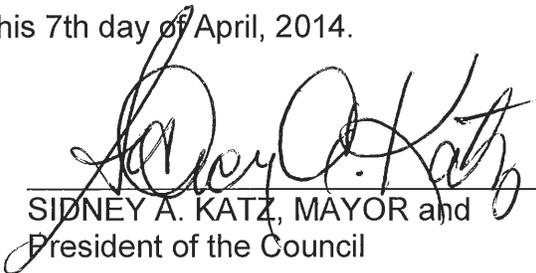
NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Gaithersburg, on the 7<sup>th</sup> of April, 2014, that Schematic Development Plan SDP-3878-2013 is hereby approved, subject to the following conditions:

- 1) The Ingress-Egress Easement for the City and the public from the proposed Malcolm King Park Bike Path Connection and the adjoining entrance to Malcolm King Park to Washingtonian Boulevard shall be approved by the City and formalized by agreement and shown on the Final Subdivision (Record) Plat;
- 2) Applicant shall provide safe conveyance for all storm drain outfalls on to City property prior to the release of site development permit bonds;
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- 5) All construction drawings of retaining walls and their footing design shall be submitted and approved by the Department of Public Works (DPW) prior to Final Site Plan Review by the Planning Commission;
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- 8) Applicant shall provide a Tree replacement Formula for the removal of any tree  $\geq 12$  inches DBH) in the stream valley buffer area, outfall areas and easement areas in Malcolm King Park shall be a minimum of \$120 per tree replacement fee-in-lieu payment to the City; the applicant shall provide an inventory of trees for review and approval by the City in these areas and payment prior to the prior to the issuance of a grading permit;
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- 16) Prior to the Planning Commission review of the first Final Site Plan for the project, Applicant shall coordinate with City staff on a plan and schedule for the maintenance of any trees in Malcolm King Park with critical root zones (as defined by the City's *Tree Manual*) extending within (1) the limit of disturbance of the project; (2) the 12-foot maintenance and construction easement; or (3) the outfall easements. Any maintenance obligations for such trees shall not extend beyond two years from the date of the final inspection of the grading permit (prior to the issuance of a use and occupancy of the subject buildings) for the project by the City for both Phase II (multi-family) and Phase III;

- 17) Applicant to include root pruning plan adjacent to City Park land on on any Final Forest Conservation Plan;
- 18) Applicant is to work with City and Montgomery County Department of Transportation (MCDOT) to respond to the request of the letter dated 3-5-2014 from Greg Leck.
- 19) Applicant is to submit a Stream Restoration Improvement Plan including, but not limited to the following items: stream geometry sheet, typical sections, profile sheets, plan sheets, stream stabilization details, stormwater management, erosion and sediment control plans, notes and details to the City for review by May 12, 2014.
- 20) Applicant is to provide distinctive architectural elevations of the office and health club garages at the time of final site plan.
- 21) Prior to the submission of any Final Site Plan applications, the applicant shall obtain approval of the Utility Plan from all utilities.

ADOPTED by the City Council this 7th day of April, 2014.



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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 7th day of April, 2014.



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Tony Tomasello, City Manager