

RESOLUTION NO. R-39-22

RESOLUTION OF THE MAYOR AND CITY COUNCIL OF
GAITHERSBURG DENYING CONCEPT SITE PLAN SP-8819-2021,
LOCATED AT 601, 605 AND 607 SOUTH FREDERICK AVENUE, FOR
PROPERTIES CONSISTING OF APPROXIMATELY 1.20 ACRES
AND ZONED CORRIDOR DEVELOPMENT (CD)

SP-8819-2021

OPINION

Concept site plan application SP-8819-2021 for the subject properties consisting of Parcel P103, Parcel P114 and Parcel P115, located at 601, 605 and 607 South Frederick Avenue, Gaithersburg, Maryland 20877 ("Properties") which is zoned Corridor Development (CD Zone), has come before the Mayor and City Council for consideration. The City Council's authority in this matter is pursuant to § 24-160G.6(c)(1) of the City of Gaithersburg Zoning Ordinance (Chapter 24 of the City Code), which authorizes the City Council to conduct a public hearing and either approve or deny the concept site plan with or without conditions. The application was submitted to the City Planning and Code Administration on March 5, 2021, and was designated as SP-8819-2021.

OPERATIVE FACTS

A. Background

The Properties were annexed into the City of Gaithersburg in 1990 as part of Annexation Application X-150 by Resolution R-93-89. The Properties were comprehensively rezoned to the CD Zone as part of the Frederick Avenue Corridor Master Plan. The Subject Properties at 605 and 607 South Frederick Avenue contains single family detached units and the Property at 601 South Frederick Avenue is vacant.

B. Current Application:

On March 5, 2021, Brett Schaecter ("Applicant") submitted an application for concept site plan, SP-8819-2021. The subject application proposes to combine three parcels into one lot to construct a 5,617 square foot automatic car wash facility and associated parking lot. The Applicant requests the removal of one specimen tree, which has a diameter at breast height (DBH) of thirty (30) inches or greater. As required by the Maryland Forest Conservation law and reaffirmed by Chapter 22 of the City Code, trees with a DBH of thirty (30) inches or greater that are proposed to be removed require a variance to be granted. The Applicant is also requesting an environmental waiver in accordance with Section 38 of the City's Environmental Standards for Development

Regulation. The Applicant is requesting approval to install and maintain a retaining wall and micro-bioretenion stormwater management planter box outside of the stream valley buffer and wetlands buffer boundary. No proposed structures or improvements are proposed within the environmental buffers; however, the environmental buffer areas will need to be accessed periodically to perform routine maintenance. The disturbance will not involve any clearing or grading within the environmental buffer boundaries.

The Mayor & City Council conducted a public hearing on March 21, 2022. During the course of the hearing, the following comments were raised:

- Annexation Compliance;
- Master Plan Compliance;
- Environmental Concerns;
- Noise and Light Concerns;
- Traffic Concerns; and
- Egress and Stacking Concerns on Central Avenue and leaving the site

During the public hearing, there were ten (10) speakers from the public. Additional written comments from the public were also received while the record remained open.

At the conclusion of the hearing, the City Council, announced by motion, the closing of their record 5 PM on April 27, 2022 with policy discussion and final action anticipated for May 16, 2022. Final action was subsequently rescheduled to June 21, 2022.

C. Evaluation and Findings

The City Council, upon careful review of the evidence of record, agrees with some, but not all of the findings and conclusions for concept site plan SP-8819-2021 by City Staff. The City Council agrees with City Staff in that the procedures governing the application for the CD Zone and approvals necessary to seek building permits are subject to a multi-step process and that, if approved, this would only be one of several steps of the process, which subsequently includes Preliminary and Final Site Plan reviews and approvals.

In reviewing the subject application and considering all of the evidence in the record for concept site plan SP-8819-2021, the City Council finds the application and development proposal does not meet or accomplish all of the purposes, objectives, and minimum standards and requirements of the CD Zone that are set forth in Chapter 24 (Zoning) Article III, Division 22 of the City Code.

The City Council finds that the application meets the submission requirements as set forth in § 24-160G.6(c)(1) of the City Code in that:

1. The Applicant filed, together with prescribed application fee, a concept plan and contained the information and items described in the concept plan checklist established by the city manager or his/her designee;
2. The City Council has conducted a public hearing on the application subject to the notification procedures as required for local map amendments.

The City Council, however, finds from the evidence of record that the application for concept site plan, SP-8819-2021, as currently amended, satisfies some but does not fulfill all of the findings required for approval under § 24-160G.7(b) of the City Code:

- (1) The plan is not substantially in accord with architectural, signage, lighting, streetscape, parking and other regulations, requirements and guidelines adopted by the city council for applicable corridor area:

The Subject Properties were identified as part of the Southern Residential District in the 2001 Frederick Avenue Corridor Master Plan. The master plan described this section as a district characterized by a predominance of residential land use patterns. There are single-family homes, multi-family dwellings, three churches, and scattered retail fronting Frederick Avenue. The retail is a mix of strip mall and converted single-family homes. The Subject Properties currently contains two single-family detached homes. The maximum building height permitted in the Southern District is three stories and cannot exceed thirty-five feet in height. The height of the car wash building will be two-stories and thirty-five feet. Neither proposed heights will exceed the maximum height permitted as outlined in the Frederick Avenue Master Plan for the Southern Residential District. While the proposed building meets the height restrictions, the proposed car wash will not be in keeping with the residential character of the neighborhood by providing a building footprint that is larger than the existing residential buildings on the Subject Properties, an architectural design, color scheme, signage and outdoor vacuum areas that are not consistent with the neighborhood, and a more vehicle intensive use on Central Avenue, which will generate more traffic through the adjacent residential community.

- (2) The plan does not meet or accomplish some of the purposes, objectives and minimum standards and requirements of the zone:

- a) Application SP-8819-2021 is for an automatic car wash use, which is a permitted use in the CD zone.
- b) Applicant SP-8819-2021 will not provide an attractive and cohesive

development pattern of the Southern Residential District, by providing a building footprint that is larger than the existing residential buildings on the Subject Properties and a more vehicle intensive use on Central Avenue.

- c) Application SP-8819-2021 will provide a commercial car wash use, which is a use similarly found along Frederick Avenue, which is considered a Commercial Throughway per the City's Street Design Standards and traffic Calming Best Practices regulation (adopted 2019). Commercial Throughways are substantial roadways that allow regional commuters to travel across/through town. Traffic along Commercial Throughways tend to be relatively fast and buildings are not located close to the street. Their function is to facilitate the movement of vehicular traffic and major transit routes. Even though the proposed car use is along a Commercial Throughway, it is also along Central Avenue which is considered a Neighborhood Residential Road. Per the requirements of Annexation Agreement X-150 and the 2001 Frederick Avenue Corridor Master Plan to reduce curb cuts on Frederick Avenue, ingress/ egress must be on Central Avenue. Neighborhood Residential Streets have low traffic volumes and provide direct access to single family and multi-family housing. Despite lower volumes of pedestrians than along other street types, sidewalks are important for providing well-defined paths for pedestrians along these streets. Due to the low traffic volumes, bicyclist often share the roadway with motorists. The proposed car wash will generate additional traffic on Central Avenue, which will have a negative externality to the adjacent residential community.

(3) The plan is not in accord with the area master plan and any accompanying special condition or requirements in said master plan for the area under consideration:

The Properties were included in the 2001 Frederick Avenue Corridor Land Use Plan within the Southern Residential District as part of the larger Map Designation D. Map Designation D designated the land use as commercial-office-residential. The master plan stated the following:

Retain parcels P103, P114, P115, N155, P116, N171, N206 and N261 (Map Designation D) as commercial-office-residential. In the 1997 Neighborhood One Land Use Plan these parcels were designated as commercial-office-residential. This area is in transition and has already experienced some redevelopment to commercial uses. While this designation remains appropriate, this Special Study Land Use Plan recommends a change in zoning category to the Corridor Development Zone. The CD zone will permit more flexible development of these properties and is better suited to the goals of the Frederick Avenue Corridor Plan. The lots are small in size and access should be from a shared common driveway

in the rear of the lots, with ingress/egress from Central Avenue. This will help eliminate curb cuts along Frederick Avenue. Development is recommended to be in keeping with residential character of this portion of the Corridor. Offices, light retail or live work units in low rise buildings are examples of what is envisioned. A maximum of 7,000 square feet of building area per lot is recommended.

Land Use and Zoning Recommendations:

- *Adopt commercial-office-residential land use designation*
- *Rezone parcels to CD*

The proposed car wash is not in conformance with the master plan due to the project not meeting the uses that was envisioned for this section of the corridor. The master plan described this section as a district characterized by a predominance of residential land use patterns. There are single-family homes, multi-family dwellings, three churches, and scattered retail fronting Frederick Avenue. The retail is a mix of strip mall and converted single-family homes. Even though the car wash is a commercial use, it is more vehicle intensive than an office or light retail use with the vehicle's impacting residential streets, which is not in keeping with the residential character of this portion of the corridor.

(4) The plan will not be internally and externally compatible and harmonious with existing and planned uses in the CD zoned area and adjacent areas:

The proposed car wash use is not compatible and harmonious with the adjacent residential area by demolishing existing residential dwellings with a car wash use that is more a vehicle intensive use. The use creates significant conflicts with the surrounding area by generating additional traffic on Central Avenue and thorough the residential community. The lack of a traffic signal at the South Frederick Avenue and Central Avenue forces vehicles to either make an illegal left turn onto South Frederick Avenue, a U-turn on South Frederick Avenue from Central Avenue or a right turn on Central Avenue through a residential community to use the traffic signal at East Deer Park Drive. While the Applicant has noted that they will make the necessary improvements to improve at this intersection, a traffic impact study and warrant study will be needed, but will not guaranteed such improvements will be made to ensure adequate traffic circulation. The need for the environmental waiver and numerous parking waivers in an effort to make the car wash use fit on the Property is further indication that the project is not internally and externally compatible the Subject Properties and in harmony with the surrounding properties. The potential of noise from the outdoor vacuums and light generated by the car wash provide an impact the residential neighborhood which is not compatible or harmonious.

(5) That existing or planned public facilities are not adequate to service the proposed development contained in the plan:

This application does not comply with some of the City's adequate public facilities requirements, as follows:

1. **Traffic Impacts-** According to the Applicant's Adequate Public Facilities Ordinance statement, the automatic car wash will generate more than thirty peak hour trips, therefore a traffic impact study will be required with a future site plan submission. The lack of a traffic signal at the South Frederick Avenue and Central Avenue forces vehicles to either make an illegal left turn onto South Frederick Avenue, a U-turn on South Frederick Avenue from Central Avenue or a right turn on Central Avenue through a residential community to use the traffic signal at East Deer Park Drive. While the Applicant has noted that they will make the necessary improvements to improve at this intersection, a traffic impact study and warrant study will be needed, but will not guaranteed which improvements will be made to ensure adequate traffic circulation. The amount of traffic and impact of egress onto Central Avenue will create a situation that is not compatible and harmonious with the adjacent established residential neighborhood.
2. **Adequacy of School Capacity-** The adequacy of school capacity is not applicable for this application because the project is for a car wash use. Therefore, the proposed development is exempt from the school test of the Adequate Public Facilities.
3. **Water and Sewer Service-** The Properties are currently served by Category W-1 and S-1 of Washington Suburban Sanitary Commission (WSSC) services. As such, water and sewer services are adequately provided to the properties.
4. **Fire and Emergency Services-** The Properties are located within a ten-minute (10-minute) response time of Station 3 (Rockville), Station 8 (Gaithersburg), Station 28 (Gaithersburg) and Station 32 (Travilah).

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

The car wash will be constructed in one phase. There is adequate public facilities to service the proposed car wash. Therefore, no staging or phasing is required for implementation of the plan.

(7) That the plan, if approved, would not be in the public interest:

The proposed car wash will generate additional traffic impacts on Central Avenue which is not compatible with the surrounding residential area. The record includes public testimony and written submissions from the surrounding community in opposition to the plan, demonstrating that the project is not in the public interest. The majority of comments in the record from the public outline the potential externalities that could be associated with the project such as increased vehicle traffic, environmental impacts, and noise and light in the neighboring properties. It is the Council's authority to determine if the proposed plan is in the public's interest by concluding the project is appropriate for the specific site, enhances the City's economic vitality, improves quality of life and furthers the City's goals and policies. Based on the information within the record and the significant public testimony in opposition to the project, the Council finds that there is not sufficient evidence in the record to support a finding that the plan will be in public interest and that it will not adversely affect the surrounding community.

(8) The existing buildings with historic significance are considered for preservation and retention pursuant to the city's historic preservation ordinance.

The two homes located on the Subject Properties were not included or identified as a historic resource or a potential historic resource in the 2018 Historic Preservation Master Plan. With that said, the two existing homes are more than 50 years old, therefore will be required to be reviewed by the Historic District Commission prior to issuance of a demolition permit.

CONCEPT SITE PLAN SP-8819-2021

RESOLUTION

NOW, THEREFORE BE IT ORDAINED by the City Council of Gaithersburg, Maryland, that SP-8819-2021, being an application filed by Brett Schaecter, requesting approval of Concept Site Plan, is hereby denied.

ADOPTED by the City Council this 21st day of June, 2022.

DocuSigned by:

Jud Ashman

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JUD ASHMAN, 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 21st day of June, 2022.

DocuSigned by:

Tanisha Briley

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Tanisha Briley, City Manager