

RESOLUTION NO. R-32-23

RESOLUTION OF THE MAYOR AND CITY COUNCIL OF GAITHERSBURG
GRANTING APPROVAL OF SKETCH PLAN SK-9497-2023 THE NIKE MISSILE
LAUNCH SITE AT 770 MUDDY BRANCH ROAD, FOR APPROXIMATELY 13.71
ACRES OF PROPERTY ZONED MIXED USE DEVELOPMENT (MXD)

SK-9497-2023

OPINION

Sketch plan application SK-9497-2023 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(a) "Application for the MXD Zone and sketch plan approval" of the City of Gaithersburg Zoning Ordinance (Chapter 24 of the City Code), which authorizes the Council and Planning Commission to conduct public hearings on a sketch plan application following appropriate notification procedures and requires the Council to take action on the application within ninety (90) days of the close of the hearing record, following receipt of a recommendation by the City Planning Commission.

The subject case involves approximately 13.71 acres of land and concerns the development of the subject property ("Property") known as the Nike Missile Launch Site. The Property is located at 770 Muddy Branch Road and includes one unplatted parcel that was formerly used by the federal government for various purposes. The Property is bounded by City-owned and Lakelands Ridge-owned HOA parcels and the Timberbrook multifamily condominium community to the north, Muddy Branch Road to the east, Muddy Branch Shopping Center and the Lakelands Ridge single family detached houses to the south, and the Lakelands Ridge multifamily condominiums to the west. The sketch plan application ("Plan" or "Project") was submitted to the City Planning and Code Administration on February 6, 2023 and was designated as SK-9497-2023.

OPERATIVE FACTS

A. Background

The Property was annexed into the City of Gaithersburg by resolution R-22-66 on January 19, 1967 as part of Annexation X-088 and zoned R-A, Low Density Residential, by resolution R-23-66. There was no annexation agreement associated with Annexation X-088. At the time of annexation, the land was used by the federal government as the launch site for Rockville Facility W-92, which was part of the anti-aircraft missile program called Project Nike. After Project Nike was discontinued in

1974, the site was used for testing and other activities by the Consumer Product Safety Commission and later by the National Institute of Standards and Technology.

On June 9, 1997, the Mayor and City Council by ordinance O-14-97 approved Comprehensive Map Amendment application Z-284, which rezoned the entire property from the R-A (Low Density Residential) Zone to the MXD (Mixed Use Development) Zone, as recommended by the Neighborhood Four Land Use Plan of the 1997 Master Plan. As is customary with a comprehensive rezoning, no sketch plan was included in the Z-284 application. The federal government stopped using the site in 2012, and later sold it through a competitive bidding process in 2022, anticipating it would be redeveloped.

B. Current Application:

On February 6, 2023, Muddy Branch Investments, LLC (an entity related to Pleasants Development), submitted an application for sketch plan SK-9497-2023. The plan proposes up to 380 multifamily residential units. No other uses are proposed on the Property.

The proposed sketch plan divides the Property into four “Blocks” lettered “A” through “D.” The Plan further envisions appropriately scaled and located open spaces, amenities, buffers to adjacent properties, and a circulation system that promotes and enhances connectivity to the surrounding area for vehicles, pedestrians, and bicycles.

A joint public hearing before the Mayor and City Council and Planning Commission was held on March 20, 2023. During the course of the hearing the Mayor and City Council and Planning Commission, questions and comments expressed related to the subject application included:

- Density
- Traffic impacts, particularly the impact on the School Drive stub-out and Muddy Branch Road
- Pedestrian and Vehicular safety, particularly at the intersection of School Drive and Muddy Branch Road
- Parking impacts to the adjacent communities
- Construction impacts to the adjacent communities
- The single access point into the site
- The visual impact and compatibility of the proposed five-story buildings
- Potential vehicular and pedestrian cut-through traffic
- Environmental remediation of the former federal uses on the site

There were nine speakers from the public during the public hearing.

The Applicant submitted a supplemental statement (Exhibit #53 of the record) to address those comments received during the joint public hearing. The Planning Commission record on SK-9497-2023 closed at five (5) p.m., Friday April 21, 2023. The Planning Commission reviewed the SK-9497-2023 application at its regular meeting on May 3, 2023.

The Commission during the course of their discussion on the SK-9497-2023 application voiced their support and approval of the proposed sketch plan. The Commission discussed the purpose of and the rights that are vested by a sketch plan; that it is to establish the broadest development parameters of the proposed development, with which later stages of review must be consistent. The Commission further noted that the next stage of review, schematic development plan (SDP), will explore the concerns regarding traffic, parking, schools, and density in more detail, as the applicant has the burden of demonstrating that the proposed SDP complies with the City's Adequate Public Facilities Ordinance (APFO) and is consistent with the approved sketch plan.

The Planning Commission further found that events since the adoption of the 2003 Master Plan Land Use Element make the land use recommendation in that plan for this Property no longer relevant, in accordance with Section 20-18(a) of the City Code. The Planning Commission recommended approval of the SK-9497-2023 application to the City Council with no conditions.

C. Evaluation and Findings

The City Council, upon careful review of the evidence of record, agrees with the findings, conclusions and the recommendation of approval for sketch plan SK-9497-2023 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. The City Council further agrees with the Planning Commission's statement that the procedures governing the application for the MXD Zone and approvals necessary to seek building permits are subject to a multi-step process and that this is only one of several steps of the process that subsequently includes Schematic Development Plan reviews and approvals.

The City Council finds that application SK-9497-2023 meets the submission requirements and the standards and requirements for approval of the subject sketch plan, as set forth in § 24-160D.9(a) because:

1. The Applicant filed, together with the prescribed application fee, an application for approval of a sketch plan, including a boundary survey, an approved natural resource inventory, an approved concept stormwater management plan, and a sketch plan defining the nature, density, location of uses, access, circulation, and preservation features; and

2. The Applicant provided as part of the SK-9497-2023 application a request and justification statement, as well as a supplemental statement, both of which addressed the application's proposed phasing or staging of development and public facilities; and
3. The City Council and City Planning Commission have conducted a joint public hearing on the application subject to the notification procedures in section 24-196 of the City Code; and
4. The Planning Commission, during its May 3, 2023 meeting, found that events since the adoption of the 2003 Master Plan make the land use recommendation in that plan no longer relevant, in accordance with Section 20-18(a) of the City Code; and
5. The Planning Commission delivered its recommendation of approval of application SK-9497-2023 to the City Council on May 3, 2023, within thirty (30) days of the close of the Commission's hearing record at 5:00 p.m. on April 21, 2023; and
6. The Council is taking action on the application on June 20, 2023, within ninety (90) days after the close of the Council's hearing record at 5:00 p.m. on May 19, 2023.

Furthermore, the City Council finds from the evidence of record that the application for sketch plan approval, SK-9497-2023, as currently amended, fulfills the findings required under § 24-160D.10:

(a) The City Council shall approve MXD zoning and the accompanying sketch plan only upon finding that:

(1) The application meets or accomplishes the purposes, objectives, and minimum standards and requirements of the zone; and

- a. Application SK-9497-2023 proposes to redevelop a dilapidated former federal government site that has been vacant for more than a decade with a new multifamily residential community that will include open space, landscape buffers, amenities, stormwater management, and a public display commemorating the historic use of the property.
 - i. The proposed multifamily development provides an additional option to meet the increased demand for housing needed to support surrounding job growth and enhances the existing horizontal mix of uses in the area.
 - ii. The additional dwelling units proposed by SK-9497-2023 will expand the customer and worker base for the existing businesses and institutional uses in the surrounding area, strengthening their success.

- iii. The proposed residential units will help meet the housing needs for the City's expected population growth over the next 30 years, as identified by the draft Round 10.0 MWCOG Forecast and the City's 2019 Visioning Exercise, including creating housing options for the City's aging population.
 - iv. The proposed residential development will include units in conformance with the City's Affordable Housing Ordinance, and will be the first such units constructed in this part of the City.
 - v. The proposed redevelopment of the former federal uses on the site includes several remediation measures that will improve the overall environmental quality of the area.
- b. Application SK-9497-2023's site layout and proposed multifamily use promotes compatibility with the surrounding uses and helps fulfill the City's vision of a walkable, integrated, live/work/play community.
 - c. Application SK-9497-2023 proposes to create internal pedestrian, bicycle, and vehicular connections to serve the new development and its shared amenities and open spaces, as well as pedestrian connections and a single vehicular connection to Muddy Branch Road, which provides additional connections to the surrounding communities.
 - d. Because of the small scale of the proposed development, Application SK-9497-2023 does not include a phasing plan, as the applicant expects to construct the entire multifamily development in a single phase, consistent with market demand.
 - e. The applicant is committed to using architectural styles and streetscapes that are coordinated with those in the surrounding community, to create both a compatible and harmonious reflection of the existing community and a separate visual identity for this new development.
 - f. Application SK-9497-2023 encourages the efficient use of land by:
 - i. Siting multifamily housing next to two communities that already have multifamily buildings located within them.
 - ii. Creating a new multifamily residential community on previously-developed land adjacent to existing residential, commercial, and institutional development, avoiding suburban sprawl and reducing the costs and environmental impacts from the extension of utilities, roads, and other infrastructure. This siting of housing close to existing and future jobs and commercial uses will enhance the existing horizontal mix of uses and help reduce overall vehicle miles traveled.

- iii. Connecting to the existing and surrounding uses and to the rest of the City and region via multiple transportation options, including a vehicular roadway, sidewalks, and pedestrian and bike facilities, all of which connect to the multimodal facilities along Muddy Branch Road, including several County Ride-On bus routes.
 - iv. Providing open space, landscape buffers, stormwater management, and amenities that serve the residents, visitors, and surrounding areas.
- g. Application SK-9497-2023 is currently zoned MXD, which allows multifamily residential as a permitted use.
 - h. Application SK-9497-2023 is located adjacent to and readily accessible from Muddy Branch Road, and this access is adequate to service the proposed development. It is intended that vehicular access will be provided both within and to the site so that traffic does not have an adverse impact on the surrounding area or cause internal circulation or safety problems, including the installation of a traffic signal at the intersection of Muddy Branch Road and School Drive, should a formal traffic study and signal warrant analysis conducted at the next stage of review (schematic development plan) recommend such a signal and should Montgomery County approve the construction and installation of such a signal.
 - i. Application SK-9497-2023 has no buildings proposed that will exceed five stories and none will be within 100 feet of an adjoining property not zoned MXD.
 - j. Application SK-9497-2023 will provide a minimum of 40% green area, as required by the MXD Zone. The Applicant will provide additional detail and information about the Project's green area during the next review stage (Schematic Development Plan).
 - k. All utilities proposed by Application SK-9497-2023 will be placed underground.

(2) The application is in accord with recommendations in the applicable master plan for the area and is consistent with any special conditions or requirements contained in said master plan; and

The Sketch Plan Application SK-9497-2023 property is included in the Land Use Element of the 2003 Master Plan, which was adopted on April 6, 2004, and is identified as Map Designation 28. In addition, the Application is subject to other relevant sections of the adopted Master Plan that are currently active:

- the Historic Preservation Element of the 2018 Master Plan;
- the Parks, Recreation, and Culture Element of the 2018 Master Plan;
- the Environment and Sustainability Element of the 2009 Master Plan
- the Process and Overview Element of the 2009 Master Plan;
- the Transportation Element of the 2009 Master Plan; and
- the Water Resources Element of the 2009 Master Plan.

a. 2003 Master Plan Land Use Element:

Under Section 20-18(a), the Planning Commission may determine that events since the adoption of the Master Plan make the land use recommendation in that Plan “no longer relevant.” In anticipation of a future subdivision plan for the new multifamily residential use should the sketch plan be approved, the Planning Commission, during its May 3, 2023 meeting, found that the 2003 Master Plan Land Use Element’s land use recommendation for this Property is no longer relevant, based upon the following:

- i. As previously mentioned, the Application is identified as Map Designation 28 in the 2003 Master Plan Land Use Element. Based upon discussions the City had with the federal government, the 2003 Master Plan Land Use Element anticipated that this Property (former Nike Missile Site) would be conveyed to the City of Gaithersburg, and the City would then use it as a public park. As such, the 2003 Master Plan recommended an Open Space land use designation and recommended a zoning change from the MXD (mixed use development) Zone to the R-A (low density residential) Zone, which is the City’s de facto zoning for public parks, open space, and public and institutional uses. The Open Space land use recommendation was adopted as part of the 2003 Master Plan approval, but the rezoning did not occur, and the Property remains in the MXD Zone.
- ii. The Property was included in the Parks, Recreation, and Culture Element of the 2018 Master Plan¹ (adopted August 5, 2019), under the “foreseeable cultural arts facilities,” which expanded upon the 2003 Master Plan’s assumption that the City could acquire the Site for use as a public park:

NIKE MISSILE SITE: This site is currently owned by the Federal government and was previously used as a launch site for NIKE missiles and then activities of the National Institute of Standards and Technology (NIST), including the development of robotic rescue equipment. If the City were to take ownership of the site, its development would be determined based on community input, feasibility, environmental impact, resources and identified needs. Cultural arts uses could include classrooms, art and performance studios.

- iii. In 2021, the federal government chose to dispose of the Property through its competitive bidding process, which was open to the general public as well as local governments. The Applicant submitted the highest (and winning) bid of \$12,050,006 and was allowed to purchase the property, which it completed on February 4, 2022.

¹ See Exhibit #49

- iv. Because the federal government disposed of the site through a competitive bidding process rather than conveying to the City directly, and because the City did not express interest in acquiring the Property through the competitive bid process and did not participate in that process, the Planning Commission finds that the 2003 Master Plan land use recommendation is no longer relevant.

Staff notes that the current development proposal is consistent with the 1997 Master Plan Neighborhood 4 Land Use Plan recommendation of commercial-office-residential land use, which was the last master plan recommendation made prior to the City and federal government discussing the possibility of the Nike Missile Site being conveyed to the City for use as a public park. Map Designation 7 of the 1997 Plan, which included this Property, recommended that “this site should be included in a larger overall development plan for the adjacent mixed residential areas.”

b. 2009 Master Plan, other Elements:

The proposed multifamily residential use, site layout, amenities, and internal and external connectivity proposed by sketch plan Application SK-9497-2023 is in accord with other adopted Elements of the 2009 Master Plan:

i. Process and Overview Element of the 2009 Master Plan:

- State Vision 3, Growth Areas: Growth is concentrated in existing population and business centers, growth areas adjacent to these centers, or strategically selected new centers
- State Vision 4, Community Design: Compact, mixed-use, walkable design consistent with existing community character, located near available or planned transit options is encouraged to ensure efficient use of land and transportation resources and preservation and enhancement of natural systems, open spaces, recreational areas, and historical, cultural, and archeological resources.
- State Vision 5, Infrastructure: Growth areas have the water resources and infrastructure to accommodate population and business expansion in an orderly, efficient, and environmentally sustainable manner.
- State Vision 7, Housing: A range of housing densities, types, and sizes provides residential options for citizens of all ages and incomes.
- State Vision 10, Resource Conservation: waterways, forests, agricultural areas, open space, natural systems, and scenic areas are conserved.

- State Vision 11, Stewardship: Government, business entities, and residents are responsible for the creation of sustainable communities by collaborating to balance efficient growth with resource protection.
 - City Guiding Strategy: Support compact building design and a mix of land uses that promotes sustainable development, creates more secure communities, provides a variety of land use options, and improves environmental outcomes.

- ii. Transportation Element of the 2009 Master Plan:
 - Objective 1: Promote connectivity within the transportation network for new, infill, and re-development projects.
 - Encourage and promote the sharing of access points between adjacent properties.
 - Preserve existing roadway connections, restore incomplete connections, and create new connections where appropriate.
 - Objective 2: Maintain or improve the functioning of the City's road network
 - Ensure that existing and future land uses are appropriate for the function of adjacent roadways that serve them.
 - Limit the number of approaches or curb cuts onto collectors and major and minor arterials, by requiring access to the development via minor collector or local streets as infill or redevelopment occurs.

 - Objective 4: Ensure that land use and transportation decisions, strategies, and investments are in step and consistent with the health, safety, and welfare goals of the City of Gaithersburg, its neighborhoods, and its citizens
 - Continue to ensure all development projects will be viewed with public safety in mind by maintaining and improving access for emergency services.
 - Encourage developers to improve environmental quality and promote energy-efficient transportation by providing for a range of transportation alternatives to the automobile, including public transit amenities and projects conducive to bicycling and walking.
 - Continue to study the installation of new crosswalks and the addition of signalized crossings to enhance pedestrian safety.

c. 2018 Master Plan, Historic Preservation Element:

- The proposed multifamily residential use, site layout, amenities, and internal and external connectivity proposed by sketch plan Application SK-9497-2023 is in accord with the adopted Historic Preservation Element of the 2018 Master Plan:
 - The Site is included in the list of Potential Historic Resources, which notes that the properties in the list “may be considered for historic designation by the City” and “should be paid special consideration and integrated to the greatest extent possible into any redevelopment projects.”
 - The Historic District Commission found at its August 24, 2022 meeting that the building and site did not meet the criteria for local historic designation by the City and allowed the demolition permit to be issued.
 - The Applicant has indicated that one of the amenities for the project will be an area that commemorates the use of the Property as a defense system by the federal government during the Cold War era.

d. 2022 City Strategic Plan:

Sketch plan application SK-9497-2023 is in accord with and fulfills recommendations from the City’s 2022 Strategic Plan:

- i. The Key Outcome Area for Vibrant Culture includes:
 - Gaithersburg values and promotes the arts and humanities, preserves its heritage, and enriches its diverse community by providing opportunities to come together to enjoy outstanding shared cultural and recreational experiences.
- ii. The Key Outcome Area and Strategies for Economic Development and Redevelopment include:
 - Gaithersburg facilitates development and redevelopment opportunities that support and enhance the stability of the local economic base and provide residents with a wide array of employment and housing options.
 - Implement strategies that encourage reinvestment in aging commercial and multi-family properties.
 - Pursue strategies to provide a mix of housing options for a variety of income levels.

iii. The Key Outcome Area and Strategies for Viable Transportation Options include:

- Gaithersburg creates neighborhood cohesion through bicycle and pedestrian connectivity and advocates for transportation and public transit options that increase efficient and convenient access.
 - Improve connectivity of people to services, activities, employment, and points of interest.
 - Develop and implement data-driven strategies that keep our community safely in motion.

(3) The application and sketch plan will be internally and externally compatible and harmonious with existing and planned land uses in the MXD zoned areas and adjacent areas.

Application SK-9497-2023 is compatible and harmonious with the land uses in the adjacent area. The proposed multifamily residential use and amenities included in the sketch plan complement nearby residential, commercial, and employment areas, contributing to a larger horizontal mix of uses that offer the opportunity to live, work, play, and shop within a short distance. By providing similar uses, building types, and densities as the surrounding area, the Property's proposed multifamily residential housing is consistent with the character of the surrounding Lakelands Ridge, Timberbrook, and Shady Grove Village communities, as envisioned in the 1997 Master Plan. The additional residential units will not adversely impact existing development and adjacent properties and will help support existing employment and commercial uses in the area.

D. Summary

In summary, the City Council finds Application SK-9497-2023 is in accordance with §§ 24-160D.9.(a) and 160D.10(a), is in the public interest, and should be approved due to the presence of substantial evidence in the record to indicate that the subject Sketch Plan has accomplished the purposes of the MXD Zone, as well as generally accepted City planning and land use policies.

SKETCH PLAN SK-9497-2023

RESOLUTION

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and City Council, that Sketch Plan SK-9497-2023, being an application filed by Muddy Branch Investments LLC, requesting approval of said Sketch Plan is hereby approved.

ADOPTED by the City Council this 20th day of June 2023.

DocuSigned by:

52E570A5749C472

JUD ASHMAN, 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 20th day of June, 2023.

DocuSigned by:

96695A65FBE94E0...

Tanisha Briley, City Manager