

ORDINANCE NO. O-6-22

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF GAITHERSBURG GRANTING APPROVAL OF ZONING MAP AMENDMENT Z-8911-2021, TO CHANGE THE ZONING OF ONE PROPERTY ON 8.77 ACRES, LOCATED AT 18501 NORTH FREDERICK AVENUE, GAITHERSBURG, MARYLAND, FROM THE C-2 (GENERAL COMMERCIAL) ZONE TO THE CD (CORRIDOR DEVELOPMENT) ZONE, IN ACCORDANCE WITH SECTION 24-196 (MAP AMENDMENTS) AND SECTION 24-160G.7(A) OF THE CITY CODE

**Z-8911-2021**

BE IT ORDAINED, by the Mayor and Council of the City of Gaithersburg, in public meeting assembled, that they find the following facts from the evidence of record in Zoning Map Amendment Application Z-8911-2021:

A. Application Z-8911-2021, filed July 8, 2021 by KIMCO Realty (Applicant), requests to change the zoning of one property on 8.77 acres from the C-2 (General Commercial) Zone to the CD (Corridor Development) Zone and establish a new concept plan. The subject property (Property) is located at 18501 North Frederick Avenue.

B. The Property, subject to the change of zoning, is defined as:

Being all of the property acquired by McCORMICK REALTY LIMITED PARTNERSHIP LLC, a Connecticut limited partnership, from LANDOVER LAND INC., a Delaware corporation, by deed dated December 9, 1999 and recorded in Book 17855 at Page 442 and also being all of that tract of land shown as Parcel 'A' on a plat of subdivision titled "Hechinger Property", recorded as Plat No. 17371, all among the Land Records of Montgomery County, Maryland, and being more particularly described in the datum of Maryland State Plane North (NAD83/91) as follows:

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
<del>Single strikethrough</del>	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by Amendment.</i>
<del>Double boldface strikethrough</del>	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

Beginning for the same at a point on the northerly right of way line of Maryland Route 355 (Frederick Road) as shown on Maryland State Highway Administration Plat No. 86131, said point also marking the southeasterly end of the 934.00 foot radius, 58.87 foot arc length line of Parcel 'A'. Thence, binding along said right of way line of Maryland Route 355 and the outline of Parcel 'A', the following courses and distances:

1. 58.87 feet along the arc of a non-tangent curve deflecting to the left, have a radius of 934.00 feet, and being subtended by a chord bearing and distance of N 60° 57' 56" W, 58.86 feet to a point; thence,
2. N 62° 46' 17" W, 108.66 feet to a point; thence,
3. N 27° 27' 23" E, 12.00 feet to a point; thence,
4. N 62° 46' 17" W, 117.75 feet to a point; thence,
5. 214.23 feet along the arc of a non-tangent curve deflecting to the left, having radius of 1969.86 feet, and being subtended by a chord bearing and distance of N 59° 27' 15" W, 214.12 feet to a rebar found and held; thence,
6. 83.12 feet along the arc of a compound curve deflecting to the left, having a radius of 2143.48 feet, and being subtended by a chord bearing and distance of N 61° 39' 38" W, 83.11 feet to a point; thence,
7. N 62° 46' 17" W, 63.30 feet to a point on the easterly right of way line of Travis Avenue, sixty (60) feet wide, as said shown on Plat No. 17371; thence, leaving the right of way of said Maryland Route 355 and binding along the right of way of said Travis Avenue, and continuing along the outline of Parcel 'A', the following four (4) courses and distances:
  8. N 17° 41 '37" E, 44.30 feet to a point; thence,
  9. 123.43 feet along the arc of a non-tangent curve deflecting to the right, having a radius of 194.00 feet and being subtended by a chord bearing and distances of N 42 ° 18' 21" E, 121.36 feet to a point, thence,
  10. 14.56' feet along the arc of a compound curve to the right, having a radius of 243.99 feet, and being subtended by a chord bearing and distance of N 62° 14' 37" E, 14.56 feet to a rebar found and held; thence,
  11. N 63° 57' 14" E, 807.57 feet to a point; thence,

12. 197.59 feet along the arc of a tangent curve deflecting to the right, having a radius of 326.32 feet, and being subtended by a chord bearing and distance of N 81° 18' 05" E, 194.59 feet to a rebar found and held at the northeasterly end of the N 27° 25' 00" E, 989.55 foot line of Parcel 'F' as shown on a plat of subdivision titled "Plat One, Town and Country, Gaithersburg", recorded among the land records of Montgomery County Maryland as Plat No. 10607; thence, binding along the outline of said Parcel 'F' and continuing along the outline of Parcel 'A',

13. S 27° 27' 23" W, 949.80 feet to the point of beginning, containing 382,076 square feet or 8.77126 acres of land.

C. The concept plan, SP-8910-2021, submitted concurrently with the Z-8911-2021 application, proposes to redevelop the site with two mixed-use buildings containing residential above ground floor commercial and office uses.

D. A consolidated joint public hearing conducted by the Mayor and City Council and Planning Commission on Z-8911-2021 and SP-8910-2021 was held on January 18, 2022. The Applicant gave a brief presentation outlining:

- Current conditions and the Property's context and relation to the greater surrounding area
- The 2009 Master Plan recommendations for the Property and how the proposed rezoning and concept plan comply, including how the proposed concept plan rebalances proposed uses for a more sustainable development
- Background for the request, including why they are proposing to redevelop and how a different balance of uses is more appropriate due to:
  - Changing consumer demands and rise of e-commerce
  - Increased demand for housing
  - Changing office dynamics
- An overview of the proposed concept plan, including uses, general building design, pedestrian and vehicular circulation, and green space
- Reasons for a height waiver request and compatibility of height with adjacent development
- Conceptual architecture and renderings illustrating the vision for the Property

The City Council and Planning Commission asked several questions regarding the proposed plan, including:

- Timing of redevelopment
- Connectivity with surrounding development, in particular pedestrian connectivity
- Potential amenities for residents and neighbors
- Status of existing tenants
- Connectivity and integration of green space
- Activation of pedestrian realm
- Acknowledgement of this Property as a gateway into the City
- Potential for activation of proposed open area at the corner of MD 355 and Travis Ave

The Applicant submitted a separate supplementary statement responding to the questions raised during the joint public hearing.<sup>1</sup>

E. The Planning Commission's Z-8911-2021 record closed at 5PM on Friday, February 18, 2022. The Commission made its recommendation for Z-8911-2021 on March 2, 2022, and forwarded their recommendation of approval of the rezoning and the concept plan to the Mayor and City Council. The Mayor and City Council's Z-8911-2021 record closed at 5PM on Friday, March 18, 2022.

F. The City Council, during their consolidated policy discussion meeting on April 4, 2022 to consider all related applications from the Applicant, carefully reviewed the evidence of record and considered all submitted testimony, documents and correspondence presented, including the Planning Commission's recommendation for approval, and made the following findings with respect to Application Z-8911-2021 as required by § 24-160G.7(a) of the City Code:

*(a) The City Council may approve CD zoning by local map amendment only upon finding that:*

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

➤ *Section 24-160G.1. - Purpose*

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<sup>1</sup> Exhibit Z19

- (a) Encourage a form of development, consistent with the goals and provisions of the respective master plans for the city that will achieve the physical characteristics necessary to enhance the economic vitality, planned visual character and quality of life within an identified transportation corridor in the city.

1. Application Z-8911-2021 is “consistent with the goals and provisions of the respective master plans,” namely the adopted 2009 Master Plan Land Use Element, which recommends rezoning the property to CD or MXD and adopting a mixed-use land use designation.

2. Application Z-8911-2021 facilitates the associated concept plan that proposes to redevelop an underutilized shopping center and surface parking lot into a vibrant, well-designed mixed-use project, thus enhancing the economic vitality of the corridor and improving the quality of life of residents through the provision of new housing, commercial uses and amenity spaces.

3. Application Z-8911-2021 facilitates the associated concept plan that will enhance the visual character and quality of both the Travis Avenue and Frederick Avenue Corridors through the use of high quality architecture and signature landscaping and amenity areas.

- (b) Create a more attractive and cohesive development pattern and to enhance the city's sense of place through the creation of individual character associated with the corridor in the applicable corridor master plan.

1. Application Z-8911-2021 facilitates the associated concept plan that proposes to redevelop an underutilized retail center into a vibrant mixed-use project using high-quality architecture and materials. The application also proposes new amenity spaces with signature landscaping to further create a strong sense of place.

2. Application Z-8911-2021 facilitates the associated concept plan that proposes a design that complements existing mixed-use development across MD 355 and locates new commercial and office uses along MD 355, while providing residential uses above and back toward Travis Avenue, effectively transitioning to nearby residential communities.

- (c) Encourage development and redevelopment and renovation of declining or underutilized properties along the corridor.

Application Z-8911-2021 facilitates the associated concept plan that that will convert an underutilized retail center with a large surface parking lot into a vibrant mixed-use community with residential and neighborhood-scaled commercial and office uses. The proposed concept plan adds green space amenities where none currently exist,

improves pedestrian connectivity and will complement existing development across North Frederick Avenue.

- (d) Encourage the use of consistent, compatible and attractive architecture, streetscape and visual themes.

Application Z-8911-2021 facilitates the associated concept plan that proposes the use of attractive architecture, with a pattern of massing, colors and materials that will create visual interest and break up the scale of buildings. The proposed design complements existing development across MD 355, and will create a welcoming and visually appealing pedestrian realm by articulating focal corners, building entrances and terminating views.

- (e) Create a streamlined process for zoning and plan approvals.

An approved rezoning provides the foundational framework for all subsequent plans, thereby streamlining future approvals.

- (f) Provide an appropriate scale of development and mix of retail, service, employment and residential uses as recommended in the applicable corridor plan.

1. Application Z-8911-2021 facilitates the associated concept plan that proposes a mix of neighborhood-scaled office and commercial uses on the ground floor with residential above. The proposed project redevelops an underutilized site and integrates office into a mixed-use development as intended by the descriptive narrative in the 2009 Master Plan.

2. The proposed development is of a similar scale, massing and building height to the existing mixed-use development across MD 355, and provides neighborhood-serving goods and services for nearby residents.

- *Sections 24-160G.2.-24-160G.4. – Uses allowed, Minimum location requirements, and Development standards*

Application Z-8911-2021 would accommodate the land uses precluded under the current C-2 Zoning, such as residential, but envisioned under the 2009 Master Plan Land Use Element. The Property meets the minimum locational requirements as it was identified for CD Zoning under the 2009 Master Plan Land Use Element and the required concurrent submission of a concept plan will reflect the applicable development standards.

- (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

1. The Property is identified as Map Designation 4 in the 2009 Master Plan Land Use Element. The Master Plan recommends rezoning the Property to CD or MXD and adopting a mixed-use land use designation. Application Z-8911-2021 complies with these recommendations by rezoning to CD and proposing a mix of commercial, office and residential uses.

2. The descriptive narrative states that several land use options are applicable for this Property, and then discusses a mixed-use development scenario with a smaller residential component and larger commercial and office component. However, the Master Plan does not require this scenario nor does it define “smaller” or give specific development numbers. The proposed balance of uses is appropriate given the current market and context of the site, and incorporates office into a mixed-use development as intended in the descriptive narrative. Additionally, the proposed uses will support the City’s expected population growth and need for affordable housing, and will complement existing nearby development with the provision of neighborhood-serving goods and services.

3. The 2009 Master Plan recognizes the Property as a gateway into the City, and Application Z-8911-2021 facilitates the associated concept plan that enhances this gateway by redeveloping the Property into a walkable, mixed-use center with quality architecture along with green space and amenities that do not currently exist.

4. Application Z-8911-2021 facilitates the associated concept plan that proposes to convert an underutilized retail center into a mixed-use development, which meets the following strategies and objectives in the City’s adopted FY 2022 Annual Strategic Plan:

Economic Development

- Promote rezoning of parcels that exhibit strong development and redevelopment potential in accordance with the Master Plan.
- Facilitate appropriate private and public investment in existing and new affordable housing.

Planning and Development

- Encourage high quality, aesthetically appealing development that adheres to City objectives for sustainable growth.

Housing

- Seek opportunities for redevelopment, acquisition and priority upgrades that improve aging, underutilized and functionally obsolete properties.

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

1. Applications Z-8911-2021 and the concept plan, SP-8910-2021, are compatible and harmonious with the surrounding existing and planned land uses, as the proposed

redevelopment is similar in scale, building height, and use-mix of the existing Spectrum neighborhood across MD 355. The associated concept plan proposes a 30 foot setback and planted buffer between this project and the adjacent residential development. The project will provide ground floor commercial and office uses along Frederick Avenue and interior to the site, while transitioning to residential along Travis Avenue as it changes to a more neighborhood residential context. These commercial and office uses complement similar uses across MD 355 and along the corridor, and will support residents in the adjacent residential communities.

2. Applications Z-8911-2021 and SP-8910-2021 propose an enhanced sidewalk with green strip along Travis Avenue, connecting to the existing sidewalk along MD 355, thus facilitating pedestrian connections to the Property from neighboring properties.

Conclusion

Application Z-8911-2021 conforms to the purpose of the CD Zone; the recommendations in the 2009 City Master Plan Land Use Element; and Strategies and Objectives defined in the City's FY '22 Annual Strategic Plan. The rezoning permits the uses proposed in the concept plan that are harmonious and consistent with the existing surrounding development and the City's vision for revitalizing the Frederick Avenue Corridor. The 2009 Master Plan Land Use Element recommended CD as an appropriate zone, and recommended a mixed-use development. The proposed development revitalizes an underutilized site and incorporates office into a mixed-use development as envisioned for the Property in the 2009 Master Plan Land Use Element.

Based upon the applicant's testimony, exhibits of record, reasoning and findings cited above, Application Z-8911-2021 is granted with no conditions.

ADOPTED by the City Council this 4th day of April, 2022.

DocuSigned by:  
  
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Jud Ashman, MAYOR and  
President of the Council

DELIVERED to the Mayor of the City of Gaithersburg this 4th day of April, 2022.  
APPROVED by the Mayor of the City of Gaithersburg this 4th day of April, 2022.

DocuSigned by:  
  
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JUD ASHMAN, MAYOR

THIS IS TO CERTIFY, that the foregoing Ordinance was adopted by the City Council of the City of Gaithersburg, in public meeting assembled on the 4th day of April, 2022; and that the same was APPROVED by the Mayor of the City of Gaithersburg on the 4th day of April, 2022. This Ordinance will become effective on the 24th day of April, 2022.

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Tanisha Briley, City Manager

RESOLUTION NO. R-17-22

RESOLUTION OF THE MAYOR AND CITY COUNCIL OF  
GAITHERSBURG GRANTING APPROVAL OF CONCEPT  
PLAN SP-8910-2021, FOR APPROXIMATELY 8.77 ACRES OF  
PROPERTY ZONED CORRIDOR DEVELOPMENT (CD)

**SP-8910-2021**

**OPINION**

A concept plan application, SP-8910-2021, for property zoned Corridor Development (CD), has come before the Mayor and City Council for approval. The City Council's authority in this matter is pursuant to Section 24-160G.6(a) 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 concept 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 8.77 acres of land and concerns the development of the subject property ("Property") known as Parcel A, Hechinger Property, Plat 17371. The subject property is located at 18501 North Frederick Avenue, at the intersection of North Frederick Avenue (MD 355) and Travis Avenue, in the City of Gaithersburg. The concept plan application was submitted to the City Planning and Code Administration on July 8, 2021 and was designated as SP-8910-2021.

**OPERATIVE FACTS**

A. Background

KIMCO Realty (Applicant) has requested to change the zoning of 8.77 acres of land, currently known as Parcel A, Hechinger Property, in the City of Gaithersburg, from the existing C-2 (General Commercial) Zone to the CD (Corridor Development) Zone, in accordance with Section 24-196 (Map amendments) and Section 24-160G.6 (Procedure for application and approval) of the City Code. Applications to be placed in the CD Zone require the concurrent submission of either a concept plan or schematic development plan. The Applicant has elected to submit a concept plan application.

## B. Current Application

On July 8, 2021, KIMCO Realty submitted an application for concept plan, SP-8910-2021, concurrently with an application for a zoning map amendment, Z-8911-2021. The concept plan application proposes to redevelop the site with two mixed-use buildings with multi-family residential above ground-floor commercial and office uses. As part of the development, the Applicant is also proposing new green space areas, plaza space, and pedestrian improvements.

The Mayor and City Council and the Planning Commission conducted a consolidated joint public hearing on the two applications (zoning map amendment and concept plan) on January 18, 2022. The Applicant presented an overview of the zoning map amendment and concept plan applications. During the joint public hearing, the Mayor and City Council, Planning Commission, and public asked several questions regarding the proposed plan, including:

- Timing of redevelopment
- Connectivity with surrounding development, in particular pedestrian connectivity
- Potential amenities for residents and neighbors
- Status of existing tenants
- Connectivity and integration of green space
- Activation of pedestrian realm
- Acknowledgement of this site as a gateway into the City
- Potential for activation of proposed open area at the corner of MD 355 and Travis Ave

The Applicant responded to the questions during the hearing and subsequently submitted a separate supplementary statement responding to the questions raised during the joint public hearing.

The Planning Commission record on SP-8910-2021 closed at five (5) PM on February 18, 2022. The Planning Commission reviewed the SP-8910-2021 application at its regular meeting on March 2, 2022 and forwarded their recommendation to the Mayor and City Council. Based upon their review of the evidence of record, the Planning Commission found the SP-8910-2021 application to be in conformance with the Corridor Development (CD) Zone standards and requirements. Consequently, the Planning Commission recommended approval of the SP-8910-2021 application with no conditions.

### C. Evaluation and Findings

On April 4, 2022 the Mayor and City Council conducted a consolidated policy discussion on applications SP-8910-2021 and Z-8911-2021. The City Council, upon careful review of the evidence of record, agrees with the findings, conclusions and the recommendation of approval for concept plan application SP-8910-2021 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 acknowledges 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 this is only one of several steps of the process, that subsequently includes Preliminary and Final Site Plan reviews and approvals.

In reviewing the subject application for the approval of concept site plan SP-8910-2021, the City Council finds the application and development proposal meets or accomplishes 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 and the standards and requirements for approval of the subject concept plan, as set forth in Section 24-160G.6(a) because:

- 1) The Applicant filed, together with the prescribed application fee, an application for approval of a concept plan;
- 2) The concept plan is scaled at one inch equals thirty (30) feet and contains: a) boundary survey; b) the uses of all buildings and structures within the concept site plan area, as well as existing uses of adjacent property external to the CD zoned area and proposed uses within adjoining zoned areas; c) the location, height, approximate dimensions and conceptual elevations of all buildings and structures, and the setbacks and densities and/or square footage thereof; d) the location of points of access to the site and all public and private roads, pedestrian and bike paths; e) the location and setbacks of parking areas; f) existing topography, including, contour intervals of not more than two (2) feet; an approved forest stand delineation and proposed forest conservation plan, if applicable; one-hundred-year floodplains; other natural features; utility easements; g) all landscaped areas, proposed conceptual screen planting, open spaces, plazas, malls, courts, community identification signage, recreation and amenity areas; i) demonstration of general compliance with any Master Plan recommendations for the property, including any special conditions or requirements related to the property set forth in the Master Plan;
- 3) The City Council and City Planning Commission have conducted a consolidated joint public hearing on the application subject to the notification procedures in section 24-196 of this Code.

- 4) The Planning Commission delivered its recommendation to the City Council on March 2, 2022, within thirty (30) days of the closing of the Commission's hearing record on February 18, 2022.
- 5) The Council is taking action on the application within ninety (90) days after the closing of the Council's hearing record on March 11, 2022;

Furthermore, the City Council finds from the Applicant's testimony and the evidence of record that the application for concept plan approval, SP-8910-2021, fulfills the findings required under Section 24-160G.7(b):

(1) The plan is substantially in accord with architectural, signage, lighting, streetscape, parking and other regulations, requirements and guidelines adopted by the city council for the applicable corridor area.

While the City Council has not adopted design guidelines for the Frederick Avenue Corridor, the Applicant has included conceptual architectural elevations that demonstrate compatible and attractive architecture. The buildings will be designed with four-sided architecture that will emphasize ground level areas, thereby creating a visually appealing pedestrian-scaled street. The Applicant is committed to ensuring that any signage will comply with current regulations and streetscape and lighting will take into consideration the existing context while adhering to all regulations and guidelines.

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

- Application SP-8910-2021 is located within an area so designated in the 2009 Master Plan Land Use Element, which recommends rezoning the Property from C-2 to CD and adopting a mixed-use land use designation. The Property was rezoned by application Z-8910-2021.
- The application proposes to redevelop an underutilized shopping center and surface parking into a vibrant, well-designed mixed-use project, thus enhancing the economic vitality of the corridor and improving the quality of life of residents through the provision of new housing, commercial uses and amenity spaces.
- The proposed design will enhance the visual character and quality of both the Travis Avenue and Frederick Avenue Corridors through the use of high quality architecture and signature landscaping and amenity areas. This high quality architecture along with new amenities and landscaping will help create a strong sense of place.
- The proposed architecture will be attractive and complement existing development across MD 355, and will use a pattern of massing and materials that will create visual interest, break up the scale of buildings, and foster a welcoming pedestrian street.

- The proposed mix of neighborhood-scaled office and commercial uses with residential above is an appropriate scale for the area, being similar in massing and building height to the existing mixed-use development across MD 355, and will support nearby residents.
- An approved concept plan will provide the foundational framework for all subsequent plans, thereby streamlining future approvals.
- The application currently meets all of the standards applicable at the time of concept site plan, except the height requirements of Section 24-160G.4(a), which limits building height to six stories and 65 feet in the Northern Employment District. Application SP-8910-2021 includes a height waiver under Section 24-160G.5(a)(4) to exceed the 65 foot height limit.

(3) The plan is in accord with the area master plan and any accompanying special condition or requirements contained in said master plan for the area under consideration.

The Property that is the subject of application SP-8910-2021 is identified as Map Designation 4 in the 2009 Master Plan Land Use Element. The Master Plan recommends rezoning the Property to CD or MXD and adopting a mixed-use land use designation. The Property was rezoned to CD with application Z-8911-2021, and application SP-8910-2021 complies with the land use recommendations by proposing a mix of commercial, office and residential uses. The descriptive narrative states that several land use options are applicable for this site, and then discusses a mixed-use development scenario with a smaller residential component and larger commercial and office component. However, the Master Plan does not require this scenario nor does it define “smaller” or give specific development numbers. The proposed balance of uses is appropriate given the current market and context of the site, and incorporates office into a mixed-use development as intended in the descriptive narrative. Additionally, the proposed uses will support the City’s expected population growth and need for affordable housing, and will complement existing nearby development with the provision of neighborhood-serving goods and services. Additionally, the 2009 Master Plan recognizes this Property as a gateway into the City, and application SP-8910-2021 enhances this gateway by redeveloping the Property into a walkable, mixed-use center with quality architecture along with green space and amenities that do not currently exist.

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

Application SP-8910-2021 is compatible and harmonious with the surrounding existing and planned land uses, as the proposed redevelopment is similar in scale, building height, and use-mix to the existing Spectrum neighborhood across MD 355. A 30 foot setback and planted buffer is proposed between this project and the adjacent residential development. The project will provide ground floor commercial and office uses along Frederick Avenue and interior to the site, while transitioning to residential along Travis Avenue as it changes to a more neighborhood residential context. These commercial and office uses complement similar uses across MD 355 and along the corridor, and will

support residents in the adjacent residential communities. Additionally, an enhanced sidewalk with green strip will be provided along Travis Avenue, connecting to the existing sidewalk along MD 355, thus facilitating pedestrian connections to the site from neighboring properties.

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

Application SP-8910-2021 meets this finding by satisfying the City's Adequate Public Facilities Ordinance (APFO) for fire response time, water, and sewer service. Three fire stations, Stations 8, 29, and 34, provide a 10-minute response time for this Property. The Property is currently served by public water and sewer and has WSSC categories of S-1 and W-1. The City's Traffic Impact Study regulations do not require the submission of a Traffic Impact Study at the time of concept plan. The Applicant will submit a Traffic Impact Statement at the time of preliminary site plan. The Applicant has, however, included a preliminary traffic operations and site access study from Wells and Associates to address vehicular access and movements along Travis Avenue. The study "concludes that the proposed site access points would operate at acceptable levels for peak traffic periods. It also concludes that the spacing of the intersections and resultant queuing are expected to operate at acceptable levels of service." This Property is served by Watkins Mill Elementary, Montgomery Village Middle School, and Watkins Mill High School. Further school capacity analysis will be conducted at preliminary site plan per Code section 24-246.

(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.

Application SP-8910-2021 has adequate public facilities and private amenities to service the proposed development. The project phasing is flexible and could be done in one or two phases. The proposed development includes ample plaza space and green space where none currently exist, as well as enhanced pedestrian infrastructure to serve the new commercial and residential uses.

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

Application SP-8910-2021 is in the public interest because it proposes redeveloping an aging retail center into a mixed-use community which will enhance the vitality and attractiveness of the northern end of the Frederick Avenue Corridor. The Property serves as an important gateway into the City, and the concept plan includes high quality design and signature landscaping to enhance this gateway corner. The redevelopment will add amenities, such as green space and plaza areas to what is currently a large surface parking lot. The inclusion of residential uses will support the City's expected population growth and need for affordable housing. Additionally, pedestrian improvements will facilitate a more welcoming environment and provide greater connectivity to surrounding properties.

In addition, the proposed development meets the following strategies and objectives in the City's adopted FY 2022 Annual Strategic Plan:

#### Economic Development

- Promote rezoning of parcels that exhibit strong development and redevelopment potential in accordance with the Master Plan.
- Facilitate appropriate private and public investment in existing and new affordable housing.

#### Planning and Development

- Encourage high quality, aesthetically appealing development that adheres to City objectives for sustainable growth.

#### Housing

- Seek opportunities for redevelopment, acquisition and priority upgrades that improve aging, underutilized and functionally obsolete properties.

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

This finding is not applicable to application SP-8910-2021, since the buildings were constructed less than 50 years ago and are neither designated historic nor part of a designated historic district, as indicated on the Official City Zoning Map.

\* \* \*

In summary, the City Council finds SP-8910-2021, proposing two mixed-use buildings to be in accordance with Sections 24-160G.6(a) and 24-160G.7(b); is in the public interest; and should be approved due to the presence of substantial evidence in the record to indicate that the subject Concept Plan has accomplished the purposes of the Corridor Development (CD) Zone, as well as generally accepted City planning and land use policies.

CONCEPT PLAN SP-8910-2021

RESOLUTION

NOW, THEREFORE BE IT ORDAINED by the City Council of Gaithersburg, that SP-8910-2021, being an application filed by KIMCO Realty, requesting approval of Concept Plan is hereby approved.

ADOPTED by the City Council this 4th day of April, 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 4th day of April, 2022.

DocuSigned by:

*Tanisha Briley*

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Tanisha Briley, City Manager

RESOLUTION NO. R-18-22

RESOLUTION OF MAYOR AND THE CITY COUNCIL GRANTING APPROVAL OF A HEIGHT WAIVER AS PART OF CONCEPT SITE PLAN SP-8910-2021, FOR APPROXIMATELY 8.77 ACRES OF PROPERTY ZONED CORRIDOR DEVELOPMENT (CD), TO ALLOW FOR A BUILDING HEIGHT OF 76 FEET

WHEREAS, on July 8, 2021, KIMCO Realty (Applicant) submitted Zoning Map Amendment Application Z-8911-2021 and Concept Plan Application SP-8910-2021 that included a request for a height waiver under § 24-160G.5, with accompanying Statement of Justification for 18501 North Frederick Avenue (Site); and

WHEREAS, the Site is located in the Northern Commercial District of the Frederick Avenue Corridor Plan; and

WHEREAS, under § 24-160G.4(a) of the City Code, properties in the Northern Employment District are permitted structures up to “six (6) stories and not to exceed sixty-five (65) feet in height”; and

WHEREAS, under § 24-160G.5(a) of the City Code, “the City Council may, by resolution, waive the building and structure height requirements [in any district] in the corridor development zone (CD zone)” and, under § 24-160G.5(a)(4) of the City Code, such waiver may be granted “for an employment district to allow a height not to exceed eight (8) stories, or ninety (90) feet,” should the Council find under § 24-160G.5(b) that (1) the applicant will provide either on-site or off-site public amenities to further enhance the corridor development zone and the purposes of the CD zone; and (2) the additional height is necessary to implement the master plan and a specific land use plan for Gaithersburg or attract an appropriate and compatible type or caliber of user; and (3) the additional height will be compatible with existing and proposed adjacent land uses and would not detrimentally impact those uses or public facilities serving a specific corridor; and

WHEREAS, to accomplish the proposed redevelopment of the Site with two mixed-use buildings, with residential above ground floor commercial and office uses, the Applicant is seeking the height waiver from the City Council; and

WHEREAS, the Applicant requests a waiver from the height limitation on measurement by feet, but not the height limitation on stories; and

WHEREAS, the Mayor and City Council heard testimony on the application and waiver request as part of the consolidated joint public hearing on the zoning map amendment and concept plan held January 18, 2022; and

WHEREAS, the City Council received the recommendation of approval for both the concept plan and height waiver from the Planning Commission on March 2, 2022; and

WHEREAS, the City Council has reviewed all testimony and evidence submitted into the record regarding the requested waiver during their meeting on April 4<sup>th</sup>, 2022.

NOW THEREFORE, in accordance with § 24-160G.5 of the City's Zoning Ordinance (Chapter 24 of the City Code), the City Council hereby finds as follows:

1. The applicant will provide either on-site or off-site public amenities to further enhance the corridor development zone and the purposes of the CD zone.

Application SP-8910-2021 will add landscaping, pedestrian plazas, open space, and other green areas to a site that currently has ample surface parking and little to no green areas. The additional height granted under a waiver will allow a smaller building footprint, thereby leaving more space available for amenities. SP-8910-2021 will improve pedestrian amenities by enhancing the sidewalk along Travis Avenue, enlarging it and providing a green buffer between the sidewalk and the street. This enhanced sidewalk will provide connection to a new passive park on the northern corner of the Site. The corner of MD 355 and Travis serves as a gateway into the City. SP-8910-2021 proposes a unique landscape experience with public art, which will greatly enhance the area.

2. The additional height is necessary to implement the master plan and a specific land use plan for Gaithersburg or attract an appropriate and compatible type or caliber of user.

Application SP-8910-2021 as proposed does not exceed the 6 story height limit, only the 65 foot height limit. The additional height is necessary due to the unique topography of the Site. In addition, the 2009 Master Plan Land Use Element recommends a mixed-use development, and sufficient floor to ceiling heights are needed for successful first floor commercial and office uses in order to provide a best in class design and attract quality tenants. High-quality design requires suitable ceiling heights for the residential uses as well.

3. The additional height will be compatible with existing and proposed adjacent land uses and would not detrimentally impact those uses or public facilities serving a specific corridor.

The additional height requested as part of application SP-8910-2021 will be compatible with existing and proposed adjacent land uses. The proposed height is similar to the height of the existing mixed-use development across MD 355. There are no existing buildings or uses directly across Travis Avenue that will be impacted. Additionally, there is a minimum 30 foot planted buffer between the proposed development and the adjacent residential uses, as well as a grade change so the existing adjacent residential uses sit up higher, making any differences in height appear visually minimized.

RESOLUTION

NOW, THEREFORE BE IT ORDAINED by the City Council of Gaithersburg, that the height waiver request of seventy-six (76) feet included as part of SP-8910-2021, being applications filed by KIMCO Realty, is hereby approved.

ADOPTED by the City Council this 4th day of April, 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 public meeting assembled on the 4th day of April, 2022.

DocuSigned by:

*Tanisha Briley*

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Tanisha Briley, City Manager