



---

Via email for the M&CC record. of ASK -9892-2024

December 13, 2024

Mayor Jud Ashman  
Members of the City Council  
Planning Commissioners  
City of Gaithersburg  
31 South Summit Avenue  
Gaithersburg, Maryland 20877

RE: ASK-9892-2024: Sketch Plan Amendment for Block R  
Spectrum at Watkins Mills Development, 301 Paramount Park Drive

Dear Mayor Ashman and Members of the City Council and Planning Commission:

On Oct. 21, 2024, we, representing the Applicant BPTC Thirteen, LLC, presented our position regarding the development of the long-delayed ‘Magnolia’ apartment building. While originally envisioned by the City and Applicant as senior housing following the construction of a City Senior Center, both parcels have now sat sadly vacant for many years.

Since many of the City Staff were not with the City when the projects were conceived (as well as some members of the Planning Commission and City Council), the Applicant presented an informational summary:

- Recounting the genesis of the dedication of land for a 30,000 SF Senior Center and the related age restriction on this parcel going back to 2005;
- Providing data-driven evidence of the changing demographics of the City, both economic and cultural;
- Outlining the emergence of inclusive, multigenerational facilities;
- Referencing Academic research exploring the strong preference of seniors today for multigenerational living - which has intensified since the COVID epidemic;
- Describing with references the emergence and growing dominance of Continuous Care Retirement Communities (CCRC) in the Senior Housing sector;
- Demonstrating the infeasibility of Senior Housing at the site as determined by two of the the largest and most active financiers and developers in the field of senior housing; and
- Outlining a multigenerational development option which would include specific features that seniors and those with disabilities seek.

We had hoped that the presentation would prompt a genuine and thoughtful, interactive discussion about how this property - after these many years of sitting idle -- might best move forward to address the evolving needs of the current and future Gaithersburg citizens.

However, following the October 21<sup>st</sup> Joint Hearing, at recording closing, inserted a Staff Analysis that included novel arguments and added more than a dozen documents to the record, leaving the Applicant no time or opportunity to correct factual errors, misstatements, or novel arguments that had not been raised previously.

Based on the Staff Analysis, on Dec. 4, 2024, the Gaithersburg Planning Commission approved ASK-9892-2024: Sketch Plan Amendment for Block R of the Spectrum at Watkins Mills Development with two onerous conditions:

1. Condition 1: “Block R must include an age restriction that requires eighty percent (80%) or more of the units to be leased to households with at least one person who is age 55 or older, consistent with Fair Housing standards.”
2. Condition 2: “For any subsequent schematic development plan and final site plan approvals, the mix must consist of the following: a maximum of ten percent (10%) studio units, a minimum of thirty percent (30%) two-bedroom units, and a minimum of ten percent (10%) three-bedroom units.

The Applicant was not given the opportunity to comment or correct these record insertions and staff arguments during the Planning Commission’s public hearing. Therefore, we are writing to address these arguments prior to the closure of the City Council record.

In the present case, the significant novel points advanced following the closing of the record were:

1. The Housing Market is threatened with a housing oversupply should this Market Rate project proceed.

*“First, Staff is concerned about general market absorption and vacancy rates for rental multifamily units within the City... Staff is concerned that if all of the near-term projects get underway at the same time in the next 2-3 years, the market may become oversaturated, particularly for the multifamily rental units that comprise about two-thirds of the near-term pipeline,”<sup>1</sup>*

adding that

*“...any new projects that happen in the next 11 years will likely be competing for the same residents, potentially reducing absorption rates, increasing vacancy rates, delaying some projects, or discouraging the pursuit of some development and redevelopment altogether.”<sup>2</sup>*

---

<sup>1</sup> See, Staff Analysis, ASK-9892-2024, November 27, 2024, Page 4 et seq.

<sup>2</sup> Ibid. p. 6.

This is a novel argument - one that we have not encountered in the recent past or present. While the number of new jobs being created in Montgomery County has lagged the State and the Nation, the inflow of new residents is probably the one item that is uniformly noted is contributing to the shortage of housing in Montgomery County.

According to Montgomery County's recently published Housing Study, "*Montgomery County is facing a serious housing shortage. We need 60,000 new housing units by 2040...*"<sup>3</sup>

Likewise, the Lakeforest Master Plan states: "The City's development pipeline (how much development is approved by unbuilt) can only accommodate half of the projected job growth."<sup>4</sup>

We also reviewed the April 28, 2023 Staff Analysis for the Nike Site, and noting the following, felt the property was being singled out for treatment:

*"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. [Emphasis added]"*.<sup>5</sup>

The Staff Analysis also sets forth the novel theory that approval of the Magnolia would undermine the 2018 Master Plan goal of "establishing a 2035 jobs to housing ratio of 2:1"<sup>6</sup> Staff notes that the City is not attracting enough jobs to meet the 2:1 ratio, which seems particularly aggressive in light of post-COVID changes to the workplace.

*"The availability of housing is not among the top 30 site location criteria identified in the well-respected Area Development 38<sup>th</sup> Annual Corporate Survey – Site Selection Factors,"* the City's economic development team asserts, adding: *"Employers seek locations that have an existing workforce compatible with their needs."*<sup>7</sup>

We don't buy it. The referenced survey primarily looked at site locations for manufacturing plants. Many of the residents of Spectrum Apartments are recruited based on the need for their talents from across the country. Companies like AstraZeneca, Hughes, and Montgomery County Public Schools do not limit their talent searches to Gaithersburg. Economic development policy that ignores the needs of expanding local employers is ill-conceived.

Second, the survey only contained 30 categories, and housing was not an option provided to survey takers. So, suggesting housing was not among the top 30 factors cited is misleading.

Third, this analysis is contrary to that advanced for other projects in the City.

---

<sup>3</sup> See, [https://montgomeryplanning.org/wp-content/uploads/2021/05/MP\\_AHSExplainer\\_051221\\_v2.pdf](https://montgomeryplanning.org/wp-content/uploads/2021/05/MP_AHSExplainer_051221_v2.pdf)

<sup>4</sup> Lakeforest Master Plan, p. 26.

<sup>5</sup> SK-9497-2023. Nike Site Redevelopment.

<sup>6</sup> Staff Analysis, p. 6, citing Exhibit #49 (Housing Element of the 2018 Master Plan, Goal 2 of Planning and Zoning Recommendations).

<sup>7</sup> Staff Analysis, p. 11, citing Exhibit #42

By contrast, the April 28, 2023, Staff Analysis for the Nike Site noted the following:

- The proposed multifamily development provides an additional option to meet the increased demand for housing needed to support surrounding job growth, particularly in the life sciences and education sectors, and enhances the existing horizontal mix of uses in the area.
- 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.

We are unaware of any other Gaithersburg application where housing development has been discouraged in an effort to achieve a 2:1 job-to-housing ratio.

The Staff analysis also cited the City's desire to achieve a 2:1 jobs/housing ratio as another reason to support the refusal to allow Parcel R to, at last, move forward as a market-rate project. By contrast, the April 28, 2023, Staff Analysis for the Nike Site noted the following:

- *The proposed multifamily development provides an additional option to meet the increased demand for housing needed to support surrounding job growth, particularly in the life sciences and education sectors, and enhances the existing horizontal mix of uses in the area.*
- *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.*

We are unaware of any other Gaithersburg application where housing development has been discouraged in an effort to achieve a 2:1 job-to-housing ratio, which seems aggressive in light of COVID-19 changes to the workplace.

Again, we would have responded to these issues at the Planning Commission level had it been raised previously.

2. There is a large and growing demand for market-rate Senior housing that will not be met by the existing pipeline:

*“Staff has determined that demand for age-restricted rental apartments exists and will grow with an aging population. A relevant market analysis (citing Lakeforest Mall’s Study) quantified the demand for new senior housing in the primary market area (northern suburbs of Montgomery County, including Rockville, Gaithersburg, Germantown, and Clarksburg, equal to the primary market area of the Spectrum location): 110 units per year (ages 55-64) and 72 units per year (ages 65+), above the area’s existing inventory.”*

The Applicant had, as part of the record, delivered market assessments for Parcel R, developed by two of the largest and most active developers in the age-restricted segment – Welltower and Pulte/Del Webb. Both delivered a strong 'no' on the site.<sup>8</sup>

These market studies were ignored in the Staff Analysis in favor of relying on the RCLCO Lakeforest Market Study, which Staff submitted to support its position that demand for Market Rate 55 and older housing exists in the market.<sup>9</sup>

In fact, the RCLCO study actually described the market for age-restricted housing as “Moderate/Weak”<sup>10</sup> with a predicted absorption of **182 units annually**.<sup>11</sup>

Had the opportunity been provided, we would have combined the Lakeforest Study of 182 units a year demand with the Welltower comprehensive market study to reveal an existing pipeline and predicted demand within the defined drive time of the site as follows:

Erickson Senior/The Grandview	16 mins	1,396 units
Kisco Senior/The Carnegie	6 mins	296 units
Retirement Unlimited/Potomac Woods	16 mins	213 units
Experience Senior/Reserve at Strathmore	21 mins	242 units
Kensington Senior/Westbard Bethesda	26 mins	155 units
Kensington Senior/Kensington Bethesda	26 mins	<u>135 units</u>
		<u>2,437 units</u> <sup>12 13</sup>

At an annual absorption rate of 182 units (or even double that figure), this represents a **very significant overhang of supply** in market-rate senior housing – consistent with the market studies and assessments of the Actual active developers of the product.

### 3. Parcel R has previously approved Site Development Plan (SDP)

Staff repeatedly has asserted that the unit mix imposed by Condition 2 was based on percentages found in a previously approved SDP for Parcel R. The Staff Analysis erroneously states: “The ***previously approved schematic development plan for building/block R*** has a bedroom mix of 10.9% studios, 66.1% 1 bedrooms, 13.9% two bedrooms, and 9.1% 3 bedrooms.”[Emphasis added]<sup>14</sup>

---

<sup>8</sup> See, See, Exhibit 43, ASK-9892-2024, Spectrum Sketch Plan Amendment, Slide 35 & 36, Pulte/DelWebb and Welltower Senior Inventory Analysis, November 27, 2024.

<sup>9</sup> Staff Analysis, p. 10.

<sup>10</sup> See, Exhibit #60(RCLCO Market Analysis for Lakeforest Mall Redevelopment, January 17, 2024).

<sup>11</sup> Staff Analysis, p. 10, citing, Exhibit #60(RCLCO Market Analysis for Lakeforest Mall Redevelopment, January 17, 2024).

<sup>12</sup> See, Exhibit 43, ASK-9892-2024, Spectrum Sketch Plan Amendment, Slide 36, Welltower Senior Inventory Analysis, November 27, 2024.

<sup>13</sup> Note also that this total does not include additions to the pipeline units which have been approved since the report was issued, including the Silverstone Senior/Seneca Community in Rockville, West Gude Drive.

<sup>14</sup> Staff Analysis, p. 7.

*“The previously-approved schematic development plan for Building/Block R has a bedroom unit mix of 10.9% studios, 66.1% one bedrooms, 13.9% two bedrooms, and 9.1% three bedrooms.”<sup>15</sup>*

This unit mix, based on the Staff testimony – was taken from a prior SDP approval – which, in fact, related to another building within the Spectrum. Had the opportunity been provided, the Applicant would have documented that Block R has **never received an SDP approval**.

During the Dec. 4 hearing, the following exchange occurred:

Planning Commissioner John Bauer: *“Just for the basis of comparison, what is the approved mix now?”*

Planner Kirk Eby: *“So, right now, **based on the last SDP approval**, it was about 11% studio, that is why we came up with the 10% cap there, it was about 66% one bedroom, 15% two bedroom and 9% three bedroom. So, we thought maybe 10% was the better fit for the three bedrooms [Emphasis added].”<sup>16</sup>*

In fact, the Applicant has never applied for nor received an SDP approval for Block R.

A review of the applications and exhibits of SDP-05-003, SDP-07-001, SDP-11-002, and SDP-8198-2019 quickly confirms this fact, as does the lack of any elevations, amenity spaces, unit layouts, elevator placement, affordable housing breakout, and the dozens of other requirements needed for a building to receive SDP approval in the City of Gaithersburg.

Had the opportunity been available, it would have been shown that the parking numbers that Staff referenced were, in fact, *‘place saving’* numbers required by the then City Staff reviewing the Majestic apartments - SDP-11-002<sup>17</sup>, and parroted in subsequent applications, based on market-rate units, in that all parties involved acknowledged that the development of the 30,000 square foot Senior Center unlikely at best.

Similarly, Block R also received a 3,000 SF placeholder for nonresidential uses. In the truest sense, the parking grid was designed as a **“place saver”** to secure needed parking for future development on the parcel. The Applicant recalls no conversations either with city staff or internally about a unit mix for this building or the nature of the age restriction on a parcel that was phased to occur after the commencement of Exit 12 of I-270.

Arguing that the *“previously approved schematic development plan for building/block R,”* had already imposed both conditions,<sup>18</sup> Staff urged the imposition of Sketch Plan conditions that 1) limit the use to age-restricted housing for 55 and older, and 2) set a unit mix that requires 40% two bedroom and larger units.

---

<sup>15</sup> See, Staff Analysis, p. 7.

<sup>16</sup> "Bauer, John and Kirk Eby. Planning Commission Hearing. Dec. 4, 2024.

<sup>17</sup> See, SDP-11-002, Parking Distribution Plan, Ex.105,

<sup>18</sup> Staff Analysis, p. 7.

**The 55 and above Impact:** Working backward from the parking grid, Staff imposed a “55 and above” age restriction on the development – the first and only in the City.<sup>19</sup>

There are reasons for this – financing among them, and by singling out this parcel with this status assures its continued status as unbuilt.

**The Unit Mix Impact:** The Staff report and final action by the Planning Commission also placed a new imposition on the property – one not seen before at the Sketch Plan Level– mandating a specific unit mix for the project.<sup>20</sup>

Accordingly, the Planning Commission voted to support Staff’s recommendation to require a maximum of ten percent (10%) studio units, a minimum of thirty percent (30%) two-bedroom units, and a minimum of ten percent (10%) three-bedroom units.<sup>21</sup>

Staff had also included in the record more than a dozen existing senior housing apartments,<sup>22</sup> including their respective tenant mix. Of these hundreds of units, we found **no three-bedroom units listed in their unit mix**, again imposing an extraordinary burden on the property.

Had this proposed condition been part of the discussion prior to the Planning Commission record closure, the Applicant would have shown that the absorption rate for market-rate three-bedroom units in the Gaithersburg market as tracked by CoStar was negative ten units (-10%) in the prior month, while studios and one-bedroom units had a positive absorption of 143 units during the same period.<sup>23</sup>

This is in part explained by what we experience as Landlords -- residents moving out of three-bedroom apartment units to three-bedroom towns and single-family homes for lease in the surrounding area – as can be seen on Apartments.com (but not on CoStar as used by the City).<sup>24</sup> As of today, there are 64 Townhomes and single-family homes available in the Gaithersburg submarket,

#### 4. Block R has been Repeatedly Singled Out to Thwart Development

The Staff Analysis notes: “The City’s Housing Element of the 2018 Master Plan, adopted September 18, 2023, recommends “preserve(ing) (sic) existing and approved age- and ability-restricted housing projects, such as Building R at the Spectrum.”<sup>25</sup> Prior to the adoption of the

---

<sup>19</sup> See Staff Analysis, ASK-9892-2024, p. 10.

<sup>20</sup> See Staff Analysis, ASK-9892-2024, p. 7.

<sup>21</sup> While Citing the “approved SDP”, the unit mix percentage cited by Staff was not consistent with the unit mix used in the ‘place saver”, which was in fact Studios (11.39), 1-Bedrooms (68.98%), 2-Bedrooms, (10.13%), and 3-Bedrooms, (9.49%)

<sup>22</sup> See, Staff Analysis, ASK-9892-2024: Exhibit 39.

<sup>23</sup> See, Co-Star Report.

<sup>24</sup> As of today (12/13/2024), there are 76 Townhomes, Condos and Single Family homes available with 3 or more bedrooms available for lease, which is where many 3 bedroom renters prefer to live. See [www.Apartments.com](http://www.Apartments.com).

<sup>25</sup> Staff Analysis, p. 8, citing Exhibit 48 (Housing Element of the 2018 Master Plan).

“Retool” document, the Applicant noted that Block R was being singled out and requested that the plan support housing “for seniors” rather than isolated, senior-designed housing. That request was ignored. In its analysis. Staff states that it did not single out Block R when drafting the “Retool” document, noting: “This recommendation applied to *all* existing and proposed senior housing projects in the City, including Hillside Senior Living, which had approached the City about removing the age restriction. Besides the Spectrum, other age-restricted projects that were approved but unbuilt at the time of the Housing Element’s adoption included The Carnegie at Washingtonian North and the Manor Homes at Asbury Methodist Village.”<sup>26</sup>

The Carnegie is a CCRC for wealthy residents 62 and older and was under construction at the time of the adoption of the Master Plan. Manor Homes is part of Asbury, also a CCRC. A 2024 City report notes that the 60 units at Manor Homes at Ashbury is “estimate only. Development approvals have expired or are preliminary – *dwelling units are unlikely to be completed in the near future.*”<sup>27</sup>

Staff provided no narrative to explain why Hillside Senior Living, which received low-income tax credit financing to convert from a motel to deeply affordable units, would seek to remove the age restriction upon which its financing is predicated. This request suggests that even affordable units in isolated senior housing are challenging to lease.

That leaves Block R singled out. While this recommendation purports to further important social justice goals, none of the other large, mixed-use projects approved since the Spectrum has included a requirement for stand-alone senior housing, including Lake Forest and Crown.

Planning Commissioner Phil Wessell noted his belief that 1) a previously approved SDP for the Magnolia placed a 55 and older restriction on the property and set for a bedroom mix, and 2) the targeted inclusion of Block R in the 2018 Master Plan blocked his authority to consider the merits of a multigenerational approach at the site. Wessell noted: “There is certainly a broad policy question here, but from my perspective, our guidance is what has been adopted in the Master Plan and the previous plans.”

During the hearing, Planning Commissioner Matthew Hopkins noted that although there may be general demand for three-bedroom units, there was no evidence in the record that this demand existed at a price point necessary to cover the cost of construction of these units and the associated structured parking costs. Nevertheless, it was decided that that was “a conversation for the future” after the imposition of the condition at this site.

No evidence was offered to indicate demand among seniors for three-bedroom apartments.

Staff also argued that Condition 2, which caps Studio Apartments at 10% and requires a 10% Minimum of Three-bedroom Apartments in an age-restricted (55 and older) building, is an important imposition necessary to decrease the “**transient**” population in the City. Further, Staff insisted that occupants of studio and one-bedroom apartments are not only more

---

<sup>26</sup> Staff Analysis, pp 8-9.

<sup>27</sup> City of Gaithersburg Dwelling Units and Estimate Population Report, July 2024.

“transient” but also “**less civically engaged**” than those occupying three-bedroom rental units. [Emphasis added].<sup>28</sup>

We find no evidence to support the claim that those renting studio and one-bedroom apartments are more transient and less civically engaged than those occupying three-bedroom apartments.

This assertion does not track with our experience managing apartments in Gaithersburg. In fact, we find studios and one-bedroom apartments in our Gaithersburg apartments typically are occupied by highly educated professionals who have chosen to start careers in Gaithersburg working for area life science and high-tech firms as well as local schools, hospitals, and nonprofits. We do not find these residents to be either more transient or less civilly engaged than residents living in larger apartments. In fact, we struggle to understand why city officials would use this pejorative term to describe either young professionals or older folks who seek to “right size” their housing needs.

We are unaware of any project in the City that has mandated a 10% minimum for three-bedroom apartments or used this novel argument to cap studio and one-bedroom apartment development.

In conclusion, the Applicant finds that the process and analysis used in consideration of this initial Sketch Plan Application for Block R to be deeply and intentionally flawed.

We appreciate your thoughtful consideration of this letter.

Sincerely,

*Leigh*     **Peter**

Leigh and Peter Henry

---

<sup>28</sup> Eby, Kirk testimony. Planning Commission. Dec. 4, 2024.