

RESOLUTION NO. R-49-24

RESOLUTION OF THE MAYOR AND CITY COUNCIL GRANTING
APPROVAL OF SCHEMATIC DEVELOPMENT PLAN SDP-9759-2024,
KNOWN AS 725 PROGRESS WAY FOR APPROXIMATELY 1.99 ACRES
OF PROPERTY ZONED MIXED USE DEVELOPMENT (MXD)

SDP-9759-2024

OPINION

Schematic development plan application SDP-9759-2024 for property zoned Mixed Use Development (MXD), has come before the Mayor and City Council for approval. The City Council's authority in this matter is pursuant to § 24-160D.9(b)(2) of the City of Gaithersburg Zoning Ordinance (Chapter 24 of the City Code), which authorizes the City Council and Planning Commission to conduct public hearings on a schematic development plan application following appropriate notification procedures and for the City 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.¹

The subject case involves approximately 1.99 acres of a 43.96-acre site and concerns the development of property comprised of Parcel "S" and addressed as 725 Progress Way (the "Property"). The schematic development plan application was submitted to the City Planning and Code Administration on March 5, 2024. This application was designated as SDP-9759-2024.

OPERATIVE FACTS

A. Background

The Property was annexed into the City of Gaithersburg in 1992 as part of Annexation X-161 and zoned I-3, Industrial and Office Park. The Property, at the time of annexation, was developed with two office buildings built in the 1960s, along with surface

¹ This application was reviewed and approved under the Zoning Ordinance in effect at the time of submission in accordance with Section 24-1.2 of the 2024 City Zoning Ordinance Update, "Any application, including any sketch plans, schematic development plans, or site development plans included therein, that is submitted prior to the effective date of the 2024 City Zoning Ordinance Update and that is deemed valid and complete and includes all application components required pursuant to the zoning code in effect at the time of the application's submission shall be reviewed by the planning division, planning commission, city council, and all other relevant city agencies pursuant to the standards of the zoning code in effect at the time of the application's submission, as long as the submission proceeds for review and approval within two (2) years of its submission."

parking and green space. The City, on April 7, 1997, approved Zoning Map Amendment Application Z-285, Ordinance O-12-97, comprehensively rezoning approximately 105 acres, including the Property, from I-3 (Industrial and Office Park) to MXD (Mixed Use Development) in compliance with recommendations from the 1997 Neighborhood Six Land Use Plan.

The Property was originally developed for IBM and most recently vacated by Leidos. Concurrent with Leidos' departure, the Property was purchased by MFV 700 NFA, LLC and DNIP4 NFA, LLC MDF. The new Property owners received approval of a Sketch Plan in 2019 for commercial, employment and industrial uses, which allows up to 650,000 square feet of development split over two "blocks," equating to a Floor Area Ratio ("FAR") of approximately .34 over 44 acres (SK-8180-2019). More specifically, the sketch plan permits up to 10% of the redeveloped floor area as retail commercial uses and up to 100% of employment/office or other commercial/institutional uses.

The first schematic development plan, SDP-8597-2020, was approved in 2020, followed by three final site plans that implement the SDP. The current SDP application is the second schematic development plan to implement the approved sketch plan and is specifically focused on defining uses, building footprints, site circulation and open and amenity space in conformance with the requirements of SK-8180-2019 for Parcel S.

B. Current Application:

On March 5, 2024, Brian Morris of MFV 700 NFA, LLC and DNIP4 NFA, LLC ("Applicant") submitted an application for schematic development plan, SDP-9759-2024 ("Application"). The Application proposes to construct two commercial buildings on the Property, with up to 14,750 square feet of retail use at 715 and 725 Progress Way. Each structure is proposed to be located on its own lot, with Lot 7 improved with a 10,100 square foot building and Lot 8 improved with a 4,650 square foot building. Each building is proposed to have a maximum building height of 30 feet and each building proposes a drive-through that circulates around the northeast side of each building parallel with the Frederick Avenue linear park. The lots share an internal vehicular connection as well as a shared pedestrian connection from Progress Way to the linear park and an outdoor dining area midway between Progress Way and the park and located between the two buildings. Egress to the lots will be from two access points on Progress Way with access to North Frederick Avenue at a signalized intersection at Bunsen Place. The list of permitted commercial uses and the permitted square footage of each use is consistent with the approved Sketch Plan, SK-8180-2019.

The Mayor and City Council and Planning Commission conducted a joint public hearing for the Application on July 1, 2024. There was no public oral testimony or written testimony received prior to the close of the record. Comments and questions discussed by the Mayor and City Council and Planning Commission during the public hearing related to the maintenance responsibility for the shared outdoor seating area, pedestrian connectivity between the existing and proposed buildings and the Frederick Avenue linear park, and elimination of drive-through lanes if not required by prospective tenants.

At the conclusion of the hearing, the Planning Commission announced, by motion, the closing of their record on July 31, 2024 with recommendation scheduled for August 7, 2024. Subsequently, the Mayor and City Council announced by motion, the closing of their record on August 14, 2024 with policy discussion and final action anticipated for September 3, 2024.

In response to issues raised during the joint public hearing, the Applicant submitted a response letter confirming that the Applicant will retain responsibility for maintenance of the common seating area and providing a circulation plan to demonstrate adequate pedestrian and vehicular circulation between the proposed lots and across existing improvements on the overall 43-acre site. The Applicant has also added a note to the SDP cover page indicating that drive-through facilities shown on the approved schematic development and not required at the time of final site plan shall be reduced or eliminated.

The Planning Commission reviewed the Application at its regular meeting on August 7, 2024. Based upon their review of the evidence in the record, their discussion, and the required findings presented in the Staff Analysis, the Planning Commission found the Application to be in conformance with the MXD Zone standards. Consequently, the Planning Commission recommended approval of the Application to the City Council with the following condition required of the applicant:

1. Applicant must submit revised Schematic Development Plan, as required, to satisfy all City staff comments prior to signing of plans by Planning staff.

As part of its review of the site plan, the Planning Commission expressed its support for the established building envelope setback from the Frederick Avenue linear park, the combined outdoor dining area and the preliminary architecture.

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 the Application 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 in 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 Final Site Plan reviews and approvals.

In reviewing the Application for approval of schematic development plan SDP-9759-2024, the City Council finds the application and development proposal meets or

accomplishes the purposes, objectives, and minimum standards and requirements of the MXD Zone that are set forth in Chapter 24 (Zoning) Article III, Division 19 of the City Code.

The City Council finds that the Application meets the submission requirements and the standards and requirements for approval of the subject schematic development plan, as set forth in § 24-160D.9(b) of the City Code in that:

1. The Applicant filed, together with the prescribed application fee, an Application for approval of a schematic development plan which is consistent with the approved Sketch Plan SK-8180-2019 in terms of nature, density, height, permitted uses, access, and circulation;
2. Staff determined that the Application was complete and contains all the information and components required under § 24-169(b) of the City Code;
3. The Property is regulated by the 1997, 2003, and 2009 Master Plans and the 2001 Frederick Avenue Corridor Land Use Plan. The Application proposes redeveloping the Property with commercial uses, in compliance with the above stated Master Plan recommendations. SDP-9759-2024 achieves the general and specific Master Plan recommendations through the predominant mix of flexible buildings to accommodate a wide range of retail uses to support the employment uses previously approved as part of SDP-8597-2020. No residential uses are proposed for the Property, in compliance with long-standing Master Plan recommendations for the Property. Unlike other MXD projects, residential uses have never been recommended for the Property since its inclusion in the 1997 Neighborhood Six Land Use Plan;
4. The City Council and City Planning Commission have conducted a joint public hearing on the Application subject to the notification procedures in § 24-196 of the City Code;
5. The Planning Commission delivered its recommendation to the City Council on August 8, 2024, within thirty (30) days of the close of the Commission's hearing record on July 31, 2024;
6. The Council is taking action on the application within ninety (90) days after the close of the Council's hearing record on August 14, 2024;
7. The approval of this schematic development plan with its degree of detail shall substitute for preliminary site plan approval and preliminary subdivision plan approval; and
8. The proposed development is the second schematic development under SK-8180-2019 and will be integrated within the existing road networks.

Furthermore, the Mayor and City Council finds from the evidence of record that the Application fulfills the findings required under § 24-160D.10(b), as follows:

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

The plan is consistent with approved Sketch Plan SK-8180-2019, approved by the Mayor and City Council by Resolution R-54-19 on August 19, 2019. The sketch plan permits the replacement of the Property's existing improvements with up to 650,000 square feet of commercial density. The Sketch Plan permits up to 10% (or 65,000 square feet) of the redeveloped floor area as retail commercial uses and up to 100% (or up to 650,000 square feet) of employment/office or other commercial/institutional uses. The Sketch Plan also limits the amount of retail square footage on Block "A" to 20,000 square feet. The current Application is the second Schematic Development Plan application under the approved Sketch Plan and permits up to 14,750 square feet of retail on Block "A", the maximum remaining retail square footage permitted for this Block.

All uses proposed in the Application, both in type and approximate location, are in accordance with the chart of permitted uses included in the Sketch Plan. The building heights conform to the six-story maximum provided in the Sketch Plan as well.

(2) The plan meets or accomplishes the purposes, objectives and minimum standards and requirements of the zone, and other requirements of the City Code:

- (a) The Property per the Application will be developed with two commercial buildings, in conformance with Approved Sketch Plan SK-8180-2024.
- (b) The Application contributes to a mix of land uses for the overall 44-acre development, including retail, office, warehouse, research and development, recreational and open space that work to complement one another. While the proposed development does not provide residential uses, the property was never envisioned to include residential uses.
- (c) The Application encourages the efficient use of land by redeveloping an existing site within an established area with existing transportation options and providing additional opportunities for synergistic retail along the North Frederick Avenue corridor. Furthermore, the Application reduces reliance on the automobile and encourages pedestrian and other non-vehicular circulation systems by locating adjacent to complete streets with comfortable sidewalks, attractive landscaping, and efficient connections to adjacent uses.

(d) The Application also encourages design flexibility through the inclusion of well-considered design guidelines, providing an elevated level for urban design, architecture, streetscape and open space.

(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 was first included in the 1997 Neighborhood Six Land Use Plan as part of Study Area 3. The 1997 Plan characterized Area 3 as dominated by industrial-research-office uses. Specific recommendations for the Property included re-designating it as commercial/ industrial-research-office and rezoning to MXD. In the 2001 Frederick Avenue Corridor Land Use Plan, the Property was included in the Northern Employment District. The 2001 Plan reconfirmed all land use designations and zoning recommendations from the 1997 Neighborhood Six Land Use Plan, thus reaffirming the commercial/ industrial-research-office designation for the Property. Subsequently, both the 2003 and 2009 Land Use Elements reaffirmed the commercial/ industrial-research-office use designation for the Property.

The Application proposes redeveloping the Property with commercial uses, in compliance with the above stated Master Plan recommendations. The Application achieves the general and specific Master Plan recommendations by proposing retail uses to support the overall project, which provides a mix of flexible buildings to accommodate a wide range of employers. No residential uses are proposed for the Property, in compliance with long-standing Master Plan recommendations for the Property. Unlike other MXD projects, residential uses have never been recommended for the Property since its inclusion in the 1997 Neighborhood Six Land Use Plan.

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

The Application is compatible and harmonious with the adjacent area. The buildings are sited to be compatible with the layout of adjacent Chick-fil-A and Sheetz site plans, with buildings and drive-throughs adjacent to the linear park and parking adjacent to Progress Way. Properties to the north and east across North Frederick Avenue and Montgomery Village Avenue respectively include a range of commercial uses and the adjacent property to the northwest is a distribution center, all of which are compatible with the proposed mix of retail along North Frederick Avenue and large, flex buildings with interior courtyards designed to accommodate distribution, among other uses. The project relies upon the existing road network and improves pedestrian connectivity both within and outside the property.

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

This Application complies with the City's adequate public facilities requirements, as follows:

1. **Traffic Impacts** (§ 24-245) - The Applicant has included a Traffic Statement performed by The Traffic Group. The Statement confirms that the proposed redevelopment will not generate an additional 30 peak hour trips. City staff has, therefore, confirmed that a Traffic Impact Study is not required for this plan and therefore the application complies with the City's Adequate Public Facilities requirements for § 24-245.
2. **Schools** (§ 24-246) - The Application does not propose any residential development; therefore, the schools test does not apply.
3. **Water and Sewer Services and Public Utilities** (§ 24-247) - The subject SDP area including the Property is located within water category W-1 (public water available) and sewer category S-1 (public sewer available), and thus satisfies the requirements of § 24-247 for water and sewer.
4. **Fire and Emergency Services** (§ 24-248) - The City's Adequate Public Facilities Ordinance (APFO) requires that any development project be served by at least two fire stations within a ten-minute response time. The Site is located within a ten-minute response time of three fire stations: Station 8 (Gaithersburg), Station 31 (Rockville/Darnestown) and Station 34 (Germantown/Milestone). Therefore, adequate fire and emergency services are provided.

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

The proposed plan will be integrated within the existing road networks and utility infrastructures. No staging or phasing program is necessary, and the development will be implemented through either one or two final site plan applications. The development can be constructed without disruption to adjacent properties or the surrounding traffic patterns as the property is currently vacant and there is adequate staging space within the property to ensure no disruptions to the surrounding area during construction.

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

The plan advances the overall Matan development vision by providing retail uses to support the employment uses on adjacent parcels and the overall community.

The project provides an additional connection to the Frederick Avenue linear park. The development will also provide a larger tax base for the City to generate additional revenue that helps support a wider array of public programs, services and improvements.

In summary, the Mayor and City Council finds Application to be in accordance with §§ 24-160D.9.(b) and 24-160D.10.(b) of the City Code and, as hereafter conditioned, is in the public interest and should be approved due to the presence of substantial evidence in the record and the included findings to indicate that the subject Schematic Development Plan has accomplished the purposes of the MXD Zone, as well as generally accepted City planning and land use policies, subject to the applicant complying with the conditions stated in this Resolution.

SCHEMATIC DEVELOPMENT PLAN SDP-9759-2024

RESOLUTION

NOW, THEREFORE BE IT ORDAINED by the Mayor and City Council of Gaithersburg, Maryland that SDP-9759-2024, being an application filed by Brian Morris, MFV 700 NFA, LLC and DNIP4 NFA, LLC, requesting approval of Schematic Development Plan SDP-9759-2024 is hereby approved subject to the following conditions required of the applicant:

1. Applicant must submit revised Schematic Development Plan, as required, to satisfy all City staff comments prior to signing of plans by Planning staff.

ADOPTED by the City Council this 3rd day of September 2024.

Signed by:

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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 3rd day of September 2024.

DocuSigned by:

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 Tanisha Briley, City Manager