



Barbara A. Sears
301-517-4812
bsears@milesstockbridge.com

Phillip A. Hummel
301-517-4814
phummel@milesstockbridge.com

January 25, 2021

Mayor Jud Ashman and
Members of the City Council

John Bauer, Chair and
Commissioners of the Planning Commission

City of Gaithersburg
31 S. Summit Avenue
Gaithersburg, Maryland 20877

Re: SDP-8597-2020 – 700 North Frederick Avenue

Dear Mayor Ashman and Council Members and Chair Bauer and Commissioners:

MFV 700 NFA, LLC and DNIP4 700 NFA, LLC (collectively, the “Applicant”) is the owner of 700 North Frederick Avenue (the “Property”) in Gaithersburg (the “City”). Applicant has filed SDP-8597-2020 (the “Application”) to redevelop the Property with up to 461,100 square feet of commercial/employment/industrial uses in multiple structures, attractive green areas, and other amenities (the “Project”). The purpose of this letter is to respond to comments, questions, and testimony raised at the December 21, 2020 joint public hearing before the Mayor and City Council and the Planning Commission on the Application.

Phasing

During the joint public hearing, questions and comments were raised regarding the phased redevelopment of the Property. As background, the Application is the first schematic development plan application to implement the Property’s approved sketch plan (SK-8180-2019, the “Sketch Plan”). The Sketch Plan depicts the phased redevelopment of the Property in two development blocks (Block A and Block B), permits adjustments to phasing boundaries, and allows development phases to be sequenced in any order or combined. Applicant notes that 38.89 acres of the Property’s 43.96 acres is included in the Application, thereby covering approximately

City of Gaithersburg
January 25, 2021
Page 2 of 8

88.5% of the Property's land area. The portions of the Property identified as Parcel H and Parcel J will be included in future phased schematic development plan application(s).

The scope of the Application (and the proposed development thereon) responds to existing economic conditions. The centerpieces of the Application are two 225,000 square-foot "flex" buildings on Lots 5 and 6 that are projected to be used for, among other permitted uses, integrated light manufacturing and research, experimental and testing laboratories. Although these "flex" buildings are being entitled in advance of Applicant securing leases with individual tenants, there is strong market demand to accommodate these anticipated uses. Such tenants expect the delivery of space on an expedited schedule to achieve "speed to market."

Furthermore, the Application includes accompanying desirable amenities to support and enhance the "flex" buildings on Lots 5 and 6. These include two employee amenity green spaces, the proposed restaurant on Lot 4, and the convenience retail store with accompanying automobile filling station on Lot 1. Additionally, and in response to City staff's request, the Application includes the linear park along the Property's entire North Frederick Avenue frontage, a length of approximately 1,400 feet, including along Parcels H and J. Although the redevelopment of Parcels H and J will be covered in a future schematic development application(s), these portions of the Property will be graded, stabilized, and seeded as open lawn areas as part of the Project to provide an attractive appearance along the North Frederick Avenue corridor.

Mezzanine Space

A question was raised during the joint public hearing regarding building height for the two "flex" buildings and their capability to include mezzanine space. The clear heights in the two "flex" buildings allow for the accommodation of future mezzanine space (approximately 25,000 square feet per building) and is therefore accounted for and reflected in the 450,000 gross square feet listed in the development tabulations for Lots 5 and 6. Accommodating potential mezzanine space in the "flex" buildings is important for tenants who might need to use such areas for offices and other occupiable space.

Building Architecture

In response to comments presented at the joint public hearing, Applicant has examined the anticipated architecture for the two "flex" buildings and the retail building for the future phase of redevelopment in greater detail. Applicant has

City of Gaithersburg
January 25, 2021
Page 3 of 8

updated the illustrative renderings presented on December 21, which are attached to this letter. The conceptual building architecture for the “flex” buildings has been revised to enhance the exterior facades so they are further articulated to reduce mass, bulk, and uniformity. The facades have been updated to include a masonry aesthetic by the use of form liner or masonry cladding at appropriate areas. In addition to the masonry texture, color variation and pattern, building facades are further articulated by using horizontal metal extrusions. These elements are positioned to provide accents, as well as shading devices near glazing at building corners and other main entrances. The updated schematic renderings therefore reflect the additional thought and detail that went into the consideration of architectural variation, visual interest, and attractiveness as experienced in views from the vehicular realm from greater distances, as well as from the pedestrian realm up close.

Additionally, entryways have been enhanced with diverse design elements and a range of building materials that include additional glass, metal panels, and surface texture and detailing. Employee and customer entrances include this architectural detailing, as well as integrate varying building heights at these locations, all of which create prominent pedestrian access points, increase transparency, and enhance the sense of arrival at the ground floor. Opportunities also exist for additional glazing and fenestration at other locations in the building facade contingent upon tenant operations, such as additional tenant entrances, office locations (including second story offices), and tenant common areas. Therefore, these areas of additional glazing have practical functions beyond serving as inlets through the facade for daylighting or visual accents. The updated design guidelines provide that the incorporation of additional glazing can be accommodated through a staff level amendment to the final site plan.

The updated illustrative renderings, together with the updated design guidelines also attached to this letter, also convey how architectural continuity will be met. The design guidelines provide comprehensive and thoughtful standards to advance harmonious building design throughout the entire Project. These design guidelines set standards for a variety of design elements, including patterns of scale, form, materials, and proportion, to assist in establishing a consistent form of development both internally within the Project, as well as externally with the surrounding Northern Employment District. The design guidelines also incorporate minimum glazing standards, texture scale, and geometry relationships to guide solid/void ratios. This allows the future buildings to convey similar patterns and detailing to tie all Project buildings together in a compatible manner. Thus, as detailed in the updated design guidelines, and as reflected in the updated illustrative renderings, architectural continuity can be achieved in numerous ways without regulating all buildings in the Project to have an identical appearance.

Visual continuity is also achieved through site design. Project site furnishings will be styled to match building aesthetics and be consistent throughout the entire development. This cohesion is achieved by specifically selecting or designing an assortment of site elements, including, but not limited to, the linear park, the employee amenity areas (with outdoor terrace spaces capable of hosting activities, outdoor work stations, picnic areas, and open lawn spaces for tenant events), street lighting, parking lot lighting, benches, and trash receptacles. Furthermore, signage will also be harmonious to create a unique, unified, and attractive character throughout the Project. All wayfinding signage will be coordinated with the overall branding of the Project and establish a distinct sense of place. These site elements will all be seamlessly integrated into the development and use recurring design principles and tools to achieve cohesion for, among other things, scale, proximity between site elements, materiality, and spatial arrangement of varying forms and features throughout the Project.

The updated illustrative architectural renderings and design guidelines reflect these points. The architectural details of the new structures proposed in the Application, including the final proposed appearance and materials, will also be reviewed in greater detail as part of final site plan review. See § 24-160D.9(c) of the Zoning Ordinance.

Sustainability

The Project will implement features and elements to promote a sustainable built environment. Applicant will use a construction waste management plan to process construction waste on and off site. As part of demolishing the Property's existing structures, Applicant estimates that approximately 42% of building materials will be recycled for use on site during the construction of the Project's "flex" buildings and related site work, with an additional approximately 31% of materials to be recycled at a local recycling center. Applicant also intends to use locally sourced materials for construction when possible.

The Project's new structures will feature building design features to mitigate the urban heat island effect. This includes "cool roof" surfaces, insulation, and radiant barriers. A "cool roof" utilizes high solar reflectance and high emissivity to reflect radiation and reduce heat absorption on the roof surface. These strategies reflect sunlight away from the buildings, thereby making them cooler and more energy efficient. The Project's new extensive landscaping, including trees and plantings within the parking lots, will also help reduce the urban heat island effect.

City of Gaithersburg

January 25, 2021

Page 5 of 8

Additionally, the Project will incorporate building construction design, materials, and systems to save energy. Lighting systems will use LED lamps and fixtures for all street lighting, signage, as well as for all interior and exterior building fixtures. The incorporation of building-level water metering, which helps track water consumption, and low-flow plumbing fixtures will also promote energy conservation. The Project will include the installation of Low-E glass, which helps minimize the amount of ultraviolet and infrared light that can pass through glass without compromising the amount of visible light that is transmitted. This further reduces energy costs. The Project also provides opportunities for on-site clean renewable energy generation. For example, the Project will include the installation of universal electric vehicle charging stations with solar panels.

Furthermore, the Project's proposed landscaping with native vegetation will create large areas of forest and increase tree canopy cover in comparison to existing conditions. As noted in the materials submitted with the Application, the Project will result in the planting of approximately 230 new trees and increasing tree canopy by approximately 2.29 acres when compared to existing conditions. The proposed design includes new areas of forest that will protect the on-site stream and offer habitat areas, atmospheric cooling, reduced runoff, and carbon sequestration. Furthermore, the Project includes significant landscaping within required open space areas and within the public realm. This includes the creation of a new linear park along the Property's approximately 1,400 foot Frederick Avenue frontage, as well the removal of existing impervious areas, provision of new plantings, and expansion of the riparian buffer in the naturalized areas of the Property along Montgomery Village Avenue and Interstate 270. The linear park and naturalized areas will be subject to new forest conservation easements, thereby advancing environmental protection objectives. The establishment of the linear park will also encourage pedestrian and bicycle circulation within the Northern Employment District.

Applicant has previously explored green roofs across its entire portfolio, as well as specifically for the Project based on comments raised during the joint public hearing. A considerable challenge with accommodating green roofs at the Project is the significant reduction and/or complete elimination of roof area for use by future tenants, including potential laboratory and biotechnology firms. Applicant's previous experience with developing similar "flex" buildings at other projects shows these types of tenants use the roof area for installing infrastructure, which helps reduce footprints and maximize operational efficiencies but limits roof access. A more pressing limitation arises from security concerns raised by prospective tenants. Access to the roof is limited to the tenant's contractors for maintenance, cleaning and testing of the tenant's own mechanical and electrical systems. These security concerns impact the overall functionality and operation of the facility and are

sensitive considerations by prospective tenants. Such difficulties also exist for accommodating solar panels on roofs. The Project appropriately balances tenant needs with sustainability goals by including cool roofs on the Project's two "flex" buildings, which will make the structures cooler and therefore more energy efficient.

Sustainability objectives will also be advanced through the Project's stormwater management facilities. As discussed in the next section below, several new bio-retention facilities will capture and clean stormwater runoff through new plantings and soil media. Stormwater infrastructure will also provide food sources for songbirds and pollinators, plant biomass, and plant and soil carbon sequestration while improving water quality on site. Applicant has even considered sustainability when the "flex" buildings reach the end of their useful life, as the majority of the building materials (e.g., concrete, steel) are recyclable.

Stormwater Management

As confirmed in the stormwater management concept submitted with the Application, the Project will significantly enhance the capture and treatment of stormwater. The City follows the Maryland Department of the Environment's ("MDE") requirements for stormwater management. MDE mandates that stormwater be treated through environmental site design ("ESD") to the maximum extent practicable ("MEP"). This entails smaller treatment facilities located throughout the site to treat runoff closer to the source, which mimics the site's natural hydrology.

The Property currently contains one existing retention pond, two structural facilities (Filterra), and three micro-bio-retention facilities on-site in the pre-development condition. Today, most of the site runoff is captured and conveyed to the pond through the existing storm drain system. A smaller portion of the site runoff first enters and is treated by one of the three existing micro-biofilter facilities before it is released to the existing storm drain system and conveyed to the pond.

The Project proposes to improve the Property's stormwater management by incorporating twenty new state-of-the-art micro-biofiltration facilities appropriately distributed throughout the site. The integration of these stormwater facilities is designed to treat stormwater runoff close to the source and mimic the pre-development drainage characteristics for the site. The overall strategy includes installing small-scale stormwater management facilities into the Project's site design, which in turn allows for stormwater runoff to be treated close to where it falls and infiltrated back into the ground. Doing so reduces the pollutant load conveyed downstream while reducing the runoff for smaller storm events and associated

City of Gaithersburg
January 25, 2021
Page 7 of 8

stream erosion for those same storm events. The proposed stormwater management strategy provides full treatment for the new impervious areas associated with the Project, as well as the required redevelopment treatment for the existing impervious areas, to meet City and State stormwater requirements.

Applicant's proposed stormwater management concept therefore considerably improves existing conditions by increasing the number of ESD facilities and thereby the volume to be treated in accordance with and excess of current City and State regulations. Treating increased stormwater volume upstream, while maintaining the existing retention pond's capacity, ensures that there is additional volumetric storage and treatment available by that pond. The overall stormwater implemented both meets and exceeds the stormwater management requirements on-site and does not request compliance through waivers, variances, or monetary contributions.

Environmental Waivers

In response to the comments and testimony presented at the December 21, 2020 joint public hearing, Applicant has prepared a supplement to the written statement justifying the Environmental Standards Waiver Application previously submitted with the Application. Applicant's Environmental Standards Waiver Application is included in the record as Exhibit #5 to SDP-8597-2020.

Specimen Tree Variance

In response to the comments and testimony presented at the December 21, 2020 joint public hearing, Applicant has prepared a supplement to the written statement requesting a variance for removing and impacting specimen trees. Applicant's Variance Request for Specimen Tree Removal/Impact is included in the record as Exhibit #30 to SDP-8597-2020.

Conclusion

Thank you for your consideration of these responses. Applicant requests this letter be included in the Planning Commission's and Mayor and City Council's respective records for SDP-8597-2020. Applicant will be present at the upcoming Planning Commission worksession currently scheduled for February 3, 2021, as well as the Mayor and City Council policy discussion currently scheduled for March 15, 2021 to answer any clarifying questions based on record evidence.

City of Gaithersburg
January 25, 2021
Page 8 of 8

Sincerely,

MILES & STOCKBRIDGE P.C.

Barbara A. Sears / KDM

Barbara A. Sears

Phillip A. Hummel / KDM

Phillip A. Hummel

cc: Caroline Seiden, City of Gaithersburg
Rob Robinson, City of Gaithersburg
Greg Mann, City of Gaithersburg
Mark Matan, The Matan Companies
Karl Morris, The Matan Companies
Brian Morris, The Matan Companies
Josh Sloan, VIKA
Ian Duke, VIKA

01.25.21

City of Gaithersburg

Mayor Jud Ashman and
Members of the City Council

John Bauer, Chair and
Commissioners of the Planning Commission

City of Gaithersburg
31 S. Summit Avenue
Gaithersburg, Maryland 20877

Re: SDP-8597-2020 – 700 North Frederick Avenue
Supplement to Specimen Tree Variance Request

Dear Mayor Ashman and Council Members and Chair Bauer and Commissioners:

MFV 700 NFA, LLC and DNIP4 700 NFA, LLC (collectively, the “Applicant”) is the owner of 700 North Frederick Avenue (the “Property”) in Gaithersburg (the “City”). Applicant has filed SDP-8597-2020 (the “Application”) to redevelop the Property with up to 461,100 square feet of commercial/employment/industrial uses in multiple structures, attractive green areas, and other amenities (the “Project”). The purpose of this letter is to respond to comments, questions, and testimony raised at the December 21, 2020 joint public hearing before the Mayor and City Council and the Planning Commission by supplementing Applicant’s October 21, 2020 Variance Request for Specimen Tree Removal/Impact included in the record as Exhibit #30 to SDP-8597-2020. This supplement incorporates by reference the content in Exhibit #30 and therefore does not repeat it herein.

Introduction

Through enabling authority provided by State law, Section 22-12(a) of the Gaithersburg City Code (the “City Code”) authorizes the disturbance of specimen trees with the approval of a variance. Generally, specimen trees have a diameter of 30 inches measured at four and one-half feet above the ground. See § 22-12(a)(3) of the City Code. Requests for variances must be made in writing. See § 22-12(b) of the City Code. Applicants for a variance must: (1) describe the special conditions peculiar to the property which would cause the hardship; (2) describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas; (3) verify that state water quality standards will not be violated or that a measurable



degradation in water quality will not occur as a result of the granting of the variance; and (4) provide any other information appropriate to support the request. See § 22-12(c) of the City Code. The City Council may approve a variance upon making the findings that an applicant has met necessary requirements. See § 22-12(e) of the Code.

The information contained in this supplement, combined with the content of Exhibit #30, establish that approval of the requested variance complies with the requirements of the City Code and is appropriate and justified.

Supplemental Information

As noted in Exhibit #30, Applicant requests a variance for the removal of nine (9) specimen trees on the Property.

The following table lists the nine specimen trees for which Applicant seeks a variance to remove:

TREE NO.	BOTANICAL NAME	COMMON NAME	D.B.H. (in.) *	CONDITION	RECOMMENDATION
22	Quercus palustris	Pin Oak	31	Good	REMOVE: 100% CRZ impact.
31	Pinus strobus	White Pine	36	Good	REMOVE: 100% CRZ impact.
50	Quercus palustris	Pin Oak	30.5	Good	REMOVE: 100% CRZ impact.
51	Quercus palustris	Pin Oak	40.5	Good	REMOVE: 100% CRZ impact.
59	Pinus strobus	White Pine	30	Good	REMOVE: 100% CRZ impact.
64	Salix babylonica	Weeping Willow	41	Poor	REMOVE: 35% CRZ impact; TREE IS NEARLY DEAD.
77	Quercus palustris	Pin Oak	35	Good	REMOVE: 100% CRZ impact.
86	Quercus palustris	Pin Oak	33	Good	REMOVE: 100% CRZ impact.
90	Quercus palustris	Pin Oak	32	Good	REMOVE: 100% CRZ impact.

* Diameter at Breast Height (D.B.H.)

Six of the nine trees proposed for removal (Trees 22, 50, 51, 59, 77, and 90) are located well within the Project’s Limit of Disturbance (“LOD”). Due to their central location on the Property, any commercially viable redevelopment would require removal of these trees. Furthermore, Applicant’s Project seeks to replace obsolete office buildings with modern “flex” buildings with accompanying retail and restaurant uses consistent with the existing character of the Northern Employment District, the built environment of neighboring properties, and the City’s long-standing master planning goals. Therefore, requiring Applicant to retain these trees would result in unnecessary hardship or practical difficulty.



The following drawing shows the location of these nine trees (highlighted in green) on the Property:



Three of the nine trees (Tree #31, Tree #86, and Tree #64) are located near the edge or just outside the LOD. Tree #31 is located near the edge of the LOD but within proposed grading that was thoughtfully and intentionally minimized to the extent possible. A grove of five large white pine trees ranging from 24 inches to 29.5 inches in diameter is located adjacent to Tree #31 and is proposed to be saved, preserving mature canopy in the immediate vicinity. These trees will be protected as part of the new Category I Forest Conservation Easement.

Tree #86 is a 33-inch pin oak in good condition located along the LOD and

northern property boundary in Parcel H where the existing parking area will be demolished. Applicant will save Tree #86 if possible by minimizing demolition work around the tree and installing appropriate tree protection measures. But because future development impacts to Tree #86 are not known at this time, Applicant is requesting Tree #86 be approved for removal if the tree is unable to be saved. Final determination shall be made by the City Arborist.

Lastly, Tree #64 is a 41” weeping willow that is located outside the LOD, but as shown in the following picture, is in poor health:



A retaining wall and minimal grading were utilized during the design process to minimize the impacts to Tree #64. This tree, however, is in significantly declining condition and is not expected to survive a 35% CRZ impact and is therefore requested for removal.

Benefits of the Project Related to Trees

In accordance with Section 22-12(c)(4) of the City Code, Applicant presents the following additional information appropriate to support its variance request. As explained below, the Project will provide significant tree enhancements when compared to the Property’s current conditions.

Existing Tree Canopy vs. Proposed Tree Canopy

As shown in the tables below, the Project proposes a considerable increase in



the number of new trees. The Project will add approximately 230 trees (645 proposed vs. 415 existing), which increases the number of trees on the Property by approximately 55%. As a result of these additional tree plantings, the Project will also significantly expand the Property’s existing tree canopy by an additional 99,800 square feet or 2.29 acres (369,116 square feet or 8.47 acres proposed vs. 269,316 square feet or 6.18 acres existing), augmenting the tree canopy on the site by approximately 37%:

Table 1A

Existing Trees Per ENV-8133-2019 approved 5/1/2019

	# of Trees	Canopy Credit	
		S.F.	AC.
Landscape Trees	44	33,700	0.77
Ex. Canopy Credit Trees	167	130,700	3.00
SVB Planting	118	82,700	1.90
Existing Forest*	86	22,216	0.51
Totals	415	269,316	6.18

Table 1B

Existing Trees to Remain and Proposed with Current Plan

	# of Trees	Canopy Credit	
		S.F.	AC.
New Landscape Trees	438	261,200	6.00
Ex. Canopy Credit to Remain	3	3,000	0.07
SVB Planting to remain	118	82,700	1.90
Existing Forest*	86	22,216	0.51
New Cat I Forest Planting**	159	69,052	1.59
New Cat II Forest Planting**	156	68,143	1.56
Totals	645	369,116	8.47

Notes:

Landscape, Existing Canopy, and SVB Trees are allotted canopy credit based on the 20-year canopy for the species.

*The number of trees is estimated based on the Basal Area rate of 169 trees per acre for this forest.

**The number of trees listed is the minimum forest rate required at 100 trees per acre.

Creation of New Forest Conservation Easements (Category I and II)

Forest conservation easements are a valuable tool for protecting and enhancing a property’s natural areas. These benefits include enhancing carbon sequestration, protecting wildlife, reducing the heat island effects in urban and suburban areas, and creating aesthetic value.

The Project will include new areas of the Property under the protection of Category I and Category II Forest Conservation Easements. The purpose of a Category I Easement is to preserve and protect existing and future forest area; entry and exit are allowed in the easement, but clearing of any tree, bush, or vegetation, or alteration of the natural landscape is prohibited with limited exceptions, including emergency tree removals and other necessary alterations allowed after reasonable notice is provided to the City. Category II Easements are typically placed over an area that features existing or future large trees to be preserved. Activities such as mowing, landscaping, and clearing of understory are allowed in Category II Easements, provided they do not damage or kill the trees protected by the easement.



Although no existing Forest Conservation Easement is shown in a title report or ALTA survey, tree plantings under the Property's previously approved Forest Conservation Plan PI-U110043 satisfied the forest conservation requirements and are subject to protection under that plan. The proposed Category I and Category II Forest Conservation Easement areas are shown in the following image and detailed in a subsequently shown table. The new areas subject to the Category I Forest Conservation Easement will include 3.44 acres of forest retention, incorporating previous stream valley buffer tree plantings and supplemented with 1.59 acres of adjacent forest plantings for a total of 5.03 acres. Additionally, the portion of the



Property subject to the new 1.56-acre Category II Forest Conservation Easement is proposed as a landscaped linear park along the Maryland Route 355 frontage.



Table 2A

CATEGORY I FOREST CONSERVATION EASEMENT (PARCEL D)

	SF	AC
Forest Retention Area	149,714	3.44
Afforestation Area 6	37,093	0.85
Afforestation Area 7	31,959	0.73
Total Category I Afforestation	69,052	1.59

Table 2B

CATEGORY II FOREST CONSERVATION EASEMENT (PARCELS A & B)

	SF	AC
Afforestation Area 1	6,354	0.15
Afforestation Area 2	11,847	0.27
Afforestation Area 3	19,274	0.44
Afforestation Area 4	9,829	0.23
Afforestation Area 5	20,839	0.48

Note: Discrepancies in AC column are due to rounding conversion errors from SF to AC

The proposed Category I Forest Conservation Easement plantings provide a significantly improved buffer for protection of the floodplain, wetland, and stream at the south and western ends of the Property and will enhance water quality and wildlife habitats. The Category II Forest Conservation Easement along the Property's Maryland Route 355 frontage helps establish a natural, visually appealing linear park that will encourage additional pedestrian and bicycle activity while providing an effective buffer between the Project and Maryland Route 355. These new forest conservation easement areas, combined with the proposed additional tree plantings and improved stormwater management, will significantly improve the natural systems on the site.

Conclusion

Applicant's requested variance establishes that all requirements of Section 22-12 of the City Code have been met and approval of the variance is necessary to avoid unnecessary hardship or practical difficulty. Furthermore, the Project, which requires



the approval of the variance for implementation, will significantly enhance the Property's environmental features.

Thank you for your consideration of these responses. Applicant requests this letter be included in the Planning Commission's and Mayor and City Council's respective records for SDP-8597-2020.

Sincerely,

VIKA Maryland, LLC

Joshua Sloan, RLA, ASLA, AICP
Director of Planning and Landscape Architecture / Vice President

cc: Caroline Seiden, City of Gaithersburg
Greg Mann, City of Gaithersburg
Mark Matan, The Matan Companies
Karl Morris, The Matan Companies
Brian Morris, The Matan Companies
Josh Sloan, VIKa
Ian Duke, VIKa

700 North Frederick Ave_ Variance Supplement 2021-0125 Final.docx



01.25.21

City of Gaithersburg

Mayor Jud Ashman and
Members of the City Council

John Bauer, Chair and
Commissioners of the Planning Commission

City of Gaithersburg
31 S. Summit Avenue
Gaithersburg, Maryland 20877

**Re: SDP-8597-2020 – 700 North Frederick Avenue
Supplement to Environmental Waiver Request**

Dear Mayor Ashman and Council Members and Chair Bauer and Commissioners:

MFV 700 NFA, LLC and DNIP4 700 NFA, LLC (collectively, the “Applicant”) is the owner of 700 North Frederick Avenue (the “Property”) in Gaithersburg (the “City”). Applicant has filed SDP-8597-2020 (the “Application”) to redevelop the Property with up to 461,100 square feet of commercial/employment/industrial uses in multiple structures, attractive green areas, and other amenities (the “Project”). The purpose of this letter is to respond to comments, questions, and testimony raised at the December 21, 2020 joint public hearing before the Mayor and City Council and the Planning Commission by supplementing Applicant’s October 28, 2020 Environmental Standards Waiver Application included in the record as Exhibit #5 to SDP-8597-2020. This supplement incorporates by reference the content in Exhibit #5 and therefore does not repeat it herein.

Introduction

Section 38 of the City’s Environmental Standards for Development Regulation authorizes waivers from the standards contained therein. Under Section 38, the City Council grants waiver applications when it finds that the public interest benefits of the project outweigh the risks to the environment and that there are no other feasible alternatives. As explained in Exhibit #5, Applicant seeks waivers arising from minor temporary and permanent impacts. Specifically, Applicant proposes 1,423 square feet of temporary impact to 100-Year Floodplain and stream buffer, and overlapping 1,400 square feet of temporary impact to the City’s 50-foot wetland buffer, all arising from the removal of an existing paved pedestrian pathway. Applicant also seeks 1,644 square feet of permanent impacts to stream buffer for a storm drain outfall and 197 square feet of permanent impacts to stream buffer for adjacent grading removing non-native fill.



The three areas associated with the waivers, as graphically shown in the following drawing and identified as Areas 1, 2, and 3, are minimal in scope in comparison to the overall approximately 40-acre Property and the significantly larger new Forest Conservation areas proposed for the site. The information contained in this supplement, combined with the content of Exhibit #5, establish that the Project will provide considerable public benefits, including improved environmental conditions.

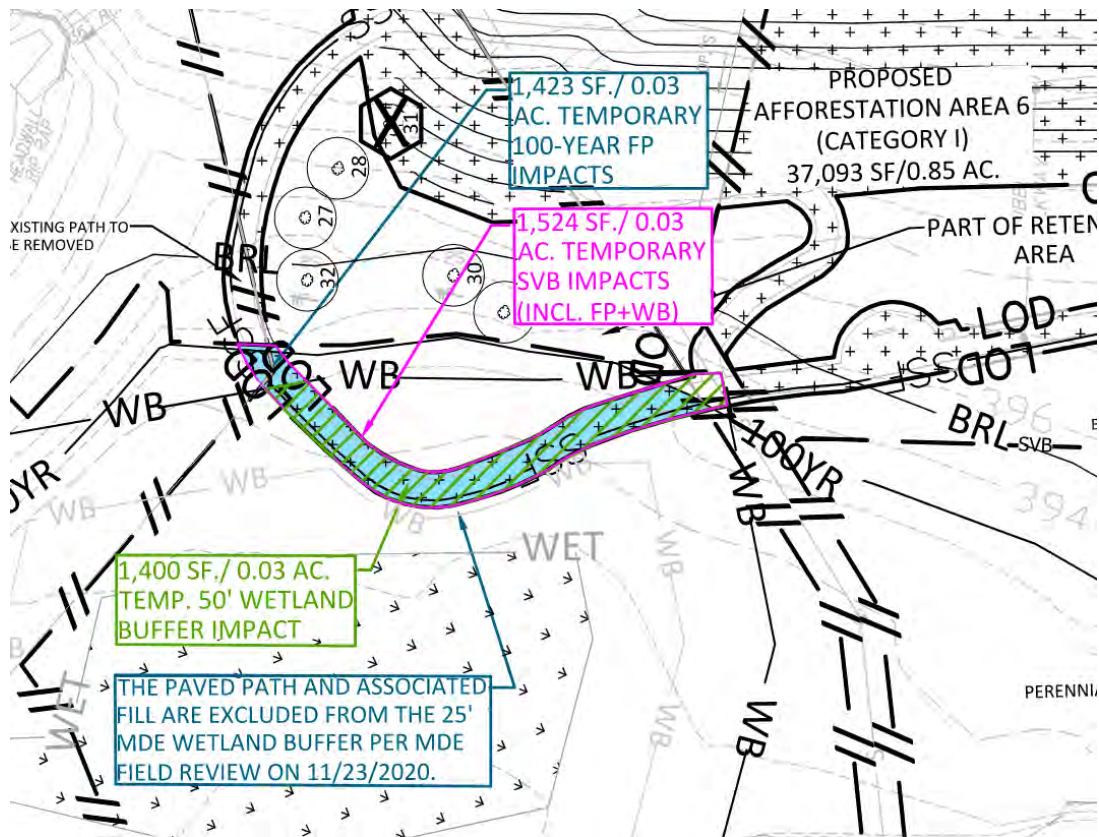


Waivers for Temporary Impacts Associated with Restoration Activities

Area 1

The waivers for Area 1 are associated with temporary impacts arising from the removal of the existing pedestrian pathway on the Property. Removing this manmade pathway and establishing a proposed forested area with new plantings help restore this portion of the Property (including Area 1) to its natural state, as well as improve the rate at which the forest regenerates and begins to function as designed.

The overlapping waivers associated with Area 1, which comprise 1,400 square feet of temporary impacts to the City's 50-foot wetland buffer, as well as 1,423 square feet of temporary impacts to the state-regulated 100-Year Floodplain, is for the removal of the existing paved pedestrian pathway, ground restoration, and forest planting. An impact to the stream valley buffer of 1,524 square feet encompasses both the impacts to the wetland buffer and the 100-Year Floodplain. Area 1 is highlighted in blue in the following drawing (not to scale):



Area 1 will be included in a new Category I Forest Conservation Easement. The purpose of a Category I Forest Conservation Easement is to preserve and protect existing and future forest area; entry and exit are allowed in the easement, but clearing of any tree, bush, or vegetation, or alteration of the natural landscape is prohibited with limited exceptions, including emergency tree removals and other necessary alterations allowed after reasonable notice is provided to the City.



The area of the pathway, as well as the surrounding area, will be enhanced with new forest plantings. In the photograph below facing roughly southeast, the stream and wetland lie towards the right, with the City's 50-foot wetland buffer and 100-Year Floodplain extending to the left of the wetland, encompassing the existing pathway section estimated by the outline in white. The proposed afforestation and Forest Conservation area is also indicated below, encompassing the temporary impacts necessary for restoration activities.



The naturalization and afforestation activities will result in significantly improved protection of the floodplain, and nearby wetland area and stream. Additional forest plantings in the pathway removal area and afforestation areas towards the left side of the pine grove in the photograph above, totaling 1.59 acres, will increase forest canopy cover. The currently planted but mowed area covering 3.44 acres will be allowed to regenerate into a natural forest ecosystem. Combined with the additional 1.59 acres of afforestation, a total of 5.03 acres of forest will be protected in a Category I Forest Conservation Easement buffering the adjacent stream, wetland, and pond.

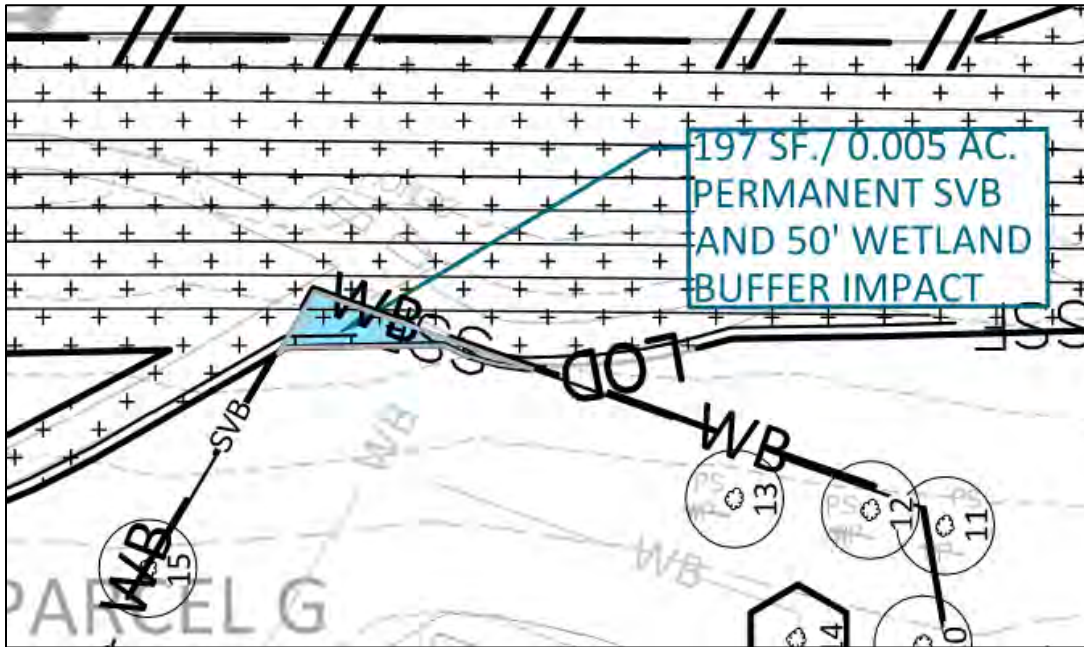
The proposed work was field-reviewed by the Maryland Department of the Environment (the "MDE") on November 23, 2020, and a Letter of Authorization (the "LOA") issuance from MDE is imminent. The LOA is issued instead of an individual permit in instances of minor impacts and allows Applicant to conduct a regulated activity in a nontidal wetland, wetland buffer, or flow path in or to Waters of the State, including regulated floodplains. The LOA is issued under the current Maryland State Programmatic General Permit in enforcement by the U.S. Army Corps of Engineers and satisfies state and federal requirements for temporary floodplain impacts for the pathway removal and restoration activities proposed by this project. The pathway and adjacent fill are considered currently developed areas and are excluded from the Maryland State 25-foot wetland buffer; therefore, no approval for wetland buffer impacts is required from MDE as confirmed during a MDE field meeting on November 23, 2020.



Waivers for Permanent Impacts Associated with Restoration Activities, Grading, and Storm Drain Outfall

Area 2

The waiver for Area 2, which comprises 197 square feet of permanent 50' wetland buffer and stream valley buffer impacts proposed for additional restoration activities and minimal grading, is shown highlighted in blue in the following drawing (not to scale):



Area of 197 s.f. of permanent SVB impact for grading and restoration activities, facing north:



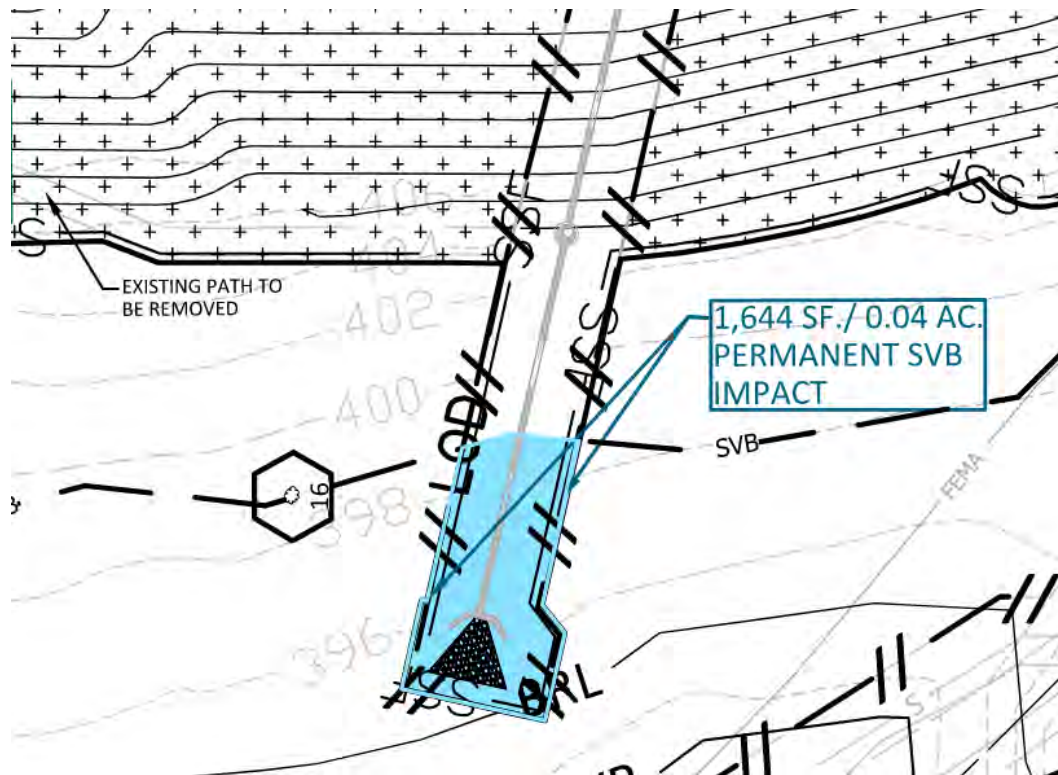
As with Area 1, the removed pathway in Area 2 will be replaced by forest plantings,



and the area of proposed grading including the impact area indicated in the above photograph will also be planted with new forest plantings. This proposed afforestation will greatly enhance a natural buffer for protection of the floodplain, nearby pond, and stream. Additionally, like with Area 1, Area 2 will be located within a new Category I Forest Conservation Easement. Grading within this area was minimized to the extent possible while providing a stable slope for the redeveloped area to reduce risk of erosion and slope failure that would negatively impact the wetland.

Area 3

Area 3, which comprises 1,644 square feet of permanent stream valley buffer impact, is proposed for a storm drain outfall and grading associated with construction of the Project. Area 3 is highlighted in blue in the following drawing (not to scale):



The storm drain outfall is a component of the Project's stormwater concept, which includes twenty new state-of-the-art micro-biofiltration facilities that will treat runoff volume in accordance with and in excess of current City and State regulations. This stormwater concept is designed for significant water quality protection. The minimal grading is necessary to construct the Project.

The following photograph shows that Area 3 is currently maintained as mowed lawn with some planted trees:



The land surrounding the outfall proposed for Area 3 will become a forested stream buffer protected in a new Category I Forest Conservation Easement in place of the currently mowed lawn. The approximate area of the proposed stormdrain outfall in the stream valley buffer shown in the photograph above will be planted with new trees and allowed to regenerate into natural forest. The Forest Conservation area surrounding the proposed outfall for Area 3 will consist of 3.44 acres of retained tree plantings to be allowed to regenerate into a natural forest system instead of the currently mowed landscape, with an additional 1.59 acres of afforestation along the proposed grading shown in the previous image, for a total of 5.04 acres of forest to buffer the nearby stream, wetland, and pond.

The proposed permanent impacts from stormdrain outfall and grading were minimized to the extent feasible, with no mitigation recommended by MDE. The minimum length of the outfall was designed to tie into existing elevation at the steep grade allowed for the outfall. The width of the outfall and construction footprint was minimized to the extent feasible for construction and maintenance. Additionally, the grading area and area outside the storm drain outfall for Area 3 will be forested and protected in a new Category I Forest Conservation Easement.

Conclusion

Applicant's requested waivers will greatly enhance the Property's environmental features. The waivers associated with Areas 1 and 2 are needed to remove the existing pathway, facilitate restoration activities, and result in new areas of the Property being protected by new Category I Forest Conservation Easements. Similarly, a significant area immediately outside of and contiguous to the stream buffer in Area 3 will be planted where not forested, and also placed into the new Category I Forest Conservation Easement. Furthermore, and as stated in other materials submitted with the Application, the Project will result in the planting of approximately 230 new trees and increasing the tree canopy by approximately 2.29 acres when compared to existing conditions. New state-of-the-art stormwater management will treat stormwater through environmental site design to the

maximum extent practicable to mimic the site's natural hydrology. Thus, the improved benefits to floodplain, wetland, and stream valley protection from afforestation and implementation of storm water management on the Property will provide substantial improvements to water quality, tree canopy, and protection of environmentally sensitive features. These important public interest benefits significantly outweigh the minimal impacts associated with Applicant's waivers. As such, the City should grant Applicant's waiver application.

Sincerely,

VIKA Maryland, LLC

Joshua Sloan, RLA, ASLA, AICP

Director of Planning and Landscape Architecture / Vice President

cc: Caroline Seiden, City of Gaithersburg
Greg Mann, City of Gaithersburg
Mark Matan, The Matan Companies
Karl Morris, The Matan Companies
Brian Morris, The Matan Companies
Ian Duke, VIKA

700 North Frederick Ave_Environmental Waiver Summary 2021-0125 Final.docx



01.25.21

City of Gaithersburg

Rob Robinson
City of Gaithersburg Environmental Planning
City Hall
31 South Summit Avenue
Gaithersburg, Maryland 20877

**Re: 700 North Frederick Avenue
Variance Request for Specimen Tree Removal/Impact**

Dear Mr. Robinson:

On behalf of our client, MFV 700 NFA, LLC & DNIP4 700 NFA, LLC (the “Applicant”), and pursuant to Section 22-12 of the Gaithersburg City Code (the “Code”), as well as Sections 5-1607 and 5-1611 of the Natural Resources Article of the Maryland Code, we respectfully request a variance to allow removal of nine (9) specimen trees identified below. These trees are also shown on approved Natural Resources Inventory/Forest Stand Delineation ENV-8133-2019, as well as the proposed Preliminary Forest Conservation Plan for the above-referenced project. As noted in greater detail below, it is appropriate to grant a variance in this matter because strict enforcement would result in unnecessary hardship or practical difficulty to Applicant.

Introduction

The project associated with this variance request is Applicant’s redevelopment of 700 North Frederick Avenue (the “Property”) in the City of Gaithersburg with up to 461,100 square feet of commercial/employment/industrial uses in multiple structures, along with attractive green areas and open spaces (the “Project”). The overall project site is comprised of 43.96 acres. The Phase 1 portion of the Property is currently comprised of approximately 40.34 acres of improved land with commercial structures, surface parking, bio-retention ponds, a walking trail, some forest, and landscaped areas with trees, shrubs, and lawn. The Property is bounded by Interstate 270 to the southwest, Montgomery Village Avenue (Maryland Route 124) to the southeast, North Frederick Avenue (Maryland Route 355) to the northeast, and a warehouse site addressed 800 North Frederick Avenue to the northwest.



As part of the proposed Project, Applicant seeks a variance for the removal of nine (9) specimen trees on the Property. This variance request complies with City of Gaithersburg and Maryland state law, which require Applicant to file for a variance from the City Code to remove or impact any Specimen Tree (tree 30” or greater in Diameter at Breast Height [DBH] or tree with a DBH equal to or greater than 75% of the current State Champion of its species as designated by MDNR); trees that are part of an historic site or associated with an historic structure; any tree designated by the State or County as a national, State, or County champion tree; or any tree, shrub or plant identified on the Rare, Threatened, or Endangered (RTE) species list provided by the U.S. Fish and Wildlife Service or the Maryland Department of Natural Resources. Only specimen trees with impacts to 15% or greater to their Critical Root Zone (“CRZ”) are included with this variance request.

The following table lists the nine (9) specimen trees for which Applicant seeks a variance to remove:

TREE NO.	BOTANICAL NAME	COMMON NAME	D.B.H. (in.)*	CONDITION	RECOMMENDATION
22	<i>Quercus palustris</i>	Pin Oak	31	Good	REMOVE: 100% CRZ impact.
31	<i>Pinus strobus</i>	White Pine	36	Good	REMOVE: 100% CRZ impact.
50	<i>Quercus palustris</i>	Pin Oak	30.5	Good	REMOVE: 100% CRZ impact.
51	<i>Quercus palustris</i>	Pin Oak	40.5	Good	REMOVE: 100% CRZ impact.
59	<i>Pinus strobus</i>	White Pine	30	Good	REMOVE: 100% CRZ impact.
64	<i>Salix babylonica</i>	Weeping Willow	41	Poor	REMOVE: 35% CRZ impact; TREE IS NEARLY DEAD.
77	<i>Quercus palustris</i>	Pin Oak	35	Good	REMOVE: 100% CRZ impact.
86	<i>Quercus palustris</i>	Pin Oak	33	Good	REMOVE: 100% CRZ impact.
90	<i>Quercus palustris</i>	Pin Oak	32	Good	REMOVE: 100% CRZ impact.

* Diameter at breast height in inches

Justification of Variance

Section 22-12(a) of the City Code authorizes the City to approve variances allowing disturbances to certain trees, including specimen trees. An applicant seeking a variance must present its request in writing and the applicable approving authority must make certain findings prior to approval. §§ 21-12(b) & (e) of the City Code. Applicant’s variance request satisfies the required findings as follows:

- (1) Describe the special conditions peculiar to the property which would cause the unwarranted hardship;



Applicant’s Project seeks to replace the Project’s obsolete and single-user office park campus with the Project, which will provide an employment hub containing multiple commercial/employment/industrial uses with attractive landscaped open spaces at a highly visible intersection. The Project will provide area residents with significant job opportunities, bring considerable economic investment to the Frederick Avenue Corridor, and offer uses that complement nearby commercial and residential areas and that are consistent with the current character of the Northern Employment District. Such redevelopment will advance long-standing City planning recommendations for the Property from the 1997 Master Plan, which are carried forward in the 2001 Corridor Plan and the Land Use Element of the 2009 Master Plan.

In addition to advancing the City’s master planning vision for the Property, the Project has been intentionally designed to minimize stream buffer impacts, preserve forest, and redevelop previously improved areas. The specimen trees proposed for removal or saved with CRZ impacts are located within landscaped areas on portions of the Property that are currently improved, such as within the vicinity of existing parking lots, or in landscaped areas that will require grading. Grading and other design considerations impacting trees were minimized to the extent practicable. Denial of the variance would cause unwarranted hardship by significantly reducing the area of the Property that could be redeveloped. This would preclude implementation of the Project, considerably undermine the economic viability of any redevelopment of the Property, and prevent achievement of the City’s adopted planning goals.

The Project will require removal of nine (9) specimen trees.

Impacts minimization and avoidance to the specimen trees are described as follows:

- **Trees # 22, 50, 51, and 77**

Proposed CRZ Impact: Severe at 100%

Tree Conditions: Good

These trees are proposed for removal due to their locations well inside the proposed Limits of Disturbance (L.O.D.) within or immediately adjacent to the Project’s proposed buildings. These trees are in currently landscaped areas. An effort to save these trees would require a significant reduction in usable building space to clear the CRZs and would not be reasonably feasible within the scope of Project’s design.



- **Tree # 31**

Proposed CRZ Impact: Severe at 100%

Tree Condition: Good

Tree 31 is proposed for removal due to its location in a proposed grading area that was minimized to the extent practical; however, avoidance of grading in the location of the tree was not plausible. This tree is located at the western end of the proposed construction outside of the stream valley buffer.

- **Trees # 59 and 90**

Proposed CRZ Impact: Severe at 100%

Tree Conditions: Good

Trees 59 and 90 proposed for removal are located at the edge of the current parking area and are also within the proposed L.O.D. where required grading is proposed. Tree 90 is also located adjacent to proposed stormwater structure.

- **Tree # 64**

Proposed CRZ Impact: Significant at 35%

Tree Condition: Poor

Tree 64 is proposed for removal due to its very poor condition, as well as significant CRZ impact.

- **Tree # 86**

Proposed CRZ Impact: Severe at 100%

Tree Condition: Good

Tree #86 is a 33-inch pin oak in good condition located along the LOD and northern property boundary in Parcel H where the existing parking area will be demolished. Applicant will save Tree #86 if possible by minimizing demolition work around the tree and installing appropriate tree protection measures. But because future development impacts to Tree #86 are not known at this time, Applicant is requesting Tree #86 be approved for removal if the tree is unable to be saved. Final determination shall be made by the City Arborist.

(2) *Describe how enforcement of this Chapter will deprive the landowner of rights commonly enjoyed by others in similar areas;*

Denial of the variance would also deprive Applicant of rights commonly enjoyed by others in similar areas. The land that abuts the Property to the northwest (800 North Frederick Avenue) has been improved with a FedEx transit warehouse



facility. Furthermore, sites within the Property’s vicinity, including those along the Frederick Avenue and Montgomery Village Avenue corridors, have been considerably improved with a wide variety of commercial development. This includes warehouses, offices, retail, personal services, restaurants, hotels, and car dealerships. The Project seeks to provide employment and accompanying retail commercial uses on the Property consistent with the existing character of the surrounding neighborhood and in close proximity to established residential communities and retail/commercial development, offer compatible buildings and uses, and advance the intent of the Property’s MXD zoning.

Strict enforcement of the City Code will unfairly prevent the redevelopment of the Property to the same extent as similarly situated properties along Frederick Avenue, Montgomery Avenue, and Interstate 270. Approval of the variance will allow Applicant to create an employment hub with a flexible range of jobs, as well as synergistic retail commercial uses, all of which is consistent with the rights enjoyed by nearby property owners. This includes the ability to improve the Property in a manner comparable to the present composition of the adjacent commercial corridors, as well as in harmony with the City’s long-established planning goals.

- (3) Verify that State water quality standards will not be violated and that a measurable degradation in water quality will not occur as a result of the granting of the variance;*

The granting of Applicant’s variance request will not result in a violation or State water quality standards, nor will a measurable degradation in water quality occur as a result. On the contrary, the Project will implement measures to improve water quality. A significant area within and adjacent to the Stream Valley Buffer (SVB) will be placed into a Category I Forest Conservation Easement and allow for an increase in the width of forested area buffering the onsite stream. In addition, a Category II Forest Conservation Easement is proposed along the Route 355 road frontage in order to allow for afforestation of this area in a manner that would be consistent to include public pathways. The Project also integrates current state-of-the-art stormwater management practices, which will improve upon the Property’s previous stormwater management system and enhance water quality.

- (4) Provide any other information appropriate to support the request.*

Approving Applicant’s variance request is justified for other reasons as well. The Project proposes both preserving and increasing onsite forest adjacent to the SVB subject to a Category I Forest Conservation Easement. In addition, the Project also includes establishing a Category II Forest Conservation easement area with



afforestation along the Property’s North Frederick Avenue frontage. The Landscape Plan includes a significant number of additional proposed plantings throughout the property, including shade trees, evergreen trees, ornamental trees, and planting beds, all of which will serve to improve ecological quality. The Project also incorporates open spaces that will enhance the Property’s existing conditions. This includes a linear park along the Property’s North Frederick Avenue frontage, which will promote additional pedestrian and cyclist activity in the area, as well as two new employee amenity areas, which will offer opportunities for gathering, collaboration, and relaxation in attractively landscaped areas with seating areas. Additionally, the Project encourages the efficient use of land by offering infill development at a prominent intersection with new employment opportunities and commercial services convenient to nearby businesses, residents, and transportation infrastructure.

Furthermore, the variance does not arise from a condition related to land or building use, either permitted or nonconforming, on a neighboring property.

Thank you for your consideration of Applicant’s tree variance request. The supporting information provided in this letter establishes that denial of the variance would result in unnecessary hardship or practical difficulty, as well as demonstrates Applicant’s extensive efforts to minimize impacts. Please contact me with any questions, or if you require additional information.

Sincerely,

VIKA Maryland, LLC

Joshua Sloan, RLA, ASLA, AICP
Director of Planning and Landscape Architecture / Vice President





01.25.21

City of Gaithersburg

Rob Robinson
City of Gaithersburg Environmental Planning
City Hall
31 South Summit Avenue
Gaithersburg, Maryland 20877

**Re: 700 North Frederick Avenue
Revised Environmental Waiver Request**

Dear Mr. Robinson:

On behalf of our client, MFV 700 NFA, LLC & DNIP4 700 NFA, LLC (the "Applicant"), and pursuant to Section 22-12 of the Gaithersburg City Code (the "Code"), as well as Sections 5-1607 and 5-1611 of the Natural Resources Article of the Maryland Code, we respectfully submit this waiver from the *Environmental Standards for Development Regulation* request to allow permanent impacts to approximately 1,644 square feet (s.f.) of stream buffer for a storm drain outfall, 197 s.f. of impacts to stream buffer and 50-foot City wetland buffer due to adjacent grading. A waiver is additionally requested for temporary impacts to 1,524 s.f. of stream valley buffer that includes 1,423 s.f. of temporary impacts to 100-Year Floodplain and 1,400 s.f. of temporary impacts to the 50-foot City wetland buffer for the purpose of removing the existing paved pedestrian pathway. The undisturbed portion of the existing pathway could not be feasibly connected to another path to the site due to grade restrictions and therefore removal of the path will be required. The impacts to state-regulated features are considered minor and temporary for restoration purposes, and an exemption for a permit requirement (Letter of Authorization) is being requested through an application to the Maryland Department of the Environment for the path removal. The proposed permanent impacts to City of Gaithersburg stream buffer from a storm drain outfall and a small amount of grading were minimized, with no mitigation recommended; however, the grading area, the path removal area, the entire stream buffer outside of the storm drain outfall, and a significant area immediately outside of the stream buffer will be planted where not forested and placed into a Category I Forest Conservation easement. The improved benefits to stream valley protection and water quality from afforestation and implementation of storm water management on the site will substantially outweigh the impacts to stream buffer. Over 40% of green area is provided in excess of the required 25% per the master plan in Phase 1 due to afforestation in the required linear park and sensitive environmental areas on the south



west portion of the site. As noted in greater detail below, strict enforcement and not granting the waiver would provide undue hardship by further reducing the developable area of the site.

Introduction

The project associated with this waiver request is Applicant’s redevelopment of 700 North Frederick Avenue (the “Property”) in the City of Gaithersburg with up to 461,100 square feet in Phase 1, of commercial/employment/industrial uses in multiple structures, along with attractive green areas and open spaces (the “Project”). The Phase 1 portion of the Property is currently comprised of approximately 40.34 acres of improved land with commercial structures, surface parking, bio-retention ponds, a walking trail, some forest, and landscaped areas with trees, shrubs, and lawn. The Property is bounded by Interstate 270 to the southwest, Montgomery Village Avenue (Maryland Route 124) to the southeast, North Frederick Avenue (Maryland Route 355) to the northeast, and a warehouse site addressed 800 North Frederick Avenue to the northwest.

As part of the proposed Project, Applicant seeks a waiver for impacts to some permanent, and some temporary impacts to the City of Gaithersburg-regulated stream valley buffer and 50-foot wetland buffer, and state-regulated 100-Year Floodplain. This waiver request complies with City of Gaithersburg law, which requires Applicant to file for a waiver from the City Code to impact any stream valley buffer. As stated in the *Environmental Standards for Development Regulation* (Regulation No. 01-01):

The City Council shall have the authority to review waiver applications and grant waivers where the Council finds that the public interest benefits of the project outweigh the risks to the environment and there are no other feasible alternatives. In cases where a waiver would cause a minor impact, the applicant may request that the City Council delegate the authority to the Planning Commission to review and grant the waiver during the site plan review process. When delegated the authority, the City Planning Commission shall conduct a separate vote on the waiver of any Environmental Standard rather than simply approving the waiver as part of a site plan approval.

The following table lists the stream buffer, 100-Year Floodplain, and wetland buffer impacts for which Applicant seeks a waiver for impacts.

IMPACT FEATURE	PROPOSED PERMANENT IMPACT (SF/AC)	PROPOSED TEMPORARY IMPACT (SF/AC)	REASON FOR IMPACT	REGULATORY AGENCY
Stream Valley Buffer	1,644 / 0.04	N/A	Stormwater outfall	City of Gaithersburg
Stream Valley Buffer	197 / 0.004	N/A	Grading	City of Gaithersburg
Stream Valley Buffer	N/A	1,524 / 0.03	Path removal	City of Gaithersburg
50' wetland buffer	N/A	1,400 / 0.03	Path removal	City of Gaithersburg
100-Year Floodplain	N/A	1,423 / 0.03	Path removal	MDE



Reasons for Granting Waivers

The Environmental Standards Section 38. *Waivers from Environmental Regulations* states that waivers will be reviewed on a case-by-case basis by either the City Council or the Planning Commission at the minimum necessary accord relief. The basis upon which waivers are granted are listed below along with a discussion following each standard on how these standards will be met.

Waivers may only be granted upon:

- a. *Completion of required approvals, rulings, permits, or waivers from all appropriate State and Federal findings agencies.*

Applicant is in the process of obtaining a Letter of Authorization for exemption from a permit for temporary, minimal impacts to the 100-Year Floodplain. A copy of the Letter of Authorization will be forwarded to the City of Gaithersburg.

- b. *A showing of good and sufficient cause and meeting the criteria outlined in Article III of this regulation.*

Applicant's Project seeks to replace the Project's obsolete and single-user office park campus with the Project, which will provide an employment hub containing multiple commercial/employment/industrial uses with attractive landscaped open spaces at a highly visible intersection. The Project will provide area residents with significant job opportunities, bring considerable economic investment to the Frederick Avenue corridor, and offer uses that complement nearby commercial and residential areas and that are consistent with the current character of the Northern Employment District. Such redevelopment will advance long-standing City planning recommendations for the Property from the 1997 Master Plan, which are carried forward in the 2001 Corridor Plan and the Land Use Element of the 2009 Master Plan.

In addition to advancing the City's master planning vision for the Property, the Project has been intentionally designed to minimize stream buffer impacts, preserve forest, and redevelop previously improved areas. Grading and other design considerations were reviewed to minimize stream buffer impacts to the extent practicable.

In addition to the Section 38 regulations, all of the Recommended Standards for Stream Buffers listed in Article III, Section 25 of the Environmental Standards for Development will be met. Only storm drain outfall, a minimal amount of necessary grading impact, and temporary impact for path removal are proposed in the stream buffer. Applicant addresses the factors below for consideration of granting this waiver



according to Article III Section 25.1.b.:

1. Reasonable alternatives for avoidance of the buffer are not available.

These activity footprints were minimized to the extent possible and are found to be necessary and unavoidable for this development. The maximum allowable stormflow will be directed to the existing stormwater pond at the northwest of the site; the remainder of the stormflow will be treated with onsite stormwater structures, and the storm drain outfall location extending into the stream buffer was unavoidable due to the required grade tie-out to minimize erosive velocity. As part of the grading required at the west end of the site the approximately 197 s.f. of grading into the stream buffer was unavoidable. Alternatives were considered to avoid removal of the existing pedestrian path; a portion of the southern end of the path will be unavoidably removed due to site construction and grading; reconstruction of access to the remaining portion within the stream buffer is not feasible due to grade constraints. Therefore, removal of the entire path is proposed because the undisturbed portion of the path is not allowed to remain without a connecting access path.

2. Encroachment into the buffer has been minimized.

The storm drain outfall extension into the stream buffer was terminated at the shortest distance possible while meeting grade requirements. The grading into the stream buffer was minimized to the extent possible. The path removal L.O.D. width was minimized to two feet on either side of the path, with removal of the path to be accomplished with light-duty machinery and manual removal to minimize ground disturbance.

3. Existing sensitive areas have been avoided (forest, headwaters, and wetlands and their designated buffers, floodplains, steep slopes, and habitat for rare, threatened, and endangered species and their associated protection buffers).

Existing sensitive areas have been avoided for the permanent impacts from a small area of grading and storm drain outfall except for the stream buffer. No floodplain, wetland, wetland buffer, stream, RTE species or habitats will be impacted from these activities. Only temporary and minimal impacts for removal of the existing pedestrian path are proposed to stream buffer, 100-Year Floodplain, and City of Gaithersburg 50-foot wetland buffer.

4. The proposed use is consistent with the preferred use of the buffer (e.g., pervious areas such as tie-outs to existing grades, slope stabilizing BMPs, etc.).

The storm drain outfall is required infrastructure for the purpose of implementing stormwater management onsite to protect stream water quality, and the necessary tie-out of the storm drain structure to the required elevation in the stream buffer is consistent with the preferred use of the buffer. The small areas of grading within the buffer and removal of the existing path will be planted with trees and placed in a



Forest Conservation easement, and therefore consistent with the preferred use of the buffer.

5. The plan design provides compensation for the loss of buffers.

After removal of the path, forest plantings will be installed, and the path area will be included in a Category I Forest Conservation easement. No mitigation is proposed expressly for encroachment into the stream buffer for grading and storm drain outfall installation, or temporary impacts for the path removal; however, the proposed afforestation and regeneration of naturalized forest understory within and immediately adjacent to the existing stream buffer will expand the currently forested area and more than compensate for the loss of buffer function, significantly enhancing the existing stream buffer function overall. The additional forested area will be much larger than the stream buffer impact for the storm drain outfall and grading. The path removal impacts will be temporary for restoration purposes, with the previously described methods to minimize ground disturbance within the stream buffer, 100-Year Floodplain, and wetland buffers. This area will also be planted and allowed to naturalize within a Forest Conservation easement.

- c. A determination that failure to grant a waiver would result in unnecessary or undue hardship to the applicant.*

Failure to grant a waiver would result in unnecessary or undue hardship to Applicant. The land that abuts the Property to the northwest (800 North Frederick Avenue) has been improved with a FedEx transit warehouse facility. Furthermore, sites within the Property's vicinity, including those along the Frederick Avenue and Montgomery Village Avenue corridors, have been considerably improved with a wide variety of commercial development. This includes warehouses, offices, retail, personal services, restaurants, hotels, and car dealerships. The Project seeks to provide employment and accompanying retail commercial uses on the Property consistent with the existing character of the surrounding neighborhood and in close proximity to established residential communities and retail/commercial development, offer compatible buildings and uses, and advance the intent of the Property's MXD zoning.

Strict enforcement of the City Code will unfairly prevent the redevelopment of the Property to the same extent as similarly situated properties along Frederick Avenue, Montgomery Avenue, and Interstate 270. Approval of the waiver will allow Applicant to create an employment hub with a flexible range of jobs, as well as synergistic retail commercial uses, all of which is consistent with the rights enjoyed by nearby property owners. This includes the ability to improve the Property in a manner comparable to the present composition of the adjacent commercial corridors, as well as in harmony with the City's long-established planning goals.

The required grading and storm drain outfall at the west end of the



development were minimized to the extent practical while meeting the design standards required. The storm drain outfall was required to extend into the stream buffer in order to meet elevation requirements and minimize erosive velocity. All of the 2.86 acres of required Forest Conservation plantings for the entire site (including Phase 1) are proposed to be met onsite in Forest Conservation easements along Route 355 and the western end of the site, providing a forested buffer extending well-beyond the delineated stream buffer. For the Phase 1 development, the Green Area provided covers 41.55% of the Phase 1 portion of the site, which is in excess of the required 25%. Per the master plan, Green Areas provided are from afforestation in the required linear park along Route 355, and sensitive environmental areas on the western portion of the site. Strict enforcement and not granting the waiver would provide unnecessary hardship for Applicant by further reducing the developable area of the site.

- d. *A determination that the granting of the waiver will not result in increased flood heights, additional threats to public safety, extraordinary public expenses, or the creation of nuisances.*

The granting of the waiver will not result in increased flood heights, additional threats to public safety, extraordinary public expenses, or the creation of nuisances. A floodplain study has been approved for this development which modeled the run-off from the entire site as entering at the high end of the on-site stream. This proposed storm drain out fall will in reality convey less than 50% of the site run-off to the stream at the proposed outfall. The remaining site run-off will outfall to the existing pond in the northwest corner of the site. It was determined to be infeasible to route all the site run-off to the existing pond because the proposed development increases the impervious area for the site and would result in a run-off volume that exceeds the design volume of the pond.

- e. *A determination that there are no conflicts with existing local and State laws or ordinances.*

No conflicts with existing local and State laws or ordinances have been identified. The required permit exemption (Letter of Authorization) for impacts to Maryland-regulated features are in the process of being obtained from MDE, satisfying state and federal requirements for the proposed activities. No other impacts to federally-regulated features are proposed. After State requirements are met, the granting of the Environmental Standards waiver by the City of Gaithersburg would comply with State requirements. The granting of Applicant's waiver request will not result in a violation or State water quality standards, nor will a measurable degradation in water quality occur as a result. On the contrary, the Project will implement measures to improve water quality. A significant area within and adjacent to the stream buffer (SB) will be placed into a Category I Forest Conservation Easement and allow for an increase in the width of forested area buffering the onsite stream. In addition, a Category II Forest Conservation Easement



is proposed along the Route 355 road frontage in order to allow for afforestation of this area in a manner that would be consistent to include public pathways. The Project also integrates current state-of-the-art stormwater management practices, which will improve upon the Property's previous stormwater management system and enhance water quality.

Thank you for your consideration of Applicant's Environmental Standards waiver request. The supporting information provided in this letter establishes that denial of the waiver would result in unnecessary hardship or practical difficulty, as well as demonstrates Applicant's extensive efforts to minimize impacts. Please contact me with any questions, or if you require additional information.

Sincerely,

VIKA Maryland, LLC

Joshua Sloan, RLA, ASLA, AICP

Director of Planning and Landscape Architecture / Vice President

Z:\50000-50500\50240\DOCUMENTS\50240B\PLANNING\ENVIRONMENTAL\PF\ENVIRONMENTAL WAIVER (COG)\2021-0122 ENV WAIVER REVISED\700 NFA - Environmental Waiver Request_2021-0122





* PRELIMINARY NOT FOR CONSTRUCTION, PERMIT, OR REGULATORY APPROVAL. * BOUNDARY LINES AND EASEMENTS ARE PRELIMINARY & REQUIRE VERIFICATION - SURVEY NOT PROVIDED. * ALL BUILDING AREAS ARE APPROXIMATE UNTIL BUILDING FOOTPRINT/ ENTRY DESIGNS ARE FINALIZED.
* RENDERING IS REPRESENTATIVE OF DESIGN INTENT ONLY. IT IS NOT A PHOTOREALISTIC REPRESENTATION OF ACTUAL MATERIALS PROPOSED AND SHOULD BE CONSIDERED PRELIMINARY AT ALL STAGES.

Illustrative Building Architecture for Lots 5 & 6



* PRELIMINARY NOT FOR CONSTRUCTION, PERMIT, OR REGULATORY APPROVAL. * BOUNDARY LINES AND EASEMENTS ARE PRELIMINARY & REQUIRE VERIFICATION - SURVEY NOT PROVIDED. * ALL BUILDING AREAS ARE APPROXIMATE UNTIL BUILDING FOOTPRINT/ ENTRY DESIGNS ARE FINALIZED.
* RENDERING IS REPRESENTATIVE OF DESIGN INTENT ONLY. IT IS NOT A PHOTOREALISTIC REPRESENTATION OF ACTUAL MATERIALS PROPOSED AND SHOULD BE CONSIDERED PRELIMINARY AT ALL STAGES.

Future Phase of Development Shown to Depict Proposed Architectural Continuity