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DAVID W. BROWN

Sole Practitioner

April 5, 2021

Via Email

rob.robinson@gaithersburgmd.gov

Rob Robinson, Manager
Long Range Planning
Planning and Code Administration
City of Gaithersburg
31 South Summit Avenue
Gaithersburg, MD 20877

Re: **Environmental Standards Waiver Request
Concept Plan, Whip Clean Car Wash**

Dear Mr. Robinson:

This firm represents a number of resident homeowners who live within sight and sound of the automatic car wash being proposed for construction on three lots at 601, 605 and 607 South Frederick Avenue in Gaithersburg (the "Project"). My clients intend to oppose the Project on a number of grounds, as will be delineated in separate correspondence with the Department of Planning and Code Administration.¹

The applicant, Crain Partners, LLC ("Applicant"), separately submitted to you on March 4, 2021 an Environmental Standards Waiver Request in connection with the Project. I write separately to oppose the Waiver Request. The Applicant has fallen far short of presenting adequate justification for the substantial departure from the Environmental Standards.

1. Violation of Environmental Standards

It is important to first disclose what the Applicant failed to disclose – the scope and breadth of the buffer intrusions proposed to be excused by the Waiver Request. As shown on the Applicant's Exhibit A: Buffer Impacts, three different environmental buffers are proposed to be compromised: stream valley, wetland, and flood plain.

¹ The list of impacted and concerned homeowners represented by this firm, at present over 15, is still growing. If deemed necessary, the current list will be provided upon requested.

a. Stream Valley Buffer

The Project proposes to disturb 9,804.92 square feet of the stream valley buffer on the Property. This will leave a narrow strip of stream valley buffer on the Property undisturbed, the area of which is not disclosed. Nevertheless, it is quite apparent that around 70% of the stream valley buffer on the Property would be lost, and that a significant portion of that (again with area undisclosed) is to be paved over, to facilitate parking stalls with vacuums and other features.

Section 25.1.5.b. prohibits clearing and grading in the stream valley buffer and construction of impervious surfaces in the buffer and construction of impervious surfaces in the buffer.

b. Wetland Buffer

Overlapping the stream valley buffer is a 2,016.91 square foot wetland buffer that is to be lost, including a portion (area undisclosed) that is to be paved over.

Section 26.1.c. requires that wetland buffers to be “maintained in their natural condition unless the proposed disturbance is for a project determined to be necessary and unavoidable for the public good....”

c. Flood Plain Buffer

Also overlapping the stream valley buffer is a flood plain buffer intrusion of 2,103.24 square feet, in a location separate from the intrusion into the wetland buffer. The total floodplain buffer area on the Property is not disclosed, but the amount impacted appears to be over 80% of the total.

Most of the buffer area is within the limit of disturbance (LOD) shown in Exhibit A. Section 26.3.b. requires the maintenance of a buffer free of land-disturbing activity that is a 25’ minimum horizontal distance from the 100-year flood plain, unless Planning and Code Administration issues a flood plain permit or exemption.

2. The Claim of Good and Sufficient Cause for Article III Violations

Under the waiver standards in Section 36, the Applicant must show “good and sufficient cause” for failing to meet the foregoing requirements. Section 36.1.b. It has not seriously attempted to do so. Instead, the Applicant claims, in broad, conclusory language, that adverse impacts of the intrusions into the sensitive areas are minimized “as much as possible.” The Applicant also claims, again with no supporting detail, that the “buffer encroachments are the minimum necessary to accomplish the goal of safe and suitable conveyance of storm drainage from the site. In fact, while there are two storm water management structures in the buffer areas, those structures comprise only a small fraction (again, quantitatively undisclosed) of the

encroachment area. Beyond that small area, the Applicant has failed to make any showing of good and sufficient cause for the much larger waiver requested.

3. The Claim of Unnecessary or Undue Hardship Absent the Waiver

Under Section 36.1.c., the Applicant has the burden of demonstrating “that failing to grant a waiver would result in unnecessary or undue hardship” to it. The Applicant has not even attempted to demonstrate this. Instead, the Applicant offers the conclusory claim that “[r]easonable alternatives for avoidance of the buffers are not available.” The unstated and indefensible premise of this argument is that buffer protection must invariably be subordinated to development plans, as if they are immutable. Left completely unaddressed, for example, is whether a different or reduced-scale car wash project could eliminate or reduce the buffer encroachments. Nor is there any evidence that the Property cannot be significantly redeveloped with one or more CD-Zone permitted uses other than a car wash, with all (or nearly all) of the necessary LOD free of buffer encroachment.

The Applicant avoids the real question raised by Section 36.1.c. because the Applicant’s only true “hardship” from waiver denial, even assuming the car wash facility could not be scaled back in respect of the environmental constraints on development of the Property, would be the lost opportunity cost of developing a property that it does not own. The supporting statement for the Applicant’s Concept Plan states that the Applicant is the “contract purchaser” of the Property, i.e., not the current owner. The Applicant has not claimed that it will suffer any property-based loss (as opposed to speculative business venture expense) if the waiver is denied. In that event, the Applicant may deem the Property ill-suited to fruition of its car wash business model. If so, the natural inference, absent (missing) evidence to the contrary from the Applicant, is that its contract with the Property owner makes closing on the sale of the Property contingent on the various plan approvals necessary from the City. In short, the Applicant has failed to show, and likely cannot show, that waiver denial would cause it unnecessary or undue hardship.

4. Decision on Waiver Request

It is not clear at present whether the decision on the Waiver Request will be made by staff or the Planning Commission. Either way, under Section 38.2 two findings must be made. The first is that “the public interest benefits of the project outweigh the risks to the environment.” The record presented to date does not come close to warranting this finding. It is simply not plausible that the requested major intrusions into an environmentally sensitive area are outweighed by the public interest in a large-scale car wash on heavily trafficked South Frederick Avenue. Second, is that “there are no other feasible alternatives.” The record makes clear that “feasible alternatives” to a large-scale automatic car wash have not even been considered, let alone demonstrated to be an infeasible outcome for CD-Zone redevelopment at this location.

Rob Robinson
Planning and Code Administration
City of Gaithersburg
April 5, 2021
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CONCLUSION

For the foregoing reasons, the Applicant's Environmental Waiver Request should be denied in full.

Respectfully submitted,

A handwritten signature in black ink that reads "David W. Brown". The signature is written in a cursive style with a long horizontal line extending to the right.

David W. Brown
Knopf & Brown
401 E. Jefferson Street, Ste 206
Rockville, MD 20850
(301) 545-6100
brown@knopf-brown.com

Attorney for Opposing Neighboring Residents

Jasmine Forbes

From: Jasmine Forbes
Sent: Tuesday, April 6, 2021 9:58 AM
To: 'Lindsay Harris'
Subject: RE: Support car wash

Good Morning,

Thank you for your correspondence related to Concept Site Plan SP-8819-2021. Your correspondence will be included into the record. If you have any questions, please feel free to contact me.

Regards,
Jasmine Forbes

Jasmine Forbes, Planner II
Planning and Code Administration

City of Gaithersburg | 31 South Summit Avenue | Gaithersburg, MD, 20877
Direct: 240-805-1069 | Main: 301-258-6330 | www.gaithersburgmd.gov
Jasmine.Forbes@gaithersburgmd.gov

-----Original Message-----

From: Lindsay Harris <lindsayagerber@gmail.com>
Sent: Monday, April 5, 2021 10:01 PM
To: Planning External Mailing <Planning@gaithersburgmd.gov>
Subject: Support car wash

This email is from an EXTERNAL source. Please use caution when opening attachments, clicking links, or responding.

To whom it may concern,

My name is Lindsay Harris and I have lived in Gaithersburg since 2001. I am writing in to support the proposed Whip Clean Express Car Wash on the corner of S Frederick Ave and Central Ave. I think a state-of-the-art Express car wash would be a great addition to the corridor and the community. The existing corridor lacks prominent retail and could really use some improvement. We live in a major metropolitan city and could definitely use another carwash.

Thank you,
Lindsay Harris

Jasmine Forbes

From: Jasmine Forbes
Sent: Tuesday, April 6, 2021 10:02 AM
To: 'Ellana Corrado'
Subject: RE: Car wash

Good Morning,

Thank you for your correspondence related to Concept Site Plan SP-8819-2021. Your correspondence will be included into the record. If you have any questions, please feel free to contact me.

Regards,
Jasmine Forbes

Jasmine Forbes, Planner II
Planning and Code Administration

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Direct: 240-805-1069 | Main: 301-258-6330 | www.gaithersburgmd.gov
Jasmine.Forbes@gaitersburgmd.gov

-----Original Message-----

From: Ellana Corrado <ellanab@yahoo.com>
Sent: Monday, April 5, 2021 10:08 PM
To: Planning External Mailing <Planning@gaitersburgmd.gov>
Subject: Car wash

This email is from an EXTERNAL source. Please use caution when opening attachments, clicking links, or responding.

To whom it may concern,

My name is Ellana Corrado and I have lived in Gaithersburg since 2004. I am writing in to support the proposed Whip Clean Express Car Wash on the corner of S Frederick Ave and Central Ave. I think a state-of-the-art Express car wash would be a great addition to the corridor and the community. The existing corridor lacks prominent retail and could really use some improvement. We live in a major metropolitan city and could definitely use another carwash.

Jasmine Forbes

From: Jasmine Forbes
Sent: Tuesday, April 6, 2021 10:05 AM
To: 'Stacy Soler'
Subject: RE: Support of Proposed Car Wash

Good Morning,

Thank you for your correspondence related to Concept Site Plan SP-8819-2021. Your correspondence will be included into the record. If you have any questions, please feel free to contact me.

Regards,
Jasmine Forbes



Jasmine Forbes, Planner II
Planning and Code Administration

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Direct: 240-805-1069 | Main: 301-258-6330 | www.gaithersburgmd.gov
Jasmine.Forbes@gaitersburgmd.gov

From: Stacy Soler <stacylashley3@gmail.com>
Sent: Monday, April 5, 2021 10:25 PM
To: Planning External Mailing <Planning@gaitersburgmd.gov>
Subject: Support of Proposed Car Wash

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To whom it may concern,

My name is Stacy Soler, and I have lived in Gaithersburg since 2003 . I am writing the City to express my support for the proposed Whip Clean Express Car Wash on the corner of S Frederick Ave and Central Ave. I think a state-of-the-art Express car wash would be a great addition to the corridor and the community. The existing corridor lacks prominent retail and could really use some improvement. We live in a major metropolitan city and another car wash would be a perfect addition.

Stacy Soler

Jasmine Forbes

From: Jasmine Forbes
Sent: Tuesday, April 6, 2021 10:08 AM
To: 'Kristi Swartz'
Subject: RE: Whip Clean

Good Morning,

Thank you for your correspondence related to Concept Site Plan SP-8819-2021. Your correspondence will be included into the record. If you have any questions, please feel free to contact me.

Regards,
Jasmine Forbes

Jasmine Forbes, Planner II
Planning and Code Administration

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Jasmine.Forbes@gaithersburgmd.gov

-----Original Message-----

From: Kristi Swartz <kristiswartz@verizon.net>
Sent: Monday, April 5, 2021 10:49 PM
To: Planning External Mailing <Planning@gaithersburgmd.gov>
Subject: Whip Clean

This email is from an EXTERNAL source. Please use caution when opening attachments, clicking links, or responding.

To whom it may concern,

My name is Kristi Swartz and I have lived in the city of Gaithersburg since 1998. I am writing in to support the proposed Whip Clean Express Car Wash on the corner of S Frederick Ave and Central Ave. I think a state-of-the-art Express car wash would be a wonderful addition to the corridor and the community. The existing corridor lacks prominent retail and could really use some improvement. I love to support the local businesses. We live in a major metropolitan city and could definitely use another good carwash.

Thank you!
-Kristi Swartz

Sent from my iPhone