

RESOLUTION NO. R-15-21

RESOLUTION OF THE MAYOR AND CITY COUNCIL GRANTING APPROVAL OF SCHEMATIC DEVELOPMENT PLAN SDP-8597-2020, KNOWN AS 700 NORTH FREDERICK AVENUE, LOCATED AT 700 NORTH FREDERICK AVENUE, FOR APPROXIMATELY 38.89 ACRES OF PROPERTY ZONED MIXED USE DEVELOPMENT (MXD)

SDP-8597-2020

OPINION

Schematic development plan application SDP-8597-2020 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.

The subject case involves approximately 38.89 acres of a 43.96-acre site and concerns the redevelopment of the subject property. The subject property is comprised of Part of Parcel C of the IBM Subdivision as depicted on Plat No. 19929 and is addressed as 700 North Frederick Avenue (the "Property"). The schematic development plan application was submitted to the City Planning and Code Administration on September 15, 2020. This application was designated as SDP-8597-2020.

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. Prior to the Property's annexation, Montgomery County approved over 1 million square feet of development on approximately 125 acres (including the Property) between 1965 and 1986. The Property, at the time of annexation, was developed with two office buildings built in the 1960s, surface 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 subject 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. This comprehensive rezoning did not include new sketch plans, nor did it alter any terms of the Annexation Agreement. Vested site plans were retained; only the zoning of the parcel changed.

Since annexation, numerous amendments to the site plan have been approved allowing modifications to the existing office development. Most notably, AFP-09-004 in 2009 allowed the construction of an enclosed entryway to connect the entrances of the two office buildings. Other site plan amendments provided for parking lot revisions and landscape improvements as well as a food service area addition which was never built.

On August 19, 2019, the Mayor and City Council approved Sketch Plan SK-8180-2019 for the redevelopment of 700 North Frederick Avenue. The Sketch Plan permits up to 650,000 square feet of commercial/employment/industrial development split over two blocks equating to an FAR or approximately .34 FAR over 43.96 acres. The current application, SDP-8597-2020 is the first Schematic Development Plan application under the newly approved Sketch Plan and covers 38.89 acres of the 43.96 acres.

B. Current Application:

On September 15, 2020, Brian Morris of MFV 700 NFA, LLC and DNIP4 NFA, LLC submitted an application for schematic development plan, SDP-8597-2020. The subject application requests to demolish existing office buildings, remove the existing surface parking lots, and construct two 225,000 square foot flex buildings and associated parking, plus 11,100 square feet of retail in two pad sites flanking North Frederick Avenue (Exhibit #79). The plan also proposes to complete the North Frederick Avenue linear park across the entire length of the property's North Frederick Avenue frontage as well as provide additional employee amenity and naturalized open spaces. 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 application SDP-8597-2020 on December 21, 2020. Comments discussed during the course of the hearing related to the use of mezzanine space in the flex building, the quality of the architecture, phasing of development, necessity of the Environmental Waiver and Tree Variance requests, and the applicant's sustainability plans.

Two (2) members of the public provided oral testimony at the hearing. No additional testimony from the public was received prior to the close of the record.

At the conclusion of the hearing, the Planning Commission announced, by motion, the closing of their record on January 27, 2021 with the recommendation scheduled for February 3, 2021. Subsequently, the Mayor and City Council, announced by motion, the closing of their record on February 12, 2021, with policy discussion anticipated for March 15, 2021.

In response to issues raised during the course of the joint public hearing, the applicant made minor modifications to the Schematic Development Plan to revise the preliminary building elevations for the flex buildings and enhance the Design Guidelines to ensure an elevated level of design. Additionally, the retail building on Lot 1 was expanded by 500 square feet from 5,500 square feet to 6,100 square feet.

The Planning Commission reviewed the SDP-8597-2020 application at its regular meeting on February 3, 2021. 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 SDP-8597-2020 application to be in conformance with the MXD Zone standards. Consequently, the Planning Commission recommended approval of the SDP-8597-2020 application to the City Council with 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; and
2. Applicant to receive final approval for proposed access and lane revisions to North Frederick Avenue from Maryland State Highway Administration prior to Final Site Plan review by the Planning Commission.

As part of its review of the site plan, the Planning Commission expressed its support for the revised preliminary architecture for the Flex Buildings on Lots 5 and 6. The Commission agreed that the scale, massing, proportions and proposed materials of the building was generally acceptable at this stage of approval and specified that the base material for the buildings should not be split face concrete block. The commission was also complimentary of the applicant's efforts to recycle a significant amount of the existing structures.

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 schematic development plan SDP-8597-2020 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 subject application for the approval of schematic development plan SDP-8597-2020, 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 schematic development plan application SDP-8597-2020 was complete and contains all the information and components required under § 24-169(b) of the City Code;
3. The subject property is regulated by the 1997, 2003, and 2009 Master Plans and the 2001 Frederick Avenue Corridor Land Use Plan. SDP-8597-2020 proposes redeveloping the Property with commercial/ employment/ industrial uses, in compliance with the above stated Master Plan recommendations. SDP-8597-2020 achieves the general and specific Master Plan recommendations through the predominant mix of flexible buildings to accommodate a wide range of employers, with a small amount of supporting retail uses. The Applicant intends to develop an employment hub, providing a diverse range of jobs for nearby residents. 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 February 4, 2021, within thirty (30) days of the close of the Commission's hearing record on January 27, 2021;

6. The Council is taking action on the application within ninety (90) days after the close of the Council's hearing record on February 12, 2021;
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 first schematic development under SK-8180-2019 and will be integrated within the existing road networks.

Furthermore, the City Council finds from the evidence of record that the application for schematic development plan approval, SDP-8597-2020, 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 up to 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 current application, SDP-8597-2020 is the first Schematic Development Plan application under the approved Sketch Plan, and permits up to 11,100 square feet of retail and 450,000 square feet of employment/office/other commercial/institutional uses, well within the maximums set by the Sketch Plan.

All uses proposed in the SDP, 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.

The plan also advances the goals of the Sketch Plan by continuing the linear park across the Property's entire North Frederick Avenue frontage, providing two employee amenity spaces within the interior of the property, and maintaining an 8-acre naturalized area on the southern portion of the property.

(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) Application SDP-8597-2020 provides a superior natural environment by incorporating new and existing landscaped areas, preserving natural topographic and geologic features, wetlands, watercourses, and open spaces, adding 2.29 acres of tree canopy to the site, providing new stormwater management strategies, and creating Category I and II Forest Conservation Areas.
- (b) Application SDP-8597-2020 contributes to and supports a mix of land uses, 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) Application SDP-8597-2020 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 SDP reduces reliance on the automobile and encourages pedestrian and other non-vehicular circulation systems by including complete streets with comfortable sidewalks, attractive landscaping, and efficient connections to adjacent uses.
- (d) The SDP 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:

Application SDP-8597-2020 is in accord with and fulfills recommendations from the City's Master Plans:

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.

SDP-8597-2020 proposes redeveloping the Property with commercial/ employment/ industrial uses, in compliance with the above stated Master Plan recommendations. SDP-8597-2020 achieves the general and specific Master Plan recommendations through the predominant mix of flexible buildings to accommodate a wide range of employers, with a small amount of supporting retail uses. The Applicant intends to develop an employment hub, providing a diverse range of jobs for nearby residents. 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. 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. The planned continuation of the North Frederick Avenue linear park also provides recreational opportunities for both on-site workers and nearby residents.

- (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 of the City Code)** - The applicant has included a Traffic Statement (Exhibit #69), 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 (Exhibit #70) and therefore the application complies with the City's Adequate Public Facilities requirements for § 24-245.

2. **Schools (§ 24-246)** - SDP-8597-2020 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 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 completed in one phase and will be served by a complete set of public and private amenities. The development of the linear park across the entire North Frederick Avenue as part of SDP-8597-2020 ensures that adequate amenities will be in place for future schematic development plans anticipated for Parcels H and J. 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 represents the redevelopment of a functionally obsolete and vacant office complex and will provide employment opportunities for potentially hundreds of workers in multiple industries in close proximity to existing housing and commercial developments. The proposed development also contributes to the completion of the long-planned 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.

Additionally, SDP-8597-2020 fulfills many objectives of the City FY '21 Strategic Plan, including:

Economic Development: Support large-scale assemblages and infill development to accelerate implementation of the City Master Plan and the Frederick Avenue Corridor and Vicinity Capacity Study.

Parks Recreation and Culture: Ensure resident proximity to parks with goal of less than .25 miles; Work to ensure that shared-use trails, bike lanes, and bike infrastructure are considered in the planning of road and infrastructure projects.

Planning and Development: Provide amenities in new neighborhoods and strive to add additional neighborhood amenities within established neighborhoods; Ensure compatible development patterns that are phased and constructed in a manner that creates the least amount of disruption as part of the entitlements process.

Transportation: Support alternate modes of transportation through the provision of convenience equipment such as bicycle racks and electric vehicle charging stations; Integrate bicycle and pedestrian design elements into road design and traffic calming measures.

In summary, the City Council finds application SDP-8597-2020 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-8597-2020

RESOLUTION

WHEREAS, a Tree Removal Variance Request letter (Exhibit #6, SDP-8597-2020) was submitted by Marion Bundens, Vika Maryland LLC, on behalf of the applicant, Brian Morris, MFV 700 NFA, LLC and DNIP4 NFA, LLC., in accordance with § 22-12(b), discussing and displaying the subject trees requested to be removed and the evidence

for requirements and criteria for granting the request in compliance in § 22-12 of the City

Code as part a development plan, known as Schematic Development Plan Application SDP-8597-2020; and

WHEREAS, the Mayor and City Council conducted a Joint Public Hearing with the Planning Commission on application SDP-8597-2020, including the Tree Removal Variance, on December 21, 2020; and

WHEREAS, the Mayor and City Council find, from the evidence submitted and the staff recommendation, that the enforcement of a prohibition of removing the specimen trees would mean reducing the development program, which would deprive the applicant of the rights commonly enjoyed by others who are in similar areas that have many of the same features as the subject property; and

WHEREAS, the Mayor and City Council find that approval of the Tree Removal Variance will not confer on the applicant a special privilege that would be denied for other applicants for the development of this property, nor did the surrounding land or building uses have any inherent characteristics that have created this particular need for a variance; and

WHEREAS, the Mayor and City Council find that approval of the Tree Removal Variance will not violate state water quality standards or cause measurable degradation in the water quality, and that the applicant has met all requirements for the variance under § 22-12 of the City Code;

NOW, THEREFORE BE IT ORDAINED by the City Council of Gaithersburg, Maryland that SDP-8597-2020, being an application filed by Brian Morris, MFV 700 NFA, LLC and DNIP4 NFA, LLC, requesting approval of Schematic Development Plan SDP-8597-2020 and a Tree Removal Variance for nine trees 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; and

2. Applicant to receive final approval for proposed access and lane revisions to North Frederick Avenue from Maryland State Highway Administration prior to Final Site Plan review by the Planning Commission.

ADOPTED by the City Council this 15th day of March, 2021.

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

THIS IS TO CERTIFY that the foregoing Resolution was adopted by the City Council in a public meeting assembled on the 15th day of March, 2021.

DocuSigned by:
Tanisha Briley
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Tanisha Briley, City Manager