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July 14, 2020

*By Electronic Mail*

Mr. Casey Anderson, Chair  
and Members of the Montgomery County Planning Board  
The Maryland-National Capital Park & Planning Comm.  
8787 Georgia Avenue  
Silver Spring, MD 20910

Re: Response of the Applicants to Request of Stormwater Partners Network of Montgomery County (“Petitioners”) for Reconsideration of Project Plan Amendment No. 91998005C and Site Plan Amendment No. 81999002M (collectively, “Amendments”) - Downtown Silver Spring (“Reconsideration Request”)

Dear Chairman Anderson and Members of the Planning Board:

On behalf of our clients, Silver Spring LC, PFA-C Silver Spring LC, PFA-D Silver Spring LC, PFA-H Silver Spring LC, and PFA Silver Spring Manager LC (“Applicants”), we are submitting this opposition to Petitioners Reconsideration Request. The Reconsideration Request concerns the Board’s approval of the use of synthetic turf on a portion of Ellsworth Drive. The Site Plan Amendment calls for approximately 8,000 square feet of the Ellsworth right-of-way to be covered with synthetic turf. The total area of the right-of-way contains approximately 30,000 square feet. All other portions of the right-of-way would remain hardscaped by upgraded stone and brick pavers and other improved street scape elements. The right-of-way would continue to provide vehicular access from Georgia Avenue to the alley between Parcel E, Block B, and Parcel F, Block B, as a one-way street leading to the Wayne Avenue Garage. This design is shown on the attached exhibit from the Staff Report.

Reconsideration requests are addressed in Section 4.2 of the Board’s Rules of Procedure (“Rules of Procedure”). Section 4.12.1 requires a petition to specify any alleged errors of fact or law and “state fully all grounds for reconsideration because of mistake, inadvertence, surprise, fraud, or other good cause.” Accordingly, just because a party disagrees with the Board’s decision does not present sufficient grounds for reconsideration.

The Request for Reconsideration is unpersuasive and falls far short of establishing the necessary grounds to support a grant. Initially, Petitioners concede that the testimony they submit as part of their Petition dated June 18, 2020, from the Stormwater Partners Network of Montgomery County

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and signed by several of their member organizations, had been submitted to the Planning Board prior to the Planning Board's action approving the Amendments as had testimony by their individual and member organizations, including the Friends of Sligo Creek and Safe Healthy Playing Fields. When this testimony and the extensive testimony and evidence of record on the synthetic turf issues are examined, they demonstrate that extensive consideration was given to the use of synthetic turf, including questions involving compliance with stormwater laws and regulations, care and maintenance, how hot the turf becomes, content of the turf to be used, ability to support emergency vehicles, and support the continuation of events such as the farm market.

The Staff Report addresses the synthetic turf issues in detail at pages 17 through 19. The Staff Report references and attaches correspondence received by citizens and interested organizations on their concerns with the synthetic turf, as well as letters and extensive supporting material from County agencies, the Applicants and the manufacturer. Specifically, the Staff Report explains that the proposed use of synthetic turf was reviewed by the Department of Environmental Protection ("DEP"), which concluded that artificial turf fields do not violate County laws so long as best management practices are applied. The Staff Report attached the Manufacturers Care and Maintenance Manual for the turf and conditioned the approval of the Site Plan Amendment on the Applicants incorporating the Maintenance Manual within the Certified Site Plan and regularly maintaining the synthetic turf according to the latest version of this Manual (Condition 4). Also attached to the Staff Report were copies of the other supporting materials submitted to County agencies and staff, providing in-depth information on flammability testing, product specifications, installation methods, specified adhesive, runoff, and heat buildup. Finally, the Staff Report states that the proposed synthetic turf also received approval from DOT, DPS Right-of-Way Permitting, and DPS Fire Access and Water Supply, "which reviewed the supplemental material provided by the Applicant in response to many of these concerns" (see page 19 and Attachment D).

Therefore, the Planning Board properly considered and weighed the substantial evidence of record on the synthetic turf issue and rendered its decision approving the proposal. The denial of the Request for Reconsideration is also supported by Maryland case law. The issues regarding the synthetic turf were fully explored. No legally recognized ground for reconsideration under the Rules of Procedure is established by the Request for Reconsideration. Further, the Request for Reconsideration does not allege mistake, surprise, fraud or inadvertence and offers no new evidence or arguments. The material presented by Petitioners merely restates in different words points of opposition previously raised and considered by the Board, Staff and multiple agencies that carefully reviewed the facts and applicable law. Further, Maryland courts have long held that granting reconsideration under such circumstances would be an unlawful "mere change of mind" and not constitute good cause. *Cinque v. Montgomery County Planning Bd.*, 173 Md. App. 349, 359 (2007), citing *Howlin Realty Mgmt.*, 364 Md. at 325 (quoting *Schultze v Montgomery County Planning Bd.*, 230 Md. 76, 81 (1962)).

For the above reasons, Applicants respectfully request that the Planning Board deny the Request for Reconsideration.

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Thank you for your consideration.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Barbara A. Sears', is written over the typed name.

Barbara A. Sears

Enclosure

cc: Matt Mills  
Gwen Wright  
Robert Kronenberg  
Stephanie Dickel  
Grace Bogdan  
Bryant Foulger  
Paul Weinschenk  
Kelly Price  
Todd Langford



Figure 5 - Illustrative Plan