



**4990 Fairmont Avenue, Project Plan 920130070 & Preliminary Plan 120130230**

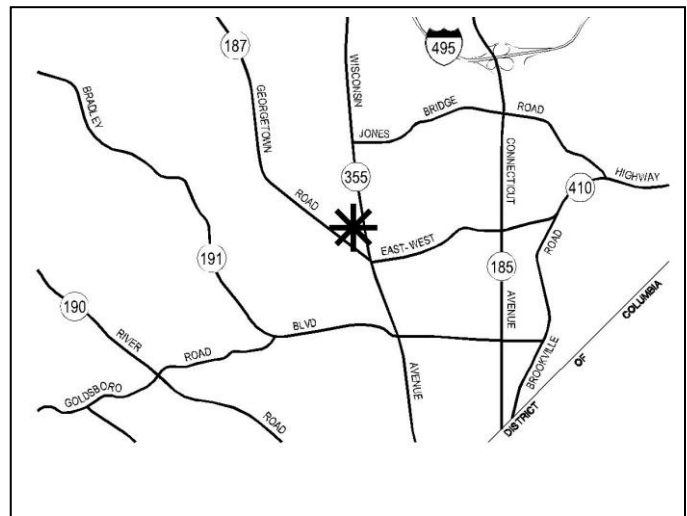
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Staff Report Date: 7/5/13

**Description**

- Location: 4990 Fairmont Avenue, Bethesda
- Gross Tract Area: 22,884 square feet
- Request: Approval of a project plan for a mixed use building 138,052 gross square feet in size, including 7,000 square feet of non-residential space and 131,052 square feet of residential space with 23% on-site public use space; Approval of a preliminary plan to consolidate three lots into one lot and a maximum of 72 residential dwelling units including 15% MPDUs
- Sector Plan: 2006 Woodmont Triangle Amendment to the 1994 Bethesda Central Business District Sector Plan
- Applicant: 4990 Fairmont LLC
- Filing Date: May 1, 2013



**Summary**

- The staff recommends **approval** of Project Plan 921030070
- The staff recommends **approval** of Preliminary Plan 120130230
- The 4990 Fairmont Avenue project is an urban infill redevelopment project in the Woodmont Triangle. The project provides artist incubator space within the first floor of the building along Old Georgetown Road as part of the on-site public use space requirement.
- The project includes 15% Moderately Priced Dwelling Units.
- Approval of the project plan and preliminary plan applications will allow for the applicant to proceed to the site plan application stage.

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# SECTION 1: CONTEXT AND PROPOSAL

## SITE DESCRIPTION

### Vicinity

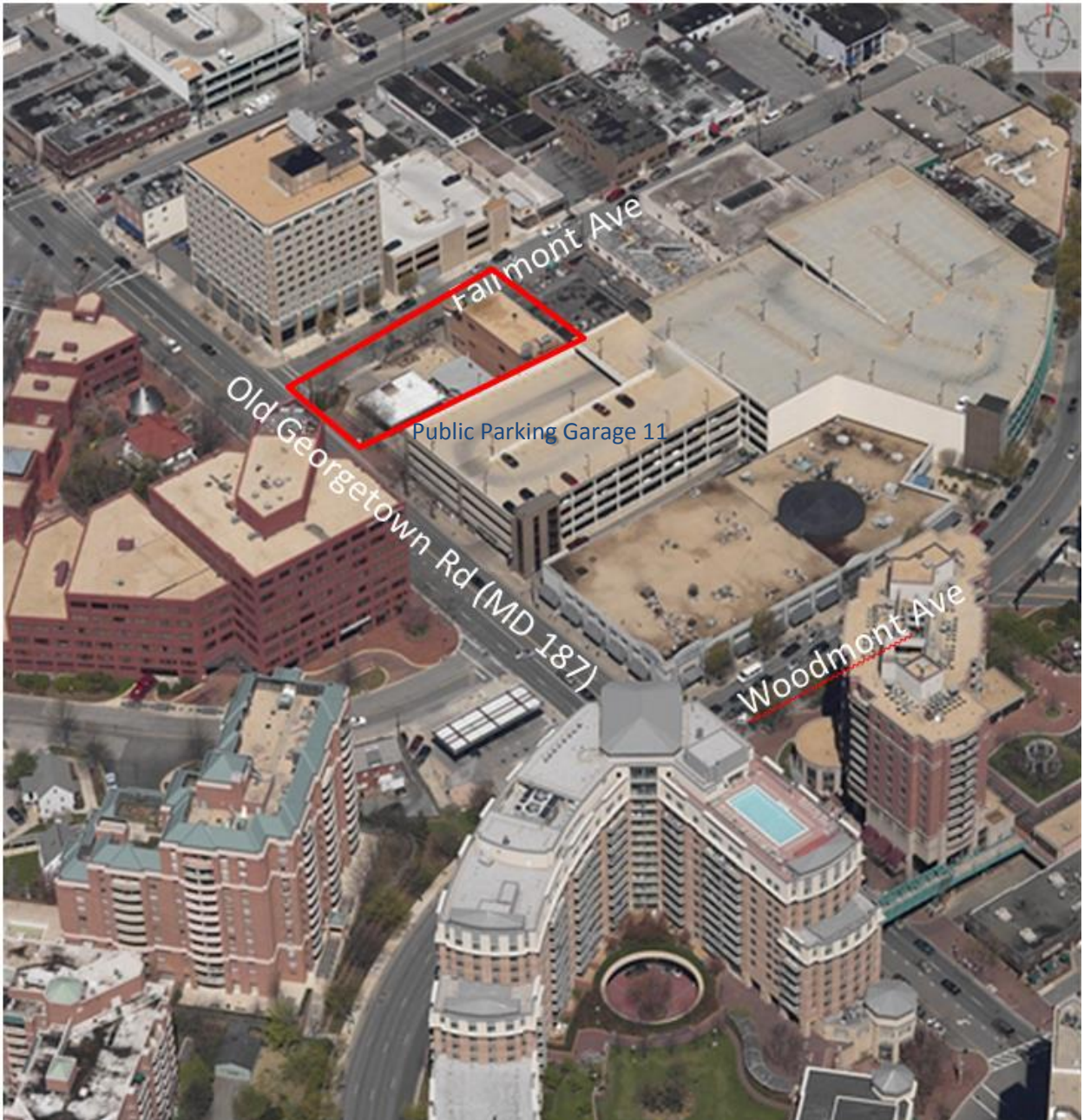
The site for this application ("Subject Property" or "Site") is located within the Bethesda Central Business District ("CBD") in the northeast quadrant of the intersection of Old Georgetown Road and Fairmont Avenue. The site has approximately 140 feet of street frontage on Fairmont Avenue and approximately 105 feet of street frontage on Old Georgetown Road. The net tract area of the Site is 14,685 square feet, and when taking prior right of way dedications into account, the gross tract area of the Site is 22,884 square feet. The property is governed by the 1994 Bethesda CBD Sector Plan and lies within the 2006 Woodmont Triangle Amendment area of the plan.



Vicinity Map



The site is zoned CBD-2. Surrounding properties include a four story Montgomery County Public Parking Garage (Garage 11) to the southeast, Positano Restaurant is a two story building adjacent to the site on the northeast, across Fairmont Avenue from the site is an 11 story office building and parking garage, and across Old Georgetown Road on the southwest are commercial uses within two story buildings as well as an eight story office building. The properties across Old Georgetown Road are not within the limits of the Bethesda CBD. The Subject Property is approximately 1500 feet from the Bethesda Metrorail station and bus transit center.



*Aerial Photo (View looking north)*

### **Site Analysis**

The Site has a gross tract area of approximately 22,884 square feet and consists of three individual lots. The property is improved with impervious pavement associated with the BP gas station on the site. The auto repair shop is still in operation but the gas station pumps and tanks have been removed from the Site. A three story office building is also located on the Site, which will be demolished if all plan approvals are granted by the Planning Board. The property contains no forest or other significant environmental features.

## **PROJECT DESCRIPTION**

### **Proposal**

The applicant proposes to redevelop the property and construct a mixed use building with a maximum height of 174 feet. The building proposed consists of 7,000 square feet of ground floor retail and artist incubator space, four stories of structured parking above grade, and 12 floors of residential uses above the parking garage on floors six through 17. The parking garage will be wrapped by the retail on the ground floor and screened with on the upper floors of the garage. The residential floors will contain a total of 72 multi-family dwelling units including 15%, or 11 total MPDUs. An overall 6.03 FAR is proposed on the 22,884 square foot site. Vehicular access to the garage and loading dock is shown from Fairmont Avenue, and pedestrian access to the residential lobby is shown from Fairmont Avenue. Access to the ground floor retail is shown from both Fairmont Avenue and Old Georgetown Road. An existing five foot wide alley that runs from Old Georgetown Road to the 4900 Fairmont Avenue project recently approved for redevelopment separates the public parking garage and the Subject Property. The alley currently provides pedestrian access to two side doors serving the public parking garage. The applicant proposes to widen this alley along the proposed building façade to 11 feet in width and use the alley for multiple access points to the artist incubator space.

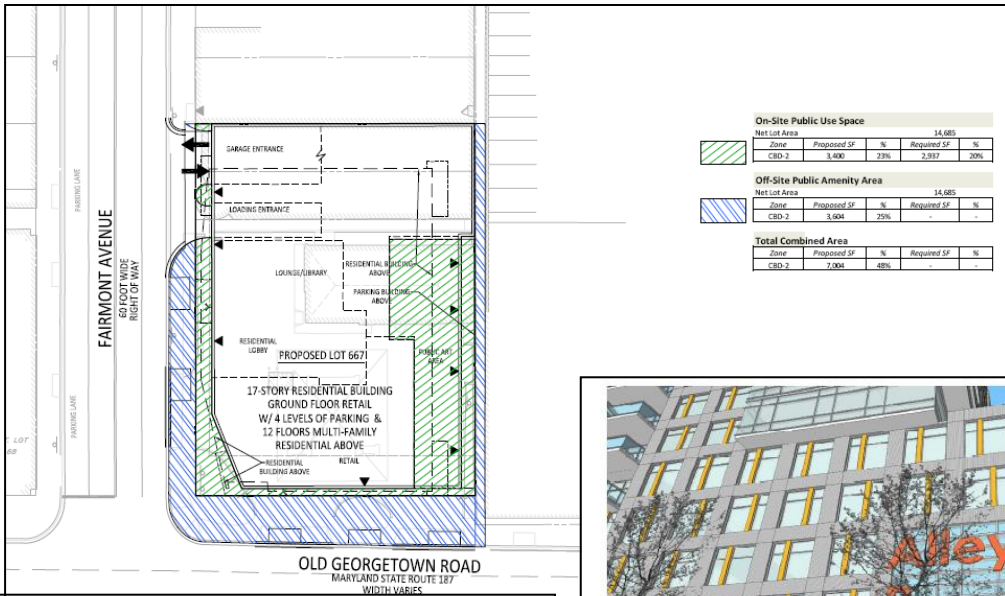
The artist incubator space will be managed by the Bethesda Urban Partnership and count towards the percentage of public use space provided on the Site. With the artist incubator space and improvements around the building that will extend the streetscape, the 20% public use space requirement is exceeded with 23% of the net lot area as public use space on the site. For off-site amenity areas, the applicant will provide streetscape improvements along the Site's Old Georgetown Road property frontage and Fairmont Avenue frontage with the undergrounding of utilities, brick pavers, and new street trees. The applicant will also improve the alley that extends from the property line to the public parking garage with brick pavers. This alley will then be approximately 11 feet in width, a much more comfortable clearance for the pedestrian than exists today.



*Proposed Architecture*

The Site is located within the Bethesda Parking Lot District, so the Applicant has the option to provide no on-site parking or fewer parking spaces per unit, but the Applicant will pay a tax for any parking not provided on the site. The parking requirement for the retail uses is 23 spaces and 87 spaces are required for the residential units. At this time, the Applicant is electing to provide 101 of the 110 spaces on site in the four story parking garage, but the final parking allocation will be determined at the site plan stage. For on-site loading, two loading spaces are required for a building of this size. The applicant has submitted a design exception package to MCDOT requesting a waiver of one loading space. The applicant is required to provide two but deems only one necessary due to the limited number of units and condominium regime that will result in limited turnover over the course of each year.





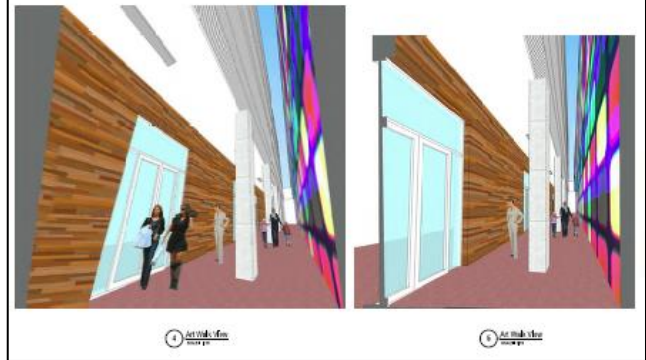
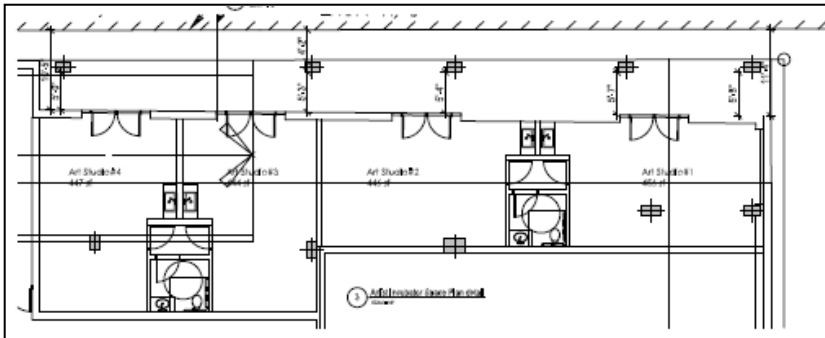
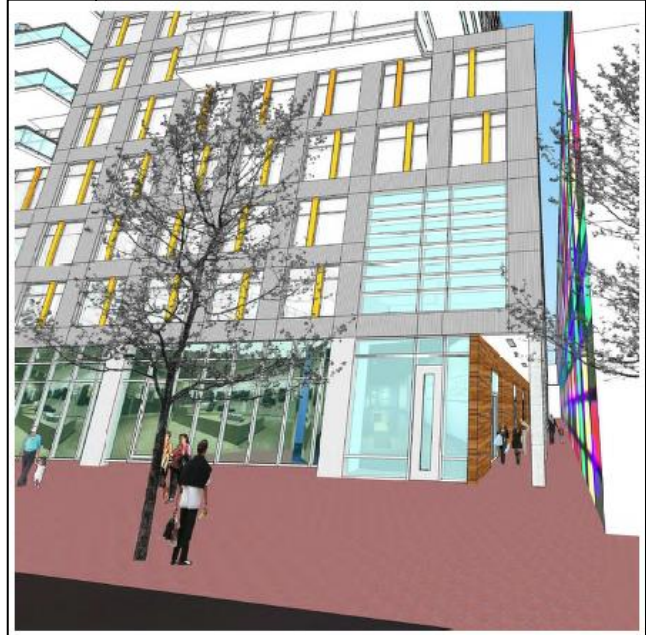
On-Site Public Use Space					
Net Lot Area		14,685			
Zone	Proposed SF	%	Required SF	%	
CBD-2	1,400	23%	2,917	20%	

Off-Site Public Amenity Area					
Net Lot Area		14,685			
Zone	Proposed SF	%	Required SF	%	
CBD-2	3,604	25%	-	-	

Total Combined Area					
Net Lot Area		14,685			
Zone	Proposed SF	%	Required SF	%	
CBD-2	7,004	48%	-	-	



Proposed Public Use Space

## COMMUNITY OUTREACH

The applicant has met all proper signage, noticing, and submission meeting requirements. On June 21, 2013, Staff met with an adjacent property owner to discuss their concerns regarding the alley connecting Public Parking Garage 11 to public rights-of-way. This owner presented exhibits to Staff [Appendix C] and suggested the applicant locate the artist incubator space off of Fairmont Avenue with an alley running alongside it from Fairmont Avenue to Public Parking Garage 11, much like the walkway for Imagination Stage off of Del Ray Avenue. Staff presented the property owner's suggestions to the applicant, who submitted a written response to these suggestions [Appendix D]. The applicant believes Old Georgetown Road offers the most visibility for the proposed artist incubator space and the incubator space in this location provides an increased setback from the property line as proposed, whereas moving the artist incubator space to the Fairmont Avenue side of the building would then necessitate constructing the building all the way to the eastern property line, resulting in a narrow 4 foot wide alley along the side of the public parking garage and thereby exacerbating the dark and narrow conditions that exists today. Furthermore, a mid-block pedestrian connection on Fairmont Avenue approximately 260 feet north of the Subject Property, will be available once the approved 4900 Fairmont Avenue project and The Monty project are completed, running from Public Parking Garage 11 to St. Elmo Avenue. Staff concurs with the applicant's position, and believes the artist incubator space location off of Old Georgetown Road is preferable in terms of safety and overall building design. Staff has not received correspondence on either the project plan or preliminary plan applications from any other property owners or concerned citizens as of the date of this report.



## SECTION 2: PROJECT PLAN

### RECOMMENDATION AND CONDITIONS

Staff recommends approval of Project Plan No. 920130070, 4990 Fairmont Avenue, subject to the following conditions.

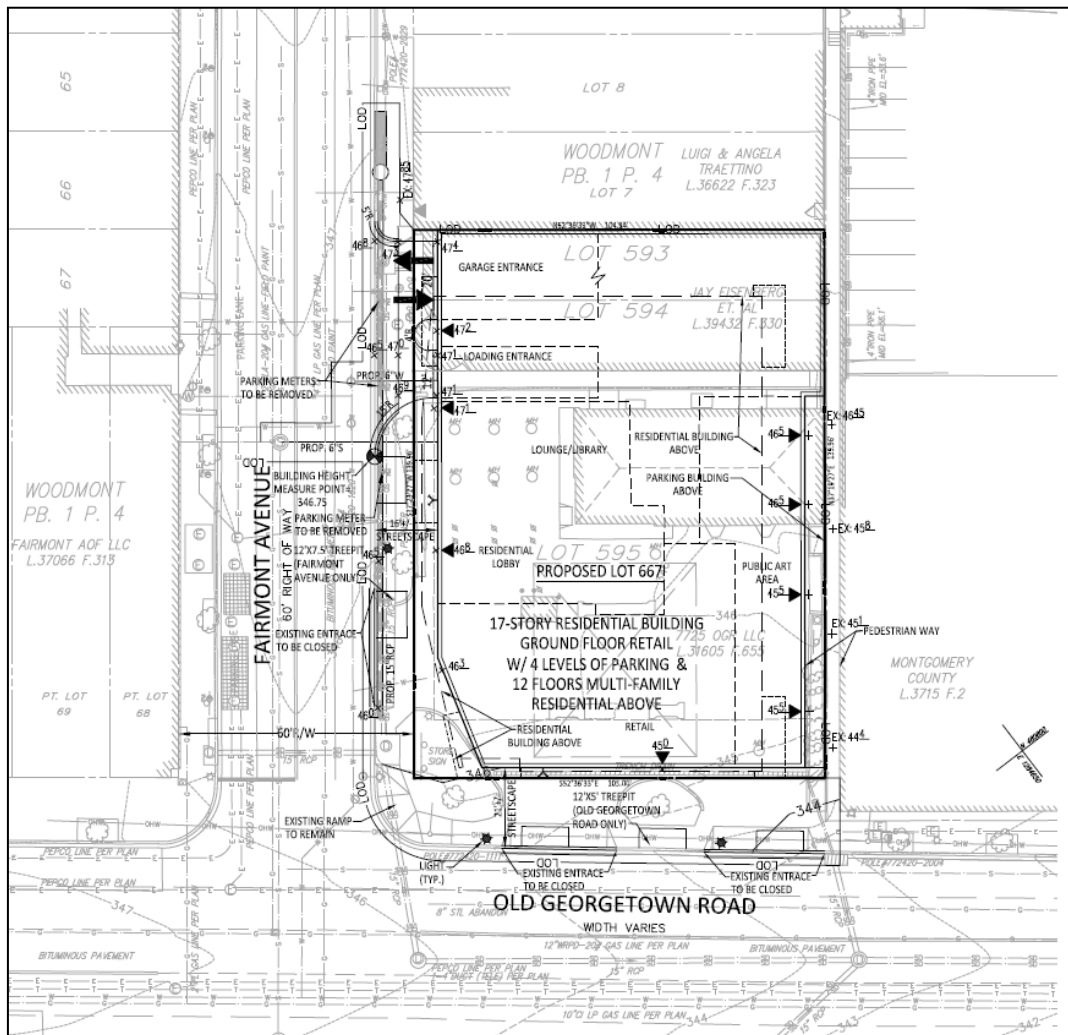
1. Development Ceiling  
The development is limited to a maximum of 138,052 square feet of gross floor area with a maximum 6.03 FAR consisting of the following uses:
  - a) A maximum 7,000 square feet of retail uses inclusive of a minimum of 2,000 square feet for artist incubator space
  - b) A maximum 131,052 square feet of residential uses for a maximum 72 residential multi-family dwelling units.
  
2. Housing  
The Applicant must provide on-site a minimum of 15% of the total number of units as Moderately Priced Dwelling Units, consistent with the requirements of Chapter 25A.
  
3. Building Height and Mass  
The development is limited to the building footprint as delineated in the Project Plan drawings submitted to MNCPPC dated June 19, 2013, unless modified at Site Plan review. The development is limited to a maximum building height of 174 feet as determined by the Department of Permitting Services approved building height measurement point.
  
4. Architecture  
The exterior architectural character, proportion, material, and articulation must be substantially similar to the schematic elevations shown on Sheets A1.01-A1.06 of the submitted architectural drawings, as determined by Staff, unless modified during Site Plan review.
  
5. Public Use Space and Amenities
  - a) The Applicant must provide a minimum of 2,937 square feet of public use space (20% of net lot area) on-site, including a minimum 2,000 square feet for artist incubator space.
  - b) The Applicant must provide public art on-site, integrated into the overall site design.
  - c) The Applicant must present final public art concepts to the Art Review Panel for review and comment that will be available to the Planning Board prior to scheduling the Planning Board hearing for the site plan application.
  - d) Final design of the public art must be determined by Certified Site Plan.
  - e) As a public amenity, the Applicant must provide streetscape improvements per the Bethesda CBD Streetscape Standards, or as amended, including the undergrounding of public utilities, along the property's frontage on Fairmont Avenue and Old Georgetown Road.
  - f) The Applicant must provide the agreement between the Bethesda Urban Partnership and the Applicant for the management of the artist incubator public use space component with the initial site plan submittal.

6. Staging of Amenity Features

- a) The development must be completed in one phase. A detailed development program will be required prior to approval of the certified Site Plan.
- b) The Applicant must complete the on-site public use space improvements prior to issuance of use and occupancy permits unless modified by the Site Plan development program.
- c) The Applicant must install the landscaping no later than the next growing season after completion of the building and site work.

7. Building Design

The Applicant must provide to Staff alternative design considerations for the columns located at the southern corner of the building, for the purposes of greater visibility and accessibility to the public use space in this location.



Project Plan

## **BASIS FOR CONSIDERATION**

Project Plans have a standard of review that includes a Basis for Consideration and Findings. The Basis for Consideration are listed below for reference and their discussion is incorporated within the Findings Section.

Section 59-D-2.43, Basis for Consideration, states: In reaching its determination on the application for the optional method of development and in making the required findings, the Planning Board must consider:

- (a) *The nature of the proposed site and development, including its size and shape, and the proposed size, shape, height, arrangement and design of structures.*
- (b) *Whether the open spaces, including developed open space, are sized and located to provide convenient areas for recreation, relaxation and social activities for the residents and patrons of the development. Open spaces should be planned, designed and situated to provide sufficient physical and aesthetic open areas among and between individual structures and groups of structures. The proposed setbacks, yards and related walkways must be wide enough and located to provide adequate light, air, pedestrian circulation and necessary vehicular access.*
- (c) *Whether the vehicular circulation system, including access and off-street parking and loading, is designed to provide an efficient, safe and convenient transportation system.*
- (d) *Whether the proposed development contributed to the overall pedestrian circulation system. Pedestrian walkways must:*
  - (1) *be located, designed and sized to conveniently handle pedestrian traffic efficiently and without congestion;*
  - (2) *be separated from vehicular roadways and designed to be safe, pleasing, and efficient for movement of pedestrians; and*
  - (3) *contribute to a network of efficient, convenient and adequate pedestrian linkages in the area of the development, including linkages among residential areas, open spaces, recreational areas, commercial and employment areas and public facilities.*
- (e) *The adequacy of landscaping, screening, parking and loading areas, service areas, lighting and signs, in relation to the type of use and neighborhood.*
- (f) *The adequacy of provisions for the construction of moderately priced dwelling units in accordance with Chapter 25A of this Code if applicable.*
- (g) *The staging program and schedule of development.*
- (h) *The adequacy of forest conservation measures proposed to meet any requirements under Chapter 22A.*
- (i) *The adequacy of water resource protection measures proposed to meet any requirements under Chapter 19.*
- (j) *Payment of a fee acceptable to the Planning Board may satisfy all or some of the requirements*

*for any public use space, or public facilities and amenities under the requirements established elsewhere in this Section.*

## **FINDINGS**

Section 59-D-2.42 of the Zoning Ordinance establishes the findings that must be made by the Planning Board in concert with the basis for consideration.

Staff makes the following findings:

*a) The application would comply with all of the intents and requirements of the zone.*

The subject Site is zoned CBD-2. Section 59-C-6.212 of the Montgomery County Zoning Ordinance establishes the CBD-2 Zone, and this section outlines the description, intent and general requirements of the zone.

The proposal for 72 residential units (including 15% MPDUs) results in a residential gross floor area of 131,052 square feet and residential FAR of 5.73. When the 7,000 square feet of street front retail/artist incubator space is added to the residential square footage to arrive at the overall 138,052 square feet of gross floor area, the total FAR is 6.03. The maximum FAR permitted in the CBD-2 zone is 5.0, however, Section 59-C-6.215(b) states that the maximum dwelling unit density or residential FAR may be increased in proportion to any MPDU density bonus provided on-site. Since the applicant is providing 15% MPDUs on-site, a 22% residential density bonus is allowable under the MPDU Law outlined in County Code Chapter 25A-5. The baseline allowable residential gross floor area is 107,420 square feet, and with a 22% density bonus, 131,052 square feet is permissible.

The applicant proposed a maximum building height of 174 feet, which exceeds the 143 feet maximum in the CBD-2 zone. Section 59-C-6.2 footnote 11, on Zoning Ordinance page C6-43 allows the Planning Board to approve a height that exceeds 143 feet, but not 200 feet in the CBD-2 zone under the optional method of development process if:

*(ii) the additional height is specifically recommended for the property in the applicable sector plan or urban renewal plan or the property is within a revitalization area designated in the applicable sector plan and is located fully or partially within 800 feet of an entrance to a metro station.*

As explained earlier in this section, a building height of 174 feet is specifically recommended for this property in the Woodmont Triangle Amendment to the Bethesda CBD Sector Plan on pages 22 and 24 as follows:

This project is in "Block 45"

- "There are parcels in Block 45, zoned CBD-1, that could redevelop and may be able to use the transfer of density option. In order to encourage residential redevelopment, this Amendment recommends changing the CBD-1 properties to CBD-2 ...The Amendment recommends a FAR of 5.0 for all properties in these blocks and a height limit of 143 feet or 174 with a 22 percent MPDU bonus."

This project includes 15% MPDUs and therefore is receiving a density bonus of 22 percent.



More specifically, Section 59-C-6.212 outlines the intent of the CBD zones:

- (a) To encourage development in accordance with an adopted and approved master or sector plan, or an urban renewal plan approved under Chapter 56 by permitting an increase in density, height, and intensity where the increase conforms to the master or sector plan or urban renewal plan and the Site Plan or combined urban renewal Project Plan is approved on review by the Planning Board.
- (b) To permit a flexible response of development to the market as well as to provide incentives for the development of a variety of land uses and activities in central business districts to meet the needs and requirements of workers, shoppers, and residents.
- (c) To encourage designs which produce a desirable relationship between the individual buildings in the central business district, between the buildings and the circulation system and between the central business district and adjacent areas.
- (d) To promote the effective use of transit facilities in the central business district and pedestrian access thereto.
- (e) To promote improved pedestrian and vehicular circulation.
- (f) To assist in the development of adequate residential areas for people with a range of different incomes.
- (g) To encourage land assembly and the most desirable use of land in accordance with a sector plan.

The density and amenities achieved through the optional method of development enables the realization of the recommendations of the Bethesda CBD Sector Plan, as described in Finding b) below. Until recently, a BP gas station operated on the property which was a use that did not take full advantage of the site's close proximity to mass transit facilities and the employment opportunities in the Bethesda CBD. The applicant acquired the property with the intent of assembling the lots to construct an optional method, mixed use project that offers retail and artist incubator space with residential units above at a prominent corner location within the Bethesda CBD. Much of the development adjacent to the Site is commercial in nature, although residential development is located approximately 150 feet southeast of the Site at the intersection of Woodmont Avenue and Old Georgetown Road. Removing the current gas station vehicular access points from Old Georgetown Road to have only one access point to the property will minimize vehicular traffic that interferes with the pedestrian realm in this area.

**Project Data Table for the CBD-2 Zone (Optional Method of Development)**

<b>Development Standard</b>	<b>Zoning Ordinance Permitted/ Required</b>	<b>Proposed for Approval</b>
<b>Site Area (square feet)</b>		
Gross Tract Area	18,000 sf	22,884 sf
Less Dedication for Public ROW	n/a	8,199 sf
Net Lot Area	n/a	14,685 sf
<b>Density</b>		
Max. Commercial (FAR) [59-C-10.3.4]	5.0	5.73
Max. Total FAR - residential - commercial	5.0	6.03 5.73 <sup>1</sup> 0.40
MPDUs [Chapter 25A] Units	12.5%	15% 11
<b>Min. Public Use Space</b>		
On-Site Off-Site Amenity Space	20% n/a	23% 25%
<b>Min. Building Setbacks (ft) [59-C-10.3.8]</b>		
Front (Fairmont Ave)	0	6 ft
Rear	0	0
West Side (Old Georgetown Rd) East Side	0 0	2 ft 0
<b>Max. Building Height (ft)</b>		
	143 ft	174 ft <sup>2</sup>
<b>Vehicle Parking (number of spaces)*</b>		
Retail	22.5	21
Residential	86.7	80
Total spaces	110	101
<b>Bicycle Parking</b>		
Number of spaces	6	6
<b>Motorcycle Parking</b>		
Number of spaces	3	3
Footnotes (on following page)		

<sup>1</sup>Per Section 59-C-6.215(b), 5.73 Residential FAR is permissible in the CBD-2 zone because the maximum dwelling unit density or residential FAR may be increased in proportion to any MPDU density bonus provided on-site. Since the applicant is providing 15% MPDUs on-site, a 22% residential gross floor area bonus is allowable.

<sup>2</sup>Per Section 59-C-6.2, footnote 11, the Planning Board can approve a height that exceeds 143 feet, but not 200 feet in the CBD-2 zone under the optional method of development process if the additional height is specifically recommended for the property in the applicable sector plan.

\*No Parking is required for this site as it is located in the Bethesda Parking Lot District. Total number of spaces will be determined at certified Site Plan.

*b) The application would be consistent with the applicable sector plan or urban renewal plan.*

The application is consistent with the 2006 Woodmont Triangle Amendment to the 1994 Bethesda CBD Sector Plan. The Goals of the Plan include a housing goal to increase the supply of housing for a variety of income levels, a small-scale retail goal to provide opportunities to retain existing business and expand opportunities for new businesses, an arts and entertainment goal to enhance the existing public arts program in the Bethesda CBD and provide opportunities for both the visual and performing arts, and a public space goal to focus on improving the safety and character of the existing streets and increase the flexibility in providing the public use space through the Optional Method of Development.

For housing, the project proposes up to 72 multi-family residential units, with 15% on-site MPDUs, in a variety of unit sizes so that persons at a range of income levels can reside in the Woodmont Triangle Area. For small-scale retail, the project provides street level space for retail, restaurant or service use. For the Arts and Entertainment District, this project provides approximately 2,000 square feet of new studio space for artists in the visual arts on a street level arts alley, an important contribution to the A&E District. This is a high priority to the community and has proved challenging to achieve in the past. For public spaces such as safe and attractive streets, this project improves the continuity of pedestrian routes by closing driveways from Old Georgetown and consolidating them on Fairmont. The Bethesda streetscape will be installed and the existing public alley will be enlivened. Entrances to street oriented retail and the residential lobby will enliven the street as well. In terms of on-site public amenities, the studio space for artists that is open to the public is highly desirable, and widening the current alley width to 11 feet will increase visibility and accessibility for the adjacent public alley which can be used to walk to side entrance to Garage 11.

Furthermore, the proposed “arts alley” contributes to a variety of public spaces in the area. Similar narrow linear spaces in the Woodmont Triangle include the Imagination Stage Intermission Terrace which is a through block connection, the Monty/Bainbridge public use space as a through block connection to Fairmont Avenue, and the future Fairmont Avenue pedestrian connection to Garage 11. This will be the first such space in the Woodmont Triangle that is oriented to Old Georgetown Road, and will be the first space lined with glass walled artist’s studios on one side and a projected light display on the off-site wall on the other side.

Building height limits and density are also addressed on pages 11 and 12 of the Woodmont Triangle Amendment (“WTA”). A step down concept is encouraged to protect the neighborhoods at the edge of the CBD and to concentrate the tallest buildings near the Metro Station. The specific heights recommended in the WTA provide flexibility while supporting that general concept. This project is consistent with the WTA recommendation for this site which allows a maximum of 174 feet for projects that include MPDUs. Properties may develop to the density permitted in the CBD-1, CBD-2

and CBD-R2 zones. In order to encourage residential development, the recommended increase in density up to the maximum allowed is for residential development, and all CBD zoned parcels within the study area will be limited to a FAR of 1.0 for non-residential development. This project is in the CBD-2 Zone and according to the plan may develop to the density permitted in the zone. As previously discussed, the Zoning Ordinance permits the FAR to increase above 5.0 to accommodate MPDUs. This project is proposed at a residential FAR of 5.73 in order to accommodate MPDUs. It is consistent with the intent of the Plan because the additional density is for residential development. Non-residential development on the property is less than 1.0 FAR at 0.40 FAR, consistent with the intent of the Plan.



*Building Perspective*

- c) *Because of its location, size, intensity, design, operational characteristics and staging the application would be compatible with, and not detrimental to, existing or potential development in the general neighborhood.*

The location, size and intensity of the proposed application are compatible with the existing and potential development in the general neighborhood. The building's orientation responds to the surroundings. The majority of the ground floor retail has entry and exit points from Old Georgetown Road where visibility and pedestrian activity will be greatest. The garage entry and loading dock entry is located off of Fairmont Avenue to minimize vehicular and pedestrian conflicts on Old Georgetown Road. The garage of the proposed building is located on the first four floors of the structure to correspond with the 40 foot tall public parking garage height. The treatment of the garage ends at the fifth floor where balconies are present on the top 12 floors but the stone or precast treatment of the garage is partially extended to the top floor of the building to provide subtle continuity. The block in which the building is located is the closest in the Woodmont Triangle Amendment area to the Bethesda Metrorail station. Redevelopment potential exists to construct additional buildings to a similar height. The



proposed building will be the same height as the approved Monty project (Site Plan 820090110, The Monty), located north of the Subject Property on the opposite side of Fairmont Avenue, and the same height as the approved 4900 Fairmont Avenue project (Site Plan Review 820120120), located northeast of the Site on the same side of Fairmont Avenue; and the proposed building will therefore be consistent with the emerging redevelopment pattern in the general neighborhood. Ground floor retail and the artist incubator space will draw pedestrians to this section of Old Georgetown Road, replacing a vehicular heavy gas station use. Additional residents in this location will enliven the block at night and on weekends when the surrounding commercial buildings are primarily vacant.

*d) The application would not overburden existing public services nor those programmed for availability concurrently with each stage of construction and, if located within a transportation management district designated under Chapter 42A, is subject to a traffic mitigation agreement that meets the requirements of that article.*

The Application will not overburden existing public facilities and services nor those programmed for availability. The subject Project Plan for the proposed residential and commercial development satisfies the transportation requirements of the Adequate Public Facilities (APF) review. The property is located within a transportation management district, therefore, the applicant is required to enter into a Traffic Mitigation Agreement (TMAg) with the Planning Board and Montgomery County Department of Transportation. The project is located in the Bethesda-Chevy Chase High School Cluster. The 72 condominium units are subject to the Annual School Test effective for FY14. A School Facilities Payment is required at the high school level in this cluster.

*(e) The application would be more efficient and desirable than could be accomplished by the use of the standard method of development.*

The application proposes to develop the site using the optional method of development, which is more efficient and desirable than the standard method of development. The optional method allows greater densities at key locations, such as proximity to mass transit, in exchange for greater public amenities and facilities. Construction of a standard method project would yield a building constructed to a maximum 2.0 FAR with a maximum 60 foot building height. For a site located in the Bethesda CBD, a building constructed to standard method requirements would have little public amenities or open space, and would be insufficient to reach the critical mass and density envisioned for the Woodmont Triangle Area of Bethesda and within close proximity to a Metrorail station. Additionally, the greater number of affordable housing units provided far exceeds what could be achieved under the standard method. Given the recommendations of the Master Plan and the Site's proximity to transit, employment and services, the optional method of development is much more desirable and efficient for this particular Site.

*(f) The application would include moderately priced dwelling units in accordance with Chapter 25A, if the requirements of that chapter apply.*

The total number and bedroom mix of MPDUs provided on site has been reviewed and approved by DHCA. The application provides 11 MPDUs, or 15% of the total number of units as MPDUs, consistent with the requirements of Chapter 25A, and as approved by DHCA [Appendix A].

*(g) When a Project Plan includes more than one lot under common ownership, or is a single lot containing two or more CBD zones, and is shown to transfer public open space or development density from on lot to another or transfer densities, within a lot with two or more CBD zones, under 59-C 6.2351 or 59-C 6.2352 (whichever is applicable), the Planning Board may approve the project plan only if:*

The development does not propose any transfers of public open space or development density from one lot to another.

*(h) Any applicable requirements for forest conservation under Chapter 22A.*

The small property forest conservation exemption previously granted is still valid for the project as proposed. Per the exemption, a tree save plan is not required. This plan meets all requirements of Chapter 22A of the Forest Conservation Law.

*(i) Any applicable requirements for water quality resources protection under Chapter 19.*

The proposed stormwater management concept approved on June 11, 2013, meets the required stormwater management goals by the use of Environmental Site Design (ESD) to the Maximum Extent Practicable (MEP) with the use of a green roof and micro-bioretenion/planter box. A waiver for structural treatment is granted since full treatment of ESD volume is not possible due to the existing shallow storm drain and onsite constraints. The plan complies with Section 50-24(j) which requires that stormwater requirements be satisfied as part of the Preliminary Plan review.

*(j) Any public use space or public facility or amenity to be provided off-site is consistent with the goals of the applicable Master or Sector Plan and serves the public interest better than providing the public use space or public facilities and amenities on-site.*

The application does not propose public use space and amenities to be provided off-site, other than the improvements to the property frontages for Fairmont Avenue and Old Georgetown Road.

## SECTION 3: PRELIMINARY PLAN

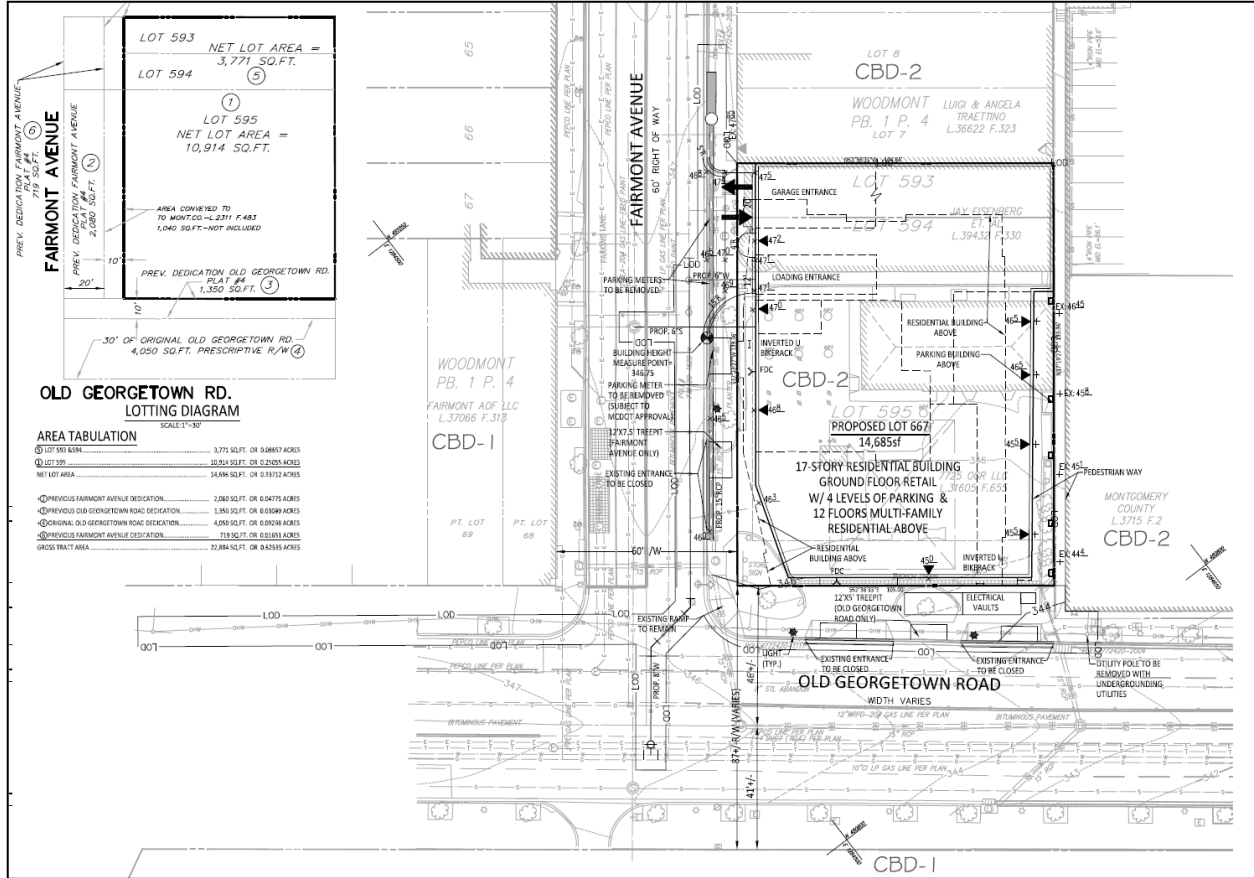
### RECOMMENDATION AND CONDITIONS

Staff recommends approval of Preliminary Plan No. 120130230, 4990 Fairmont Avenue, subject to the following conditions.

1. This Preliminary Plan is limited to 1 lot for a maximum of 138,052 gross floor area for 72 residential units including a minimum 15% Moderately Priced Dwelling Units (MPDU's), and 7,000 square feet of retail uses inclusive of artist incubator space.
2. The Planning Board has accepted the recommendations of the Montgomery County Department of Permitting Service ("MCDPS") – Water Resources Section in its stormwater management concept letter dated June 11, 2013, and does hereby incorporate them as conditions of the Preliminary Plan approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
3. The Planning Board has accepted the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated June 26, 2013, and does hereby incorporate them as conditions of the Preliminary Plan approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
4. The Adequate Public Facility (APF) review for the Preliminary Plan will remain valid for 85 months (10 years) from the date of mailing of the Preliminary Plan Resolution .
5. The Subject Property is located in the Bethesda-Chevy Chase High School Cluster. Pursuant to the FY2014 Annual School Test, the 72 dwelling units are to subject to a School Facilities Payment at the high school level. The rate of the tax or payment due is the rate in effect when the tax or payment is paid and must be made in accordance with Chapter 52, Article VII, Section 52-50(l), of the Montgomery County Code.
6. Short term public bicycle parking for up to six bikes (inverted "U" racks) must be installed along the retail frontage and near the art incubator space. Exact locations of the rack to be determined at the time of Site Plan.
7. The Applicant must enter into a Traffic Mitigation Agreement (TMAg) with the Planning Board and MCDOT to participate in the Bethesda Transportation Management District and must execute the TMAg prior to approval of the Certified Site Plan. The TMAg must include trip mitigation measures recommended by MCDOT.
8. The Applicant must show on the final record plat the following right-of-way dedications, Public Improvement Easement (PIE), or public access easements consistent with the 1994 Approved and Adopted *Bethesda CBD Sector Plan* and Montgomery County Code Chapter 50 Subdivision Regulation requirements:
  - a. Fairmont Avenue: No dedication is necessary because this street is currently at its master planned minimum future right-of-way width.
  - b. Old Georgetown Road (MD 187): No dedication is necessary because this street currently exceeds its master planned minimum future right-of-way width.
9. The Applicant must provide a noise analysis at the time of the initial site plan submittal. The noise analysis must include exhibits of showing existing and 20 year projected 60, 65 and 70 dba Ldn noise contours. Prior to issuance of the first building permit, an engineer specialized in acoustics must certify that the building shell has been designed to attenuate projected exterior noise levels to

an interior level not to exceed 45 dBA Ldn. The builder must commit to construct the units in accord with these design specifications, with any changes that may affect acoustical performance approved by the acoustical engineer in advance of installation.

10. Prior to site plan submittal, the Applicant must satisfy all Montgomery County Fire and Rescue Service (“MCFRS”) requirements and obtain written approval from MCFRS.



Preliminary Plan

## ANAYSIS AND FINDINGS

### Master Plan Conformance

As discussed in the Project Plan section of this report, the application is consistent with and substantially conforms to the 2006 Approved and Adopted Woodmont Triangle Amendment to the 1994 Bethesda CBD Sector Plan. The application contributes to the housing, retail, arts and entertainment, and public space goals of the Plan. The project proposes up to 72 multi-family residential units, with 15% on-site MPDUs, in a variety of unit sizes so that persons at a range of income levels can reside in the Woodmont Triangle Area. The proposed building also includes street level space for retail, restaurant or service use, and includes approximately 2,000 square feet of new studio space for artists on a street level “arts alley”, an important contribution to the Arts & Entertainment District. The Bethesda streetscape will be installed and the existing public alley will be enlivened, while the renovated alley will contribute to a



variety of public spaces in the area.

The project is consistent with the building height and density recommendations of the plan, where a 174 foot tall building and 5.73 residential FAR in this location will not adversely affect adjacent properties, but are appropriate given the provision of 15% MPDUs in this location that is 1,500 feet from the Bethesda Metrorail station.

### **Adequate Public Facilities Review (APF)**

The site currently has access points on Old Georgetown Road (two full-movement driveways) and Fairmont Avenue (one full-movement driveway). Vehicular ingress and egress to and from the proposed on-site private residential garage and loading space will be limited to two full-movement driveways off Fairmont Avenue on the north corner of the property. Pedestrian and bicyclist access to the site will be provided along both Old Georgetown Road and Fairmont Avenue, although Fairmont Avenue provides the more comfortable bicyclist experience due to its lower vehicular speed and volume.

The immediate area is well served by transit that includes the Red Line Bethesda Metrorail Station (located approximately 0.3 mile or 1,500 feet to the south of the site), Metrobus, RideOn, and the Bethesda Circulator. Future transit in the area includes a proposed Purple Line station. Specific transit routes near the Site include:

1. RideOn Bus Routes 29, 32, 30, 34, 36, 40, 47, 70
2. WMATA Metrobus Routes J2, J3, J4, J7, and J9

### Master Plan Roadways and Pedestrian/Bikeway Facilities

The 1994 *Bethesda CBD Sector Plan* has the following master plan facilities along property frontage:

1. Fairmont Avenue, along the northern site frontage, as a Biker Friendly Area and Mixed Street with a minimum right-of-way width of 60 feet. Mixed Streets are described in the Sector Plan as streets that accommodate higher levels of pedestrian activity.
2. Old Georgetown Road, along the southern/western Site frontage and between St. Elmo Avenue to the north and Woodmont Avenue to the south, as a major highway (M-4) with a minimum right-of-way width of 82 feet.

### Adequate Public Facilities Review

A traffic statement (dated June 17, 2013) was submitted for the subject application per the *LATR/TPAR Guidelines* since the proposed development was estimated to generate less than **30** peak-hour trips during the typical weekday morning (6:30 a.m. – 9:30 a.m.) and evening (4:00 p.m. – 7:00 p.m.) peak periods.

### Trip Generation

A site trip generation summary (Table 1) shows that the proposed development will generate fewer vehicular trips than the Site's current use as an office and filling station. As a result of the proposed change of use to residential and retail, the Site will generate 18 fewer trips during the morning peak period and 15 fewer trips during the evening peak period.

### Local Area Transportation Review

Since the proposed development will generate fewer than 30 peak hour trips, the project is not subject to the LATR. Exemption from the LATR was documented in the Applicant's traffic statement, dated June 17, 2013. No further analysis is necessary to satisfy LATR requirements.

Transportation Policy Area Review

Since the proposed development is within the Bethesda CBD Policy Area, the project is exempt from both the roadway and transit tests set forth in the 2012-2016 Subdivision Staging Policy. As a result, the proposed development is not required to pay transportation impact tax to satisfy the TPAR requirement.

The proposed development satisfies the *LATR and TPAR requirements* of the APF review and will provide safe, adequate, and efficient vehicular and pedestrian access.

**TABLE 1  
SUMMARY OF SITE TRIP GENERATION  
PROPOSED 4990 FAIRMONT AVENUE PROJECT**

Trip Generation	Morning Peak-Hour			Evening Peak-Hour		
	In	Out	Total	In	Out	Total
<b>Existing (Credit)</b>						
Office (3,704 SF)	5	1	6	2	4	6
BP Gas Station (8 Pumps)	52	46	98	50	49	99
Pass-by (60%AM/ 50%PM)	(31)	(28)	(59)	(25)	(25)	(50)
<b>Existing Credit Subtotal</b>	<b>26</b>	<b>19</b>	<b>45</b>	<b>27</b>	<b>28</b>	<b>55</b>
<b>Proposed Development (CBD Rates)</b>						
High Rise Apartments (72 DUs)	4	18	22	15	7	22
Retail (7,000 SF)	3	2	5	9	9	18
<b>Subtotal</b>	<b>7</b>	<b>20</b>	<b>27</b>	<b>24</b>	<b>16</b>	<b>40</b>
<b>Net Increase/Decrease in Peak Hour Trips (Proposed – Existing)</b>	<b>(19)</b>	<b>1</b>	<b>(18)</b>	<b>(3)</b>	<b>(12)</b>	<b>(15)</b>

Source: Wells and Associates, Inc. Traffic Statement dated June 17, 2013.

**Other Public Facilities**

Public facilities and services are available and will be adequate to serve the proposed development. The property will be served by public water and sewer systems. The application has been reviewed by the Montgomery County Fire and Rescue Service (MCFRS), and the applicant is awaiting final approval from this agency. Staff has recommended a condition requiring final approval from MCFRS prior to site plan submittal. Electrical and telecommunications services are also available to serve the Property. Washington Suburban Sanitary Commission recommends approval of the plan finding that local lines exist, and they are of adequate size to serve the proposed number of units. Local health clinics, police stations and fire stations are all operating within acceptable levels as established by the Subdivision Staging Policy.

The project is located in the Bethesda-Chevy Chase High School Cluster. The 72 condominium units are subject to the Annual School Test effective for FY14. As conditioned, a School Facilities Payment is required at the high school level in this cluster.

### **Environmental Guidelines and Forest Conservation**

The property is located in the Bethesda CBD. There are no onsite wetlands, floodplains, streams or their associated buffers on the property. There is neither onsite forest nor specimen trees onsite. The property is located in the Willett Branch watershed which is a tributary to Little Falls Branch Stream, a Use I-P<sup>1</sup> watershed.

The applicant applied for an exemption from submitting a forest conservation plan. Exemption 42013105E was confirmed on January 16, 2013 because the property is less than 1.5 acres in size. This property qualified for an exemption under section 22A-5(s)(1) of the Montgomery County Forest Conservation Law, where an activity occurring on a tract of land less than 1.5 acres with no existing forest or existing specimen or champion trees, and the afforestation requirements would not exceed 10,000 square feet.

#### Noise

The applicant will be required to provide a noise analysis at time of site plan, which must include exhibits of existing noise contours and 20 year projection, and certification from an engineer specialized in acoustics that the building shell has been designed to attenuate projected exterior noise levels to an interior level not to exceed 45 dBA Ldn.

#### Green Buildings

The project must also comply with County Council green building legislation, by achieving a LEED certification (26-32 points). LEED points can be achieved using diverse measures such as green roofs, green building materials, energy saving measures and waste reduction plans. If the applicant is unable to achieve a silver rating, they will have to provide information on what would need to be done to achieve that standard. This will be a requirement of the site plan.

#### Stormwater Management

The proposed stormwater management concept approved on June 11, 2013, meets the required stormwater management goals by the use of Environmental Site Design (ESD) to the Maximum Extent Practicable (MEP) with the use of a green roof and micro-bioretenion/planter box. A waiver for structural treatment is granted since full treatment of ESD volume is not possible due to the existing shallow storm drain and onsite constraints. Staff finds that the plan complies with Section 50-24(j)

---

<sup>1</sup> Use I-P:

*WATER CONTACT RECREATION & PROTECTION OF AQUATIC LIFE, AND PUBLIC WATER SUPPLY*

*Waters that are suitable for: water contact sports: play and leisure time activities where the human body may come in direct contact with the surface water; fishing; the growth and propagation of fish (other than trout); other aquatic life, and wildlife; agricultural water supply, industrial water supply, and use as a public water supply.*

which requires that stormwater requirements be satisfied as part of the Preliminary Plan review.

### **Compliance with the Subdivision Regulations**

The application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The proposed lot will have frontage on a public street. The size, width, shape and orientation of the lot is appropriate for the location of the subdivision. The proposed lot size is appropriate, for it accommodates a single building with a mix of uses. The width of the lot is suitable given the various points of access necessary to accommodate pedestrian movement and the single point of access to accommodate the residential parking garage and required on-site loading. The shape of the lot is appropriate, for the consolidation creates a more rectangular lot which is suitable for the orientation of the property.

### **APPENDICES**

- A. Reviewing Agency Approvals
- B. Sun/Shadow Study
- C. Citizen Correspondence
- D. Applicant's Response to Citizen Correspondence
- E. Additional Correspondence



DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Isiah Leggett  
County Executive

June 28, 2013

Richard Y. Nelson, Jr.  
Director

Mr. Elza Hisel-McCoy  
Area I Division  
Maryland-National Capital Park and Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

Re: 4990 Fairmont Avenue  
Project Plan No. 920130070  
Preliminary Plan No. 120130230

Dear Mr. Hisel-McCoy:

The Department of Housing and Community Affairs (DHCA) has reviewed the applicant's revisions to the Project and Preliminary Plans for the above project. The applicant has addressed DHCA's DRC comments, and therefore DHCA recommends Approval of the plans, with the following condition, which is stated in #15 of the General Notes on the plans:

- Final MPDU locations, bedroom compositions and layouts will be determined at certified site plan with review and approval by DHCA .

Sincerely,

Lisa S. Schwartz  
Senior Planning Specialist

cc: Erin Grayson, M-NCPPC  
C. Robert Dalrymple, Linowes and Blocher LLP  
Heather Dlhopsky, Linowes and Blocher LLP

S:\Files\FY2013\Housing\MPDU\Lisa Schwartz\4990 Fairmont DHCA Letter 6-28-2013.doc

Division of Housing

Moderately Priced  
Dwelling Unit  
FAX 240-777-3709

Housing Development  
& Loan Programs  
FAX 240-777-3691

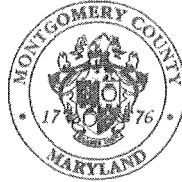
Landlord-Tenant Affairs  
FAX 240-777-3691

Licensing & Registration Unit  
240-777-3666  
FAX 240-777-3699

100 Maryland Avenue, 4th Floor • Rockville, Maryland 20850 • 240-777-3600 • www.montgomerycountymd.gov/dhca







DEPARTMENT OF TRANSPORTATION

Isiah Leggett  
County Executive

Arthur Holmes, Jr.  
Director

June 26, 2013

*Erin:*  
Ms. Erin Grayson, Senior Planner  
Area I Planning Division  
The Maryland-National Capital Park and Planning Commission  
8787 Georgia Avenue  
Silver Spring, MD 20910-3760

RE: Preliminary Plan No: 120130230  
Project Plan No: 120130070  
4990 Fairmont Avenue

Dear Ms. Grayson:

We have completed our review of the amended preliminary plan and attorney's response (to the DRC comments) dated June 18, 2013. An earlier version of this plan was reviewed by the Development Review Committee at its meeting on June 10, 2013.

We recommend approval of the plan subject to the following comments:

All Planning Board Opinions relating to this plan or any subsequent revision, project plans or site plans should be submitted to MCDPS in the package for record plats, storm drain, grading or paving plans, or application for access permit. Include this letter and all other correspondence from this department.

Design Exception Requests

- o Design Exception 1; Right-of-Way Truncation to 0 feet:

This Design Exception request applies to the intersection of Fairmont Avenue with Old Georgetown Road/MD 187.

**Response:** Although MCDOT does not oppose the Design Exception request, we defer to the Maryland State Highway Administration for comment this proposal - as this location falls under the State's jurisdiction.

**Division of Traffic Engineering and Operations**

100 Edison Park Drive, 4th Floor • Gaithersburg, Maryland 20878  
Main Office 240-777-2190 • TTY 240-777-6013 • FAX 240-777-2080  
trafficops@montgomerycountymd.gov



o Design Exception 2; Reduction to the Number of Loading Spaces:

This Design Exception requests a reduction in the number of off-street truck loading spaces required under the Executive Branch's "Off-Street Loading Space Policy." Under that policy, 2 truck loading docks would be required for the entire project; the applicant is instead proposing to provide 1 truck loading dock.

**Response:** We support approval of the applicant's request subject to execution and recordation of a County-approved declaration which establishes the applicability, maintenance, and operations of the coordinated on-site management for the jointly used loading docks. This document should be executed prior to the issuance of any applicable building permits.

o Design Exception 3: Proposed Truck (2) Loading (1) and Passenger Car Garage Driveways (2) on Fairmont Avenue less than 100 feet from adjacent and opposite driveways

The plan proposes to construct a 60 foot wide apron (to accommodate a 20 foot wide in/out driveway to the residential parking garage and one-12 foot truck loading dock) including curb returns.

**Response:** Since this site is located within the Bethesda Central Business District and (due to limited site frontage) the applicant cannot achieve the recommended one hundred (100) tangent section between adjacent and opposite driveways, we approve this Design Exception request.

Prior to the Planning Board hearing, we recommend the plans be updated to clearly delineate the location of the existing adjacent and opposite driveways.

In their response to the DRC comments, the applicant also indicated that they have been in negotiations with the property owner on the east side (Positano restaurant) regarding the proposed extension of the eastern curb return for the underground parking across the common property line. The applicant's response indicated that they have been attempting to obtain an easement from the adjacent property (in acknowledgement of this entrance location) and that the driveway apron will be shifted west (should the effort be unsuccessful). We accept this proposal. The location of the driveway apron will need to be finalized prior to approval of the record plat.

General Site layout and Right-of-Way Review Comments

1. A Traffic Statement was submitted and was found to be acceptable.
2. A Storm Drain Study has been submitted and was found to be acceptable.
3. Prior to approval of the record plat by the Department of Permitting Services, submit a completed, executed and **sealed** County Sight Distances Evaluation certification form, for the proposed driveways on Fairmont Avenue, for Executive Branch review and approval.
4. Access and improvements along Old Georgetown Road (MD 187) as required by the Maryland State Highway Administration.  
  
We recommend the applicant be required to construct Bethesda Central Business District Streetscaping improvements across the Old Georgetown Road (MD 187) site frontage.
5. We recommend the record plat reflect denial of access along the Old Georgetown Road (MD 187) site frontage.
6. Prior to issuance of any building permit by MCDPS, the applicant will need to enter into a Traffic Mitigation Agreement with the Planning Board and this Department. Within MCDOT, the applicant should coordinate with Ms. Sandra Brecher, Chief of the Division of Transit Services/Commuter Services Section. Ms. Brecher may be contacted at 240-777-5800.
7. Provide on-site handicap access facilities, parking spaces, ramps, etc. in accordance with the Americans With Disabilities Act.
8. Relocation of utilities along existing roads to accommodate the required roadway improvements shall be the responsibility of the applicant.
9. For any parking facility containing more than fifty (50) parking spaces, the applicant needs to furnish bicycle parking facilities as required Section 59 E-2.3 of the Montgomery County Code. Accordingly, the applicant should provide either bike lockers or inverted "U" type bike racks.
10. If the proposed development will alter any existing parking meters and/or parking signing, please contact Mr. Xavius DaSilva Thompson in DOT's Parking Operations Section at 240-777-8711 for further instructions. All cost for modifying, relocating, removing and/or installations of parking meter or on-street parking control sigs shall be borne by the applicant.

11. If the proposed development will alter or impact any existing County maintained transportation system management component (i.e., traffic signals, signal poles, handboxes, surveillance cameras, etc.) or communication component (i.e., traffic signal interconnect, fiber optic lines, etc.), please contact Mr. Bruce Mangum of our Transportation Systems Engineering Team at (240) 777-2190 for proper executing procedures. All costs associated with such relocations shall be the responsibility of the applicant.
12. If the proposed development will alter any existing street lights, signing, and/or pavement markings, please contact Mr. Dan Sanayi of our Traffic Control and Lighting Engineering Team at (240) 777-2190 for proper executing procedures. All costs associated with such relocations shall be the responsibility of the applicant.
13. Permit and bond will be required as a prerequisite to DPS approval of the record plat. The permit will include, but not necessarily be limited to, the following improvements:
  - A. Construct Bethesda Central Business District Streetscaping improvements across the Fairmont Avenue site frontage.
  - B. Permanent monuments and property line markers, as required by Section 50-24(e) of the Subdivision Regulations.
  - C. Erosion and sediment control measures as required by Section 50-35(j) and on-site stormwater management where applicable shall be provided by the Developer (at no cost to the County) at such locations deemed necessary by the Department of Permitting Services (DPS) and will comply with their specifications. Erosion and sediment control measures are to be built prior to construction of streets, houses and/or site grading and are to remain in operation (including maintenance) as long as deemed necessary by the DPS.
  - D. Developer shall provide street lights in accordance with the specifications, requirements, and standards

Ms. Erin Grayson  
Preliminary Plan 120130230, 4990 Fairmont Avenue  
June 26, 2013  
Page 5

Thank you for the opportunity to review this preliminary plan. If you have any questions or comments regarding this letter, please contact Mr. David Adams, our Development Review Engineer for this project, at [david.adams@montgomerycountymd.gov](mailto:david.adams@montgomerycountymd.gov) or (240) 777-2190.

Sincerely,



Gregory M. Leck, Manager  
Development Review Team

m:/correspondence/FY13/Traffic/Active/120130230, 4990 Fairmont Avenue, MCDOT final plan review ltr.doc

Enclosure

cc: Tom Albert; 4990 Fairmont LLC c/o Starr Capital LLC  
Bob Dalrymple & Heather Dlhopsky; Linowes & Blocher  
Bill Landfair; VIKA  
Elza Hisel-McCoy; M-NCPPC Area 1  
Matt Folden; M-NCPPC Area 1  
Robert Kronenberg; M-NCPPC Area 1  
Cathy Conlon; M-NCPPC DARC  
Scott Newill; MSHA AMD  
Dave Dabney; BUP  
Preliminary Plan Folder  
Preliminary Plan Letters Notebook

cc-e: Atiq Panjshiri; MCDPS RWPR  
Sam Farhadi; MCDPS RWPR  
Henry Emery; MCDPS RWPR  
Sandra Brecher; MCDOT DTS  
Xavius DaSilva Thompson; MCDOT DPM  
Jeremy Souders; MCDOT DPM  
Bruce Mangum; MCDOT DTEO  
Dan Sanayi; MCDOT DTEO  
David Adams; MCDOT DTEO



## Grayson, Erin

---

**From:** Crispell, Bruce <Bruce\_Crispell@mcpsmd.org>  
**Sent:** Friday, June 21, 2013 12:38 PM  
**To:** 'Dlhopolsky, Heather - HXD'  
**Cc:** Grayson, Erin  
**Subject:** RE: 4990 Fairmont project, Bethesda - School Capacity

Heather,

You are correct. The FY 2014 School Test results show that a school facility payment is required for plan approval at the high school level. No payment is required at the elementary and middle school levels.

Erin,

Pam Dunn over at MNCPPC is the local guru on the school test. You can find this information from her as well.

Bruvce

Bruce Crispell

Director, Division of Long-range Planning  
Montgomery County Public Schools  
45 West Gude Drive, Suite 4100  
Rockville, Maryland 20850

(240) 314-4702 (office)  
(301) 279-3062 (fax)

---

**From:** Dlhopolsky, Heather - HXD [<mailto:HDlhopolsky@linowes-law.com>]  
**Sent:** Thursday, June 20, 2013 1:48 PM  
**To:** Crispell, Bruce  
**Cc:** 'Grayson, Erin'  
**Subject:** 4990 Fairmont project, Bethesda - School Capacity

Bruce,

I represent 4990 Fairmont LLC (the "Applicant") on a Project Plan and Preliminary Plan application currently scheduled for a public hearing at the Montgomery County Planning Board on July 18<sup>th</sup>. The Applicant is the owner of 4962 Fairmont Avenue and contract purchaser of 7725 Old Georgetown Road in Bethesda, Maryland, and the Applicant proposes redevelopment of the Property with a mixed-use project that includes up to 72 multi-family residential units (including 15% MPDUs).

Based on the latest FY14 Schools Test adopted by M-NCPPC several weeks ago, it appears that there is adequate capacity for this project at all three school levels in the B-CC cluster, but that the Applicant will have to pay a School Facilities Payment for the high school level at the time of building permit.

Erin Grayson, the M-NCPPC reviewer copied on this email, needs your email confirmation regarding capacity and the School Facilities Payment. Can you please respond back to this email and let me know if my understanding of the applicable capacity and School Facilities Payment is correct?

Thank you very much. Please let me know if you have any questions.

## Heather

Heather Dlhopsky  
Linowes and Blocher LLP  
7200 Wisconsin Avenue, Suite 800  
Bethesda, MD 20814-4842  
(301) 961-5270 (direct phone)  
(301) 654-0504 (switchboard)  
(301) 654-2801 (fax)  
[hdlhopsky@linowes-law.com](mailto:hdlhopsky@linowes-law.com)  
[www.linowes-law.com](http://www.linowes-law.com)

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Martin O'Malley, Governor  
Anthony G. Brown, Lt. Governor

Darrell B. Mobley, Acting Secretary  
Melinda B. Peters, Administrator

**MARYLAND DEPARTMENT OF TRANSPORTATION**

June 7, 2013

Ms. Catherine Conlon  
The Maryland-National Capital Park and Planning  
Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

RE: Montgomery County  
Old Georgetown Road (MD 187)  
4990 Fairmont Avenue  
SHA Tracking No.: 12APMO017XX  
File Nos.: 920130070 and 120130230  
Mile Post: 0.26

Dear Ms. Conlon:

Thank you for the opportunity to review the project plan and preliminary plan, dated May 13, 2013, for the proposed 4990 Fairmont Avenue development in Montgomery County. The State Highway Administration (SHA) offers the following comments:

**Access Management Division Comments:**

1. If a traffic impact study (TIS) is required by the county, the applicant shall submit seven (7) copies and an electronic PDF version of the TIS directly to Mr. Steven Foster, Attention Mr. Nick Driban. For questions regarding the TIS, please contact Mr. Nick Driban at 410-545-0398 or via email at [CDriban@sha.state.md.us](mailto:CDriban@sha.state.md.us).
2. The SHA supports the proposal to close the two existing entrances along MD 187 and to provide all access to the site from Fairmont Avenue.
3. The sidewalk and sidewalk ramps within the SHA right-of-way shall conform to the SHA Accessibility Policy and Guidelines for Pedestrian Facilities along State Highways. The policy can be accessed at [www.roads.maryland.gov](http://www.roads.maryland.gov) by selecting the Business Center drop down menu and Business Standards and Specifications, SHA Accessibility Guidelines for Pedestrian Facilities along State Highways. The policy can also be accessed directly at <http://www.roads.maryland.gov/Index.aspx?PageId=26>.
4. The SHA has no objection to the proposed right-of-way truncation variance.

The SHA has no objection to the proposed 4990 Fairmont Avenue project and preliminary plan. The applicant should be made aware, however, that proposed work within SHA right-of-way will require a SHA Access Permit. The acquisition of the permit will be subject to the SHA access management pre-permit engineering plan review and issuance processes.

Further plan submittals should reflect the above comments. If a TIS is required, then it will need to be reviewed and approved the SHA's Access Management Division. After the TIS has been approved, the applicant shall submit 6 sets of SHA right-of-way improvement plans and a CD containing the plans and all supporting documentation in PDF format, as well as a point by point response, to reflect the comments noted above directly to Mr. Steven Foster attention of Mr. Jonathan Makhlof. Please reference the SHA tracking number on future submissions. Please keep in mind that you can view the reviewer and project status via SHA Access Management Division web page at <http://www.roads.maryland.gov/pages/amd.aspx>.

My telephone number/toll-free number is \_\_\_\_\_

Maryland Relay Service for Impaired Hearing or Speech 1.800.735.2258 Statewide Toll Free

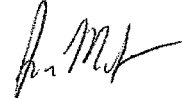
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202 • Phone 410.545.0300 • [www.roads.maryland.gov](http://www.roads.maryland.gov)

Ms. Catherine Conlon

Page 2

If you have any questions, or require additional information, please contact Mr. Jonathan Makhlouf at 410-545-5586, by using our toll free number in Maryland only at 1-800-876-4742 (x5586) or via email at JMakhlouf2@sha.state.md.us.

Sincerely,



for

Steven D. Foster, Chief/Development Manager  
Access Management Division

SDF/JWR/JMM

cc: Mr. Tom Albert (tomalbert@starrcapital.com), Starr Capital, LLC  
Mr. Bill Landfair (landfair@vika.com), VIKA Maryland, LLC  
Mr. Mark McKenzie, SHA Access Management Division  
Ms. Anyesha Mookherjee, SHA District 3 Traffic  
Mr. Scott Newill, SHA Access Management Division



Vm1789B  
RECEIVED  
6/13/13

DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett  
County Executive

June 11, 2013

Diane R. Schwartz Jones  
Director

Shannon Woodrow  
Vika Maryland, LLC  
20251 Century Boulevard, Suite 400  
Germantown, MD 20874

Re: Stormwater Management **CONCEPT** Request  
for BP Site Bethesda  
Preliminary Plan #: 120130230  
SM File #: 251211  
Tract Size/Zone: 0.34 Ac./CBD-2  
Total Concept Area: 0.42 Ac.  
Lots: 593, 594, & 595  
Watershed: Lower Rock Creek

Dear Ms. Woodrow:

Based on a review by the Department of Permitting Services Review Staff, the stormwater management concept for the above mentioned site is **acceptable**. The stormwater management concept proposes to meet required stormwater management goals via ESD to The MEP with a Pe of 1.1" by the use of a green roof and a micro-bioretenion/planter box. A waiver for structural treatment is granted since full treatment of ESD volume is not possible due to the existing shallow storm drain and onsite constraints.

The following **items** will need to be addressed **during** the detailed sediment control/stormwater management plan stage:

1. Prior to permanent vegetative stabilization, all disturbed areas must be topsoiled per the latest Montgomery County Standards and Specifications for Topsoiling.
2. A detailed review of the stormwater management computations will occur at the time of detailed plan review.
3. An engineered sediment control plan must be submitted for this development.
4. All filtration media for manufactured best management practices, whether for new development or redevelopment, must consist of MDE approved material.
5. Landscaping shown on the approved Landscape Plan as part of the approved Site Plan are for illustrative purpose only and may be changed at the time of detailed plan review of the Sediment Control/Storm Water Management plans by the Mont. Co. Department of Permitting Services, Water Resources Section.
6. The green roof is to be designed by a professional with green roof experience.
7. A minimum of 4,762 square feet of 8" green roof is required. At time of plan design please try to provide additional square footage.
8. All covered parking areas are to drain to WSSC.

---

255 Rockville Pike, 2nd Floor • Rockville, Maryland 20850 • 240-777-6300 • 240-777-6256 TTY  
www.montgomerycountymd.gov



9. Easements and covenants will be required for the green roof and micro-bioretenion/planter box.
10. Include on detailed plans how both stormwater structures are to be accessed for inspection and maintenance.

This list may not be all-inclusive and may change based on available information at the time.

Payment of a stormwater management contribution in accordance with Section 2 of the Stormwater Management Regulation 4-90 **is required.**

This letter must appear on the sediment control/stormwater management plan at its initial submittal. The concept approval is based on all stormwater management structures being located outside of the Public Utility Easement, the Public Improvement Easement, and the Public Right of Way unless specifically approved on the concept plan. Any divergence from the information provided to this office; or additional information received during the development process; or a change in an applicable Executive Regulation may constitute grounds to rescind or amend any approval actions taken, and to reevaluate the site for additional or amended stormwater management requirements. If there are subsequent additions or modifications to the development, a separate concept request shall be required.

If you have any questions regarding these actions, please feel free to contact David Kuykendall at 240-777-6332.

Sincerely,



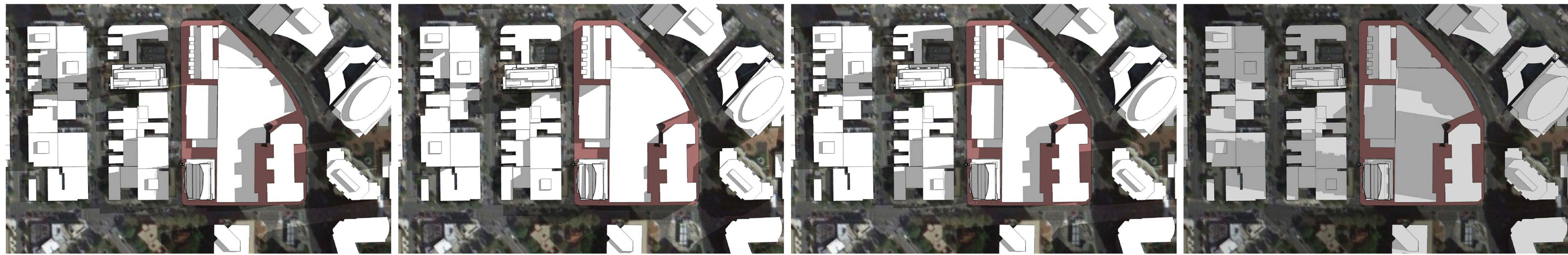
Mark C. Etheridge, Manager  
Water Resources Section  
Division of Land Development Services

MCE: jb CN251211 BP Site Bethesda.DWK

cc: C. Conlon  
SM File # 251211

ESD Acres:	0.42
STRUCTURAL Acres:	0.00
WAIVED Acres:	0.42





1 March 21st @ 9:00 am  
SCALE: NTS

4 June 21st @ 9:00 am  
SCALE: NTS

7 September 21st @ 9:00 am  
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10 December 21st @ 9:00 am  
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2 March 21st @ 12:00 pm  
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5 June 21st @ 12:00 pm  
SCALE: NTS

8 September 21st @ 12:00 pm  
SCALE: NTS

11 December 21st @ 12:00 pm  
SCALE: NTS



3 March 21st @ 5:00 pm  
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6 June 21st @ 5:00 pm  
SCALE: NTS

9 September 21st @ 5:00 pm  
SCALE: NTS

12 December 21st @ 5:00 pm  
SCALE: NTS

**CERTIFIED PRELIMINARY PLAN**  
THE UNDERSIGNED AGREES TO EXCISE ALL THE FEATURES OF THE PRELIMINARY PLAN APPROVAL NO. 13089 INCLUDING APPROVAL CONDITIONS, DEVELOPMENT PROGRAM, AND CERTIFIED PRELIMINARY PLAN.  
DATE: \_\_\_\_\_  
SIGNATURE: \_\_\_\_\_

**DEVELOPER'S CERTIFICATE**  
THE UNDERSIGNED AGREES TO EXCISE ALL THE FEATURES OF THE PRELIMINARY PLAN APPROVAL NO. 13089 INCLUDING APPROVAL CONDITIONS, DEVELOPMENT PROGRAM, AND CERTIFIED PRELIMINARY PLAN.  
DATE: \_\_\_\_\_  
SIGNATURE: \_\_\_\_\_

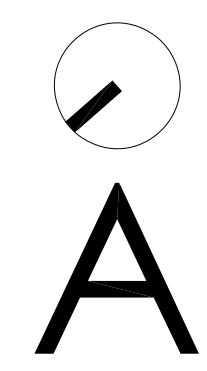
COMPANY: 4990 FAIRMONT, LLC c/o STARR CAPITAL, LLC  
ADDRESS: 13089 WINDY HILL AVENUE  
SUITE 800 BETHESDA, MD 20815  
PHONE: 817-763-3330



Professional Certification.  
I hereby certify that these documents were prepared or approved by me, and that I am a duly licensed architect under the laws of the State of Maryland.

License No.: 13089  
Expiration Date: 4/11/2014

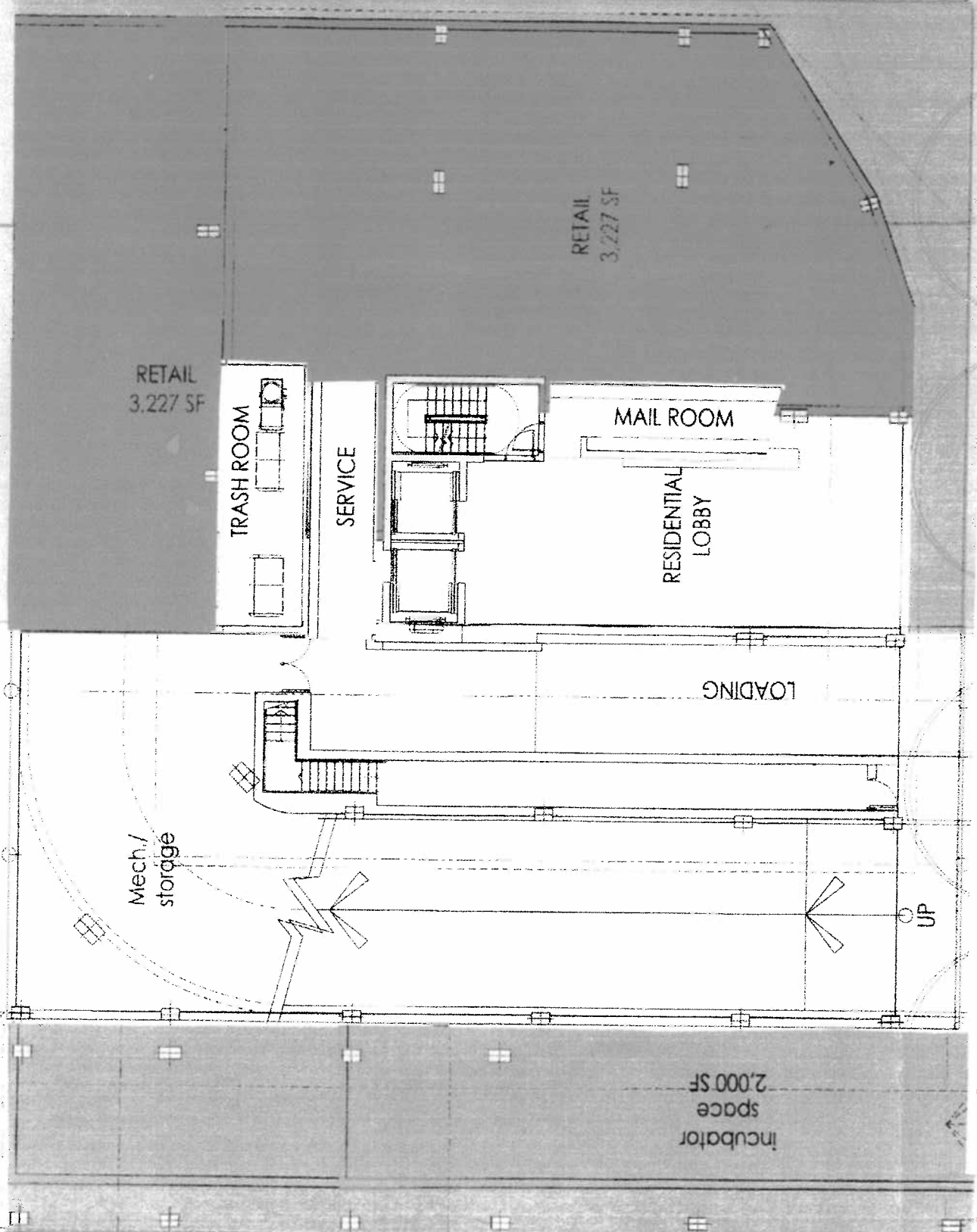
4990 FAIRMONT  
BETHESDA, MD



Note 1: Conceptual plan, for illustrative purpose only.



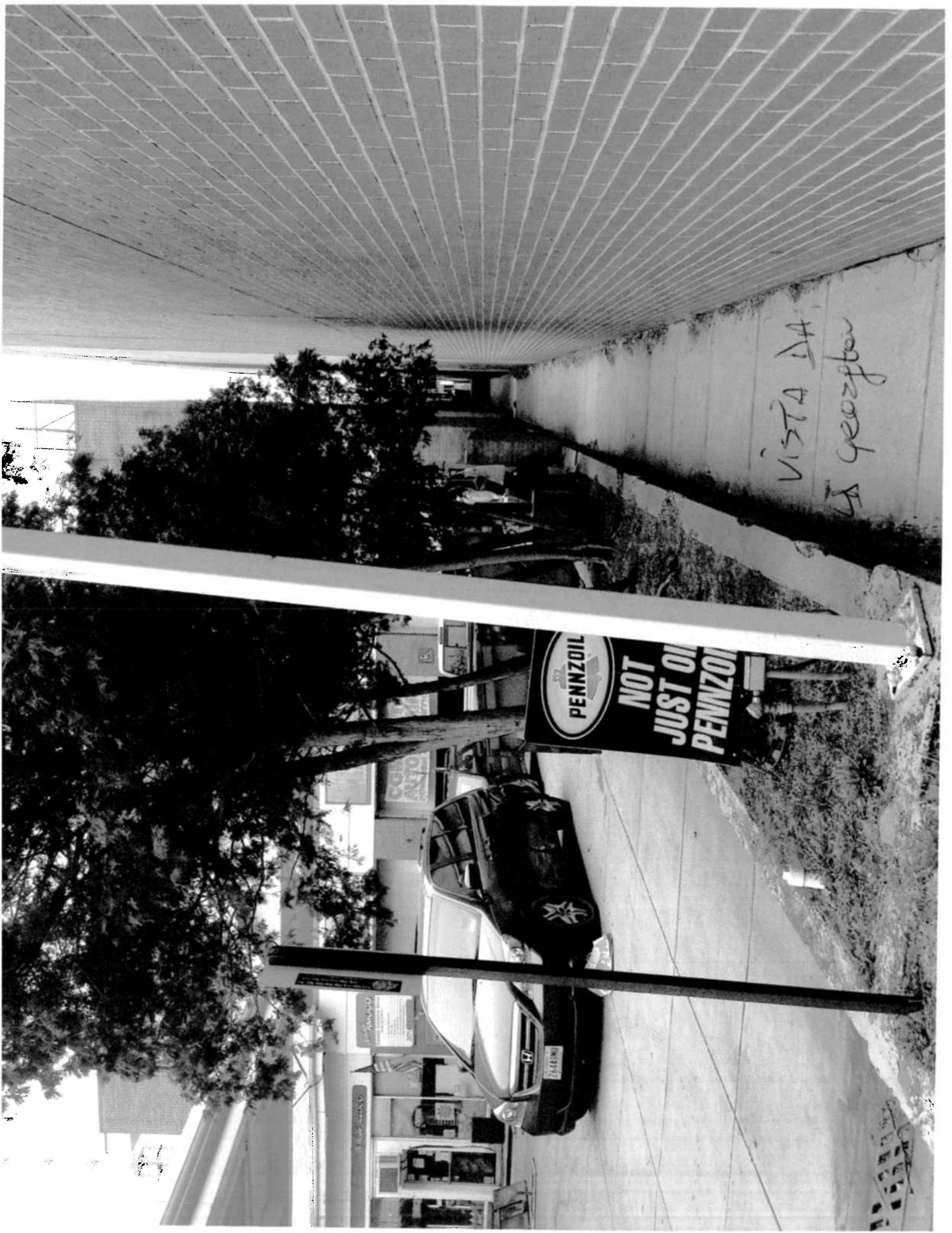
OLD GEORGETOWN ROAD



4990 FAIRMONT AVENUE (Proposed revision)  
By Luigi Traettino - POSITANO - Confinante







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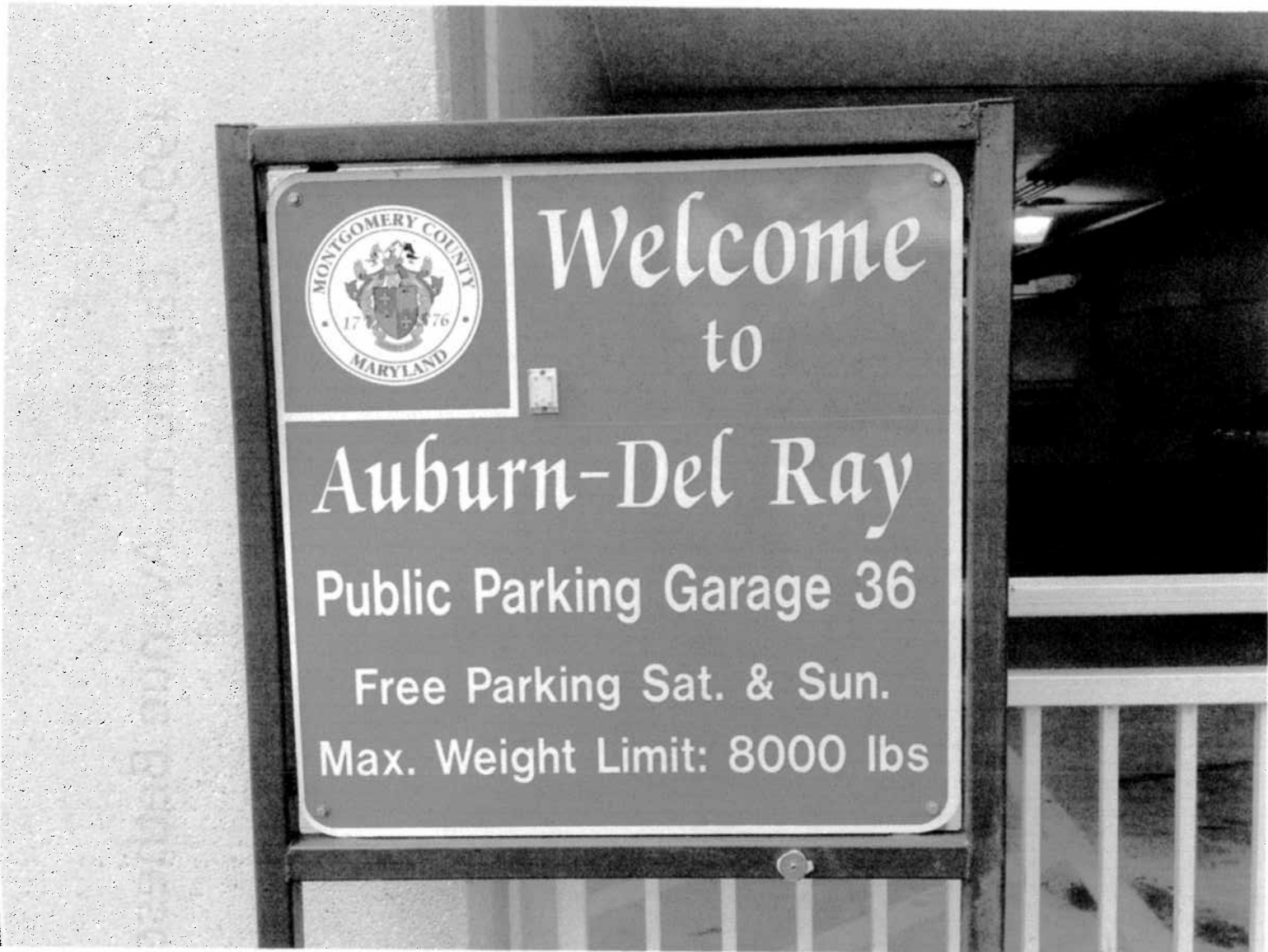
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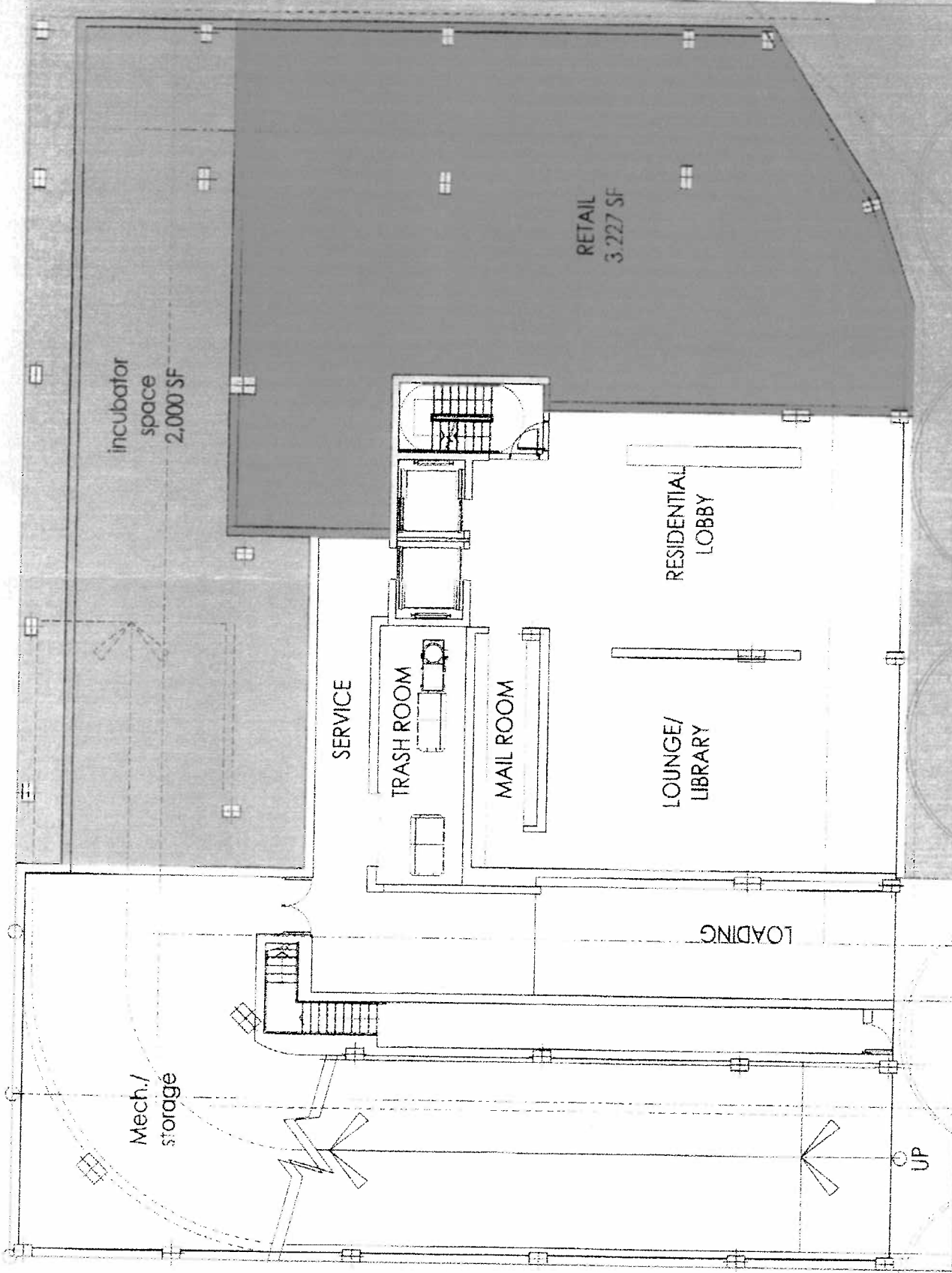
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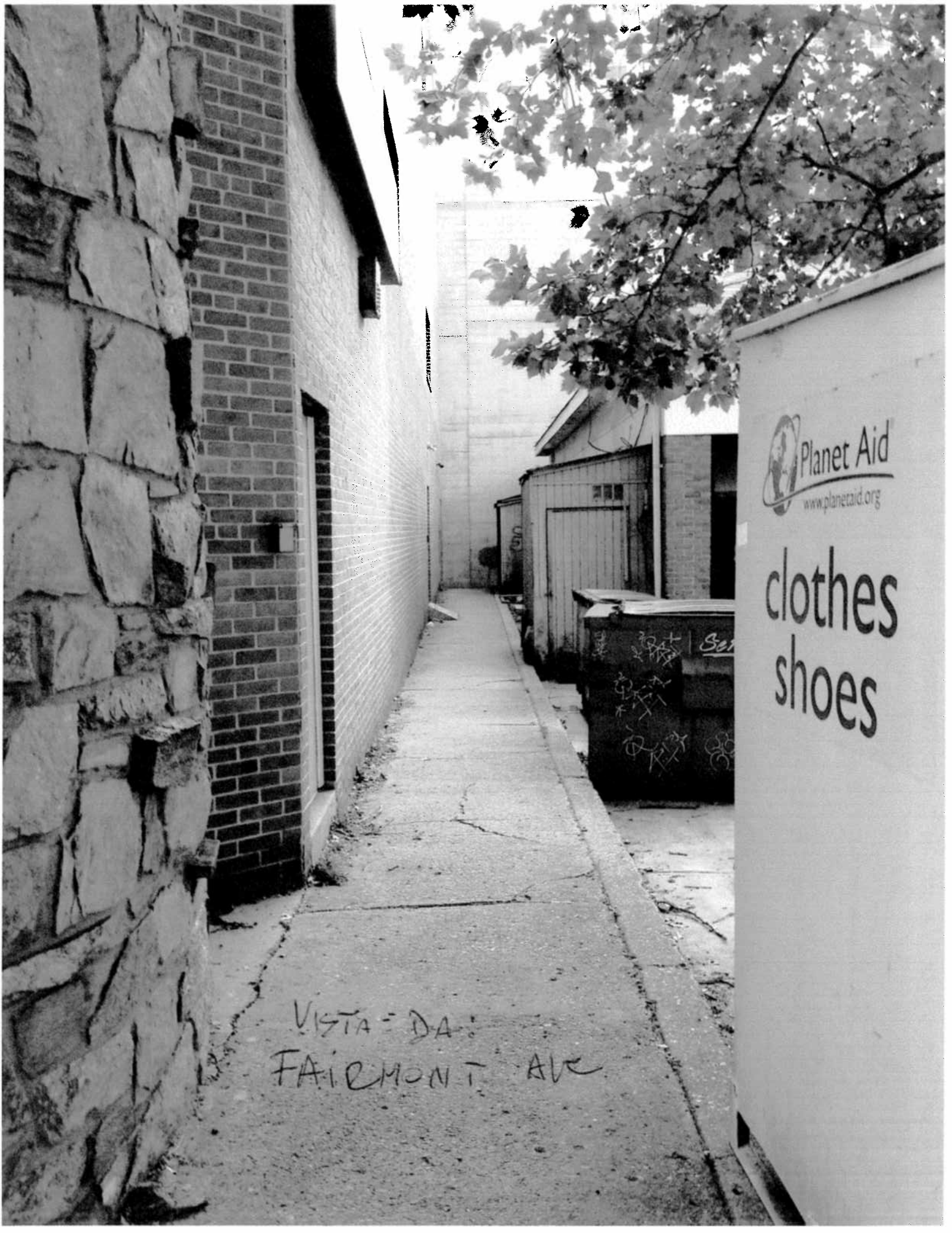


OLD GEORGETOWN ROAD



4990 FAIRMONT AVENUE 1st Copy

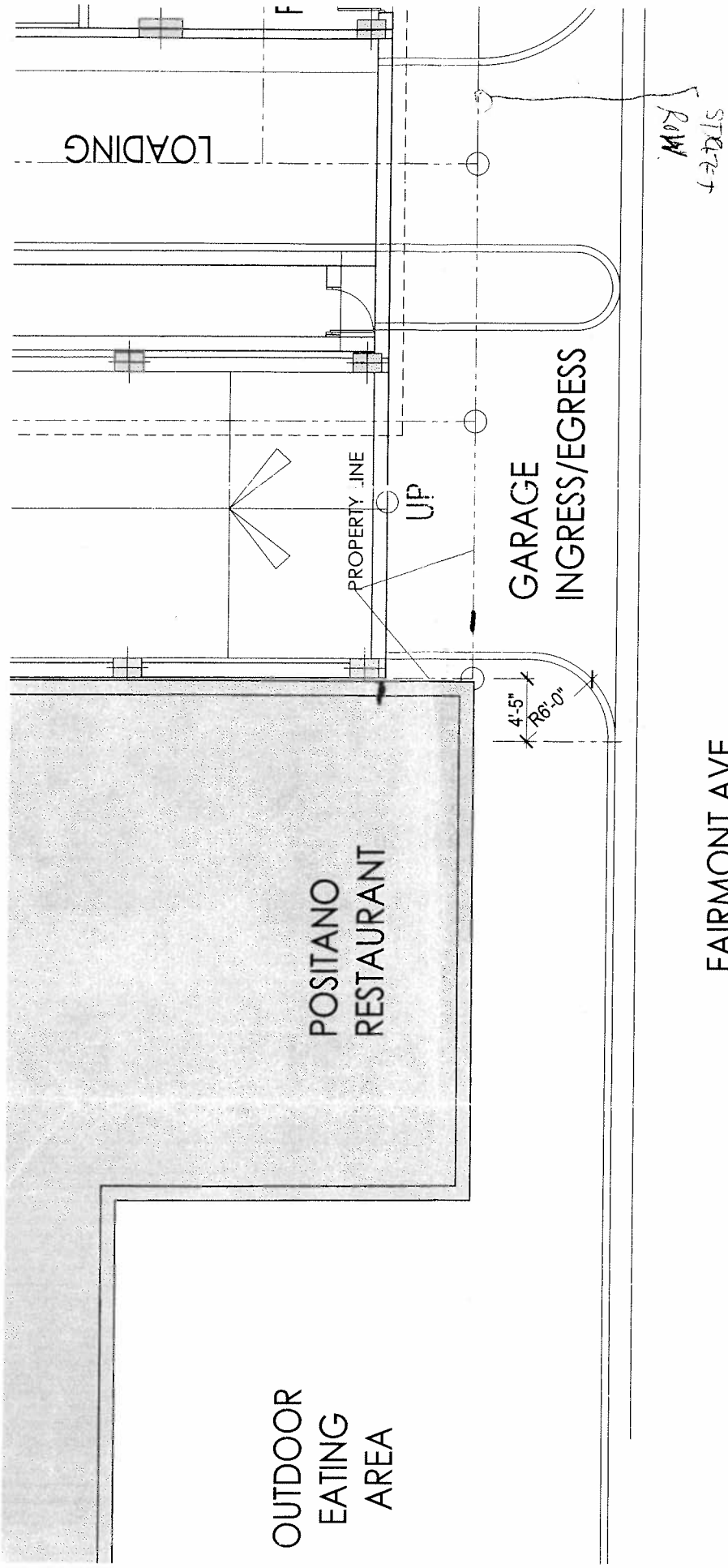
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Planet Aid  
www.planetaid.org

clothes  
shoes

VISTA - DA:  
FAIRMONT AVE



FAIRMONT AVE

STREET ROW

LOADING

GARAGE INGRESS/EGRESS

UP

PROPERTY LINE

POSITANO RESTAURANT

OUTDOOR EATING AREA

4'-5"  
R6'-0"

**LINOWES**  
**AND BLOCHER LLP**  
ATTORNEYS AT LAW

July 3, 2013

**C. Robert Dalrymple**  
301.961.5208  
bdalrymple@linowes-law.com  
**Heather Dlhopsky**  
301.961.5270  
hdlhopsky@linowes-law.com

**VIA EMAIL DELIVERY**

Ms. Erin Grayson  
M-NCPPC Development Review Division  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

Re: 4990 Fairmont Avenue – Project Plan No. 920130070 and Preliminary Plan No. 120130230 (the “Applications”): Response to Positano Restaurant (“Positano”) Comments

Dear Ms. Grayson:

On behalf of 4990 Fairmont LLC (the “Applicant”), we are responding to the comments you provided to the Applicant via email on June 21<sup>st</sup> from Positano (located just east of the Property) regarding the Applications. As described in detail in the materials previously submitted with the Applications, the Applicant proposes redevelopment of the Property with a mixed-use project with up to 72 multi-family residential units (including 15% moderately priced dwelling units), up to 7,000 square feet of non-residential uses (including retail, restaurant, or service uses and artist workspace), structured parking, and associated utility relocation, on-site public use space, and off-site public amenity space (the “Project”). The owners of Positano have suggested that certain ground-floor features within the Project be rearranged in order to provide an alley space between the Property and Positano running from Fairmont Avenue to Public Parking Garage 11 (“Garage 11”) in the back of the properties, and that the artist workspace be located on the side of the Project immediately adjacent to Positano, which would result in a shift of the Project’s parking and loading access approximately 20 feet closer to Old Georgetown Road (or alternatively to the Old Georgetown Road side of the Property). For reasons described below, these suggestions by Positano cannot be accommodated.

The suggestions of Positano were actually considered and analyzed by the Applicant as part of the original design review, long before now being suggested by Positano, and the conclusions reached then still apply now. The ground-floor features within the Project have been designed in the only layout feasible given the constraints surrounding the Project on three sides: Old Georgetown Road on the east, Fairmont Avenue on the north, and the 40-foot-high blank cinder block façade of Garage 11 located only four feet from the Property line on the south. The artist workspace and parking and loading access are properly situated in the Project both from urban design and visibility perspectives, and provision of a public alley from Fairmont Avenue would

\*\*L&B 2470161v3/12244.0002



Ms. Erin Grayson  
July 3, 2013  
Page 2

provide very little functional use and would significantly compromise the Project from an operational perspective. To expand on this:

- The Public Alley and Artist Workspace Are Correctly Located Adjacent to Garage 11: There is an existing 4-foot-wide public alley pedestrian sidewalk ("Public Alley") that runs generally eastward along Garage 11 (which encumbers much of the block) from Old Georgetown Road to The JBG Companies' 4900 Fairmont project that recently was approved for optional method redevelopment. The Public Alley provides pedestrian access to two doorways serving Garage 11, including a doorway approximately 55 feet past the Property and a doorway behind JBG's project (actually being relocated by JBG to be directly accessed from the new "Paseo" being provided by JBG to provide pedestrian linkage from Fairmont Avenue to Garage 11). This Public Alley is located on County property, and thus even if the Applicant constructed the Project's ground-floor level right up to the Property line, the 4-foot gap would remain. Rather than walling in the 4-foot space with structure on both sides, the Applicant has decided to open up the space by setting its ground-floor artist workspace back from the Property line approximately six (6) feet, which when combined with the existing 4-foot width of the Public Alley itself will comprise an approximately 10-foot-wide walkway along the artist workspace portion of the southeast side of the Property (closer to 11 feet in width near the Old Georgetown Road frontage). The artist workspace will line the side of the Project facing Garage 11, which will help to activate and beautify the space and place "eyes on the alley". Thus, placement of the artist workspace in this location embraces and enhances the Public Alley by incorporating it for multiple points of access to the artist workspace; including the alley in creating an outdoor space that will be an extension of the enclosed artist workspace; and by enhancing the Public Alley as a pedestrian way linking Garage 11 and the other uses along Fairmont Avenue with Old Georgetown Road.
- Artist Workspace Visibility: From a pure operational perspective, the artist workspace would greatly benefit from visibility and access on Old Georgetown Road to draw visitors and customers. Thousands of vehicles, bicycles, and pedestrians pass by the Property frontage along Old Georgetown Road on a daily basis (approximately 30,000 vehicles daily). Were the artist workspace to be located on Fairmont Avenue far from its intersection with Old Georgetown Road, visibility and publicity for the space would be a fraction of that along Old Georgetown Road (only approximately 2,000 vehicles pass by the Property frontage along Fairmont Avenue daily) and the reduced visibility will hinder the success of the artists and the space.
- Shifting the Artist Workspace and the Resulting Shift in Parking/Loading Access Will Not Conform to MCDOT Design Guidelines: Were the artist workspace to shift to the

Ms. Erin Grayson  
July 3, 2013  
Page 3

east side of the Project adjacent to Positano, the Project's parking and loading access would shift from its current location adjacent to the Property line approximately 20 feet closer to Old Georgetown Road. Given the Montgomery County Department of Transportation's ("MCDOT") policies on spacing of intersections and driveways, it is very likely that this shift would place the Project's driveways too close to Old Georgetown Road, and the access points would be denied by MCDOT. Locating the access points on Old Georgetown Road is not an option, as the Project has already been denied access along that State road. Further, the Project's ramping system cannot shift away from the Property line as such a shift will compress the garage levels above and render the garage dysfunctional from an operational perspective, and the Project's service uses cannot be shifted either as there is no room in the middle of the building to accommodate them.

- There Is No Need for Another Public Alley between Fairmont Avenue and Garage 11: Finally, provision of a public alley from Fairmont Avenue to Garage 11 between the Project and Positano would provide very little functional use. There will be a mid-block pedestrian connection on Fairmont Avenue approximately 260 feet to the east of the Property line once the Bainbridge Bethesda project on the north side of Fairmont and the 4900 Fairmont project (and its "Paseo") on the south side of Fairmont are constructed, which will connect Fairmont to St. Elmo Avenue to the north and Garage 11 to the south. Visitors to Positano will need to walk only 262 feet east to reach the Paseo to Garage 11, or 258 feet west and south to reach the Project's Public Alley to Garage 11 (as shown on the attached plan). Thus, constructing another alley between the Project and Positano is redundant at best.

For all of these reasons, the only logical conclusion is that the ground-floor features within the Project have been designed in the only layout feasible given the constraints surrounding the Project on three sides, and that the resulting layout makes both good urban design and operational sense. It is worthy to also note that this design has been consistently shown since the beginning of the design process, including many public presentations and several presentations to representatives of Positano. The Applicant was never presented with Positano's suggestions or concerns until your email of June 21<sup>st</sup> was provided to us. Finally, this design has also received substantial and unwavering support from, among many others, the Woodmont Triangle Action Group, the Art Review Panel, and The Greater Bethesda-Chevy Chase Chamber of Commerce. Additionally, the Bethesda Urban Partnership ("BUP") has preliminarily reviewed and approved the design in the process of reaching an operating agreement between the Applicant and Montgomery County (whereby BUP will be responsible for operating the artist workspace which will be owned in fee simple by the County).



Ms. Erin Grayson  
July 3, 2013  
Page 4

Should you have any questions or require any additional information, please do not hesitate to contact us.

Very truly yours,

**LINOWES AND BLOCHER LLP**

*C. Robert Dalrymple, HO*

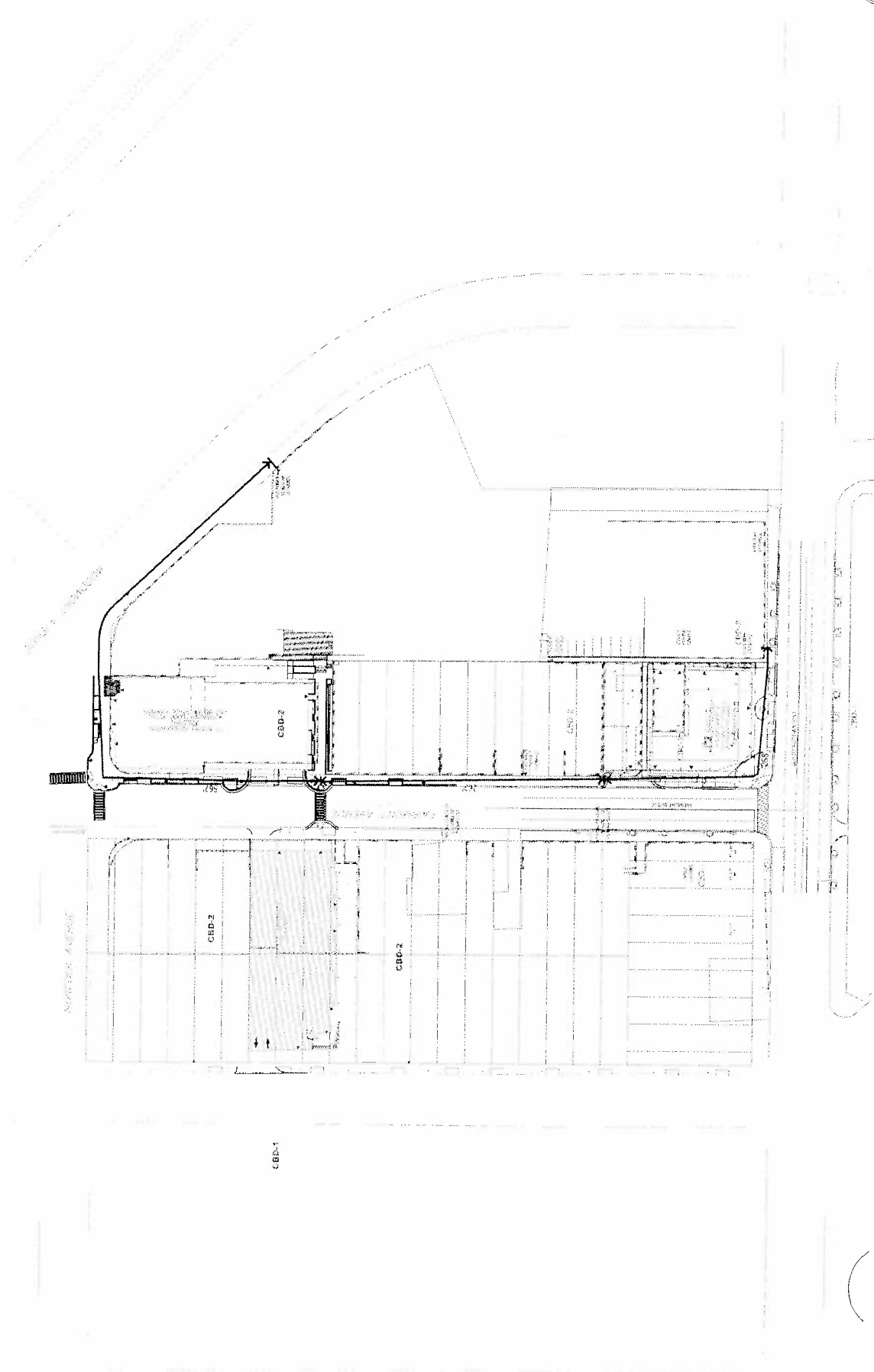
C. Robert Dalrymple

*H. D. Dally*

Heather Dlhopsky

Enclosure

cc: Mr. Thomas Albert  
Mr. Timothy Eden  
Mr. Bill Landfair  
Mr. Federico Olivera Sala



VIA PARTNERS, LLC  
 10000 WOODBURN AVENUE, SUITE 100  
 BETHESDA, MONTGOMERY COUNTY, MD 20814  
 (301) 470-1700 • FAX (301) 470-1282  
 WWW.VIA.COM

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**POSITANO'S DISTANCE EXHIBIT**

4990 FAIRMONT AVE  
 BETHESDA, MD 20814  
 MONTGOMERY COUNTY  
 JUNE, 2013  
 SCALE: 1"=40'



**MCP-CTRACK**

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OFFICE OF THE CHAIRMAN  
MONTGOMERY COUNTY PLANNING  
AND ZONING DEPARTMENT  
PARK AND PLANNING COMMISSION

**From:** Hartman, Ken <Ken.Hartman@montgomerycountymd.gov>  
**Sent:** Thursday, June 27, 2013 10:22 AM  
**To:** MCP-Chair  
**Cc:** Kronenberg, Robert  
**Subject:** 4990 Fairmont - Woodmont Triangle Action Group letter  
**Attachments:** 4990 Fairmont.pdf; ATT00001.txt

Dear Ms. Carrier,

Please see the attached letter from the Woodmont Triangle Action Group regarding 4990 Fairmont Avenue. Thank you.

# Woodmont Triangle Action Group

Bethesda Chevy Chase Regional Services Center  
4805 Edgemoor Lane – Bethesda, MD - 20814

June 27, 2013

The Honorable Françoise Carrier  
Chair, Montgomery County Planning Board  
8787 Georgia Ave, Silver Spring, MD 20910

Subject: 4990 Fairmont Avenue – Letter of Support

Dear Ms. Carrier:

The Woodmont Triangle Advisory Group (WTAG) is pleased to offer this letter of support for the proposed development at 4990 Fairmont Avenue in Bethesda. The developer of the project (Starr Capital) has met with us several times as they developed their site and project plans.

WTAG members are especially excited with the inclusion of the artist studio spaces as the public amenity for the project. As you know, WTAG and the Bethesda Arts and Entertainment District have been working to include artist studio spaces in the area for a number of years. In fact, the Woodmont Triangle Sector Plan Amendment identifies artist studio spaces as a potential priority project for the area. In addition, we are pleased to see that the developer intends to utilize the Bethesda Urban Partnership to manage these spaces.

The WTAG considers the project's connection to the County garage as another element that is consistent with the spirit of the Woodmont Triangle Sector Plan.

While the overall site design was positively received, we would like to continue to work with the developer on a plan to enhance the columns along the entrance to the studio spaces in a way that can display the work of resident artists.

Thank you for the opportunity to comment and please do not hesitate to contact us if you have questions.

Sincerely,



Sue Knapp, Chair

cc: Robert Kronenberg, Planning Department