



Item #11
MCPB
07.03.03

THE MARYLAND-NATIONAL CAPITAL PARK & PLANNING COMMISSION

MEMORANDUM

DATE: ~~June 12, 2003~~ **June 27, 2003**
TO: Montgomery County Planning Board
VIA: Michael Ma, Supervisor *JRO*
Joseph R. Davis, Division Chief
Development Review Division
FROM: Mary Beth O'Quinn
Planning Department Staff
(301) 495-1322

REVIEW TYPE: Site Plan AMENDMENT
CASE #: 8-00014B
PROJECT NAME: Bethesda Theater Residential
APPLYING FOR: Approval of a time extension for completion of the restoration of the historic theater
PROJECT NAME: **Bethesda Theater Residential**
REVIEW BASIS: Sec. 50-D-3 of the Zoning Ordinance

ZONE: CBD-2
LOCATION: Bounded by Wisconsin, Cheltenham, Tilbury and Middleton
MASTER PLAN: Bethesda CBD Sector Plan
APPLICANT: Bethesda Theatre LLC, c/o The Bozzuto Group
FILING DATE: May 19, 2003
HEARING DATE: ~~June 19, 2003~~ **July 3, 2003**



SUMMARY

This amendment proposes solely to extend deadlines for completing the restoration of the historic Bethesda Theater, as stated in Condition #4 of the Site Plan approved by the Montgomery County Planning Board (MCPB) on March 2, 2000. The applicant has developed, with the Historic Preservation Commission, a program of restoration of the interior and incorporation of certain exterior features into the design of the apartment building to be constructed over the theater.

The approved Site Plan required the full completion of the theater exterior restoration prior to occupancy of the 1st residential unit in the apartment tower. The completion of the theater interior restoration was required prior to occupancy of the 105th residential unit in the apartment tower.

The amended condition, as recommended by staff will allow a time extension for a portion of the elements of restoration construction. The design and configuration of the remaining restoration elements rely significantly on the functional program of the future tenant. The time extension will allow the applicant to avoid redundant design and engineering efforts, as well as duplicative construction time and costs.

The applicant has demonstrated his commitment through the ongoing efforts to secure an operator for the Bethesda Theater. The applicant will submit quarterly reports to the Planning Board on the progress in leasing the theater. The extension of the deadlines for the final restoration elements will facilitate the applicant's ability to customize interior specifications to a particular tenant and enhance the probability of a obtaining an attractive tenant in the near term. [See also *High-Rise Building Delivery Schedule*, page 3.]

STAFF RECOMMENDATION: Approval to allow a time extension for completion of the restoration of the historic theater, as follows:

1. Conditions of all previous approvals remain in full force and effect except as modified by this approval.
2. Restoration Construction Prior to Occupancy
Applicant must complete all elements of the exterior preservation of the theater prior to the issuance of occupancy permit(s) for the apartment tower, as follows:
 - a. Exterior Restoration
Applicant must complete these elements prior to issuance of the 105th 1st occupancy permit:
 - i. Remove existing roof trusses and install new apartment tower trusses while protecting interior finishes [work completed as of June 25, 2003];
 - ii. Retain and preserve the decorative brick and cast stone west parapet wall in original location [work completed as of June 25, 2003];
 - iii. Remove and replace wood frame roof and floor construction at the west retail areas [work completed as of June 25, 2003];
 - iv. Install new structural columns at the north and south elevations to support the new apartment trusses [work completed as of June 25, 2003];
 - v. Clean and point the brick on the west, north, and south elevations;
 - vi. Provide level exiting from the Theatre by raising the grade on the north and south sides [work completed as of June 25, 2003];
 - vii. Remove and reinstall the original marquee sign including repairing the support structure, sheet metal cladding and lighting to match original configuration [work completed as of June 25, 2003];
 - b. Exterior Restoration
Applicant must complete these elements prior to issuance of the 188th occupancy permit or by August 20, 2003:
 - i. Clean and repair existing original aluminum and glass storefront on the west and south elevations, replacing any missing or altered portions of the trim to match the original [work to begin July 1-7, 2003];
 - ii. Replicate the original storefront materials and detailing on the north elevation with a modification to add an egress door [work to begin July 1-7, 2003];
 - iii. Restore the existing, original ticket booth, entry doors, and entrance lobby; remove added ceilings and signs and repair existing stone, plaster, metal and wood details while replacing any missing elements to match the original and repainting the original decorative scheme [work to begin early July, 2003];
 - iv. Replace the steel exit doors, frames and hardware at the north and south elevations [work in progress];
 - c. Interior Restoration
Applicant must complete these elements of the interior restoration prior to December 31, 2004:

- i. Remove and replace wood ceiling and floor framing at west retail spaces **[work completed as of June 25, 2003]**;
- ii. Remove the added floor structure, kitchen, and service facilities in the theatre in order to install the apartment tower **[work completed as of June 25, 2003]**;
- iii. Remove all existing mechanical, electrical and plumbing systems **[work completed as of June 25, 2003]**;
- v. Install new support columns in the north and south retail spaces and along the north wall of the theatre **[work completed as of June 25, 2003]**;
- vi. Install a new egress stair and exit corridor from the apartment tower at the north retail space **[work in progress, expected completion July 1-7, 2003]**;
- vii. Support and protect theatre ceiling during construction **[work in progress, also dependent on tenancy]**;
- viii. Install all new plumbing, mechanical, and electrical systems **[dependent on tenancy]**;
- viii. Preserve existing plan configurations and finishes of the theater and the lobby subject to necessary modifications in order to accommodate new toilet facilities, accessibility, food service and theatre operations **[completion dependent on tenancy]**;
- ix. Replicate and supplement lighting as necessary and repair any original remaining light fixtures **[dependent on tenancy]**.

4. Posting of Bond

Applicant must post a bond prior by August 1, 2003 in the amount of \$1,500,000 to cover costs of completing the interior restoration, including all finishes, administration and supervision of this work, and the contingency funding. The bond must be payable to the M-NCPPC in the event of default.

Completion Schedule for Residential Units

Bethesda Theatre Project High-Rise Building Delivery Schedule 6/23/2003			
Location	Finish Date	Units Delivered	Cumulative Units Delivered
Lobby & Garage	24-Jun	0	0
2nd Floor	9-Jul	13	13
3rd Floor	9-Jul	13	26
4th Floor	9-Jul	21	47
5th Floor	16-Jul	25	72
6th Floor	23-Jul	25	97
7th Floor	30-Jul	25	122
8th Floor	6-Aug	22	144
9th Floor	13-Aug	22	166
10th Floor	20-Aug	22	188
11th Floor	3-Sep	17	205

Attachments

- Memo from Gwen Wright, MNCPPC Historic Preservation, dated June 26, 2003
- Letter from Anne C. Martin, Linowes and Blocher LLP, dated June 25, 2003
- Memo from Shariar Etemadi, MNCPPC Transportation Planning dated June 5, 2003
- MCPB Opinion, *Bethesda Theater Residential*, Site Plan 8-00014 dated June 12, 2002
- Letter from Emily Vaias, Linowes and Blocher LLP, dated May 19, 2003
- Letter from Artie L. Harris, Bozzuto Development Company, dated February 25, 2003



THE MARYLAND-NATIONAL CAPITAL PARK & PLANNING COMMISSION

June 26, 2003

MEMORANDUM

TO: Joe Davis, Chief
Development Review Division

Mary Beth O'Quinn, Planner
Development Review Division

FROM: Gwen Wright, Supervisor
Historic Preservation Section
Countywide Planning Division

SUBJECT: Bethesda Theatre Site Plan Amendment

The Bethesda Theatre is a historic site, designated on the *Master Plan for Historic Preservation*. Restoration of this important historic resource and its continued use as a venue for the performing arts (either cinematic or live performance) was the major amenity offered by the developers of the new residential tower that has been constructed above the theater space.

The residential tower is nearing completion, but the restoration of the theater is not yet complete.

The developers are currently requesting an amendment to their approved Site Plan conditions to allow for more time to complete the theater restoration, while allowing for occupation of the residential units in the new tower. Historic preservation staff feels that a limited time extension should be granted, but with very clear deadlines and remedies for not complying with the deadlines.

Historic preservation staff and Development Review Division staff toured the theater on June 23, 2003 with the development team. The theater restoration is definitely progressing and the quality of work being undertaken seems excellent. During the tour, staff was given additional information about problems encountered during the course of the restoration work that have resulted in delays and the explanations for the delays seemed reasonable.

Based on the information presented by the development team on June 23, 2003 and their anticipated schedule for completion restoration work on the theater, historic preservation staff feels that the following revisions to the Site Plan conditions would be acceptable:

1. The exterior restoration of the theater (as described in the June 25, 2003 letter from Anne C. Martin on behalf of the developer) must be completed by delivery of the 144th unit (estimated by the developer as an August 6, 2003 finish date.) If this deadline is not met, no additional occupancy permits will be issued until the exterior restoration of the theater is complete.
2. The interior restoration of the theater (as described in the June 25, 2003 letter from Anne C. Martin on behalf of the developer) must be completed by December 31, 2004. If this deadline is not met, the developer will be in default.
3. By August 1, 2003, the developer will post a bond in the amount of \$1,500,000 to cover the costs of completing the interior restoration, including all finishes, administration and supervision of this work, and a contingency fund. This bond will be payable to the MNCPPC in the event of developer default.

Historic preservation staff continues to feel that the restoration of the Bethesda Theatre is a very good project and a very appropriate amenity for the additional density on the site. The completed facility will be a great benefit to the entire community. However, completion of a high quality theater restoration in a timely manner must be of high priority to the developer. The revised Site Plan conditions and deadlines must be adhered to if the optional method development process is to have meaning and purpose.

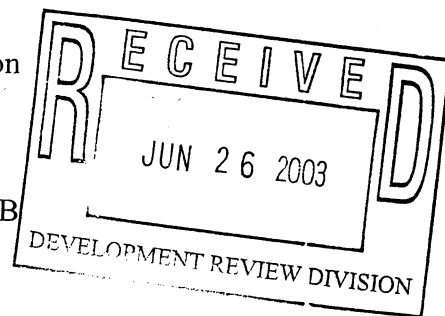
LINOWES
AND BLOCHER LLP
ATTORNEYS AT LAW

June 25, 2003

Anne C. Martin
301.961.5127
amartin@linowes-law.com

BY HAND DELIVERY

Ms. Mary Beth O'Quinn
Development Review Division
Maryland National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910



Re: Bethesda Theatre Residential, Site Plan No. 8-00014B

Dear Ms. O'Quinn:

Please find enclosed the additional information you requested to supplement the request of the owner/developer of the Bethesda Theatre Residential project, Bethesda Theatre, LLC (the "Applicant"), to amend the timeline to complete the exterior preservation and interior restoration of the Theatre. As we discussed at the site visit conducted on Monday, June 23, 2003, this supplemental information includes the current Delivery Schedule for the high-rise units, an amended Performance Bond Estimate spreadsheet adding additional funds in the event of developer default, and a memorandum from Oehrlein Associates. Because the bond amount was only increased to address the concern regarding a circumstance of developer default, we would respectfully request that the related recommended condition similarly be revised to state that the "Applicant must post a bond prior to the issuance of the 200th occupancy permit in the amount of \$1,400,000, \$750,000 of which is to secure the completion of the interior restoration work and \$650,000 of which is only to address the administration, supervision and finishing work in the event of developer default."

For your reference, we have additionally updated the information provided in our May 19, 2003 correspondence regarding the work which makes up the "exterior preservation of the Theatre," and the "interior restoration" submitted with the Historic Area Work Permit for the Theatre, [with its updated construction status in brackets]:

A. Exterior Preservation

1. Remove existing roof trusses and install new apartment tower trusses while protecting interior finishes. [work completed]
2. Retain and preserve the decorative brick and cast stone west parapet wall in original location. [work completed]

Ms. Mary Beth O'Quinn

June 25, 2003

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3. Remove and replace wood frame roof and floor construction at the west retail areas. [work completed]
4. Install new structural columns at the north and south elevations to support the new apartment trusses. [work completed]
5. Clean and point the brick on west, north and south elevations. [work completed]
6. Provide level exiting from the Theatre by raising the grade on the north and south sides. [work completed]
7. Clean and repair existing original aluminum and glass storefront on the west and south elevations, replacing any missing or altered portions of the trim to match the original. [shop drawings approved and work expected to begin the first week of July]
8. Replicate the original storefront materials and detailing on the north elevation with a modification to add an egress door. [shop drawings approved and work expected to begin the first week of July]
9. Restore the existing, original ticket booth, entry doors, and entrance lobby. Remove added ceilings and signs and repair existing stone, plaster, metal and wood details while replacing any missing elements to match the original and repainting the original decorative scheme. [work expected to begin in early July]
10. Remove and reinstall the original marquee sign including repairing the support structure, sheet metal cladding and lighting to match original configuration. [work completed]
11. Replace the steel exit doors, frames and hardware at the north and south elevations. [work in progress]

B. Interior Restoration

The interior restoration consists of the following:

Ms. Mary Beth O'Quinn

June 25, 2003

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1. Remove and replace wood ceiling and floor framing at west retail spaces. [work completed]
2. Support and protect Theatre ceiling during construction. [ceiling protected during construction and restoration work is in progress but completion dependent upon tenancy]
3. Remove the added floor structure, kitchen, and service facilities in the Theatre in order to install the apartment tower. [work completed]
4. Remove all existing mechanical, electrical and plumbing systems. [work completed]
5. Install new support columns in the north and south retail spaces and along the north wall of the Theatre. [work completed]
6. Install a new egress stair and exit corridor from the apartment tower at the north retail space. [work in progress, expect to be completed the first week of July]
7. Install all new plumbing, mechanical and electrical systems. [majority of systems installed in the main Theatre but remainder dependent upon tenancy]
8. Preserve existing plan configurations and finishes of the Theatre and the lobby subject to necessary modifications in order to accommodate new toilet facilities, accessibility, food service and Theatre operations. [configurations and finishes preserved but remainder is dependent upon tenancy]
9. Replicate and supplement lighting as necessary and repair any original remaining light fixtures. [dependent upon tenancy]

As we discussed, the unavoidable delays with the exterior renovations were the result of complications that were more complex, difficult, and expensive than could have been anticipated. In particular, the marquee installation required replacement of all of the steel supports and the concrete decking support, as well as complete repair of the entire marquee sign. These delays with the marquee work consequently created a delay to the storefront work, which is currently in progress.

As stated previously, the Applicant has been using diligent efforts to secure a user for the Theatre within the near future and is hopeful that the Theatre preservation and restoration can move forward as quickly as possible. However, to complete the remaining construction work without having identified a user and the exact design specifications would result in possible re-

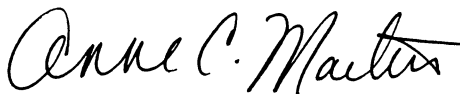
Ms. Mary Beth O'Quinn
June 25, 2003
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construction and unnecessary delay as well as inefficient use of both public and private funds. In addition, the Applicant needs to move forward with the residential occupancy of the Project to support the financing that is driving the overall development. It is important that the residential piece of the Project be occupied as soon as possible so that funding continues to be available to the Applicant to work on completing the Theatre. As an ongoing effort and commitment to find the proper user and complete the Theatre, the Applicant will continue to submit quarterly reports to the Planning Board on its progress to secure an user for the Theatre.

Thank you for your consideration of this matter. Please do not hesitate to contact us if you have any questions.

Sincerely,

LINOWES AND BLOCHER LLP


Anne C. Martin

Enclosures

cc: Mr. Joseph R. Davis
Mr. Michael Ma
Michele Rosenfeld, Esq.
Ms. Gwen Marcus Wright
Mr. Artie L. Harris
Mr. Eugene Smith
Mr. Thomas A. Baum
Ms. Mary A. Oehrlein
Robert H. Metz, Esq.
Emily J. Vaias, Esq.

MEMORANDUM

FROM: Mary Oehrlein
DATE: June 25, 2003
RE: Bethesda Theater Completion Status

Base building work yet to be completed is as follows:

- Exterior
 - Fabricate and install storefronts and doors
 - Restore the ticket booth and outer vestibule
 - Restore entrance doors
 - Repair masonry at the storefronts, complete masonry punch list
 - Install roofing and flashing
 - Complete marquee installation
 - Install new egress doors
- Interior
 - Complete the plaster restoration
 - Complete decorative painting at the lobby and house
 - Restore vestibule doors
 - Restore/replicate wood trim
 - Complete the electrical system installation
 - Install lighting
 - Complete the fire suppression system installation
 - Complete mechanical system installation

Estimated Cost: \$474,000

In order to avoid installing work that would later need to be demolished, portions of the project work have been put on hold until the new tenant design and construction drawings are complete. The deferred work is as follows:

- North exist stair and site walls
- Interior floor configuration, ramps and stairs
- Toilet room partitions, plumbing and finishes
- Basement and retail space partitioning and finishes
- Wall fabric
- Carpeting

Estimated Cost: \$ 265,500

Furniture, fixtures and equipment (FF&E) to be completed as part of the tenant construction includes:

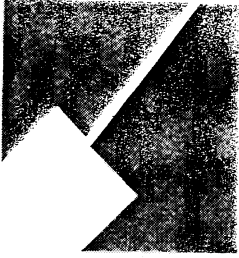
- Lighting, dimming and controls
- Sound system
- Theater seating

Estimated Cost: \$350,000

**Value of Theatre Work - Performance Bond Estimate
Bethesda Theatre Project
25-Jun-03**

	Contract Amount	% Complete	Completed Value	Remaining work to complete (as of 06-18-03)
Original Contract				
Original Donohoe Contract (See attached Breakdown)	\$2,267,000			
Allowances	<u>see below</u>	85%	\$1,926,950	\$340,050
Total	\$2,267,000			
Change Orders to Date				
Mechanical, Electrical & Plumbing	\$215,000	85%	\$182,750	\$32,250
Storefront, Incl. Doors	\$210,000	60%	\$126,000	\$84,000
Marquee	\$90,000	90%	\$81,000	\$9,000
Underpinning & Structural Repairs	\$70,000	100%	\$70,000	\$0
Replace Retail Roofs/Structural Supports	\$45,000	90%	\$40,500	\$4,500
Other Miscellaneous	<u>\$85,000</u>	95%	\$80,750	\$4,250
Total	\$715,000			
Total w/Change Orders	\$2,982,000			
Work "On Hold" for Tenant Specific Requirements				
Donohoe Contract Allowances (interior finishes)	\$86,000	20%	\$17,200	\$68,800
Rails & Stairs	\$48,000	45%	\$21,600	\$26,400
Theatre Handicap Ramp	\$30,000	15%	\$4,500	\$25,500
Refinish Stage Floor	\$10,000	0%	\$0	\$10,000
Bathroom Fixtures	\$10,000	0%	\$0	\$10,000
Wall Covering	\$48,000	0%	\$0	\$48,000
Misc. MEP	\$35,000	25%	\$8,750	\$26,250
Rear Basement (Green Rooms)	\$25,000	10%	\$2,500	\$22,500
Misc. Retail/Basement Partitions	\$18,000	0%	\$0	\$18,000
North Alley Completion (site work/stairs)	<u>\$20,000</u>	50%	\$10,000	\$10,000
Total	\$330,000			
Total Value of Theatre Work	\$3,312,000	78%	\$2,572,500	\$739,500
Additional Funds In Instance of Developer Default				
County Supervision				\$250,000
Additional Architecture Engineering Supervision				\$50,000
FF&E (See Memo from Oehrlein Assoc. dated 6-23-03)				\$350,000
Bond Amount Estimate				\$1,389,500

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK & PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

June 5, 2003

MEMORANDUM

TO: Mary Beth O'Quinn, Planner
Development Review Division

VIA: Daniel Hardy, Supervisor *DKH*
Transportation Planning

FROM: Shahriar Etemadi, Coordinator
Transportation Planning

SUBJECT: Site Plan No. 8-00014, Bethesda Theatre Residential
Bethesda CBD

This memorandum is Transportation Planning staff's Adequate Public Facilities review of the subject application.

RECOMMENDATION

Transportation Planning staff recommends no conditions to support approval of the above referenced application.

Local Area Transportation Review (LATR)

The applicant is requesting a change in schedule for completing the exterior renovation of the theatre prior to the first occupancy permit issued for the residential building. This request has no impact on the transportation system in the area. We have no objection to approval of this application as it relates to LATR.

Transportation issues were evaluated and approved during the preliminary plan and site plan approval for this project.

Site Access and Circulation

Access, circulation and providing pedestrian facilities for this project have been approved previously and there are no requested design changes as part of this application. Therefore, adequate access, circulation and pedestrian facilities exist for this project.

Policy Area Review/Staging Ceiling Analysis

The site is located within the Bethesda CBD Policy area, which has a remaining capacity of 847 jobs and 414 housing units as of May 31, 2003.

SE:ct

mmo to o'quinn re 8-00014 bethesda cbd.doc

LINOWES
AND BLOCHER LLP
ATTORNEYS AT LAW

May 19, 2003

Emily J. Vaias
301.961.5174
evaias@linowes-law.com

BY HAND DELIVERY

Mr. Michael Ma
Maryland National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Request for Amendment of Condition to Site Plan No. 8-00014
Bethesda Theatre Residential

Dear Mr. Ma:

We represent the owner/developer of the Bethesda Theatre Residential project, Bethesda Theatre, LLC. As you are aware, this Project has been an on-going process since 1996. Over the past seven years, the Applicant has worked to receive Project Plan, Zoning, Abandonment, Preliminary Plan and Site Plan Approvals, in addition to designation on the National Historic Registry. The conclusion of these numerous approvals has been the current construction and development of 249 apartment units, 9 townhouses, 2 underground parking garages, and preservation of the historic Bethesda Theatre (the "Project"). Throughout this process, the Applicant has worked closely with the numerous interested parties to design and develop a Project that is truly an asset to the Bethesda Central Business District area ("CBD") and surrounding communities.

As part of the numerous approvals, the residential portion of the Project has been contingent upon making certain improvements or preservation actions related to the Theatre. Despite diligent and good faith efforts by the Applicant to find an appropriate user for the Theatre, as required by its various approvals, an operating agreement has not yet been signed to finalize the tenancy. Further, as explained by the Applicant in a letter dated February 25, 2003 to you (attached hereto as Exhibit "A"), each potential tenant has had significantly different interior requirements for the Theatre. Therefore, the Applicant has learned that until a tenant is located, it would be costly and wasteful to complete all of the Theatre interior renovations without a firm commitment from a tenant to occupy the space. In addition, the Applicant could not have anticipated the complexity and difficulty of making some of the exterior renovations which has also resulted in unavoidable delays. Consequently, we are respectfully requesting that the Planning Board amend Condition No. 4 of the Site Plan Opinion (dated June 12, 2000) (attached hereto as Exhibit "B") which states as follows:

Michael Ma
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“4. Applicant to complete the exterior preservation of the Theater prior to the first occupancy permit for the apartment tower and the interior restoration prior to the 105th occupancy permit for the apartment tower.”

As part of the information submitted with the Historic Area Work Permit (“HAWP”) for the Theatre, the work which makes up the “exterior preservation of the Theatre,” and the “interior restoration” includes the following [with its construction status in brackets]:

A. Exterior Preservation

1. Remove existing roof trusses and install new apartment tower trusses while protecting interior finishes. [work completed]
2. Retain and preserve the decorative brick and cast stone west parapet wall in original location. [work completed]
3. Remove and replace wood frame roof and floor construction at the west retail areas. [work completed]
4. Install new structural columns at the north and south elevations to support the new apartment trusses. [work completed]
5. Clean and point the brick on west, north and south elevations. [work completed]
6. Provide level exiting from the Theatre by raising the grade on the north and south sides. [work completed]
7. Clean and repair existing original aluminum and glass storefront on the west and south elevations, replacing any missing or altered portions of the trim to match the original. [shop drawings approved and work expected to begin in June]
8. Replicate the original storefront materials and detailing on the north elevation with a modification to add an egress door. [shop drawings approved and work expected to begin in June]
9. Restore the existing, original ticket booth, entry doors, and entrance lobby. Remove added ceilings and signs and repair existing stone, plaster, metal and wood details while replacing any missing elements to match the original and repainting the original decorative scheme. [work expected to begin in June]

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10. Remove and reinstall the original marquee sign including repairing the support structure, sheet metal cladding and lighting to match original configuration. [sign has been repaired, support structure is being replaced and sign expected to be re-installed in June]
11. Replace the steel exit doors, frames and hardware at the north and south elevations. [work expected to begin in June]

B. Interior Restoration

The interior restoration consists of the following:

1. Remove and replace wood ceiling and floor framing at west retail spaces. [work completed]
2. Support and protect Theatre ceiling during construction. [ceiling protected during construction and restoration work is in progress but completion dependent upon tenancy]
3. Remove the added floor structure, kitchen, and service facilities in the Theatre in order to install the apartment tower. [work completed]
4. Remove all existing mechanical, electrical and plumbing systems. [work completed]
5. Install new support columns in the north and south retail spaces and along the north wall of the Theatre. [work completed]
6. Install a new egress stair and exit corridor from the apartment tower at the north retail space. [new stair reconfigured to exit on south wall of Theatre and is under construction, expect to be completed in June]
7. Install all new plumbing, mechanical and electrical systems. [majority of systems installed in the main Theatre but remainder dependent upon tenancy]
8. Preserve existing plan configurations and finishes of the Theatre and the lobby subject to necessary modifications in order to accommodate new toilet facilities, accessibility, food service and Theatre operations. [configurations and finishes preserved but remainder is dependent upon tenancy]

Michael Ma
May 19, 2003
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9. Replicate and supplement lighting as necessary and repair any original remaining light fixtures. [dependent upon tenancy]

The Applicant has completed, or believes it can soon complete, the work for seven (7) of the eleven (11) items listed as part of the Exterior Preservation. However, the Applicant has experienced some unavoidable delays with regard to items Nos. 7 and 8 (storefronts); No. 9 (ticket booth, entry doors and entrance lobby); and No. 11 (exit doors). Each of these items is either underway or about to begin, however, the Applicant does not believe it can complete these items prior to the first occupancy for the apartment tower.

The Applicant has completed, or believes it can shortly complete, five (5) of the nine (9) Interior Restoration items. However, Items No. 2 (complete Theatre ceiling); No. 7 (new plumbing, mechanical and electrical system); No. 8 (final configurations and finishes of Theatre and lobby space); and No. 9 (lighting) will not be completed by the time the Applicant is ready to obtain the 105th occupancy permit for the apartment tower.

The Applicant is therefore requesting modification to the above-referenced Site Plan Condition to state as follows:

“Prior to the first occupancy permit for a residential unit in the apartment tower, the Applicant must complete Items Nos. 1 – 6 and No. 11 of the Exterior Preservation of the Theatre and Items No. 1 and Nos. 3 –6 of the Interior Restoration of the Theatre. Further, by December 31, 2003, the Applicant must complete Items Nos. 7 – 10 of the Exterior Preservation of the Theatre. By December 31, 2004, the Applicant must complete the Interior Restoration Items Nos. 2 and 7-9.”

As an ongoing effort and commitment to find the proper user and complete the Theatre, the Applicant will continue to submit quarterly reports to the Planning Board on its progress to secure a user for the Theatre. The Applicant is hopeful that a user can be secured within the near future and that the Theatre preservation and restoration can move forward as quickly as possible. However, to complete the remaining construction work without having identified a user and the exact design specifications would result in possible re-construction and unnecessary delay as well as inefficient use of both public and private funds. In addition, the Applicant needs to move forward with the residential occupancy of the Project to support the financing that is driving the overall development. It is important that the residential piece of the Project be occupied as soon as possible so that funding continues to be available to the Applicant to work on completing the Theatre.

Michael Ma
May 19, 2003
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Further, the Applicant appreciates the need to find an appropriate user for the Theatre and is firmly committed to doing so. The Applicant, consistent with all the prior approvals and the Sector Plan, recognizes that the use of the Theatre is just as important as its physical characteristics. This use will be an asset for the residential Project as well as for the overall Bethesda CBD.


Thank you for your consideration of this request. Because the occupancy for the apartment tower is currently scheduled to begin the second week of June 2003, we would request that this matter be heard by the Planning Board as soon as possible and without the need for Development Review Committee review as we have met with Staff several times and are not asking for any design changes.

We have included herewith a completed Site Plan Application, a check in the amount of \$2,600 (as discussed), two sets of mailing labels for the adjoining and confronting property owners, and 10 sets of the approved Site Plan.

Please contact me if you have any questions.

Sincerely,

LINOWES AND BLOCHER LLP



Emily J. Vaias

EJV:sec

cc: Mr. Charles R. Loehr
Michele Rosenfeld, Esq.
Mr. John Carter
Mr. Artie Harris
Mr. Eugene Smith
Mr. Thomas Baum
Ms. Mary A. Oehrlein
Robert H. Metz, Esq.



February 25, 2003

Mr. Michael Ma
Development Review
Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Bethesda Theatre Renovation Update
Site Plan No.: 8-00014

Dear Mr. Ma:

The purpose of this letter is to update you on the construction and leasing activities for the Bethesda Theatre (the "Theatre"). As you may recall, the Theatre is part of a larger project, which was approved by Site Plan No. 8-00014 and consists of the following components:

- Renovation of the historic Theatre;
- High-rise residential building with 205 units located over the Theatre;
- Low-rise residential building with 39 units behind the Theatre;
- Below-grade residential parking garage with 285 spaces;
- An underground County parking garage (with approximately 350 spaces) beneath the low-rise residential building;
- Nine townhouses fronting onto Middleton Lane and Tilbury Street; and
- A public plaza/courtyard area (collectively, the "Project").

We, Bozzuto Development Company (the owner/developer), broke ground on the Project in July 2001 and are expecting to complete construction of the residential components and County garage by September 2003. The Contractor (Donohoe Construction Company) is currently putting the brick skin on the high-rise building and starting to drywall in the low-rise building. Both underground garages have essentially been completed.

With respect to the Theatre, the following is the status of the main components therein

- Refurbishing of marquee complete. (The steel supports/frame were rusted beyond repair and will have to be replaced before the marquee can be reinstalled.)
- Installation of main auditorium HVAC systems nearly complete.
- Demolition of non-historic flooring, roof over retail spaces and storefronts complete.

EXHIBIT A

- Installation of replica historic storefronts in progress.
- Repairing/clearing of exterior brick nearly completed.
- Below-slab plumbing for bathrooms in basement installed.

We estimate that the exterior renovation of the Theatre will be completed in May 2003. The completion of the interior renovation will depend in large part upon the timing of obtaining a tenant for the space.

Since we purchased the property, approximately twenty months ago, we have been actively seeking a tenant for the Theatre. We are committed to finding a quality "arts" user for the space, but we have learned over this period that: 1) the pool of users is limited; 2) the Theatre has significant physical constraints from the perspective of performing-arts users (such as small stage without wings and flyloft, very limited back of the house support space, no storage space, limited space for the restrooms and kitchen, etc.) that eliminate many users; and 3) each potential user wants the space configured differently.

Early on (before we closed on the land), we hired a theatre/entertainment/retail consultant, Street Sense Retail Advisors located in Bethesda, to help us secure a tenant for the Theatre. With their help, we have been in serious discussions with three prospects.

Prospect 1

Based out of Alexandria, Virginia, this company produces high-quality live music concerts. Their current operation in Alexandria is very successful and they wanted to open a second location in Maryland. We were in discussions with them from May 2001 through December 2001. We had developed detailed construction documents based on their concept and obtained a revised building permit to allow us to construct their improvements. It was a big blow to us when they decided not to move forward with the deal. Their decision to not move forward, we believe, stemmed from the uncertainty of the industry after September 11, 2001.

Prospect 2

Based in Chicago, Illinois, this company runs a very popular supper-club connected with Second City Theatre. We were in discussions with them from March 2002 through September 2002, including performing market studies, preparing schematic layouts and lease negotiations. They were proposing a live jazz music venue in the evenings and corporate events during the day. Unfortunately, they were not able to go forward with the deal.

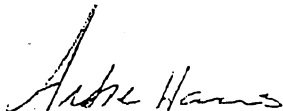
Prospect 3

Based in New York City, this company, and its affiliates, is one of the largest theatre companies in the world with more than thirty theatres in the United States. We have been in discussions with them since the Fall of 2002 and feel they would be a great user for the Theatre. They are very interested in the Washington Metropolitan area, love Bethesda, and appreciate the Theatre. We are just completing a two-month schematic design process with them and will follow that with a preliminary pricing exercise and final lease negotiations. Their physical requirements for the Theatre will, as with each potential user, be specifically tailored to their needs and will impact the interior renovations.

Although the above-three prospects have been the most promising, we have been pursuing hundreds of leads to obtain a "quality" user for the Theatre. Accordingly, we hope you can see that we have been spending a significant amount of effort and money to obtain an appropriate user for the Theatre.

Please feel free to contact Gene Smith or me if you have any questions. We look forward to meeting with you and Gwen Wright on February 28, 2003 at 2:00 p.m. to further discuss our progress with the Project.

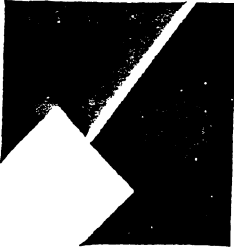
Sincerely,
BOZZUTO DEVELOPMENT COMPANY



Artie L. Harris
Vice President

cc: Ms. Mary L. Oehrlein
Mr. Eugene Smith
Emily J. Vaias, Esquire
Ms. Gwen Marcus Wright

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

MONTGOMERY COUNTY PLANNING BOARD

OPINION

DATE MAILED: June 12, 2000

SITE PLAN REVIEW: #8-00014

PROJECT: Bethesda Theater Residential

Action: Approval subject to conditions. Motion by Commissioner Bryant, seconded by Commissioner Wellington, with a vote of 4-0, Commissioners Bryant, Hussmann, Perdue and Wellington voting for. Commissioner Holmes was absent.

The date of this written opinion is June 12, 2000, (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal, as provided in the Maryland Rules of Procedure, on or before July 12, 2000, (which is thirty days from the date of this written opinion). If no administrative appeal is timely filed, this site plan shall remain valid for as long as Preliminary Plan #1-97104 is valid, as provided in Section 59-D-3.8. Once the property is recorded, this site plan shall remain valid until the expiration of the project's APFO approval, as provided in Section 59-D-3.8.

On March 2, 2000, Site Plan Review #8-00014 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application. Based on the testimony and evidence presented and on the staff report which is made a part hereof, the Montgomery County Planning Board finds:

1. The Site Plan is consistent with the approved development plan or a project plan for the optional method of development, if required;
2. The Site Plan meets all of the requirements of the CBD-2 and PD-35 zones in which it is located;

3. The locations of the buildings and structures, the open spaces, the landscaping, and the pedestrian and vehicular circulation systems are adequate, safe, and efficient;
4. Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development;
5. The site plan meets all applicable requirements of Chapter 22A regarding forest conservation.

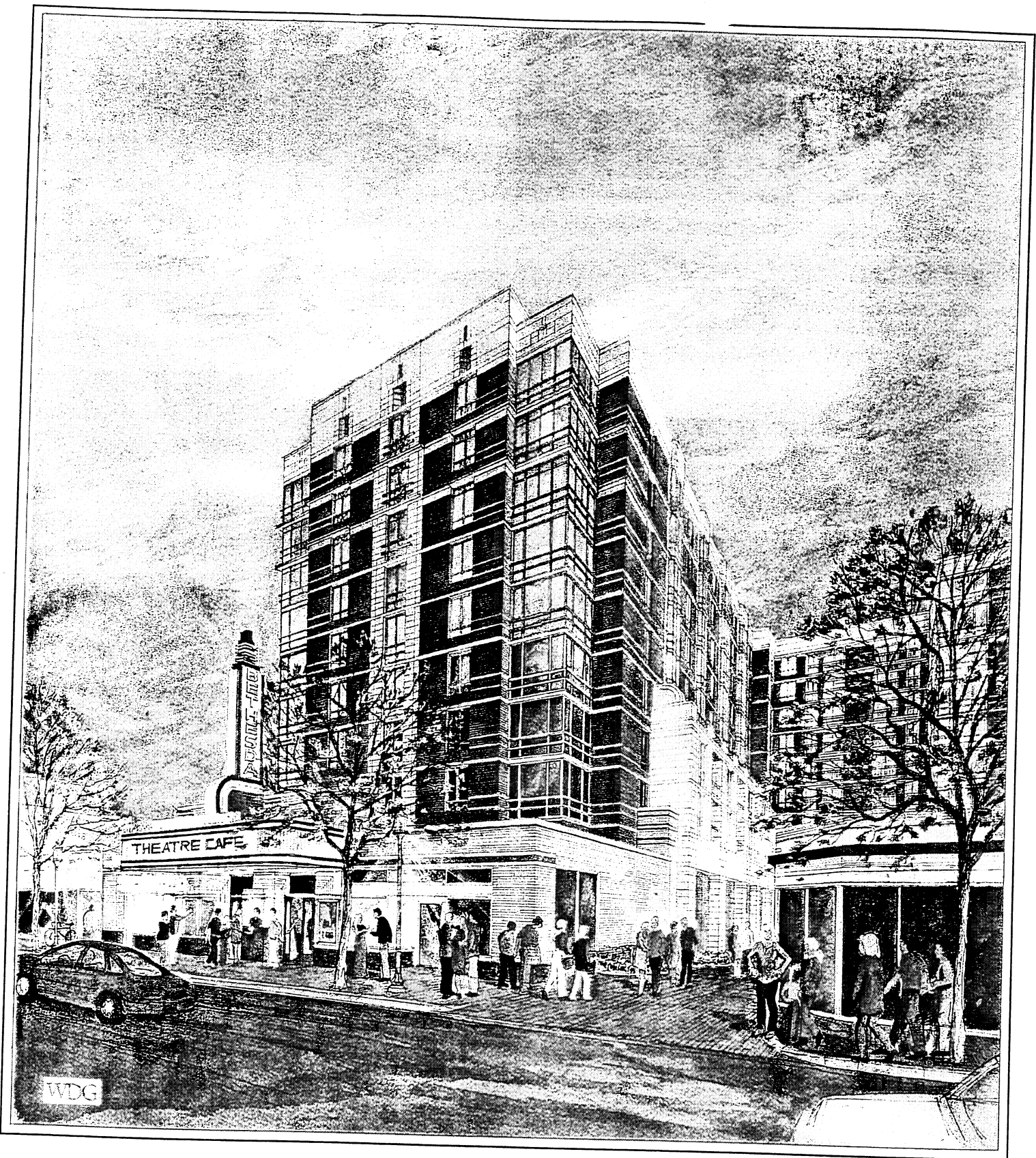
The Montgomery County Planning Board APPROVES Site Plan Review #8-00014, which consists of 249 multifamily apartments including 32 MPDUs, 9 townhouses, a 400-car public parking garage and restoration of the Bethesda Theater, subject to the following conditions:

1. Standard Conditions dated October 10, 1995, Appendix A, as modified herein.
2. Approval subject to finalization of pending abandonment of portions of Tilbury Street (Case AB 636).
3. If the residents of Sleaford Road who desire to close the street to through traffic obtain the necessary approvals, the applicant agrees to construct a barrier at the west end of Sleaford Road, in accordance with MCDPWT guidelines. If a street closing is not authorized, the applicant agrees to the following actions, subject to MCDPWT approval:
 - a. Retain the existing one-way north configuration on Tilbury Street, and
 - b. Provide channelization of the intersection of Tilbury Street and Cheltenham Drive (in lieu of the channelization at Tilbury and Sleaford Road) to discourage illegal turns onto Tilbury Street and thence onto Sleaford Road.
4. Applicant to complete the exterior preservation of the theater prior to the first occupancy permit for the apartment tower and the interior restoration prior to the 105th occupancy permit for the apartment tower.
5. Starting on June 1, 2000 applicant shall make quarterly reports to the Board on the progress of his efforts to secure a user for the Theater. Any proposal to change the use from a cinema or performing arts use requires an amendment to the Site Plan.
6. Applicant will comply with the binding elements of Zoning Case LMA G-749 (County Council resolution No. 13-1422), and the conditions of approval of Abandonment Case AB 617 (County Council Resolution No. 13-1420).

APPENDIX A: STANDARD CONDITIONS OF APPROVAL DATED 10-10-95:

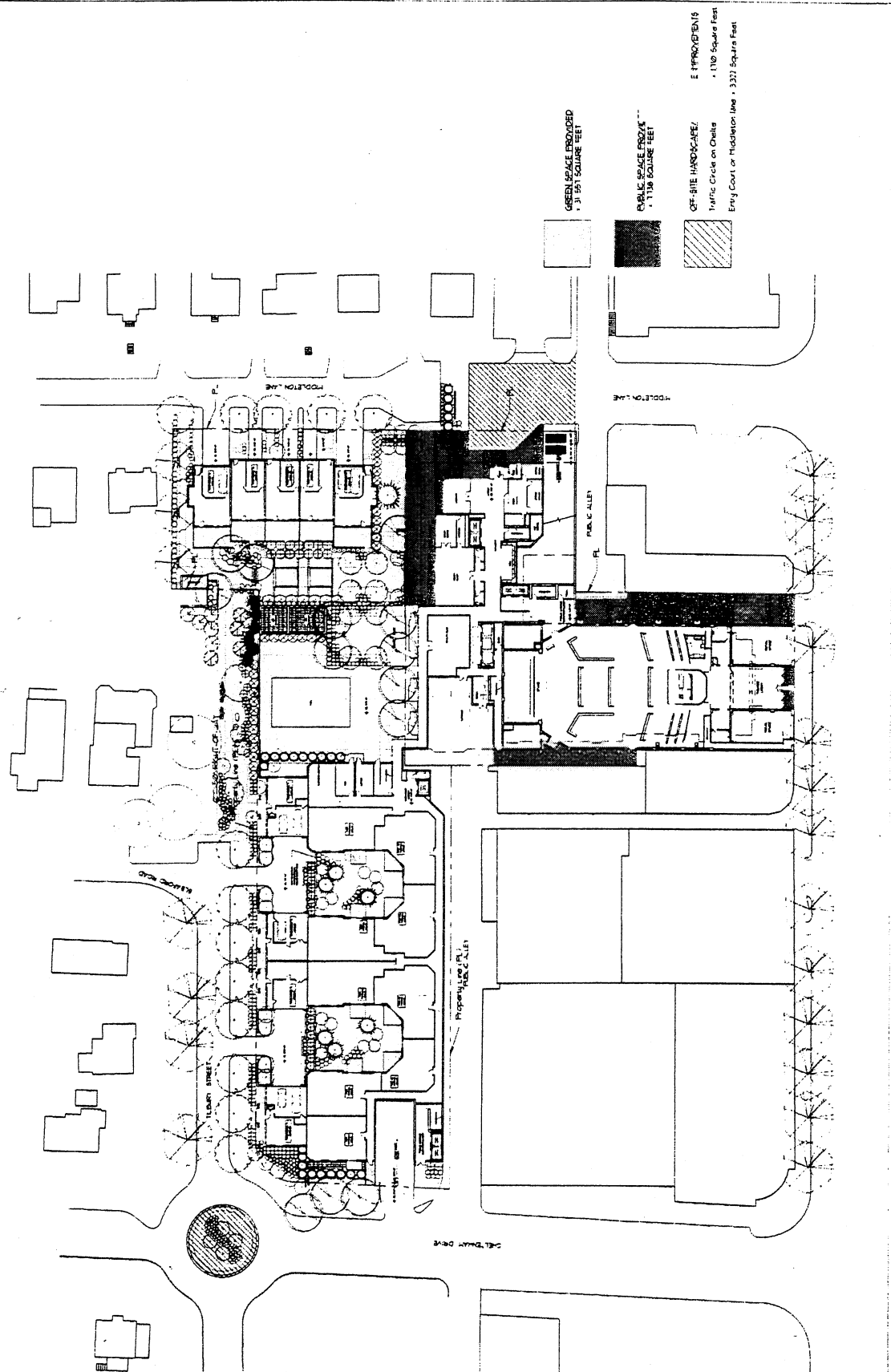
1. Submit a Site Plan Enforcement Agreement, Development Program, and Homeowners Association Documents for review and approval prior to approval of the signature set as follows:
 - a. Development Program to include a phasing schedule as follows:
 - 1) Street tree planting must progress as street construction is completed, but no later than six months after completion of the units adjacent to those streets.
 - 2) Community-wide pedestrian pathways and recreation facilities must be completed prior to seventy percent occupancy of each phase of the development.
 - 3) Landscaping associated with each building shall be completed as construction of each is completed.
 - 4) Pedestrian pathways and seating areas associated with each facility shall be completed as construction of each facility is completed.
 - 5) Coordination of each section of the development and roads;
 - 6) Phasing of dedications, stormwater management, sediment/erosion control, recreation, forestation, community paths, trip mitigation or other features.
2. Signature set of site, landscape/lighting, forest conservation and sediment and erosion control plans to include for staff review prior to approval by Montgomery County Department of Permitting Services (DPS):
 - a. Conditions of DPS Stormwater Management Concept approval (waiver) letter
 - b. The development program inspection schedule.
 - c. Street trees along all public streets;
3. Forest Conservation Plan shall satisfy all conditions of approval prior to recording of plat and DPS issuance of sediment and erosion control permit.
4. No clearing or grading prior to M-NCPPC approval of signature set of plans.

G:ASP_STAFF\8-00014



Bethesda Theatre Residential

7791 Wisconsin Avenue
Bethesda, MD 20814



SITE PLAN-OPEN SPACE DIAGRAM
 03/1/2008
 9:07:00
 Scale

Bethesda Theatre Residential
 7791 Wisconsin Avenue
 Bethesda, MD 20814

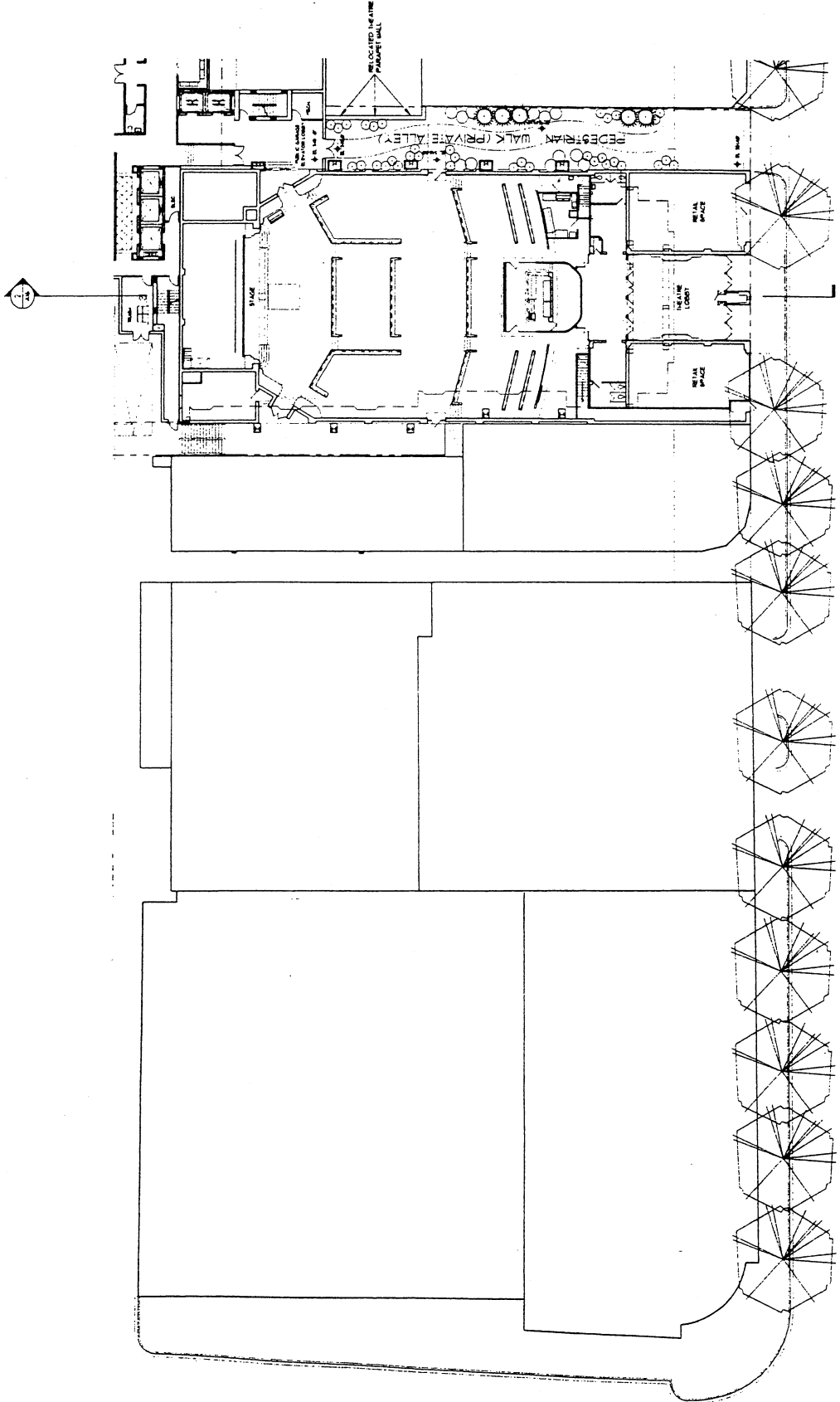
DMRKEN & ASSOCIATES ARCHITECTS
 1000 Wisconsin Avenue
 Suite 1000
 Washington, DC 20007

SILVER ASSOCIATES P.A.
 1000 Wisconsin Avenue
 Suite 1000
 Washington, DC 20007

WKA, INCORPORATED
 1000 Wisconsin Avenue
 Suite 1000
 Washington, DC 20007

E. N. SMITH ASSOCIATES
 1000 Wisconsin Avenue
 Suite 1000
 Washington, DC 20007

A1A



Bethesda Theatre Residential

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Bethesda, MD 20814

WDG ARCHITECTURE
100 Connecticut Avenue, N.W.
Washington, D.C. 20037
Tel: 202.331.2100

LEWIS SCALY GOMET
222 1st Avenue, N.W.
Atlanta, GA 30303
Tel: 404.525.1212

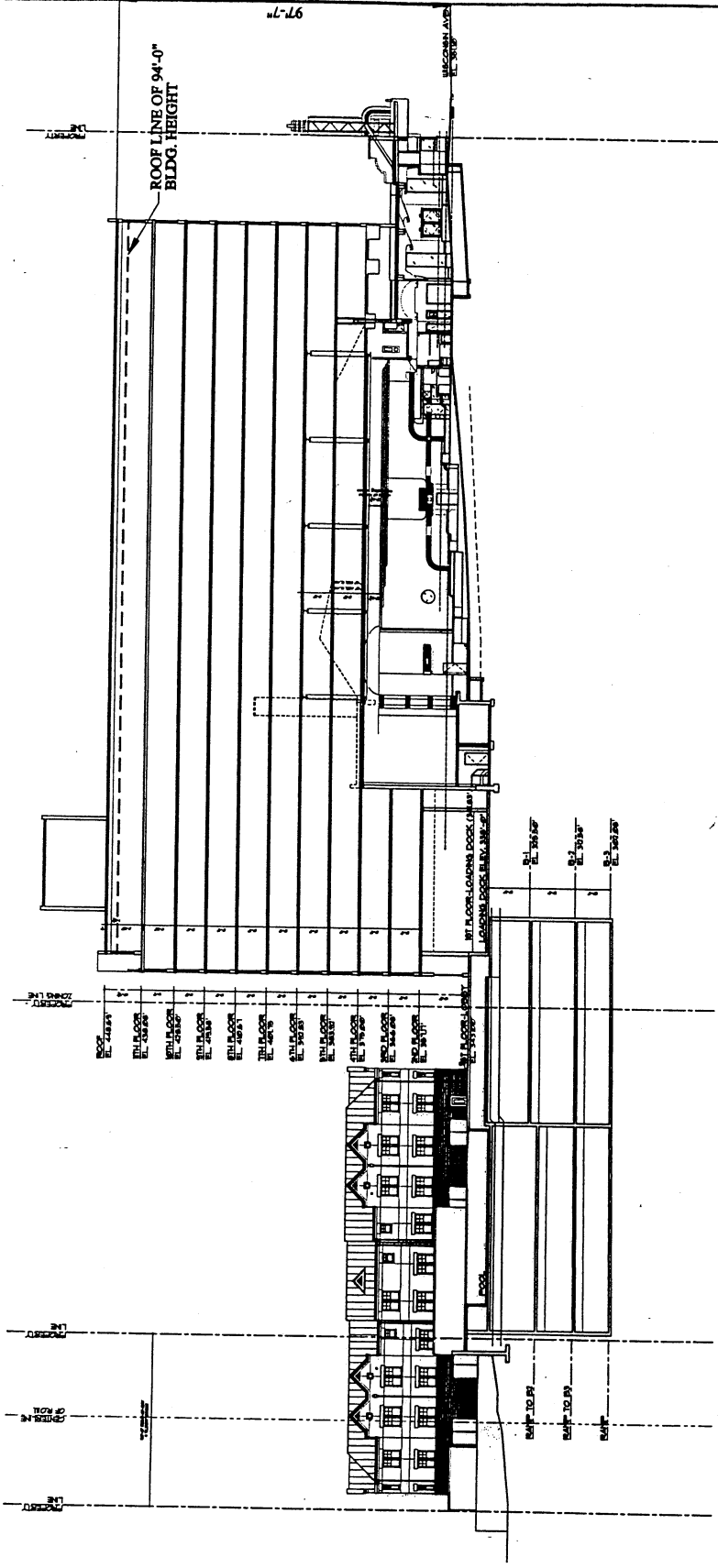
OSHEEN & ASSOCIATES ARCHITECTS
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VIRAL INCORPORATED
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Tel: 202.331.2100

E. M. SMITH ASSOCIATES
1000 Connecticut Avenue, N.W.
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Tel: 202.331.2100

THE BOZITZO GROUP
1000 Connecticut Avenue, N.W.
Washington, D.C. 20036
Tel: 202.331.2100



97-76

ROOF LINE OF 94'-0"
BLDG. HEIGHT

PROPERTY LINE

100'-0"
EL. 300.00'

100'-0"
EL. 300.00'

EL. 288.00'

EL. 291.00'

EL. 292.00'

PROPERTY LINE

EL. 288.00'

EL. 289.00'

EL. 290.00'

EL. 291.00'

EL. 292.00'

EL. 293.00'

EL. 294.00'

EL. 295.00'

EL. 296.00'

EL. 297.00'

EL. 298.00'

EL. 299.00'

EL. 300.00'

LOADING DOCK BLDG. (100'-0")

LOADING DOCK BLDG. (100'-0")

EL. 288.00'

EL. 291.00'

EL. 292.00'

PROPERTY LINE

PROPERTY LINE

PROPERTY LINE

EL. 288.00'

EL. 291.00'

EL. 292.00'