



SEP 16 2009

MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 09-117
Project Plan No. 920090010
Woodmont Central
Date of Hearing: June 25, 2009

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Division 59-D-2, the Montgomery County Planning Board ("Planning Board") is vested with the authority to review project plan applications; and

WHEREAS, on January 22, 2009, Donohoe Development Company ("Applicant"), filed an application for approval of a project plan for the creation of two lots for 453,109 square feet of multiple family residential use with up to 457 dwelling units, 81,107 square feet of office use, and 19,556 square feet of retail use ("Project Plan"), on 48,966 square feet of CBD-R2 zoned land at the intersection of Rugby Lane and Del Rey Avenues and 19,122 square feet of CBD-1 zoned land at the intersection of Wisconsin Avenue and Battery Lane, ("Properties" or "Subject Properties"); and

WHEREAS, the Applicant's project plan application was designated Project Plan Number 920090010, Woodmont Central (the "Application"); and

WHEREAS, Planning Board Staff ("Staff") issued a memorandum to the Planning Board, dated June 15, 2009, setting forth its analysis of, and recommendation for approval of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the staff of other governmental agencies, on June 25, 2009, the Planning Board held a public hearing on the Application (the "Hearing"); and

Approved as to
Legal Sufficiency: 
M-NCPPC Legal Department

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on June 25, 2009, the Planning Board approved the Application subject to conditions, on the motion of Commissioner Robinson, seconded by Commissioner Cryor, with a vote of 3-2, Commissioners Cryor, Hanson, and Robinson voting in favor, Commissioners Alfandre and Presley voting in opposition.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Montgomery County Planning Board APPROVES Project Plan number 920090010 for the creation of two lots for 453,109 square feet of multiple family residential use with up to 457 dwelling units, 81,107 square feet of office use, and 19,556 square feet of retail use on 48,966 square feet of CBD-R2 zoned land and 19,122 square feet of CBD-1 zoned land, subject to the following conditions:

1. Development Ceiling

The proposed development is limited to a maximum of 553,772 square feet of gross floor area for both buildings. The total residential floor area is limited to a maximum of 453,109 square feet of gross floor area; the total commercial floor area is limited to a maximum of 100,663 square feet.

2. Density Transfer

A density transfer of any commercial or residential gross floor area between the two created lots must be established and recorded per Section 59-C-6.2355(b) of the Zoning Ordinance.

3. Building Height and Mass

- a. The building footprint on the site at the corner of Rugby Avenue and Del Ray Avenue (Phases 1b and 2 on the project plan) must be revised such that the first floor is within ten feet of the property line for a minimum of three-quarters of the property line along Auburn Avenue, Rugby Avenue, and Del Ray Avenue. The apex of the intersection of Rugby Avenue and Del Ray Avenue should be occupied by the building, not open space. Details of the building must be provided at site plan.
- b. A majority of the first floor building frontage along the street rights-of-way on the site at the corner of Rugby Avenue and Del Ray Avenue must provide retail storefronts and entrances.
- c. A minimum ten-foot podium setback must be provided along the Del Ray Avenue frontage within 55 feet of height measured from the sidewalk grade.
- d. The building at the corner of Rugby Avenue and Del Ray Avenue is limited to a maximum height of 190 feet, exclusive of mechanical equipment and uses

incidental to the residential uses on site under the provisions of Section 59-B-1.1.

- e. The proposed development at the corner of Wisconsin Avenue and Battery Lane is limited to the building footprint as delineated in the project plan drawings submitted to MNCPPC dated May 13, 2009 unless modified at site plan review and to 90 feet in height from the approved building height measurement point, as determined by the Department of Permitting Services.
- f. Deviations from the above conditions (3a through 3e) can be made at the time of site plan approval without the need to modify the Project Plan if the Planning Board finds that the intents of these conditions - a pedestrian scaled environment along Del Ray Avenue and an active street front along Del Ray, Rugby, and Auburn Avenues - is met by an alternative design.

4. Public Use Space

Public use space may be distributed disproportionately on either site included in this project plan application provided that:

- a. The Applicant must provide a minimum of 20% of the combined net lot area for on-site public use space. The minimum percentage of additional improvements will be determined at site plan in concert with the revised building design per condition 3. If the revised building design reduces the amount of public use space below the 20%, the Applicant may elect to utilize the public amenity fund to satisfy their public use space requirements. The final design and details will be determined during site plan review.
- b. The proposed public use space must be easily and readily accessible to the general public and available for public enjoyment.
- c. The Applicant must provide a public art program and other features in general conformance with the illustrative landscape plan depicted in the staff report.
- d. The Applicant must present the plaza design and public artwork to the art review panel for comment prior to approval of the site plan.

5. Staging of Amenity Features

- a. The proposed development may be completed in up to three phases. A detailed development program for each phase will be required prior to approval of the certified site plan.
- b. The Applicant must complete the on-site public use space improvements as delineated by the phasing plan prior to issuance of use-and-occupancy permits unless modified by the site plan development program.
- c. The Applicant must install any landscaping described in the phasing plan no later than the next growing season after completion of the building and site work in each phase.
- d. If the required public use space is not completed by the end of the approved preliminary plan adequate public facilities finding, the Applicant must pay a

fee-in-lieu to the public amenity fund in an amount approved by the Planning Board.

- e. Retail uses must be provided in all phases of the project plan.
- f. As part of the site plan application, the Applicant must include a report satisfactory to the Planning Board explaining in detail the steps the Applicant took to retain the existing retail tenants. If the existing retail tenants are not retained, the report must explain why.

6. Environmental

The Applicant must achieve a LEED Silver rating, or other certification based on equivalent energy and environmental design standards, for both buildings unless the Planning Board finds at site plan review that this requirement may be waived in light of the final quantity, quality, and expense of the other amenities provided by the Applicant.

7. Maintenance and Event Management Organization

Prior to issuance of use-and-occupancy permits, the Applicant will create and implement a maintenance plan for all on-site public use space unless an alternative arrangement is made with another public entity.

8. Moderately Priced Dwelling Units and Workforce Housing

The Applicant must construct 15% of the residential units as MPDUs to receive a 22% density bonus and 10% workforce housing units as required by Chapters 25A and 25B. The final calculation of market rate units, MPDUs, and workforce housing units will be determined at site plan.

9. Coordination for Additional Approvals Required Prior to Preliminary Plan and Site Plan Approval

- a. The Applicant must obtain written approval from MCDOT for the final design and extent of any and all streetscape improvements within the rights-of-way.
- b. The Applicant must coordinate with the following agencies for any changes that are created by the conditions of this approval or the final site plan application: MCDOT, MCDPS, SHA, and the Montgomery County Planning Department.

BE IT FURTHER RESOLVED, that having given full consideration to the recommendations and findings of its Staff as set forth in the Staff Report, which the Planning Board hereby adopts and incorporates by reference except as modified herein, and upon consideration of the entire record and all applicable elements of § 59-D-2.43, the Montgomery County Planning Board, with the conditions of approval, FINDS:

- (a) *As conditioned, the proposal complies with all of the intents and requirements of the zone.*

Intentions and Purposes of The CBD Zones

The Montgomery County Zoning Ordinance states the purposes which the CBD zones are designed to accomplish. The following statements analyze how the proposed Project Plan conforms to these purposes:

- (1) *"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."*

With respect to density, the Sector Plan Amendment recommends allowing the FAR permitted by the optional method of the zone, when a mix of uses is provided. Further, the Plan recommends that non-residential FAR in this area be capped at 1 FAR. This project meets these recommendations.

Building height recommendations are indicated on page 22 of the Sector Plan Amendment. With the proviso that additional height be allowed to accommodate workforce housing, this project meets the recommended height limits of the Plan.

- (2) *"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."*

The Woodmont Triangle Sector Plan Amendment recommendations vis-à-vis the type of development desired in the Woodmont Triangle Area are to develop sites with a range of residential uses and limited small-scale retail. The proposed development will achieve the recommended density with a range of unit types and MPDUs and workforce housing. And, as conditioned, the site will allow for existing and new small businesses to prosper in the area. This mix of uses will enhance the viability of this area as a place to work, shop, and live.

- (3) *"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."*

The proposed development of the site on the corner of Wisconsin Avenue and Battery Lane will enhance pedestrian, bicycle, and vehicular circulation by

providing sidewalk improvements, bike facilities, and reducing curb cuts on these busy streets. The layout of retail doors and lobbies will effectively direct pedestrians into and around the site. The relationship of the proposed building to existing buildings is typical and appropriate for a central business district.

The proposed development of the site at the intersection of Rugby Avenue and Del Ray Avenue will, given the conditions of approval, provide a better relationship between individual buildings and provide a legible streetscape for pedestrians and cyclists. The removal of the driveway between Rugby Avenue and Del Ray Avenue will create a simple and safe vehicular pattern.

(4) *"To promote the effective use of transit facilities in the central business district and pedestrian access thereto."*

The proposed development is between $\frac{1}{2}$ and $\frac{3}{4}$ miles from Metro and directly on local bus routes. It is a local and regional imperative that infill development is provided at such sites as an alternative to suburban sprawl. As conditioned, the location and accessibility of the proposed development to the local transit system is an excellent realization of the Sector Plan transit and sustainability goals, for example the provision of jobs and housing within walking distance of the Metro and shopping areas.

(5) *"To improve pedestrian and vehicular circulation."*

On both sites, vehicular circulation around the site will generally be improved by the decrease in curb cuts, the consolidation of loading and garage access, and the addition of parallel parking spaces (in the case of the site on Rugby and Del Ray). The pedestrian environment provides numerous enhancements to help realize the potential of these sites. These include streetscape upgrades and, as conditioned, open spaces focused on active areas with retail and leisure opportunities. The mid-block connection provides potential for the adjacent properties to turn this into a welcoming area for additional shops and restaurants.

(6) *"To assist in the development of adequate residential areas for people with a range of different incomes."*

The proposed development provides a unit mix of studio apartments and one- and two-bedroom units. A proportional mix of these will be MPDUs and workforce housing units. This range provides a good housing variety for this area.

(7) *"To encourage land assembly and most desirable use of land in accordance with a sector plan."*

In the case of the development on Rugby Avenue and Del Ray Avenue, the application proposes to consolidate over a dozen small lots and parts of lots into one lot. This will allow for the flexibility in building footprint and open space and can better respond to the site constraints and Sector Plan goals. The site on the corner of Wisconsin Avenue and Battery Lane is reconfiguring an existing lot.

Further Intentions of the CBD-1 and CBD-R2 Zones

Section 59-C-6.213 of the Zoning Ordinance states:

a) *In the CBD-0.5, CBD-R1, and CBD-1 zones it is further the intent:*

1. *To foster and promote the orderly development of the fringes of the CBDs of the county so that these areas will provide land uses at a density and intensity which will encourage small business enterprises and diverse living accommodations, while complementing the uses in the interior portions of these districts; and*
2. *To provide a density and intensity of development which will be compatible with adjacent land uses outside the Central Business Districts.*

The development of the CBD-1 site proposes an FAR of 2.82, which is below the development standard, and a maximum height of 90 feet. All adjacent and confronting properties are similarly zoned and have the same or similar Sector Plan Amendment recommended limits on density and height. The small retail bays on this property will encourage small businesses; there are no residential uses on this site.

b) *In the CBD-R1, CBD-R2, CBD-2, and CBD-3 zones it is further the intent to foster and promote the orderly development of the CBDs of the county so that these areas will enhance the economic status of the county as well as providing an expanding source of employment and living opportunities for its citizens in a desirable urban environment.*

The development of the CBD-R2 site proposes up to 457 residential units and approximately 9,600 square feet of retail space. This building has a total gross floor area of approximately 462,000 square feet. This property tax base enhances the economic status of the county and provides a range of living opportunities. As conditioned, the retail base will expand at this site providing more employment opportunities, and the built form and open space will provide a desirable urban environment.

Requirements of the CBD-1 and CBD-R2 Zone

The following data table demonstrates the conformance of the project plan with the development standards under the optional method of development. Among other standards, the proposed development meets the area, public use space, building height, and density requirements of the zone.

| Development Standard | CBD-1 | CBD-R2 | Approved and Binding on the Applicant |
|--|---------------------|---------------------|---------------------------------------|
| | Permitted/ Required | Permitted/ Required | |
| Building Height (feet) | 90 | 200 | 90/190 |
| Setbacks (feet) | | | |
| To any Property Line | 0 | 0 | 0 |
| Site Area (square feet) | | | |
| Net Tract Area | n/a | n/a | 68,088 |
| Dedications | n/a | n/a | 32,575 |
| Gross Tract Area | 18,000 | 18,000 | 100,663 |
| Density | | | |
| Floor Area Ratio | 3.0 | 5.0 | 5.5 |
| Public Use Space (% of net lot) | | | |
| On-Site Public Use Space | 20 | 20 | 20 |
| Off-Site Amenity Space | n/a | n/a | 32 |
| Total Public Use & Amenity Space | 20 | 20 | 52 |

According to the Zoning Ordinance (59-C-6.215(b)) a further requirement of optional method projects is the provision of additional public amenities:

“Under the optional method greater densities may be permitted and there are fewer specific standards, but certain public facilities and amenities must be provided by the developer. The presence of these facilities and amenities is intended to make possible the creation of an environment capable of supporting the greater densities and intensities of development permitted.”

To this end, the proposed development is proffering the following package of amenities and public facilities:

Amenities and Facilities Summary

On-Site Public Use Space Improvements

- Sidewalks
- Art
- Plaza with Focal Feature
- LEED Standards
- Mid-block Pedestrian Connection
- Seating & Landscaping

Off-Site Amenity Improvements

- Sidewalks

In lieu of the entire on-site open space area proposed with this Application, other amenities concentrating on the environmental sustainability of the residential building, the expansion of retail space, and a focus on retaining local businesses must be provided with the site plan.

- (b) *The proposal conforms to the approved and adopted Master or Sector Plan or an Urban Renewal Plan approved under Chapter 56.*

Zoning and Land Use

The subject property is zoned CBD-1 and CBD-R2, which is recommended by the Sector Plan Amendment. All proposed uses are allowed in these zones and the proposed development is in keeping with the general guidelines to provide housing and limited commercial uses. Specifically, the Sector Plan recommends diverse housing opportunities, which this plan provides and a maximum FAR of 1 for commercial uses, which this plan also provides. The proposed uses are appropriate for the subject site and conform to the Sector Plan and Sector Plan Amendment.

Sector Plan Conformance

The Approved and Adopted Bethesda CBD Sector Plan is organized around several goals that the Project satisfies, if modified per the conditions regarding the building footprint, retail frontage, and massing of the building and open space:

- Establishment of a vibrant and diverse downtown;
- Development by infill that complements the existing urban fabric;
- Development of a wide range of housing;
- Creation of employment opportunities;
- Creation of an appealing environment for working, shopping, and entertainment; and

- Creation of a circulation patterns that encourage walking, cycling, and the use of mass transit.

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

Because of its proximity to transit, the location is optimal for as much intensity of use and density as are found to be compatible with the context, i.e., the proposed development must be designed so as not to adversely affect adjacent buildings and uses. To this end, the architecture and open space of the site on Wisconsin Avenue and Battery Lane have been designed as a continuation of the existing street walls, and at heights similar to surrounding uses. The density is below that allowed in the zone and is an appropriate intensity. It is recommended that the residential building on Rugby and Del Ray avenues be modified regarding the design of its footprint and massing to be more compatible with the surrounding streets. But the location and intensity of the uses are compatible. The staging of this building and open space, however, should be conditioned to provide some retail in each phase and provide a payment in-lieu if the entire approved open space improvements are not completed within the time frame allocated by the adequate public facility findings.

The operational characteristics of each site will improve the road and sidewalk network because of the reduction of curb cuts and consolidation of loading, parking, and drop-off areas.

(d) *As conditioned, the proposal 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, article II, is subject to a traffic mitigation agreement that meets the requirements of that article.*

A draft traffic management agreement has been submitted by the Applicant and will be finalized during the site plan review process. Other public facilities exist on or near the site and no expansion or renovation of these services will be required to be completed by the County. Further, requirements for public safety and fire will be minimally impacted due to the nature of the land use and must be approved by the respective agencies prior to preliminary plan approval. After much discussion and one dissenting vote regarding the capacity of existing public services, the Board finds that the proposal will not overburden existing public services.

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

A standard method project would only allow a density of 3 FAR on these combined sites. Further, the requirement for public amenities would be removed and the public use space requirement would be reduced by one-half. Because infill development and density at transit hubs is a core value of smart growth and given the number and quality of public amenities being provided or required by condition of approval, this optional method project is more desirable and more efficient for this particular site.

- (f) *The proposal will include moderately priced dwelling units in accordance with Chapter 25A of this Code, if the requirements of that chapter apply.*

The proposed development will provide 15% MPDUs as required by Chapter 25A for a 22% density bonus. A final agreement between the Applicant and the Department of Housing and Community Affairs will be required at the time of site plan review. This project is also providing 10% workforce housing units.

- (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, pursuant to the special standards of either section 59-C 6.2355, the Project Plan may be approved by the Planning Board based on the following findings:*

The proposed development will create two non-contiguous lots and transfer density between each. The combined lot area exceeds the minimum 18,000 square feet. The project plan complies with the approval requirements of Section 59-D-2.42(g): the project will result in an overall land use configuration that is significantly superior in meeting the goals of the applicable master or sector plan and the zone than what would be achieved without the proposed transfer. Although discussion of this topic lead to a dissenting vote by one member, the Board finds that the proposed optional method development, as conditioned, will be more efficient and desirable than would have been accomplished by a standard method development on this site. It meets these goals by:

- Consolidating public use space,
- Providing more affordable housing,
- Providing more significant amenities, and
- Focusing growth near a transit center.

The proposed development also meets the following provisions:

- The density transfer is measured in terms of gross square feet of development;
- The lots that receive a density transfer do not abut or confront one-family residential zones;

- The development capacity of the combined lots does not exceed the total development capacity otherwise permitted on the separate lots under the optional method of development procedure or any density limit recommended in a master or sector plan; and
- Public use space is provided based on the total area of the lots and is located on-site.

(h) As conditioned, the proposal satisfies any applicable requirements for forest conservation under Chapter 22A.

The site is subject to Chapter 22A Montgomery County Forest Conservation Law. There is no forest on-site or significant/specimen trees. The site has a forest conservation requirement of 0.26 acres of afforestation. The Applicant is proposing to meet the planting requirement through an in-lieu fee payment.

(i) As conditioned, the proposal satisfies any applicable requirements for water quality resources protection under Chapter 19.

The Montgomery County Department of Permitting Services (MCDPS) Stormwater Management Section approved the stormwater management concept for the Commercial site on May 21, 2009. The stormwater management concept includes water quality control using a stormfilter. Onsite recharge is not required because this is a redevelopment project. Channel protection is not required because the one-year post-development peak discharge is less than 2 cubic feet per second.

The MCDPS Stormwater Management Section approved the stormwater management concept for the Residential site on June 11, 2009. The stormwater management concept includes water quality control using a flow-based proprietary filter and 1,000 square feet of green roof. Onsite recharge is not required because this is a redevelopment project. A waiver of on-site channel protection is granted because the site is less than two acres in area in a CBD zone and the amount of imperviousness will not increase.

BE IT FURTHER RESOLVED, that all elements of the plans for Project Plan number 920090010, Woodmont Central date stamped May 13, 2009 are required except as modified by the above conditions of approval; and

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board and incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

BE IT FURTHER RESOLVED, that this Project Plan shall remain valid as provided in Montgomery County Code § 59-D-2.7; and

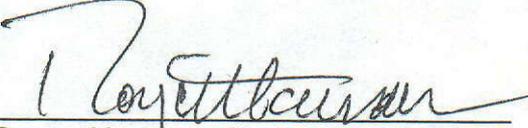
BE IT FURTHER RESOLVED, that the date of this Resolution is SEP 16 2009
(which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

* * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner Wells-Harley, seconded by Commissioner Presley, with Commissioners Hanson, Alfandre, Presley, and Wells-Harley voting in favor of the motion, and with Commissioner Cryor absent, at its regular meeting held on Thursday, September 10, 2009, in Silver Spring, Maryland.



Royce Hanson, Chairman
Montgomery County Planning Board