



MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

APR 11 2013

MCPB No. 13-46
Project Plan No. 92010001A
8621 Georgia Avenue
Date of Hearing: April 4, 2013

RESOLUTION

WHEREAS, under Montgomery County Code Division 59-D-2, the Montgomery County Planning Board is authorized to review project plan applications; and

WHEREAS, by MCPB Resolution No. 09-144, on December 14, 2009, the Planning Board approved Project Plan No. 920100010 for a mixed-use development of 191,281 square feet of space, consisting of 6,209 square feet of ground floor retail/restaurant uses below 185,072 square feet of office at 8621 Georgia Avenue, approximately 75 feet west of the intersection of Georgia Avenue and Colesville Road ("Subject Property") on 0.69 acres of land comprised of one CBD-2 zoned lot located in the 2000 Silver Spring Central Business District ("CBD") Sector Plan ("Sector Plan") area; and

WHEREAS, on November 9, 2012, 8621 Limited Partnership ("Applicant") filed an application to amend Project Plan No. 920100010 to change the primary use of the Subject Property from high-rise commercial to high-rise residential as a mixed-use development of 263,356 square feet of space, consisting of 1,619 square feet of commercial uses and 261,737 square feet of residential uses with 292 dwelling units, including 12.5% moderately priced dwelling units ("MPDUs") and 17 workforce housing units ("WFHUs"); and

WHEREAS, Applicant's project plan amendment application was designated Project Plan No. 82011001A, 8621 Georgia Avenue ("Application" or "Project Plan"); and

WHEREAS, following review and analysis of the Application by Planning Board Staff ("Staff") and other governmental agencies, Staff issued a memorandum to the

Approved as to
Legal Sufficiency:

[Signature] 4/4/13

Planning Board, dated March 20, 2013, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on April 4, 2013, the Planning Board held a public hearing on the Application, and at the hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, at the hearing, the Planning Board voted to approve the Application subject to certain conditions, by the vote as certified below.

NOW, THEREFORE, BE IT RESOLVED that, the Planning Board APPROVES Project Plan No. 82011001A, 8621 Georgia Avenue, for a mixed-use development consisting of no more than 263,356 square feet of gross floor area, with 1,619 square feet of commercial uses and 261,737 square feet of residential uses consisting of no more than 292 dwelling units, including 12.5% MPDU's and 17 WFHUs on the Subject Property, subject to the following conditions:¹

1. Development Ceiling

The development is limited to 263,356 square feet of gross floor area and a maximum 5.5 FAR including a maximum 1,619 square feet of commercial uses and 261,737 square feet of residential uses consisting of no more than 292 dwelling units. The delineation of the total area into 261,737 square feet of residential uses and 1,619 square feet of retail is recognized as preliminary and will be finalized at Site Plan.

2. Housing

The Applicant must provide a minimum of 12.5% of the total number of units onsite as MPDUs, consistent with the requirements of Chapter 25A of the Montgomery County Code; and at least 17 units as WFHUs, consistent with the requirements of Chapter 25B, Article V.

3. Building Height and Mass

The development is limited to the building footprint as delineated on the Project Plan drawings submitted to MNCPPC dated February 22, 2013, unless modified during site plan review. The development is limited to a maximum building height of 161

¹ For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

feet as determined by the Montgomery County Department of Permitting Services ("MCDPS") 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-A4 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 4,225 square feet of public use space (13.8% of net lot area) on-site.
- b) In lieu of providing the 1,844 remaining square feet (6.2%) of the required 20% of the net lot area as on-site public use space, the Applicant must contribute to M-NCPPC no less than \$251,497 towards development of Gene Lynch Urban Park as the amenity site, in the Silver Spring CBD. The payment must be submitted to the M-NCPPC prior to release of the first building permit.
- c) At the time of site plan review, the Board may approve an alternative amenity site, as recommended by Staff, to satisfy the Applicant's public use space requirement. The alternative site must be in the public interest and consistent with the Amenity Fund Guidelines. Board approval of this alternative would not require an amendment to the Project Plan.
- d) The Applicant must provide public art on-site, integrated into the overall site design.
- e) Final design of the public art must be selected by the time of certified site plan.
- f) As a public amenity, the Applicant must provide streetscape improvements per the Silver Spring Streetscape Standard along the Subject Property's frontage on Georgia Avenue.

6. Staging of Amenity Features

- a) The development will 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. Maintenance

Prior to issuance of use and occupancy permits, the Applicant must create and implement a maintenance plan for all on-site public use space or make alternative arrangements for on-going maintenance.

BE IT FURTHER RESOLVED that all elements of Project Plan No. 82011006A, 8621 Georgia Avenue, stamped received by The M-NCPPC on February 22, 2013, are required except as modified by the above conditions of approval; and

BE IT FURTHER RESOLVED, that all conditions Project Plan application 920130020 are superseded by this approval; and

BE IT FURTHER RESOLVED that, having considered the recommendations and findings of its Staff as presented at the hearing and as set forth in the Staff Report, which the Planning Board hereby adopts and incorporates by reference (except as modified herein) and having considered the entire record, all applicable elements of § 59-D-2.43, and the relevant provisions of Section 59-D-2.42, the Planning Board, with the conditions of approval, FINDS:

(a) The development complies with all of the intents and requirements of the CBD-2 zone as applied comprehensively to the Project.

Although the maximum FAR permitted in the CBD-2 zone is 5.0, and maximum building height in the CBD-2 zone is 143 feet, the Zoning Ordinance provides for developments with WFHUs to exceed those limitations in certain circumstances. This Application provides 292 residential units (including 12.5% MPDUs and 17 WFHUs), and 1,619 square feet of street front commercial uses with a maximum building height of 161 feet, and a FAR of 5.5. Section 59-A-6.18.2(c) states:

To allow the construction of workforce housing units on site, the Planning Board must permit:

- (1) any residential density or residential FAR limit of the applicable zone to be exceeded to the extent required for the number of workforce housing units that are constructed, but not by more than 10 percent of the total FAR or number of dwelling units;
- (2) a residential density or residential FAR limit established in a master or sector plan to be exceeded to the extent required for the number of workforce housing units that are constructed, but not to more than the maximum density and FAR of the zone, except as provided in paragraph (1); and
- (3) any building height limit established in a master or sector plan to be exceeded to the extent required for the number of workforce housing units that are constructed, but not to more than the maximum height of the zone.

Furthermore, Section 59-C-6.2 (footnote 11) allows the Planning Board to approve a height that exceeds 143 feet, but not more than 200 feet in the CBD-2 zone under the optional method of development process if the additional height is necessary for the project to accommodate workforce housing under Section 59-A-6.18. However, the additional height must not be more than required for the number of workforce housing units that are constructed.

Seventeen units are proposed on the uppermost floor of the building in concert with the number of workforce housing units provided. An 18 foot height increase for an additional floor is necessary to accommodate the seventeen dwelling units and rooftop building amenities including a swimming pool, pool lounging and sitting areas, and an indoor community room. Additional height of the community room will provide a more varied roof line and a clubroom that takes advantage of the best vista from the site. Pedestrians walking up Fidler Lane will be able to see a more interesting building façade and residents will enjoy sweeping views of downtown Silver Spring from a glass enclosed rooftop space that offers a superior amenity to all residents of the building. The additional height for the community room provides for amenities to benefit not only the market rate units but the greater number of affordable units being proposed with the Application and provides the opportunity for more below market units in this project. The site is narrow and deep and the Planning Board finds the location of the clubroom is appropriate and the height of the room is justified to provide a superior amenity on a site where options for placing such amenities are very limited. Furthermore, the value added to the building through the upgraded amenities will translate into higher market rate rents to support the added cost to the project to provide the 17 WFHUs. Therefore, the Planning Board finds that the 161 foot building height is necessary for the project to accommodate the number of workforce housing units that are being constructed.

The CBD-2 zone is the area of land lying generally between the core area and the areas of the lowest density within the CBD. More specifically, Section 56-C-6.212 outlines the intent of the CBD zones by:

- (a) Encouraging development in accordance with an adopted and approved master or sector plan by permitting an increase in density, height, and intensity where such increase is approved on review by the Planning Board.
- (b) Permitting a flexible response of development to the market, and to provide incentives for the development of a variety of land uses and activities in CBDs to meet the needs and requirements of workers, shoppers, and residents.
- (c) Encouraging designs which produce a desirable relationship between the individual buildings in the CBD, between the buildings and the circulation system and between the CBD and adjacent areas.
- (d) Promoting the effective use of transit facilities in the CBD and pedestrian access thereto.
- (e) Promoting improved pedestrian and vehicular circulation.
- (f) Assisting in the development of adequate residential areas for people with a range of different incomes.
- (g) Encouraging land assembly and the most desirable use of land in accordance with a sector plan.

For the reasons discussed below, the Planning Board finds that this Application meets the intents of the zone. The increased density and amenities for this project achieved through the optional method of development implement recommendations of the Sector Plan. The Amendment is a flexible response by the Applicant to market conditions. Following extensive marketing of the site as a commercial project, the Applicant concluded that a residential building with street front retail was more suitable in today's economy. A residential building within close walking distance to the metro and retail offerings of downtown Silver Spring is a viable use for this location. The residents of the building and customers of the street front retail use will further enliven this block of Georgia Avenue with more pedestrian traffic. A new retail use in this location will likely complement the existing retail uses on the north side of the block.

The MPDUs and WFHUs mixed in with market-rate units will assist in the development of residences for people with a range of different incomes.

(b) The development conforms to the Sector Plan and the Master Plan.

The Amendment is consistent with the 2000 Silver Spring CBD Sector Plan's vision for Silver Spring's future "to create a development environment that invites revitalization." The Subject Property is being developed under the optional method of development to achieve higher density and provide greater amenities on a vacant stretch of Georgia Avenue. The Sector Plan outlines themes of a transit oriented downtown, residential downtown, commercial downtown, green downtown, civic downtown and pedestrian friendly downtown to achieve this vision. With the addition of residential units, the theme of residential downtown is supported. The mixed use building will offer pedestrian access from Georgia Avenue, vehicular access from a service alley and will also be within walking distance of the Silver Spring Transit Center. The Application minimizes the role of vehicular traffic and maximizes pedestrian access to Georgia Avenue and bus and rail transit infrastructure south of the site.

This project redevelops a site currently used as a parking lot into an active residential building. The ground level retail use will help activate the sidewalk area in front of the building. Residents of the multi-family dwelling units will shop and dine within the core area of Silver Spring and will most likely reach such destinations by foot. The project will contribute to a pedestrian friendly downtown environment as envisioned by the Sector Plan.

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

Because the building lies within the core area of the Silver Spring CBD, this 16 story building with 5.5 FAR density will complement existing development and provide a catalyst for future redevelopment within this block. To the northeast of the site are existing two story retail buildings, which include the recently completed Fillmore performing arts venue. The Montgomery Center Building located directly north of the site is a 13-story mixed use building with 12 stories of commercial square footage and ground floor retail uses on the first floor. The Twin Towers building across Georgia Avenue to the south is a 15-story mixed use building with ground floor retail along Georgia Avenue and 14 stories of dwelling units above. The seven story Verizon building across the street to the south is a substation for the utility provider. To the east is the Lee Building, a 10 story commercial building which frames the corner of the intersection of Georgia Avenue and Colesville Road and acts as an anchor building for

the block. Directly to the west is the three story Encore Building occupied by offices and a financial institution.

The new building will have balconies visible from Georgia Avenue and a modern building design similar to other recent redevelopment projects in Silver Spring. The garage levels will not be visible from Georgia Avenue and will not degrade the viewshed of surrounding buildings. The "filling in" of the property will help create a more cohesive building line along Georgia Avenue and will enhance the east-west pedestrian corridor within Silver Spring. In short, the addition of a residential building on this block will enhance the present mix of uses and not be incompatible or detrimental to existing or future development.

(d) As conditioned, the development 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 all the applicable requirements.

The additional units proposed under this Amendment will not overburden existing public facilities. The development will be built in one phase. The previously approved Site Plan No. 820110060 satisfied all relevant APF tests for commercial uses. This Amendment will generate fewer trips in both the a.m. and p.m. peak hours and, therefore, will not change the APF findings from the previously approved site plan. The total number of students generated by the 292 multi-family high rise units is projected to be approximately 13 elementary, 10 middle, and 12 high school students. The project is located in the service areas of Woodlin Elementary School and Sligo Middle School, and in the base area of Albert Einstein High School. The current FY 2013 Subdivision Staging Policy does not require a school facility payment for approvals in the Albert Einstein cluster schools.

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

The Amendment continues to develop the site using the optional method of development, which allows greater densities at key locations, such as proximity to mass transit, in exchange for greater public amenities and facilities. The Amendment increases the overall density on the site from 4.0 to an overall 5.5 FAR, and at the same time, it expands the amount of on-site space available for public use.

Construction of a standard method project would yield a building constructed to a maximum of 2.0 FAR with a maximum 60 foot building height. 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 core of Silver Spring and areas 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.

(f) The development will include moderately priced dwelling units in accordance with Chapter 25A of the Montgomery County Code.

The Amendment includes 35 of 292 units (12.5%) MPDUs, in accordance with Chapter 25A. Additionally, this project is providing 17 WFHUs.

(g) The development satisfies applicable requirements for forest conservation under Chapter 22A of the Montgomery County Code.

The Amendment does alter the Forest Conservation Plan exemption granted on September 27, 2007.

(h) The development satisfies applicable requirements for water quality resources protection under Chapter 19 of the Montgomery County Code.

The storm water management concept for the site was approved by MCDPS on January 22, 2013, and consists of Environmental Site Design to the maximum extent practicable by using green roof technology and a micro-bioretenion planter box. Additional treatment will be provided through the use of a structural proprietary flow-through underground filter. Due to site conditions, full Environmental Site Design volume cannot be provided and MCDPS granted a waiver of the water quantity portion of the requirement.

(i) 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.

For the on-site public use space, in addition to upgrading the streetscape in front of the site to the Silver Spring Streetscape standards, the outdoor seating area and

public art component will enliven an area along Georgia Avenue in a manner that is consistent with the recommendations in the Sector Plan. The Applicant is providing a fee-in-lieu payment for 6.2% of the public use space requirement that cannot be provided on-site. The payment for \$251,497 will be contributed to the Amenity Fund that is being directed to the implementation of Gene Lynch Urban Park in the Silver Spring CBD. The Applicant's contribution to the amenity fund for 6.2% of the public use space is consistent with the goals of the Silver Spring CBD Sector Plan because it contributes to the creation of a civic downtown. A larger urban park within the Silver Spring CBD will have substantially more visibility than public use space on the Subject Property and will serve as a communal gathering space for visitors and residents.

BE IT FURTHER RESOLVED, that this Resolution 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

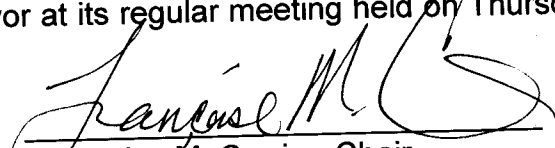
BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Planning Board, and that the date of this Resolution is **APR 11 2013** (which is the date that this Resolution is mailed to all parties of record); and

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).

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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 Anderson, seconded by Commissioner Presley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley voting in favor at its regular meeting held on Thursday, April 4, 2013, in Silver Spring, Maryland.



Françoise M. Carrier, Chair
Montgomery County Planning Board