



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

MCPB No. 16-084
 Site Plan No. 820160130
 8008 Wisconsin Avenue
 Date of Hearing: July 28, 2016

SEP 16 2016

RESOLUTION

WHEREAS, under Section 59-7.1.2 of the Montgomery County Zoning Ordinance, the Montgomery County Planning Board is authorized to review site plan applications; and

WHEREAS, under Section 59-7.7.1.B.1, the Planning Board reviewed this site plan under the procedures and standards of the Zoning Ordinance in effect on October 29, 2014, including the zoning then in effect; and

WHEREAS, on March 31, 2016, Jemal's Surplus, LLC ("Applicant") filed an application for approval of a site plan for a mixed-use building containing up to 150,375 square feet of residential uses, consisting of no more than 106 dwelling units, including 15% moderately priced dwelling units ("MPDUs"), and 5,793 square feet of nonresidential uses on 27,077 gross square feet of CBD-1-zoned-land, located in the southwest quadrant of the intersection of Wisconsin Avenue and Cordell Avenue ("Subject Property"), in the Bethesda CBD Policy Area and *Woodmont Triangle Amendment to the Bethesda CBD Sector Plan* ("Sector Plan") area; and

WHEREAS, Applicant's site plan application was designated Site Plan No. 820160130, 8008 Wisconsin Avenue ("Site Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated July 15, 2016, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 28, 2016, 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, on July 28, 2016, the Planning Board voted to approve the Application subject to conditions on motion of Commissioner Fani-Gonzalez, seconded by Commissioner Wells-Harley, with a vote of 4-0; Commissioners Anderson, Cichy,

Approved as to
 Legal Sufficiency:

 8/2/16
 MNCPPC Legal Department

8787 Georgia Avenue, Prince Georges, Maryland 20910 Chairmans Office: 301.495.4605 Fax: 301.495.1320

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Gonzalez, and Wells-Harley voting in favor. Commissioner Dreyfuss was absent from the hearing.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board approves Site Plan No. 820160130 for a mixed-use building containing up to 150,375 square feet of residential uses, consisting of no more than 106 dwelling units, including 15% moderately priced dwelling units ("MPDUs"), and 5,793 square feet of nonresidential uses, on the Subject Property, subject to the following conditions:¹

1. Project Plan Conformance

The Applicant must comply with the conditions of approval for Project Plan No. 92015002A.

2. Preliminary Plan Conformance

The Applicant must comply with the conditions of approval for Preliminary Plan No. 120160050.

Environment

3. Noise Attenuation

For any residential dwelling units to be constructed within the projected 65, dBA Ldn noise contour, the Applicant must disclose in writing to all prospective residents that those units are impacted by transportation noise.

4. Stormwater Management

The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services ("MCDPS") – Water Resources Section in its stormwater management concept letter dated May 2, 2016, and incorporates them as conditions of the Site Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources Section provided that the amendments do not conflict with other conditions of the Site Plan approval.

Public Use Space, Facilities, and Amenities

5. Public Use Space, Facilities, and Amenities

- a. The Applicant must provide a minimum of 2,918 square feet of public use space on the Subject Property.
- b. The Applicant must construct the Bethesda CBD standard streetscape, including, but not limited to, street trees, street lighting, brick paving, and

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.

undergrounding of utilities, along the Subject Property's frontage on Woodmont Avenue, Cordell Avenue, and Wisconsin Avenue, as shown on the Certified Site Plan, except as modified by design exceptions approved by MCDPS.

- c. Before the issuance of the final use and occupancy permit, all public use space areas must be completed.
- d. Prior to issuance of a building permit, the Applicant must pay a fee in lieu of public use space equal to \$694,323.49, for design and/or construction of renovations at Battery Lane Urban Park. The fee will be calculated as follows: the percentage of public use space not being provided on-site multiplied by the assessed land value of the sending properties, plus the area in square feet of the public use space not being provided on-site multiplied by \$35 per square foot.

6. Recreation Facilities

- a. Before Certified Site Plan approval, the Applicant must meet the requirements for all applicable recreational elements and demonstrate to Staff that each element meets M-NCPPC Recreation Guidelines.
- b. The Applicant must provide at a minimum the following recreation facilities: Indoor community space, indoor fitness facility, picnic/sitting areas, and a pedestrian system.

7. Maintenance of Public Amenities

The Applicant is responsible for maintaining all publicly accessible amenities including, but not limited to, pedestrian pathways, landscaping, hardscape, and public use space.

Transportation and Circulation

8. Bicycle Parking

- a. The Applicant must provide 30 bicycle parking spaces for long-term private use and eight bicycle parking spaces for short-term public use.
- b. The private spaces must be on-site in a secured, well-lit bicycle room within the garage and/or building, and the public spaces must be inverted-U racks installed in a location convenient to the main entrance (weather protected preferred). The specific location(s) of the public and private bicycle parking must be identified on the Certified Site Plan.

9. Traffic Mitigation

Prior to issuance of a building permit, the Applicant must enter into a Traffic Mitigation Agreement ("TMAg") with the Planning Board and the Montgomery County Department of Transportation ("MCDOT") to participate in the Bethesda Transportation Management District. The TMAg must be executed prior to the

release of any above grade building permit for development on the Subject Property exclusive of any sheeting and shoring permit. The TMAg must include trip mitigation measures recommended by MCDOT.

10. Department of Permitting Services

The Planning Board accepts the recommendations of MCDPS – Right-of-Way Section in its memorandum dated June 14, 2016, and incorporates them as conditions of the Site Plan approval. The Applicant must comply with each of the recommendations as set forth in the memorandum, which may be amended by MCDPS –Right-of-Way Section provided that the amendments do not conflict with other conditions of the Site Plan approval.

Density and Housing

11. Moderately Priced Dwelling Units (MPDUs)

- a. The Planning Board accepts the recommendations of the Montgomery County Department of Housing and Community Affairs (“MCDHCA”) in its letter dated June 16, 2016, and incorporates them as conditions of the Site Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which MCDHCA may amend if the amendments do not conflict with other conditions of the Site Plan approval.
- b. The Applicant must provide a minimum of 15% MPDUs within the project on the Subject Property in accordance with the letter from MCDHCA dated June 16, 2016.
- c. Prior to the release of any building permit, exclusive of the sheeting and shoring permit, the Applicant must execute the MPDU agreement to build.

Site Plan

12. Building Height

The development is limited to the maximum height of 143 feet, as measured from the approved building height measuring point shown on the Certified Site Plan.

13. Site Design

The exterior architectural character, proportion, materials, and articulation must be substantially similar to the schematic elevations shown on the Certified Site Plan, as determined by Staff.

14. Landscaping

- a. Before issuance of the final residential use and occupancy certificate or similar final inspection for this Site Plan, all on-site amenities including, but not limited to, streetlights, sidewalks/pedestrian pathways, streetscape and

related improvements, hardscape, bicycle facilities, and public use space amenities must be installed.

- b. The Applicant must install the landscaping no later than the next growing season after completion of construction and site work.

15. Lighting

- a. Before approval of the Certified Site Plan, the Applicant must provide certification to Staff from a qualified professional that the exterior lighting in this Site Plan conforms to the Illuminating Engineering Society of North America (IESNA) recommendations in effect on the date of this resolution for a development of this type. All onsite exterior area lighting must be in accordance with the latest IESNA outdoor lighting recommendations in effect on the date of this resolution.
- b. Deflectors must be installed on all up-lighting fixtures to prevent excess illumination and glare.
- c. Streetlights and other pole-mounted lights must not exceed the height illustrated on the Certified Site Plan.

16. Site Plan Surety and Maintenance Agreement

Before issuance of any building permit or sediment and erosion control permit, the Applicant must enter into a Site Plan Surety and Maintenance Agreement with the Planning Board in a form approved by the M-NCPPC Office of General Counsel that outlines the responsibilities of the Applicant. The Agreement must include a performance bond(s) or other form of surety in accordance with Section 59-D-3.5(d) of the Montgomery County Zoning Ordinance, with the following provisions:

- a. A cost estimate of the materials and facilities, which, upon Staff approval, will establish the surety amount;
- b. The cost estimate must include applicable Site Plan elements including, but not limited to, plant materials, on-site lighting, exterior site furniture, art pieces, vegetated walls, retaining walls, railings, curbs, gutters, sidewalks, and associated improvements; and
- c. The bond or surety must be tied to the development program, and completion of plantings and installation of particular materials and facilities covered by the surety will be followed by inspection and release of the surety.

17. Development Program

The Applicant must construct the development in accordance with a development program table that will be reviewed and approved prior to the approval of the Certified Site Plan.

18. Certified Site Plan

Before approval of the Certified Site Plan, the following revisions must be made and/or information provided subject to Staff review and approval:

- a. Include the forest conservation exemption letter, stormwater management concept approval letter, development program, and Project Plan resolution, Preliminary Plan resolution, and Site Plan resolution on the approval or cover sheet(s).
- b. Add a note stating that "Minor modifications to the limits of disturbance shown on the Site Plan within the public right-of-way for utility connections may be done during the review of the right-of-way permit drawings by the Department of Permitting Services."
- c. Modify data table to reflect development standards approved by the Planning Board.
- d. Ensure consistency of all details and layout between Site and Landscape plans.
- e. Include a note on the Site Plan that states that the Applicant must not place any structures or other items, including temporary items, that would interfere with pedestrian movement on the sidewalk or obstruct sight distance within the area that would have been the 20-foot truncation area at the intersection of Wisconsin Avenue and Cordell Avenue.

BE IT FURTHER RESOLVED that all site development elements shown on the latest electronic version of 8008 Wisconsin Avenue, Site Plan No. 820160130, submitted via ePlans to the M-NCPPC as of the date of the Staff Report, are required, except as modified by the above conditions of 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 Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

1. *The Site Plan conforms to all non-illustrative elements of a development plan or diagrammatic plan, and all binding elements of a schematic development plan, certified by the Hearing Examiner under Section 59-D-1.64, or is consistent with an approved project plan for the optional method of development if required, unless the Planning Board expressly modifies any element of the project plan.*

Neither a development plan, diagrammatic plan, nor a schematic development plan were required for the Application. The Site Plan is consistent with Project Plan Amendment 92015002A, as conditioned.

2. *The Site Plan meets all of the requirements of the zone in which it is located.*

The approved uses are allowed in the CBD-1 zone, and the Site Plan fulfills the specific purposes of the zone by providing mixed-use development in a desirable urban environment, a transitional density from the core to the periphery of the CBD, and an effective use of transit facilities for residents and visitors to the Subject Property.

As the data table below indicates, the Site Plan meets all of the development standards of the zone. With respect to building height, setbacks, density, and public use space, the development meets the minimum and maximum standards, respectively.

Requirements of the CBD-1 Zone

Based on the following data table, which sets forth the development standards approved by the Planning Board and binding on the Applicant, and based on other evidence and testimony of record, the Application meets all of the applicable requirements of the CBD-1 Zone.

Table 1: Data Table

| Development Standard | Permitted/ Required | Approved in Project Plan 92015002A | Approved in Site Plan |
|--|------------------------|--|--------------------------|
| Gross Tract Area - total (sf.) | 18,000 | 97,884 | 97,884 |
| Receiving Site | 27,077 | | |
| Sending Sites | 70,807 | | |
| Previous Dedications - total (sf.) | | 44,013 | 44,013 |
| Receiving Site | 11,688 | | |
| Sending Sites | 32,325 | | |
| Required Dedications - total (sf.) | | 1,427 | 1,427 |
| Receiving Site | 1,427 | | |
| Sending Sites | 0 | | |
| Net Lot Area - total (sf.) | | 52,444 | 52,444 |
| Receiving Site | 13,962 | | |
| Sending sites | 38,482 | | |
| Maximum Density (FAR) (base) | | | |
| CBD-1 | 3 | 3 | 3 |
| C-2 | 1.5 | 1.5 | 1.5 |
| Maximum Floor Area, Total (sf.) (base) | 196,816 | 196,816 | 196,816 |
| Receiving Site | 129,052 | | |
| Sending Sites | 67,764 | | |
| Maximum Density, Non-residential (FAR) | 1 | 0.21 | 0.21 |

| Development Standard | Permitted/ Required | Approved in Project Plan 92015002A | Approved in Site Plan |
|---|------------------------|--|--------------------------|
| Maximum Floor Area, Non-residential (sf.) | 128,004 | 5,793 | 5,793 |
| Maximum Floor Area, Residential (sf.) (base) | n/a | 123,259 | 123,259 |
| Maximum Floor Area, Residential (sf.) (22% density bonus) | n/a | 27,116 | 27,116 |
| Maximum Floor Area, Residential (sf.) (including 22% density bonus) | n/a | 150,375 | 150,375 |
| Maximum Floor Area, Total (sf.) (including 22% density bonus) | n/a | 156,168 | 156,168 |
| Maximum Density, Total (FAR) (including 22% density bonus) | n/a | 5.8 | 5.8 |
| Maximum Dwelling Units, total | n/a | 106 | 106 |
| Minimum MPDU (%) | 12.5 | 15 | 15 |
| Building Height, Maximum (ft.) | 143 | 143 | 143 |
| Parking Spaces, Maximum | | | |
| Residential | 146 | | |
| Non-residential | 29 | | |
| Less 10% CBD Residential Credit | -17 | | |
| Total Required | 158 | 54 | 54 ¹ |
| On-Site Public Use Space, Minimum (% of net lot area) | | | |
| Receiving Site | 20 | 20 | 20 |
| Sending Sites | 10 | 0.33 | 0.33 ² |
| On-Site Public Use Space (sf.) | | | |
| Receiving Site | 2,792 | 2,792 | 2,792 |
| Sending Sites | 3,848.2 | 126 | 126 ² |
| Off-Site Public Amenity Space (% of net lot area) | | | |
| Receiving Site | n/a | 34 | 34 |
| Sending Sites | n/a | 0 | 0 |
| Off-Site Public Amenity Space (sf.) | | | |
| Receiving Site | n/a | 4,784 | 4,784 |
| Sending Sites | n/a | 0 | 0 |

¹ The site is located in the Bethesda parking lot district, and as such is not required to provide the full complement of parking spaces on site. Parking that is not provided on the site, consistent with Section 59-E, will be subject to an ad valorem tax.

²The Application will provide 126 square feet public use space on the sending sites. The remaining required 3,722.2 square feet of public use space for the sending sites will be provided by payment of a fee in lieu.

In accordance with the standards of the CBD-1 zone, the Application must provide public use space equal to 20% of the net lot area of the receiving site and 10% of the net lot area of the sending sites, which equates to a 6,640-square-foot public use space requirement. However, because of the constrained size of the Subject Property, the Applicant was required, with the previous approval of the project plan application, to provide 2,812 square feet of public use space and to pay a fee in lieu of providing the 3,828-square-foot remainder. A condition of approval of the previously approved project plan application requires the Applicant to pay a fee in lieu of public use space in the amount of \$717,120.00, unless the amount is adjusted by the Planning Board to reflect any change in the amount of public use space being provided prior to approval of a site plan.

The Application reflects a modest increase in the amount of public use space attributed to the sending sites, from 20 square feet to 126 square feet. As previously approved, all public use space will continue to be provided on the receiving property. Because of the increase in the amount of public use space to be provided on-site, the fee required in the condition of approval is recalculated as follows:

The percentage of public use space not being provided on-site multiplied by the assessed value of the land, plus the area in square feet of public use space not being provided on-site multiplied by \$35 per square foot.

The assessed value of the land is shown in Table 2 below, based on data from the Maryland Department of Assessments and Taxation.

Table 2: Assessed Land Value of Sending Properties

| Site No. | Address | Tax ID | Description | Plat | Zone | Assessed Value |
|----------|--------------------------|-------------|---|-------------|-------|----------------|
| 1 | 5001 Wilson Lane | 07-00441433 | Block M, Lot P2, Battery Park Sec 2 | 304 | C-2 | \$500,400 |
| 2 | 5027 Wilson Lane | 07-00440941 | Block M, Lot P3, Battery Park Sec 2 | 304 & 24360 | C-2 | \$423,000 |
| 3 | 5004 Cordell Avenue | 07-00440952 | Block M, Lot P1 & P3, Part Lot 3 Battery Park | 304 & 24360 | C-2 | \$273,300 |
| 4 | 7830 Old Georgetown Road | 07-02446538 | Block L, Lot 23, Battery Park Sec 2 | 15023 | C-2 | \$3,488,500 |
| 5 | 4906 Del Ray Avenue | 07-00552161 | Part Lot 278, Woodmont | 4 | CBD-1 | \$573,100 |

| Site No. | Address | Tax ID | Description | Plat | Zone | Assessed Value |
|----------|---------------------|-------------|------------------------|------|-------|--------------------|
| 5 | 4906 Del Ray Avenue | 07-00552172 | Part Lot 279, Woodmont | 4 | CBD-1 | \$573,100 |
| | Total | | | | | \$5,831,400 |

Based on the formula for calculation of the fee in lieu of public use space, Table 3 shows the amount of the fee that is required by Condition 5 of this approval. The Condition allocates the fee to CIP project P118701 for design and/or construction of renovations at Battery Lane Urban Park. Payment to the amenity fund for the public use space contribution is required at the time of building permit.

Table 3: Calculation of fee in lieu of public use space

| | | | |
|--|---------|---------------------|---|
| Percentage of public use space not provided on site | 9.673% | \$564,046.49 | Assessed land value times percentage of public use space not provided on site |
| Square feet of public use space not provided on site | 3,722.2 | \$130,277.00 | Square feet of public use space not provided on site times \$35/square foot |
| Total fee in lieu of public use space | | \$694,323.49 | |

Loading Space Waiver

Under Section 59-E-1.4 of the Zoning Ordinance, the Application is required to provide two loading bays. However, the Applicant is requesting a waiver from this standard to allow only one loading bay along Cordell Avenue. The Planning Board is authorized to grant the requested loading waiver where it finds that the loading requirement is not necessary to accomplish the objectives in Section 59-E-4.2. Those objectives are:

- (a) The protection of the health, safety and welfare of those who use any adjoining land or public road that abuts a parking facility. Such protection shall include, but shall not be limited to, the reasonable control of noise, glare or reflection from automobiles, automobile lights, parking lot lighting and automobile fumes by use of perimeter landscaping, planting, walls, fences or other natural features or improvements.
- (b) The safety of pedestrians and motorists within a parking facility.
- (c) The optimum safe circulation of traffic within the parking facility and the proper location of entrances and exits to public roads so as to reduce or prevent traffic congestion.
- (d) The provision of appropriate lighting, if the parking is to be used after dark.

The requirement that the Application include two loading bays is not necessary to accomplish any of the four objectives contained in Section 59-E-4.2. Reducing the number of loading spaces will reduce noise, enhance pedestrian safety, will

provide safe circulation of traffic, and will not negatively impact the provision of appropriate lighting. Therefore, the Planning Board finds that the requested waiver is justified and will promote the objectives identified in Section 59-E-4.2.

3. *The locations of the buildings and structures, the open spaces, landscaping, recreation facilities, and pedestrian and vehicular circulation systems are adequate, safe, and efficient.*

The Application will improve safety and character of the adjacent streets by providing unique paver aprons and the Bethesda Streetscape standard paving, lighting, and street trees for the frontages of Cordell, Woodmont, and Wisconsin Avenues. Additionally, the Application will activate these frontages both during the day and evening hours with new residential and retail uses. The Application will provide a striking and illuminated public use space along all three of these frontages. Last, the Application is designed to ensure that all loading and vehicular access areas on Cordell Avenue are safe and efficient.

The building is to be located along the street frontage of Wisconsin Avenue, Cordell Avenue, and Woodmont Avenue. This location provides easy access to the building from adjoining sidewalks and parking. The location of the building is adequate and efficient, while meeting the aesthetic concerns of the area, and it does not pose any safety concerns on the site.

The public use space on the three frontages will be integrated into the adjacent sidewalk network. The public use space on Wisconsin Avenue is designed to accommodate pedestrian circulation associated with the future BRT station at the intersection of Wisconsin Avenue and Cordell Avenue. The Site Plan will improve pedestrian circulation in the area by providing Bethesda Streetscape improvements along all three adjacent street frontages. Recreational facilities will be placed on a rooftop terrace and within the building, and they will be easily accessible to building residents. Landscaping will be provided in the public use space areas.

4. *Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development.*

The design, scale, façade, and uses approved in the Site Plan will provide a complimentary relationship to adjacent buildings in the Woodmont Triangle and the Bethesda CBD as a whole. The 143 feet in building height approved for the Site Plan represents a step-down from the taller buildings permitted in the core of the Bethesda CBD. The Application will provide a street-activating, commercial component along Woodmont Avenue. The Application's use of density transfers

helps to preserve the small-scale retail sites in the Woodmont Triangle by transferring unused density to the Subject Property.

5. *The Site Plan meets all applicable requirements of Chapter 22A regarding forest conservation, Chapter 19 regarding water resource protection, and any other applicable law.*

The Application was granted an exemption from submitting a forest conservation plan per section 22A-5(s)(2) on June 3, 2014. The development meets the conditions as the Subject Property is smaller than one acre with no existing forest, specimen trees, or champion trees, and the afforestation requirements would not exceed 10,000 square feet. The previously granted exemption remains in effect.

The MCDPS Stormwater Management Section approved the stormwater management concept on May 2, 2016. According to the approval letter, the stormwater management concept meets stormwater management requirements via environmental site design to the maximum extent practicable through the use of green roofs and micro-bioretenention planter boxes.

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 Site Plan shall remain valid as provided in Montgomery County Code § 59-D-3.8; and

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is SEP 16 2016 (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 Vice Chair Wells-Harley, seconded by Commissioner Cichy, with Chair Anderson, Vice Chair Wells-Harley, and Commissioner Cichy voting in favor, and Commissioners Dreyfuss and Fani-González absent at its regular meeting held on Thursday, September 8, 2016, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board