



MCPB No. 16-140
Preliminary Plan No. 120160380
7272 Wisconsin Avenue
Date of Hearing: January 5, 2017

JAN 25 2017

RESOLUTION

WHEREAS, under Montgomery County Code Chapter 50, the Montgomery County Planning Board is authorized to review preliminary plan applications; and

WHEREAS, on October 22, 1987, the Planning Board approved Preliminary Plan No. 119851780, for one lot with 118,395 square feet of office uses and 61,404 square feet of retail uses on 2.69 acres of CR8.0, C7.5, R7.5, H250 zoned-land, located in the southwest quadrant of the intersection of Wisconsin Avenue and Elm Street ("Subject Property"), in the *Bethesda Central Business District Sector Plan* ("Sector Plan") area; and

WHEREAS, on July 11, 2016, CP 7272 Wisconsin Avenue, LLC c/o Carr Properties ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create 1 lot on 2.69 acres of land in the CR8.0, C7.5, R7.5, H250 zone, located in the southwest quadrant of the intersection of Wisconsin Avenue and Elm Street ("Subject Property"), in the Bethesda CBD Policy Area and the *Bethesda Purple Line Station Minor Master Plan Amendment* ("Master Plan") area, which will completely supersede Preliminary Plan 119851780; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120160380, 7272 Wisconsin Avenue ("Preliminary 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 December 23, 2016, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on January 5, 2017, the Planning Board held a public hearing on the Application at which it heard testimony and received evidence submitted for the record on the Application; and

Approved as to
Legal Sufficiency: 

WHEREAS, on January 5, 2017, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Fani-Gonzalez, seconded by Commissioner Cichy, with a vote of 3-0; Commissioners Anderson, Cichy, and Fani-Gonzales voting in favor, and Commissioners Dreyfuss and Wells-Harley being absent.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120160380 to create one lot on the Subject Property, subject to the following conditions:¹

1. This Preliminary Plan is limited to one lot with up to 937,184 square feet of total development, including up to 360,800 square feet of office uses, up to 14,572 square feet of retail uses, and up to 480 multi-family dwelling units.
2. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated September 20, 2016, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
3. The Planning Board accepts the recommendations of the Maryland State Highway Administration ("MDSHA") in its letter dated December 19, 2016, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MDSHA provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
4. Prior to issuance of access permits, the Applicant must satisfy the provisions for access and improvements as required by MDSHA and MCDOT.
5. Prior to recordation of the plat(s) the Applicant must satisfy MCDPS requirements to ensure the construction of frontage improvements, on both the Elm Street and Wisconsin Avenue frontages, as shown on the Certified Site Plan. These improvements may be modified by MCDPS and MD SHA, provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.

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.

6. Prior to the release of any building permit for above-grade construction on the Subject Property, the Applicant must enter into a Traffic Mitigation Agreement (TMAg) with the Planning Board and MCDOT. The TMAg must include trip mitigation measures recommended by MCDOT in its letter dated September 20, 2016.
7. The Adequate Public Facility (APF) review for the Preliminary Plan will remain valid for eighty-five (85) months from the date of mailing of this Planning Board Resolution.
8. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Service ("MCDPS") – Water Resources Section in its stormwater management concept letter dated October 31, 2016, and hereby incorporates them as conditions of the Preliminary 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 Preliminary Plan approval.
9. The Applicant must dedicate and show on the record plat(s) dedication along Wisconsin Avenue from the right-of-way centerline to the surface Public Improvement Easement above the existing underground parking structure to remain, as illustrated on the Certified Preliminary Plan.
10. Prior to record plat, the Applicant must record and provide a public use and access easement on the Subject Property for the full width and extent of the Capital Crescent Trail (CCT), as shown on the Certified Site Plan, granted to Montgomery County, in trust for the public, in a recordable form containing provisions to address the following:
 - a. Entitlement for open and unobstructed public use of the easement for all necessary pedestrian, bicycle, general public, and emergency access;
 - b. Obligation for the Applicant to design and construct the on-site portion of the CCT, as shown on the Certified Site Plan pursuant to comparable MCDOT structural construction standards, at the Applicant's expense, unless such obligation has been assumed by another entity as part of the overall trail maintenance;
 - c. Obligation for the Applicant to maintain and repair the structural components, including the trail surface, of the on-site portion of the CCT in a condition acceptable to MCDOT for all access, at the Applicant's expense, unless such obligation has been assumed by another entity as part of the overall trail maintenance;
 - d. Obligation for the Applicant to keep the on-site portion of the CCT free of snow, litter and other obstructions and hazards at all reasonable times, at

its expense, unless such obligation has been assumed by another entity as part of the overall trail maintenance;

- e. Entitlement for the Applicant or its designee to close the on-site portion of the CCT for normal maintenance and repair at reasonable times and upon reasonable prior notice to the public.
11. The Applicant must construct all road improvements within the rights-of-way shown on the approved Preliminary Plan to the full width mandated by the master plan and/or to the design standards imposed by all applicable road codes. Only those roads (or portions thereof) expressly designated on the Preliminary Plan, "To Be Constructed By _____" are excluded from this condition.
12. The certified Preliminary Plan must contain the following note:

Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of issuance of site plan approval. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot. Other limitations for site development may also be included in the conditions of the Planning Board's approval.
13. The Applicant must submit a revised Final FCP to correctly identify the afforestation requirements.
14. The record plat must show all easements.
15. Prior to recordation of any plat, Site Plan No. 820160200 must be certified by M-NCPPC Staff.
16. No clearing or grading of the site for new construction, or recording of plats prior to Certified Site Plan approval. Upon Final Forest Conservation Plan approval, and before Certified Site Plan approval, the Applicant may obtain Erosion and Sediment Control and demolition permits for the existing building.

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 Preliminary Plan substantially conforms to the Master Plan.

Planning Vision of the Sector Plan

The Preliminary Plan is consistent with, and furthers, the recommendations of the 2014 *Bethesda Purple Line Station Minor Master Plan Amendment*. The Preliminary Plan conforms to the Sector Plan's recommendation to encourage coordinated redevelopment of the Subject Property, especially in realizing a vision to construct a better-designed Purple Line station and a new tunnel for the CCT. It will provide new housing and employment uses in the downtown. The Application also promotes the Sector Plan objective of reducing auto dependence by integrating a combination of uses near transit options, such as WMATA Metrobus service and the future Purple Line station, and near downtown retail, businesses, public facilities, and recreational amenities.

Land Use and Zoning

The Application takes full advantage of the density and height provisions promoted by the Sector Plan and allowed under the Zoning Ordinance. The additional building height offers greater flexibility to accommodate the numerous program elements of the improved station and trail.

Infrastructure

The Sector Plan emphasizes that "the top priority public benefits for this Plan area are the provision of space on the Apex Building site necessary for planning, construction and operation of the 'major public facilities' of the improved transit station and the CCT tunnel." With the increased height and density, the Preliminary Plan will accommodate the new Purple Line Station, which includes access to the Red Line Metro south entrance and the CCT trail through the building. The Application's infrastructure is consistent with Sector Plan recommendations.

Public Open Space

The public use spaces are consistent with the Sector Plan recommendations for redevelopment of the station entrances at the corner of Wisconsin Avenue and Elm Street, and the CCT tunnel.

2. Public facilities will be adequate to support and service the area of the approved subdivision.

Access and Circulation

Vehicular access to the Subject Property is from both Elm Street and Wisconsin Avenue. The Preliminary Plan includes automobile garage access from both streets, with truck loading access only from a full-movement driveway on Wisconsin Avenue. All vehicular parking will be contained within a structured subgrade garage beneath the building.

Bicycle access to the site will be via the Capital Crescent Trail (CCT), which will run through a lower level of the building, providing a regional connection. The Preliminary Plan is providing space for a public bicycle storage facility adjacent to both the proposed Purple Line station and Capital Crescent Trail tunnel. Pedestrian access will be provided from the Wisconsin Avenue and Elm Street sidewalks, as well as on the CCT from Woodmont Plaza. The Preliminary Plan will maximize pedestrian entrances along the two streets to help activate the ground floor.

Transit Connectivity

The immediate area is well served by transit that includes the Red Line Bethesda Metrorail Station, Metrobus, RideOn, and the Bethesda Circulator. Future transit in the area includes a proposed Purple Line station beneath the building. Specific transit routes near the Site include:

1. RideOn Bus Routes 1, 2, 3, 4, 5, 8, 9, 11, 29, 30, 32, 34, 36, 47, 70
2. WMATA Metrobus Routes J2, J3, J4, J7, J9

Master Plan Roadways and Pedestrian/Bikeway Facilities

The following recommendations are included in the *1994 Bethesda Central Business District Sector Plan* and the *2005 Countywide Bikeways Functional Master Plan*:

1. Wisconsin Avenue (MD 355), along the Subject Property's eastern frontage, as major highway (M-6) within a minimum right-of-way width of 114 feet.
2. Elm Street, along the Subject Property's northern frontage, as a business district roadway within a minimum right-of-way width of 60 feet.
3. Capital Crescent Trail (SP-6), a tunnel through the Subject Property and adjacent to the Purple Line, as a regionally-important shared use path between Georgetown and Union Station in the District of Columbia via Bethesda and Silver Spring.

Sector-Planned Transportation Demand Management

As a mixed-use development within the Bethesda Transportation Management District (TMD) that has more than 25 employees on the largest shift and more than 100 dwelling units, the Applicant is required to enter into a Traffic Mitigation Agreement to participate in the Bethesda TMD.

Adequate Public Facilities

A traffic study, dated July 1, 2016, and revised November 11, 2016, was submitted for the subject application per the *LATR/TPAR Guidelines* since the proposed development was estimated to generate more than 30 peak-hour trips

during the typical weekday morning (6:30 a.m. – 9:30 a.m.) and evening (4:00 p.m. – 7:00 p.m.) peak periods.

A site trip generation summary for the proposed development shows that the project will generate 313 net new peak-hour trips during the weekday morning peak period and 306 net new peak-hour trips during the weekday evening peak period. This trip generation estimate is based on the addition of up to 360,800 square feet of General Office Space, 480 high rise dwelling units, and up to 14,572 square feet of General Retail.

A summary of the capacity analysis/Critical Lane Volume (CLV) analysis for the weekday morning and evening peak-hour periods shows that the total (Build) condition will remain within the policy area congestion standard of 1,800 CLV. Based on the analysis presented in the traffic study, the subject application will satisfy the LATR requirements of the APF test.

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

Other Public Facilities

Public facilities and services are available and will be adequate to serve the proposed development. The Subject Property will be served by public water and public sewer. The Application has been reviewed by the Montgomery County Fire and Rescue Service, which has determined that the Subject Property will have appropriate access for fire and rescue vehicles. Other public facilities and services, such as police stations, firehouses, schools, and health services are operating according to the *Subdivision Staging Policy* resolution currently in effect and will be adequate to serve the Subject Property. Electrical, telecommunications, and gas services are also available to serve the Subject Property.

- 3. The size, width, shape, and orientation of the approved lots are appropriate for the location of the subdivision, taking into account the recommendations included in the applicable master plan, and for the type of development or use contemplated.*

This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Application meets all applicable sections. The size, width, shape, and orientation of the approved lots are appropriate for the location of the subdivision taking into account the recommendations included in the applicable master plan, and for the type of

development or use contemplated. The Application substantially conforms to the 2014 *Bethesda Purple Line Station Minor Master Plan Amendment*. The Application complies with the specific density recommendations for the Subject Property as well as the applicable urban design, roadway, and general recommendations outlined in the Sector Plan. As evidenced by the Preliminary Plan, the Subject Property is sufficiently large to efficiently accommodate the proposed mix of uses.

Under Section 59-4.5.4 of the Zoning Ordinance, the dimensional standards for the lots will be determined with approval of subsequent site plans.

4. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code Chapter 22A.*

As conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

This Application is subject to the Chapter 22A, Montgomery County Forest Conservation Law. A Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) #420160820 for the project was approved on December 22, 2015. The urban site is located within the Little Falls watershed, a use-class I-P² watershed. There are several existing street trees and minor landscape plantings fronting the site; the tree sizes range up to approximately 18" diameter at breast height (DBH). The Subject Property is not associated with any significant or specimen trees, nor any forest areas or other environmentally sensitive resources such as highly erodible soils, steep slopes, streams, floodplains or associated buffers.

The project is subject to a Forest Conservation Plan (FCP). Although there is no forest to be cleared in association with the Application, there is an afforestation requirement. Given the dense urban setting over the existing Metro and future Purple Line, the afforestation credits will be met offsite by a payment of fee-in-lieu per Sec. 22A-12(g)(2)(D) of the Forest Conservation Law.

² Use I-P: Waters that are suitable for: water contact sports; play and leisure time activities where the human body may come in direct contact with the surface water; fishing; the growth and propagation of fish (other than trout); other aquatic life, and wildlife; agricultural water supply, industrial water supply, and use as a public water supply.

5. *All stormwater management requirements shall be met as provided in Montgomery County Code Chapter 19, Article II, titled "Storm Water Management," Sections 19-20 through 19-35.*

This finding is based upon the determination by MCDPS that the Stormwater Management Concept Plan meets applicable standards. The MCDPS Stormwater Management Section approved the stormwater management concept by letter dated October 31, 2016.

BE IT FURTHER RESOLVED that this Preliminary Plan will remain valid for 85 months from its initiation date (as defined in Montgomery County Code Section 50-35(h)), and that prior to the expiration of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded in the Montgomery County Land Records, or a request for an extension must be filed; 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 JAN 25 2017 (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 Fani-González, seconded by Commissioner Cichy, with Chair Anderson, and Commissioners Dreyfuss, Fani-González, and Cichy voting in favor, and Vice Chair Wells-Harley absent, at its regular meeting held on Thursday, January 19, 2017, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board