



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

NOV 5 2013

MCPB No. 13-145
Sketch Plan No. 32011002A
North Bethesda Gateway
Date of Hearing: October 3, 2013

RESOLUTION

WHEREAS, under Section 59-C-15.42 of the Montgomery County Code the Montgomery County Planning Board ("Planning Board" or "Board") is authorized to review sketch plan applications; and

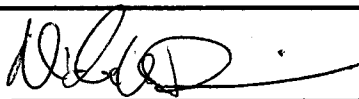
WHEREAS, on July 5, 2011, the Planning Board, by Resolution MCPB No. 11-06, approved Sketch Plan No. 320110020, for up to 1,236,648 square feet of non-residential uses and up to 1,073,288 square feet of residential uses, limited by a total cumulative density of up to 1,700,241 square feet or approximately 3.54 FAR, on 11.04 acres of land zoned CR3: C1.5, R2.5, H200 on 5.12 acres ("LWALP Site") and CR4: C3.5, R2.0, H250 on the remaining 5.92 acres, located on Rockville Pike, approximately 250 feet South of Nicholson Lane (together, "Property" or "Subject Property") within the White Flint Master Plan ("Master Plan") area; and

WHEREAS, on May 22, 2013, ProMark Real Estate Services, LLC ("Applicant") filed an application to amend the previously approved sketch plan for approval of the following modifications:

1. Decrease the square footage approved for non-residential uses by eliminating the office use and reducing the retail use on the LWALP Site;
2. Increase the square footage approved for residential uses on the LWALP Site;
3. Illustrate alternate heights for structures on the LWALP Site;
4. Modify the approved public benefits; and
5. Incorporate circulation enhancements on the LWALP Site.

WHEREAS, Applicant's application to amend the sketch plan was designated Sketch Plan No. 320110020A, North Bethesda Gateway ("Amendment," "Sketch Plan" or "Application"); and

Approved as to
Legal Sufficiency:

 10/16/13

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 September 19, 2013, setting forth its analysis of, and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on October 3, 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, on October 3, 2013, the Planning Board voted to approve the Application subject to conditions, on the motion of Commissioner Anderson, seconded by Commissioner Presley, with a vote of 5-0, with Commissioners Anderson, Carrier, Dreyfus, Presley, and Wells-Harley all voting in favor.

NOW, THEREFORE, BE IT RESOLVED that, pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Montgomery County Planning Board approves Sketch Plan No. 320110020A, subject to the following binding elements and conditions:¹

- A. Binding Elements. The following site development elements are binding under Section 59-C-15.43(b)(4) of the Montgomery County Zoning Ordinance:

1. Maximum Density

On the LWALP Site, the development is limited to a maximum of 35,500 square feet of non-residential uses and up to 557,918 square feet of residential uses, limited by a total cumulative density of up to 1,624,158 square feet or approximately 3.38 FAR for the Subject Property.²

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

² In MCPB No. 11-06, the Planning Board found that allocating 184,671 square feet of the permitted 334,751 square feet of non-residential uses and allocating 484,830 square feet of the permitted 557,918 square feet of residential uses for the LWALP Site satisfied the requirements for approval of a sketch plan and furthered the recommendations and objectives of the White Flint Sector Plan. This Resolution reduces the approved allocation of non-residential uses to a maximum of 35,500 square feet and increases the approved allocation of residential uses up to 557,918 on the LWALP Site, thereby leaving a shortfall of 76,083 square feet of non-residential uses authorized in MCPB No. 11-06. If Applicant seeks to recapture some or all of the 76,083 square feet of non-residential uses in a future sketch plan amendment or site plan for the LWALP Site, the Planning Board should consider its findings in support of its approval in MCPB No. 11-06 allocating the entire 184,671 square feet of non-residential uses on the LWALP Site.

2. Maximum Height

The proposed development is limited to a maximum height of 110 feet on the LWALP Site.³

3. Incentive Density

The development must be constructed with the public benefits in accordance with Sketch Plan No. 320110020, except for conditions 3.c) Design Quality and 3.d) Natural Environment Protection and Enhancement, which are replaced with the following:

a) Quality of Building and Site Design

The Applicant proposes, and the Board approves the maximum of 30% allowed incentive density for the Quality of Building and Site Design category, which is achieved through public amenities in the sub-categories of Structured Parking (16.25% incentive), Public Open Space (9.68% incentive), and Exceptional Design (7.50% incentive).

b) Protection and Enhancement of the Natural Environment

The Applicant proposes, and the Board approves 15% incentive density overall for the Protection and Enhancement of the Natural Environment category, which is achieved through public amenities in the sub-categories of Building Lot Terminations (BLTs) (5% incentive), Vegetated Roofs (5% incentive), and Cool Roof (5% incentive).

4. Phasing Program

The Applicant must construct the development in accordance with the approved development program, except for condition 6.c), which shall be replaced by the following:

- a) The LWALP Site will be developed in two phases consisting of residential and retail on Phase I and residential and retail on Phase II. Phase I will include Residential Building "D" with parking, retail plaza, and the entire LWALP mid-block connection. Phase II will include Residential Building "F" with retail.

³ In MCPB No. 11-06, the Planning Board found that approving maximum building heights up to 200 feet on the LWALP Site satisfied the requirements for approval of a sketch plan and furthered the recommendations and objectives of the White Flint Sector Plan. This Resolution reduces the maximum height of the proposed development on the LWALP Site to 110 feet. If Applicant seeks to increase the maximum height of the proposed development in a future sketch plan amendment or site plan for the LWALP Site, the Planning Board should consider its findings in support of its approval in MCPB No. 11-06 authorizing building heights up to 200 feet on the LWALP Site.

B. Conditions.

1. Sketch Plan Conformance

The development must comply with the binding elements and conditions of approval for Sketch Plan No. 320110020 as set forth in MCPB No. 11-06, except as amended by this Application. The MCPB No. 11-06 binding elements include maximum density and heights, the general location and extent of public use space, public benefits, and the phasing program.

BE IT FURTHER RESOLVED, that unless amended, all other conditions of approval for Sketch Plan No. 320110020 remain valid, unchanged and in full force and effect; and

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-C-15.42, the Montgomery County Planning Board finds that as conditioned herein the elements of the sketch plan specified in Section 59-C-15.42(c) of the zoning ordinance are appropriate in concept and appropriate for further review at site plan. Unless specifically set forth herein, this Amendment does not alter the intent, objectives, or requirements in the originally approved sketch plan, and all findings not specifically addressed remain in effect. Specifically, the Planning Board finds that as shown in the Sketch Plan:

- 1) The development will continue to meet the requirements and standards of Division 59-C-15.**

Project Data Table for the CR-3 and CR-4 Zones Optional Method of Development	
Development Standard	Approved by the Planning Board & Binding on the Applicant
Gross Tract Area (sf.)	
Zone 1: CR3, C1.5, R2.5, H200	223,167
Zone 2: CR4, C3.5, R2.0, H250	257,685
Total	480,852
Density (sf.)	
<i>Non-residential (C)</i>	
Zone 1	35,500
Zone 2	849,460
Total	884,960 (1.84 FAR)

<i>Residential (R)</i>	
Zone 1	557,918
Zone 2	181,280
Total	739,198 (1.54 FAR)
Total CR Density	1,624,158 (3.38 FAR)
Building Height (feet)	
Zone 1	(up to) 110
Zone 2	(up to) 250
Setbacks	n/a
Parking Spaces	
Total	n/a *
Public Use Space Requirement (%)	10
Public Open Space above Public Use Space Requirement (%)**	9.68
Residential Amenity Space (sf.)	Determined at site plan based on final unit count.

* The number of parking spaces will be calculated at site plan when the number of residential dwelling units and the number of hotel rooms is determined.

** The Zoning Ordinance allows incentive density for public *open* space above the public *use* space requirements of the zone.

2) The proposed public benefits and associated requested incentive density will further the objectives of the applicable master or sector plan and the objectives of the CR zones.

The proposed public benefits and associated requested incentive density further the objectives of the 2010 *White Flint Sector Plan* and the objectives of the CR zones. As the table below indicates, the additional density requested is based on public benefits provided in the following categories: transit proximity, connectivity and mobility, design quality, and natural environment protection and enhancement. The public benefits provided are appropriate for the incentive density requested. Final figures and adjustments are expected with each site plan, but no development may be approved if it is determined that the total minimum public benefit requirement cannot be met.

CR Incentive Density Calculation Summary Table		
Gross tract area: 480,852 sf.		
Standard Method Density: 240,426 sf.		
Allowed Total CR Density: 1,700,241 sf. (3.54 FAR)		
Approved Total Density: 1,624,158 sf. (3.38 FAR)		
Approved Incentive Density: 1,383,732 sf.		
Public Benefit	Incentive Density Points	Incentive Density Requested (sf)
Transit Proximity	30.64	447,287
Subtotal (no maximum)	30.64	447,287
Connectivity and Mobility		
Neighborhood Services	10.00	145,982
Through Block Connection	15.00	218,972
Subtotal (maximum 30% of incentive density)	25.00	364,954
Design Quality		
Structured Parking	16.25	237,220
Public Open Space	9.68	141,310
Exceptional Design	7.50	109,486
Subtotal (maximum 30% of incentive density)	33.43	488,016
Subtotal after 30% CAP	30.00	437,945
Natural Environment Protection & Enhancement		
BLTs	5.00	72,991
Vegetated Roof	5.00	72,991
Cool Roof	5.00	72,991
Subtotal (maximum 30% of incentive density)	15.00	218,973
Total Points	100.64	
Total Incentive Density Supported		1,469,159
Incentive Density Approved		1,383,732
Must be equal to or greater than 0.00		85,427

The previous sketch plan approval calculated incentive density as a percentage. Amendments to the Zoning Ordinance now call for CR zone public benefits to be calculated as points, which are reflected in the following discussion. Because every 1% is equivalent to 1 point, there is no substantive change in the approval.

a) Transit Proximity

The Planning Board previously approved 30.4 points for proximity to White Flint metro, a Level 1 transit portal. The Amendment does not change the proximity, and therefore, conditions of the previous approval still apply.

b) Connectivity between Uses, Activities, and Mobility Options

The Planning Board previously approved 25 points achieved through public amenities in the subcategories of Neighborhood Services and Through Block Connection.

Neighborhood Services: The Applicant was granted 10 points for proximity to at least 10 different retail services currently existing within a ¼ mile radius of the site. In addition, at least 4 have a maximum retail bay floor are of 5,000 SF. The Amendment does not change the proximity to services; therefore, the conditions of the previous approval still apply.

Through Block Connection: The Applicant was granted 15 points for the through block connection between Rockville Pike, Huff Court, and Proposed Road 'A'. In accordance with the CR Zone Guidelines, the connector will be at least 15 feet in width, have at least 35 percent of the walls facing the interior pedestrian connection below a height of 8 feet with clear, unobstructed windows; and be open to public between sunrise and sunset. The through block connection will be pedestrian only east of Huff Court and shared pedestrian and light vehicular west of Huff Court. These conditions were the basis for approval and remain unchanged in the Amendment; therefore, the conditions of the previous approval still apply.

c) Quality of Building and Site Design

The Applicant was granted the maximum 30 points achieved through public amenities in the subcategories of Structured Parking, Public Open Space, and Exceptional Design.

Structured Parking: The Applicant was granted 14.29 points for structured parking provided above and below ground. This incentive is granted on a sliding scale based on the percentage of total on-site spaces provided in above ground parking multiplied by 10%, plus the percentage of total on-site spaces provided in below ground parking multiplied by 20%. The originally approved sketch plan provided 1,316 above grade

parking spaces, and 988 below grade parking spaces, which yielded a total of 14.29 points.

The Amendment increases residential units and decreases commercial square footage. The changes in the total on-site space provided reflect the modifications to the building type and structure. The Amendment provides 838 above grade parking spaces, and 1,360 below grade parking spaces. Using the same formula, the amended parking totals yields a total of 16.25 points. The Board approves the additional incentive density based on the modified number of total on-site parking.

Exceptional Design: The Applicant was granted 7.5 points for design that creates a sense of place and serves as a landmark. Consideration was given to the proposed Hotel and Office towers along Rockville Pike as prominent, signature structures and the quality of the proposed open spaces including the Pike Promenade, Pike Plaza, Retail Plaza, and mid-block connection. These elements remain unchanged.

d) Protection and Enhancement of the Natural Environment

The Applicant was granted 15 points achieved through public amenities in the sub-categories of Building Lot Terminations (BLTs) and Vegetated Roofs.

BLTs: As required by the CR Zones, the Applicant was granted 5 points for the purchase of BLT easements or payment to the Agricultural Land Preservation Fund. The condition for this approval remains unchanged.

Vegetated Roofs: The Applicant was granted 10 points for providing vegetated roofs with a soil depth of at least 4 inches and covering at least 33% of the total roof excluding space for mechanical equipment on four buildings. The Amendment decreases the number of buildings with vegetated roofs to two buildings. Given this change, the Applicant has requested, and the Board approves a reduction of the incentive density to 5 points, which reflects the modifications to the development plan.

Cool Roofs: The Applicant requests 5 points for constructing roof area that is not covered by a vegetated roof with a minimum solar reflectance index (SRI) of 75 for roofs with a slope at or below a ratio of 2:12, and a minimum SRI of 25 for slopes above 2:12. Per the CR Zone Incentive Density Implementation Guidelines, an incentive density of 5 points is appropriate for sites greater than one acre. The Amendment proposes the cool roof on 5.123 acres of the total 11.04-acre site. The Board approves the addition of 5 points for this public benefit.

Other opportunities exist to enhance the overall environmental benefits of this development. These include:

- Enhanced tree cover over open spaces;
- Increased are of vegetated roofs for stormwater management, energy management, and air quality;
- Use of structural cells instead of Filterra systems to provide increased stormwater retention volumes and root volume for trees; and
- Use of vegetated walls on parking and loading areas to screen and improve air quality.

The public benefits schedule is a binding element under the originally approved sketch plan, and the development must be constructed with the public benefits approved by this resolution.

BE IT FURTHER RESOLVED that all elements of the plans for Sketch Plan No. 320110020A, North Bethesda Gateway stamped received by M-NCPPC on July 23, 2013, are required except as modified herein; and

BE IT FURTHER RESOLVED that at the time of site plan, the Planning Board may approve changes to this Sketch Plan under certain circumstances. If the Applicant proposes to change a condition of approval or binding element, or agrees to a change proposed by another party, the proposed change must satisfy the requirements for approval of a sketch plan and site plan, including Section 59-C-15, Section 59-D-3.4, and the Master Plan. If Staff proposes to change a condition of approval or binding element, however, the Board may approve the change if necessary to ensure conformance with Section 59-C-15, Section 59-D-3.4, or the Master Plan. In other words, for the Board to approve an Applicant-proposed change of a binding element it must find consistency with applicable standards; for the Board to approve a Staff proposed modification to a binding element that the Applicant has not agreed to, the Board must find that the proposed change is necessary to meet the site plan approval standards, including conformance with zoning and Master Plan requirements.

Alternatively, based on detailed review of a site plan, the Board may find that any element of the approved Sketch Plan, including a binding element, does not meet the requirements of the zone, Master Plan, or other findings necessary to approve a site plan, and deny the site plan application.

The Board's review of sketch plans is governed by Section 59-C-15.43, which provides that "in approving a sketch plan" the Board must find that certain elements of the plan are "appropriate in concept and appropriate for further detailed review at site plan." Because the Board's approval of a sketch plan is in concept only and subject to

further detailed review at site plan, it necessarily follows that the Board may find, based on detailed review of a site plan, that any element of a sketch plan does not meet the requirements of the zone, master plan, or other requirements for site plan approval. The Board does not have the authority at the time of sketch plan to predetermine that any element of the Sketch Plan will satisfy all applicable requirements for site plan approval. As a practical matter it would be unwise for it to do so, due to the limited detail contained in a sketch plan and the sketch plan's unlimited validity period. If the Board were unable to require changes to binding elements at the time of site plan to ensure compliance with all code and master plan requirements, the Board might have decided to approve fewer elements of this Sketch Plan as binding.

Although the Board does not have the authority to provide complete certainty about the conditions of approval or binding elements of a sketch plan, this does not mean that the Board should or will require changes to an approved sketch plan without good reason. To do so would be inefficient and unfair to Applicants and community members whose expectations about the future shape of development will be formed by what the Board approves in a sketch plan; and

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

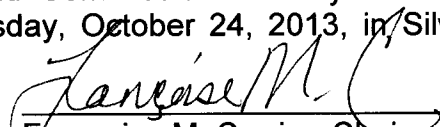
BE IT FURTHER RESOLVED that the date of this Resolution is NOV 15 2013 (which is the date that this Resolution is mailed to all parties of record); and

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 Vice Chair Wells-Harley, seconded by Commissioner Anderson, with Chair Carrier, Vice Chair Wells-Harley, and Commissioner Anderson voting in favor, and Commissioners Dreyfuss and Presley absent, at its regular meeting held on Thursday, October 24, 2013, in Silver Spring, Maryland.



Françoise M. Carrier, Chair
Montgomery County Planning Board