

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

JAN 06 2023

MCPB No. 22-116
Site Plan No. 820220160
4901 Battery Lane
Date of Hearing: December 15, 2022

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, on April 21, 2022, WC Smith Development (“Applicant”) filed an application for approval of a site plan for one building, 120 feet in height, with 416,367 square feet of residential use, for a maximum of 372 multi-family dwelling units, with a minimum of 15 percent MPDUs, including up to 277, 713 square feet of BOZ density on 2.12 acres of CR-1.5 C-0.5 R-1.5 H-120’ and Bethesda Overlay Zone zoned-land, located on the north side of Battery Lane, approximately 450 feet west of Woodmont Avenue Subject Property”), in the Bethesda CBD Policy Area and 2017 *Bethesda Downtown Sector Plan*; and

WHEREAS, the site plan application for the Subject Property was designated Site Plan No. 820220160, 4901 Battery Lane (“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 December 5, 2022 providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on December 15, 2022, the Planning Board held a public hearing on the Application and voted to approve the Application subject to conditions, on the motion of Commissioner Hill, seconded by Vice Chair Presley, with a vote of 5-0; Chair Zyontz, Vice Chair Presley, and Commissioners Branson, Hill, and Piñero voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board approves Site Plan No. 820220160 for the development of one building, 120 feet in height, with 416,367 square feet of residential use, for a maximum of 372 multi-family dwelling

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Approved as to
Legal Sufficiency: /s/ Matthew T. Mills
M-NCPPC Legal Department

units, with a minimum of 15 percent MPDUs, including up to 277, 713 square feet of BOZ density on the Subject Property, subject to the following conditions:¹

1. Density

The Site Plan is limited to a maximum of 416,367 square feet of total development for residential use on the Subject Property, including up to 372 multi-family dwelling units.

2. Height

The development is limited to a maximum height of 120 feet, as measured from the building height measuring point illustrated on the Certified Site Plan.

3. The development must comply with the conditions of approval for Sketch Plan No. 320220040 per MCPB Resolution No. 22-004, dated February 3, 2022, and the conditions of approval for Preliminary Plan No. 120220100, as may be amended.

4. Moderately Priced Dwelling Units (MPDUs)

The Planning Board has reviewed and accepts the recommendations of Montgomery County Department of Housing and Community Affairs (DHCA) in its letter dated November 8, 2022 and incorporates them as conditions of Site Plan approval. The Applicant must comply with each of the recommendations provided in the letter, which DHCA may amend provided the amendments do not conflict with other conditions of the Site Plan approval.

The development must provide a minimum of 15 percent MPDUs or MCDHCA-approved equivalent consistent with the requirements of Chapter 25A.

Before issuance of any building permit for any residential unit(s), the MPDU Agreement to Build between the Applicant and the MCDHCA must be executed and provided to M-NCPPC Staff.

5. Bethesda Overlay Zone Density and Park Impact Payment

- a) Per Section 59.4.9.2.D.4 of the Zoning Ordinance, the Applicant must have a building permit application accepted by MCDPS that includes the core and shell of the principal building within two years of the date of the Planning Board Resolution approving the Site Plan. Within two years of MCDPS accepting the building permit application, the Applicant must obtain the building permit. The deadlines may not be extended. If the

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.

Applicant fails to comply with any of the deadlines in this condition, the entire Site Plan approval is revoked.

- b) The Applicant must pay to M-NCPPC a Park Impact Payment (PIP) of \$2,666,151.88 before release of the first above-grade building permit for the allocation of 277,713 square feet of Bethesda Overlay Zone Density, not including 44,045 square feet of MPDU density exempt from the PIP calculation. In the event the final allocation of density from the BOZ is less than the approved amount, or if the amount of exempt MPDU density changes, the Applicant may apply to reduce the allocation of density from the BOZ, and/or modify the PIP through a minor site plan amendment.
6. Before issuance of the first Use and Occupancy certificate, excluding core and shell, the Applicant must construct the streetscape improvements, including the undergrounding of utilities, along the Property's frontage on Battery Lane, consistent with the Bethesda Downtown Streetscape Standards or equivalent streetscape as modified by MCDOT and M-NCPPC Staff.
7. Before the issuance of the final Use and Occupancy certificate, the Applicant must construct the two through-block connections and associated amenities as shown on the Certified Site Plan.
8. The Applicant must provide a minimum of approximately 8,000 square feet of public open space for the two through-block connections.
9. Public Benefits

The Applicant must provide the following public benefits and meet the applicable criteria and requirements of the Zoning Ordinance and the *CR Zone Incentive Density Implementation Guidelines* for each.

- a) Connectivity and Mobility –
 - i. Minimum Parking – The Applicant must not provide more than 305 parking spaces on the Subject Property, as shown on the Certified Site Plan.
 - ii. Through-Block Connections- The Applicant must provide two (2) pedestrian connections on the Property; one bisecting the Site from north to south, and a second connection bisecting the northern-most portion of the Site from east to west. The two pedestrian connections must be shown on the Certified Site Plan.
- b) Diversity of Uses and Activities

- ii. **Enhanced Accessibility for the Disabled – The Applicant must construct nine (9) dwelling units that satisfy American National Standards Institute A117.1 Residential.**
- c) **Quality Building and Site Design**
 - i. **Architectural Elevations –Final elevation design must be shown on the Certified Site Plan. The exterior architectural elements must be substantially similar to architectural elevations as shown on the Certified Site Plan and as determined by M-NCPPC Staff.**
 - ii. **Exceptional Design – The Applicant must construct the building in a manner consistent with the architectural elevations included in the Certified Site Plan.**
 - iii. **Structured Parking – The Applicant must provide all onsite parking spaces within a below grade structure.**
 - iv. **Tower Step-Back – The Applicant must step back the building's upper floors by a minimum of six (6) feet behind the first-floor façade. The Certified Site Plan must show this step-back.**
- d) **Protection and Enhancement of the Natural Environment**
 - i. **Building Lot Terminations (BLTs) – Before issuance of any building permit, the Applicant must provide proof of purchase and/or payment of 0.881 BLTs to the MCDPS and M-NCPPC staff.**
 - ii. **Cool Roof – The Applicant must provide 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, as shown on the Certified Site Plan.**

10. Recreation Facilities

- a) **Before Certified Site Plan approval, the Applicant must meet the square footage requirements for all of the applicable recreational elements and demonstrate to M-NCPPC Staff that each element meets M-NCPPC Recreation Guidelines.**
- b) **The Applicant must provide the required recreation facilities as shown on the Certified Site Plan (CSP). The CSP must include an exhibit delineating location and detail of recreation facilities, where appropriate, in a manner that is clear and corresponds to the posted surety and maintenance agreement.**

11. Maintenance of Public Amenities

The Applicant is responsible for maintaining all publicly accessible amenities including, but not limited to streetscape improvements and the two through-block pedestrian connections.

12. Forest Conservation & Tree Save

- a) The Applicant must schedule the required site inspections by M-NCPPC Forest Conservation Inspection Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
- b) The Applicant must comply with all tree protection and tree save measures shown on the approved Final Forest Conservation Plan. Tree save measures not specified on the Final Forest Conservation Plan may be required by the M-NCPPC Forest Conservation Inspection Staff.
- c) Before the start of any demolition, clearing, grading or construction, whichever comes first, for this development Application, the Applicant must submit the forest conservation fee-in-lieu payment to the M-NCPPC Planning Department for the 0.31-acres of afforestation/reforestation requirement, or as shown on the certified Final Forest Conservation Plan.
- d) Within the first planting season following the release of the first Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for the Subject Property, or as directed by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install the variance tree mitigation plantings as shown on the Forest Conservation Plan.
- e) The Applicant must plant the variance tree mitigation plantings on the Subject Property, with a minimum size of 3 caliper inches, totaling at least 28 caliper inches, or as shown on the certified Forest Conservation Plan. All trees credited towards variance mitigation must be at least five (5) feet away from any structures, stormwater management facilities, PIEs, PUEs, ROWs, utility lines, and/or their associated easements. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC Forest Conservation Inspection Staff.
- f) Before any demolition, clearing, grading or construction for this development Application, whichever comes first, the Applicant must submit financial surety, in a form approved by the M-NCPPC Office of the General Counsel, to the M-NCPPC Planning Department for the

mitigation trees and maintenance, including invasive species management controls, credited toward meeting the requirements of the FCP.

- g) Before any demolition, clearing, grading or construction for this development Application, whichever comes first, the Applicant must execute a five-year Maintenance and Management Agreement (“MMA”) in a form approved by the M-NCPPC Office of General Counsel. The MMA is required for all forest planting areas, mitigation tree plantings, including variance tree mitigation plantings, and landscape plantings credited toward meeting the requirements of the FCP. The MMA includes invasive species management control measures.

13. Green Cover

The Applicant must provide on-site a minimum 35% of the site area as green cover (at least 29,746 square feet), as described in Section 2.4.1 of the *Bethesda Downtown Sector Plan*, and any proposed tree canopy must utilize tree species and canopy sizes at 20-year maturity per the M-NCPPC *Approved Trees Technical Manual*. Green cover must be illustrated on the Certified Site Plan.

14. Noise Attenuation

- a) Before the issuance of the first above-grade building permit, the Applicant must provide certification to M-NCPPC Staff from an engineer who specializes in acoustical treatments that the building shell for residential dwelling units affected by exterior noise levels projected at or above 65 dBA Ldn, will attenuate the projected exterior noise levels to an interior level not to exceed 45 dBA Ldn. Noise-impacted units must be illustrated on the Certified Site Plan.
- b) Before the final inspection for any impacted residential unit, the Applicant/developer/builder must certify to M-NCPPC Staff that the noise-impacted units have been constructed in accordance with the certification of an engineer who specializes in acoustical treatments.
- c) If any changes occur to the Site or Preliminary Plan that affect the validity of the noise analysis dated June 24, 2022, acoustical certifications, and/or noise attenuation features, a new noise analysis will be required to reflect the changes and new noise attenuation features may be required.

- d) Before issuance of any Use and Occupancy Certificate or Final Inspection, whichever is relevant, for any of the noise-impacted units, a Professional Engineer must certify to the Planning Department and Department of Permitting Services that the noise-impacted units have been constructed in accordance with the certification of an engineer who specializes in acoustical treatments.
- e) For all noise-impacted residential dwelling units, the Applicant/developer/builder must disclose in writing to all prospective purchasers that those homes are impacted by transportation noise. Such notification may be accomplished by inclusion of this information and any measures to reduce the impacts in brochures and promotional documents and must be included in any noise-impacted unit sales contracts and any illustrative site plan(s) on display within any sales related offices(s), in Homeowner Association documents, with all Deeds of Conveyance of noise impacted units, and by inclusion on all signature subdivision and site plans.

15. Stormwater Management

The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Service (MCDPS) Water Resources Section in its stormwater management concept letter dated July 26, 2022, and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations provided in the letter, which the MCDPS Water Resources Section may amend if the amendments do not conflict with other conditions of Site Plan approval. The MCDPS Water Resources Section will review, approve, and inspect all landscaping within the Storm Water Management easements and facilities.

16. Transportation

The Planning Board reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services Right-of-Way Section (DPS-ROW) in its memo dated July 7, 2022 and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations provided in the memo, which DPS-ROW may amend if the amendments do not conflict with other conditions of Site Plan approval.

17. Pedestrian & Bicycle Circulation

- a. The Applicant must provide 95 long-term and five (5) short-term bicycle parking spaces (100 spaces total).
 - i. The long-term spaces must be in secured, well-lit bicycle rooms on the first and ground floors of the parking garage, accessible by a

push-button door, and the short-term spaces must be inverted-U racks (or approved equal) installed in a location convenient to the main entrance (weather protected preferred). The specific location(s) of the short-term bicycle rack(s) must be identified on the Certified Site Plan.

- ii. The Applicant must provide one (1) bicycle repair station.
- b. The Applicant must provide the following master-planned pedestrian and bicycle facilities, and the exact location, design and construction must comply with Montgomery County Department of Transportation, Division of Traffic Engineering and Operations requirements, before the final use and occupancy certificate is issued for the Site.
- i. A publicly accessible shared- use path along the east side of the Property with a minimum width of eight feet (8 ft).
 - ii. A publicly accessible shared-use path along the north/rear of the Property that is a minimum width of ten feet (10 ft).
 - iii. The north and east side shared-use paths on Site will connect, creating a seamless, ADA accessible pathway. These shared-use paths will ultimately connect to the other master-planned trail segments on either side of the Site when those locations redevelop, and will increase bicycle and pedestrian connectivity to the North Bethesda Trail (located northwest of the Site).
 - iv. The Applicant must record all necessary easements or covenants along the two (2) master-planned pathways to ensure public access, and future pathway connections from the adjacent sites when redevelopment occurs.

18. Fire and Rescue

The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services (MCDPS), Fire Department Access and Water Supply Section in its letter dated September 29, 2022, and hereby incorporates them as conditions of approval. The Applicant must comply with each of the recommendations provided in the letter, which MCDPS may amend if the amendments do not conflict with other conditions of Site Plan approval.

19. Site Design

The exterior architectural character, proportion, materials, and articulation must be substantially similar to the schematic elevations shown on Sheets

A01.05 – A01.08 of the submitted architectural drawings, as determined by M-NCPPC Staff.

20. Lighting

- b) At 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 latest Illuminating Engineering Society of North America (IESNA) recommendations (Model Lighting Ordinance-MLO: June 15, 2011, or as superseded) for a development of this type. All onsite exterior area lighting must comply with the latest IESNA outdoor lighting recommendations (Model Lighting Ordinance-MLO: June 15, 2011, or as superseded).
- b) All onsite down-lights must have full cut-off or BUG-equivalent fixtures.
- c) Deflectors will be installed on all up-light fixtures to prevent excess illumination and glare.
- d) Illumination levels generated from on-site lighting must not exceed 0.5 footcandles (fc) at the lot line, excluding areas impacted by streetlights within the right-of-way.
- e) Streetlights and other pole-mounted lights must not exceed the height illustrated on the Certified Site Plan.
- f) On the rooftop of the building, the light pole height must not exceed the height illustrated on the Certified Site Plan.

21. Site Plan Surety and Maintenance Agreement

Before issuance of any building permit, sediment control permit, or Use and Occupancy Certificate, whichever comes first, 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 59.7.3.4.K.4 the Montgomery County Zoning Ordinance, with the following provisions:

- c) A cost estimate of the materials and facilities, which, upon Staff approval, will establish the surety amount.
- d) The cost estimate must include applicable Site Plan elements, including, but not limited to plant material, on-site lighting, indoor and outdoor recreational facilities, site furniture, retaining walls, fences, railings, sidewalks, private utilities, paths and associated improvements of development, including sidewalks, bikeways, storm drainage facilities,

street trees and streetlights. The surety must be posted before issuance of any building permit of development and will be tied to the development program.

- e) The bond or surety must be tied to the development program, and completion of all improvements covered by the surety for each phase of development will be followed by a site plan completion inspection. The surety may be reduced based upon inspector recommendation and provided that the remaining surety is sufficient to cover completion of the remaining work.

22. Development Program

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

23. 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:

- f) Include the stormwater management concept approval letter, development program, and Sketch Plan, Preliminary Plan and Site Plan resolutions on the approval or cover sheet(s).
- g) Correct development data tables to show zero (0) GFA of commercial area proposed.
- h) Correct the bicycle parking data table to remove references to commercial area and correct figures to show 100 bicycle parking spaces provided.
- d) Add the following notes:
 - i. "M-NCPPC Staff must inspect all tree-save areas and protection devices before clearing and grading."
 - ii. "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."
 - iii. "The Applicant must schedule a preconstruction meeting (pre-con), preferably on-site, with staff from the Department of Permitting Services (DPS) responsible for Certified Site Plan conformance and compliance, upon approval of the Certified Site Plan (CSP). The pre-con must occur before any site development work commencement and

before any work that is covered by the site plan surety and maintenance agreement. The Applicant, along with its representatives, must attend the pre-con with DPS CSP Staff. A copy of the approved Certified Site Plan along with any subsequent amendments is required to be on-site at all times.”

- e) Include the Fire and Rescue Access plan in the Certified Site Plan.
- f) Ensure the Building Height Measuring Point and associated Building Height Measuring Point Elevation of 326.75 feet is noted consistently on applicable architectural and civil plan sheets.
- g) Ensure consistency of all details and layout between Site and Landscape plans.

BE IT FURTHER RESOLVED that all site development elements shown on the latest electronic version of 820220160, 4901 Battery Lane submitted via ePlans to 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 of its Staff as presented at the hearing and/or provided 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 development satisfies any previous approval that applies to the site.*

Sketch Plan 320220040 applies to the Site and was approved by the Planning Board (MCPB No. 22-004, dated February 3, 2022) subject to five Binding Elements and ten conditions. The Site Plan satisfies this previous approval as summarized:

Binding Elements:

- I. Maximum density and height;
- II. Approximate location of lots and public dedications;
- III. General location and extent of public open space;
- IV. General location of vehicular access points; and
- V. Public benefit schedule.

The Site Plan conforms with the Binding Elements and conditions of approval of the Sketch Plan. The proposal is within the established density and height limitations, provides appropriate design elements that are responsive to the public

benefits schedule, and includes the required public dedications and through-block connections.

2. *The development satisfies the binding elements of any development plan or schematic development plan in effect on October 29, 2014.*

There are no binding elements of an associated development plan or schematic development plan in effect on October 29, 2014 for the Property.

3. *The development satisfies any green area requirement in effect on October 29, 2014 for a property where the zoning classification on October 29, 2014 was the result of a Local Map Amendment.*

This section is not applicable as the Subject Property's zoning classification on October 29, 2014 was not the result of a Local Map Amendment.

4. *The development satisfies applicable use standards, development standards, and general requirements under the Zoning Ordinance.*

a. Development Standards

The Subject Property includes approximately 2.12 acres zoned CR-1.5 C-0.5 R-1.5 H-120' and Bethesda Overlay Zone. The Application satisfies the applicable development standards as shown in the following data table:

Development Standard	Permitted/ Required	Approved
Tract Area	2.12 acres	2.12 acres
Prior Dedication	0.122 acres	0.122 acres
Proposed Dedication	0.049 acres	0.049 acres
Site Area	1.95 acres	1.95 acres
Mapped Density CR-15, C-0.5 R-1.5 H-120 Zone Residential (GFA/ FAR)	138,663 sq. ft. / 1.5 FAR	138, 654 sq. ft. / 1.5 FAR
Commercial (GFA/FAR)	46,221 sq. ft. / 0.5 FAR	0 sq. ft. / 0.0 FAR
Total Mapped Density (GFA/FAR)	138, 663 sq. ft. / 1.5 FAR	138, 663 sq. ft. / 1.5 FAR

Bethesda Overlay Zone (BOZ) Density	281,874 sq. ft. / 3.05 FAR	277,713 sq. ft. / 3.0 FAR
MPDU requirement	15 percent	15.1 percent
MPDU Bonus Density (GFA/FAR)	51,150 sq. ft. / 0.55 FAR	44,045 sq. ft. / 0.46 FAR
Total GFA/FAR with MPDU bonus (GFA/FAR)	420, 528 sq. ft. / 4.55 FAR	416,367 sq. ft. / 4.5 FAR
Building Height	120 ft.	120 ft.
Public Open Space (min s.f.)	0 sq. ft.	0 sq. ft.
Minimum Setbacks (ft)	0 ft.	0 ft.
Front	0 ft.	0 ft.
Rear	0 ft.	0 ft.
Front Side		

The Bethesda Overlay Zone (BOZ) was adopted July 18, 2017, specifically to implement the recommendations of the Bethesda Downtown Sector Plan as it relates to density, building heights, affordable housing, parks, and design. The BOZ set a cap of overall development (32.4 million square feet) whereby the zoning approved for most properties retains the base density but increases the heights on respective sites. An applicant can request an allocation of density over the base density to build to the maximum height permitted by the Zone, as needed. The Applicant is subject to a Park Impact Payment (PIP) valued at \$11.41/square foot based upon the density requested and facilitates acquisition of parkland in the downtown Bethesda area.

Based on the requested 277,713 square feet of BOZ density, reduced by 44,045 square feet of MPDU density², the Applicant is required to pay for 233,668 square feet of BOZ density at a value of \$2,666,151.88. The amount of density allocated from the BOZ for the Subject Application is deducted from the 32.4 million cap.

Section 4.5.4.B.4 - Form Standards

The Site Plan conforms to the intent of the form standards, including transparency, blank walls and active entrances. The Project proposes ample

² Section 59.4.9.2.C.3.c.i. of the Zoning Ordinance exempts MPDU density from the Park Impact Payment.

fenestration at the ground-level for transparency as well as activating features on the ground-floor level, including an expansive residential lobby and amenity area fronting on Battery Lane. A covered, vehicular drop off area is located on the east side of the lobby, which will further activate the space while separating vehicular and pedestrian activity around the lobby. The building incorporates an architectural design that leaves no blank walls. As conditioned, the exterior architectural character, proportion, materials, and articulation must be substantially similar to the schematic elevations shown on the architectural drawings included in the Certified Site Plan.

Division 4.7 Optional Method Public Benefits

In accordance with the Zoning Ordinance, Section 59.4.7.1, as modified by Section 59.4.9.2.C.4 for the Bethesda Overlay Zone, the Site Plan proposes 118.19 public benefit points in four categories to satisfy the requirements: Connectivity and Mobility, Diversity of Uses and Activities, Quality Building and Site Design, and Protection and Enhancement of the Natural Environment.

Public Benefit	Maximum Points Allowed	Approved
Connectivity and Mobility		
Minimum Parking	20	8
Through-Block Connections	30	20
Diversity of Uses and Activities		
Enhanced Accessibility	20	7.26
Quality Building and Site Design		
Architectural Elevations	20	15
Exceptional Design	30	15
Structured Parking	20	20
Tower Step-Back	10	20
Protection and Enhancement of the Natural Environment		
Building Lot Terminations (BLT)	30	7.93
Cool Roof	10	5
Total Points	Minimum of 100	118.19

Connectivity and Mobility

Minimum Parking

The Applicant requests eight points for the provision of a lesser quantity of on-site parking than the maximum allowed. The maximum public benefit points available for minimum parking is increased from 10 to 20 points in the BOZ.

Points for this incentive are granted on a sliding scale, with zero points earned for providing the maximum number of allowed on-site parking spaces, and 20 points granted for providing no more than the maximum number of on-site parking spaces required. Based on the formula set forth in the Incentive Density Implementation Guidelines, the proposed project is eligible for eight public benefit points in this category.

$$\frac{((\text{Maximum Allowed Parking}) - (\text{Parking Provided}))}{((\text{Maximum Allowed Parking}) - (\text{Minimum Parking}))} * 10 = \text{number of public benefit Points}$$
$$(504-305) / (504-254) * 10 = 8 \text{ points}$$

The Application provides 305 parking spaces, which is 199 fewer spaces than the maximum, and yields eight public benefit points. The Planning Board approves the allocation of eight public benefit points for minimum parking.

Through-Block Connections

The Project proposes two through-block connections; one north-south connection on the Site's eastern side, and one east-west connection on the Site's northern side. Both through-block connections are recommended for the Site by the Sector Plan. The east-west link will eventually provide a pedestrian connection between the Bethesda Trolley Trail to the west and Woodmont Avenue to the east. The north-south connection will link to sidewalks on Battery Lane. The north-south connection is designed as an eight-foot-wide paved pathway flanked by landscaping on either side. The total width of the north-south connection corridor is approximately 15 feet. The east-west connection is designed as a ten-foot-wide paved pathway flanked by landscaping of varied width. Two paved oval sitting areas are included at its eastern and western terminus, where future connections to abutting properties are envisioned. These two pedestrian through-block connections are the first segments of a larger network of pedestrian pathways envisioned in the Battery Lane District, with future segments to be created as additional properties in the area redevelop. The maximum public benefit points available for through-block connections is increased from 20 to 30 points in the BOZ. The Applicant requests 20 public benefit points for the provision of the two Sector Plan-recommended through-block connections. The Planning Board approves the 20 public benefit points for the provision of the two through-block connections.

Diversity of Uses and Activities

Enhanced Accessibility

The Applicant requests 7.26 public benefit points for providing nine dwelling units that satisfy the ANSI A117.1 Residential Type A accessibility standard or equivalent county standard. Each percentage of units provided to this standard is worth three points. Nine of the 372 dwelling units equates to approximately

2.4 percent of the proposed total units (0.024 percent units x 3 points = 7.26 points). The Planning Board approves the 7.26 public benefit points requested.

Quality Building and Site Design

Architectural Elevations

The maximum public benefit points available for architectural elevations is increased from 20 to 30 points in the BOZ. The Applicant requests 15 public benefit points for providing high-quality architectural elevations on all four sides of the building that include binding design elements approved with the Sketch Plan. These elements include, but are not limited to, including minimum transparency requirements for the section of the building fronting Battery Lane, design parameters that affect the perception of building mass, pedestrian comfort, and including materials and form that are compatible with the neighborhood. The provision of well-proportioned and attractive elevations is particularly significant with this proposal as all four sides of the building will be visible from the public realm. The southern façade will be highly visible from Battery Lane. The northern and eastern facades will be highly visible from the pedestrian through-block connections provided with the development, and western façade will be visible from the existing nearby Bethesda Trolley Trail and abutting senior living building. The Planning Board approves 15 public benefit points for Architectural Elevations.

Exceptional Design

The maximum public benefit points available for exceptional design is increased from 10 to 30 points in the BOZ. The Applicant requests 15 public benefit points for providing a building and site design that enhance the character of the Battery Lane setting. As a site receiving an allocation of Bethesda Overlay Zone density, the Project is subject to review by the Design Advisory Panel, which recommends awarding of points based on the quality of the design. The Applicant asserts the Project will fulfill recommendations of the *Bethesda Downtown Sector Plan* and associated Design Guidelines.

The Project provides a building with a distinctive “traditional-modern” design that is respectful of the existing development in the neighborhood, as well as the proposed redevelopment of multiple adjacent Battery Lane properties through the Battery District project (Sketch Plan 320190080 and Preliminary Plan 120190240). The building includes high-quality façade designs on all four sides in response to its visibility from Battery Lane, the two through-block connections, and existing senior housing to the west. Stepbacks are included on all sides of the building on multiple levels which reduces the bulk and perceived scale of the building, while providing terraces with outdoor space for residents. The use of masonry materials throughout, glazing treatments, strong expression

lines and overall proportionality building elements contribute the proposed building's exceptional design.

The proposed project creates a sense of place that is respectful of the existing character of the neighborhood but at a scale that is compatible with the Sector Plan's vision for the redevelopment of the Battery Lane District. The new building's location at the intersection of two through-block connections and its prominence along Battery Lane will showcase the building as a landmark within the neighborhood. The building's unique shape, massing with multiple stepbacks, terraces and use of traditional materials will blend together to create a building that is visually interesting and enhance the public realm in a distinct manner.

At their February 23, 2022 meeting, the Design Advisory Panel (DAP) voted 5-0 in support of awarding 15 points for Exceptional Design, with the following comment: "Consider recessing the building entry at the Battery Lane frontage to soften the impact of the wide building frontage and building canopy on the pedestrian experience along Battery Lane." The Applicant revised the building design to recess the Battery Lane entry and reduce the length of the canopy to soften its presence in the pedestrian realm. Additionally, planters and benches were added to the entry plaza area to reinforce the transitional space between the building entrance and Battery Lane Sidewalk. The Planning Board approves 15 public benefit points for Exceptional Design.

Structured Parking

The Applicant requests 20 public benefit points for providing Structured Parking. The proposal includes below-grade structured parking with 305 spaces. All on-site parking will be provided in the subsurface garage. The *CR Zone Incentive Density Implementation Guidelines* grant points on a sliding scale based on the percentage of total on-site spaces to be provided in a below-grade parking structure. The proposed parking regime qualifies for 20 public benefit points as 100 percent of the proposed parking spaces for the project will be located in a subsurface parking structure. The Planning Board approves 20 public benefit points for Structured Parking.

Tower Step-Back

The maximum public benefit points available for tower step-back is increased from 10 to 20 points in the BOZ. The Applicant requests 20 points for providing Tower Step-Backs. The Project proposes multiple stepbacks in the façade design on all four sides of the building. Up to twenty points may be achieved in the Bethesda Overlay Zone for stepping back the building's upper floors by six feet behind the first-floor façade. This step back must begin at a height no greater than 72 feet. Additional points may be appropriate if deeper setbacks are

provided, a setback is included at a lower level, and/or if integration of setbacks is achieved with reduced floor plate sizes on upper floors. Three step backs are provided along the southern façade, above the 3rd, 10th and 11th floors, which recesses the upper levels of the building 18 feet behind the first-floor façade along Battery Lane. The Planning Board approves the 20 public benefits for Tower Step-Backs.

Protection and Enhancement of the Natural Environment

Building Lot Terminations (BLT)

The Applicant requests 7.93 points for the purchase of 0.881 BLT easements or equivalent payment made for every 31,500 square feet of gross floor area comprising the 7.5 percent incentive density floor area, exclusive of any density allocated for MPDUs. Points are granted by the calculation of BLTs as provided in Section 59.4.7.3.F of the Zoning Ordinance. The Planning Board approves the 7.93 public benefits points for BLTs based on the following calculation:

$$(((416,367-(46,218))*7.5\%)/31,500)*9= 7.93 \text{ points}$$

Cool Roof

The maximum public benefit points available for cool roof is increased from 10 to 15 points in the BOZ. The Applicant requests five points for providing cool roof area. The Project will meet the minimum solar reflective index (SRI) on a total 6,365 square feet of the building's non-vegetated roof area. The Planning Board approves the five public benefit points for provision of Cool Roof area.

b. General Requirements

i. *Site Access*

The Project proposes consolidating the existing two driveways on Battery Lane down to one that will serve the on-site pick-up and drop-off loop, loading area, and parking structure. Pedestrian access will be enhanced by the streetscape improvements proposed along the Battery Lane Site frontage. The existing sidewalk on Battery Lane will be replaced by a 6.5-foot tree lawn buffering a 7-foot sidewalk. The Project addresses the Canopy Corridor designation of the 2017 Bethesda Downtown Plan Streetscape Guidelines by installing a double row of trees on either side of the sidewalk.

The Applicant proposes constructing two master-planned pedestrian and bikeway connections along the eastern and northern boundaries of the Site, which will connect to the Bethesda Trolley Trail with future development of the adjacent sites

ii. *Parking, Queuing, and Loading*

The Project proposes a parking structure on-site that will provide a total of 305 parking spaces, which is comfortably within the range of required parking spaces for a residential development with up to 372 units (276 min./504 max.). The Project is providing one additional loading bay beyond the two that are required.

In an effort to improve the safety along Battery Lane, the Project also proposes an on-site pick-up and drop-off layby lane, accessible by the Site driveway. This creates a space for ride share, taxi and unscheduled deliveries to queue away from the public right-of-way. Locating this feature along the east side of the building declutters the view of the Site and activates the frontage on Battery Lane.

iii. *Open Space and Recreation*

As the Site includes between one to three acres of tract area and frontage on a single right-of-way, the provision of open space is not required in accordance with Section 59.4.5.4.B.1. However, the Project includes two through-block connections. These linear spaces include approximately 8,615 square feet of area that will be open and accessible to the public as envisioned by the Sector Plan.

The Application is in conformance with the *Recreation Guidelines*, as demonstrated in the Proposed Onsite Recreation Facilities table included on the Site Plan. Recreation facilities include a rooftop amenity area with an outdoor pool, grilling and seating areas, a fitness room, an outdoor dog run and indoor dog cleaning station, bicycle parking and repair station, and garden plots for residents. The final locations and quantities of each of these amenities will be shown on the Certified Site Plan.

iv. *General Landscaping and Outdoor Lighting*

Landscaping and outdoor lighting is proposed as part of the Project. These elements along Battery Lane are generally designed to the Bethesda Streetscape Standards. Landscaping is provided around the periphery of the Site. Lighting is provided in appropriate locations around the Site and building to ensure safe and attractive nighttime illumination.

5. *The development satisfies the applicable requirements of Chapters 19 and 22A of the Montgomery County Code.*

a. Chapter 19. Erosion, Sediment Control, and Stormwater Management

A Stormwater Concept Plan was approved by the Montgomery County Department of Permitting Services on July 26, 2022. The plan will meet stormwater management requirements using green roof area and micro-bioretenment to the maximum extent practicable.

b. Chapter 22A. Forest Conservation

The Board finds that as conditioned the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD), designated no. 420220090, was approved for the Subject Property on October 1, 2021. The plan identified the existing man-made and natural features associated with the Property, such as the buildings, associated parking, street trees and landscape elements. The on-site elements described on the NRI/FSD include significant and specimen trees located near the north, east, and south site boundaries while the existing residential buildings and surface parking make up most of the Site. There are no rare, threatened, or endangered species, no stream/buffers, or steep slopes on Site.

Although there is no forest on-site or adjacent to the Property, this Application is subject to Chapter 22A Forest Conservation Law and includes a Preliminary/Final Forest Conservation Plan. Due to the tract area, associated offsite work, and the high-density residential land use category of this project, the Forest Conservation Worksheet included in the Forest Conservation Plan shows a calculated Afforestation Requirement of 0.31-acres, which is conditioned herein to be met via fee-in-lieu. Additionally, due to the loss of specimen trees, sized at 30" or greater in diameter-at-breast-height (DBH), this Application is also subject to the variance provisions of Chapter 22A.

Forest Conservation Variance

Section 22A-12(b)(3) of the Montgomery County Forest Conservation Law identifies certain individual trees as a high priority for retention and protection ("Protected Trees"). Any impact to these Protected Trees, including removal or any disturbance within a Protected Tree's critical root zone ("CRZ"), requires a variance under Section 22A-12(b)(3) ("Variance"). Otherwise, such resources must be left in an undisturbed condition.

This Application will require the removal or CRZ impact to eight Protected Trees. In accordance with Section 22A-21(a), the Applicant has requested a Variance and the Board agreed that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance. Due to the location of specimen trees, largely on the perimeter of the Site, the narrow lot shape and layout of the existing residential buildings, and the desire to implement two Sector Plan recommended through-block connections with the development of the proposed multi-family building as multi-family housing with associated open space in this urban location, the development proposal results in unavoidable variance tree impacts.

The Board makes the following findings necessary to grant the Variance:

1. *Granting the Variance will not confer on the Applicant a special privilege that would be denied to other applicants.*

The Applicant's proposal is to demolish the existing building and surface parking lots to construct a 120-foot multi-family building with structured parking, provide efficient site access/circulation for Fire and Rescue, and provide onsite stormwater management, as well as improve the public realm as envisioned in the Sector Plan. Further, the Applicant's proposal will provide environmental benefits via proposed mitigation plantings. With these factors considered, the Planning Board concludes the variance request would be granted to any applicant in a similar situation and does not represent a special privilege granted to this Applicant.

2. *The need for the Variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

As stated above, the requested variance and associated tree impacts are due to the concerns related to the existing layout of buildings in relation to specimen trees on the Site's perimeter. Providing adequate site access/circulation, as well as providing the required frontage improvements (including those associated with the Green Corridor recommendation of the Sector Plan), while also constructing a new multi-family residential building, necessitates variance tree impacts. The variance request submitted by the Applicant reflects efforts to lessen overall site impacts and retain mature trees where possible. Without this flexibility in the proposed design and construction, far greater subject tree impacts would be expected. Therefore, this

variance request is not based on circumstances which are the result of actions by the Applicant.

3. *The need for the Variance is not based on a condition related to land or building use, either permitted or non-conforming, on a neighboring property.*

The requested variance is a result of the proposed site design and layout on the Subject Property and not as a result of land or building use on a neighboring property.

4. *Granting the Variance will not violate State water quality standards or cause measurable degradation in water quality.*

The Protected Trees requested for removal are not located in an environmental buffer or special protection area. This approval is conditioned on mitigation that approximates the form and function of trees removed. Therefore, their removal will not violate State water quality standards or cause measurable degradation in water quality. The Protected Trees being impacted will remain to provide the same level of water quality protection as it currently provides.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Board approved the replacement of Protected Trees at a ratio of approximately one-inch DBH (diameter at breast height) for every four-inches DBH removed. No mitigation is required for Protected Trees impacted but retained.

6. *The development provides safe, well-integrated parking, circulation patterns, building massing, and where required, open spaces and site amenities.*

All parking, loading, trash collection, and pick-up and drop-off activities will occur on-site and out of the public right-of-way. The Project proposes consolidating the two existing driveways to one, which reduces conflict exposure for pedestrians and other vehicles. Pedestrian safety and connectivity will be improved with the enhanced streetscape improvements along the Site's Battery Lane frontage and with the two new public connections the Project is providing on-site along the eastern and northern sides of the Property. These connections were envisioned in the 2017 *Bethesda Downtown Sector Plan*. The intent of the connection is to break up the Battery Lane block and to connect to the existing Bethesda Trolley Trail, a regional trail connecting Bethesda to Rockville, located west of the Site.

7. *The development substantially conforms to the recommendations of the applicable master plan and any guidelines approved by the Planning Board that implement the applicable plan.*

The Project substantially conforms with the recommendations of the 2017 *Bethesda Downtown Sector Plan* and associated design and implementation guidelines. The Property is within the area identified as the “Battery Lane District” and is designated as part of Site 6 on page 129 of the Sector Plan, which recommended rezoning the Site to the CR zone³. The residential character of the proposed development is consistent with the Sector Plan’s recommendation regarding the appropriateness of the proposed use. The Site Plan conforms with the Sector Plan’s overall goals for the Battery Lane District as follows:

Preserve existing market-rate affordable housing.

The Project will include a total of 372 multi-family dwelling units, of which 15 percent (56 units) will be moderately priced dwelling units (MPDUs). These units will replace the existing 87 units on-site. The existing units are considered “market rate affordable” as are most apartments in the Battery District due to their age (built in the 1950s and 1960s) and general lack of modern conveniences, such as air conditioning. The 56 MPDUs will be new government-sanctioned affordable housing units, built to modern standards, where no MPDUs currently exist.

Promote enhanced redevelopment opportunities to foster a quality mix of housing options.

The Sector Plan (page 129) specifically recommends rezoning of the subject Site to the CR zone “to promote enhanced redevelopment opportunities to foster a quality mix of housing options”. The Preliminary Plan and accompanying Site Plan propose a comprehensive redevelopment of the Site which will replace the two existing garden-style apartment buildings containing 87 units, with a single building containing 372 multifamily dwelling units, to include 15 percent MPDUs. This is a total increase of 287 dwelling units on the Property over existing conditions. A mix of studio, one bedroom and two-bedroom units is proposed.

³ The Site was rezoned from R-10 to CR-1.5 C-0.5 R-1.5 H-120 by Sectional Map Amendment H-122 for the Bethesda Downtown Plan.

Expand neighborhood green at Battery Lane Park.

Battery Lane Urban Park is adjacent to the Site but is not abutting nor contiguous with it. No expansion of the park is contemplated with this Site Plan. However, planned frontage improvements and provision of two through-block connections on the Site will enhance the pedestrian realm near the Park.

Improve pedestrian and bike connectivity through the district and along the park.

The two proposed through-block connections are consistent with the recommendations of the Sector Plan. An east-west path segment provided along the northern section of the Site is a portion of the master-planned pedestrian and bicycle connection between Woodmont Avenue to the east and Bethesda Trolley Trail to the west. The north-south path segment provided along the east side of the Site will connect Battery Lane to the future east-west trail between Woodmont Avenue and the Trolley Trail. The Trolley Trail links to the Battery Lane Park to the south and continues through the NIH property to the north. The provision of these two master-planned through-block connections will improve bicycle and pedestrian connectivity in the Battery District and is supportive of the Sector Plan's broader goal to "link streets, through-block connection, greenways and trails to create a well-connected network" (page 17).

The development proposed will contribute to the Sector Plan's goals for enhancing the pedestrian realm within the Battery District. The two through-block connections to be provided are the first segments of a new east-west pedestrian and bicycle pathway envisioned to connect the Bethesda Trolley Trail and Woodmont Avenue. Battery Lane streetscape improvements, including the undergrounding of utilities, provision of wider sidewalks and construction of a segment of a new bike lane in the Site's frontage are Project elements that will implement goals of the Sector Plan and Bicycle Master Plan.

8. *The development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities.*

The development proposed by this Site Plan will be served by adequate public services and facilities. In accordance with the County Growth and Infrastructure Policy resolution currently in effect, public services such as electrical,

telecommunications, gas, police stations, firehouses, and health services are adequate to serve the development. The adequacy of public schools and transportation facilities were reviewed in detail with Preliminary Plan 120220100, which is associated with this Site Plan. Schools were determined to have adequate capacity to support the development. The dedication of ten feet of right-of-way along the Site's frontage on Battery Lane, contributions to improving sidewalks, bike lanes and bus stops proximate to the Site are included in the proposal. These improvements were also included with the approval of the Preliminary Plan and carried forward into the Site Plan. Therefore, as conditioned, there are adequate public facilities to support the Project.

9. The development is compatible with the character of the residential neighborhood.

The Subject Property is not located in a Rural Residential or Residential Zone. This requirement is not applicable to this Application.

10. The development is compatible with existing and approved or pending adjacent development.

The proposed residential building of up to 120 feet in height is appropriate to the setting. Adjacent properties are zoned for similar height maximums and a mix of densities. The majority of existing developments proximate to the site along Battery Lane are developed with residential uses and other projects pending nearby (i.e. Battery District Sketch Plan No. 320190080, Preliminary Plan No. 120190240 and associated Battery District Site C Site Plan No. 820220230), are also primarily residential in nature.

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 § 59-7.3.4.H; 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 06 2023~~ (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 the motion of Commissioner Branson, seconded by Commissioner Presley, with a vote of 5-0-; Chair Zyontz, Vice Chair Presley, and Commissioners Branson, Hill, and Piñero, voting in favor of the motion, at its regular meeting held on Thursday, December 22, 2022, in Wheaton, Maryland and via video conference.



Jeffrey Zyontz, Chair
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