



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

MCPB
 Item
 Date:

DATE: July 1, 2010

TO: Montgomery County Planning Board

FROM: Elsabett Tesfaye, Planner Coordinator (301) 495-1301 *ET*

VIA: Rose Krasnow, Chief, Development Review Division *RK*
 Ralph Wilson, Zoning Supervisor, Development Review Division

SUBJECT: Development Plan Amendment No: 10-2: Battery Lane, LLC, is a request to add 10 feet 8 inches to the height of the previously approved residential building for a maximum building height of 90 feet, consisting of approximately 22,618 feet of land in the PD-75 zone, located at NW corner of Woodmont Avenue and Battery Lane.

FILING DATE:	February 1, 2010
PLANNING BOARD HEARING	July 15, 2010
PUBLIC HEARING:	September 2, 2010

STAFF RECOMMENDATION: Disapprove.

Although there are benefits associated with the development proposal, increasing building height 25 feet above the sector plan established 65 feet height limit is a substantial departure from the Sector Plan and not supported by staff.

CASE SUMMARY

The applicant is proposing to amend the previously approved development plan for the Woodmont View project in Bethesda to add 10 feet 8 inches to the height of the approved residential building, for a maximum building height of 90 feet. The development proposal retains the existing single-family house, now occupied by the Children's Inn, and provides a multi-story, 46 unit residential building, with eight MPDUs (a 22 percent bonus density), and a commercial use on the ground floor. The increased building height would permit the applicant to change the unit mix to an all two-bedroom building, provide higher ceilings for all units, and increase the amount of green space.

The applicant has an approved development plan and an approved site plan for construction of the residential building at 79 feet 4 inches. This building height limit was established in 2006 by the Alternative Review Committee as the additional height necessary for the applicant to provide the MPDUs allowed under Chapter 25A and for the project to be financially feasible. The Planning Board, in approving the site plan for the site in Sept 2009, indicated that if Development Plan (DPA 06-1) was amended to allow the height to go up to 90 feet, the increased height would be acceptable without the need to come back to the Planning Board for further review.

The Alternative Review Committee and their process of finding financial feasibility have since been repealed because of conflicts between the open meetings law and applicants' interest in protecting proprietary financial information. Current regulations permit building height limits established in a sector plan to be increased, up to the maximum of the zone, to accommodate the number of MPDUs, including bonus density units, built on site. The applicant is correct in stating that there is nothing in the code that specifies that the height of the building can only be increased by 22% to accommodate the number of MPDUs built on site and that the height of the subject building is not limited to the proportion approved by the Alternative Review Committee.

Staff believes that some deviation from a sector plan guideline is reasonable to facilitate the construction of MPDUs that might not otherwise be realized, but the deviation must be considered in the context of sector plan objectives.

SITE DESCRIPTION



The subject site consists of approximately 22,618 square feet of land located in the northwestern corner of Woodmont Avenue and Battery lane in Bethesda. The site is currently improved with a single-family house, a 4-story office building, and associated asphalt paving for parking and driveway access. The site has approximately 340 feet of frontage along Woodmont Avenue and 60 feet of frontage on Battery Lane.

At the north end of the property is a 3 story single-family home (the Children's Inn). At the south end of the property is a four-story office building, which the applicant plans to demolish. The property is substantially paved with a gradual slope downward from east to west and upward from north to south along Woodmont Avenue.

SURROUNDING AREA

The surrounding area was established in a previously approved development plan for the subject site. The area contains a mix of residential, commercial, and institutional uses. It extends out from the intersection of Battery Lane and Woodmont Avenue to the Battery Lane Urban Park to the west, Norfolk Avenue and Chase Avenue to the south, Wisconsin Avenue to the east, and the National Library of Medicine on the NIH campus to the north. The area to the north including NIH is zoned R-60. Properties immediately surrounding the subject site are classified in the R-60, R-10, R-10/TDR, and CBD zones.



PREVIOUSLY APPROVED PLANS

Zoning Application G-808, approved on March 30, 2004, reclassified the site from the C-T zone to the PD-75 zone. The development proposal, which was phase two of the project, was for 10 townhouses designed to match the architectural appearance of the existing single-family house, built at the northern end of the property in phase one. The maximum, building height per the Woodmont Triangle Amendment to the Bethesda CBD Sector Plan was 65 feet. There is no specific height limit in the PD zone; it is to be established at the time of site plan.

The development proposal approved in 2004 which called for the construction of 11 townhouses was revised in April, 2007. The development plan, as amended, allowed development of the site with an eight story, 46-unit residential building including 8 MPDUs or 15% at a building height of 79 feet, 4 inches, and a commercial use on the ground floor of the residential building. The existing single-family house on the northern end of the site was to be retained, but the existing four-story office building on the southern extreme of the property would be demolished. The central issue in the case was the 14.3-foot increase in building height above the 65 foot limit recommended in the sector plan.

The height increase above the sector plan limit was reviewed by the Alternative Review Committee. The Committee found that it would be financially infeasible for the applicant to provide the eight MPDUs within the 65 foot height limit established for the site in the Woodmont Triangle Amendment to the Bethesda CBD Sector Plan. The Alternative Review Committee concluded that a 14-foot increase (22%) above the sector plan 65 foot limit would be sufficient for the project to be financially feasible and to secure the financing necessary to proceed. The Committee's conclusion was related solely to the financial conditions associated with the property's development and not about the compatibility of the project. The Alternative Review Committee process has since been repealed.

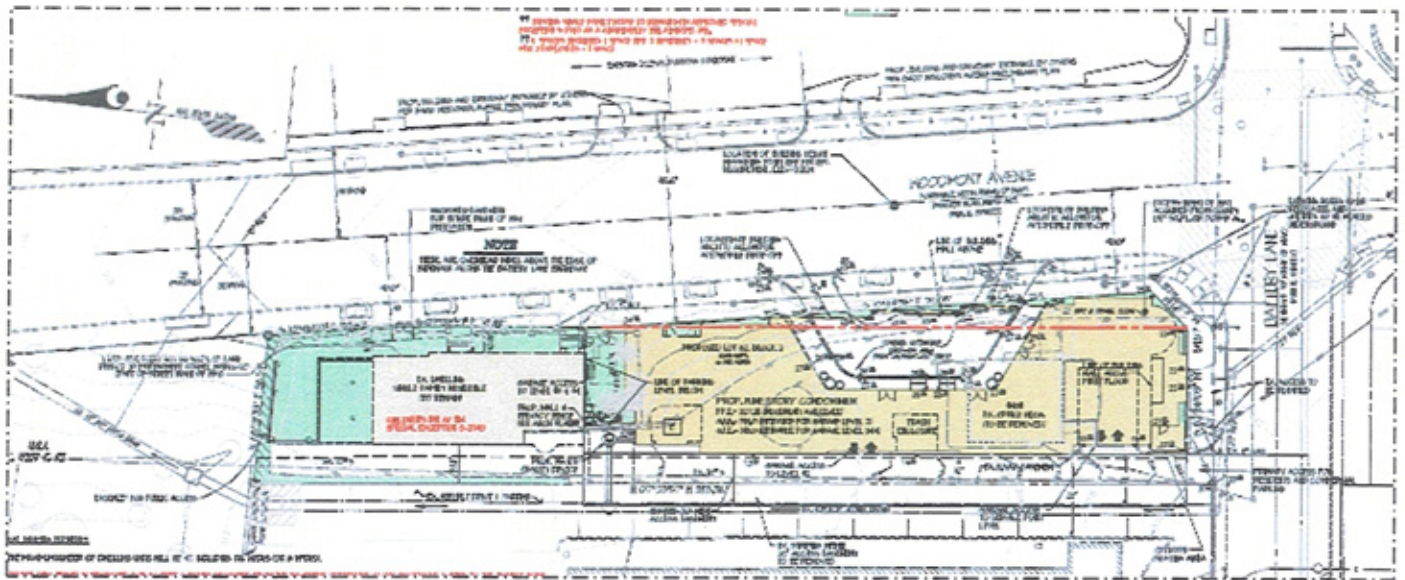
In November 2008, the applicant filed for approval of a site plan for the multi-story building with 46 dwelling units, the restaurant, and the single-family house. Under the site plan application, building height would be increased from 79 feet 4 inches to 90 feet. The site plan was approved by the Planning Board on July 23, 2009 with a condition limiting building height to 79 feet 4 inches as approved by DPA-06-1, but the Board acknowledged that a building height of 90 feet did not create issues with respect to compatibility because taller buildings in the immediate vicinity either already existed or had been approved. The Board made it clear that if DPA-06-1 was amended to allow the additional height, the site plan did not need to come back for further review.

DEVELOPMENT PLAN AMENDMENT (DPA-10-2)

Development Plan Amendment 10-2 as proposed by the applicant does not involve a change in the area zoned, the proposed uses, or development density. The single-family house on the site, approved by special exception for use by the Children's Inn, and the multi-story, 46 unit residential building with 8 MPDUs, and a commercial use on the ground floor, would be retained. However, increasing the height of the residential building from 79 feet 4 inches to 90 feet would allow all 46 units, including the 8 MPDUs, to be converted from a mix of one and

two-bedroom units to all two bedroom units, which is a positive feature of the application. The Department of Housing and Community Affairs has expressed its support for the proposed two bedroom MPDUs. The applicant is proposing 40 percent of the site as green space, with more green space on the roof. The applicant makes the case that the increased building height would be better aesthetically, more in line with today's market demands, and compatible with surrounding buildings.

The property is currently accessed by auto from Battery lane. Residents and guests will have private garage access from the same location. Automobiles will enter a proposed driveway at the rear (east) side of the building and can drive down into two separates underground garage entrances. A separate service dock is provided.



Amended Development Plan

PARKING REQUIRED:

RESIDENTIAL REQUIREMENTS:

EX. SINGLE FAMILY HOUSE **	4 SPACES ††
37 TWO BEDROOMS @ 15 SPACES	56 SPACES
6 MPDU UNITS @ 0.75 SPACES	6 SPACES
SUBTOTAL:	66 SPACES
10% PARKING SPACE REDUCTION PER ZONING SECTION 54E.3.33(a)	(-7) SPACES

COMMERCIAL REQUIREMENT:

(PROPOSED 3,200 SF GROSS COMMERCIAL AREA)	
1200 SF PROPOSED RESTAURANT PATRON AREA	
1200 SF @ 25 SPACES/1000 SF:	30 SPACES
128 SF PROPOSED OUTDOOR SEATING PATRON AREA	
128 SF @ 15 SPACES/1000 SF:	2 SPACES
TOTAL COMMERCIAL SPACES:	32 SPACES

TOTAL PARKING REQUIRED: 91 SPACES

PARKING PROVIDED:

EX. SINGLE FAMILY GARAGE PARKING:	1 SPACES
SERVICE COURT P1	7 SPACES
UNDERGROUND PARKING GARAGE LEVEL P2	22 SPACES
UNDERGROUND PARKING GARAGE LEVEL P3 WITH ATTENDANT PARKING PER SEC. 54E.2.4:	24 SPACES
UNDERGROUND PARKING GARAGE LEVEL P4 WITH ATTENDANT PARKING PER SEC. 54E.2.4:	36 SPACES
TOTAL PARKING PROVIDED	101 SPACES

** EXISTING SINGLE FAMILY HOUSE TO REMAIN WITH APPROVED SPECIAL EXCEPTION S-2140 AS A CHARITABLE/ PHILANTHROPIC USE.

†† 4 SPACES REQUIRED: 1 SPACE PER 2 RESIDENTS = 3 SPACES + 1 SPACE PER 2 EMPLOYEES = 1 SPACE

LEGEND

	CURB & GUTTER
	SEWER MANHOLE
	STORM DRAIN MANHOLE
	GAS VALVE
	WATER VALVE
	TELEPHONE MANHOLE
	TREE
	UTILITY POLE
	LIGHT POLE
	SEWER LINE
	STORM DRAIN LINE
	GAS LINE
	BUILDING RESTRICTION LINE
	EXISTING DRIVEWAY PAVEMENT
	FINISHED FLOOR ELEVATION
	GARAGE FLOOR ELEVATION
	PROPOSED GREEN SPACE

NOTE: Writings in red represent the changes proposed in the subject application (DPA-10-2)

The amended development plan proposes to carry forward several binding elements from previous approvals. These previously approved binding elements would be revised to reflect the proposed changes associated with Development Plan Amendment (DPA 10-2).

1. The maximum number of dwelling units will be 47, including 17 % MPDUS.
2. **The building height is proposed for 90 feet 0 inches measured from the pavement centerline along Woodmont Avenue to the highest point of the main roof slab (the roof area covering the major area of the building excluding mechanical, access, elevator penthouses, and decorative gables) with final height measurement subject to review and adjustment by the Planning Board at site plan approval.**
3. The minimum setbacks will be 0 feet for the front yards at Woodmont Avenue and Battery Lane, 11.5 feet for the side yard to the west, and 40.5 feet for the rear yard from existing building at the north property line.
4. The minimum green space will be 30% of gross tract area.
5. All green areas (including the active/passive recreation rooftop green area) for the condominium building will be accessible to the residents of the condominium building.
6. The maximum building coverage will be **60.5%** of the site
7. The maximum number of parking spaces for the residential units will be 54, and the number of parking spaces for the commercial use will comply with the Zoning Ordinance.
8. This property is subject to a common Driveway agreement recorded at Liber 26425, folio 122 among the land records of Montgomery County. The Common Driveway agreement sets forth the agreement between the subject property owners and the adjacent property owner to share certain portions of the restrictive properties for mutual ingress and egress from Battery Lane in order to achieve more efficient, convenient, and safer access to both properties.
9. Applicant shall submit a revised stormwater management concept plan to be approved prior to site plan.
10. The street commercial space in the planned Building will be occupied by a “quality restaurant” as described in the Institute of Transportation Engineers (ITE) trip generation manual 7th edition, page 1703, not by any more intensive commercial use (i.e. one producing more peak hour traffic).

NOTE: Bold letters and underlines represent the revisions in the current application.



East/Woodmont Ave. Elevation



West Elevation



South/Battery Lane Elevation



North Elevation

CONSISTENCY WITH THE SECTOR PLAN

The subject site is within the 2006 Woodmont Triangle Amendment to the Bethesda CBD Sector Plan. Community Base Planning indicates that although the development proposal is consistent with many of the sector plan recommendations, it is substantially above the 65 foot height limit recommended for the site.

Both the Woodmont Triangle Amendment and the Bethesda CBD Sector Plan recommend residential use on the site. The proposed development plan amendment (DPA 10-2) is for a residential project. The development proposal would change the residential unit mix to all two bedroom units and increase the ceiling height in all of the units. These changes include the moderately priced dwelling units (MPDUs). The proposal would also relocate one of the MPDUs from the more active ground floor to a quieter all residential floor, which is in response to the Department of Housing and Community Affairs concerns with the current version of the project. Besides changes to the residential units, architectural design improvements and an increase in green space are proposed.

In order to make these improvements to the building, the applicant is proposing to increase the building height from 79 feet 8 inches to 90'. The additional height is compatible with the surrounding area heights. It is surrounded by buildings that are up to 100 or more feet in height. However, the 90' is in conflict with the 65' height limit established in the 1994 Bethesda CBD sector plan. And though the site is within the Woodmont Triangle Amendment's boundaries, the zoning and height limits in the Battery Lane District were unchanged. Therefore, in every review of this case Community-Based Planning staff has maintained that the project is in conflict with the 1994 Bethesda CBD Sector Plan 65' height limit recommendation for this site. Community Based Planning staff does not support increasing the approved building height from 79 feet 4 inches to 90 feet as proposed by the applicant.

CONCLUSION

After a careful review of the proposed development plan amendment, staff concludes that although there are benefits associated with the development proposal, increasing building height 25 feet above the sector plan established 65 feet height limit is a substantial departure from the sector plan that is not supported by staff. A deviation from a sector plan guideline is a reasonable trade-off for the construction of MPDUs that might not otherwise be realized, but must be considered in context of sector plan objectives. In granting DPA-06-1, in 2007, the District Council found that the 79' feet and 4 inches height is practical, functional and economically feasible (for the applicant) allowing reasonable flexibility to achieve the maximum extent required to accommodating the eight MPDU units. The current proposal does not offer an increase in the number of MPDUs

Attachments:

- County Counsel Order Resolution No. 16-98
- Planning Board Resolution No. 09-91
- Referral Comments

DPA-10-02/ Staff Report/ET/ 6/18/10

Attachments

Attachments

DPA-10-2 Woodmont View



DPA-10-2

NIH

BATTERY

RUGBY

AUBURN

DEL RAY

CORDELL

NORBEL

ST ELMO

FAIRMONT

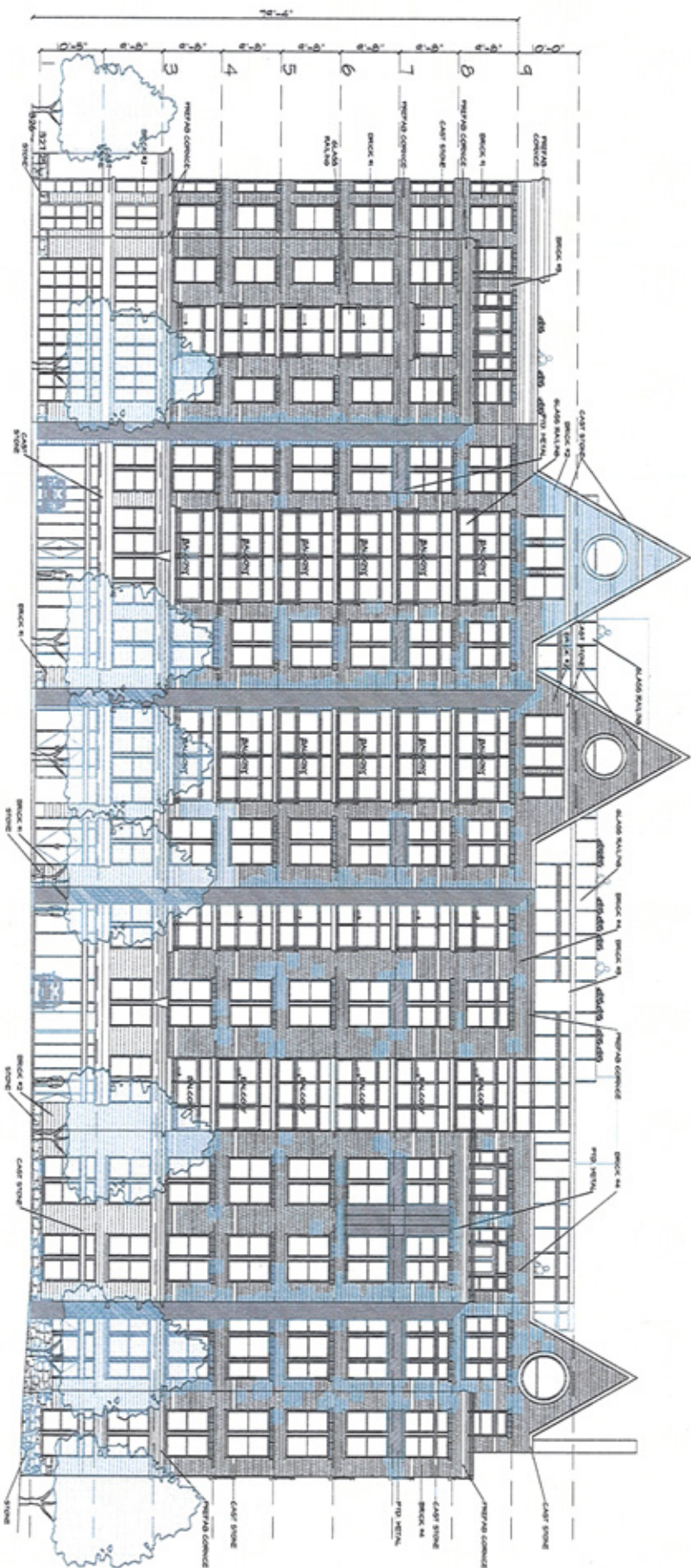
WILSON



TEXTUAL BINDING ELEMENTS

1
2
3
4
5
6
7
8
9
10

1. THE MAXIMUM NUMBER OF DWELLING UNITS WILL BE 47, INCLUDING 17% MPDUS (OR 8 MPDUS).
 2. THE BUILDING HEIGHT IS PROPOSED FOR 90 FEET 0 INCHES MEASURED FROM THE PAVEMENT CENTERLINE ALONG WOODMONT AVENUE TO THE HIGHEST POINT OF THE MAIN ROOF SLAB (THE ROOF AREA COVERING THE MAJOR AREA OF THE BUILDING EXCLUDING MECHANICAL, ACCESS, ELEVATOR PENTHOUSES, AND DECORATIVE GABLES) WITH FINAL HEIGHT MEASUREMENT SUBJECT TO REVIEW AND ADJUSTMENT BY THE PLANNING BOARD AT SITE PLAN APPROVAL.
 3. THE MINIMUM SETBACKS WILL BE 0 FEET FOR THE FRONT YARDS AT WOODMONT AVENUE AND BATTERY LANE, 11.5 FEET SIDE YARD TO THE WEST, AND 40.5 FEET REAR YARD FROM EXISTING BUILDING AT THE NORTH PROPERTY LINE.
 4. THE MINIMUM GREEN SPACE WILL BE 30% OF THE GROSS TRACT AREA.
 5. ALL GREEN AREAS (INCLUDING THE ACTIVE/PASSIVE RECREATION ROOFTOP GREEN AREA) FOR THE CONDOMINIUM BUILDING WILL BE ACCESSIBLE TO THE RESIDENTS OF THE CONDOMINIUM BUILDING.
 6. THE MAXIMUM BUILDING COVERAGE WILL BE ~~60.5%~~ OF THE SITE AREA.
 7. THE MINIMUM NUMBER OF PARKING SPACES FOR THE RESIDENTIAL UNITS WILL BE 54, AND THE NUMBER OF PARKING SPACES REQUIRED FOR THE COMMERCIAL USE WILL COMPLY WITH THE ZONING ORDINANCE.
 8. THIS PROPERTY IS SUBJECT TO A COMMON DRIVENWAY AGREEMENT RECORDED AT LIBER 26425, FOLIO 122 AMONG THE LAND RECORDS OF MONTGOMERY COUNTY. THE COMMON DRIVENWAY AGREEMENT SETS FORTH THE AGREEMENT BETWEEN THE SUBJECT PROPERTY OWNERS AND THE ADJACENT PROPERTY OWNER TO SHARE CERTAIN PORTIONS OF THEIR RESPECTIVE PROPERTIES FOR MUTUAL INGRESS AND EGRESS FROM BATTERY LANE IN ORDER TO ACHIEVE MORE EFFICIENT, CONVENIENT, AND SAFER ACCESS TO BOTH PROPERTIES.
 9. APPLICANT SHALL SUBMIT A REVISED STORMWATER MANAGEMENT CONCEPT PLAN TO BE APPROVED PRIOR TO SITE PLAN.
 10. THE STREET COMMERCIAL SPACE IN THE PLANNED BUILDING WILL BE OCCUPIED BY A "QUALITY RESTAURANT" AS DESCRIBED IN THE INSTITUTE OF TRANSPORTATION ENGINEERS (ITE) TRIP GENERATION MANUAL, 7TH EDITION, PAGE 1703, NOT BY ANY MORE INTENSIVE COMMERCIAL USE (I.E. ONE PRODUCING MORE PEAK HOUR TRAFFIC).
-



EAST ELEVATION
SCALE: 1/8" = 1'-0"

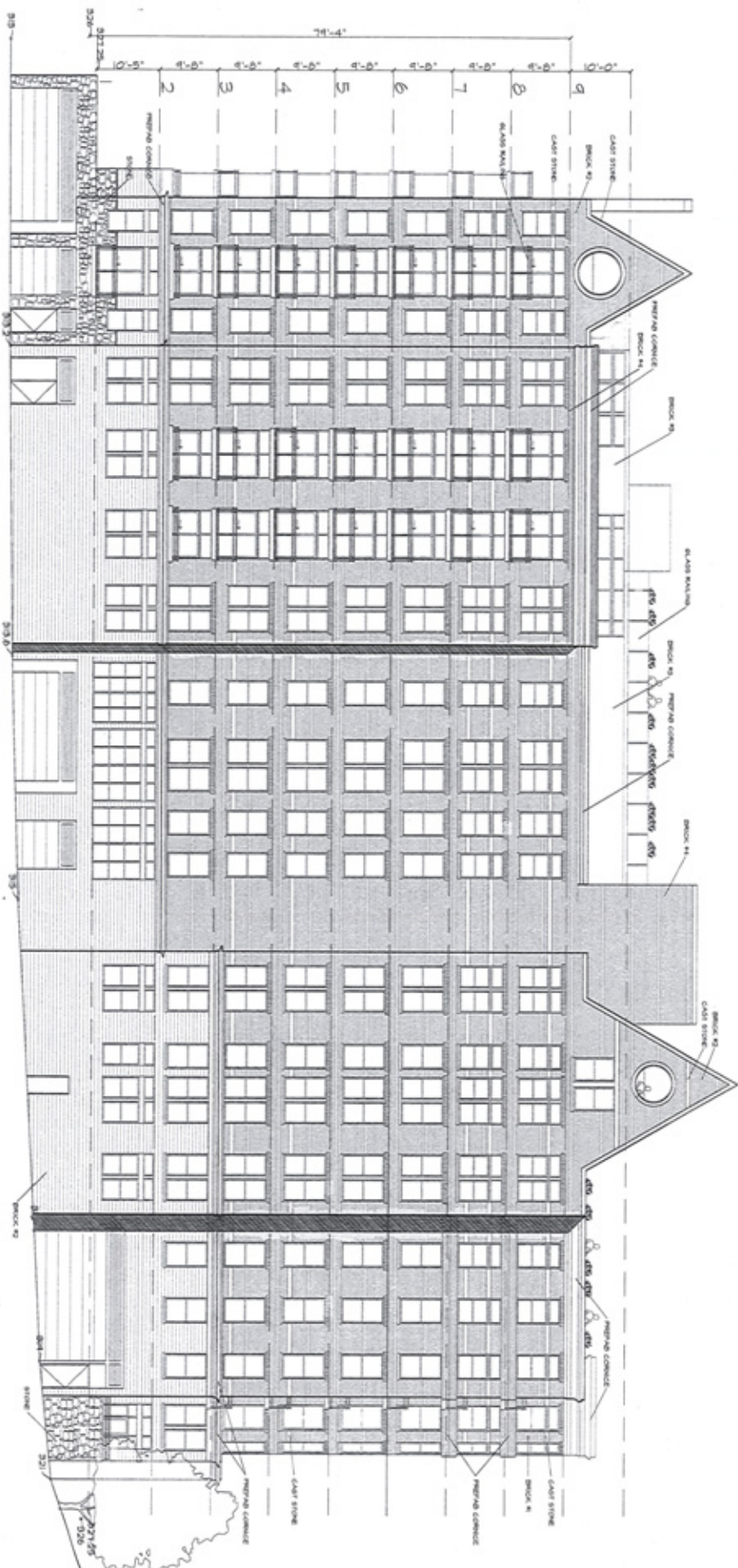
DATE: 11-10-10
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 PROJECT: [Name]

EAST ELEVATION

WOODMONT VIEW
 NORTHWEST PARK
 PROPOSED LOT 02, BLOCK 2

MORRISON ARCHITECTS
 1728 CONNECTICUT AVENUE, NW SUITE 500, WASHINGTON, D.C. 20004
 TELEPHONE: 202.293.2832 FAX: 202.293.8144
 E-MAIL: INFO@MORRISONARCHITECTS.COM

A-1



WEST ELEVATION
SCALE: 1/8" = 1'-0"

DATE ISSUED
1/14/08 2-21-10
DESIGNER
4/18/08
DRAWN BY
12/10

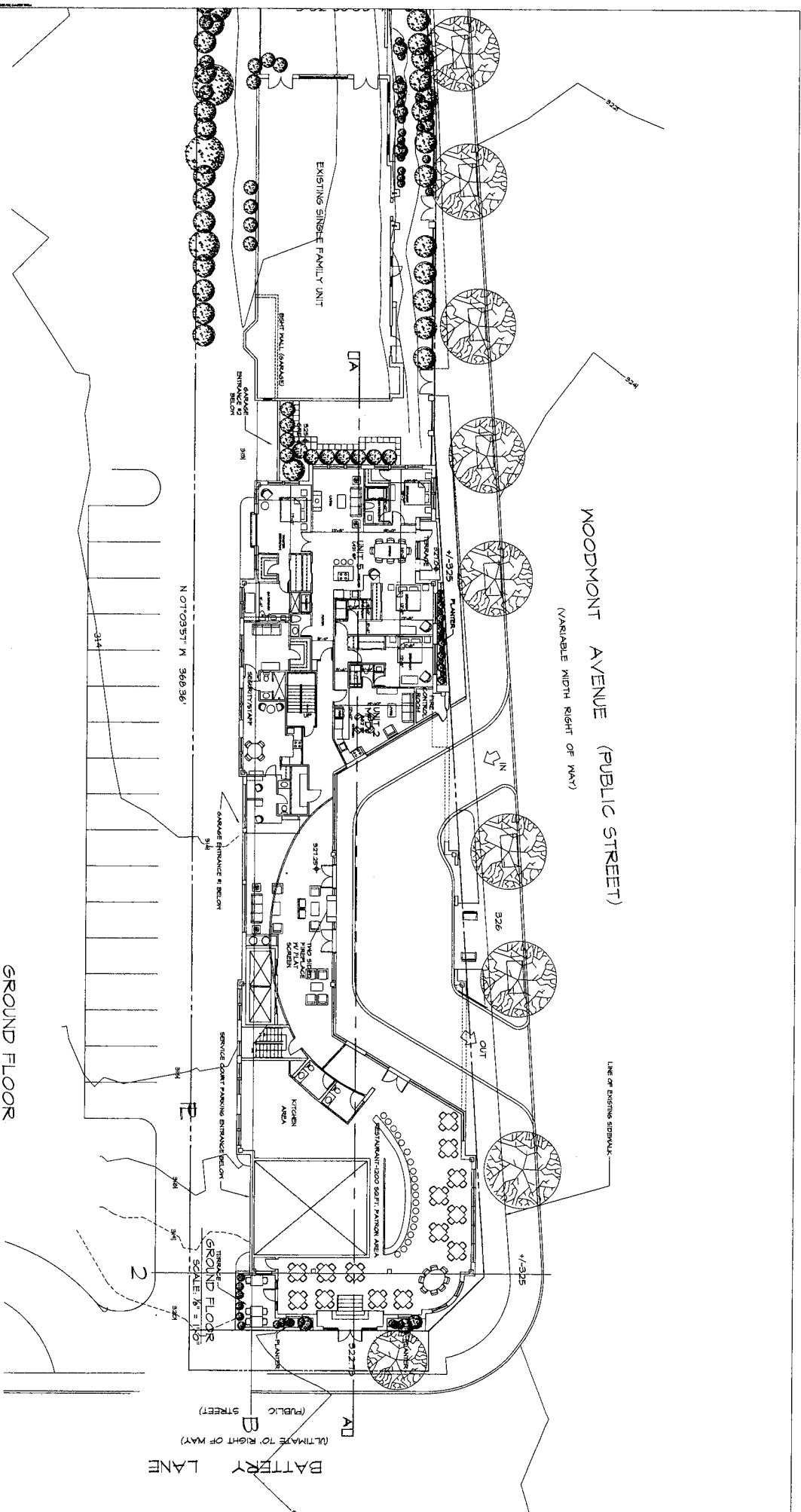
WEST ELEVATION

WOODMONT VIEW
NORTHWEST PLAZA
PROPOSED LOT 62, BLOCK 2

MORRISON ARCHITECTS
1738 CONNECTICUT AVENUE, SUITE 500, WASHINGTON, D.C. 20007
TELEPHONE: 202.261.8100 FAX: 202.261.8104
E-MAIL: MFC@MORRISONARCHITECTS.COM

A-2

MORRISON ARCHITECTS



GROUND FLOOR
SCALE: 3/32" = 1'-0"

date 1-14-09
 8-24-09
 4-14-04
 5-11-03
 1-5-10

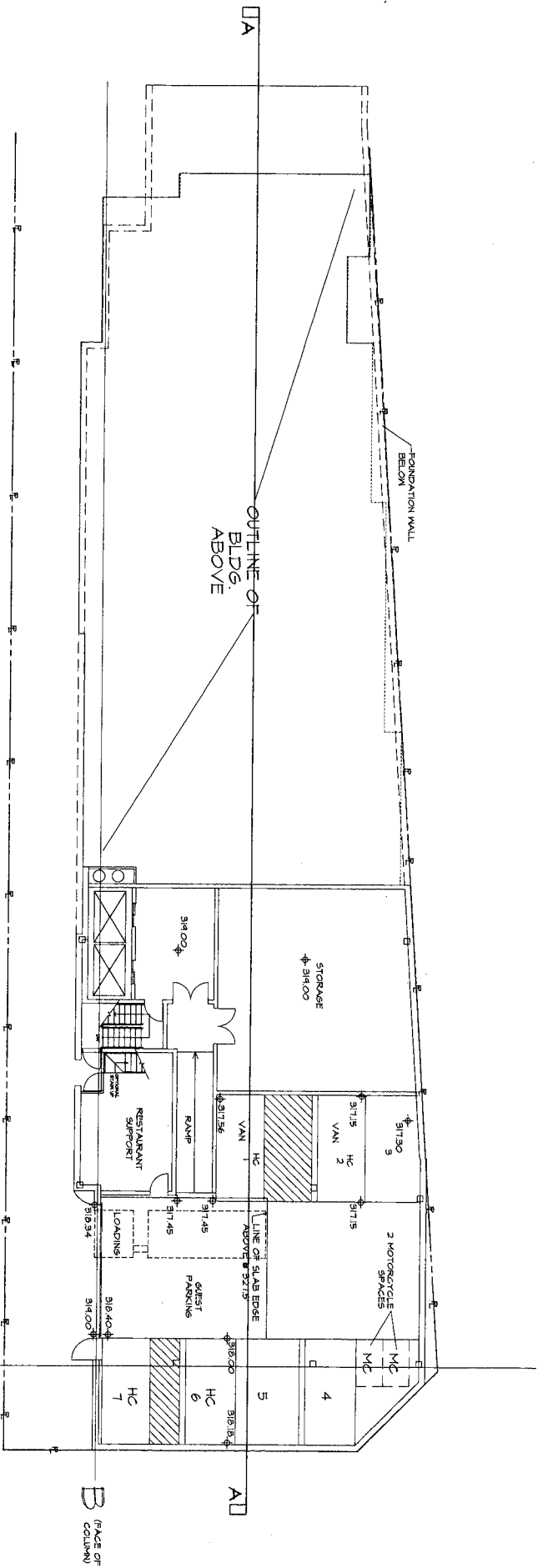
by David
 5-27-10

TITLE
 GROUND FLOOR
 PLAN

WOODMONT VIEW
 NORTHWEST PARK
 PROPOSED LOT 62, BLOCK 2

MORRISON ARCHITECTS
 1726 CONNECTICUT AVENUE, NW SUITE 800, WASHINGTON, D.C. 20004
 TELEPHONE: 202.245.8182 FAX: 202.245.8184
 E-MAIL: WELCOME@MORRISONARCHITECTS.COM

MORRISON ARCHITECTS
 A.4



SERVICE COURT LEVEL @ ± 318'
SCALE: 1/8" = 1'-0"

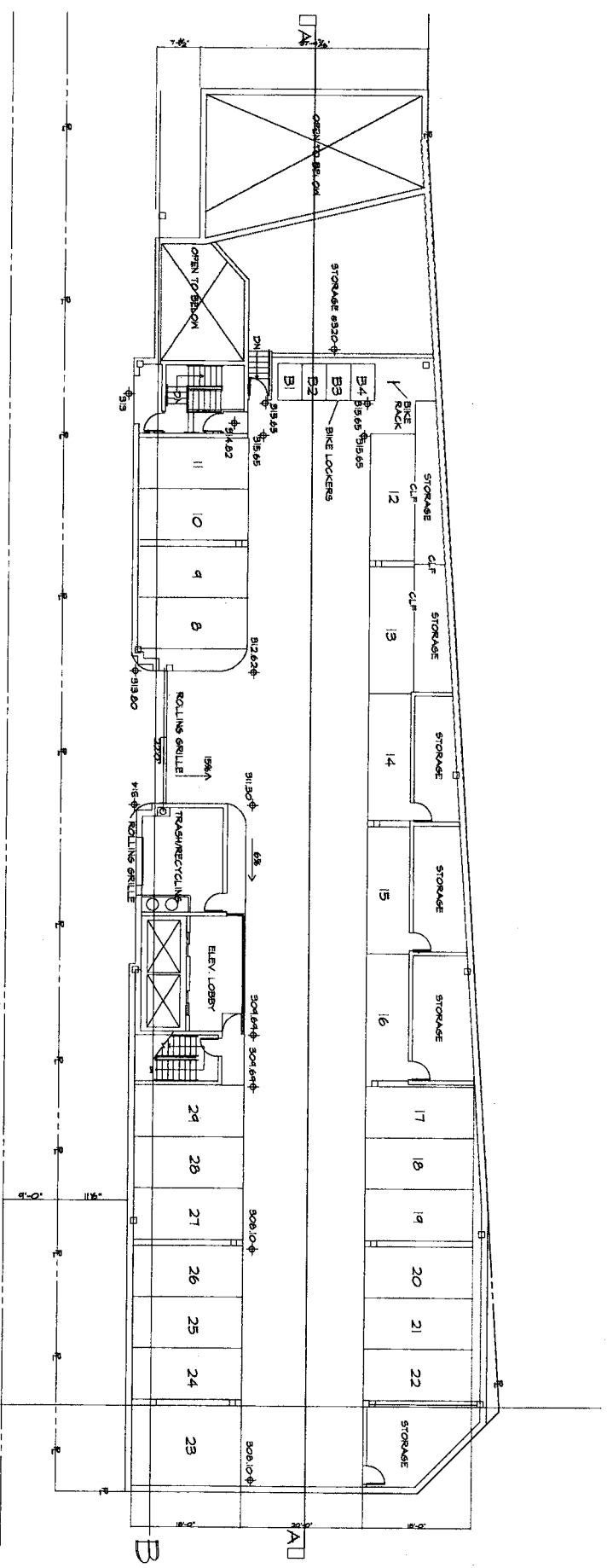
DATE: 11-14-09
 DRAWN BY: E2THLO
 CHECKED BY:
 TITLE: SERVICE COURT LEVEL FLOOR PLAN

WOODMONT VIEW
 NORTHWEST PARK
 PROPOSED LOT 62, BLOCK 2

MORRISON ARCHITECTS
 1726 CONNECTICUT AVENUE NW SUITE 300 WASHINGTON, D.C. 20004
 TELEPHONE: 202.245.2400 FAX: 202.245.2404
 E-MAIL: MEL@MORRISONARCHITECTS.COM

A-5

MORRISON ARCHITECTS



PARKING LEVEL 1
SCALE: 1/8" = 1'-0"

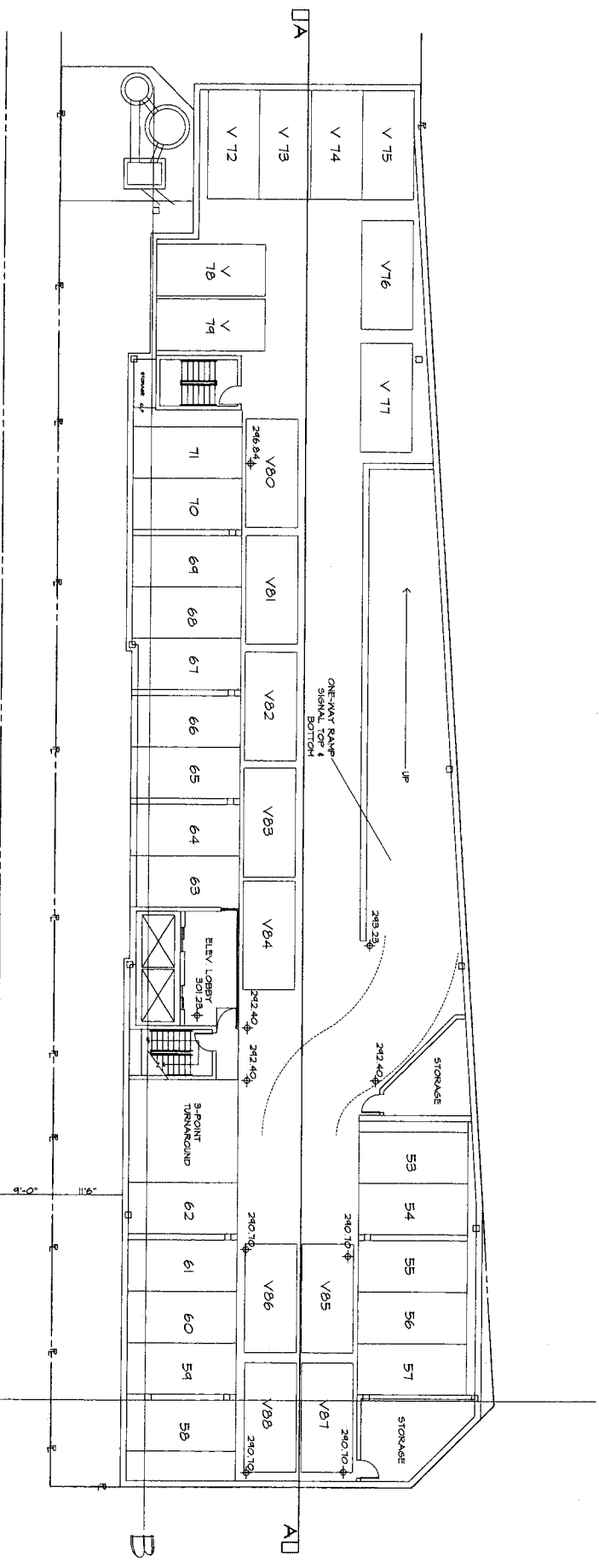
DATE: 7-14-08
DRAWN BY: B.S. J. J. J.
CHECKED BY: B.S. J. J. J.
SCALE: 1/8" = 1'-0"

PARKING LEVEL 1
FLOOR PLAN

WOODMONT VIEW
NORTHWEST PARK
PROPOSED LOT B2, BLOCK 2

MORRISON ARCHITECTS
1729 CONNECTICUT AVENUE, NW SUITE 800, WASHINGTON, D.C. 20004
TELEPHONE: 202.261.8100 FAX: 202.261.8104
E-MAIL: INFO@MORRISONARCHITECTS.COM

A-6



PARKING LEVEL 3
SCALE: 1/8" = 1'-0"

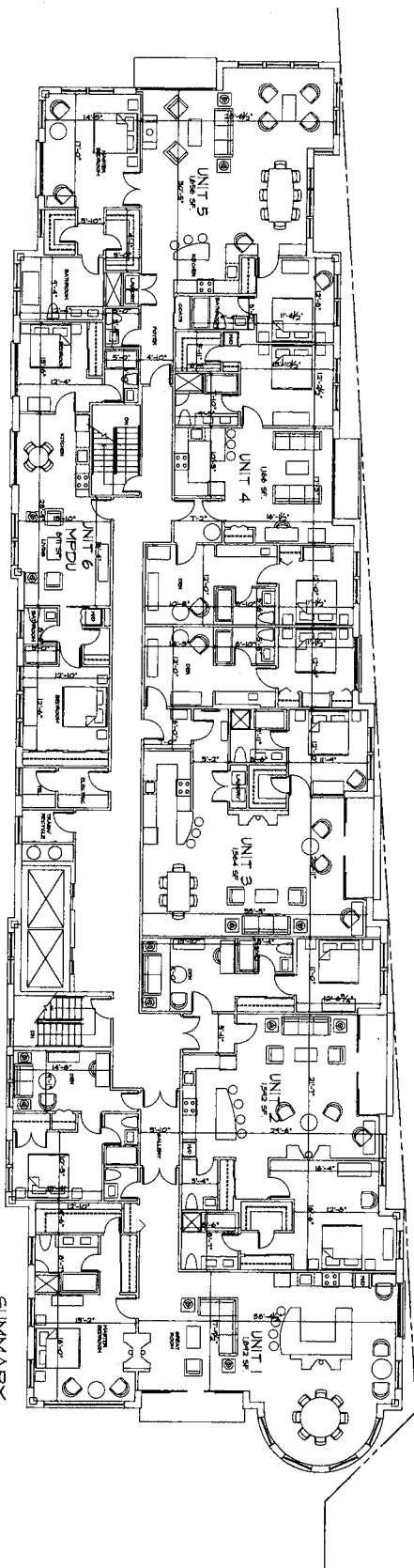
date	revised
7-14-08	SZJLO
8-25-08	
4-14-09	
1-9-10	

PARKING LEVEL 3
FLOOR PLAN

WOODMONT VIEW
NORTHWEST PARK
PROPOSED LOT 02, BLOCK 2

MORRISON ARCHITECTS
1726 CONNECTICUT AVENUE, NW SUITE 300, WASHINGTON, DC 20004
TELEPHONE: 202.245.8102 FAX: 202.245.8104
E-MAIL: WELCOME@MORRISONARCHITECTS.COM

MORRISON ARCHITECTS
A-8



SUMMARY
10,575 SF

2ND-8TH FLOOR PLAN

SCALE: 1/8" = 1'-0"

DATE: 7-14-09
 DRAWN BY: B.L.S./O.P.
 CHECKED BY: M.H./O.P.
 DATE: 5-27-10
 DRAWN BY: [blank]
 CHECKED BY: [blank]

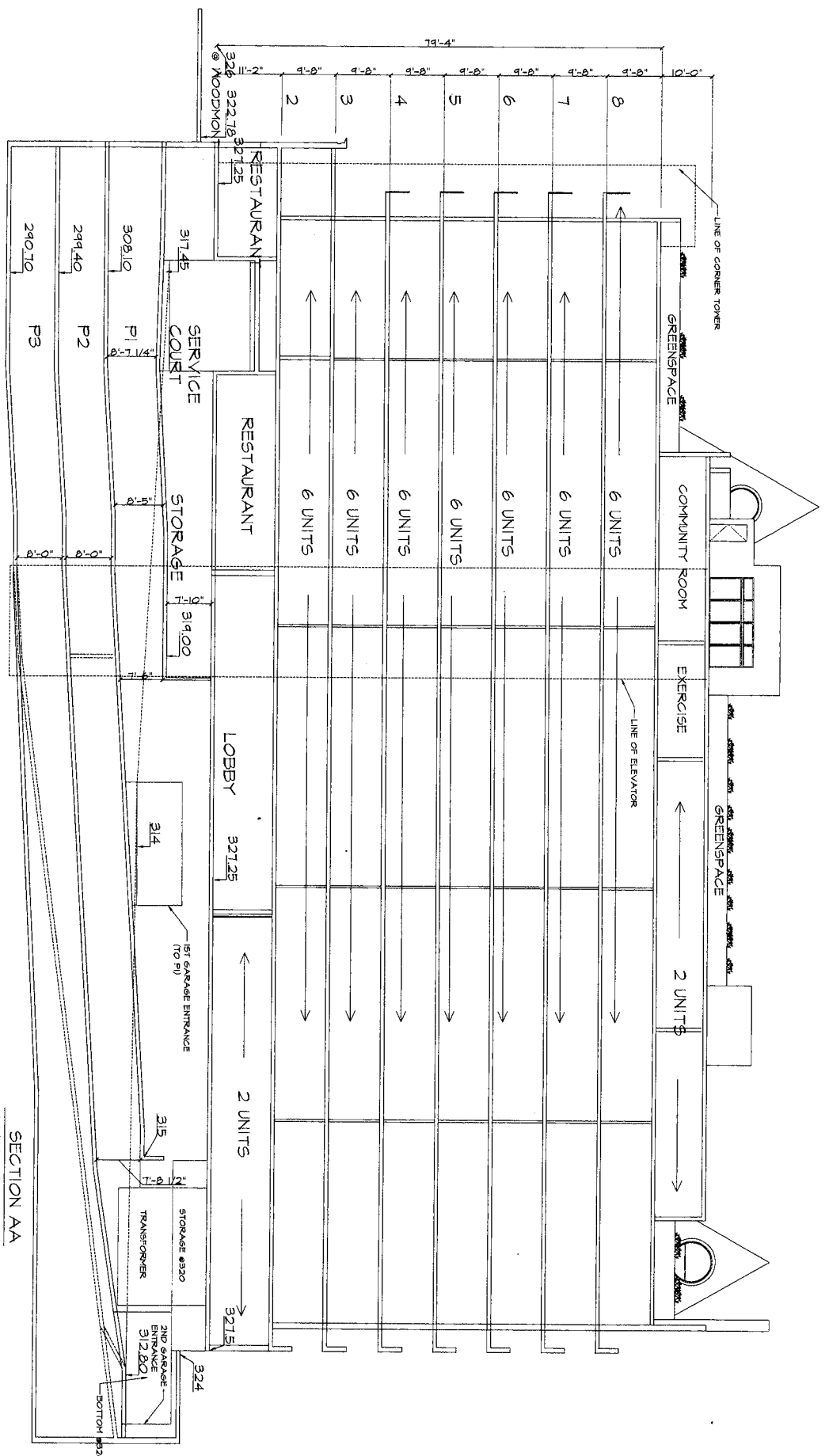
TYPICAL FLOOR PLAN

WOODMONT VIEW
 NORTHWEST PARK
 PROPOSED LOT 62, BLOCK 2

MORRISON ARCHITECTS
 1736 CONNECTICUT AVENUE NW, SUITE 200, WASHINGTON D.C. 20004
 TELEPHONE: 202.245.8100
 FAX: 202.245.8101
 E-MAIL: MEL@MORRISONARCHITECTS.COM

MORRISON ARCHITECTS

A-9



SECTION AA
SCALE: 1/8" = 1'-0"

DATE ISSUED
7-14-09 5-27-10
2-25-09
15-10

SECTION AA

WOODMONT VIEW
NORTHWEST PARK
PROPOSED LOT 82 BLOCK 2

MORRISON ARCHITECTS
1726 CONNECTICUT AVENUE NW SUITE 300 WASHINGTON D.C. 20004
TELEPHONE: 202.245.9182 FAX: 202.245.9184
E-MAIL: WELCOME@MORRISONARCHITECTS.COM



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

MEMORANDUM

DATE: April, 13, 2010

TO: Elsabett Tesfaye, Build/Development Review Division

VIA: Bill Barron, South Central Corridor Team Leader
Vision/Community-Based Planning Division 

FROM: Crystal Myers, Senior Planner
Vision/Community-Based Planning Division 

SUBJECT: DPA 10-2, Woodmont View

The site is approximately 22,618 square feet and zoned PD-75. It is located at Woodmont Avenue and is within the Approved and Adopted Woodmont Triangle Amendment to the, Bethesda Central Business District Sector Plan (2006) and the Approved and Adopted Bethesda Central Business District Sector Plan (2004). The proposed mixed use project contains 46 multifamily residential units and ground floor commercial use. The site also has an approved special exception for a charitable or philanthropic institution, Children's Inn (S-2740, approved on 1/15/09). The project meets many of the housing and land use goals of the Woodmont Triangle Amendment and the Bethesda CBD Sector Plan. However, the project's height is inconsistent with the Sector Plan's height recommendations.

Both the Woodmont Triangle Amendment and the Bethesda CBD Sector Plan recommend residential use on the site. This development plan amendment (DPA) is for a residential project. The DPA changes the residential unit mix to all two bedroom units and increases the ceiling height in all of the units. These changes include the moderately priced dwelling units (MPDUs). The DPA also relocates one of the MPDUs from the more active ground floor to a quieter all residential floor, which is in response to the Department of Housing and Community Affairs concerns with the current version of the project. Besides making changes to the residential units, the DPA makes architectural design improvements and increases the greenspace on the building's roof from 30% to 40%. In order to make these improvements to the building, the DPA is proposing to increase the building height to 90'. The additional height is compatible with the surrounding area heights. It is surrounded by buildings that are up to 100 or more feet in height.

However, the 90' is in conflict with the 65' height limit established in the 1994 Bethesda CBD sector plan. Though the site is included within the Woodmont Triangle Amendment's boundaries, the Amendment deferred to the Bethesda CBD Sector Plan on height recommendations for the property. "This Amendment leaves unchanged the current zoning and height limits in the Battery Lane District," (Amendment, p. 23). Therefore, in every review of this case Community-Based Planning staff has had to maintain that the project is in conflict with the 1994 Bethesda CBD Sector Plan 65' height limit recommendations on this site.

In the past, the Alternative Review Committee (ARC) process could permit additional height beyond the Sector Plan. According to the County Council, in their Opinion for DPA 06-1:

The Zoning Ordinance expressly permits additional height and density in proportion to the MPDUs proposed on site, as long as the ARC determines, as it has here, that the addition of the MPDUs would not be financially feasible within the base limits prescribed by the Zoning Ordinance...They are permitted by Code 25 A-(c)(3) to obtain a bonus density and height of 22%.

The Council supported the Committee's finding that a height bonus of 22 percent, or 14'4", to include eight MPDUs was appropriate. Therefore, the Applicant's approved DPA 06-1 and site plan 820090010 permit them a maximum height of 79'4".

Vision staff finds that although the project is not in conformance with the Sector Plan, it meets many of the housing and land use objectives of the Sector Plan.



MEMORANDUM, Site Plan Section

To: Elsabett Tesfaye, Senior Coordinator
Development Review Division

Via: Robert Kronenberg, Supervisor *RK*
Development Review Division

From: Sandra Pereira, Senior Planner *SP*
Development Review Division

Subject: DPA-10-2, Woodmont View

Date: 3/31/2010

The subject site is located at the northwest corner of the intersection with Woodmont Avenue and Battery Lane at the northern edge of the Bethesda Central Business District. DPA 10-2 proposes to add 10 feet 8 inches to the height of the previously approved residential building for a maximum height of 90 feet.

Background

At the Planning Board Hearing for Woodmont View, Site Plan No. 820090010, the Planning Board found that the proposed building height of 90 feet would be compatible with the surrounding buildings, however, the Planning Board was not in support of the additional story (approximately 10 feet 8 inches) because the proposal was not in conformance with DPA 06-1, which only permitted a height of 79'-4". Further, the Planning Board added to condition number 5 that if the DPA was amended, the maximum height of 90 feet would be approved without the requirement for further Planning Board review or approval.

RECOMMENDATIONS

Site Plan Staff supports Application DPA-10-2, Woodmont View for the following reasons:

- 1) The proposed building height at 90 feet is compatible with the surrounding buildings. The proposed building is higher than the adjacent mid-rise residential

- building to the west, and it is the same height as the approved building directly across Woodmont Avenue at 8400 Wisconsin Avenue.
- 2) The proposed building along with the approved building at 8400 Wisconsin Avenue will continue to frame the northern entrance to Bethesda along Woodmont Avenue to create a gateway as recommended by the July 1994 Bethesda CBD Sector Plan.
 - 3) The proposed building will continue to provide a transition between the 200-foot buildings of the Bethesda Metro Station and the edges of the Central Business District.
 - 4) The additional height will allow for larger units and better amenities for the residents of the building, given that the total number of units remains at 47.



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

MEMORANDUM

TO: Elsabett Tesfay

FROM: Mark Pfeifferle *mp*
Acting-Chief, Environmental Planning

DATE: March 26, 2010

SUBJECT: DPA 10-2

Environmental Planning has no objection to DPA 10-2 for the request is to add height to a previously approved residential building.



DEPARTMENT OF TRANSPORTATION

Isiah Leggett
County Executive

Arthur Holmes, Jr.
Director

April 5, 2010

Ms. Elsabet Tefaye, Planner Coordinator
Development Review Division
The Maryland-National Capital
Park and Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910-3760

RE: Zoning Application DPA-10-2
Woodmont View Property
Bethesda CBD Policy Area

Dear Ms. Tefaye:

We have reviewed the proposed amendment to this plan and have no comments on the revised plan as the proposed change will not impact the adjacent public rights-of-way.

Thank you for the opportunity to review this development plan amendment. If you have any questions or comments regarding this letter, please contact Mr. David Adams at (240) 777-2197 or at david.adams@montgomerycountymd.gov.

Sincerely,

Gregory M. Leck, P.E. Manager
Development Review Team

DPA10-2WoodmontView2.dca, gml revs.doc

cc: Laurence Lipnik; Battery Lane LLC
Debra Borden; Linowes & Blocher LLP
Sarah Navid; DPS RWPR
David Adams; DOT DTEO

Division of Traffic Engineering and Operations

100 Edison Park Drive, 4th Floor • Gaithersburg, Maryland 20878
Main Office 240-777-2190 • TTY 240-777-6013 • FAX 240-777-2080
trafficops@montgomerycountymd.gov



MONTGOMERY COUNTY PUBLIC SCHOOLS
MARYLAND

www.montgomeryschoolsmd.org

April 6, 2010

Ms. Elsabett Tesfaye
Development Review Division
Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

Dear Ms. Tesfaye:

This letter is sent in response to Zoning Application No. DPA-10-2 known as "Woodmont View," located at the northwest corner of Woodmont Avenue and Battery Lane in Bethesda, Maryland.

This development plan amendment would result in 10 townhouse units. Based on average yield factors derived from the Montgomery County Planning Department 2008 Census Update Survey, the impact of this project is estimated to be approximately three (3) elementary, one (1) middle, and one (1) high school student.

This property is located within the Bethesda Elementary School attendance area, Westland Middle School attendance area, and Bethesda-Chevy Chase High School attendance area.

Enrollment at Bethesda Elementary School currently exceeds capacity and is projected to remain over capacity. Enrollment at Westland Middle School is currently within capacity but is projected to exceed capacity, beginning in 2012. Enrollment at Bethesda-Chevy Chase High School currently exceeds capacity and is projected to remain over capacity. See enclosed pages from the Montgomery County Public Schools *FY 2011 Capital Budget and FY 2011-2016 Capital Improvements Program (CIP)*.

In the current growth policy school test (FY 2010), elementary school utilization exceeds the 120 percent level in the Bethesda-Chevy Chase Cluster. This level of utilization would ordinarily place the Cluster in residential moratorium. However, the County Council has provided additional elementary school capacity through an interim capital project. Therefore, the Bethesda-Chevy Chase Cluster is not in residential moratorium in FY 2010. However, cluster elementary school enrollment exceeds 105 percent, resulting in the subdivision approval requirement that a school facilities payment be made when building permits are requested.

Sincerely,

Bruce H. Crispell, Director
Division of Long-range Planning

BHC:lm
Enclosure

Copy to: Mr. Bowers, Mr. Lavorgna, Ms. Turpin

Division of Long-range Planning

2096 Gaither Road, Suite 201 ♦ Rockville, Maryland 20850 ♦ 240-314-4700 ♦ Fax 240-314-4707

SEP 14 2009



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

MCPB No. 09-91
Site Plan No. 820090010
Project Name: Woodmont View
Date of Hearing: July 23, 2009

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Division 59-D-3, the Montgomery County Planning Board ("Planning Board") is vested with the authority to review site plan applications; and

WHEREAS, on November 20, 2008, Battery Lane, LLC ("Applicant"), filed an application for approval of a site plan for a multi-story building with 46 residential units and a restaurant, and an existing single family home to remain ("Site Plan" or "Plan") on 0.52 acres of PD-75-zoned land, located at the northwestern quadrant of intersection of Woodmont Avenue and Battery Lane ("Property" or "Subject Property"); and

WHEREAS, Applicant's site plan application was designated Site Plan No. 820090010, Woodmont View (the "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated July 9, 2009, setting forth its analysis of, and recommendation for approval of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the staff of other governmental agencies, on July 23, 2009, the Planning Board held a public hearing on the Application (the "Hearing"); and

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on July 23, 2009, the Planning Board approved the Application subject to conditions on the motion of Commissioner Presley; seconded by Commissioner Alfandre; with a vote of 4-0, Commissioners Alfandre, Cryor, Hanson, and Presley voting in favor and one Planning Board position being vacant.

Approved as to
Legal Sufficiency:

Handwritten signature of Nancy G. Harris in black ink.

8787 Georgia Avenue, Spring Department 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

NOW, THEREFORE, BE IT RESOLVED that, pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Montgomery County Planning Board APPROVES Site Plan No. 820090010 for a multi-story building with 46 residential units and a 3200-square-foot restaurant, and an existing single family home to remain, on 0.52 gross acres in the PD-75 zone, subject to the following conditions:

Conformance with Previous Approvals

1. Development Plan Conformance
The development must comply with the binding elements of the Development Plan Amendment 06-1.
2. Special Exception Conformance
The development must comply with the conditions of approval of Special Exception S-2740 dated March 27, 2009.
3. Site Plan
Approval of this plan replaces Site Plan No. 820020260.

Environment

4. Stormwater Management
The development is subject to Stormwater Management Concept approval conditions dated January 15, 2002, and later reconfirmed on August 18, 2008, unless amended and approved by the Montgomery County Department of Permitting Services.

Architecture

5. The building height shall be limited to a maximum of 79 feet 4 inches as approved by DPA 06-1, but may be approved for a maximum of 90 feet if the DPA is amended to permit the increased height prior to Certified Site Plan without the requirement to come back to the Planning Board for further review.
6. The final design of the building façade will substantially conform to the architectural renderings received by MNCPPC on May 20, 2009, including fenestration and the provision of terraces/balconies.

Parks, Open Space, & Recreation

7. Common Open Space Covenant

Record plat of subdivision shall reference the Common Open Space Covenant recorded at Liber 28045 Folio 578 ("Covenant"). Applicant shall provide verification to M-NCPPC staff prior to issuance of the use and occupancy permit that Applicant's recorded Homeowners Association Documents incorporate by reference the Covenant.

8. Recreation Facilities

The Applicant must provide sitting areas, an indoor community room, an exercise room and a swimming pool.

Adequate Public Facilities (APF)

9. Adequate Public Facilities (APF)

- a) An APF finding for school capacity must be made by the Planning Board prior to building permit release unless the school moratorium is no longer in effect.
- b) The APF review, exclusive of the schools test, for this development will remain valid for 85 months from the date of mailing of the Planning Board Resolution for the Site Plan.

10. Transportation

The Applicant shall comply with the condition of approval from M-NCPPC-Transportation Planning in the memorandum dated June 18, 2009.

Density & Housing

11. Moderately Priced Dwelling Units (MPDUs)

- a) The development must provide 17 percent MPDUs on-site in accordance with the letter from the Department of Housing and Community Affairs dated April 27, 2009.
- b) The Applicant is receiving a 22 percent density bonus for providing 17 percent (or eight) MPDUs on-site.
- c) The MPDU agreement to build shall be executed prior to the release of any building permits.

Site Plan

12. Lighting

- a) The lighting distribution and photometric plan with summary report and tabulations must conform to IESNA standards for residential development.
- b) All onsite light fixtures must be full cut-off fixtures, except for the wall-mounted fixtures.

- c) Deflectors shall be installed on all fixtures causing potential glare or excess illumination, specifically on the perimeter fixtures abutting the adjacent residential properties.
- d) Illumination levels shall not exceed 0.5 footcandles (fc) at any property line abutting county roads and residential properties.
- e) The height of the light poles shall not exceed 13 feet including the mounting base.

13. Development Program

The Applicant must construct the development in accordance with a development program that will be reviewed and approved prior to the approval of the Certified Site Plan. The development program must include the following items in its phasing schedule:

- a) Street lamps and sidewalks must be installed within six months after street construction is completed. Street tree planting may wait until the next growing season.
- b) On-site amenities including, but not limited to, sidewalks, benches, trash receptacles, and bicycle facilities must be installed prior to release of any residential building occupancy permit.
- c) Clearing and grading must correspond to the construction phasing to minimize soil erosion and must not occur prior to approval of the Sediment Control Plan, and M-NCPPC inspection and approval of all tree-save areas and protection devices.
- d) The development program must provide phasing for installation of on-site landscaping and lighting.
- e) The development program must provide phasing of dedications, stormwater management, sediment and erosion control, trip mitigation, and other features.

14. Certified Site Plan

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

- a) Include the stormwater management concept approval, development program, inspection schedule, and site plan resolution on the approval or cover sheet.
- b) Add a note to the site plan stating that an APF finding regarding school capacity must be made before a building permit may be issued unless the school moratorium is no longer in effect.
- c) Add a note to the site plan stating that "M-NCPPC staff must inspect all tree-save areas and protection devices prior to clearing and grading".
- d) Modify data table to reflect changes to the building height, and parking as a result of bedroom-unit mix and development standards enumerated in

the staff report, unless the increased height is approved by an amendment to DPA 06-1.

- e) Ensure consistency off all details and layout between site plan and landscape plan.
- f) Provide for an alternate plant list on the landscape plan.

BE IT FURTHER RESOLVED that all site development elements as shown on Woodmont View drawings stamped by the M-NCPPC on May 20, 2009, shall be required, except as modified by the above conditions of approval; and

BE IT FURTHER RESOLVED that, having given full consideration to the recommendations and findings of its Staff, the Planning Board hereby expressly adopts and incorporates by reference the Staff Report (except as modified herein), and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

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

As conditioned, the site plan conforms to all non-illustrative elements and binding elements of the Development Plan Amendment (DPA 06-1) approved by the County Council on April 24, 2007, with the Resolution No. 16-98, specifically with regard to the height of the building. The binding elements quantified certain development standards, such as the number of dwelling units, building height, setbacks, green space, building coverage, and residential parking spaces because the zone does not have any requirements for some of these.

2. *The Site Plan meets all of the requirements of the PD-75 zone and where applicable conforms to an urban renewal plan approved under Chapter 56.*

The uses approved are allowed in the PD-75 Zone and the site plan fulfills the purposes of the zone by integrating mutually compatible uses, such as residential and restaurant, which encourages social and community interaction and activity among those who live and work within the area.

The Staff Report contains a data table that lists the zoning ordinance required development standards and the developments standards proposed for approval. The Board finds, based on the aforementioned data table, and other uncontested evidence and testimony of record, that the Application meets all of the applicable

requirements of the PD-75 Zone. The following data table sets forth the development standards approved by the Planning Board and binding on the Applicant.

Data Table

Development Standard	Development Standards Approved by the Planning Board and Binding on the Applicant
Gross Tract Area (GTA)	0.52 acres (22,618 sq. ft.)
Max. Non-residential Density (FAR)	0.14
Max. Residential Density (du/acres) 59-C-7.14(a)	91.5 (75 du/ac X 1.22 MPDU bonus)
MPDUs (%)	17%
Max. Number of Dwelling Units - Existing one-family detached - Market Rate - MPDUs	47 1 ^(a) 38 8
Min. Building Setbacks (feet) - From Woodmont Ave - Battery Lane - From west side - From rear (north)	0 0 11.5 40.5
Max. Building Height (feet)	79'-4" ^(b)
Max. Building Coverage (% of GTA)	60.5 (0.31 acres)
Min. Green Area (% of GTA) (59-C-7.16) - At ground level - Rooftop	40.5 (9,158 sq. ft.) 16.6 (3,753 sq. ft.) 23.9 (5,405 sq. ft.)
Min. Onsite Parking Spaces (59-E)	101
Residential (Sub-total) (1) existing one-family detached ^(a) (46) 2-bedrooms @ 1.5 spaces 10% reduction (59-E-3.33(a))	
Restaurant (Sub-total) Indoors patron use area (1200 sq. ft.) @ 25 sp/1000 GLS Outdoors patron use area (128 sq. ft.) @ 15	

sp/1000 GLS	
Motorcycle spaces	2
Bicycle spaces (@ 1 sp/ 20 parking spaces)	7
On-site loading	1

- (a) Existing one-family detached house to remain with approved special exception S-2740 as a charitable/philanthropic use.
- (b) Although the Zoning Ordinance does not specify a maximum building height for the PD-75 Zone, the Sector Plan Amendment specifies 65 feet, which also recognizes that additional height may be permitted when MPDUs are provided onsite. Binding element no. 2 of DPA 06-1 specifies a building height of 79 feet 4 inches measured from the adjoining curb grade along Woodmont Avenue to the highest point of the main roof slab (the roof area covering the major area of the building excluding mechanical , access, elevator penthouses, and decorative gables) with final height measurement subject to review and adjustment by the Planning Board at site plan approval. The Planning Board found that if DPA 06-1 was amended to allow a greater height up to 90 feet, the increased height was acceptable.

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

a. Buildings and Structures

The approved multi-use building includes 46 dwelling units (including 8 MPDUs) and a "Quality Restaurant" as required by binding element number 10 of the DPA 06-1. The building extends from the existing single-family home which will remain at the northern property line to the southern property line at the intersection of Woodmont Avenue and Battery Lane. There is an approximate 15-foot wide landscaped area between the two buildings. The new building will have a covered vehicular drop-off area on the Woodmont Avenue side to facilitate access to the restaurant at the ground floor. The restaurant's access is from both Woodmont Avenue and Battery Lane. The outdoor eating area on Battery Lane, along with the streetscape improvements, will help to activate this intersection. The residential units will be accessed from the drop-off area, which connects to an interior lobby area. The building's location and orientation are adequate, safe and efficient, while meeting the aesthetic concerns of the area and the character envisioned by the Master Plan.

b. Open Spaces

This zone does not have an open space requirement; instead it has a minimum green area requirement of 30 percent of the gross tract area, which was confirmed by binding element number 4 of the DPA 06-1. The plan meets the green area requirements by providing a combined total of 40.5 percent of green space, of which 16.6 percent is located at street level and 23.9 percent on the

rooftop of the building. All green areas (including the active/passive recreation rooftop green area) for the building will be accessible to all residents of the condominium, as required by binding element number 5 of the DPA 06-1. Although green area requirements are typically met on the ground as opposed to building rooftops, the green area definition does not preclude the proposed location of green area within the building footprint. The general location of this site, in the Bethesda Central Business District, implies that certain urban densities will promote creative and unconventional approaches to fulfilling the green area requirements. In addition, there is at least one precedent in Bethesda, the LMA G-864 for the Christ Evangelical Lutheran Church of Bethesda Chevy Chase, where rooftop green area has been counted towards the green area requirement. In this case, the Hearing Examiner concluded that "the fundamental intent of the definition and the green area requirement was to provide useful outdoor recreation space for apartment dwellers, and that goal can be satisfied with a well-designed rooftop recreation area as well as on the ground" (p.145). The open space adequately and efficiently addresses the needs of the use and the recommendations of the Master Plan, while providing a safe and comfortable environment.

c. Landscaping and Lighting

The landscaping consists of street trees along Woodmont Ave and Battery Lane to match the species and general spacing of the existing street trees, and raised planters with shrubs on the Battery Lane and Woodmont Avenue façades of the building. Additional landscaping is located along the edges of the roof and on the pool deck, and consists of shrubs and flowering trees, which add interest and provide enclosure for these areas. The landscape provided is safe, adequate and efficient and it meets the standards of the 1992 Bethesda Streetscape Plan.

The lighting plan consists of street lights that meet the standards of the 1992 Bethesda Streetscape Plan and wall mounted lights around the perimeter of the building that provide adequate and efficient levels of illumination to have a safe pedestrian environment.

d. Recreation Facilities

The recreation facilities provided include various sitting areas, an indoor community room, an indoor exercise room, and a swimming pool. These facilities meet the M-NCPPC Recreation Guidelines for a multi-family high-rise development of 5 stories or more, and a single-family detached house in a lot of 20,000 square feet or more. The facilities provided are adequate, safe and efficient at serving the recreational needs of the residents.

e. Vehicular and Pedestrian Circulation

Pedestrian access from adjacent sidewalks adequately and efficiently integrates this site into the surrounding area. Pedestrian access will be improved through a widening of the existing sidewalk near the northern property line to include the entire width between the curb and the existing fence of the existing house. Pedestrian circulation along Woodmont Avenue is interrupted by the access to the vehicular drop-off area, however, this is mitigated via flush pavement between the sidewalk and the drop-off area (no curb), and the slope is maintained at a maximum of 2 percent at the crossing points. The standards of the Bethesda Streetscape Plan help to improve pedestrian access throughout the CBD by assuring that adequate sidewalks and connections are provided.

In addition to the one-way vehicular drop-off/pick-up loop at Woodmont Avenue, vehicular circulation takes place in the rear of the building through a two-way driveway located within a 20-foot wide shared access easement between the subject site and the adjoining property to the west. This driveway, connecting to Battery Lane and running parallel to Woodmont Avenue, provides access to the 3-level parking garage underneath the building. Three separate entrances to the parking garage provide access to the service court level, parking level 1, and parking levels 2 and 3, respectively. Both residential and restaurant parking needs will be accommodated within the 3 levels of parking. The existing single-family detached house (Children's Inn) has separate parking underneath the house:

The Applicant must provide an easement for future dedication of up to 5 more feet of right-of-way for a total of 40 feet from the centerline of Woodmont Avenue near the northern property line to conform with the Bethesda CBD Sector Plan. When dedicated, the existing fence in front of the existing house (Children's Inn) would be located within the additional public right-of-way. At that time, the Applicant must obtain a revocable easement agreement from Montgomery County that includes liability and maintenance considerations for the fence.

The design of the pedestrian and vehicular circulation systems allows for adequate and efficient access to the site and the building, while creating a safe atmosphere for pedestrians, cyclists, and vehicles.

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

The uses approved are compatible with the adjacent and confronting uses as well as the approved adjacent development. The approved residential use will increase the supply of existing multi-family housing in the Battery Lane District,

whereas the restaurant at street level will help to activate the intersection of Woodmont Avenue and Battery Lane. The proposal also conforms with the high-rise or garden apartment land use designation for this area of the Battery Lane District by the *March 2006 Woodmont Triangle Amendment to the Bethesda CBD Sector Plan*.

Although the proposed building height of 90 feet would be compatible with the surrounding buildings, the Planning Board is not in support of the additional story (approximately 10 feet 8 inches) because the proposal is not in conformance with DPA 06-1. The DPA has already granted a 22 percent height bonus above the Sector Plan recommended height limit of 65 feet due to the provision of over 15 percent MPDUs onsite. Therefore, the Planning Board recommends that the proposed building height be limited to 79 feet 4 inches as approved by DPA 06-1.

The Applicant argued that the building height at 90 feet would allow for a better building overall, which would still be compatible with the surrounding buildings. Specifically, the increased building height would allow for all MPDUs to be 2-bedroom, as opposed to a mix of one and two-bedroom MPDUs as approved by the DPA 06-1, and better amenities for the residents of the building. The additional height with the site plan proposal accommodated the community and exercise rooms, two dwelling units, and an outdoor pool with seating areas.

The Planning Board concluded that Binding Element No. 2 of DPA 06-1 left flexibility for the Planning Board to make the final determination of the building height at site plan approval. However, this binding element should be read in the context of the entire case, which makes it clear that it referred to minor adjustments to the building height as reflective of the final determination of the building measuring point. It is unreasonable to believe that this language meant to accommodate an additional story, or a 10 feet 8 inch increase in the building height, at the sole discretion of the Planning Board and without further review or analysis by the Hearing Examiner.

As amended, the building height at 79 feet 4 inches will be compatible with the nearby buildings and is located such that it will not adversely impact existing or proposed adjacent uses. This building height is higher than the adjacent mid-rise residential building to the west, and lower than the approved building located directly across Woodmont Avenue at 8400 Wisconsin Avenue, at approximately 90 feet. An 8-story building along with the approved building at 8400 Wisconsin Avenue will continue to frame the northern entrance to Bethesda along Woodmont Avenue to create a gateway as recommended by the *July 1994 Bethesda CBD Sector Plan*. In addition, the amended height will provide a better transition between the 200-foot buildings of the Bethesda Metro Station and the edges of the Central Business District. The Applicant has already demonstrated

the total number of units can be accommodated within the lower height through the DPA, but will most likely result in a different bedroom mix.

The PD-75 Zone contains no standards for building setbacks and the DPA 06-1 approved minimum setbacks as part of binding element no. 3. The building will be at the property line on Woodmont Avenue and Battery Lane with zero foot setbacks, which is consistent with the urban character envisioned for the Woodmont Triangle and the PD-75 zoning of this narrow site. The sidewalks surrounding the site will be upgraded according to the Bethesda Streetscape Plan.

The approved building is compatible with the existing one-family dwelling through architectural treatments and materials used. The building has varying roof lines and step-backs for upper floors, which help increase compatibility with the height of the existing house. The north elevation of the building incorporates balconies that face the existing house and the 15-foot landscaped area between the building and the existing house.

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

The site is exempt from the Montgomery County Forest Conservation law. There is no forest on-site. Exemption 42002206E was approved in January 2002. Therefore, no forest conservation or tree save plan review by the Planning Board is required.

The stormwater management concept consists of on-site water quality control via installation of a hydrodynamic structure and a waiver request for water quantity control.

BE IT FURTHER RESOLVED, that this resolution constitutes the written opinion of the Board and incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

BE IT FURTHER RESOLVED, that this Site Plan shall remain valid as provided in Montgomery County Code § 59-D-3.8; and

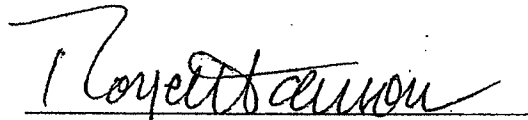
BE IT FURTHER RESOLVED, that the date of this resolution is SEP 14 2009 (which is the date that this resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

* * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner Wells-Harley, seconded by Commissioner Presley, with Commissioners Hanson, Alfandre, Presley, and Wells-Harley voting in favor of the motion, and with Commissioner Cryor absent, at its regular meeting held on Thursday, September 10, 2009, in Silver Spring, Maryland.



Royce Hanson, Chairman
Montgomery County Planning Board

Resolution No.: 16-98
Introduced: April 24, 2007
Adopted: April 24, 2007

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS A DISTRICT COUNCIL FOR THAT PORTION
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT
WITHIN MONTGOMERY COUNTY, MARYLAND**

By: County Council

SUBJECT: APPLICATION DPA 06-1 FOR DEVELOPMENT PLAN AMENDMENT OF G-808, Previously Approved by the Council on March 30, 2004; Stephen Z. Kaufman, Esquire, Heather Dishopolsky, Esquire, and Debra S. Borden, Esquire, Attorneys for the Applicants, Laurence Lipnick and Battery Lane, LLC; OPINION AND RESOLUTION ON APPLICATION; Tax Account Nos. 03379057 and 03379068.

OPINION

Applicants Laurence Lipnick and Battery Lane, LLC (a/k/a "Woodmont View"), filed Development Plan Amendment 06-1, on July 20, 2005, seeking to amend the development plan approved by the Council on March 30, 2004 in LMA G-808. That Council Resolution (No. 15-563) reclassified 21,101 square feet of land located at 4811 Battery Lane, Bethesda to the PD-75 (Planned Development) Zone and accepted Applicants' former plan to develop the property with 10 townhomes and an existing single-family, detached home. Applicants' present plan (*i.e.*, DPA 06-1) would instead develop the subject site with an eight-story (79 feet, 4 inches in height), 46 unit, mixed-use condominium, including eight moderately priced dwelling units (MPDUs) and a restaurant. The existing single-family, detached home on the northern end of the property (Mr. Lipnick's residence) would also be retained, but the existing four-story office building on the southern extreme of the property would be demolished.

The subject property (designated the "Trunnell property" in the *1994 Bethesda CBD Sector Plan*) is part of Lot 48, Block 2, Northwest Park, Plat No. 134, and is bounded by Woodmont Avenue to the east,

Battery Lane to the south, the "Aldon" property¹ (Lot 22, Block 2) to the west, and the National Institutes of Health to the north.

The application for the development plan amendment was reviewed by the Alternative Review Committee (ARC), pursuant to Zoning Ordinance §59-D-1.61(a), and the ARC found that it was not financially feasible to develop the property with eight MPDUs on site, unless bonus height and density were permitted, as requested by Applicants. Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC) and the Montgomery County Planning Board ("Planning Board") considered the application and both recommended approval, including the bonus height and density sought by Applicants. Because the changes to the development plan sought by Applicants were substantial, the Planning Board forwarded the matter to the Office of Zoning and Administrative Hearings (OZAH) for a public hearing.

That hearing was held on January 29, February 23 and March 9, 2007. The only opposition was presented by Jim Humphrey, Chair of the Planning and Land Use Committee of the Montgomery County Civic Federation (MCCF). The primary basis for MCCF's opposition was the request for height 14.3 feet above the 65 foot height limit recommended in the *1994 Bethesda CBD Sector Plan* for the Battery Lane District. On April 6, 2007, the Hearing Examiner filed his Report and Recommendation, recommending approval of the development plan amendment. To avoid unnecessary detail in this Resolution, the Hearing Examiner's Report and Recommendation, is incorporated herein by reference. Based on its review of the entire record, the District Council finds that the application does meet the standards required for approval of the requested development plan amendment, for the reasons set forth by the Hearing Examiner.

The subject site has approximately 60 feet of frontage with Battery Lane and 340 feet of frontage along Woodmont Avenue. The site has a gross tract area of 22,618 square feet (52% of an Acre) because Applicants acquired 1,517 square feet of excess Woodmont Avenue right-of-way (ROW) from the County

¹ The Aldon property is called that because it is run by Aldon Management, but it is referred to as "Site 1" in the 1994 Sector Plan and occasionally as the "Brown" property, because that is the surname of the current owners.

on September 13, 2004, *i.e.*, prior to this application. Applicants dedicated 596 square feet of Battery Lane ROW to the County on July 24, 2002. The site is rectangular in shape, and the topography slopes down from east to west. There are no natural resources (wetlands, streams, flood plains or forest) on the property. The public utilities (water and sewer) serving the property have adequate capacity to handle the proposed development. There is also an existing public storm drain on the adjoining property, which has adequate capacity to take storm water runoff away.

In the 1954 Regional District zoning, this area was zoned R-60. In 1958, the R-60 Zone was reaffirmed as part of the countywide comprehensive zoning. On December 6, 1977, SMA G-20 reaffirmed the R-60 Zone. On December 12, 1989, Local Map Amendment G-636 changed the R-60 Zone to the C-T Zone. That change was reaffirmed on October 11, 1994, in SMA G-711. On March 30, 2004, Local Map Amendment G-808 reclassified the subject site to the PD-75 (Planned Development) Zone in Council Resolution No. 15-563.

The surrounding area must be identified in a floating zone case so that compatibility can be evaluated properly. The "surrounding area" takes into account those areas that would be most directly affected by the proposed development. In the present case, the Hearing Examiner appropriately adopted the definition of the surrounding area accepted by the Council in LMA G-808:

extend[ing] out from the intersection of Battery Lane and Woodmont Avenue to the Battery Lane Urban Park to the west, Norfolk Avenue and Cheltenham Drive to the south, Wisconsin Avenue to the east and the National Library of Medicine on the National Institutes of Health (NIH) campus to the north.

Surrounding the subject site are properties zoned R-60, R-10, R-10/TDR and CBD. The land use and zoning pattern for the area reflects a mix of residential, commercial and institutional land uses. North of the subject property is R-60 zoned land surrounding the Library of Medicine on the grounds of NIH. Confronting to the east and southeast are uses in the CBD-1 Zone, including a hotel on the site of a proposed 200 unit condominium building, known as 8400 Wisconsin Avenue (owned by "Crimson 8400 Bethesda,

LLC"). Confronting to the south and adjoining to the west are multi-family residential buildings in the R-10 and R-10/TDR Zones. These buildings range in height from three to five stories. Further to the west is the Battery Lane Urban Park operated by M-NCPPC. There is also a parking garage south of Battery Lane, within this area.

Pursuant to Code § 59-D-1.11, development in the PD-75 Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the PD-75 Zone or upon approval of an amendment to that development plan pursuant to Code §-D-1.7. The land use plan (Exhibit 78(b)) is a required part of the development plan, and it is entitled "Alternative Amendment To Development Plan" in this case. It shows the proposed locations of all structures, as well as additional information regarding the planned development, both in diagram and textual form. The Development Plan and the Land Use Plan that constitutes one of its primary parts are binding on the Applicants except where particular elements are identified as illustrative or conceptual. Illustrative elements may be changed during site plan review by the Planning Board, but the binding elements (*i.e.*, those used in evaluating compatibility and compliance with the zone) cannot be changed without a separate application to the District Council for an additional development plan amendment.

Binding Elements{ TC "B. Development Plan & Binding Elements" \f C \l "2" }

The textual binding elements here include the following:

1. The maximum number of dwelling units will be 47, including 17% MPDUs (or 8 MPDUs).
2. The building height is proposed for 79 feet 4 inches measured from the adjoining curb grade along Woodmont Avenue to the highest point of the main roof slab (the roof area covering the major area of the building excluding mechanical, access, elevator penthouses, and decorative gables) with final height measurement subject to review and adjustment by the Planning Board at site plan approval.
3. The minimum setbacks will be 0 feet for the front yards on Woodmont Avenue and Battery Lane, 11.5 feet for the side yard to the west, and 40.5 feet for the rear yard from the existing building at the north property line.
4. The minimum green space will be 30% of the gross tract area.

5. All green areas (including the active/passive recreation rooftop green area) for the condominium building will be accessible to all residents of the condominium building.
6. The maximum building coverage will be 60% of the site area.
7. The minimum number of parking spaces for the residential units will be 54, and the number of parking spaces required for the commercial use will comply with the Zoning Ordinance.
8. This property is subject to a Common Driveway Agreement recorded at Liber 26425, Folio 122 among the Land Records of Montgomery County. The Common Driveway Agreement sets forth the agreement between the applicant and the adjacent property owner to share certain portions of their respective properties for mutual ingress and egress from Battery Lane in order to achieve more efficient, convenient, and safer access to both properties.
9. Applicant shall submit a revised Stormwater Management Concept Plan to be approved prior to site plan.
10. The Street commercial space in the planned building will be occupied by a "Quality Restaurant" as described in the Institute of Transportation Engineers (ITE) Trip Generation Manual, 7th Edition, page 1703, not by any more intensive commercial use (*i.e.* one producing more peak hour traffic).

The District Council finds that the development plan submitted with this application satisfies all the requirements for a development plan under Code §59-D-1.61(a)-(e). Each of the required findings is addressed below.

§59-D-1.61(a): consistency with master plan and other County policies.

There are two applicable Master Plan documents, the *July 1994 Bethesda CBD Sector Plan*, and the *March 2006 Woodmont Triangle Amendment to the Bethesda CBD Sector Plan*. As observed by M-NCPPC's Community-Based Planning Division (Exhibit 25, Attachment 4):

... The current proposal meets several of the objections and recommendations of the 1994 Sector Plan in that it increases the amount of housing near Metro and helps provide a northern gateway to the Woodmont Triangle. Together with the proposed development across Woodmont Avenue, the 8400 Wisconsin project, two high-rise residential developments would frame the northern entrance to Bethesda along Woodmont Avenue. The proposal provides eight moderately priced dwelling units on site, adding to the 25 proffered by the 8400 Wisconsin Avenue project, and furthering one of the main goals of the Woodmont Triangle Amendment to the 1994 Sector Plan.

Technical Staff notes that the proposal also conforms to many of the urban design guidelines in the Sector Plan (pp. 92-94), including streetscape development, building orientation towards both Woodmont Avenue and Battery Lane, vehicular access and off-street parking, hidden underground. The proposal offers attractive architectural features, including rooflines that are compatible with adjacent development and the existing dwelling on the property. Exhibit 25, p. 6.

The Land Use Maps on page 27 of the 2006 Amendment propose a land use of "High-rise or Garden Apartments" for the subject site, evidencing the fact that the Sector Plan Amendment did not intend to preclude an eight-story residential building on the site, as long as it qualifies for the bonus height by the inclusion of on-site MPDUs. Code §59-C-7.14(c)(3) requires projects in the PD Zones with a residential density of more than 28 dwelling units per acre to have a minimum of 12.5% MPDUs, and Section 59-C-7.14(c) permits a development in the PD Zone to exceed the density specified for the PD density category (in this case PD-75) "to accommodate the construction of Moderately Priced Dwelling Units."

Although a 65 foot height limit is recommended for the area of the subject site by the Sector Plan and its 2006 Amendment, the 2006 Amendment also expressly recognizes that recommended height limits may be exceeded to allow the inclusion of MPDUs. As stated on page 10 of the 2006 Amendment,

Mixed-use projects with moderately priced dwelling units (MPDUs) on-site can achieve the greater height and density allowed in the respective zones as specified in this Amendment, but at a FAR no greater than the maximum allowed in the Zoning Ordinance.

The almost identical statement can be found on page 21 of the 2006 amendment:

Mixed-use projects with MPDUs on-site may achieve a greater height and density than allowed in the 1994 Sector Plan as specified in this Amendment, but no greater than the maximum in the Zoning Ordinance.

The Zoning Ordinance also expressly permits additional height and density in proportion to the MPDUs provided on site, as long as the ARC determines, as it has here, that the addition of MPDUs would not be financially feasible within the base limits prescribed by the Zoning Ordinance. Code §59-D-1.61(a).

Since Applicants are providing 17% MPDUs, they are permitted by Code §25A-5(c)(3) to obtain a bonus density and height of 22%. Applying that bonus percentage to the height and density limits, yields a permitted height of 79.3 feet and a permitted density of 47 dwelling units, exactly what Applicants seek in the subject case. The District Council therefore finds that the 65 foot height limit contained in both the 1994 Sector Plan and its 2006 Amendment for the subject site does not prohibit the 79.3 foot structure proposed here.

The 2006 Woodmont Triangle Amendment also encourages the location of first-floor retail in the Woodmont Triangle area. This sentiment is reiterated explicitly in one of the "Urban Design Guidelines" on page 15 of the Plan Amendment, which recommends that developments:

- Provide street-oriented retail, restaurants, and other street animating uses on the first floor of buildings located along streets such as Norfolk Avenue and Cordell Avenue.

Thus, the inclusion of a street-level restaurant, as planned for the eight-story building in this case, is perfectly consistent with the amended Sector Plan.

The County's Annual Growth Policy (AGP) and the Adequate Public Facilities Ordinance (APFO) require a review of the availability of adequate public facilities for any proposed development. The evidence is that the subject site will be supplied by ample water and sewer service; that there is adequate school capacity under the AGP schools test; and that the development comports with Local Area Transportation Review standards.

The District Council concludes that the proposed development plan will be in substantial compliance with the use and density indicated in the Master Plan and will not conflict with any other applicable county plan or policy.

§59-D-1.61(b): purposes, standards and regulations of the zone; safety, convenience and amenity of residents; and compatibility with adjacent development.

The requirements for the PD-75 Zone are found in Code §59-C-7.1. PD (Planned Development) zones are a special variety of floating zone with performance specifications integrated into the requirements of the zone. These zones allow considerable design flexibility if the performance specifications are satisfied. The applicant is not bound to rigid design specifications, but may propose site-specific criteria, within the parameters established for the zone, for elements such as setbacks, building heights and types of buildings, all of which must be spelled out on a development plan.

The lengthy purpose clause for the PD-75 Zone (as well as the other PD Zones) is found in Code §59-C-7.11. Generally, it is the purpose of the Zone to implement the general and master plans by permitting “unified development consistent with densities proposed by the master plans.” Development in the PD Zones should be “so designed and constructed as to facilitate and encourage a maximum of social and community interaction and activity among those who live and work within an area and to encourage the creation of a distinctive visual character and identity for each development.” It is intended to produce a “coordinated mixture of residential and convenience commercial uses and encourage a broad range of housing types....” It is also a purpose of the PD Zones to take advantage of open space and trees, enabling them to function “as places for relaxation, recreation and social activity.” The purpose clause also encourages large scale developments and creation of “pedestrian circulation networks, separated from vehicular roadways . . . [which will] minimize reliance upon the automobile as a means of transportation.” Finally, it is the purpose of the PD Zones “to achieve a maximum of safety, convenience and amenity for both the residents ... [and their neighbors], and to assure compatibility and coordination of each development with existing and proposed surrounding land uses.”

As discussed above, the proposed development will be in substantial compliance with the *Bethesda CBD Sector Plan, as Amended*. Accordingly, the application will comply with the first element of the

purpose clause by allowing implementation of applicable Master Plan objectives. However, the small size of the intended development makes it virtually impossible for the builder to satisfy each element of the purpose clause unless one evaluates this development as part of the larger neighborhood.

Typically, developments in the PD Zone are, as mentioned in the "purpose clause," large in scale, a characteristic which enables the developer to employ the kinds of pedestrian circulation networks, open spaces and recreational areas which are goals of the Zone. The small size of this project limits the use of extensive common areas and pedestrian circulation networks. Nevertheless, Zoning Code §59-C-7.122 does recognize that a PD Zone may be applied to small developments, and this project's location near the heart of Bethesda allows it to achieve the PD Zone's social interaction goals in the context of the surrounding area. The development will be close enough for people to walk to nearby restaurants, shops and entertainment.

Moreover, the new development plan calls for a much larger project than originally planned (*i.e.* the original plan called for 10 townhouses, while the plan amendment would allow a 46 unit building to be added to the site). The additional size allows Applicants to supply additional amenities, such as a restaurant and roof-top common areas. Thus, the present application is more in keeping with the purposes of the PD-75 Zone than the original proposal approved by the Council in LMA G-808. More importantly, it will provide a diversity of housing types, called for in the "purpose" clause, but not provided under the G-808 townhouse plan.

Visually, the planned structure will be an improvement over the present office building and gravel parking lot. As noted by the Technical Staff, the new building will front on both Woodmont Avenue and Battery Lane to activate the streetscape. The architecture was designed to blend well with the existing single-family home on the site, and it will provide an interesting gateway to Woodmont Triangle from the north.

In addition, the proposed development would provide the “maximum of safety, convenience and amenity” for both the residents and their neighbors, another stated purpose of the PD Zone. The eight-story structure will have safe vehicular access via the recessed drop-off area on Woodmont Avenue and the existing single driveway on Battery Lane. Parking will be in a two-level underground garage, except for the service court parking and the existing two-car garage attached to the Lipnick residence. The uncontradicted record in this case establishes that vehicular and pedestrian access and circulation will be safe and efficient. Moreover, living within easy walking distance of a Metro station and having the numerous Bethesda retail establishments as well as the Battery Lane Local Park in the neighborhood will be great conveniences. Residents and the public will also benefit from the 30% green area proposed for this project, although the roof-top green space will not be available to the general public.

The goal of visual compatibility will be achieved by designing the proposed building to mesh architecturally with the existing detached, single-family home, and by the similarity of the proposed eight-story building to other structures existing and planned in the surrounding area. In fact, the new development plan calls for a structure that is more in keeping with its surrounding area than the townhouse proposal approved in G-808. Land use compatibility is provided by the fact that the proposed residential use fits in well both with the nearby residential uses and with the variety of local amenities available in Bethesda within walking distance. It is also consistent with the Land Use Plan provided on page 27 of the 2006 Woodmont Triangle Amendment.

Technical Staff correctly observes that “the building height provided will be compatible with adjacent development and will integrate mutually compatible uses,” because “[t]he proposed height is higher than adjacent mid-rise residential development to the west, but it is lower than adjacent residential development at 8400 Wisconsin Avenue, which is 100 feet.” Also, “[t]he residential use is consistent with existing and planned land use in the surrounding area ... [and t]he commercial use . . . [will] fit into the fabric of the urban environment of the Bethesda CBD.” Exhibit 25, p.6. It should also be noted that the

Amended Sector Plan allows heights up to 110 feet directly across Battery Lane to the south (Diagram on Page 12 of the Sector Plan Amendment); and the property to the north is NIH, an institutional use with large buildings.

The proposed use of the subject site as a mixed-use, multi-family dwelling is also consistent with the planned use across Woodmont Avenue and with the other existing uses on Battery Lane, almost all of which are multi-family structures. Finally, the proposed building is compatible with the more urban style of development that is planned for the Woodmont Triangle area under the Sector Plan Amendment. The District Council finds that the new proposal for a mixed-use, eight-story condominium, would be more compatible with the surrounding area than the initial plan of ten townhouses for the subject site.

In sum, the proposed development is consistent with the intent and purposes of the PD-75 Zone. We next look to the “standards and regulations” of the PD-75 Zone, which are spelled out in Zoning Ordinance §§59-C-7.12 through 7.18.

Code Sections 59-C-7.121 and 59-C-7.122 are inapplicable because this application does not seek a reclassification of the zone, but only a development plan amendment.

Pursuant to Code §59-C-7.131, all types of residential uses are permitted in the PD-75 Zone except detached, single-family homes. The existing detached, single-family house on the site is permitted to remain because it predated the rezoning, approved by the Council in G-808. The Council determined at that time that it is a nonconforming use subject to the restrictions contained in Division 59-G-4 of the Zoning Ordinance.

Code Section 59-C-7.132(b) permits commercial uses in the PD-75 Zone under specified circumstances. Applicants seek to include a small amount of restaurant commercial space (3200 square feet of gross floor area) on the first floor of their proposed eight-story building. The District Council finds that such commercial space is permitted under Section 59-C-7.132(b) because the *Bethesda CBD Sector*

Plan endorses such uses for the area. This application also satisfies the alternative prong of this section because a restaurant use would achieve the purpose of the zone by adding an additional and compatible amenity.

Section 59-C-7.14 determines the appropriate density category for the zone when reclassification is sought. That is not the case here, so this section is inapplicable.

Code Section 59-C-7.15, addresses compatibility, a subject which has already been discussed in the context of the Zone's purpose clause. Based on the preponderance of the evidence, the District Council concludes that the development proposed on the subject property would be compatible with and would not adversely affect the character of adjacent development.

Section 59-C-7.16 requires 30% green area for the PD-75 Zone. Textual Binding Element #4 of the Amended Development Plan calls for a minimum of 30% green area, thus meeting the 30% green-area requirement under the PD-75 density category.

Section 59-C-7.17, discusses dedication of land for public use. Applicants previously dedicated of 596 square feet of right-of-way along Battery Lane. No additional dedication is planned.

Section 59-C-7.18 specifies that off-street parking must be provided in accordance with the requirements of Article 59-E of the Zoning Ordinance. In this case, eighty-eight (88) parking spaces are required for the site, including both the residential requirements (54 spaces)² and commercial requirements (34 spaces). Applicants will provide the required 88 spaces on site in a two-level underground garage (75 spaces); in the service court (11 spaces); and in the exiting garage attached to the Lipnick single-family home (2 spaces).

² The number of residential parking spaces required in this case is reduced by 17% (from 65 to 54) pursuant to Zoning Ordinance §59-E-3.33(b)(3) because Applicants will be providing 17% of their dwelling units as MPDUs.

In sum, the District Council finds that Applicants have complied with all of the purposes, standards and regulations of the PD-75 Zone, as set forth in Article 59-C of the Zoning Ordinance.

The next finding required by Section 59-D-1.61 is a determination that the proposed development would provide the “maximum safety, convenience, and amenity of the residents.” Since this required finding is practically identical with one of the purpose clause requirements for the PD-75 Zone, it has been discussed in that context, above. As noted there, Applicants have provided the maximum in safety, convenience and amenities for the future residents of this development.

§59-D-1.61(c): safe, adequate and efficient internal vehicular and pedestrian circulation systems.

The development plan provides an improved pedestrian circulation network with wider sidewalks and better access for residents and the public traveling through the area. As noted previously, the project is designed to provide safe, adequate, and efficient access for vehicles and pedestrians. Vehicular points of access will be provided on both Woodmont Avenue and Battery Lane. The Applicants have negotiated a common driveway agreement with the owner of the adjacent multi-family development to accommodate a shared driveway. The overwhelming evidence is that the site will provide safe, adequate and efficient pedestrian and vehicular access. Accordingly, the District Council finds that the proposed circulation systems and site access would be safe, adequate and efficient.

§59-D-1.61(d): preservation of natural features

There are no forests, specimen trees or natural features existing on the site. The site, which is mostly impervious at present, was significantly graded to construct the existing office building and parking lot. Applicants submitted a Natural Resources Inventory and Forest Stand Delineation (NRI/FSD), and received an exemption from the M-NCPPC as to forest conservation requirements in connection with LMA G-808. That exemption is still in effect. A Preliminary Storm Water Management Concept and Sediment Control Plan was also approved by the Department of Permitting Services in conjunction with LMA G-808;

however, Technical Staff determined that an amended plan must be filed prior to site plan review in the current case. Applicants agreed to add a textual binding element stipulating that a revised stormwater management concept plan will be submitted and must be approved prior to site plan. It is now Textual Binding Element #9.

In sum, the District Council finds that Applicants have demonstrated the environmental controls required by "Finding (d)."

§59-D-1.61(e): common area maintenance.

The property is owned by Co-Applicant, Laurence Lipnick, as demonstrated by the deed to the property filed as Exhibit 75. According to Applicants' counsel, Applicants will form a condominium association, which will be responsible for maintenance of common and quasi-public areas. He submitted a sample "Declaration of Condominium" of the kind which will be used for this development (Exhibit 76). It includes a provision (Article 2, Section 2.1(b)) for maintenance of common elements by the "Council of Unit Owners."

The District Council finds that Applicants have sufficiently demonstrated both ownership of the property and their commitment to perpetual maintenance of all recreational and other common or quasi-public areas.

The Public Interest

The final finding which is required under Maryland law is that the proposed Development Plan Amendment will be in the public interest. The proposed development will promote the "health, safety, morals, comfort, and welfare of the inhabitants of the regional district" (*i.e.*, the public interest) by providing the kind of residential development called for in the *1994 Bethesda CBD Sector Plan*, and the affordable housing which is a goal of the 2006 Woodmont Triangle Amendment, without any adverse effect on public facilities. It will offer an attractive transition from the north into the denser portions of

Bethesda and will bring more residents within walking distance of Metro and a variety of convenience retail establishments in Bethesda. In sum, the District Council finds that the proposed Development Plan Amendment is in the public interest.

Based on the foregoing analysis and the Hearing Examiner's report, which is incorporated herein, and after a thorough review of the entire record, the District Council concludes that the proposed development satisfies the intent, purpose and standards of the PD-75 Zone; that it meets the requirements set forth in Section 59-D-1.61 of the Zoning Ordinance; that the application proposes a project that would be compatible with development in the surrounding area; and that the requested development plan amendment has been shown to be in the public interest. The District Council also finds that the legal issues raised by the People's Counsel and MCCF were appropriately decided by the Hearing Examiner, as detailed in his report. For these reasons and because approval of the instant application for a development plan amendment will aid in the accomplishment of a coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District, the application will be approved in the manner set forth below.

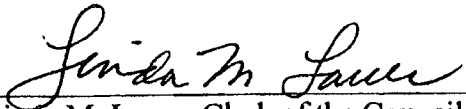
ACTION

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District located in Montgomery County, approves the following resolution.

Development Plan Amendment (DPA) 06-1, requesting amendment of the Development Plan approved by the Council on March 30, 2004, in Local Map Amendment (LMA) # G-808, regarding the property located on part of Lot 48, Block 2, Northwest Park Subdivision, Plat No. 134, in the Seventh Election District, at 4811 Battery Lane, in the northwest quadrant of Woodmont Avenue and Battery Lane, in Bethesda, is approved subject to the specifications and requirements of the Development Plan

Amendment, Exhibit 78(b), provided that the Applicants submit to the Hearing Examiner, for certification, a reproducible original and three copies of the approved Development Plan Amendment within 10 days of approval, as required under Code §59-D-1.64.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council