Resolution No.: 15-1632
Introduced: October 10, 2006
Adopted: October 10, 2006

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

By: County Council

SUBJECT: APPLICATION NO. G-850 FOR AMENDMENT TO THE ZONING ORDINANCE MAP, C. Robert Dalrymple, Esquire and Ann C. Martin, Esquire, Attorneys for Applicant, Lot 31 Associates, LLC, OPINION AND RESOLUTION ON APPLICATION

Tax Account No. 07-00430190.

OPINION

Application No. G-850, filed on March 7, 2006 by Lot 31 Associates, LLC, requests reclassification of approximately 3.3 acres of County-owned land in downtown Bethesda from the R-60 and CBD-1 Zones to the TS-M Zone (Transit Station-Mixed). Applicant seeks to rezone lots 138, 139 and parts of lots 18 through 24, Block B of the Miller's Addition Subdivision, a site which is located on both the southwest and southeast quadrants of the intersection of Bethesda and Woodmont Avenues. The portion west of Woodmont Avenue is currently occupied by Parking Lot 31, and it is in the Arlington Road District of the 1994 Bethesda CBD Sector Plan. The portion east of Woodmont Avenue is currently occupied by Parking Lot 31-A, and it is in the Wisconsin South Corridor of the Sector Plan. The site will be developed with an underground garage containing approximately 1138 public and 342 private spaces (*i.e.*, totaling 1480 parking spaces), and a mixed-use residential/retail project above. The two buildings will have up to 250 dwelling units and 40,000 square feet of retail floor space.

Applicant, Lot 31 Associates, is the developer selected by the County in a competitive solicitation for proposals to develop the subject property. The County entered into an agreement with Applicant to

have Lot 31 Associates, LLC, serve as the County's agent for purpose of applying for and obtaining zoning and development approvals.

In addition to the subject rezoning application, this project is dependent upon two other administrative processes, a "mandatory referral" to the Montgomery County Planning Board for approval of the proposed public parking garage (#06806-DPWT-1), and an "abandonment" of a portion of Woodmont Avenue (#AB 684), which will allow that thoroughfare to be realigned to accommodate the development. The Planning Board approved the mandatory referral on June 28, 2006, and the Council conditionally approved the Abandonment Petition on August 1, 2006, in Council Resolution 15-1584.

The building planned for Lot 31 (*i.e.*, west of Woodmont) would be three to five stories tall, with retail space on the first floor and on two mezzanine levels above the first floor. The building planned for Lot 31A (*i.e.*, east of Woodmont) would be six to nine stories tall (up to 90 feet) and would also have retail space on the first floor and on two mezzanine levels above the first floor. The buildings would house 12.5% moderately priced dwelling units (MPDUs), and up to 35 "workforce housing units" (WFDUs). Because this development called for a height above the 75 feet recommended in the Sector Plan for this CBD area, Zoning Ordinance §59-D-1.61(a) required review by an Alternative Review Committee (ARC) to determine whether the inclusion of MPDUs made the additional height necessary, for the project to be financially feasible. The ARC reviewed the matter, and on June 12, 2006, issued a finding that the additional height was needed to make the project financially feasible.

The application for rezoning was reviewed by the Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC), and in a report dated June 7, 2006, Staff recommended approval of the application. The Montgomery County Planning Board (Planning Board), considered the application on June 22, 2006 and, by a vote of 5 to 0, also recommended approval, as stated in a memorandum dated June 23, 2006.

The proposed development was strongly supported by the Coalition for the Capital Crescent Trail, the Sacks Neighborhood Association and Federal Realty Investment Trust, which has significant interest in the nearby Bethesda Row. A public hearing was noticed for June 27, 2006, and it proceeded as scheduled. In addition to Applicant's seven witnesses, two County officials, William Siebert III, Chief of the Parking Operations Section, Division of Operations, Department of Public Works and Transportation (DPW&T), and Elizabeth Bradford Davison, Director of the Department of Housing and Community Affairs (DHCA), appeared at the public hearing and testified in support of the project. Martin Klauber, the People's Counsel, participated in the hearing, and stated his support for the proposal. There was no opposition testimony at the hearing; however, a representative of the Ourisman Honda dealership which is adjacent to Parking Lot 30, testified to express the concern of that business that it be given adequate space to off-load its cars. In addition, an attorney for the Seasons, LLC, which owns a building adjacent to Parking Lot 31A, appeared and represented that his client, which had opposed the project, had reached an agreement with the Applicant, reflected in the final binding elements, and it no longer opposed the development.

The hearing in this case concluded on June 27, 2006, and the Hearing Examiner recommended approval on grounds that the proposed development satisfies the intent, purpose and standards of the TS-M 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 reclassification to the TS-M Zone has been shown to be in the public interest.

To avoid unnecessary detail in this Resolution, the Hearing Examiner's Report and Recommendation, dated September 7, 2006, 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 rezoning for the reasons set forth by the Hearing Examiner.

The subject property is comprised of two tracts currently being used as public parking lots (Parking Lots 31 and 31A), with 279 surface parking spaces, and the portion of Woodmont Avenue between them.

Parking Lot 31, which is west of Woodmont Avenue, is located adjacent to, and north of the Sacks Subdivision, with the Capital Crescent Trail to the west, Woodmont Avenue to the east and Bethesda Avenue to the north. It consists of recorded lots 138 and 139, and parts of lots 18, 19, 20, 21, 22, 23 and 24. Parking Lot 31A, which is east of Woodmont Avenue, is located adjacent to, and west of, the Seasons high-rise apartment building. It consists of parts of lots 18 and 19, and is bordered on the north by Bethesda Avenue and on the south and west by Woodmont Avenue.

The property is approximately 1,500 feet south of the Bethesda Metro Station. The combined property is trapezoidal in shape, and the gross tract area, including dedicated public right-of-way, is approximately 3.3 acres (143,819 square feet). The net lot area (contemplating the abandonment of existing Woodmont Avenue right-of-way and re-establishment of the relocated Woodmont Avenue right-of-way by grant of easement) is approximately 3.07 acres (133,738 square feet).

The property is zoned R-60 (Residential, one-family) to the west of Woodmont Avenue, and CBD-1 (Central Business District-1) to the east of Woodmont Avenue. There are no historic structures or sites situated on the property, and the site contains no wetlands, streams, stream valley buffers, or one-hundred year floodplains. Site soils are considered suitable for development.

The surrounding area must be identified in a floating zone case so that compatibility can be evaluated properly. The "surrounding area" is defined less rigidly in connection with a floating zone application than in evaluating a Euclidean zone application. In general, the definition of the surrounding area takes into account those areas that would be most directly affected by the proposed development. Technical Staff recommends describing the "surrounding area" as bounded by Elm Street to the north; Arlington Road to the west; and Bradley Boulevard, Strathmore Avenue, Woodmont Avenue, Leland Street and Wisconsin Avenue to the south and east, including properties on Miller Avenue. The District Council accepts this definition of the "surrounding area."

Land use in the surrounding area is mixed, and there are several zoning classifications, including C-2 and CBD-1. The Sacks Subdivision, located south of the subject property, is comprised of single-family detached residential units in the R-60 Zone. A three-story automotive retail building (Ourisman Honda), on C-2 zoned land, is located to the west of the subject site, just across the Capital Crescent Trail. A three-story retail building, a one-story retail building and a restaurant in the C-2 Zone, as well as an 8-story office building with a restaurant in the CBD-1 Zone, are located to the north of the property, across Bethesda Avenue. A 15-story residential apartment and retail building (the "Seasons") is located to the east of the subject property. It is 143 feet tall and is set back 13 feet from the eastern property line. This building is closer to the proposed buildings than any others in the surrounding area. Other nearby land uses include high-rise residential buildings, townhouses, condominiums, and retail and office uses.

Technical Staff recounted the zoning history of the area. The R-60 Zone was enacted and mapped, including Lot 31, in the 1954 Regional District Zoning. The R-60 Zone was subsequently confirmed and reconfirmed in the 1958 County-wide Comprehensive Zoning; SMA F-736, adopted August 15, 1972; SMA G-20, adopted December 6, 1977; SMA G-665, adopted June 26, 1990; SMA G-666, adopted June 26, 1990; and SMA G-711, adopted October 11, 1994. Parking Lot 31A's reclassification to the CBD-1 Zone dates back to SMA G-20, adopted on December 6, 1977, and it was confirmed in SMA G-666, adopted on June 26, 1990; and in SMA G-711, adopted on October 11, 1994

The components of the proposed project, as described by Technical Staff, are:

- **Residential Building Located West of Woodmont Avenue** - This building is located on the west side of Woodmont Avenue. It will be from three to five stories tall stepping up towards Bethesda Avenue from the southern portion of the property line. A service area for this building is located along the west side of Woodmont Avenue. Retail space will be on the first floor of this building and in two mezzanine levels above the first floor. The retail space will be located along a portion of the Capital Crescent Trail with direct access to Bethesda Avenue and Woodmont Avenue. The main entrance lobby for the residential portion of this building will be located on Bethesda Avenue.

- **Residential Building Located East of Woodmont Avenue** - This building is located on the east side of Woodmont Avenue. It will range from six to nine stories tall (90 feet), stepping

up from Woodmont Avenue to the east towards the existing adjacent 15-story residential building (the Seasons). The service area is located along Bethesda Avenue adjacent to the Seasons high-rise residential building. Retail space will also be on the first floor of this building and in two mezzanine levels above the first floor. The retail space will have direct access from Bethesda Avenue and Woodmont Avenue. The main entrance lobby for this residential building will also be located on Bethesda Avenue.

- **Public and Private Parking Garage** - Each building has access to the same underground, 342-space private parking garage associated with the private residential and retail space. The project also includes a 1,138-space public parking garage (County Parking Lot District). The combined public and private parking garage is located below grade under both buildings and Woodmont Avenue. Access to the combined garage is located along the east side of Woodmont Avenue and along Bethesda Avenue near the Seasons high-rise residential building.

- **Re-Alignment of Woodmont Avenue** - The Development Plan includes a re-alignment of Woodmont Avenue. This street will be closed during the construction of the below grade garage. Woodmont Avenue will be reconstructed with a small realignment.

- **Improvements to the Intersection of Woodmont Avenue and Bethesda Avenue** - The applicant proposes to neck-down two quadrants of the intersection of Bethesda. These proposed improvements coincide with current improvements by the Department of Public Works and Transportation (DPWT) to improve the intersection of Woodmont Avenue and Bethesda Avenue. These combined improvements are intended to improve pedestrian and bicycle safety, and circulation at the intersection of Woodmont Avenue and Bethesda Avenue. These improvements were recommended in the 1994 Bethesda CBD Sector Plan.

- **Streetscape, Public Use Space, and Active and Passive Recreation Space** - The applicant proposes street level retail and streetscape amenities to enhance the pedestrian experience along Bethesda Avenue and Woodmont Avenue.

The proposal is intended to be compatible with adjacent development and provide a transition from the Central Business District to the adjacent, single-family-detached neighborhood to the south. In addition, Bethesda Row would be improved by:

- Providing street-level retail and streetscape;

- Adding public seating (in non-restaurant areas) for those strolling or biking and wanting to rest and "people watch;"

- Constructing a "bike depot" at the southern intersection of the Trail and Bethesda Avenue;

- Establishing an on-site vehicular drop-off for bicycle and pedestrian access to the Trail on the west side of Woodmont Avenue, away from the main intersection; and

- Activating links to the [Crescent] Trail not only with appealing landscape architecture but also with two-story townhouse-style condominium lining the southern and western edges of the site and fronting on the Trail connection.

Pursuant to Zoning Ordinance §59-D-1.1, development in the TS-M Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the TS-M Zone. The Development Plan and the Land Use Plan that constitutes one of its primary parts are binding on the Applicant 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 cannot be changed without a separate application to the District Council for a development plan amendment.

The binding elements, which are printed on the Development Plan (Exhibit 66(a)), are as follows:

1. Maximum FAR [floor area ratio] of 2.59 as reflected on development plan.

2. Maximum of 250 total dwelling units (final number of units and unit mix to be determined at site plan).

3. Maximum of 342 private parking spaces (total number of parking spaces based on unit mix to be determined at site plan).

4. Building setback from south property line, west of realigned Woodmont Avenue, to be 50 feet.

5. Building setback from east property line, east of realigned Woodmont Avenue, shall be 5 feet for the entire building line. Beginning at and above the second floor the building shall be setback from the east property line as shown on the plan entitled "Building Setback Plan At and Above Second Floor Adjacent to Seasons Building" entered into the public hearing record for this zoning application as Exhibit No 56 and which plan is also shown on the face of the development plan. [Exhibit 56 shows that, beginning on the second floor and above, the setback expands on the eastern side (*i.e.*, adjacent to the Seasons building) to 10 feet for a distance of 27 feet along the eastern property line, and then to 15 feet for the remainder of the eastern property line.]

6. The mechanical penthouse on the rooftop of the building located east of Woodmont Avenue will:
(1) be setback 40 feet from the shared property line with the adjacent Seasons Apartments to the east ("Seasons");

(2) not have any primary vertical components of any cooling towers located closer than 75 feet from the shared property line with the Seasons (by example, pipes along the rooftop that are ancillary to a cooling tower would be allowed); and
(3) have a maximum height of 14 feet above the roofline.

7. Measured from the measuring points shown on the development plan (identified on development plan as elevation 334.9 feet above sea level – the "Measuring Points"), maximum building heights (not including mechanical penthouse) are as follows:

   - East of Woodmont Avenue: Building height not to exceed 90 feet as measured from the Measuring Points (elevation 424.9 feet above sea level), with step down to building height not to exceed 65 feet as measured from the Measuring Points (elevation 399.9 feet above sea level) at intersection of Bethesda Avenue and Woodmont Avenue.

   - West of Woodmont Avenue: Building height not to exceed 54 feet as measured from the Measuring Points (elevation 388 feet above sea level) for building west of Woodmont Avenue, with maximum building height of 14 feet as measured from the Measuring Points (elevation 348 feet above sea level) between 50 and 60 feet setback along southern property line (for town home style condominium units adjacent to single family Sack's neighborhood to south).

8. Provision on-site of 12.5% MPDUs per County law and provision of up to 35 workforce housing units per DHCA Agreement, to be finally reflected at site plan.

9. Minimum 35% open space (active and passive recreational space/public use space), with final area to be determined at site plan.

10. Developer to construct realignment of Woodmont Avenue and improvements to Woodmont Avenue/Bethesda Avenue intersection per the Development Plan and future DPWT approvals, with final design and operation of the intersection for pedestrians, bicyclists and vehicles to be determined at site plan.

11. Loading docks serving buildings shall be enclosed within building area.

12. All residential units will be multi-family condominium units.

13. Dwelling units along the southern building edge of the building west of realigned Woodmont Avenue shall be townhome style condominium units.

14. The underground public garage shall exhaust through the roof of the on-site buildings west of Woodmont Avenue (and away from adjacent residential uses), this also being known as the existing Lot 31 property, and there shall be no exhaust from the underground public garage through any buildings (through the roof or otherwise) east of Woodmont Avenue, this also being known as the existing Lot 31A property.

15. A bicycle and pedestrian connection from Woodmont Avenue to the Capital Crescent Trail shall be provided along the southern property line within the 50-foot setback area, and the

final design and operations of the bike drop off area adjacent to Woodmont Avenue to be finalized with DPWT and M-NCPPC at site plan.

16. At time of site plan review, Applicant to provide appropriate hardscape/landscape in setback area along eastern property line. With the cooperation and authorization of the adjacent property owner to the east, coordinated hardscape/landscape amenities within the setback area located on the adjacent property to the east will be included as part of the amenity package for the redevelopment of Lot 31/31A by the Applicant.

17. Detailed information regarding the ultimate location, operation, and alignment of Woodmont Avenue between Bethesda Avenue and Leland Street shall be provided for DPWT and M-NCPPC review and approval at time of preliminary plan and site plan. New right-of-way for realigned Woodmont Avenue shall be established with DPWT at the time of preliminary plan and reflected on the record plat.

18. LATR study for the subject project to be provided by Applicant at time of preliminary plan reflecting approved public garage access points. The Applicant will further analyze capacity, design and operations of local road network.

19. The Applicant will request DPWT approval of a right-in/right-out limitation on ingress and egress to the public garage access along Bethesda Avenue.

20. Documentation of agreement between Applicant and DPWT allowing for private access beneath Woodmont Avenue to be provided at time of site plan, including documentation of future ownership of the public and private property.

Section 59-D-1.61 of the Zoning Ordinance requires the District Council, before it approves any application for re-zoning to the TS-M Zone, to consider whether the application, including the development plan, fulfils the "purposes and requirements" set forth in Code Section 59-C for the new zone. In making this determination, Zoning Ordinance §59-D-1.61 expressly requires the District Council to make five specific findings, and Maryland law requires that zoning power be exercised in the public interest.

§59-D-1.61(a): Consistency with Master Plan and other County Policies.

The first required finding is consistency with County plans and policies. The subject site is located within the area analyzed by the *Bethesda Central Business District (CBD) Sector Plan,* approved and adopted in July, 1994. More specifically, Lot 31 is within the Arlington Road District and Lot 31A is in the Wisconsin South Corridor. This distinction accounts for the different zoning recommendations contained in the Sector Plan with regard to the subject site. Lot 31 is recommended for the TS-M Zone that

is sought by Applicant, but Lot 31A is recommended for its current CBD-1 classification, with its use anticipated as public parking. *Sector Plan, p. 125, Figure 4.34.*

Nevertheless, it is evident that the Sector Plan did not envision that the Lot 31A portion of the subject site would be combined with Lot 31 as a single development project, with the Public Parking Garage expanding beneath the entire site. Both the ARC and the Planning Board recommended approval of the additional height requested for the Lot 31A building, and the zoning recommendation has been superceded by the language of Zoning Ordinance §59-C-8.21(a), which permits the TS-M Zone within the CBD when an adjacent lot, or one separated only by a public right-of-way, is eligible for classification to the TS-M Zone. That is precisely the case here.

As such, the Sector Plan should be interpreted to give effect to its underlying intent for the area, and not strictly in accordance with its height recommendation or its CBD-1 recommendation for Lot 31A. A master plan is only a guide where, as here, the Zoning Ordinance does not make it mandatory. *See Richmarr Holly Hills, Inc. v. American PCS, L..P.*, 117 Md. App. 607, 635-636, 701 A.2d 879, 893, n.22 (1997). In this case, the additional 15 feet of height sought by Applicant for the Lot 31A building (*i.e.*, permitting it to be 90 feet high) will actually make it more compatible with the adjacent Seasons building, which exceeds 140 feet in height, and with the confronting Artery building, which is almost as high. Reclassification of the entire site to a single zone, the TS-M Zone, is permitted by the current Zoning Ordinance and is reasonable in this instance.

The District Council finds that Applicant's proposal is fully consistent with the recommendations and urban design guidelines specified for Lot 31, and though not consistent with the zoning and height recommendations for Lot 31A, those recommendations have been superceded by subsequent development in the area and recent changes in the Zoning Ordinance. The District Council finds that the proposed development is consistent with the goals and objectives of the Bethesda CBD Sector Plan, and is thus in substantial compliance with the Sector Plan.

Another County policy which must be considered is the Adequate Public Facilities Ordinance ("APFO," Code §50-35(k)). While the ultimate test under the APFO is carried out at subdivision review, evidence concerning adequacy of public facilities is also relevant to the District Council's determination in a rezoning case. Under the 2003-05 AGP Policy Element (p.14), which remained unchanged in FY 2006, "[t]he Planning Board and staff must consider the programmed services to be adequate for facilities such as police stations, firehouses, and health clinics unless there is evidence that a local area problem will be generated." There is no such evidence in this case. We therefore turn to the remaining three public facilities, transportation, schools and water and sewer service.

1. Transportation

Under the 2003-05 AGP Policy Element, subdivision applications are subject to Local Area Transportation Review ("LATR") requirements. LATR generally involves a traffic study intended to evaluate whether a proposed development would result in unacceptable congestion during the peak hour of the morning and evening peak periods. Congestion is defined by the County in terms of "critical lane volume" (CLV) above specified limits. The CLV standard specified for the relevant intersections is 1800.

It is clear from the LATR traffic study in this case that the proposed project and the garage will meet current County CLV standards; however, the "Synchro/Sim" traffic analysis (the third part of the LATR traffic study) demonstrates that "The programmed and planned pedestrian/bicycle improvements would result in longer motorist delays and vehicle queues," and that there is a "trade-off between (1) pedestrian and bicycle safety and convenience and (2) vehicle delays and queues." Exhibit 38(g), p. 66. Various traffic mitigation measures are being considered, including restricted turning movements, additional turn lanes, changes in traffic signal timing, and revising the proposed "neck downs" of the traffic lanes. Technical Staff Report, Exhibit 43, p. 17. The District Council finds that these issues cannot be resolved at the rezoning stage of this development, and that the planners will have to resolve these trade-offs at subdivision and site plan review.

The District Council finds that Applicant's proposal complies with the LATR standards and other transportation requirements. Based on the evidence of record, the District Council finds that transportation facilities will be adequate for this project.

2. School Capacity:

This property is located within the Bethesda Elementary School, Westland Middle School and Bethesda-Chevy Chase High School service areas. Bruce H. Crispell, Director of the Division of Long-range Planning, Montgomery County Public School's (MCPS), estimated that the impact of this project would be approximately twenty (20) elementary, ten (10) middle and eleven (11) high school students. Attachment 4 to Exhibit 43. According to Mr. Crispell and Technical Staff, the current Growth Policy schools test finds capacity adequate in the Bethesda/Chevy Chase cluster. The District Council concludes that the increased demand projected from the subject development is within the capacity of MCPS.

3. Water and Sewer Service:

Under the FY 2003-05 AGP Policy Element, p.14, "applications must be considered adequately served by water and sewerage if the subdivision is located in an area in which water and sewer service is presently available (*i.e.*, Category I). The subject site is served by public water and sewer systems, and is currently in Water Service Category W-1 and Sewer Service Category S-1. As stated by Technical Staff, "The public facilities are adequate to serve the proposed development . . .." Exhibit 43, p. 6. The District Council so finds.

In sum, based on this record, the District Council finds that the requested rezoning does not conflict with "applicable County plans and policies."

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

The second required finding is:

> *That the proposed development would comply with the purposes, standards, and regulations of the zone as set forth in article 59-C, would provide for the maximum safety, convenience, and amenity of the residents of the development and would be compatible with adjacent development.*

The requirements for the TS-M Zone are found in Code §59-C-8. The TS-M Zone is a "floating zone," intended to be used in transit station development areas and within the CBD when an adjacent lot, or one separated only by a public right-of-way, is eligible for classification to the TS-M Zone. Section 59-C-8.21(c) also specifies that the TS-M Zone is intended for locations where substantial commercial or office uses already exist or where such uses are recommended by an approved and adopted master plan. That is the case here.

Section 59-C-8.21(d) provides:

In order to facilitate and encourage innovative and creative design and the development of the most compatible and desirable pattern of land uses, some of the specific restrictions which regulate, in some other zoning categories, the height, bulk and arrangement of buildings and the location of the various land uses are eliminated and the requirement substituted that all development be in accordance with a plan of development meeting the requirements of this division.

The District Council finds that Applicant's development plan is consistent with the requirements of the Zoning Ordinance.

The purposes of the TS-M Zone are set forth in Code §59-C-8.23:

(a) To promote the optimum use of the transit facilities by assuring the orderly development of land in transit station development areas and access, both vehicular and pedestrian, to metro stations;

(b) To provide for the needs of the workers and residents of transit station development areas;

(c) To provide for the incidental shopping needs of the transit facility riders at metro stations having parking facilities for large numbers of riders;

(d) To minimize the necessity for automobile transportation by providing, in largely residential transit station areas, the retail commercial uses and professional services that contribute to the self-sufficiency of the community;

(e) To obtain amenities for the residents and workers in transit station areas not ordinarily obtainable in conventional zoning classifications; and

(f) To prevent detrimental effects to the use or development of adjacent properties of the neighborhood and to promote the health, safety, morals and welfare of the present and future inhabitants of the district and the county as a whole.

The proposed development meets the first purpose by providing for a public parking garage and connectivity to the Bethesda Metro Station, which is only 1500 feet away, and to the other transit facilities located in this district that will help optimize the use of transit for the residents and visitors to this portion of Bethesda. The development would fulfill the second purpose by the inclusion of mixed income and mixed height of residential uses, and by the creation of the street retail and an improved pedestrian circulation environment.

The main street retail that is proposed here, completing Bethesda Row, will accomplish the third purpose of providing for incidental shopping needs of transit facility riders. The fourth purpose is to minimize the necessity of the automobile. Mixed-use developments such as the subject one require less reliance on the automobile for services and amenities. Easy access to the Bethesda Metro will also help meet that purpose.

The fifth purpose is to obtain amenities not available in conventional zoning. Conventional zoning does not allow the flexibility that is required to provide the amenities that are being proposed here, such as the enhancements to the Capital Crescent Trail, the additional landscaping, the bicycle drop-off for the users of the trail, and streetscape amenities. The proposed development would satisfy the final purpose of preventing detrimental affects upon the adjacent properties by providing a transition from the more intensely developed portions of Bethesda to the less intensely developed areas to the south, such as the Sacks neighborhood.

The proposed development will put 250 residential units within easy walking distance of a Metro station, and will include MPDUs as well as workforce housing. It will provide 40,000 square feet of retail space and improvements to the sidewalks and crosswalks to encourage walking and the use of the transit by future employees and residents. Streetscape, bikeway improvements and adjacent retail space will reduce the dependence on the automobile in the area. Based on the ample evidence in the record, the District

Council finds, as did the Hearing Examiner, Technical Staff and the Planning Board, that the proposed development satisfies the purposes of the TS-M Zone.

Zoning Ordinance §59-C-8.23 specifies the uses permitted in the TS-M Zone. All of the uses proposed for the Mixed-Use Project (residential and retail) are permitted in the TS-M zone.

Zoning Ordinance §59-C-8.24 provides that the TS-M Zone is "permitted only in a Transit Station Development Area defined in section 59-A-2.1 and in accordance with an approved and adopted master plan or sector plan, except in areas within and adjacent to a Central Business District in accordance with Section 59-C-8.21(a)." Lot 31 is within a Transit Station Development Area as defined in Section 59-A-2.1, while Lot 31A is within the Central Business District, and is permitted pursuant to Section 59-C-8.21(a), as described above.

Zoning Ordinance §59-C-8.25 requires that a proposed development in the TS-M Zone conform to "the facilities and amenities" of the Sector Plan, include any required easements, provide for safe and efficient circulation and adequate open and recreation space, and insure compatibility with the surrounding area, as well as the ability of the area to accommodate the intended use.

The proposed development would provide a realignment of Woodmont Avenue to permit optimal use of Lot 31A and to improve pedestrian circulation. It also will provide a bicycle drop-off area, connected to the Capital Crescent Trail by a new bike path and sidewalk, a variety of streetscape improvements and a total of at least 35% open space, including a minimum of 10% public use space and 25% active and passive recreational space. The realignment of Woodmont would result in dedication of the new right-of-way to the County, once its precise contours have been established.

In addition to meeting the purposes and intent of the TS-M Zone, a development must meet all the applicable development standards set forth in Code Section 59-C-8.4. The District Council finds that Applicant's development plans are in accordance with all of the standards and regulations of the TS-M Zone, as set forth in Article 59-C of the Code.

The next part of "Finding (b)" 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." This issue has been discussed above in conjunction with the requirements for the TS-M Zone. The District Council finds that Applicant has provided the maximum in safety, convenience and amenities for the future residents of this development.

The final required determination under "Finding (b)" is that the proposed development be compatible with adjacent development. Because there is a mix of uses completely surrounding the subject property, Applicant decided to make this project a "four sided building," which attempts to face each use in its appropriate way for the purpose of compatibility. The bike drop-off, which is to the south and east of the property, links to the Capital Crescent Trail and provides the needed buffer to help protect the single-family homes to the south. The south and west corner of the site employs a townhouse style construction intended to bring the massing down to a more human scale, more compatible with the single-family homes in the Sacks community immediately to the south. These two-story townhouse style condominiums also turn towards the Capital Crescent Trail to make that a more pleasant experience for those utilizing the trail.

There is also a courtyard in the center of the building to break up the townhouse row along that south perimeter, and to open it up light and air. The bicycle drop-off area, which is at the southeastern corner of the site, links to the bicycle trail that is in front of the townhouses. On the east side of Woodmont, new setbacks from the Seasons building were agreed to in order to make the buildings more compatible. The 90 foot tall building, which is proposed, with a step down to 65 feet on the western side, would be more compatible with the existing structures to the east and north, and with the building planned for Lot 31 across Woodmont Avenue. Applicant's efforts were to vary the view of each side of the proposed buildings to be compatible with surroundings, and yet relate to each other.

Technical Staff and the Hearing Examiner found the proposed development to be compatible with the surrounding development. Staff noted that the Lot 31 building will be limited to three to five stories

(65 feet maximum), and that the town-house style multi-family units are located along the southern property line adjacent to the existing single-family dwelling units. In addition, a setback of 50 feet will be provided, and a large green space extending into the project will be provided adjacent to the existing development. These features all help to make the development compatible with the nearby residences.

As to the Lot 31A building, Technical Staff noted that its planned 90 foot height would be compatible with the adjacent high-rise residential building (the Seasons), which is approximately 143 feet in height. Moreover, the step down from 90 feet for the east side of the proposed Lot 31A building to 65 feet on the Woodmont Avenue side of the building will make it compatible with the Lot 31 building to be located west of Woodmont Avenue. The increased setbacks for the Lot 31A building from its neighbor to the east, as specified in the Binding Elements, will also increase compatibility by allowing more space between the two buildings and avoiding a "canyon effect."

For all these reasons, the District Council finds Applicant's Development Plan to be compatible with adjacent development.

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

The third required finding is "[t]hat the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate, and efficient." As discussed above, the balance between vehicular and pedestrian circulation systems for this project is a work in progress which will not be completed until the final alignment and configuration of Woodmont Avenue is decided upon at subdivision and site plan. Reaching the correct balance is critical to the public interest, but it is not something that can be decided at the rezoning stage. Transportation Planning Staff made it clear in its report (Exhibit 43, Attachment 1, pp. 4-6) that it continues to review the matter and the possibility of various traffic mitigation measures.

Applicant's transportation expert, Martin Wells, testified (Tr. 188-218) that the access points to the proposed project will, in fact, be safe, adequate and efficient. The proposed driveway entries to the garage

are located as far as practicable from the Woodmont-Bethesda intersection. With regard to safety of that intersection, Mr. Wells opined that the geometric changes that are proposed will make existing conditions safer by reducing the pedestrian crossing distances and by reducing the steep crossing angle at the Woodmont-Bethesda intersection to make it more like an ordinary intersection.

Mr. Wells also testified that the internal design of the garage is adequate and efficient, in that the single point of revenue control has an advantage for "way-finding" and directional signage. There will be adequate stacking and queuing capacity inside the garage, and the placement of the garage driveways, and the modifications to Woodmont Avenue at Leland Street and Miller Avenue, will minimize any adverse traffic impacts on the surrounding community.

Based on the entire record, the District Council finds that external access and internal circulation will be safe, adequate and efficient for both vehicular and pedestrian traffic.

§59-D-1.61(d): preventing erosion, preserving vegetation, forest conservation and water resources

No environmental issues were raised in this case. The site is not located in a Special Protection Area or Primary Management Area. It has no steep slopes or erodible soils, and there are no wetlands or streams on the site. One-half acre of afforestation will be needed to meet the requirements of the Forest Conservation Law. Technical Staff indicates that a combination of street trees in the public right-of-way and additional landscaping in the setback area from the existing neighborhood will meet the requirement.

An approved stormwater management plan is required at the time of the approval of the Preliminary Plan. Currently there are no storm water management facilities on either Lot 31 or 31A. Applicant proposes to provide a hydrodynamic facility along Woodmont Avenue, and within the first level of the garage there will be two storm filter facilities that will use a cartridge filtration system to clean the water and discharge it back into the receiving or existing storm drain lines.

Applicant is requesting a waiver of channel protection volume controls based on the fact that the project will actually reduce the amount of imperviousness. The existing site is approximately 95 to 100

percent impervious right now. Applicant plans to reduce that by about 30 percent, to a level of approximately 70 percent imperviousness. This reduction in imperviousness will reduce the flow off the property to less than exists today, and the water quality facilities will produce cleaner water runoff.

According to Applicant's engineer, sediment control takes care of itself on this type of project since a large hole is being created which will hold the sediment. There will also be some perimeter measures around the edge, to protect the rights-of-way and the Sacks subdivision. There will be very little grading because the builders will be creating a hole for the garage and developing up from the garage to the residential component.

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

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

The fifth required finding is "[t]hat any documents showing the ownership and method of assuring perpetual maintenance of any areas intended to be used for recreational or other common or quasi-public purposes are adequate and sufficient."

Applicant, Lot 31 Associates, is the developer selected by the County in a competitive solicitation for proposals to develop the subject property, which is owned by the County. The County entered into an agreement with Applicant to have Lot 31 Associates serve as the County's agent for purpose of applying for and obtaining zoning and development approvals. That agreement is in the record as Exhibit 4.

Applicant's commitment to perpetual maintenance of all recreational and other common or quasi-public areas is established by General Note 19 on the Development Plan (Exhibit 66(a)); by Applicant's Statement in Support of the Application (Exhibit 15, Part V, p. 17), by the testimony of Douglas Firstenberg (Tr. 105-106), a representative of Lot 31 Associates, and by the July 5, 2006 letter to the Hearing Examiner from Applicant's attorney (Exhibit 62(b)). General Note 19 provides that "Land intended for public use but to remain in private ownership will be maintained in perpetuity for public use

pursuant to agreement with the County." The Applicant's Statement, the Firstenberg testimony and the attorney's letter indicate that maintenance of the recreational and other common or quasi-public areas will be managed by a combination of the County, which is responsible for the public garage, rights-of-way and sidewalks, and the condominium entity which will be created as part of the overall land-and-building condominium structure. Condominium documents will specifically set forth perpetual maintenance requirements, and the County and the condominium entity may contract with the "Bethesda Urban Partnership" to physically conduct this maintenance.

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

The Public Interest

The applicant must show that the proposed reclassification is sufficiently in the public interest to justify its approval. The State Zoning Enabling Act applicable to Montgomery County requires that all zoning power must be exercised:

> *. . . with the purposes of guiding and accomplishing a coordinated, comprehensive, adjusted, and systematic development of the regional district, . . . and [for] the protection and promotion of the health, safety, morals, comfort, and welfare of the inhabitants of the regional district. [Regional District Act, Maryland-National Capital Park and Planning Commission Article (Art. 28), Md. Code Ann., § 7-110].*

When evaluating the public interest, the District Council normally considers master plan conformity, the recommendations of the Planning Board and Technical Staff, and any adverse impact on public facilities. As outlined above, Applicant's proposal is fully consistent with the recommendations and urban design guidelines specified for Lot 31, and though not consistent with the zoning and height recommendations for Lot 31A, those recommendations should not be dispositive in this case. The District

Council finds that the proposed development is consistent with the goals and objectives of the Bethesda CBD Sector Plan, and is thus in substantial compliance with the Sector Plan.

As already mentioned, the Hearing Examiner, the Planning Board and the Technical Staff all recommended approval of the proposed rezoning. The impact on public facilities was also discussed above. The evidence indicates that, in general, transportation, schools and water and sewer services would not be adversely affected by the proposed development. However, there is a caveat – vehicular traffic will likely be slowed at the crucial intersection of Bethesda and Woodmont Avenue because of the efforts to make it more pedestrian friendly, and it will clearly be slowed during two years of construction because Woodmont Avenue south of Bethesda Avenue will be closed to vehicular traffic.

These are very important public interest concerns, but they cannot be resolved as part of this rezoning application. The proper balance between pedestrian and vehicular traffic, will have to be resolved at subdivision and site plan. In any event, the record demonstrates that Technical Staff, the Planning Board and DPW&T are all acutely aware of the problem and will be working on it. We do know that the project will bring approximately 1138 new public parking spaces to an area that sorely needs them, and will provide additional retail space and affordable housing to the downtown Bethesda area, all of which is in the public interest.

There has been much public support for, and virtually no opposition to, this project, as reflected in input from public interest groups and government officials. The District Council concludes that the proposed development would be 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 TS-M 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 reclassification to the TS-

M Zone has been shown to be in the public interest. For these reasons and because approval of the instant zoning application 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, Maryland approves the following resolution:

Zoning Application No. G-850, requesting reclassification from the R-60 and CBD-1 Zones to the TS-M Zone of approximately 3.3 acres of County-owned land on the southwest and southeast quadrants of the intersection of Bethesda and Woodmont Avenues (Lots 138, 139 and parts of Lots 18 – 24, Block B of the Miller's Addition Subdivision) in Bethesda, in the 7th Election District, be ***approved*** in the amount requested and subject to the specifications and requirements of the final Development Plan, Exhibit 66(a), provided that the Applicant submits to the Hearing Examiner for certification a reproducible original and three copies of the Development Plan approved by the District Council within 10 days of approval, in accordance with §59-D-1.64 of the Zoning Ordinance. The reproducible original and copies of the Development Plan should be corrected by removing any reference to the incorrect Tax Account No. 07-00430361. The correct Tax Account No. 07-00430190 should remain on the Development Plan.

This is a correct copy of Council action.

Linda M. Lauer

Linda M. Lauer, Clerk of the Council

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

February 28, 2008

Parties of Record
Preliminary Plan No. 120070690, MCPB No. 07-184 and
Site Plan No. 820070180, MCPB No. 07-198
Lot 31 and Lot 31A Bethesda

RE: Corrected Resolutions

To whom it may concern:

Attached please find corrected copies of the Planning Board resolutions for the above-referenced plan. The highlighted corrections were made to clarify certain requirements and correct typographical errors. These corrections do not affect the plan validity period, or alter the appeal period established by the original resolution.

Catherine Conlon
Subdivision Section Supervisor

DEC 20 2007

MCPB No. 07-198
Site Plan No. 820070180
Lot 31/Lot 31A Bethesda
Date of Hearing: September 20, 2007

MONTGOMERY COUNTY PLANNING BOARD

CORRECTED RESOLUTION

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

WHEREAS, on March 27, 2007, Lot 31 Associates, LLC ("Applicant") filed an application for approval of a site plan for a mixed-use development with a maximum density of 2.59 floor area ratio including a maximum of 250 multi-family dwelling units, of which a minimum of 12.5% of the units will be moderately priced dwelling units and up to 35 of the units will be workforce housing units, and a maximum of 40,000 square feet of retail space ("Site Plan" or "Plan") on 3.30 acres of TS-M zoned-land, located on the southeast and southwest quadrants of the intersection of Woodmont Avenue and Bethesda Avenue ("Property" or "Subject Property"); and

WHEREAS, Applicant's Site Plan application was designated Site Plan No. 820070180, Lot 31/Lot 31A Bethesda, (the "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated September 7, 2007, 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 staffs of other governmental agencies, on September 20, 2007, the Planning Board held a public hearing on the Application (the "Hearing"); and

WHEREAS, on September 20, 2007, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

Approved as to
Legal Sufficiency: 8Feb 08
M-NCPPC Legal Department

WHEREAS, on September 20, 2007 the Planning Board approved the Application subject to conditions on the motion of Commissioner Bryant, seconded by Commissioner Robinson, with a vote of 5-0, Commissioners Bryant, Cryor, Hanson, Lynch, and Robinson voting in favor.

NOW, THEREFORE, BE IT RESOLVED that, pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Montgomery County Planning Board APPROVES Site Plan No. 820070180 for a mixed-use development with a maximum density of 2.59 floor area ratio including a maximum of 250 multi-family dwelling units, of which a minimum of 12.5% of the units will be moderately priced dwelling units and up to 35 of the units will be workforce housing units, and a maximum of 40,000 square feet of retail space ("Site Plan" or "Plan") on 3.30 gross acres in the TS-M Zone, subject to the following conditions:

1. Development Plan Conformance
   The proposed development must comply with all of the non-illustrative elements of the Binding Elements outlined in the Opinion for Zoning Application Number G-850, dated October 10, 2006.

2. Preliminary Plan Conformance
   The proposed development must comply with the conditions of approval for Preliminary Plan 120070690.

3. Art Review
   The Applicant will submit designs of the bicycle drop-off shelter, public artworks, and related landscaping, lighting, and site amenities to the Art Review Panel for review prior to approval of the Certified Site Plan. Minor modifications to site plan elements involving the public art may be incorporated into the Certified Site Plan.

4. Lighting
   Deflectors must be installed on all fixtures along the eastern property line between the subject property and the adjacent property that cause potential glare or excess illumination on said adjacent property.

5. Maintenance Responsibility
   The Applicant is responsible for maintaining all on-site public use space and all on-site public recreation facilities and amenities until the Condominium Association assumes responsibility or an alternative arrangement is reached with the Bethesda Urban Partnership.

6. Environmental
   a. The proposed development must comply with the conditions of the final Forest Conservation Plan. The Applicant must satisfy all conditions prior to recording of plat(s). The Final Forest Conservation Plan must be revised to reflect the requirements found in Section 109.B of the Forest Conservation Regulations (COMCOR 18-01AM). This includes:
      i. A method of meeting this plan's planting requirements.
      ii. If off-site reforestation/afforestation is chosen, a reforestation/afforestation plan with a full planting, location, and maintenance plan must be included as part of the submission.
      iii. All financial security must be submitted to M-NCPPC prior to record plat submission.
   b. Compliance with MNCPPC noise compatibility guidelines:
      i. At time of building permit, an acoustical engineer must certify through building shell analysis that interior noise levels will not exceed 45 DBA L_{DN}.
      ii. The builder must construct the buildings in accord with these acoustical recommendations, with any changes affecting acoustical performance approved by the acoustical engineer, with copy to MNCPPC staff.
      iii. The certification and builder acceptance letter must be provided to MNCPPC Environmental Planning staff before building permits are issued.

7. Stormwater Management
   The Applicant must comply with the conditions of approval of the MCDPS stormwater management approval dated October 13, 2006.

8. Maintenance and Liability Agreement
   A Maintenance and Liability Agreement must be recorded for all private seating areas, canopies, and other private encumbrances and/or uses within future public rights-of-way at Certified Site Plan.

9. MPDU/Workforce Housing
   The Applicant must finalize an agreement pertaining to the construction and staging of MPDUs and Workforce Housing Units from DHCA prior to issuance of any building permits.

10. Development Program
    The Applicant must construct the proposed development in accordance with the Development Program. A Development Program will be reviewed and approved by M-NCPPC staff prior to approval of a Certified Site Plan. The Development Program will include a phasing schedule for the following items:

a. Streetscapes and landscaping associated with each pedestrian area will be completed as construction is completed, but no later than the next growing season.
b. On-site lighting.
c. Pedestrian seating areas associated with each area will be completed as construction is completed.
d. Capital Crescent Trail renovation to be completed prior to issuance of use-and-occupancy permits.
e. Artwork at the bicycle drop-off and public garage entrances.
f. Phasing of dedications, easements, site amenities, trip mitigation or other features.

11. Certified Site Plan

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

a. Development program, inspection schedule, and Site Plan Resolution.
b. Revised site plan data table, recreation calculations, and photometric data.
c. Trail improvement construction and amenity details.
d. Art program elements.
e. Coordination of landscape plan along eastern property line with adjacent property owner.
f. Change parenthetical language on Site Plan referring to Binding Element #19 to read, "The design of the physical channelization subject to DPS/DPWT development approval."

BE IT FURTHER RESOLVED that all site development elements as shown on Lot 31/31A drawings stamped by the M-NCPPC on August 3, 2007, 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, which the Planning Board hereby adopts and incorporates by reference (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.*

On October 10, 2006 the County Council for Montgomery County, Maryland sitting as the District Council for that Portion of the Maryland

Washington Regional District in Montgomery County, approved by an 9-0 vote the Resolution # 15-1632 for Amendment to the Zoning Ordinance for reclassification of the 3.3 acres of County-owned land in downtown Bethesda from the R-60 and CBD-1 Zones to the TS-M (Transit Station-Mixed). The District Council concurrently approved the Development Plan, including several "binding elements" to the Development Plan proffered by the Applicant. The Site Plan addresses and conforms to the Binding Elements as noted below.

1. *Maximum FAR (floor area ratio) of 2.59 as reflected on the Development Plan.* The maximum FAR of 2.59 (372,500 FAR square feet) is not exceeded in the Site Plan submission.

2. *Maximum of 250 dwelling units (final number of units and mix to be determined at Site Plan.* The Applicant proposes no more than 250 dwelling units, with the actual total number and unit types to be determined at the time of Certified Site Plan to allow Applicant to be responsive to market conditions.

3. *Maximum of 342 private parking spaces (total number of parking spaces based on unit mix to be determined at Site Plan).* The Applicant is within the maximum 342 private parking spaces based on its current proposed unit count. Parking will be definitively identified within this limit at the time of Certified Site Plan, based upon the actual unit number and mix and market conditions.

4. *Building setback from south property line, east of realigned Woodmont Avenue, to be 5 feet.* The setback from south property line is 50 feet.

5. *Building setback from east property line, **~~west~~** **east** of realigned Woodmont Avenue, shall be 5 feet for the entire building line. Beginning at and above the second floor the building shall be setback from the east property line as shown on the plan entitled "Building Setback Plan at and Above Second Floor Adjacent to Seasons Building" entered into the public hearing record for this zoning application as Exhibit 56 and which plan is also shown on the face of the development plan. [Exhibit 56 shows that, beginning on the second floor and above, the setback expands on the eastern side (i.e. adjacent to the Seasons building) to 10 feet for a distance of 27 feet along the eastern property line and then to 15 feet for the remainder of the eastern property line.* The Site Plan conforms to the setbacks noted above.

6. *The mechanical penthouse on the rooftop of the building located **~~west~~** **east** of Woodmont Avenue will: (1) be setback 40 feet from the shared property line with the adjacent Seasons Apartments to the east ("Seasons"); (2) not have any primary vertical components of any cooling towers located closer than 75*

feet from the shared property line with the Seasons (by example, pipes along the rooftop that are ancillary to a cooling tower would be allowed); and (3) have a maximum height of 14 feet above the roofline. The Site Plan conforms to this binding element.

7. *Measured from the measuring points shown on the Development Plan (identified on development plan as elevation 334.9 feet above sea level – the "Measuring Points"), maximum building heights (not including mechanical penthouse) are as follows:*
   a. *East of Woodmont Avenue: Building height not to exceed 90 feet as measured from the Measuring Points (elevation 424.9 feet above sea level), with step down to building height not to exceed 65 feet as measured from the Measuring Points (elevation 399.9 above sea level) at intersection of Bethesda Avenue and Woodmont Avenue.*
   b. *West of Woodmont Avenue: Building height not to exceed 54 feet as measured from the Measuring Points (elevation 388 feet above sea level) for building west of Woodmont Avenue, with maximum building height of 14 feet as measured from the Measuring Points (elevation 348 above sea level) between 50 and 60 feet setback along southern property line (for town home style condominium units adjacent to single family Sack's neighborhood to south).*

   The Measuring Points and building elevations conform to binding element #7.

8. *Provision on-site of 12.5% MPDU's per County law and provision of up to 35 workforce housing units per DHCA Agreement, to be finally reflected at Site Plan.* Per DHCA Agreement signed December 4, 2006 the Applicant has provided up to 35 work force housing units and 12.5% MPDU's. The Architectural plans included with this submission graphically (but illustratively) locate the workforce housing and MPDU units. Working with DHCA, the final location, demising walls and sizing and type of the units and the details (including number of MPDU's at 12.5% of the finally determined unit count) will be reflected on the Certified Site Plan.

9. *Minimum 35% open space (active and passive recreational space/public use space), with final area to be determined at Site Plan.* Per the attached Site Plan submission the Applicant has achieved over 35% active and passive/public space. The Applicant has provided both active and passive recreational and public use space both on and off-site. The Applicant has provided an active front plaza on both the west and east buildings at the corner of Woodmont and Bethesda Avenues. The public and private active/passive areas are planned to have restaurant/café seating. The area also has two seat walls and metal benches for seating within both the private and public designated space of the plazas. The Applicant also proposes

improvements to the Capital Crescent Trail adjacent to the Property, both for bicyclists and pedestrians. A secondary pedestrian path will be installed for pedestrians and those using the Elevators from the public parking garage. Some retail activity may be installed along the pedestrian portion of the sidewalk. Bicycle racks are also being proposed at the northwest corner of the Trail, immediately south of Bethesda Avenue trailhead for the safe "parking" of bicycles. Along the southern edge of the west building the Applicant proposes a path extension from the bicycle drop off to the Capital Crescent Trail that will be inviting and pleasant for visitors and residents of the Property and neighborhood. The large Courtyard Plaza allows residents, visitors and the public to enjoy a pleasant south-facing courtyard filled with a water feature and tables and chairs. Additionally, the Applicant is constructing curb bump-outs along the southeast, southwest and northeast curbs to "neck down" the intersection of Woodmont and Bethesda Avenues. Moving the corners closer to each other will significantly reduce the pedestrian crossing distance of this critical intersection.

10. *Developer to construct realignment of Woodmont Avenue and improvements to Woodmont Avenue/Bethesda Avenue intersection per the Development Plan and future DPWT approvals, with final design and operation of the intersection for pedestrians, bicyclists and vehicles to be determined at Site Plan.* The plan has the proposed realignment of Woodmont Avenue. Woodmont Avenue will be an 80' right of way with both street and sidewalk area. The Applicant has indicated parallel parking on Woodmont, and proposes hour restrictions for parking after 9:30 am weekdays and Saturdays and for only 15 minute parking in front of the residential entrances on both the west and east side of Woodmont Avenue (all subject to DPWT approvals). Per the Site Plan, the Applicant will "bump out" the sidewalks at the intersection of Bethesda Avenue and Woodmont Avenue to increase pedestrian safety. The County has already performed the improvements outlined in the plan for the northwest corner. The Applicant will complete the increase in sidewalk area at the northeast, southwest and southeast corners of the intersection. The Applicant will also stripe the crosswalks (subject to DPWT approvals). The Mandatory Referral submission established the location of the garage entrances that addresses both pedestrian and automobile safety. The Capital Crescent Trail has improvements as noted previously to provide safety to both pedestrian and bicycle users of the Trail. The Applicant is also proposing to extend the median along Woodmont Avenue south of the Property. This extension will prohibit a left turn onto Leland Avenue from northbound Woodmont, a significant safety improvement to the residents living in the Sack's neighborhood.

11. *Loading docks serving buildings shall be enclosed within building area.* The Site Plan provides the locations of the loading docks. Both loading docks shall have enclosed loading areas.

12. *All residential units will be multi-family condominium units.* The final unit mix will be determined at the time of Certified Site Plan. The structure of the residential portion of the project will be condominium.

13. *Dwelling units along the southern building edge of the building west of realigned Woodmont Avenue shall be town home-style condominium units.* The elevation of the west building units facing the south incorporates a town home condominium style. Many of the units along the southern exposure have entrances to units from the path.

14. *The underground public garage shall exhaust through the roof of the on-site buildings west of Woodmont Avenue (and away from the adjacent residential uses), this also being known as the existing Lot 31 property, and there shall be no exhaust from the underground public garage through any buildings (through the roof or otherwise) east of Woodmont Avenue, this also being known as the existing Lot 31A property.* The enclosed roof plans indicate that the location of the public garage exhaust is through the roof of the west building.

15. *A bicycle and pedestrian connection from Woodmont Avenue to the Capital Crescent Trail shall be provided along the southern property line within the 50-foot setback area, and the final design and operations of the bike drop off area adjacent to Woodmont Avenue to be finalized with DPWT and M-NCPPC at Site Plan.* The Site Plan illustrates the proposed bike drop off area and the sidewalk connection between the drop off and the Capital Crescent Trail.

16. *At time of Site Plan review, Applicant to provide hardscape/landscape in setback area along eastern property line. With the cooperation and authorization of the adjacent property owner to the east, coordinated hardscape/landscape amenities within the setback area located on the adjacent property to the east will be included as part of the amenity package for the redevelopment of Lot 31/Lot 31A by the Applicant.* The Certified Site Plan will include the proposed hardscape/landscape agreed upon by the adjacent property owner and Lot 31 Associates. The setback area will have small planting strips along the western side of the southern edge and at the northwest edge. The remainder of the setback area will be hardscape with the Bethesda brick pavers to provide a pedestrian path. There is also lighting proposed for the area for security of the path.

17. *Detailed information regarding the ultimate location, operation and alignment of Woodmont Avenue between Bethesda Avenue and Leland Street shall be provided for DPWT and M-NCPPC review and approval at time of preliminary plan and Site Plan. New right-of-way for realigned Woodmont Avenue shall be established with DPWT at the time of Preliminary Plan and reflected on the record plat.* The Site Plan provides the proposed location, operation and alignment of Woodmont Avenue between Bethesda Avenue and Leland Street.

18. *LATR study for the subject project to be provided by Applicant at time of preliminary plan reflecting approved public garage access points. The Applicant will further analyze capacity, design and operations of the local road network.* The Applicant included with the Preliminary Plan the updated LATR study by Wells & Associates with scoping as defined by M-NCPPC staff. In addition to the APFO analysis utilizing the typical LATR study for the private development component of the Project, additional safety and operational information studies relating to the public garage are being provided for the benefit of DPWT and M-NCPPC.

19. *The Applicant will request DPWT and DPS approval of a right-in/right-out limitation on ingress and egress to the public garage access along Bethesda Avenue.* The Site Plan indicates a right-in and right-out only limitation on ingress and egress to the parking garage on Bethesda Avenue.

20. *Documentation of agreement between Applicant and DPWT allowing for private access beneath Woodmont Avenue to be provided at time of Site Plan, including documentation of future ownership of the public and private property.* DPWT, M-NCPPC and the Applicant have agreed in concept that the site will be two lots separated by the newly dedicated right-of-way of Woodmont Avenue, with the garage beneath Woodmont Avenue reserved and exempted from the public dedication.

2. *The Site Plan meets all of the requirements of the zone in which it is located, and where applicable conforms to an urban renewal plan approved under Chapter 56.* As amended in accordance with recommended conditions, the Site Plan meets all of the requirements of the TS-M zone. The following Data Table sets forth the development standards approved by the Planning Board and binding on the Applicant.

PROJECT DATA TABLE FOR TS-M ZONE

Development Standard	Permitted/ Required	Approved as a Binding Element	Approved by the Planning Board and Binding on the Applicant
Minimum Area (square feet)	40,000	143,819	143,819
Floor Area Ration (FAR)	3.0	2.59[1]	2.59
Dwelling Units	n/a	250	250
MPDU's	12.5%	12.5% (27 units)[2]	12.5% (27 units)
Workforce Housing	n/a	up to 35 units	up to 35 units
Building Height (feet)	n/a	90/65 & 54/14[3]	90/65 & 54/14
Open Space (% of net lot area)			
Public Use	10	not specified	10% minimum
Recreational Space	25	not specified	25% minimum
Total Open Space	35	35	48.3% minimum[4]
Building Setbacks (feet)			
South Property Line	n/a	50	50
East Property Line	n/a	5/10/15/40/75[5]	5/10/15/40/75
West Property Line	n/a	not specified	0
North Property Line	n/a	not specified	0
Parking			
Public Spaces	n/a	1,150[6]	1,150
Private Spaces (max)	none[7]	342	342
Total (max)	n/a	1,492	1,492

[1] For purposes of FAR calculation, parking, parking aisles and loading areas are not included.
[2] MPDUs are calculated on the basis of market rate units – workforce housing units have been subtracted: (250-35) x 12.5% = 27.
[3] See Binding Element #7 of the Development Plan.
[4] **Total Open Space includes approved off-site Public Amenity Space in addition to on-site Public Use Space and Recreational Space.**
[5] 5 feet minimum, 10 feet/15 feet at and above the second floor as shown on the Building Setback Plan, 40 feet to the mechanical penthouse, and 75 feet to the cooling towers. See the development plan setback exhibit for exact layout.
[6] County will determine final count and mix.
[7] The proposed development is within the Bethesda Parking District and is not required to provide any parking on site.

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

a. Buildings and Structures

The buildings are located according to the binding elements of the Development Plan. In addition, they are massed and detailed to provide adequate, safe, and efficient pedestrian and vehicular access, visibility to public spaces, and various types of enclosures and pedestrian environments. They are designed such that they complement the existing context, while distinguishing themselves by their interesting concave frontage along Bethesda Avenue and their integral artworks and open spaces.

b. Open Spaces

The location of the open spaces are adequate, safe and efficient. The TS-M Zone requires both public use space and recreation space. The open spaces provided around the buildings provide a continuous street frontage that ties this project into the existing retail and residential context. The internal spaces and the enhancements of the adjacent trail will provide more than adequate space to encourage pedestrians and bicyclists to use the trails and sidewalks rather than their vehicles. The courtyards and plazas provide distinct and various areas for relaxation, people-watching, and gathering. These spaces are all sufficiently efficient and safe for the numerous pedestrians and bicyclists that frequent this part of Bethesda.

c. Landscaping and Lighting

The landscaping and lighting are adequate, safe, and efficient to provide for safe use of the site, access around the site, and visual interest and beauty for passers-by, shoppers, and residents. All of the requirements of the binding elements have been met regarding necessary landscaping, and the lighting conforms to the Sector Plan.

d. Recreation Facilities

The recreation facilities provided are adequate, safe, and efficient as the following table demonstrates. As indicated in the detailed list of proposed recreation facilities, a significant portion of the public use space and recreation space required by the TS-M Zone contributes to the on-site supply of recreation facilities.

Demand Points

		D1 Tots	D2 Children	D3 Teens	D4 Adults	D5 Seniors
Housing Type	Number of Units	0 to 4	5 to 11	12 to 17	18 to 64	65+
Hi-Rise (5 or more)	250	10.00	10.00	10.00	192.50	115.00
Total		10.00	10.00	10.00	192.50	115.00

On-Site Supply Values

		D1 Tots	D2 Children	D3 Teens	D4 Adults	D5 Seniors
Recreation Facility	Quantity Provided	0 to 4	5 to 11	12 to 17	18 to 64	65+
Picnic/Sitting	21	21.00	21.00	31.50	105.00	42.00
Bike System	1	0.50	1.00	1.50	28.88	11.50
Pedestrian System	1	1.00	2.00	2.00	86.63	51.75
Indoor Community Space	1	1.00	1.50	3.00	57.75	46.00
Indoor Exercise Room	1	1.00	1.00	3.00	57.75	46.00
Indoor Fitness Facility	1	0.00	1.00	1.00	38.50	17.25
Total		24.50	27.50	42.00	374.50	214.50

Off-Site Supply Values

		D1 Tots	D2 Children	D3 Teens	D4 Adults	D5 Seniors
Recreation Facility	Quantity Provided	0 to 4	5 to 11	12 to 17	18 to 64	65+
Bike System	1	0.50	1.00	1.50	28.88	11.50
Pedestrian System	1	1.00	2.00	2.00	86.63	51.75
	total:	1.50	3.00	3.50	115.50	63.25
	35%:	0.53	1.05	1.23	40.43	22.14
	35% of total:	13.19	14.81	22.62	201.65	115.50
	allowed off-site supply:	0.53	1.05	1.23	40.43	22.14

Adequacy of Recreation Facilities

	D1 Tots	D2 Children	D3 Teens	D4 Adults	D5 Seniors
	0 to 4	5 to 11	12 to 17	18 to 64	65+
Supply:	25.03	28.55	43.23	414.93	236.64
Demand:	10.00	10.00	10.00	192.50	115.00
% of Total Demand:	250.25	285.50	432.25	215.55	205.77
90% Demand:	9.00	9.00	9.00	173.25	103.50
Difference must be 0 or greater:	16.03	19.55	34.23	241.68	133.14

e. Pedestrian and Vehicular Circulation Systems

The proposed development is providing numerous pedestrian, bicycle, and vehicular improvements and new resources that are more than adequate, safe and efficient. First, is the realignment of Woodmont Avenue, which will provide much safer and more efficient vehicular circulation as well as better sight distances and shorter crosswalks for pedestrians. Second, are the Capital Crescent Trail improvements, including widening and more bicycle racks. Third, is the new pedestrian link between the trail and the new bicycle drop-off on Woodmont Avenue. Fourth, is the bicycle drop-off, which allows bicyclists to pull off of Woodmont Avenue into a small turn-around that will allow them to remove their bikes from their vehicles, temporarily lock them up, and then find a parking space before they return to retrieve them. Last, all of the streets will be upgraded to the Sector Plan standards with respect to paving, street trees, and lighting fixtures.

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

The proposed structure is compatible with other uses in and around the subject site and with the adjacent development patterns and scale. The proposed use of retail and residential spaces complement the surrounding uses by providing a center of employment, entertainment, and housing within an existing retail and residential urban context.

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.*

As conditioned, the Final Forest Conservation Plan meets all applicable requirements of Chapter 22A and the environmental guidelines.

The Stormwater Management Concept has been approved and consists of on-site water quality control via green roofs, flow based "StormFilters", and a MCDPS approved hydrodynamic structure. Onsite recharge is not required since this is redevelopment. Channel protection volume is waived due to the lack of suitable outfalls (shallowness of existing storm drain systems).

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

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

DEC 20 2007 BE IT FURTHER RESOLVED, that the date of this Resolution is _____ (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

At its regular meeting, held on Thursday, February 21, 2008, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission ADOPTED the above Resolution, on motion of Commissioner Bryant, seconded by Commissioner Cryor, with Commissioners Hanson, Robinson, Bryant, and Cryor present and voting in favor. This Resolution constitutes the final decision of the Planning Board, and memorializes the Board's findings of fact and conclusions of law for Site Plan No. 820070180, Lot 31/Lot 31A Bethesda.

Royce Hanson, Chairman
Montgomery County Planning Board

AUG 9 2011

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

MCPB No. 11-57
Site Plan No. 82007018A
Project Name: Lot 31/31A – Bethesda
Hearing Date (Consent Agenda): July 21, 2011

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Division 59-D-3, the Montgomery County Planning Board ("Planning Board") is required to review amendments to approved site plans; and

WHEREAS, the subject site located on the southeast and southwest corners of the intersection of Bethesda Avenue and Woodmont Avenue is comprised of two public parking lots and includes the public right of way of Woodmont Avenue with Parking Lot 31 adjacent to an existing single family neighborhood to the south and the Capital Crescent Trail to the west ("Property"); and

WHEREAS on October 10, 2006 the County Council for Montgomery County, sitting as the District Council, approved the reclassification of land in the R-60 Zone and CBD -1 Zone to TS-M zoning for the Property; and.

WHEREAS on September 20, 2007, the Planning Board approved, subject to conditions, Site Plan 820070180 for a mixed use development with a maximum density of 2.59 floor area ratio including a maximum of 250 multi-family dwelling units, of which a minimum of 12.5% of the units will be moderately priced dwelling units and up to 35 of the units will be workforce housing units, and a maximum of 40,000 square feet of retail space for development of the Property; and.

WHEREAS, on May 9, 2011, in accordance with Section 59-D-3.7 of the Zoning Ordinance, Lot 31 Associates, LLC and Montgomery County, Maryland, filed a site plan amendment application that included some minor amendments to the approved forest conservation plan for the Property, together designated Site Plan No. 82007018A ("Amendment") for approval of the following modifications:

- Lot 31A building footprint adjustment at northwest building corner (adjacent to Bethesda Avenue/Woodmont Avenue); adjustments to seating area and elimination of plantings based on footprint adjustment resulting in reduced open space on this corner.

Approved as to
Legal Sufficiency: 7/6/11
M-NCPPC Legal Department

- Lot 31 rear courtyard plaza enlarged with layout revisions to landscape, water feature, and hardscape, with associated minor lighting adjustments.
- Lot 31A landscape and hardscape alterations along Woodmont Avenue and eastern property line.
- A slight increase in total open space provided.
- Minor detailing adjustments to seat wall along southern buffer on Lot 31.
- Minor alterations of final grade at various locations around the entire site.
- Extension of screen wall from Lot 31 southwest property line.

WHEREAS, following review and analysis of the Amendment by Planning Board staff ("Staff") and the staffs of other applicable governmental agencies, Staff issued a memorandum to the Planning Board dated July 11, 2011 setting forth its analysis and recommendation for approval of the Amendment ("Staff Report"); and

WHEREAS, on July 21, 2011, Staff presented the Amendment to the Planning Board as a consent item for its review and action (the "Hearing"); and

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Planning Board hereby adopts the Staff's recommendation and analysis set forth in the Staff Report and hereby APPROVES Site Plan No. 82007018A; and

BE IT FURTHER RESOLVED, that the development must comply with the conditions of approval for Site Plan 820070180 as enumerated in the Planning Board Resolution dated December 20, 2007 and Corrected Resolution dated February 28, 2008, except as modified herein; and

BE IT FURTHER RESOLVED, that upon consideration of the entire record, the Montgomery County Planning Board FINDS that the modifications to the Site Plan will not alter the overall character or impact of the development with respect to the original findings of approval, and that these modifications will not affect the compatibility of the development with respect to the surrounding neighborhood; and

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

BE IT FURTHER RESOLVED, that the date of this written resolution is AUG 19 2011 (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 written opinion, 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 Presley, seconded by Vice Chair Wells Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioner Presley present and voting in favor of the motion, with Commissioner Anderson abstaining, and Commissioner Dreyfuss absent, at its regular meeting held on Thursday, July 21, 2011, in Silver Spring, Maryland.

Françoise M. Carrier, Chair
Montgomery County Planning Board

LOT 31 ASSOCIATES, LLC
DOUGLAS FIRSTENBERG
4733 BETHESDA AVENUE, SUITE 800
BETHESDA, MD 20814

MONTGOMERY COUNTY, MARYLAND
STEPHEN NASH
101 MONROE STREET
ROCKVILLE, MD 20850

RODGERS CONSULTING, INC.
KIM MCCARY
19847 CENTURY BOULEVARD
SUITE 200
GERMANTOWN, MD 20874

SK & I ARCHITECTURAL DESIGN
SAMI KIRKDIL
7735 OLD GEORGETOWN ROAD
BETHESDA, MD 202814

LEE & ASSOCIATES
RHONDA DAHIKEMPER
638 EYE STREET, NW
WASHINGTON, DC 20001

LINOWES & BLOCHER, LLP
C. ROBERT DALRYMPLE
7200 WISCONSIN AVENUE
SUITE 800
BETHESDA, MD 20814

Mr. Richard Brush, Manager
MCDPS-Water Res. Plan Review
255 Rockville Pike, 2nd Fl
Rockville, MD 20850

Ms. Susan Scaly-Demby, Manager
MCDPS-Zoning
255 Rockville Pike, 2nd Fl
Rockville, MD 20850

Mr. Hadi Masouri
MCDP Building Construction
255 Rockville Pike, 2nd Fl
Rockville, MD 20850

Mr. Christopher Anderson, MPDU Mgr
DHCA County Office Bldg,
255 Rockville Pike
Rockville, MD 20850

Ms. Gail Lucas, Manager
MCDPS-Building Construction
255 Rockville Pike, 2nd Fl
Rockville, MD 20850

Lisa S. Schwartz
Senior Planning Specialist
Montgomery County Department of Housing
and Community Affairs
100 Maryland Ave., 4th Floor
Rockville, MD 20850

Mr. Greg Leck
100 Edison Park Dr, 4th Fl
Gaithersburg, MD 20878

Mr. Joseph Y. Cheung, Manager
MCDPS-Right of Way Permitting and
Plan Review
255 Rockville Pike, 2nd Fl
Rockville, MD 20850

Mr. Greg Nichols, Manager
MCDPS-Land Development
255 Rockville Pike, 2nd Fl
Rockville, MD 20850

Mr. Michael Reahl, Manager
MCDPS-Sediment/Stormwater
Inspection and Enforcement
255 Rockville Pike, 2nd Fl
Rockville, MD 20850

Mr. Ehsan Motazedi
MCDPS-Site Plan Enforcement Mgr.
255 Rockville Pike, 2nd Fl
Rockville, Md 20850

Mr. Jay Beatty, Manager
MCDPS-Well and Septic
255 Rockville Pike, 2nd Fl
Rockville, MD 20850

Mr. Leroy Anderson, Manager
MCDPS-Right of Way Development
Inspection and Enforcement
255 Rockville Pike, MD 20850

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

Memorandum

TO: Gwen Wright, Planning Director

VIA: Robert Kronenberg, Chief
Area 1 Division

FROM: Elza Hisel-McCoy, Assoc. AIA, LEED-AP, Master Planner/Supervisor
Area 1 Division

RE: Lot 31/31A
MINOR SITE PLAN AMENDMENT #82007018B

DATE: April 3, 2015

Section 59.7.7.1.B.3 of the Zoning Code addresses Amendments for Plans approved or pending before October 30, 2014. Section 7.7.1.B.3.a states that until October 30, 2039, an Applicant may apply to amend any previously approved application under the development standards and procedures of the property's zoning on October 29, 2014, subject to certain limitations.

Section 7.7.1.B.3.b of the Zoning Ordinance, however, allows Applicants to apply to amend a site plan approved before October 30, 2014, to take advantage of the parking requirements contained in Sections 6.2.3 and Section 6.2.4 of the Zoning Ordinance that went into effect on October 30, 2014.

Under Section 59.7.3.4.J.2, the Planning Director may approve in writing certain applications for an amendment to a Certified Site Plan. Such amendments, which are considered minor in nature and do not alter the intent and objectives of the plan, specifically include an amendment "to reduce the approved parking to satisfy Article 59-6."

Neither a Pre-Application meeting with the community/public/parties of record nor a Pre-Submittal meeting with the DARC Intake Section is required. However, submittal of the application to DARC is required. In addition, applicants must provide public notice under Division 7.5.

On March 4, 2015, Kim McCary ("Applicant") filed a site plan amendment application designated Site Plan No. 82007018B ("Amendment") for approval of the following modifications:

1. Modify public space;

2. Minor adjustment to the on-site bike path connection from the drop-off at Woodmont Avenue to the Capital Crescent Trail; and
3. Minor changes to streetscape.

A notice of the subject site plan amendment was sent to all required parties by the Applicant on March 9, 2015. The notice gave the interested parties 15 days to review and comment on the contents of the amended site plan. Staff received one e-mail inquiry that addressed issues outside the scope of the proposed amendment. After meeting with Staff to discuss the concerns, the commenter elected not request a public hearing.

The proposed amendment is consistent with the provisions of Section 59.7.3.4.J.2 of the Montgomery County Zoning Ordinance for Minor Plan Amendments. The amendment does not alter the intent, objectives, or requirements of the Planning Board in approving the site plan.

This Amendment shall remain valid as provided in Montgomery County Code § 59.7.3.4.H. The Applicant is responsible for submitting a certified site plan after approval by the Director for the specific modifications.

ACCEPTED & APPROVED BY:

Gwen Wright

Gwen Wright, Planning Director

4/6/15

Date Approved

Lot 31/31A Event Schedule

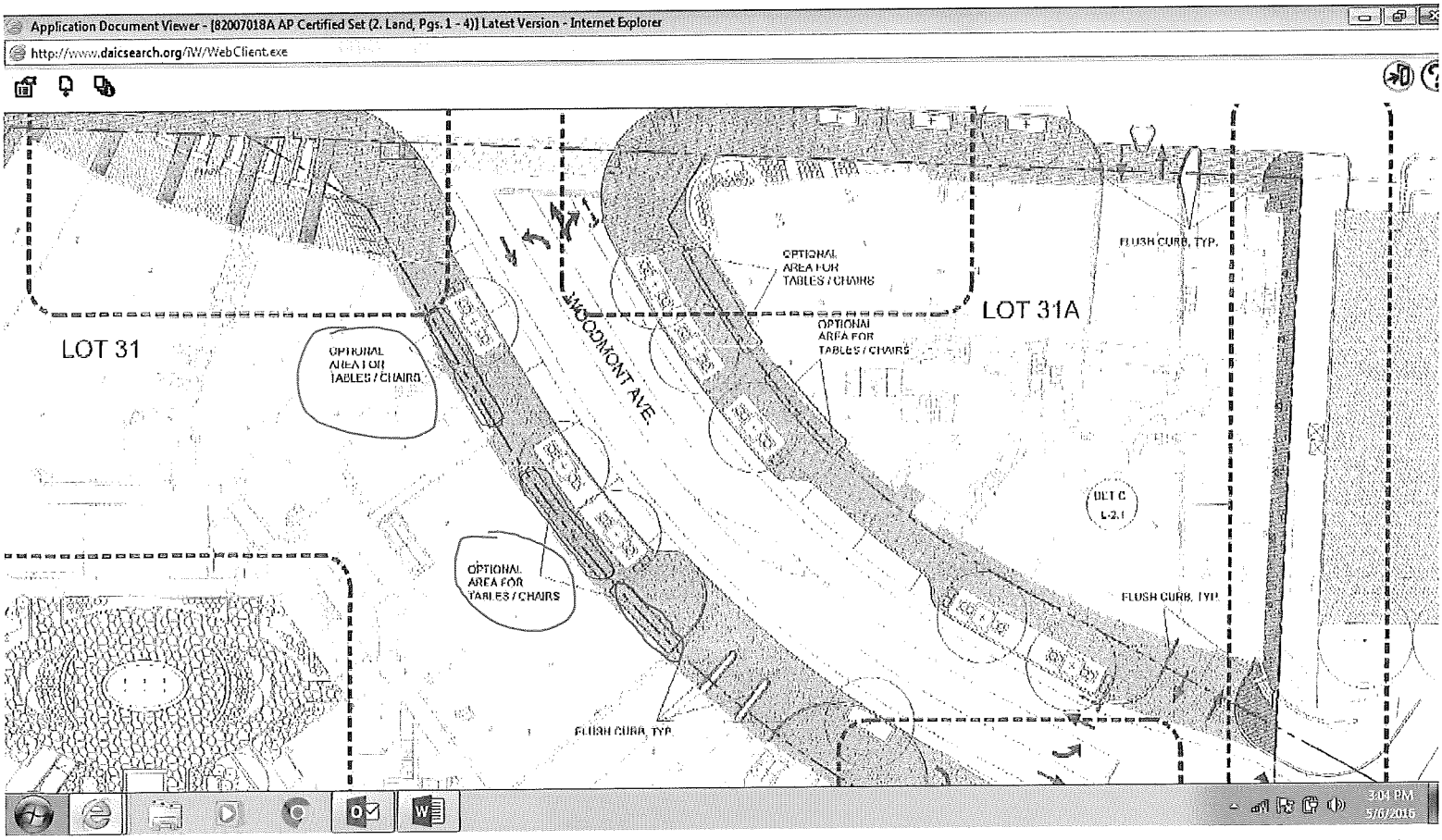
5-06-16	Inspected Lot 31/31A at Silver Diner tenant location on site via complaint sent to Greg Nichols. Inspection report generated.
5/09/16	NONC issued for hardscape details along Bethesda Ave and Woodmont Ave not matching certified site plan. This includes minor changes to landscaping and the change to the seating area for the Silver Diner.
6/28/16	On site meeting with M-NCPPC, Stonbridge Carras and DPS. 30-day extension to NONC granted
8/05/16	Re-inspection of the seating area of the Silver Diner. Seating area still in violation for site plan compliance.

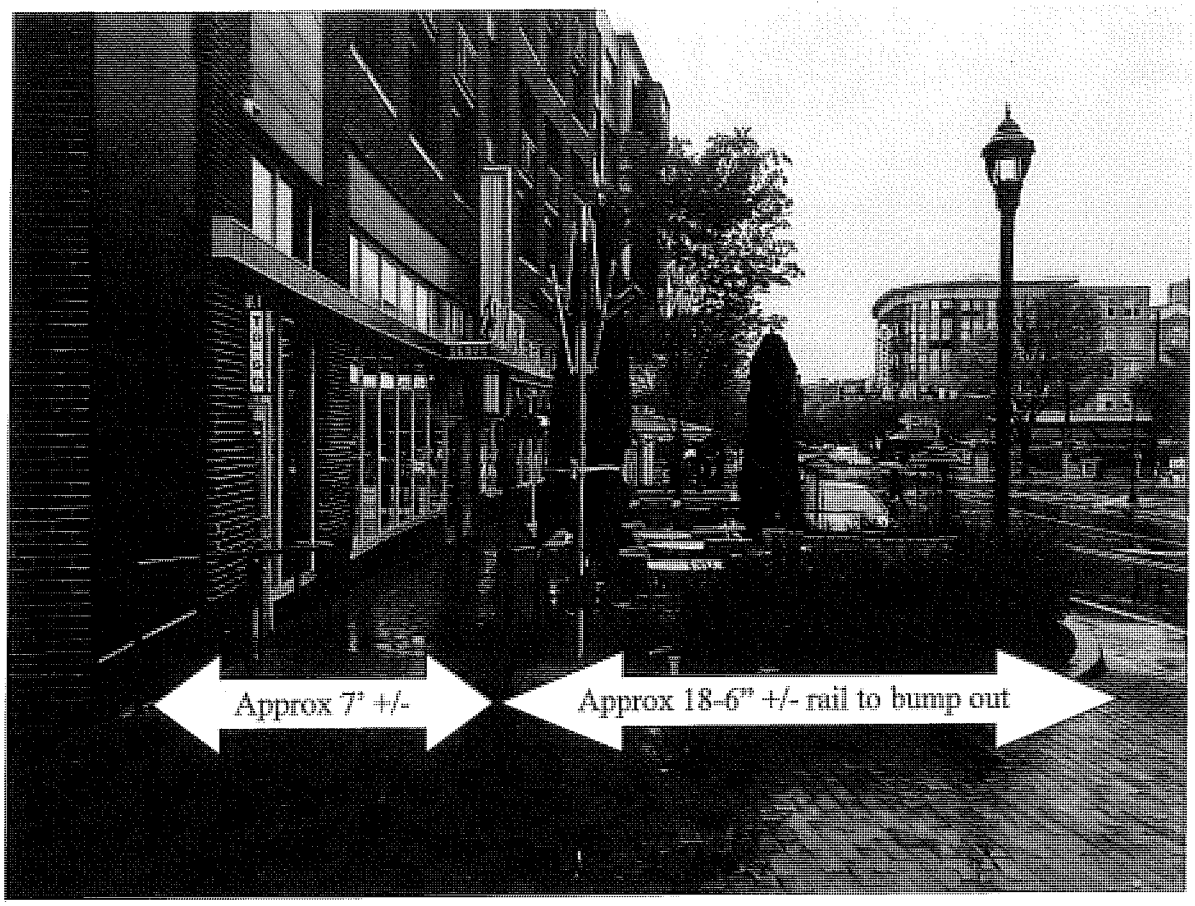
MONTGOMERY COUNTY, MARYLAND

Department of Permitting Services
255 Rockville Pike, 2nd Floor
Rockville, Maryland 20850
PHONE: 240-777-6260
FAX: 240-777-6263

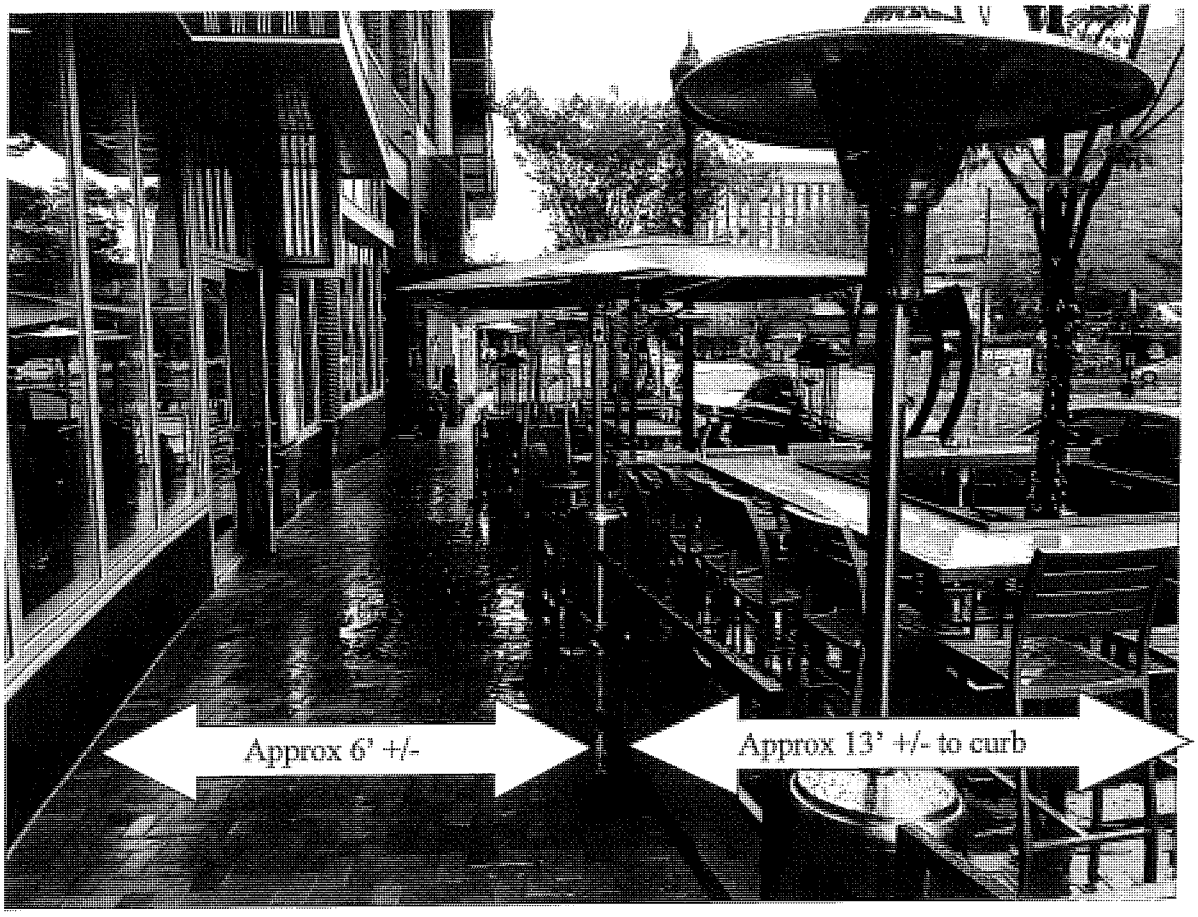
SITE PLAN AND ZONING ENFORCEMENT
SITE INSPECTION REPORT

SITE:	**Lot 31 / 31A**
DATE / TIME:	**5/06/16 1:00pm**
INSPECTOR:	**MAKOWSKI**
SITE PLAN NUMBER:	**82007018A**
COMMENT:	**Silver Restaurant sidewalk furniture impeding with Right-of-Way.**





*West side of Woodmont Ave looking north.
*Approx 7' b/w rail opening.
*Approx 18'6" b/w curb and furniture at curbing bump out.



Close up of seating area on west side of Woodmont Ave.

MONTGOMERY COUNTY DEPARTMENT OF PERMITTING SERVICES SITE PLAN ENFORCEMENT SECTION 255 Rockville Pike, 2nd Floor Rockville, MD 20850-4166	**NOTICE OF NON-COMPLIANCE**

FOR MONTGOMERY COUNTY, MARYLAND the undersigned issuer; being duly authorized, states that:

On **5/09/16**, the site plan recipient of this NOTICE: **Jane Mahaffie**, who represents the site plan applicant/defendant, **Lot 31 / Lot 31A Bethesda**.

is notified that Non-Compliant conditions exist under Section 8-26 (g) (Compliance with Zoning Regulations) and Section 8-50-41 (Enforcement) of the Montgomery County Code regarding the following:

M-NCPPC Certified Site Plan # **82007018A** **and Project Name:**

The Non-Compliance is described as: Existing Hard scape details, handrail configuration, planting beds and seating area for tenant along Bethesda Ave and Woodmont Ave does not match with currently released Certified Site Plan.

The following corrective Compliance action(s) must be performed in: ☒ **30-Days** ☐ **60-Days**

Accurately reflect all hardscape details changes to be captured in upcoming "B" Amendment.

Failure to comply with this Notice of Non-Compliance may result in the issuance of one or more $500.00 civil citations.

☐ **A "STOP WORK ORDER" is issued this date at the above referenced project: All construction activities on these premises must cease immediately. Only those activities required to correct the non-compliance may continue. Permission from the Site Plan Enforcement Inspector is required to resume construction.**

Issued by:	Matthew Makowski		5/09/16	240-401-9237
	Please Print Name	Signature	Date	Phone

Received by:	Jane Mahaffe and Chris Smith via e-mail on 5/09/16			
	Please Print Name	Signature	Date	Phone

Call **DPS SPZE Inspector Matthew Makowski** at 240-401-9237 to schedule a re-inspection.

☐ **Sent by Registered Mail/Return Receipt on**:

(Recipients signature acknowledges receipt of a copy of this notice of non-compliance only.) If you wish to contest/dispute this Notice of Non-Compliance, contact the DPS Site Plan Enforcement Manager Greg Nichols at 240-777-6278.

MONTGOMERY COUNTY, MARYLAND

Department of Permitting Services
255 Rockville Pike, 2nd Floor
Rockville, Maryland 20850
PHONE: 240-777-6260
FAX: 240-777-6263

SITE PLAN AND ZONING ENFORCEMENT
SITE INSPECTION REPORT

SITE:	Lot 31/31A
DATE / TIME:	8/05/16
INSPECTOR:	MAKOWSKI
SITE PLAN NUMBER:	82007018B
COMMENT:	Re-inspection for compliance of seating area placed in Right-Of-Way pedestrian walkway area. All furniture in same place from NONC issued on 5/09/16. 30-day extension granted on 6/28 during on-site meeting with M-NCPPC and Stonebridge Carras.

Citation No. SP002

Administrative Citation
Site Plan
The Maryland-National Capital Park and Planning Commission
vs.

Name: Jane (First) (Middle) Mahaffie (Last)
Company/Position: Principal/Stonebridge Carras
Address: 7200 Wisconsin Avenue, Suite 700, Bethesda, MD 20814
Phone Number: 301 931-9610 Fax Number: Email: mahaffie@stonebridgecarras.com

Location and Description of Violation:
Address/location of site: 7150 Woodmont Avenue, Bethesda. In front of the Silver restaurant

Pursuant of the M-NCPPC's authority under the Land Use Article of the Annotated Code of Maryland and Chapters 50 and 59 of the Montgomery County Code, it is formally charged that the above named defendant on September 16, 2016 (date) at the stated site location did commit the following:
As the property owner, allowed one or more tenants to violate certified site plan 82007018A, in particular General Note #26 on sheet C-4. This note says "Applicant may use the Woodmont Avenue right-of-way from the face of the curb to 10 feet face of the building for tenant restaurant (if any) outdoor seating". The outdoor seating encroaches into this area and in some places the distance is reduced to approximately 6 feet from the face of the building.

In violation of:
☐ Montgomery County Code, Chapter 22A
☒ Approval of certified site plan Plan No. 82007018A
☐ Montgomery County Code, Chapter 59
☐ Other:

Civil Fine and Compliance:
1. (a) ☒ You shall pay a fine of $ 1000.00 by September 30, 2016 and complete the remedial action listed below
(b) ☒ You shall pay a daily fine of $ 50.00 if the original fine has not been paid by September 30, 2016. The daily fine shall accrue (until the original fine is paid.
2. ☒ You shall pay a daily fine of $ 500.00 until the remedial action listed below is completed. This fine shall be paid within 15 days of completion of all remedial action.

Checks should be made payable to M-NCPPC and shall be paid during normal business hours at the information Counter of M-NCPPC's Montgomery Regional Office located at 8787 Georgia Avenue, 2nd Floor, Silver Spring, MD 20910, 301-495-4610. Failure to comply with this citation may result in an administrative enforcement hearing or issuance of additional citations including additional fines. You may also contest the administrative citation by requesting a hearing. If you request a hearing, you must notify the M-NCPPC Office of the General Counsel, in writing, at 8787 Georgia Avenue, Suite 205, Silver Spring, MD 20910, within 15 days of the citation. The Montgomery County Planning Board will thereafter notify you of the hearing date.

Remedial Action:

Remove all planters, chairs, tables, railings and partitions from the public right-of-way to maintain a 10 foot distance between the seating area and the face of the building as required by General Note #26 of certified site plan 82007018A. Remedial action must be completed by September 30, 2016.

If remedial action is not completed by September 30, 2016, you shall pay a daily fine of $ 500.00 until work is completed.

Administrative Civil Penalty:

If the Montgomery County Planning Board finds you in violation of Chapters 50 or 59, you may be subject to an Administrative Civil Penalty. An Administrative Civil Penalty may include an additional monetary fine in addition to corrective measures.

Acknowledgment:
I sign my name as a receipt of a copy of this Administrative Citation and not as an admission of guilt. I will comply with the requirements set forth in this Citation. I have a right to request a hearing for the offense(s) charged. If I do not exercise my right to request a hearing, I agree to entry by the court judgment on affidavit for the amount of the fine.

Jane Mahaffie — 9/16/2016
Defendant's Signature — Date

Affirmation:
I solemnly affirm under the penalties of perjury, and upon personal knowledge or based on the affidavit, that the contents of this Administrative Citation are true to the best of my knowledge, information and belief and that I am competent to testify on these matters.

Mark Pfefferle — September 16, 2016
Inspector's Signature — Date

Print Name: Mark Pfefferle Phone Number: 301 495-4730

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

October 3, 2016

Jane Mahaffie
Principal
Stonebridge Carras
7200 Wisconsin Avenue, Suite 700
Bethesda, MD 20814

RE: Administrative Site Plan Citation SP002
Site Plan 82007018A
Lot 31/31A

SENT VIA EMAIL TO: mahaffie@stonebridgecarras.com

Dear Ms. Mahaffie:

This letter is to amend Administrative Citation number SP002 issued to you on September 16, 2016 for site plan number 82007018A, Lot 31/31A. The Administrative Citation is amended as follows:

1. The civil fine is reduced from $1,000 to $500 and payable no later than October 3, 2016.
2. The corrective action compliance date is changed from September 30, 2016 to one of the following:
    a. If the Planning Board votes to approve site plan amendment 82007018C then the new setbacks must be complied with by the mailing date of the Planning Board resolution for site plan amendment 82007018C.
    b. If the Planning Board votes to deny site plan amendment 82007018C then the compliance date, for the corrective actions identified in Administrative Citation number SP002, is the mailing date of the Planning Board resolution denying site plan amendment 82007018C or November 28, 2016, whichever comes first.
    c. If the Planning Board does not vote on site plan amendment 82007018C by November 17, 2016 then the compliance date to comply with the requirements of site plan 82007018A is November 28, 2016.

If you have any questions, please contact me at 301 495-4730 or mark.pfefferle@montgomeryplanning.org.

Sincerely,

Mark Pfefferle
Chief, DARC

Cc: Elza-Hisel McCoy
Robert Dalrymple
Mark Russel

DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett
County Executive

Diane R. Schwartz Jones
Director

October 24, 2016

Gwen Wright, Director
Montgomery County Planning Department
MNCPPC
8787 Georgia Avenue
Silver Spring, MD 20910

Via electronic and first class mail

Re: Lot 31 outdoor café seating for the Silver Restaurant/Site Plan#82007018C

Dear Ms. Wright:

This letter follows up on site plan and right-of-way enforcement actions taken relative to the outdoor café seating for the Silver Restaurant and the ensuing Lot 31 Associates, LLC application to amend its site plan to address the enforcement actions. In response to these actions, the Department of Permitting Services (DPS) has received a request to approve the attached outdoor café seating plan. The attached plan is consistent with right-of-way standards and DPS is prepared to approve the plan provided that the minimum 6 feet wide sidewalk in the public right-of-way (the "Free and Clear Area") is maintained free and clear of obstructions, no food or drink is served in or from the public sidewalk Free and Clear Area, and the Planning Board approves a conforming site plan amendment. Further, no seating is to be added without the express approval of DPS and subject to any required site plan amendment. Please let me know if you have any questions.

Sincerely,

Diane R. Schwartz Jones
Director

attachment

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

CORE
1010 wisconsin ave nw, suite 405
washington, dc 20007
t 202.466.6116 f 202.466.6235
w coredc.com e gen@coredc.com

Silver - Bethesda **P.332**

Silver Diner

Seating Plan

Project Number 12035.00
Printed 10/14/16
© core group, pc 2014

Hisel-McCoy, Elza

From: Lilian <tiggerlil@gmail.com>
Sent: Wednesday, May 25, 2016 12:15 PM
To: Contreras, Christina
Cc: Nichols, James; Hisel-McCoy, Elza; atiq.panjshiri; Kronenberg, Robert; Hartman, Ken; management@crescentplaza.net; CM Berliner; County Council; Director DOT; Liang, Kyle; Bilgrami, Khursheed
Subject: Silver and Developers not meeting their obligations; County Council not advocating for constituents

You have had all winter and most of spring to bring Silver into compliance with the site plan. Whether you want to call it a ROW issue or not, they are still in violation of the site plan which specifies the 10 feet right of way. They continue to use an extra row of tables that infringe on the right of way. I can assure you that everyone who lives in the vicinity are upset about this and knowing that I have been pursuing this issue with you, ask me when anything will be done. The key word here is "anything" because the residents of downtown Bethesda feel we have already been sold us out to the developers. And the developers continue to take more than what was approved. How difficult is it to have Silver remove the row of seating nearest the building?

While I am airing our complaints, I may as well air another one -- not enough dog parks. The downtown Bethesda plan does not include any dog parks even though it increases population density and almost all the residential buildings are or will be pet friendly. So why are the developers not required to pay for or provide a park for dogs? I have written to MNCPPC about dog parks, especially at Norwood and Willow, and have been told it costs $250,000 to put one in. So why not have the developers pay for it since they are the ones contributing to the dog population?

In both cases, the developers are getting what they want and making money hand over fist while the residents are paying the price. The County Council just approved a property tax increase which will impact individual homeowners more than developers who will just pass it on to their tenants. When is the County Council going to make the developers pay for the problems they are causing?

I am on the board of our condo and all our owners feel disenfranchised and ignored. We are bombarded with numerous complaints at every board meeting. Access to our street and garage has been curtailed without consent which has added burden to our private driveway which people use for U turns. Traffic and parking violations go unchecked regardless of how many times we report it and ask for regular patrols. Traffic signs removed by construction are tossed aside and not replaced, even when DOT is informed of the exact location of the discarded sign. Our property prices have dropped because of all these things and the constant construction. And yet our property taxes will be increased? How much do you expect us to bear? We are all at our limits and some attention to the smaller matters such as Silver site plan, access to Miller Ave, and no U turns using our private driveway, will help relieve some of the stress.

On Thu, May 5, 2016 at 8:35 PM, Lilian <tiggerlil@gmail.com> wrote:

Silver is still not complying with 10 feet pedestrian right-of-way. The attached photos were taken today. I include one with people to give you a perspective that there is not 10 feet between the wall and railing. The outer row of seating should not be there. The monstrous table around the tree is at the 10 feet limit and there should be no seating or additional tables past it.

It is very frustrating and disappointing that the county does not enforce its own planning regulations. And businesses and developers are allowed to do as they please with no consequences. It is bad enough that the county council allows excessive development against the objections of residents, but allowing the developers to further violate resident rights is unconscionable.

On Friday, March 11, 2016, Lilian <tiggerlil@gmail.com> wrote:

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Sent from my iPhone

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> Christine,
> Bethesda Row just announced the opening of outdoor seating. I have not yet checked the clearance in front of Silver but I hope they are following the site plan. I will go there within the next couple of days and send you photos if they are not adhering to the 10 feet right of way.
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> > Ms. Burch –
> >
> > I apologize for using the abbreviation ROW which stands for Right of Way. My staff is handling the issue with regards to the Outdoor Café. You are in fact being heard. As noted, we(the DPS Land Development Division specifically the Public Right of Way Inspection section) are currently working with the permittee to resolve all issues as it relates to the Silver. We (the Public Right of Way Inspection section) work together daily with the DPS Zoning and Site Plan Enforcement Division to ensure all development work is appropriate.

Again, as noted, this issue is currently still being handled as it has not been forgotten nor overlooked.

Thank you again –

Christina

Christina Tadle Contreras, P.E., Manager

Sediment Control/Stormwater Management and Right of Way Inspections

Montgomery County Department of Permitting Services

Division of Land Development

255 Rockville Pike, 2nd Floor

Rockville, MD 20850

240-777-6307

240-777-6339 (fax)

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http://permittingservices.montgomerycountymd.gov/DPS/eServices/AbouteServices.aspx

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From: Lilian [mailto:tiggerlil@gmail.com]
Sent: Monday, December 21, 2015 4:28 PM
To: Contreras, Christina <Christina.Contreras@montgomerycountymd.gov>
Cc: Nichols, James <James.Nichols@montgomerycountymd.gov>; Hisel-McCoy, Elza <elza.hisel-mccoy@montgomeryplanning.org>; Panjshiri, Atiq <Atiq.Panjshiri@montgomerycountymd.gov>; Kronenberg, Robert <robert.kronenberg@montgomeryplanning.org>; Hartman, Ken <Ken.Hartman@montgomerycountymd.gov>; management@crescentplaza.net
Subject: Re: Right of way in front of Silver is in violation of site plan

Who is or are ROW? How do we contact them so that we can be heard?

Lilian

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> Ms. Burch –
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> This is in fact a ROW issue and being that ROW has the lead with this, it is currently being handled. It has not been forgotten nor overlooked.
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> Thank you again for your concern and again, your continued patience is appreciated.
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> Happy Holidays.
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> Christina
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> Christina Tadle Contreras, P.E., Manager
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To: Contreras, Christina <Christina.Contreras@montgomerycountymd.gov>; Nichols, James <James.Nichols@montgomerycountymd.gov>
Cc: Hisel-McCoy, Elza <elza.hisel-mccoy@montgomeryplanning.org>; Panjshiri, Atiq <Atiq.Panjshiri@montgomerycountymd.gov>; Kronenberg, Robert <robert.kronenberg@montgomeryplanning.org>; Hartman, Ken <Ken.Hartman@montgomerycountymd.gov>; management@crescentplaza.net
Subject: Re: Right of way in front of Silver is in violation of site plan

Dear Mr Nichols,

I am including you in this email thread because from the DPS web site, it appears you are in charge of enforcing site plans and this is a violation of the site plan, even though Christina has been treating it as a right of way issue. I hope you can bring Silver in line with the site plan.

Thank you

Lilian Burch

On Monday, December 21, 2015, Lilian <tiggerlil@gmail.com> wrote:

Christina,

Attached are photos I just took today of the sides in front of Silver. They continue to be in violation of 10 feet right of way. There is no one sitting outside but they have not removed any of the tables and chairs, especially the large one built around the tree in the third photo. I am not patronizing the Silver and will encourage my neighbors to boycott the restaurant until they comply with the right of way requirements approved by the county planning. It is bad enough we have to give up any pedestrian right of way to businesses especially when the county wants to be pedestrian friendly.

This violation particularly affects residents of my building because it is one of our paths to Bethesda Row.

Thank you

Lilian

On Sunday, October 18, 2015, Lilian <tiggerlil@gmail.com> wrote:

Christina,

There is much more foot traffic on the Silver than the Darby side of Woodmont because the pedestrian exit from the garage is on the Silver side. That is why a 10 foot right of way is necessary. As I returned from walking my dog this afternoon, there was a lot of foot traffic from the pedestrian access to the garage and with the wait staff traffic and people loitering in the right of way as well as entering and exiting the restaurant, it was difficult to navigate without being hit by an opening door.

As the weather cools, they should be removing the outdoor seating soon. Even so, I hope you will not let up on this and ensure they respect the site plan right of way when warm weather returns. The foot traffic on that sidewalk will only increase as construction ends and retail and dining options continue to grow.

Thank you

Lilian

On Friday, October 9, 2015, Lilian <tiggerlil@gmail.com> wrote:

Thank you for letting me know something is being done. As of last email from you, it seemed you felt they were in compliance.

On Friday, October 9, 2015, Contreras, Christina <Christina.Contreras@montgomerycountymd.gov> wrote:

Ms. Burch –

DPS is and has been working on remedying the situation at the Silver. Your patience is much appreciated as this is handled.

Christina

Christina Tadle Contreras, P.E., Manager

Sediment Control/Stormwater Management and Right of Way Inspections

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From: Lilian [mailto:tiggerlil@gmail.com]
Sent: Friday, October 09, 2015 2:34 PM
To: Hisel-McCoy, Elza <elza.hisel-mccoy@montgomeryplanning.org>
Cc: Contreras, Christina <Christina.Contreras@montgomerycountymd.gov>; Panjshiri, Atiq <Atiq.Panjshiri@montgomerycountymd.gov>; Kronenberg, Robert <robert.kronenberg@montgomeryplanning.org>
Subject: Re: Right of way in front of Silver

Hello Elza,

Are you telling me that Permitting Services can decide what is in compliance even if it does not follow approved site plans? If that is the case, what is the point of planning approvals?

Atiq, I ask that you review the approved site plan and enforce the 10 feet right of way approved by planning. An exception of 4 feet is just not right or acceptable. We cannot allow developers who only have profit in mind to decide what is acceptable and livable for residents. Haven't we given away enough already to the developers? Federal Realty got an exception to reduce right of way from 6 feet to 5 feet. With increased foot traffic in Bethesda Row, you cannot let Stonebridge and Silver to reduce right of way by 4 feet.

Thank you

Lilian

On Friday, October 9, 2015, Hisel-McCoy, Elza <elza.hisel-mccoy@montgomeryplanning.org> wrote:

Hello Lilian,

As I noted in my e-mail on March 31, Note 26 on the most recently approved site plan amendment (No. 82007018B) reads as follows:

<image001.jpg>

The County Department of Permitting Services is the agency that determines compliance with this note.

Sincerely,

Elza

Elza Hisel-McCoy, Assoc. AIA, LEED-AP

Master Planner, Regulatory Supervisor

Area One

Montgomery County Planning Department

M-NCPPC

8787 Georgia Avenue

Silver Spring, MD 20910

301.495.2115, elza.hisel-mccoy@montgomeryplanning.org

montgomeryplanning.org

From: Lilian [mailto:tiggerlil@gmail.com]
Sent: Tuesday, October 06, 2015 11:13 PM
To: Contreras, Christina <Christina.Contreras@montgomerycountymd.gov>
Cc: atiq.panjshiri <atiq.panjshiri@montgomerycountymd.gov>; Kronenberg, Robert <robert.kronenberg@montgomeryplanning.org>; Hisel-McCoy, Elza <elza.hisel-mccoy@montgomeryplanning.org>
Subject: Re: Right of way in front of Silver

Elza & Robert,

I would really like to know if Elza gave me the correct information about the right of way. Whether something changed since Elza gave me the information, or Stonebridge managed to get an exception without public review, or they are just doing as they please. I tried to walk my dogs there today and it was very difficult with all cross traffic between the restaurant and seating area.

Thank you

Lilian

On Mon, Sep 21, 2015 at 11:19 AM, Lilian <tiggerlil@gmail.com> wrote:

> Christina,
>
> Again, I beg to differ. Just as exceptions were made for Federal Realty which does not follow your guidelines, the information Elza gave me which I quoted to you, is an exception from your guidelines. I reviewed this with Elza back in March and he assured me there would be 10 feet of right of way. Have you consulted with Planning? If it is on their site plan, they must comply or be in violation.

Thank you

Lilian

On Friday, September 18, 2015, Contreras, Christina <Christina.Contreras@montgomerycountymd.gov> wrote:

Lilian –

The correct ROW is 6 feet as was noted on my email dated September 10th.

Thank you again for your concern.

Christina

Christina Tadle Contreras, P.E., Manager

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From: Lilian [mailto:tiggerlil@gmail.com]
Sent: Friday, September 18, 2015 4:04 PM
To: Contreras, Christina <Christina.Contreras@montgomerycountymd.gov>; Panjshiri, Atiq <Atiq.Panjshiri@montgomerycountymd.gov>
Cc: robert.kronenberg@montgomeryplanning.org; elza.hisel-mccoy@montgomeryplanning.org
Subject: Right of way in front of Silver

Christina,

They are about to open and there is still not 10 feet of right of way for pedestrians. Did you clarify this with Elza or Robert?

I believe Stonebridge probably did not read the site plan or purposely did not inform Silver of the required right of way and so could be liable to Silver for any modifications of the outdoor seating area. Either way, the residents and pedestrians of Bethesda Row need the 10 feet right of way for reasons of safety and volume.

Please let me know when they will comply with the site plan.

Thank you

Lilian

On Thu, Sep 10, 2015 at 5:05 PM, Lilian <tiggerlil@gmail.com> wrote:

Christina,

If you read what Elza sent me, it says 10 feet clear sidewalk area, not 6 feet. They can have sidewalk seating to within 10 feet of the building, not 6 feet. It does not say they can use 10 feet of sidewalk from the curb.

Please clarify with Elza or Robert at Planning (they are cc'd)

Thank you

Lilian

On Thursday, September 10, 2015, Lilian <tiggerlil@gmail.com> wrote:

> That is not my understanding based on the information provided to me by Elza Hisel-McCoy of Planning, after a meeting and site visit in March. Please refer to the quote below from an email from Elza which I had previously forwarded to you.
>
> As a side note, I would like to point out that often the right of way is obstructed by signs and wait stations, as was the case along Elm when I walked there yesterday, in front of Cafe Deluxe and Mamma Lucia. The whole idea of seating by the curb instead of the building is impractical. Pedestrians often nearly collide with opening doors and wait staff who also stand in the right of way while serving the tables. Is there any way to relocate outdoor seating to next to the building instead of the curb?
>
> In this case, there are also large planters by the entrance to the flats leaving less than 6 feet clearance, let alone 10 feet.
>
> My intent is to make sure the businesses do not take precedence over pedestrian safety and access. There is a lot of foot traffic including dogs, not to mention bicycles that really should not be ridden on sidewalks.
>
> According to Elza Hisel-McCoy,

- Per the note on their current approval, the Applicant "may use Woodmont Avenue right-of-way from face of curb to 10+/- face of building for tenant restaurant (if any) outdoor seating". My reading of this is that along Woodmont Avenue there will be approximately 10 feet clear sidewalk area between the face of the building and the outdoor seating. I will ask the applicant to show this 10' line on their drawings/

On Thursday, September 10, 2015, Contreras, Christina <Christina.Contreras@montgomerycountymd.gov> wrote:

Ms. Burch -

The requirement is that they maintain 6 feet free and clear. That has been provided. I have checked numerous times to confirm as they have been making final adjustments as they are getting things ready and prepared for their opening.

Thank you for your concern with regards to this. I am attaching our Outdoor Café guidelines for your reference.
http://permittingservices.montgomerycountymd.gov/DPS/pdf/OutdoorCafeSeatingGuideline.pdf

Christina

Christina Tadle Contreras, P.E., Manager
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To: Contreras, Christina
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Cc: robert.kronenberg@montgomeryplanning.org
Subject: Right of way in front of Silver

Dear Christina

I believe this photo shows that there is not 10 feet of pedestrian right-of-way in front of the new Silver on Woodmont Avenue. Even less near the entrance to the flats. Please make sure they leave enough room for pedestrians.

Thank you
Lilian Burch

Hisel-McCoy, Elza

From: Lilian <tiggerlil@gmail.com>
Sent: Wednesday, August 10, 2016 2:01 AM
To: Hisel-McCoy, Elza
Subject: Fwd: Enforcing removal of objects in right of way

Forwarding and cc'ing you because Robert is out of office.

---------- Forwarded message ----------
From: **Lilian** <tiggerlil@gmail.com>
Date: Wed, Jun 22, 2016 at 8:30 PM
Subject: Enforcing removal of objects in right of way
To: Councilmember.Leventhal@montgomerycountymd.gov, councilmember.floreen@montgomerycountymd.gov
Cc: "Nichols, James" <James.Nichols@montgomerycountymd.gov>, "Hisel-McCoy, Elza" <elza.hisel-mccoy@montgomeryplanning.org>, "Panjshiri, Atiq" <Atiq.Panjshiri@montgomerycountymd.gov>, "Kronenberg, Robert" <robert.kronenberg@montgomeryplanning.org>, "Hartman, Ken" <Ken.Hartman@montgomerycountymd.gov>, "management@crescentplaza.net" <management@crescentplaza.net>, CM Berliner <councilmember.berliner@montgomerycountymd.gov>, County Council <county.council@montgomerycountymd.gov>, Director DOT <Director.DPWT@montgomerycountymd.gov>, "Liang, Kyle" <Kyle.Liang@montgomerycountymd.gov>, "Bilgrami, Khursheed" <Khursheed.Bilgrami@montgomerycountymd.gov>, metro@washpost.com, Christina Contreras <Christina.Contreras@montgomerycountymd.gov>

Councilmember Leventhal,

When I heard you on the radio talking about enforcing the removal of signs in public right of way, you gave me hope that you may be able to help me enforce a similar right of way violation. I have completed the online contact form that is supposed to distribute my complaint to all council members, in which I stated that I would forward this chain of emails I have sent Ms Contreras and other officials of Montgomery County who have knowledge of the site plan and the 10 feet pedestrian right of way in front of the Silver restaurant. In December, Ms Contreras said it was being handled but it is now summer and the tables are still there. There is no other way to handle this but remove the tables. If Passion Fish on the other side of Woodmont can operate without taking up pedestrian right of way, why can Silver not? There is a good amount of foot traffic from the garage to Bethesda Row, not to mention residents who live on the east side of Silver.

If you meant what you said about being fair and not allowing objects in right of way, then please get someone to enforce the site plan and give us residents the right of way we were promised.

Lilian Burch

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You have had all winter and most of spring to bring Silver into compliance with the site plan. Whether you want to call it a ROW issue or not, they are still in violation of the site plan which specifies the 10 feet right of way. They continue to use an extra row of tables that infringe on the right of way. I can assure you that everyone who lives in the vicinity are upset about this and knowing that I have been pursuing this issue with you, ask me when anything will be done. The key word here is "anything" because the residents of downtown Bethesda feel we have already been sold us out to the developers. And the developers continue to take more than what was approved. How difficult is it to have Silver remove the row of seating nearest the building?

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Christina

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> Christina
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> Christina Tadle Contreras, P.E., Manager
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From: Lilian [mailto:tiggerlil@gmail.com]
Sent: Monday, December 21, 2015 2:42 PM
To: Contreras, Christina <Christina.Contreras@montgomerycountymd.gov>; Nichols, James <James.Nichols@montgomerycountymd.gov>
Cc: Hisel-McCoy, Elza <elza.hisel-mccoy@montgomeryplanning.org>; Panjshiri, Atiq <Atiq.Panjshiri@montgomerycountymd.gov>; Kronenberg, Robert <robert.kronenberg@montgomeryplanning.org>; Hartman, Ken <Ken.Hartman@montgomerycountymd.gov>; management@crescentplaza.net
Subject: Re: Right of way in front of Silver is in violation of site plan

Dear Mr Nichols,

I am including you in this email thread because from the DPS web site, it appears you are in charge of enforcing site plans and this is a violation of the site plan, even though Christina has been treating it as a right of way issue. I hope you can bring Silver in line with the site plan.

Thank you

Lilian Burch

On Monday, December 21, 2015, Lilian <tiggerlil@gmail.com> wrote:

Christina,

Attached are photos I just took today of the sides in front of Silver. They continue to be in violation of 10 feet right of way. There is no one sitting outside but they have not removed any of the tables and chairs, especially the large one built around the tree in the third photo. I am not patronizing the Silver and will encourage my neighbors to boycott the restaurant until they comply with the right of way requirements approved by the county planning. It is bad enough we have to give up any pedestrian right of way to businesses especially when the county wants to be pedestrian friendly.

This violation particularly affects residents of my building because it is one of our paths to Bethesda Row.

Thank you

Lilian

On Sunday, October 18, 2015, Lilian <tiggerlil@gmail.com> wrote:

Christina,

There is much more foot traffic on the Silver than the Darby side of Woodmont because the pedestrian exit from the garage is on the Silver side. That is why a 10 foot right of way is necessary. As I returned from walking my dog this afternoon, there was a lot of foot traffic from the pedestrian access to the garage and with the wait staff traffic and people loitering in the right of way as well as entering and exiting the restaurant, it was difficult to navigate without being hit by an opening door.

As the weather cools, they should be removing the outdoor seating soon. Even so, I hope you will not let up on this and ensure they respect the site plan right of way when warm weather returns. The foot traffic on that sidewalk will only increase as construction ends and retail and dining options continue to grow.

Thank you

Lilian

On Friday, October 9, 2015, Lilian <tiggerlil@gmail.com> wrote:

Thank you for letting me know something is being done. As of last email from you, it seemed you felt they were in compliance.

On Friday, October 9, 2015, Contreras, Christina <Christina.Contreras@montgomerycountymd.gov> wrote:

Ms. Burch –

DPS is and has been working on remedying the situation at the Silver. Your patience is much appreciated as this is handled.

Christina

Christina Tadle Contreras, P.E., Manager

Sediment Control/Stormwater Management and Right of Way Inspections

Montgomery County Department of Permitting Services

Division of Land Development

255 Rockville Pike, 2nd Floor

Rockville, MD 20850

240-777-6307

240-777-6339 (fax)

Have you tried DPS eServices? http://permittingservices.montgomerycountymd.gov/DPS/eServices/AboutServices.aspx

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this transmission by parties other than the intended recipient(s) is strictly prohibited. If you are not the intended recipient, please immediately notify the sender by reply e-mail or phone and delete this message and its attachments.

From: Lilian [mailto:tiggerlil@gmail.com]
Sent: Friday, October 09, 2015 2:34 PM
To: Hisel-McCoy, Elza <elza.hisel-mccoy@montgomeryplanning.org>
Cc: Contreras, Christina <Christina.Contreras@montgomerycountymd.gov>; Panjshiri, Atiq <Atiq.Panjshiri@montgomerycountymd.gov>; Kronenberg, Robert <robert.kronenberg@montgomeryplanning.org>
Subject: Re: Right of way in front of Silver

Hello Elza,

Are you telling me that Permitting Services can decide what is in compliance even if it does not follow approved site plans? If that is the case, what is the point of planning approvals?

Atiq, I ask that you review the approved site plan and enforce the 10 feet right of way approved by planning. An exception of 4 feet is just not right or acceptable. We cannot allow developers who only have profit in mind to decide what is acceptable and livable for residents. Haven't we given away enough already to the developers? Federal Realty got an exception to reduce right of way from 6 feet to 5 feet. With increased foot traffic in Bethesda Row, you cannot let Stonebridge and Silver to reduce right of way by 4 feet.

Thank you

Lilian

On Friday, October 9, 2015, Hisel-McCoy, Elza <elza.hisel-mccoy@montgomeryplanning.org> wrote:

Hello Lilian,

As I noted in my e-mail on March 31, Note 26 on the most recently approved site plan amendment (No. 82007018B) reads as follows:

<image001.jpg>

The County Department of Permitting Services is the agency that determines compliance with this note.

Sincerely,

Elza

Elza Hisel-McCoy, Assoc. AIA, LEED-AP

Master Planner, Regulatory Supervisor

Area One

Montgomery County Planning Department

M-NCPPC

8787 Georgia Avenue

Silver Spring, MD 20910

301.495.2115, elza.hisel-mccoy@montgomeryplanning.org

montgomeryplanning.org

From: Lilian [mailto:tiggerlil@gmail.com]
Sent: Tuesday, October 06, 2015 11:13 PM
To: Contreras, Christina <Christina.Contreras@montgomerycountymd.gov>
Cc: atiq.panjshiri <atiq.panjshiri@montgomerycountymd.gov>; Kronenberg, Robert <robert.kronenberg@montgomeryplanning.org>; Hisel-McCoy, Elza <elza.hisel-mccoy@montgomeryplanning.org>
Subject: Re: Right of way in front of Silver

Elza & Robert,

I would really like to know if Elza gave me the correct information about the right of way. Whether something changed since Elza gave me the information, or Stonebridge managed to get an exception without public review, or they are just doing as they please. I tried to walk my dogs there today and it was very difficult with all cross traffic between the restaurant and seating area.

Thank you

Lilian

On Mon, Sep 21, 2015 at 11:19 AM, Lilian <tiggerlil@gmail.com> wrote:

Christina,

Again, I beg to differ. Just as exceptions were made for Federal Realty which does not follow your guidelines, the information Elza gave me which I quoted to you, is an exception from your guidelines. I reviewed this with Elza back in March and he assured me there would be 10 feet of right of way. Have you consulted with Planning? If it is on their site plan, they must comply or be in violation.

Thank you

Lilian

On Friday, September 18, 2015, Contreras, Christina <Christina.Contreras@montgomerycountymd.gov> wrote:

Lilian –

The correct ROW is 6 feet as was noted on my email dated September 10th.

Thank you again for your concern.

Christina

Christina Tadle Contreras, P.E., Manager

Sediment Control/Stormwater Management and Right of Way Inspections

Montgomery County Department of Permitting Services

Division of Land Development

255 Rockville Pike, 2nd Floor

Rockville, MD 20850

240-777-6307

240-777-6339 (fax)

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From: Lilian [mailto:tiggerlil@gmail.com]
Sent: Friday, September 18, 2015 4:04 PM
To: Contreras, Christina <Christina.Contreras@montgomerycountymd.gov>; Panjshiri, Atiq <Atiq.Panjshiri@montgomerycountymd.gov>
Cc: robert.kronenberg@montgomeryplanning.org; elza.hisel-mccoy@montgomeryplanning.org
Subject: Right of way in front of Silver

Christina,

They are about to open and there is still not 10 feet of right of way for pedestrians. Did you clarify this with Elza or Robert?

I believe Stonebridge probably did not read the site plan or purposely did not inform Silver of the required right of way and so could be liable to Silver for any modifications of the outdoor seating area. Either way, the residents and pedestrians of Bethesda Row need the 10 feet right of way for reasons of safety and volume.

Please let me know when they will comply with the site plan.

Thank you

Lilian

On Thu, Sep 10, 2015 at 5:05 PM, Lilian <tiggerlil@gmail.com> wrote:

Christina,

If you read what Elza sent me, it says 10 feet clear sidewalk area, not 6 feet. They can have sidewalk seating to within 10 feet of the building, not 6 feet. It does not say they can use 10 feet of sidewalk from the curb.

Please clarify with Elza or Robert at Planning (they are cc'd)

Thank you

Lilian

On Thursday, September 10, 2015, Lilian <tiggerlil@gmail.com> wrote:

That is not my understanding based on the information provided to me by Elza Hisel-McCoy of Planning, after a meeting and site visit in March. Please refer to the quote below from an email from Elza which I had previously forwarded to you.

As a side note, I would like to point out that often the right of way is obstructed by signs and wait stations, as was the case along Elm when I walked there yesterday, in front of Cafe Deluxe and Mamma Lucia. The whole idea of seating by the curb instead of the building is impractical. Pedestrians often nearly collide with opening doors and wait staff who also stand in the right of way while serving the tables. Is there any way to relocate outdoor seating to next to the building instead of the curb?

In this case, there are also large planters by the entrance to the flats leaving less than 6 feet clearance, let alone 10 feet.

My intent is to make sure the businesses do not take precedence over pedestrian safety and access. There is a lot of foot traffic including dogs, not to mention bicycles that really should not be ridden on sidewalks.

According to Elza Hisel-McCoy,

- Per the note on their current approval, the Applicant "may use Woodmont Avenue right-of-way from face of curb to 10+/- face of building for tenant restaurant (if any) outdoor seating". My reading of this is that along Woodmont

Avenue there will be approximately 10 feet clear sidewalk area between the face of the building and the outdoor seating. I will ask the applicant to show this 10' line on their drawings/

On Thursday, September 10, 2015, Contreras, Christina <Christina.Contreras@montgomerycountymd.gov> wrote:

> Ms. Burch -
>
> The requirement is that they maintain 6 feet free and clear. That has been provided. I have checked numerous times to confirm as they have been making final adjustments as they are getting things ready and prepared for their opening.
>
> Thank you for your concern with regards to this. I am attaching our Outdoor Café guidelines for your reference.
> http://permittingservices.montgomerycountymd.gov/DPS/pdf/OutdoorCafeSeatingGuideline.pdf
>
> Christina
>
> Christina Tadle Contreras, P.E., Manager
> Sediment Control/Stormwater Management and Right of Way Inspections
> Montgomery County Department of Permitting Services
> Division of Land Development
> 255 Rockville Pike, 2nd Floor
> Rockville, MD 20850
> 240-777-6307
> 240-777-6339 (fax)
>
> Have you tried DPS eServices?
> http://permittingservices.montgomerycountymd.gov/DPS/eServices/AbouteServices.aspx
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-----Original Message-----
From: Lilian [mailto:tiggerlil@gmail.com]
Sent: Wednesday, September 09, 2015 5:19 PM
To: Contreras, Christina
<Christina.Contreras@montgomerycountymd.gov>
Cc: robert.kronenberg@montgomeryplanning.org
Subject: Right of way in front of Silver

Dear Christina

I believe this photo shows that there is not 10 feet of pedestrian right-of-way in front of the new Silver on Woodmont Avenue. Even less near the entrance to the flats. Please make sure they leave enough room for pedestrians.

Thank you
Lilian Burch

Hisel-McCoy, Elza

From: Lilian Burch <tiggerlil@gmail.com>
Sent: Tuesday, August 30, 2016 11:15 AM
To: Hisel-McCoy, Elza; Kronenberg, Robert; Diane Jones; Vikrum Mathur; Leventhal's Office, Councilmember; #CCL.Leventhal Staff; Pfefferle, Mark; Nichols, James; metro@washpost.com; Ike Leggett; Councilmember Berliner
Cc: management; Info@protectbethesdaopenspace.com
Subject: Amendment to Lot 31 site plan

Robert and Elza,

I am not a lawyer but what I can glean from their application is that they claim DPS gave them permission to allow only 6 feet of pedestrian right of way. If DPS made a mistake by not consulting the site plan, that does not justify reducing the right of way. DPS does not have the authority and their mistake should not be the justification for changing the site plan. This is a dangerous precedent. In future, any mistake by DPS or any other agency will be the justification used to change a site plan. The site plan is the master document, like the constitution. If an action is unconstitutional, it is rescinded or corrected. We do not change the constitution.

At the same time, Lot 31 cannot put all the blame on DPS. They should have consulted their own site plan which they applied for and was approved. Or, did they know DPS's permit would allow them more seating and therefore did not point out the discrepancy between the site plan and the permit?

The fact that Silver may lose revenue is not Planning's concern and should not enter into consideration of this amendment application. Lot 31 will have to compensate Silver, not the people of Bethesda. Lot 31 would like the people of Bethesda to sacrifice our public space to pay for their mistake and negligence.

Lot 31 claims there have been no complaints about the seating. That is not true. Others have complained but I may be most vocal. Also, the public is not aware that Lot 31 and Silver are in violation of the site plan so they do not know there is grounds for complaint. I had not involved the entire community because I thought DPS and Planning would do the right thing and enforce the site plan. However, if Lot 31 wants to claim no complaints as a reason for not adhering to the site plan, rest assured I will now ensure the entire community is aware of what Lot 31 is trying to do.

Furthermore, I believe they have exaggerated the number of seats involved. They need only remove the row of two top tables that are currently in the right of way. Additionally, if Lot 31 had not applied for seating next to the curb and instead followed DPS's guidelines that outdoor seating be next to the building, they could probably have space for two or three tables because there are no trees next to the building.

Lot 31's application for this amendment is dated August 1st but as late as August 26 I was still being told there are no updates. I only learned of this when I saw the posted sign. Again, the sign is not posted in the area it affects. It is posted on the other side of the street where there is no seating and nothing on the sidewalk. Is this another attempt to hide the true nature of the application from the public? And why does it not say on the sign that the application is for 6 feet INSTEAD OF 10 feet? There is more information explaining the minor changes that Lot 31's attorneys wrote only one paragraph about than the one most important major change that Lot 31's attorneys tried to justify with six paragraphs in their application letter.

When is the hearing for this application scheduled? Or has it happened already and the sign is a formality with no lead time for people to be aware that there will be a hearing and an opportunity to attend?

As a concerned citizen, I expect to be kept apprised of this application process so that I can continue to voice my objection to this reduction in our public space. I plan to rally my neighbors and the community to do the same.

Lilian

https://eplans.montgomeryplanning.org/PdoxTemp/01-SOJ-82007018C.pdf

Hisel-McCoy, Elza

From: Lilian <tiggerlil@gmail.com>
Sent: Thursday, September 01, 2016 11:21 AM
To: Jones, Diane
Cc: Leventhal's Office, Councilmember; #CCL.Leventhal Staff; ehsan.motazedi; Nichols, James; Mansouri, Hadi; Pfefferle, Mark; management@crescentplaza.net; Mathur, Vikrum; Wright, Gwen; Contreras, Christina; Kronenberg, Robert; Hisel-McCoy, Elza; metro@washpost.com; CM Berliner; Ike Leggett
Subject: Lot 31 right of way - Application untruths

Dear Diane,

I apologize for the erroneous assumptions. They were based on the information presented in Lot 31's application to the planning board which I attach. This is further evidence of the deviousness of Lot 31's actions. They claim that DPS "permitted and approved" the outdoor seating with only 6 feet of clearance and is using your department as the main reason that they ignored the requirements in their site plan.

As you know, I have been writing to the planners but not the planning board directly. However, If there are any inaccuracies or untruths in Lot 31's application to amend the site plan, I ask, no beg, you to please make sure the Planning board knows the true facts and point out any errors, misrepresentations and exaggerations in the application letter. We cannot, must not, allow powerful developers and their attorneys to twist the truth or even outright lie to achieve their selfish gains. I do not know the correct email address at the Planning board to use that would ensure the board's attention. If you do, please share it with me.

Thank you and I hope you will act on behalf of the residents of downtown Bethesda to protect our public access.

Lilian

PS. I had also previously pointed out that there is not 6 feet of access in front of Jaleo on the Elm Street side and at the corner so the table next to the door should be removed for wheelchair access around the corner.

On Thursday, September 1, 2016, Jones, Diane <Diane.Jones@montgomerycountymd.gov> wrote:

> Good morning Lilian,
>
> I appreciate your concerns and frankly share some of them relative to access, however, there are several erroneous assumptions and accusations in your email.
>
> DPS took the initial action to enforce the site plan by issuing a notice of non-compliance. When after efforts to resolve the situation failed, DPS referred the violation to MNCPPC for further action which has resulted in the issuance of a citation by MNCPPC (the step which follows failure to achieve compliance following a notice of non-compliance). DPS and MNCPPC have been in contact multiple times over the past several months on this matter and, most recently, on August 18, 2016, a joint-agency meeting was conducted on site with Mr. Pfefferle of MNCPPC and my office to review the status of the notice of non-compliance. Following that

meeting, Mr. Pfefferle issued the developer an Administrative Citation for $1000.00 for violating the conditions of the certified site plan. That citation directs the developer to "Remove all planters, chairs, tables and partitions from the public right-of-way to maintain a 10-foot distance between the seating area and the face of the building by General Note #26 of certified site plan 82007018A." This is consistent with the requirement for a 6' clear sidewalk in the public right-of-way per the right-of-way permit.

Your comments about Ms. Contreras are erroneous. Ms. Contreras, Land Development Inspections Manager, had nothing to do with issuance of the permit for café seating. Rather, when the initial concern was raised, she and our Division of Zoning and Site Plan Enforcement inspected and shared their concerns with myself, MNCPPC, the developer, and the restaurant. Since that time DPS in coordination with MNCPPC have been working to attain compliance.

Following issuance of the Administrative Citation by MNCPPC, Ms. Contreras issued a Notice of Violation with regard to the right-of-way permit. The right-of-way permit requires compliance with other approvals.

The Developer has applied for a site plan amendment. That application is pending at the MNCPPC and will be determined by the Montgomery County Planning Board. Concerns you have about the proposed amendment to the site plan should be addressed to the Planning Board so that they can be considered in accordance with the public process for action on a request for a site plan amendment.

Diane Schwartz Jones, Director

Montgomery County Department of Permitting Services

255 Rockville Pike

Rockville, MD 20850

240.777.6363

Have you tried DPS eServices? *http://permittingservices.montgomerycountymd.gov/DPS/eServices/AbouteServices.aspx*

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From: Lilian [mailto:tiggerlil@gmail.com]
Sent: Tuesday, August 30, 2016 2:58 PM
To: Jones, Diane <Diane.Jones@montgomerycountymd.gov>
Cc: Leventhal's Office, Councilmember <Councilmember.Leventhal@montgomerycountymd.gov>; #CCL.Leventhal Staff <#CCL.LeventhalStaff@montgomerycountymd.gov>; Motazedi, Ehsan <Ehsan.Motazedi@montgomerycountymd.gov>; Nichols, James <James.Nichols@montgomerycountymd.gov>; Mansouri, Hadi <Hadi.Mansouri@montgomerycountymd.gov>; Pfefferle, Mark <mark.pfefferle@montgomeryplanning.org>; WashPost Metro <metro@washpost.com>; management@crescentplaza.net; Mathur, Vikrum <Vikrum.Mathur@montgomerycountymd.gov>
Subject: Lot 31 right of way

Diane,

From reading the letter from Lot 31's attorney applying for an amendment to the site plan, I gather they are claiming that your department issued the permit for them to build and occupy more of the sidewalk than the site plan allowed. I do not blame your department for not consulting the site plan before issuing the permit. I still hold Lot 31 responsible. My analogy is this: if my friend tells me to doing something I know or even suspect may be illegal and I am caught doing it, do I make my friend pay the fine or go to jail in my place? Do I expect my friend's family to pay my fine or my attorney to keep me out of jail? In this analogy, the citizens and residents of Bethesda are my friend's family. Just as individuals must be accountable so do corporations.

I now know why Christina Contreras never acted on enforcing the site plan. Perhaps she was the one who issued the permit in the first place. What I am most disappointed about is that no one was honest enough to tell me the truth and I had to wait until now, 2 years later, to find out from the very developer who was in violation of their own site plan. In my view Lot 31 should not be granted the amendment to reduce the right of way. They are as much to blame as DPS and must suffer the consequences. They, not the residents of Bethesda, will have to compensate Silver. They certainly have made enough money from the development to do so. I understand they have obtained the property where the district police station is located and will be developing that as well. Instead of paying their attorneys to file this amendment, why not just pay Silver?

Too often we have acquiesced and given to developers exceptions and concessions. First, allowing Bethesda restaurants to deviate from your department's guidelines for outdoor seating by letting them place the seating next to the curb instead of the building even though all logic and common sense say it should be next to the building. Second, conceding a foot of pedestrian right of way to Federal Realty for their properties. As you can see, these actions were setting precedents for the developers to keep asking for and getting more concessions. This is why Lot 31's attorneys think that they can get the site plan changed because of your department's actions.

Furthermore, I believe the seating numbers in the letter are exaggerated. I suggest that DPS start enforcing your outdoor seating guidelines and require all outdoor seating to be against the building. Less wait staff traffic, less wait staff standing in the Pedestrian right of way to serve and/or chat with patrons. As an aside, I have to tell you that some wait staff are rather rude and do not give pedestrians right of way in the Right of way. And no trees next to the building so more space for tables.

Specific to downtown Bethesda and especially after the addition of the bike share stations, there is increased bicycle traffic on the sidewalks. Add to that strollers and dogs with the increased population density and pet friendly buildings the developers have brought to downtown Bethesda, and we should be increasing pedestrian right of way, not decreasing it.

So, in summary, I hope you will not allow Lot 31 to leverage and force a mistake by your department into another concession that is not in the best interest of the residents of Bethesda. The residents of Bethesda should not pay for anyone's mistakes, your department's or Lot 31's. Silver has already had a 2-year run of outdoor seating they were not entitled to.

With integrity,

Lilian

On Friday, June 24, 2016, Jones, Diane <Diane.Jones@montgomerycountymd.gov> wrote:

> Thank you Mr. Leventhal.
>
> The Department of Permitting Services has in fact issued a notice of non-compliance due to some of the seating and has been working with MNCPPC and the developer to resolve the non-compliance. In fact, I have been advised that my staff and planning staff will be meeting with the Developer representative next week.
>
> *Diane Schwartz Jones, Director*
>
> *Montgomery County Department of Permitting Services*
>
> *255 Rockville Pike*
>
> *Rockville, MD 20850*
>
> *240.777.6363*

Have you tried DPS eServices? http://permittingservices.montgomerycountymd.gov/DPS/eServices/AboutServices.aspx

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From: Leventhal's Office, Councilmember
Sent: Thursday, June 23, 2016 1:23 PM
To: Lilian <tiggerlil@gmail.com>
Cc: #CCL.Leventhal Staff <#CCL.LeventhalStaff@montgomerycountymd.gov>; Jones, Diane <Diane.Jones@montgomerycountymd.gov>
Subject: RE: Enforcing removal of objects in right of way

Dear Ms. Burch:

I am copying Diane Schwartz Jones, director of the Department of Permitting Services, on this reply with a request that she investigate your concerns regarding pedestrian right-of-way in front of Silver restaurant on Woodmont Avenue.

Best regards,

George Leventhal

Montgomery County Councilmember

From: Lilian [mailto:tiggerlil@gmail.com]
Sent: Wednesday, June 22, 2016 8:30 PM
To: Leventhal's Office, Councilmember <Councilmember.Leventhal@montgomerycountymd.gov>; Floreen's Office, Councilmember <Councilmember.Floreen@montgomerycountymd.gov>
Cc: Nichols, James <James.Nichols@montgomerycountymd.gov>; Hisel-McCoy, Elza <elza.hisel-mccoy@montgomeryplanning.org>; Panjshiri, Atiq <Atiq.Panjshiri@montgomerycountymd.gov>; Kronenberg, Robert <robert.kronenberg@montgomeryplanning.org>; Hartman, Ken <Ken.Hartman@montgomerycountymd.gov>; management@crescentplaza.net; Berliner's Office, Councilmember <Councilmember.Berliner@montgomerycountymd.gov>; County Council

<County.Council@montgomerycountymd.gov>; Director DOT <Director.DPWT@montgomerycountymd.gov>; Liang, Kyle <Kyle.Liang@montgomerycountymd.gov>; Bilgrami, Khursheed <Khursheed.Bilgrami@montgomerycountymd.gov>; WashPost Metro <metro@washpost.com>; Contreras, Christina <Christina.Contreras@montgomerycountymd.gov>
Subject: Enforcing removal of objects in right of way

Councilmember Leventhal,

When I heard you on the radio talking about enforcing the removal of signs in public right of way, you gave me hope that you may be able to help me enforce a similar right of way violation. I have completed the online contact form that is supposed to distribute my complaint to all council members, in which I stated that I would forward this chain of emails I have sent Ms Contreras and other officials of Montgomery County who have knowledge of the site plan and the 10 feet pedestrian right of way in front of the Silver restaurant. In December, Ms Contreras said it was being handled but it is now summer and the tables are still there. There is no other way to handle this but remove the tables. If Passion Fish on the other side of Woodmont can operate without taking up pedestrian right of way, why can Silver not? There is a good amount of foot traffic from the garage to Bethesda Row, not to mention residents who live on the east side of Silver.

If you meant what you said about being fair and not allowing objects in right of way, then please get someone to enforce the site plan and give us residents the right of way we were promised.

Lilian Burch

On Wed, May 25, 2016 at 12:14 PM, Lilian <tiggerlil@gmail.com> wrote:

> You have had all winter and most of spring to bring Silver into compliance with the site plan. Whether you want to call it a ROW issue or not, they are still in violation of the site plan which specifies the 10 feet right of way. They continue to use an extra row of tables that infringe on the right of way. I can assure you that everyone who lives in the vicinity are upset about this and knowing that I have been pursuing this issue with you, ask me when anything will be done. The key word here is "anything" because the residents of downtown Bethesda feel we have already been sold us out to the developers. And the developers continue to take more than what was approved. How difficult is it to have Silver remove the row of seating nearest the building?
>
> While I am airing our complaints, I may as well air another one -- not enough dog parks. The downtown Bethesda plan does not include any dog parks even though it increases population density and almost all the residential buildings are or will be pet friendly. So why are the

developers not required to pay for or provide a park for dogs? I have written to MNCPPC about dog parks, especially at Norwood and Willow, and have been told it costs $250,000 to put one in. So why not have the developers pay for it since they are the ones contributing to the dog population?

In both cases, the developers are getting what they want and making money hand over fist while the residents are paying the price. The County Council just approved a property tax increase which will impact individual homeowners more than developers who will just pass it on to their tenants. When is the County Council going to make the developers pay for the problems they are causing?

I am on the board of our condo and all our owners feel disenfranchised and ignored. We are bombarded with numerous complaints at every board meeting. Access to our street and garage has been curtailed without consent which has added burden to our private driveway which people use for U turns. Traffic and parking violations go unchecked regardless of how many times we report it and ask for regular patrols. Traffic signs removed by construction are tossed aside and not replaced, even when DOT is informed of the exact location of the discarded sign. Our property prices have dropped because of all these things and the constant construction. And yet our property taxes will be increased? How much do you expect us to bear? We are all at our limits and some attention to the smaller matters such as Silver site plan, access to Miller Ave, and no U turns using our private driveway, will help relieve some of the stress.

On Thu, May 5, 2016 at 8:35 PM, Lilian <tiggerlil@gmail.com> wrote:

> Silver is still not complying with 10 feet pedestrian right-of-way. The attached photos were taken today. I include one with people to give you a perspective that there is not 10 feet between the wall and railing. The outer row of seating should not be there. The monstrous table around the tree is at the 10 feet limit and there should be no seating or additional tables past it.
>
> It is very frustrating and disappointing that the county does not enforce its own planning regulations. And businesses and developers are allowed to do as they please with no consequences. It is bad enough that the county council allows excessive development against the objections of residents, but allowing the developers to further violate resident rights is unconscionable.
>
> On Friday, March 11, 2016, Lilian <tiggerlil@gmail.com> wrote:
>
> > Took the attached photos when I took my dog out. It's better but it's still not 10 feet. They are still trying to have seating around the large counter they put around a tree but the edge of the counter is at the 10 feet limit without stools. The stantions should probably line up with the end of the permanent railing next to the loading dock area. Silver needs to remove the counter seating.

Sent from my iPhone

On Mar 11, 2016, at 1:35 PM, Lilian <tiggerlil@gmail.com> wrote:

Christine,

Bethesda Row just announced the opening of outdoor seating. I have not yet checked the clearance in front of Silver but I hope they are following the site plan. I will go there within the next couple of days and send you photos if they are not adhering to the 10 feet right of way.

Thank you

Lilian

Sent from my iPhone

On Dec 21, 2015, at 4:47 PM, Contreras, Christina <Christina.Contreras@montgomerycountymd.gov> wrote:

Ms. Burch –

I apologize for using the abbreviation ROW which stands for Right of Way. My staff is handling the issue with regards to the Outdoor Café. You are in fact being heard. As noted, we(the DPS Land Development Division specifically the Public Right of Way Inspection section) are currently working with the permittee to resolve all issues as it relates to the Silver. We (the Public Right of Way Inspection section) work together daily with the DPS Zoning and Site Plan Enforcement Division to ensure all development work is appropriate.

Again, as noted, this issue is currently still being handled as it has not been forgotten nor overlooked.

Thank you again –

Christina

Christina Tadle Contreras, P.E., Manager

Sediment Control/Stormwater Management and Right of Way Inspections

Montgomery County Department of Permitting Services

Division of Land Development

255 Rockville Pike, 2nd Floor

Rockville, MD 20850

240-777-6307

240-777-6339 (fax)

Have you tried DPS eServices?
http://permittingservices.montgomerycountymd.gov/DPS/eServices/AboutServices.aspx

All information in this communication and its attachments are confidential and are intended solely for addressee(s) included above and may be legally privileged. Please take notice that any use, reproduction or dissemination of this transmission by parties other than the intended recipient(s) is strictly prohibited. If you are not the intended recipient, please immediately notify the sender by reply e-mail or phone and delete this message and its attachments.

From: Lilian [mailto:tiggerlil@gmail.com]
Sent: Monday, December 21, 2015 4:28 PM
To: Contreras, Christina <Christina.Contreras@montgomerycountymd.gov>
Cc: Nichols, James <James.Nichols@montgomerycountymd.gov>; Hisel-McCoy, Elza <elza.hisel-mccoy@montgomeryplanning.org>; Panjshiri, Atiq <Atiq.Panjshiri@montgomerycountymd.gov>; Kronenberg, Robert <robert.kronenberg@montgomeryplanning.org>; Hartman, Ken

<Ken.Hartman@montgomerycountymd.gov>; management@crescentplaza.net
Subject: Re: Right of way in front of Silver is in violation of site plan

Who is or are ROW? How do we contact them so that we can be heard?

Lilian

On Monday, December 21, 2015, Contreras, Christina <Christina.Contreras@montgomerycountymd.gov> wrote:

Ms. Burch –

This is in fact a ROW issue and being that ROW has the lead with this, it is currently being handled. It has not been forgotten nor overlooked.

Thank you again for your concern and again, your continued patience is appreciated.

Happy Holidays.

Christina

Christina Tadle Contreras, P.E., Manager

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From: Lilian [mailto:tiggerlil@gmail.com]
Sent: Monday, December 21, 2015 2:42 PM
To: Contreras, Christina <Christina.Contreras@montgomerycountymd.gov>; Nichols, James <James.Nichols@montgomerycountymd.gov>
Cc: Hisel-McCoy, Elza <elza.hisel-mccoy@montgomeryplanning.org>; Panjshiri, Atiq <Atiq.Panjshiri@montgomerycountymd.gov>; Kronenberg, Robert <robert.kronenberg@montgomeryplanning.org>; Hartman, Ken <Ken.Hartman@montgomerycountymd.gov>; management@crescentplaza.net
Subject: Re: Right of way in front of Silver is in violation of site plan

Dear Mr Nichols,

I am including you in this email thread because from the DPS web site, it appears you are in charge of enforcing site plans and this is a violation of the site plan, even though Christina has been treating it as a right of way issue. I hope you can bring Silver in line with the site plan.

Thank you

Lilian Burch

On Monday, December 21, 2015, Lilian <tiggerlil@gmail.com> wrote:

Christina,

Attached are photos I just took today of the sides in front of Silver. They continue to be in violation of 10 feet right of way. There is no one sitting outside but they have not removed any of the tables and chairs, especially the large one built around the tree in the third photo. I am not patronizing the Silver and will encourage my neighbors to boycott the restaurant until they comply with the right of way requirements approved by the county planning. It is bad enough we have to give up any pedestrian right of way to businesses especially when the county wants to be pedestrian friendly.

This violation particularly affects residents of my building because it is one of our paths to Bethesda Row.

Thank you

Lilian

On Sunday, October 18, 2015, Lilian <tiggerlil@gmail.com> wrote:

> Christina,
>
> There is much more foot traffic on the Silver than the Darby side of Woodmont because the pedestrian exit from the garage is on the Silver side. That is why a 10 foot right of way is necessary. As I returned from walking my dog this afternoon, there was a lot of foot traffic from the pedestrian access to the garage and with the wait staff traffic and people loitering in the right of way as well as entering and exiting the restaurant, it was difficult to navigate without being hit by an opening door.
>
> As the weather cools, they should be removing the outdoor seating soon. Even so, I hope you will not let up on this and ensure they respect the site plan right of way when warm weather returns. The foot traffic on that sidewalk will only increase as construction ends and retail and dining options continue to grow.
>
> Thank you
>
> Lilian
>
> On Friday, October 9, 2015, Lilian <tiggerlil@gmail.com> wrote:
>
> > Thank you for letting me know something is being done. As of last email from you, it seemed you felt they were in compliance.

On Friday, October 9, 2015, Contreras, Christina <Christina.Contreras@montgomerycountymd.gov> wrote:

Ms. Burch –

DPS is and has been working on remedying the situation at the Silver. Your patience is much appreciated as this is handled.

Christina

Christina Tadle Contreras, P.E., Manager

Sediment Control/Stormwater Management and Right of Way Inspections

Montgomery County Department of Permitting Services

Division of Land Development

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the sender by reply e-mail or phone and delete this message and its attachments.

From: Lilian [mailto:tiggerlil@gmail.com]
Sent: Friday, October 09, 2015 2:34 PM
To: Hisel-McCoy, Elza <elza.hisel-mccoy@montgomeryplanning.org>
Cc: Contreras, Christina <Christina.Contreras@montgomerycountymd.gov>; Panjshiri, Atiq <Atiq.Panjshiri@montgomerycountymd.gov>; Kronenberg, Robert <robert.kronenberg@montgomeryplanning.org>
Subject: Re: Right of way in front of Silver

Hello Elza,

Are you telling me that Permitting Services can decide what is in compliance even if it does not follow approved site plans? If that is the case, what is the point of planning approvals?

Atiq, I ask that you review the approved site plan and enforce the 10 feet right of way approved by planning. An exception of 4 feet is just not right or acceptable. We cannot allow developers who only have profit in mind to decide what is acceptable and livable for residents. Haven't we given away enough already to the developers? Federal Realty got an exception to reduce right of way from 6 feet to 5 feet. With increased foot traffic in Bethesda Row, you cannot let Stonebridge and Silver to reduce right of way by 4 feet.

Thank you

Lilian

On Friday, October 9, 2015, Hisel-McCoy, Elza <elza.hisel-mccoy@montgomeryplanning.org> wrote:

Hello Lilian,

As I noted in my e-mail on March 31, Note 26 on the most recently approved site plan amendment (No. 82007018B) reads as follows:

<image001.jpg>

The County Department of Permitting Services is the agency that determines compliance with this note.

Sincerely,

Elza

Elza Hisel-McCoy, Assoc. AIA, LEED AP

Master Planner, Regulatory Supervisor

Area One

Montgomery County Planning Department

M-NCPPC

8787 Georgia Avenue

Silver Spring, MD 20910

301.495.2115, **elza.hisel-mccoy@montgomeryplanning.org**

montgomeryplanning.org

From: Lilian [mailto:tiggerlil@gmail.com]
Sent: Tuesday, October 06, 2015 11:13 PM
To: Contreras, Christina <Christina.Contreras@montgomerycountymd.gov>
Cc: atiq.panjshiri <atiq.panjshiri@montgomerycountymd.gov>; Kronenberg, Robert <robert.kronenberg@montgomeryplanning.org>; Hisel-McCoy, Elza <

Hisel-McCoy, Elza

From: Hisel-McCoy, Elza
Sent: Friday, September 02, 2016 8:45 AM
To: 'Lilian'; Kronenberg, Robert
Cc: ehsan.motazedi; Greg Nichols (james.nichols@montgomerycountymd.gov)
Subject: RE: Honest truth
Attachments: Silver NONC.pdf; Lot 31_31A citation.pdf

Hello Lilian,

Sorry for the delay in responding. I will start off by saying that this Site Plan Amendment is in response to a violation of the approved Certified Site Plan. I have attached for your reference an updated Notice of Non-Compliance (NONC) which the County Department of Permitting Services issued to the developer in May of this year, which includes updated Site Inspection Reports. Since the violation has not been resolved, on August 26 the Planning Department issued to the developer an Administrative Citation for the violation. I have included this citation as well.

The Site Plan Amendment application itself (No. 82007018C) was accepted by our Department on August 29. The applicant is required to post signs and mail notices to adjoining and confronting property owners and homeowners associations within a mile. There will be a Planning Board hearing, the date of which has not been set, but I would expect it in the next few months. When the date is set, I will let you know. In advance of the hearing, the review team (to be lead by me) will prepare a staff report that lays out the issues and makes a recommendation. The Planning Board will take into account this report, as well as other information provided in writing and orally by the applicant and members of the public, in making their decision on the proposed amendment. At the hearing, staff will present its recommendation, the applicant will present their case, and the public will be invited to provide comment. The Board can ask questions of all of these parties. If you (or anyone) provide written comment on the application before the staff report is written, it will be discussed in the report. Comment received after the report is written will be discussed at the hearing. The Planning Board will receive copies of all correspondence. The Planning Board will then typically render a decision, which can approve or deny any or all elements of the application, and can also include alternative elements.

I would be happy to meet with you on-site to discuss if you would like. Please let me know if you have any questions.

Sincerely,

Elza

Elza Hisel-McCoy, Assoc. AIA, LEED-AP
Master Planner, Regulatory Supervisor
Area One
Montgomery County Planning Department
M-NCPPC
8787 Georgia Avenue
Silver Spring, MD 20910
301.495.2115, elza.hisel-mccoy@montgomeryplanning.org
montgomeryplanning.org

From: Lilian [mailto:tiggerlil@gmail.com]
Sent: Tuesday, August 30, 2016 2:32 PM
To: Kronenberg, Robert <robert.kronenberg@montgomeryplanning.org>; Hisel-McCoy, Elza <elza.hisel-mccoy@montgomeryplanning.org>
Subject: Honest truth

Robert & Elza,

I am writing to you for some truthful answers. Of all the people I have encountered in this two year long struggle to right what was wrong, you are the only people who have not stonewalled me or lied to me. So I would like to ask you some questions and hope that you will give me honest answers.

1. What are the chances Lot 31 will get their amendment application approved and reduce the right of way to 6 feet? Will the planning board ask for your recommendation even if they don't take it?
2. I now realize Lot 31 installed the signs so the wording is their attorneys'. How do we make the public aware of the whole picture and the whole truth?
3. Will there be a hearing for the application? When will it be held or has it already been held? There is no date on the signs.
4. What is the best way for me and my neighbors to be heard by the planning board before their decision on the amendment?

If there is still a chance for me to not let the right of way be reduced, I would like to meet with you both to understand what, if any, role the two minor changes involve and how it plays into the right of way. Is it possible to approve only parts of the application or is it all or nothing?

Thank you
Lilian

Hisel-McCoy, Elza

From: Lilian <tiggerlil@gmail.com>
Sent: Friday, September 02, 2016 11:38 AM
To: Hisel-McCoy, Elza
Cc: Kronenberg, Robert; ehsan.motazedi; Greg Nichols (james.nichols@montgomerycountymd.gov)
Subject: Honest truth

'Hi Elza,

Thank you so much for your detailed explanation of what has happened. I am gratified to know that my efforts were not for naught. After I emailed you, I learned that Lot 31 misrepresented the actions of DPS in their amendment application. This is inexcusable and should be grounds to deny their application altogether. In short, they lied. Can they be sworn in to testify at the hearing so that they could be charged with perjury?

I intend to comment on every paragraph of their application letter and submit that to you for inclusion in your report as well as to the Planning Board. What is the deadline to get that to you for inclusion in your report?

Since Lot 31 claims that no one complained, even though I was also acting on behalf of my neighbors, what is the best way to show that people complained but not to Planning? I know for a fact some people complained to DPS because that's where they were supposed to complain. I presume my complaints were shared with Lot 31 as their letter seems to attempt to address some of my points.

The information on the sign they posted is misleading and does not accurately state the true nature of the application to REDUCE the right of way. How can that be remedied so that people are aware? That is one reason not a lot of people complained. They did not know there is a violation. The county makes people aware when a restaurant is violating health codes. Is there not a responsibility to make people aware of other violations?

I would like to meet with you on site (or at our condo office) to further discuss strategies we can use to not let this amendment be approved. I believe that the planners had good reason to specify 10 feet.

Thank you so much for your help. Have a nice Labor Day holiday.

Lilian

On Friday, September 2, 2016, Hisel-McCoy, Elza <elza.hisel-mccoy@montgomeryplanning.org> wrote:

> Hello Lilian,
>
> Sorry for the delay in responding. I will start off by saying that this Site Plan Amendment is in response to a violation of the approved Certified Site Plan. I have attached for your reference an updated Notice of Non-Compliance (NONC) which the County Department of Permitting Services issued to the developer in May of this year, which includes updated Site Inspection Reports. Since the violation has not been resolved, on August 26 the Planning Department issued to the developer an Administrative Citation for the violation. I have included this citation as well.

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I would be happy to meet with you on-site to discuss if you would like. Please let me know if you have any questions.

Sincerely,

Elza

Elza Hisel-McCoy, Assoc. AIA, LEED-AP

Master Planner, Regulatory Supervisor

Area One

Montgomery County Planning Department

M-NCPPC

8787 Georgia Avenue

Silver Spring, MD 20910

301.495.2115, elza.hisel-mccoy@montgomeryplanning.org

montgomeryplanning.org

From: Lilian [mailto:tiggerlil@gmail.com]
Sent: Tuesday, August 30, 2016 2:32 PM
To: Kronenberg, Robert <robert.kronenberg@montgomeryplanning.org>; Hisel-McCoy, Elza <elza.hisel-mccoy@montgomeryplanning.org>
Subject: Honest truth

Robert & Elza,

I am writing to you for some truthful answers. Of all the people I have encountered in this two year long struggle to right what was wrong, you are the only people who have not stonewalled me or lied to me. So I would like to ask you some questions and hope that you will give me honest answers.

1. What are the chances Lot 31 will get their amendment application approved and reduce the right of way to 6 feet? Will the planning board ask for your recommendation even if they don't take it?

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3. Will there be a hearing for the application? When will it be held or has it already been held? There is no date on the signs.

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If there is still a chance for me to not let the right of way be reduced, I would like to meet with you both to understand what, if any, role the two minor changes involve and how it plays into the right of way. Is it possible to approve only parts of the application or is it all or nothing?

Thank you

Lilian

Hisel-McCoy, Elza

From: Lilian <tiggerlil@gmail.com>
Sent: Saturday, September 03, 2016 10:38 PM
To: Hisel-McCoy, Elza
Cc: Kronenberg, Robert; ehsan.motazedi; Greg Nichols (james.nichols@montgomerycountymd.gov); management@crescentplaza.net
Subject: Honest truth

Elza,

There are supposed to be 5 signs about the amendment but none are in front of Silver. There should be a sign immediately adjacent to both ends of the reduced right of way as well as in front of the Silver facing the street. How else would people know what six feet of right of way looks like?

I am not in town this weekend but a neighbor tells me she saw no signs, further evidence that they are not conspicuous enough. According to the photos from Lot 31, two of the signs look like they are in landscaped areas so they would be inconspicuous and unnoticed. They need to be placed in the middle of the sidewalk so that pedestrians can experience what it would like to walk on a sidewalk with only six feet of right of way. Is there any way we can have them moved, in addition to providing signs with more facts about the amendment applications?

I have reached out to neighbors and have received some very supportive responses. I would also like it noted in your record and timeline that I first contacted DPS about the violation last September (you were cc'd on my emails with Christina Contreras) as soon as Silver put out their seating but DPS did not do anything until this year. Do you think the fact that Christina did not consult the site plan and insisted only six feet were required will hurt our chances of stopping the amendment? I hope not. Two wrongs don't make a right.

Hope you had a nice Labor Day holiday. Please let me know when you can meet.

Lilian

On Friday, September 2, 2016, Lilian <tiggerlil@gmail.com> wrote:

'Hi Elza,

Thank you so much for your detailed explanation of what has happened. I am gratified to know that my efforts were not for naught. After I emailed you, I learned that Lot 31 misrepresented the actions of DPS in their amendment application. This is inexcusable and should be grounds to deny their application altogether. In short, they lied. Can they be sworn in to testify at the hearing so that they could be charged with perjury?

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Elza

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Master Planner, Regulatory Supervisor

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Montgomery County Planning Department

M-NCPPC

8787 Georgia Avenue

Silver Spring, MD 20910

301.495.2115, elza.hisel-mccoy@montgomeryplanning.org

montgomeryplanning.org

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Sent: Tuesday, August 30, 2016 2:32 PM
To: Kronenberg, Robert <robert.kronenberg@montgomeryplanning.org>; Hisel-McCoy, Elza <elza.hisel-mccoy@montgomeryplanning.org>
Subject: Honest truth

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Thank you

Lilian

RECEIVED
SEP 06 2016
OFFICE OF THE CHAIRMAN
THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

MCP-CTRACK

From: Lilian <tiggerlil@gmail.com>
Sent: Saturday, September 03, 2016 11:18 PM
To: MCP-Chair; Anderson, Casey; Dreyfuss, Norman; Fani-Gonzalez, Natali; Wells-Harley, Marye
Cc: management@crescentplaza.net
Subject: Silver site plan violation

Planning Board,

This is some background on an ongoing violation of the Lot 31 site plan. I began with DPS last year but after receiving no action from them, I contacted councilmember Leventhal after he championed removing signs in right of way, hoping he would champion removing all obstruction in the right of way. I had previously also emailed councilmember Berliner and even Ike Leggett. Now Lot 31 has applied to change the site plan so that they are no longer in violation. Lot 31 is not truthful in their application letter and I plan to submit a rebuttal for every claim they make. I was hoping DPS and Planning would be able to enforce compliance without my having to involve my neighbors in the lengthy and time consuming process of a hearing before the Board. I hope the Board will realize this is a waste of the Board's time and just another attempt by a profit hungry developer to take a mile after we, the residents have already given them an inch, a foot, a yard.

I will submit letters and emails but I hope that the Board realizes that the planners designated a 10 foot right of away because more right of way is critical as the height of buildings increase with accompanying increase in population density. Additional right of way is critical for safe egress in the event of an evacuation. I hope you will realize a responsibility to protect the residents of downtown Bethesda and preserve their quality of life.

Please be on the lookout for my letter of protest against this amendment to curtail our right of way.

Thank you
Lilian Burch

---------- Forwarded message ----------
From: **Lilian** <tiggerlil@gmail.com>
Date: Monday, August 29, 2016
Subject: Silver site plan violation
To: "Nichols, James" <James.Nichols@montgomerycountymd.gov>
Cc: "Motazedi, Ehsan" <Ehsan.Motazedi@montgomerycountymd.gov>, "Jones, Diane" <Diane.Jones@montgomerycountymd.gov>, "Kronenberg, Robert" <robert.kronenberg@montgomeryplanning.org>, "#CCL.Leventhal Staff" <#CCL.LeventhalStaff@montgomerycountymd.gov>, "Pfefferle, Mark" <mark.pfefferle@montgomeryplanning.org>, "metro@washpost.com" <metro@washpost.com>, "management@crescentplaza.net" <management@crescentplaza.net>, "Leventhal's Office, Councilmember" <Councilmember.Leventhal@montgomerycountymd.gov>, "Vikrum.Mathur@montgomerycountymd.gov" <Vikrum.Mathur@montgomerycountymd.gov>, Ike Leggett <Ike.Leggett@montgomerycountymd.gov>

P.S. There is more verbiage on the sign about the secondary and tertiary minor changes than there are about the most important primary change. It should clearly state it is a reduction from 10 feet to 6 feet. As it is, it is ambiguous about what is changing. The sign should be amended to say "reduce free and clear pedestrian path

from 10 feet to 6 feet" and the date of the hearing also posted. And what is the reason for the words "free and clear"? Is that to further cloak the real reason for the amendment? The manipulation is so obvious. I am disgusted!

On Monday, August 29, 2016, Lilian <tiggerlil@gmail.com> wrote:
Mr Nichols & Mr Pfefferle,

It appears my optimism was premature. I just saw the notice in the attached photo on the sidewalk not at Silver but across the street near the garage entrance. I knew this is what the developers would do since they have an army of attorneys at their beck and call to file changes to site plans that they agreed to but choose to ignore and violate.

It must be true then that the developers do own Montgomery county, the county council and the planning board. First they are allowed to not follow the guidelines that sidewalk seating must be next to the building. Then Federal Realty is allowed to reduce the right of way in front of their properties. Now Stonebridge is going to be allowed to reduce the 10' right of way in the site plan that they knew about and agreed to before construction so that they can avoid being in violation? It's akin to changing a law after I've broken it and gone unpunished for breaking it - I wish I had that kind of power.

As I feared, Planning is going to let Stonebridge and Silver weasel out of the 10' right of way by allowing this change to the site plan. Hence the delay in enforcing the site plan and insisting that Silver remove the tables. I'm sure Stonebridge will get their way just like every other developer in downtown Bethesda. I am very disappointed in our elected officials and the people who are supposed to be working for the citizens and residents of Bethesda and Montgomery county and protecting our quality of life. Won't someone stand up to these property mongers?

Not only will Stonebridge change the site plan, they will have gone two years without any penalty or consequence for the violation. That is just adding insult to injury. I am truly ashamed of the lack of integrity of all involved.

Lilian Burch

On Wednesday, August 10, 2016, Lilian <tiggerlil@gmail.com> wrote:
Dear Mr Nichols,

Thank you for bringing me up-to-date on this site plan violation. I am encouraged that there has been no mention of changing the site plan to reduce the 10' setback or giving Silver an exception, at least at this point.

Mr Pfefferle, I would like very much to be kept up-to-date on your enforcement actions. It still baffles me that it has taken so long for this to get to you for enforcement. I reported this violation last year and again this spring before outdoor seating began but they were not issued a notice of non-compliance until 5/9/16. I am also amazed that Silver can be granted a 30 extension two months after the notice. I hope it is obvious to you that these are just delay tactics employed by developers, and you will not allow any further extensions or delays in enforcing the 10' setback.

Knowing the tactics that developers use and the army of attorneys at their disposal, I am most concerned that they will manage to get the Planning Board to change the site plan and reduce the 10' setback, and avoid any penalties for this more than year-long violation. I hope you will not let that happen.

I look forward to seeing the seating removed and setback restored to what was approved by M-NCPPC.

Thank you
Lilian Burch

On Tue, Aug 9, 2016 at 4:25 PM, Nichols, James <James.Nichols@montgomerycountymd.gov> wrote:

Dear Ms. Burch,

I manage the Site Plan Enforcement Section (SPES) within DPS' Zoning & Site Plan Enforcement Division. I want to bring you up to date with my office's enforcement action regarding the seating area within the public right-of-way associated with the Silver. In response to your complaint, SPES inspected the seating areas and confirmed that the 10' setback was not being maintained. Accordingly, and following our enforcement procedure, SPES issued a Notice of Non-Compliance (NONC) to the developer on 05/09/16. Subsequently, we met with M-NCPPC staff, the developer, and owner of the Silver on 06/28/16 to review the NONC and site plan requirements. At that time, the developer requested a 30-day extension of the NONC compliance date in order to seek possible solutions from the various authorities. DPS has clearly communicated to the developer and the Silver that the seating needs to be pulled back to an appropriate distance to facilitate pedestrian access through his area. Although there have many communications and meetings in the interim, no solution has been proposed to date and the extended compliance date has passed. Therefore, following the enforcement procedure for such site plan issues, SPES has recently referred this case to M-NCPPC's DARC Chief, Mark Pfefferle, for further enforcement action. From this point, M-NCPPC will proceed to process this violation in accordance with the Planning Board's Enforcement Rules. Any further determination of corrective actions and/or penalties will come from that process and the Planning Board.

DPS has taken this situation very seriously and we look forward to its resolution. I have copied Mr. Pfefferle on this so he may respond to any future inquires you may have.

Sincerely,

James Gregory Nichols (Greg)

Manager, SPES

Zoning & Site Plan Enforcement

Department of Permitting Services

255 Rockville Pike, 2nd Floor

Rockville, MD 20850

240-777-6278 T

240-777-6263 F

Have you tried DPS eServices?
http://permittingservices.montgomerycountymd.gov/DPS/eServices/AbouteServices.aspx

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From: Leventhal's Office, Councilmember
Sent: Tuesday, August 09, 2016 11:26 AM
To: Lilian <tiggerlil@gmail.com>
Cc: Jones, Diane <Diane.Jones@montgomerycountymd.gov>; robert.kronenberg@montgomeryplanning.org; #CCL.Leventhal Staff <#CCL.LeventhalStaff@montgomerycountymd.gov>
Subject: RE: Enforcing removal of objects in right of way

Dear Lilian:

I see that you copied Diane Schwartz Jones on your July 27 message but I have not seen her response. Did she reply to you?

Regards,

George Leventhal

From: Lilian [mailto:tiggerlil@gmail.com]
Sent: Wednesday, July 27, 2016 11:31 AM
To: Leventhal's Office, Councilmember <Councilmember.Leventhal@montgomerycountymd.gov>
Cc: Jones, Diane <Diane.Jones@montgomerycountymd.gov>; robert.kronenberg@montgomeryplanning.org
Subject: Re: Enforcing removal of objects in right of way

Mr Leventhal,

It has been several weeks since the "meeting" and there are still tables, chairs, railings, plants, etc in the right of way. What was the outcome of the meeting? I hope that Silver or Stonebridge or someone will be fined for the 2 years of violation of the site plan, with the money going towards site plan enforcement and parking enforcement in downtown Bethesda. Please do not accept any offer from the developers or Silver to change the site plan. We need our right of way and no price is worth giving it up, especially for residents in the vicinity. We must stop making concessions to the developers. They are only interested in exploiting downtown Bethesda and have no regard for quality of life. The Planning Board allows too much development at too fast a pace. We understand that development boosts our county's economy but Bethesda should not be bearing the brunt of the development and longtime residents should not be made to suffer with their quality of life and the reason we like living in Bethesda torn to shreds.

I assure you that if you lived in downtown Bethesda, you would agree with me. I hope you can help us suspend further development until the community has had a chance to adjust and serious thought given to truly planning future development.

Thank you.

Lilian

Lilian

On Wed, Jul 6, 2016 at 9:56 AM, Leventhal's Office, Councilmember <Councilmember.Leventhal@montgomerycountymd.gov> wrote:

Dear Lilian:

Thank you for your detailed messages. You raise legitimate concerns. I appreciate knowing of the interaction between residents and Bethesda's bustling restaurant scene. I hope the Department of

Permitting Services is able to enforce restaurant compliance to accommodate both diners and pedestrians.

The Bethesda sector plan is still currently with the Planning Board; however, we expect to receive it later this summer. I will notify you when it comes before the County Council. In the interim, you may want to contact Leslye Howerton, the planner in charge of developing the draft plan (301-495-4551). A dog park would also come before Planning Board.

Thank you for bringing these issues to my attention.

Best regards,

George Leventhal

From: Lilian <tiggerlil@gmail.com>
Sent: Friday, June 24, 2016 3:27:54 PM
To: Jones, Diane
Cc: Leventhal's Office, Councilmember; #CCL.Leventhal Staff; Motazedi, Ehsan; Nichols, James; Mansouri, Hadi; management@crescentplaza.net; WashPost Metro
Subject: Re: Enforcing removal of objects in right of way

I honestly don't understand why a meeting is even necessary or why it took so long to set up a meeting. If the developer misrepresented the space available for outdoor seating to the restaurant, then it's an issue between the restaurant and the developer. I hope the county will not make any concessions to the developer or restaurant such as what was made to Federal Realty where the right of way was reduced from 6 feet (county standard) to 5 feet. As congested as Bethesda Avenue is, that one foot would make a lot of difference. Even so, the restaurants on Bethesda Ave and Elm continue to push the limit, creeping inch by inch into the right of way and hanging planters on the railings to take up more right of way space. Add to that wait staff serving customers from the right of way and not watching out for pedestrians when they cross the right of way.

Throughout the entire construction of lot 31, Stonebridge showed no regard or consideration to the residents living adjacent to the construction, from placing porta johns in the middle of Woodmont Ave directly in front of our building, to allowing their construction crew and contractors to trample on and decimate our landscaping, and subjecting our residents to polluting fumes while their dump trucks parked and idled directly under our windows. No matter how many times we asked Jane Mahaffie to remedy these issues, we were either stonewalled or ignored, and the county did very little to help us. So I hope the county will enforce the site plan and not allow any deviation or concession.

There is only one way to "resolve" non compliance -- make them comply. They should be fined for each day they have not complied. Don't sell us (taxpayers who were residents in Bethesda long before the developer and restaurant) out.

On Friday, June 24, 2016, Jones, Diane <Diane.Jones@montgomerycountymd.gov> wrote:

Thank you Mr. Leventhal.

The Department of Permitting Services has in fact issued a notice of non-compliance due to some of the seating and has been working with MNCPPC and the developer to resolve the non-compliance. In fact, I have been advised that my staff and planning staff will be meeting with the Developer representative next week.

Diane Schwartz Jones, Director

Montgomery County Department of Permitting Services

255 Rockville Pike

Rockville, MD 20850

240.777.6363

Have you tried DPS eServices? http://permittingservices.montgomerycountymd.gov/DPS/eServices/AboutServices.aspx

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From: Leventhal's Office, Councilmember
Sent: Thursday, June 23, 2016 1:23 PM
To: Lilian <tiggerlil@gmail.com>
Cc: #CCL.Leventhal Staff <#CCL.LeventhalStaff@montgomerycountymd.gov>; Jones, Diane

<Diane.Jones@montgomerycountymd.gov>
Subject: RE: Enforcing removal of objects in right of way

Dear Ms. Burch:

I am copying Diane Schwartz Jones, director of the Department of Permitting Services, on this reply with a request that she investigate your concerns regarding pedestrian right-of-way in front of Silver restaurant on Woodmont Avenue.

Best regards,

George Leventhal

Montgomery County Councilmember

From: Lilian [mailto:tiggerlil@gmail.com]
Sent: Wednesday, June 22, 2016 8:30 PM
To: Leventhal's Office, Councilmember <Councilmember.Leventhal@montgomerycountymd.gov>; Floreen's Office, Councilmember <Councilmember.Floreen@montgomerycountymd.gov>
Cc: Nichols, James <James.Nichols@montgomerycountymd.gov>; Hisel-McCoy, Elza <elza.hisel-mccoy@montgomeryplanning.org>; Panjshiri, Atiq <Atiq.Panjshiri@montgomerycountymd.gov>; Kronenberg, Robert <robert.kronenberg@montgomeryplanning.org>; Hartman, Ken <Ken.Hartman@montgomerycountymd.gov>; management@crescentplaza.net; Berliner's Office, Councilmember <Councilmember.Berliner@montgomerycountymd.gov>; County Council <County.Council@montgomerycountymd.gov>; Director DOT <Director.DPWT@montgomerycountymd.gov>; Liang, Kyle <Kyle.Liang@montgomerycountymd.gov>; Bilgrami, Khursheed <Khursheed.Bilgrami@montgomerycountymd.gov>; WashPost Metro <metro@washpost.com>; Contreras, Christina <Christina.Contreras@montgomerycountymd.gov>
Subject: Enforcing removal of objects in right of way

Councilmember Leventhal,

When I heard you on the radio talking about enforcing the removal of signs in public right of way, you gave me hope that you may be able to help me enforce a similar right of way violation. I have completed the online contact form that is supposed to distribute my complaint to all council members, in which I stated that I would forward this chain of emails I have sent Ms Contreras and other officials of Montgomery County who have knowledge of the site plan and the 10 feet pedestrian right of way in front of the Silver restaurant. In December, Ms Contreras said it was being handled but it is now summer and the tables are still there. There is no other way to handle this but remove the tables. If

Passion Fish on the other side of Woodmont can operate without taking up pedestrian right of way, why can Silver not? There is a good amount of foot traffic from the garage to Bethesda Row, not to mention residents who live on the east side of Silver.

If you meant what you said about being fair and not allowing objects in right of way, then please get someone to enforce the site plan and give us residents the right of way we were promised.

Lilian Burch

On Wed, May 25, 2016 at 12:14 PM, Lilian <tiggerlil@gmail.com> wrote:

You have had all winter and most of spring to bring Silver into compliance with the site plan. Whether you want to call it a ROW issue or not, they are still in violation of the site plan which specifies the 10 feet right of way. They continue to use an extra row of tables that infringe on the right of way. I can assure you that everyone who lives in the vicinity are upset about this and knowing that I have been pursuing this issue with you, ask me when anything will be done. The key word here is "anything" because the residents of downtown Bethesda feel we have already been sold us out to the developers. And the developers continue to take more than what was approved. How difficult is it to have Silver remove the row of seating nearest the building?

While I am airing our complaints, I may as well air another one -- not enough dog parks. The downtown Bethesda plan does not include any dog parks even though it increases population density and almost all the residential buildings are or will be pet friendly. So why are the developers not required to pay for or provide a park for dogs? I have written to MNCPPC about dog parks, especially at Norwood and Willow, and have been told it costs $250,000 to put one in. So why not have the developers pay for it since they are the ones contributing to the dog population?

In both cases, the developers are getting what they want and making money hand over fist while the residents are paying the price. The County Council just approved a property tax increase which will impact individual homeowners more than developers who will just pass it on to their tenants. When is the County Council going to make the developers pay for the problems they are causing?

I am on the board of our condo and all our owners feel disenfranchised and ignored. We are bombarded with numerous complaints at every board meeting. Access to our street and garage has been curtailed without consent which has added burden to our private driveway which people use for U turns. Traffic and parking violations go unchecked regardless of how many times we report it and ask for regular patrols. Traffic signs removed by construction are tossed aside and not replaced, even when DOT is informed of the exact

location of the discarded sign. Our property prices have dropped because of all these things and the constant construction. And yet our property taxes will be increased? How much do you expect us to bear? We are all at our limits and some attention to the smaller matters such as Silver site plan, access to Miller Ave, and no U turns using our private driveway, will help relieve some of the stress.

On Thu, May 5, 2016 at 8:35 PM, Lilian <tiggerlil@gmail.com> wrote:

Silver is still not complying with 10 feet pedestrian right-of-way. The attached photos were taken today. I include one with people to give you a perspective that there is not 10 feet between the wall and railing. The outer row of seating should not be there. The monstrous table around the tree is at the 10 feet limit and there should be no seating or additional tables past it.

It is very frustrating and disappointing that the county does not enforce its own planning regulations. And businesses and developers are allowed to do as they please with no consequences. It is bad enough that the county council allows excessive development against the objections of residents, but allowing the developers to further violate resident rights is unconscionable.

On Friday, March 11, 2016, Lilian <tiggerlil@gmail.com> wrote:

Took the attached photos when I took my dog out. It's better but it's still not 10 feet. They are still trying to have seating around the large counter they put around a tree but the edge of the counter is at the 10 feet limit without stools. The stantions should probably line up with the end of the permanent railing next to the loading dock area. Silver needs to remove the counter seating.

Sent from my iPhone

On Mar 11, 2016, at 1:35 PM, Lilian <tiggerlil@gmail.com> wrote:

Christine,

Bethesda Row just announced the opening of outdoor seating. I have not yet checked the clearance in front of Silver but I hope they are following the site plan. I will go there within the next couple of days and send you photos if they are not adhering to the 10 feet right of way.

Thank you

Lilian

Sent from my iPhone

On Dec 21, 2015, at 4:47 PM, Contreras, Christina <Christina.Contreras@montgomerycountymd.gov> wrote:

Ms. Burch –

I apologize for using the abbreviation ROW which stands for Right of Way. My staff is handling the issue with regards to the Outdoor Café. You are in fact being heard. As noted, we(the DPS Land Development Division specifically the Public Right of Way Inspection section) are currently working with the permittee to resolve all issues as it relates to the Silver. We (the Public Right of Way Inspection section) work together daily with the DPS Zoning and Site Plan Enforcement Division to ensure all development work is appropriate.

Again, as noted, this issue is currently still being handled as it has not been forgotten nor overlooked.

Thank you again –

Christina

Christina Tadle Contreras, P.E., Manager

Sediment Control/Stormwater Management and Right of Way Inspections

Montgomery County Department of Permitting Services

Division of Land Development

255 Rockville Pike, 2nd Floor

Rockville, MD 20850

240-777-6307

240-777-6339 (fax)

Have you tried DPS eServices?
http://permittingservices.montgomerycountymd.gov/DPS/eServices/AboutServices.aspx

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From: Lilian [mailto:tiggerlil@gmail.com]
Sent: Monday, December 21, 2015 4:28 PM
To: Contreras, Christina <Christina.Contreras@montgomerycountymd.gov>
Cc: Nichols, James <James.Nichols@montgomerycountymd.gov>; Hisel-McCoy, Elza <elza.hisel-mccoy@montgomeryplanning.org>; Panjshiri, Atiq <Atiq.Panjshiri@montgomerycountymd.gov>; Kronenberg, Robert <robert.kronenberg@montgomeryplanning.org>; Hartman, Ken <Ken.Hartman@montgomerycountymd.gov>; management@crescentplaza.net
Subject: Re: Right of way in front of Silver is in violation of site plan

Who is or are ROW? How do we contact them so that we can be heard?

Lilian

On Monday, December 21, 2015, Contreras, Christina <Christina.Contreras@montgomerycountymd.gov> wrote:

Ms. Burch –

This is in fact a ROW issue and being that ROW has the lead with this, it is currently being handled. It has not been forgotten nor overlooked.

Thank you again for your concern and again, your continued patience is appreciated.

Happy Holidays.

Christina

Christina Tadle Contreras, P.E., Manager

Sediment Control/Stormwater Management and Right of Way Inspections

Montgomery County Department of Permitting Services

Division of Land Development

255 Rockville Pike, 2nd Floor

Rockville, MD 20850

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From: Lilian [mailto:tiggerlil@gmail.com]
Sent: Monday, December 21, 2015 2:42 PM
To: Contreras, Christina <Christina.Contreras@montgomerycountymd.gov>; Nichols, James <James.Nichols@montgomerycountymd.gov>
Cc: Hisel-McCoy, Elza <elza.hisel-mccoy@montgomeryplanning.org>; Panjshiri, Atiq <Atiq.Panjshiri@montgomerycountymd.gov>; Kronenberg, Robert <robert.kronenberg@montgomeryplanning.org>; Hartman, Ken <Ken.Hartman@montgomerycountymd.gov>; management@crescentplaza.net
Subject: Re: Right of way in front of Silver is in violation of site plan

Dear Mr Nichols,

I am including you in this email thread because from the DPS web site, it appears you are in charge of enforcing site plans and this is a violation of the site plan, even though Christina has been treating it as a right of way issue. I hope you can bring Silver in line with the site plan.

Thank you

Lilian Burch

On Monday, December 21, 2015, Lilian <tiggerlil@gmail.com> wrote:

Christina,

Attached are photos I just took today of the sides in front of Silver. They continue to be in violation of 10 feet right of way. There is no one sitting outside but they have not removed any of the tables and chairs, especially the large one built around the tree in the third photo. I am not patronizing the Silver and will encourage my neighbors to boycott the restaurant until they comply with the right of way requirements approved by the county planning. It is bad enough we have to give up any pedestrian right of way to businesses especially when the county wants to be pedestrian friendly.

This violation particularly affects residents of my building because it is one of our paths to Bethesda Row.

Thank you

Lilian

On Sunday, October 18, 2015, Lilian <tiggerlil@gmail.com> wrote:

Christina,

There is much more foot traffic on the Silver than the Darby side of Woodmont because the pedestrian exit from the garage is on the Silver side. That is why a 10 foot right of way is necessary. As I returned from walking my dog this afternoon, there was a lot of foot traffic from the pedestrian access to the garage and with the wait staff traffic and people loitering in the right of way as well as entering and exiting the restaurant, it was difficult to navigate without being hit by an opening door.

As the weather cools, they should be removing the outdoor seating soon. Even so, I hope you will not let up on this and ensure they respect the site plan right of way when warm weather returns. The foot traffic on that sidewalk will only increase as construction ends and retail and dining options continue to grow.

Thank you

Lilian

On Friday, October 9, 2015, Lilian <tiggerlil@gmail.com> wrote:

Thank you for letting me know something is being done. As of last email from you, it seemed you felt they were in compliance.

On Friday, October 9, 2015, Contreras, Christina <Christina.Contreras@montgomerycountymd.gov> wrote:

Ms. Burch –

DPS is and has been working on remedying the situation at the Silver. Your patience is much appreciated as this is handled.

Christina

Christina Tadle Contreras, P.E., Manager

Sediment Control/Stormwater Management and Right of Way Inspections

Montgomery County Department of Permitting Services

Division of Land Development

255 Rockville Pike, 2nd Floor

Rockville, MD 20850

240-777-6307

240-777-6339 (fax)

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From: Lilian [mailto:tiggerlil@gmail.com]
Sent: Friday, October 09, 2015 2:34 PM
To: Hisel-McCoy, Elza <elza.hisel-mccoy@montgomeryplanning.org>
Cc: Contreras, Christina <Christina.Contreras@montgomerycountymd.gov>; Panjshiri, Atiq <Atiq.Panjshiri@montgomerycountymd.gov>; Kronenberg, Robert

<robert.kronenberg@montgomeryplanning.org>
Subject: Re: Right of way in front of Silver

Hello Elza,

Are you telling me that Permitting Services can decide what is in compliance even if it does not follow approved site plans? If that is the case, what is the point of planning approvals?

Atiq, I ask that you review the approved site plan and enforce the 10 feet right of way approved by planning. An exception of 4 feet is just not right or acceptable. We cannot allow developers who only have profit in mind to decide what is acceptable and livable for residents. Haven't we given away enough already to the developers? Federal Realty got an exception to reduce right of way from 6 feet to 5 feet. With increased foot traffic in Bethesda Row, you cannot let Stonebridge and Silver to reduce right of way by 4 feet.

Thank you

Lilian

On Friday, October 9, 2015, Hisel-McCoy, Elza <elza.hisel-mccoy@montgomeryplanning.org> wrote:

Hello Lilian,

As I noted in my e-mail on March 31, Note 26 on the most recently approved site plan amendment (No. 820070188) reads as follows:

<image001.jpg>

The County Department of Permitting Services is the agency that determines compliance with this note.

Sincerely,

Elza

MCP-Chair

From: Lilian <tiggerlil@comcast.net>
Sent: Wednesday, September 07, 2016 5:45 PM
To: MCP-Chair
Subject: Fwd: Woodmont Avenue

RECEIVED
SEP 08 2016
OFFICE OF THE CHAIRMAN
THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

Sent from XFINITY Connect Mobile App

------ Original Message ------

From: Vikrum Mathur
To: Lilian
Sent: September 7, 2016 at 4:48 PM
Subject: RE: Woodmont Avenue

Ms. Burch,

Thank you for sharing your concerns on this matter with us. We appreciate hearing from you.

We have been included in your recent correspondence with DPS and our office is satisfied with DPS' thorough investigation and Director Schwartz-Jones' response on this matter.

With respect to your question, I would recommend that you contact the Planning Board Chair(Casey Anderson)'s office to look into the matter/penalties. The Chair can be reached at MCP-Chair@mncppc-mc.org or 301-495-4605 .

I hope that this information is helpful.

Vikrum Mathur
Legislative Aide
Office of Councilmember Roger Berliner
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850
Vikrum.Mathur@montgomerycountymd.gov
240-777-7826

From: Lilian [mailto:tiggerlil@comcast.net]
Sent: Saturday, September 03, 2016 11:17 AM
To: Mathur, Vikrum <Vikrum.Mathur@montgomerycountymd.gov>
Subject: Re: Woodmont Avenue

I have just learned the facts of DPS' actions and Planning's actions. Based on those facts, Lot 31's justification for applying for the amendment to the site plan to reduce the right of way contains inaccuracies, is missing important information, and outright lies. What is the penalty for lying to the Planning Board?

Sent from XFINITY Connect Mobile App

------ Original Message ------

From: Lilian
To: Vikrum Mathur
Sent: August 26, 2016 at 5:34 PM
Subject: Re: Woodmont Avenue

I really do not understand what kind of detailed investigation is necessary. All they have to do is measure the sidewalk. They tables are either in the right of way or not. It's very straight forward. What other kind of detailed investigation is there? This is just a delaying tactic. I suspect they are delaying to allow Silver to use the right of way until the season is over. That is not right. Silver and/or developer should still pay penalty or fine for violating site plan for 2 years.

Sent from XFINITY Connect Mobile App

------ Original Message ------

From: Vikrum Mathur
To: Lilian
Sent: August 26, 2016 at 5:19 PM
Subject: RE: Woodmont Avenue

Ms. Burch,

I have shared your concerns with DPS and they are still investigating the matter under DPS's review process. Under DPS' investigation protocols, this process does entail a detailed review. They will be in touch with us on this issue and I hope the investigation results will come soon. Thank you for your patience.

Vikrum Mathur
Legislative Aide
Office of Councilmember Roger Berliner
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850
Vikrum.Mathur@montgomerycountymd.gov
240-777-7826

From: Lilian [mailto:tiggerlil@comcast.net]
Sent: Monday, August 08, 2016 9:46 AM
To: Mathur, Vikrum <Vikrum.Mathur@montgomerycountymd.gov>

Cc: management <management@crescentplaza.net>;
metro@washingtonpost.com
Subject: Re: Woodmont Avenue

Still no follow up from DPS.

Sent from XFINITY Connect Mobile App

------ Original Message ------

From: Lilian
To: Vikrum Mathur
Cc: management, metro@washingtonpost.com
Sent: July 1, 2016 at 12:05 AM
Subject: Re: Woodmont Avenue

P.S. Silver was not in compliance with site plan from day one but county allowed them to operate for over a year now without doing anything to enforce the site plan. Do not allow them to change the site plan. The right of way is there to protect residents and visitors of Bethesda Row. Developers and businesses do not own Bethesda Row and do not use the sidewalks like people who live here do. Our rights should be protected. We have no dog park even though developers bring in more residents with dogs. Developers should pay for and build a dog park, not take away sidewalk right of way for residents and their dogs.

Sent from XFINITY Connect Mobile App

------ Original Message ------

From: Lilian
To: Vikrum Mathur
Sent: June 30, 2016 at 11:57 PM
Subject: Re: Woodmont Avenue

There is nothing to look into. They are in violation of the site plan. Developer (Stonebridge) is probably trying to change site plan or cut a deal after knowingly violate the site plan thinking they could get away with it. Do not trust them. Site them and make them comply. That is the only reasonable and acceptable solution.

Sent from XFINITY Connect Mobile App

------ Original Message -

From: Vikrum Mathur
To:
tiggerlil@comcast.net
Sent: June 30, 2016 at 1:34 PM
Subject: RE: Woodmont Avenue

Dear Ms. Burch,

Just an update. Ms. Contreras contacted me and said that they are still looking into the issue that you wrote in to us about, and that they will be in touch with you with respect to any updates. Just wanted to share.

Please also keep me posted on when DPS follows up with you. Thanks.

Vikrum Mathur
Legislative Aide
Office of
Councilmember Roger Berliner
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850
Vikrum.Mathur@montgomerycountymd.gov
240-777-7826

From: Mathur, Vikrum
Sent: Friday, June 24, 2016 3:56 PM
To:
'tiggerlil@comcast.net' <tiggerlil@comcast.net>
Subject: Woodmont Avenue

Dear Ms. Burch,

Thank you for your e-mail to our office.

I am in the process of looking into your concerns. Will share information as soon as I get it. Thank you.

Vikrum Mathur
Legislative Aide
Office of
Councilmember Roger Berliner
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850
Vikrum.Mathur@montgomerycountymd.gov
240-777-7826

INFOR HANSEN 8

9/30/2016 13:42

MARJORIE YOE

Service Request #	200053169
Request Type	RW1
	ROW VIOLATIONS
Request Date	9/13/2016 17:00
Call Date	9/13/2016 17:00
Taken By	YOE
Incident Date	9/14/2016 07:36

Information

Information

Area	
Sub-area	
District	
Map #	
Priority	
Responsibility	
Project	
Reference #	
Source	

Request Location

Parcel ID	
GPS Y	0.0000
GPS X	0.0000
Property ID	

Location

Street #	
Pre Dir	
Street Name	
Suffix	
Post Dir	
Subdesignation	
	Address
Cross Street	
Cross Street	
City, State, ZIP	
Location	Lot #31 Woodmont Ave

Additional Information

(No Data)

Call Details

Call Duration	00:00:00
# of Calls	1
Taken By	WEB
	WEB DPS
Customer Contact Requested	no
Notify Customer Regarding Service Request Progress	no
	1

Other Calls

(No Data)

Contact

Name	HOLLAND
First, MI	NANCY

Title	
Foreign	no
Address	4517 S Chelsea Ln
City	Bethesda
State/Province	MD
ZIP/PC	20814
Country	
Day Phone	(301)656-8754
Evening Phone	
Fax	
Pager	
PIN	
Mobile	
E-mail	nancy.holland@rcn.com
Contact Type	Customer

Customer Comments

The developer has petitioned to reduce the pedestrian right of way in front of the building. I am strongly opposed to this. Ironically enough, the goal of the new sector plan, etc. is for people to walk more. I don't see how this can happen, if developers reduce the width of sidewalks, etc. Please do not reduce the pedestrian right of way at this location (or anywhere else in Bethesda, for that matter.) The developer has proposed increased population and therefore, population density. Common sense says this will increase pedestrian density. What about safety? What about access and egress? Please deny this request. Thank you.

Inspection

(Tab Not Loaded)

Log

(Tab Not Loaded)

Associations

(Tab Not Loaded)

Details

(Tab Not Loaded)

INFOR HANSEN8

9/30/2016 14:02

MARJORIE YOE
Service Request # 200053170
Request Type RW1
ROW VIOLATIONS
Request Date 9/13/2016 17:16
Call Date 9/13/2016 17:16
Taken By YOE
Incident Date 9/14/2016 07:38

Information

Information

Area
Sub-area
District
Map #
Priority
Responsibility
Project
Reference #
Source

Request Location

Parcel ID
GPS Y 0.0000
GPS X 0.0000
Property ID

Location

Street #
Pre Dir
Street Name
Suffix
Post Dir
Subdesignation
Address
Cross Street
Cross Street
City, State, ZIP
Location Lot 31, intersection of Bethesda Ave and Woodmont

Additional Information

(No Data)

Call Details

Call Duration 00:00:00
# of Calls 1
Taken By WEB
WEB DPS
Customer Contact Requested no
Notify Customer Regarding Service Request Progress no
1

Other Calls

(No Data)

Customer Comments

I am complaining about the amendment to further reduce the pedestrian right of way in front of Silver on Woodmont Avenue. It is already too hard to walk around Bethesda. Don't pedestrians,

especially tax paying residents, have any rights (or representation) anymore where downtown Bethesda is concerned?

Contact

Name	PALLADINO
First, MI	GRACE
Title	
Foreign	no
Address	4524 N. Chelsea Lane
City	Bethesda
State/Province	MD
ZIP/PC	20814
Country	
Day Phone	
Evening Phone	
Fax	
Pager	
PIN	
Mobile	
E-mail	
Contact Type	Customer

Inspection

(Tab Not Loaded)

Log

(Tab Not Loaded)

Associations

(Tab Not Loaded)

Details

(Tab Not Loaded)

INFOR HANSEN8

9/30/2016 14:13

MARJORIE YOE

Service Request #	200053196
Request Type	RW1
	ROW VIOLATIONS
Request Date	9/14/2016 17:25
Call Date	9/14/2016 17:25
Taken By	YOE
Incident Date	9/15/2016 07:20

Information

Information

Area	
Sub-area	
District	
Map #	
Priority	
Responsibility	
Project	
Reference #	
Source	

Request Location

Parcel ID	
GPS Y	0.0000
GPS X	0.0000
Property ID	

Location

Street #	7150
Pre Dir	
Street Name	WOODMONT
Suffix	AVE
Post Dir	
Subdesignation	
	Address
Cross Street	
Cross Street	
City, State, ZIP	BETHESDA MD 20814
Location	

Additional Information

(No Data)

Call Details

Call Duration	00:00:00
# of Calls	1
Taken By	WEB
	WEB DPS
Customer Contact Requested	no
Notify Customer Regarding Service Request Progress	no
	1

Other Calls

(No Data)

Contact

Name	MCCABE

First, MI	LISA V
Title	
Foreign	no
Address	4608 Highland Avenue
City	Bethesda
State/Province	MD
ZIP/PC	20814
Country	
Day Phone	(202)714-4948
Evening Phone	(202)714-4948
Fax	
Pager	
PIN	
Mobile	
E-mail	lisavee@mindspring.com
Contact Type	Customer

Customer Comments

The notice for a proposed change at this location is hard for pedestrians to read where it is located. According to the plan amendment being considered by the Planning Board by Lot 31, 31A Bethesda plan# 82007018C, this would be a change to change the pedestrian right of way from 10 feet to 6 feet. This area of downtown Bethesda is increasingly busy for foot traffic and vehicular traffic. I believe making this change would be a danger to both pedestrians and vehicles. Keeping the larger area for pedistrian traffic that was already approved by the Planning Board is the prudent thing to do to keep residents safe who are traveling by foot and by car. Additionally, many people travel by bicycle and have strollers for children in this location and keeping the wider right of way is extremely important to safety.

Inspection

Inspector	CURTI ADAM CURTIN
Scheduled	9/15/2016 07:21
Due By	
Started	
Due By	
Completed	
Due By	
Resolved	9/28/2016 10:28
Due By	
Resolution	NOVIO NO VIOLATION FOUND 1

Service Request Inspections

(No Data)

Log

1

Service Request Log Results

Log Type	Entered By	Start Date	To Comments
DATA	CURTI		
DATA	CONTR	9/30/2016 14:13	Concerns sent to M-NCPPC as the site plan amendment is under their purview.

Associations

(Tab Not Loaded)

Details

(Tab Not Loaded)

Hisel-McCoy, Elza

From: Lilian <tiggerlil@gmail.com>
Sent: Monday, September 26, 2016 1:20 PM
To: Nichols, James
Cc: ehsan.motazedi; Jones, Diane; Kronenberg, Robert; #CCL.Leventhal Staff; Pfefferle, Mark; metro@washpost.com; management@crescentplaza.net; Leventhal's Office, Councilmember; Vikrum Mathur; Ike Leggett; CM Berliner; Councilmember Berliner; Hisel-McCoy, Elza; MCP-Chair
Subject: Re: Silver site plan violation

Follow Up Flag: Follow up
Flag Status: Completed

It appears Lot 31 and Silver continue to dodge the citation. They still have not removed the seating in the right of way but what they have now done is moved it next to the building. That is still a violation of their site plan as they are still in the 10 feet of right way that is supposed to extend from the building. The actual pedestrian right of way is still less than 10 feet. With the placement of seating next to the building, the wait staff will have to stand in the right of way to serve the customers, which is also a violation.

Just because they have an application to amend the site plan does not mean they can continue to violate their site plan as it exists now. They are assuming their amendment will be approved, which would be a blow to the residents of and visitors to Bethesda. Visitors need the right of way to walk from the garage entrance to Bethesda Ave. My neighbors are telling me they avoid walking on the Silver side of Woodmont because there is not enough room. Instead, they walk on the opposite side of the street. The amendment proposes reducing the right of way on both sides of Woodmont, leaving no side wide enough for anyone.

Lot 31 has to acknowledge they made a mistake in signing a lease with Silver that allowed them to place seating in the right of way and re-negotiate that lease to compensate Silver for whatever revenue they think they will lose, instead of passing the buck to the people of Bethesda and Montgomery County.

Since my neighbors have become aware of the true nature of this amendment application, a number of them have already filed complaints with DPS and Planning.

Lilian

On Mon, Aug 29, 2016 at 5:53 PM, Lilian <tiggerlil@gmail.com> wrote:
Mr Nichols & Mr Pfefferle,

It appears my optimism was premature. I just saw the notice in the attached photo on the sidewalk not at Silver but across the street near the garage entrance. I knew this is what the developers would do since they have an

army of attorneys at their beck and call to file changes to site plans that they agreed to but choose to ignore and violate.

It must be true then that the developers do own Montgomery county, the county council and the planning board. First they are allowed to not follow the guidelines that sidewalk seating must be next to the building. Then Federal Realty is allowed to reduce the right of way in front of their properties. Now Stonebridge is going to be allowed to reduce the 10' right of way in the site plan that they knew about and agreed to before construction so that they can avoid being in violation? It's akin to changing a law after I've broken it and gone unpunished for breaking it - I wish I had that kind of power.

As I feared, Planning is going to let Stonebridge and Silver weasel out of the 10' right of way by allowing this change to the site plan. Hence the delay in enforcing the site plan and insisting that Silver remove the tables. I'm sure Stonebridge will get their way just like every other developer in downtown Bethesda. I am very disappointed in our elected officials and the people who are supposed to be working for the citizens and residents of Bethesda and Montgomery county and protecting our quality of life. Won't someone stand up to these property mongers?

Not only will Stonebridge change the site plan, they will have gone two years without any penalty or consequence for the violation. That is just adding insult to injury. I am truly ashamed of the lack of integrity of all involved.

Lilian Burch

On Wednesday, August 10, 2016, Lilian <tiggerlil@gmail.com> wrote:

Dear Mr Nichols,

Thank you for bringing me up-to-date on this site plan violation. I am encouraged that there has been no mention of changing the site plan to reduce the 10' setback or giving Silver an exception, at least at this point.

Mr Pfefferle, I would like very much to be kept up-to-date on your enforcement actions. It still baffles me that it has taken so long for this to get to you for enforcement. I reported this violation last year and again this spring before outdoor seating began but they were not issued a notice of non-compliance until 5/9/16. I am also amazed that Silver can be granted a 30 extension two months after the notice. I hope it is obvious to you that these are just delay tactics employed by developers, and you will not allow any further extensions or delays in enforcing the 10' setback.

Knowing the tactics that developers use and the army of attorneys at their disposal, I am most concerned that they will manage to get the Planning Board to change the site plan and reduce the 10' setback, and avoid any penalties for this more than year-long violation. I hope you will not let that happen.

I look forward to seeing the seating removed and setback restored to what was approved by M-NCPPC.

Thank you
Lilian Burch

On Tue, Aug 9, 2016 at 4:25 PM, Nichols, James <James.Nichols@montgomerycountymd.gov> wrote:

Dear Ms. Burch,

I manage the Site Plan Enforcement Section (SPES) within DPS' Zoning & Site Plan Enforcement Division. I want to bring you up to date with my office's enforcement action regarding the seating area within the public right-of-way associated with the Silver. In response to your complaint, SPES inspected the seating areas and confirmed that the 10' setback was not being maintained. Accordingly, and following our enforcement procedure, SPES issued a Notice of Non-Compliance (NONC) to the developer on 05/09/16. Subsequently, we met with M-NCPPC staff, the developer, and owner of the Silver on 06/28/16 to review the NONC and site plan requirements. At that time, the developer requested a 30-day extension of the NONC compliance date in order to seek possible solutions from the various authorities. DPS has clearly communicated to the developer and the Silver that the seating needs to be pulled back to an appropriate distance to facilitate pedestrian access through his area. Although there have many communications and meetings in the interim, no solution has been proposed to date and the extended compliance date has passed. Therefore, following the enforcement procedure for such site plan issues, SPES has recently referred this case to M-NCPPC's DARC Chief, Mark Pfefferle, for further enforcement action. From this point, M-NCPPC will proceed to process this violation in accordance with the Planning Board's Enforcement Rules. Any further determination of corrective actions and/or penalties will come from that process and the Planning Board.

DPS has taken this situation very seriously and we look forward to its resolution. I have copied Mr. Pfefferle on this so he may respond to any future inquires you may have.

Sincerely,

James Gregory Nichols (Greg)

Manager, SPES

Zoning & Site Plan Enforcement

Department of Permitting Services

255 Rockville Pike, 2nd Floor

Rockville, MD 20850

240-777-6278 **T**

240-777-6263 F

Have you tried DPS eServices?
http://permittingservices.montgomerycountymd.gov/DPS/eServices/AbouteServices.aspx

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From: Leventhal's Office, Councilmember
Sent: Tuesday, August 09, 2016 11:26 AM
To: Lilian <tiggerlil@gmail.com>
Cc: Jones, Diane <Diane.Jones@montgomerycountymd.gov>; robert.kronenberg@montgomeryplanning.org; #CCL.Leventhal Staff <#CCL.LeventhalStaff@montgomerycountymd.gov>
Subject: RE: Enforcing removal of objects in right of way

Dear Lilian:

I see that you copied Diane Schwartz Jones on your July 27 message but I have not seen her response. Did she reply to you?

Regards,

George Leventhal

From: Lilian [mailto:tiggerlil@gmail.com]
Sent: Wednesday, July 27, 2016 11:31 AM
To: Leventhal's Office, Councilmember <Councilmember.Leventhal@montgomerycountymd.gov>
Cc: Jones, Diane <Diane.Jones@montgomerycountymd.gov>; robert.kronenberg@montgomeryplanning.org
Subject: Re: Enforcing removal of objects in right of way

Mr Leventhal,

It has been several weeks since the "meeting" and there are still tables, chairs, railings, plants, etc in the right of way. What was the outcome of the meeting? I hope that Silver or Stonebridge or someone will be fined for the 2 years of violation of the site plan, with the money going towards site plan enforcement and parking enforcement in downtown Bethesda. Please do not accept any offer from the developers or Silver to change the site plan. We need our right of way and no price is worth giving it up, especially for residents in the vicinity. We must stop making concessions to the developers. They are only interested in exploiting downtown Bethesda and have no regard for quality of life. The Planning Board allows too much development at too fast a pace. We understand that development boosts our county's economy but Bethesda should not be bearing the brunt of the development and longtime residents should not be made to suffer with their quality of life and the reason we like living in Bethesda torn to shreds.

I assure you that if you lived in downtown Bethesda, you would agree with me. I hope you can help us suspend further development until the community has had a chance to adjust and serious thought given to truly planning future development.

Thank you.

Lilian

Lilian

On Wed, Jul 6, 2016 at 9:56 AM, Leventhal's Office, Councilmember <Councilmember.Leventhal@montgomerycountymd.gov> wrote:

> Dear Lilian:
>
> Thank you for your detailed messages. You raise legitimate concerns. I appreciate knowing of the interaction between residents and Bethesda's bustling restaurant scene. I hope the Department of Permitting Services is able to enforce restaurant compliance to accommodate both diners and pedestrians.

The Bethesda sector plan is still currently with the Planning Board; however, we expect to receive it later this summer. I will notify you when it comes before the County Council. In the interim, you may want to contact Leslye Howerton, the planner in charge of developing the draft plan (301-495-4551). A dog park would also come before Planning Board.

Thank you for bringing these issues to my attention.

Best regards,

George Leventhal

From: Lilian <tiggerlil@gmail.com>
Sent: Friday, June 24, 2016 3:27:54 PM
To: Jones, Diane
Cc: Leventhal's Office, Councilmember; #CCL.Leventhal Staff; Motazedi, Ehsan; Nichols, James; Mansouri, Hadi; management@crescentplaza.net; WashPost Metro
Subject: Re: Enforcing removal of objects in right of way

I honestly don't understand why a meeting is even necessary or why it took so long to set up a meeting. If the developer misrepresented the space available for outdoor seating to the restaurant, then it's an issue between the restaurant and the developer. I hope the county will not make any concessions to the developer or restaurant such as what was made to Federal Realty where the right of way was reduced from 6 feet (county standard) to 5 feet. As congested as Bethesda Avenue is, that one foot would make a lot of difference. Even so, the restaurants on Bethesda Ave and Elm continue to push the limit, creeping inch by inch into the right of way and hanging planters on the railings to take up more right of way space. Add to that wait staff serving customers from the right of way and not watching out for pedestrians when they cross the right of way.

Throughout the entire construction of lot 31, Stonebridge showed no regard or consideration to the residents living adjacent to the construction, from placing porta johns in the middle of Woodmont Ave directly in front of our building, to allowing their construction crew and contractors to trample on and decimate our landscaping, and subjecting our residents to polluting fumes while their dump trucks parked and idled directly under our windows. No matter how many times we asked Jane Mahaffie to remedy these issues, we were either stonewalled or ignored, and the county did very little to help us. So I hope the county will enforce the site plan and not allow any deviation or concession.

There is only one way to "resolve" non compliance -- make them comply. They should be fined for each day they have not complied. Don't sell us (taxpayers who were residents in Bethesda long before the developer and restaurant) out.

On Friday, June 24, 2016, Jones, Diane <Diane.Jones@montgomerycountymd.gov> wrote:

Thank you Mr. Leventhal.

The Department of Permitting Services has in fact issued a notice of non-compliance due to some of the seating and has been working with MNCPPC and the developer to resolve the non-compliance. In fact, I have been advised that my staff and planning staff will be meeting with the Developer representative next week.

Diane Schwartz Jones, Director

Montgomery County Department of Permitting Services

255 Rockville Pike

Rockville, MD 20850

240.777.6363

Have you tried DPS eServices? http://permittingservices.montgomerycountymd.gov/DPS/eServices/AboutServices.aspx

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From: Leventhal's Office, Councilmember
Sent: Thursday, June 23, 2016 1:23 PM
To: Lilian <tiggerlil@gmail.com>
Cc: #CCL.Leventhal Staff <#CCL.LeventhalStaff@montgomerycountymd.gov>; Jones, Diane <Diane.Jones@montgomerycountymd.gov>
Subject: RE: Enforcing removal of objects in right of way

Dear Ms. Burch:

I am copying Diane Schwartz Jones, director of the Department of Permitting Services, on this reply with a request that she investigate your concerns regarding pedestrian right-of-way in front of Silver restaurant on Woodmont Avenue.

Best regards,

George Leventhal

Montgomery County Councilmember

From: Lilian [mailto:tiggerlil@gmail.com]
Sent: Wednesday, June 22, 2016 8:30 PM
To: Leventhal's Office, Councilmember <Councilmember.Leventhal@montgomerycountymd.gov>; Floreen's Office, Councilmember <Councilmember.Floreen@montgomerycountymd.gov>
Cc: Nichols, James <James.Nichols@montgomerycountymd.gov>; Hisel-McCoy, Elza <elza.hisel-mccoy@montgomeryplanning.org>; Panjshiri, Atiq <Atiq.Panjshiri@montgomerycountymd.gov>; Kronenberg, Robert <robert.kronenberg@montgomeryplanning.org>; Hartman, Ken <Ken.Hartman@montgomerycountymd.gov>; management@crescentplaza.net; Berliner's Office, Councilmember <Councilmember.Berliner@montgomerycountymd.gov>; County Council <County.Council@montgomerycountymd.gov>; Director DOT <Director.DPWT@montgomerycountymd.gov>; Liang, Kyle <Kyle.Liang@montgomerycountymd.gov>; Bilgrami, Khursheed <Khursheed.Bilgrami@montgomerycountymd.gov>; WashPost Metro <metro@washpost.com>; Contreras, Christina <Christina.Contreras@montgomerycountymd.gov>
Subject: Enforcing removal of objects in right of way

Councilmember Leventhal,

When I heard you on the radio talking about enforcing the removal of signs in public right of way, you gave me hope that you may be able to help me enforce a similar right of way violation. I have completed the online contact form that is supposed to distribute my complaint to all council members, in which I stated that I would forward this chain of emails I have sent Ms Contreras and other officials of Montgomery County who have knowledge of the site plan and the 10 feet pedestrian right of way in front of the Silver restaurant. In December, Ms Contreras said it was being handled but it is now summer and the tables are still there. There is no other way to handle this but remove the tables. If Passion Fish on the other side of Woodmont can operate without taking up pedestrian right

of way, why can Silver not? There is a good amount of foot traffic from the garage to Bethesda Row, not to mention residents who live on the east side of Silver.

If you meant what you said about being fair and not allowing objects in right of way, then please get someone to enforce the site plan and give us residents the right of way we were promised.

Lilian Burch

On Wed, May 25, 2016 at 12:14 PM, Lilian <tiggerlil@gmail.com> wrote:

You have had all winter and most of spring to bring Silver into compliance with the site plan. Whether you want to call it a ROW issue or not, they are still in violation of the site plan which specifies the 10 feet right of way. They continue to use an extra row of tables that infringe on the right of way. I can assure you that everyone who lives in the vicinity are upset about this and knowing that I have been pursuing this issue with you, ask me when anything will be done. The key word here is "anything" because the residents of downtown Bethesda feel we have already been sold us out to the developers. And the developers continue to take more than what was approved. How difficult is it to have Silver remove the row of seating nearest the building?

While I am airing our complaints, I may as well air another one -- not enough dog parks. The downtown Bethesda plan does not include any dog parks even though it increases population density and almost all the residential buildings are or will be pet friendly. So why are the developers not required to pay for or provide a park for dogs? I have written to MNCPPC about dog parks, especially at Norwood and Willow, and have been told it costs $250,000 to put one in. So why not have the developers pay for it since they are the ones contributing to the dog population?

In both cases, the developers are getting what they want and making money hand over fist while the residents are paying the price. The County Council just approved a property tax increase which will impact individual homeowners more than developers who will just pass it on to their tenants. When is the County Council going to make the developers pay for the problems they are causing?

I am on the board of our condo and all our owners feel disenfranchised and ignored. We are bombarded with numerous complaints at every board meeting. Access to our street and garage has been curtailed without consent which has added burden to our private driveway which people use for U turns. Traffic and parking violations go unchecked regardless of how many times we report it and ask for regular patrols. Traffic signs removed by construction are tossed aside and not replaced, even when DOT is informed of the exact location of the discarded sign. Our property prices have dropped because of all these

things and the constant construction. And yet our property taxes will be increased? How much do you expect us to bear? We are all at our limits and some attention to the smaller matters such as Silver site plan, access to Miller Ave, and no U turns using our private driveway, will help relieve some of the stress.

On Thu, May 5, 2016 at 8:35 PM, Lilian <tiggerlil@gmail.com> wrote:

Silver is still not complying with 10 feet pedestrian right-of-way. The attached photos were taken today. I include one with people to give you a perspective that there is not 10 feet between the wall and railing. The outer row of seating should not be there. The monstrous table around the tree is at the 10 feet limit and there should be no seating or additional tables past it.

It is very frustrating and disappointing that the county does not enforce its own planning regulations. And businesses and developers are allowed to do as they please with no consequences. It is bad enough that the county council allows excessive development against the objections of residents, but allowing the developers to further violate resident rights is unconscionable.

On Friday, March 11, 2016, Lilian <tiggerlil@gmail.com> wrote:

Took the attached photos when I took my dog out. It's better but it's still not 10 feet. They are still trying to have seating around the large counter they put around a tree but the edge of the counter is at the 10 feet limit without stools. The stantions should probably line up with the end of the permanent railing next to the loading dock area. Silver needs to remove the counter seating.

Sent from my iPhone

On Mar 11, 2016, at 1:35 PM, Lilian <tiggerlil@gmail.com> wrote:

Christine,

Bethesda Row just announced the opening of outdoor seating. I have not yet checked the clearance in front of Silver but I hope they are following the site plan. I will go there within the next couple of days and send you photos if they are not adhering to the 10 feet right of way.

Thank you

Lilian

Sent from my iPhone

On Dec 21, 2015, at 4:47 PM, Contreras, Christina <Christina.Contreras@montgomerycountymd.gov> wrote:

Ms. Burch –

I apologize for using the abbreviation ROW which stands for Right of Way. My staff is handling the issue with regards to the Outdoor Café. You are in fact being heard. As noted, we(the DPS Land Development Division specifically the Public Right of Way Inspection section) are currently working with the permittee to resolve all issues as it relates to the Silver. We (the Public Right of Way Inspection section) work together daily with the DPS Zoning and Site Plan Enforcement Division to ensure all development work is appropriate.

Again, as noted, this issue is currently still being handled as it has not been forgotten nor overlooked.

Thank you again –

Christina

Christina Tadle Contreras, P.E., Manager

Sediment Control/Stormwater Management and Right of Way Inspections

Montgomery County Department of Permitting Services

Division of Land Development

255 Rockville Pike, 2nd Floor

Rockville, MD 20850

240-777-6307

240-777-6339 (fax)

Have you tried DPS eServices?
http://permittingservices.montgomerycountymd.gov/DPS/eServices/AboutServices.aspx

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From: Lilian [mailto:tiggerlil@gmail.com]
Sent: Monday, December 21, 2015 4:28 PM
To: Contreras, Christina <Christina.Contreras@montgomerycountymd.gov>
Cc: Nichols, James <James.Nichols@montgomerycountymd.gov>; Hisel-McCoy, Elza <elza.hisel-mccoy@montgomeryplanning.org>; Panjshiri, Atiq <Atiq.Panjshiri@montgomerycountymd.gov>; Kronenberg, Robert <robert.kronenberg@montgomeryplanning.org>; Hartman, Ken <Ken.Hartman@montgomerycountymd.gov>; management@crescentplaza.net
Subject: Re: Right of way in front of Silver is in violation of site plan

Who is or are ROW? How do we contact them so that we can be heard?

Lilian

On Monday, December 21, 2015, Contreras, Christina <Christina.Contreras@montgomerycountymd.gov> wrote:

Ms. Burch –

This is in fact a ROW issue and being that ROW has the lead with this, it is currently being handled. It has not been forgotten nor overlooked.

Thank you again for your concern and again, your continued patience is appreciated.

Happy Holidays.

Christina

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From: Lilian [mailto:tiggerlil@gmail.com]
Sent: Monday, December 21, 2015 2:42 PM
To: Contreras, Christina <Christina.Contreras@montgomerycountymd.gov>; Nichols, James <James.Nichols@montgomerycountymd.gov>
Cc: Hisel-McCoy, Elza <elza.hisel-mccoy@montgomeryplanning.org>; Panjshiri, Atiq <Atiq.Panjshiri@montgomerycountymd.gov>; Kronenberg, Robert <robert.kronenberg@montgomeryplanning.org>; Hartman, Ken <Ken.Hartman@montgomerycountymd.gov>; management@crescentplaza.net
Subject: Re: Right of way in front of Silver is in violation of site plan

Dear Mr Nichols,

I am including you in this email thread because from the DPS web site, it appears you are in charge of enforcing site plans and this is a violation of the site plan, even though Christina has been treating it as a right of way issue. I hope you can bring Silver in line with the site plan.

Thank you

Lilian Burch

On Monday, December 21, 2015, Lilian <tiggerlil@gmail.com> wrote:

Christina,

Attached are photos I just took today of the sides in front of Silver. They continue to be in violation of 10 feet right of way. There is no one sitting outside but they have not removed any of the tables and chairs, especially the large one built around the tree in the third photo. I am not patronizing the Silver and will encourage my neighbors to boycott the restaurant until they comply with the right of way requirements approved by the county planning. It is bad enough we have to give up any pedestrian right of way to businesses especially when the county wants to be pedestrian friendly.

This violation particularly affects residents of my building because it is one of our paths to Bethesda Row.

Thank you

Lilian

On Sunday, October 18, 2015, Lilian <tiggerlil@gmail.com> wrote:

Christina,

There is much more foot traffic on the Silver than the Darby side of Woodmont because the pedestrian exit from the garage is on the Silver side. That is why a 10 foot right of way is necessary. As I returned from walking my dog this afternoon, there was a lot of foot traffic from the pedestrian access to the garage and with the wait staff traffic and people loitering in the right of way as well as entering and exiting the restaurant, it was difficult to navigate without being hit by an opening door.

As the weather cools, they should be removing the outdoor seating soon. Even so, I hope you will not let up on this and ensure they respect the site plan right of way when warm weather returns. The foot traffic on that sidewalk will only increase as construction ends and retail and dining options continue to grow.

Thank you

Lilian

On Friday, October 9, 2015, Lilian <tiggerlil@gmail.com> wrote:

Thank you for letting me know something is being done. As of last email from you, it seemed you felt they were in compliance.

On Friday, October 9, 2015, Contreras, Christina <Christina.Contreras@montgomerycountymd.gov> wrote:

Ms. Burch –

DPS is and has been working on remedying the situation at the Silver. Your patience is much appreciated as this is handled.

Christina

Christina Tadle Contreras, P.E., Manager

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From: Lilian [mailto:tiggerlil@gmail.com]
Sent: Friday, October 09, 2015 2:34 PM

To: Hisel-McCoy, Elza <elza.hisel-mccoy@montgomeryplanning.org>
Cc: Contreras, Christina <Christina.Contreras@montgomerycountymd.gov>; Panjshiri, Atiq <Atiq.Panjshiri@montgomerycountymd.gov>; Kronenberg, Robert <robert.kronenberg@montgomeryplanning.org>
Subject: Re: Right of way in front of Silver

Hello Elza,

Are you telling me that Permitting Services can decide what is in compliance even if it does not follow approved site plans? If that is the case, what is the point of planning approvals?

Atiq, I ask that you review the approved site plan and enforce the 10 feet right of way approved by planning. An exception of 4 feet is just not right or acceptable. We cannot allow developers who only have profit in mind to decide what is acceptable and livable for residents. Haven't we given away enough already to the developers? Federal Realty got an exception to reduce right of way from 6 feet to 5 feet. With increased foot traffic in Bethesda Row, you cannot let Stonebridge and Silver to reduce right of way by 4 feet.

Thank you

Lilian

On Friday, October 9, 2015, Hisel-McCoy, Elza <elza.hisel-mccoy@montgomeryplanning.org> wrote:

> Hello Lilian,
>
> As I noted in my e-mail on March 31, Note 26 on the most recently approved site plan amendment (No. 82007018B) reads as follows:
>
> <image001.jpg>

The County Department of Permitting Services is the agency that determines compliance with this note.

Sincerely,

Elza

Elza Hisel-McCoy, Assoc. AIA, LEED-AP

Master Planner, Regulatory Supervisor

Area One

Montgomery County Planning Department

M-NCPPC

8787 Georgia Avenue

Silver Spring, MD 20910

301.495.2115, elza.hisel-mccoy@montgomeryplanning.org

montgomeryplanning.org

From: Lilian [mailto:tiggerlil@gmail.com]
Sent: Tuesday, October 06, 2015 11:13 PM
To: Contreras, Christina <Christina.Contreras@montgomerycountymd.gov>
Cc: atiq.panjshiri <atiq.panjshiri@montgomerycountymd.gov>; Kronenberg, Robert <robert.kronenberg@montgomeryplanning.org>; Hisel-McCoy, Elza <elza.hisel-mccoy@montgomeryplanning.org>
Subject: Re: Right of way in front of Silver

Elza & Robert,

I would really like to know if Elza gave me the correct information about the right of way. Whether something

changed since Elza gave me the information, or Stonebridge managed to get an exception without public review, or they are just doing as they please. I tried to walk my dogs there today and it was very difficult with all cross traffic between the restaurant and seating area.

Thank you

Lilian

On Mon, Sep 21, 2015 at 11:19 AM, Lilian <tiggerlil@gmail.com> wrote:

> Christina,
>
> Again, I beg to differ. Just as exceptions were made for Federal Realty which does not follow your guidelines, the information Elza gave me which I quoted to you, is an exception from your guidelines. I reviewed this with Elza back in March and he assured me there would be 10 feet of right of way. Have you consulted with Planning? If it is on their site plan, they must comply or be in violation.
>
> Thank you
>
> Lilian
>
> On Friday, September 18, 2015, Contreras, Christina <Christina.Contreras@montgomerycountymd.gov> wrote:
>
> > Lilian –
> >
> > The correct ROW is 6 feet as was noted on my email dated September 10th.

Thank you again for your concern.

Christina

Christina Tadle Contreras, P.E., Manager

Sediment Control/Stormwater Management and Right of Way Inspections

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From: Lilian [mailto:tiggerlil@gmail.com]
Sent: Friday, September 18, 2015 4:04 PM
To: Contreras, Christina <Christina.Contreras@montgomerycountymd.gov>; Panjshiri, Atiq <Atiq.Panjshiri@montgomerycountymd.gov>
Cc: robert.kronenberg@montgomeryplanning.org; elza.hisel-mccoy@montgomeryplanning.org
Subject: Right of way in front of Silver

Christina,

They are about to open and there is still not 10 feet of right of way for pedestrians. Did you clarify this with Elza or Robert?

I believe Stonebridge probably did not read the site plan or purposely did not inform Silver of the required right of way and so could be liable to Silver for any modifications of the outdoor seating area. Either way, the residents and pedestrians of Bethesda Row need the 10 feet right of way for reasons of safety and volume.

Please let me know when they will comply with the site plan.

Thank you

Lilian

On Thu, Sep 10, 2015 at 5:05 PM, Lilian <tiggerlil@gmail.com> wrote:

> Christina,
>
> If you read what Elza sent me, it says 10 feet clear sidewalk area, not 6 feet. They can have sidewalk seating to within 10 feet of the building, not 6 feet. It does not say they can use 10 feet of sidewalk from the curb.
>
> Please clarify with Elza or Robert at Planning (they are cc'd)
>
> Thank you
>
> Lilian

On Thursday, September 10, 2015, Lilian <tiggerlil@gmail.com> wrote:

> That is not my understanding based on the information provided to me by Elza Hisel-McCoy of Planning, after a meeting and site visit in March. Please refer to the quote below from an email from Elza which I had previously forwarded to you.
>
> As a side note, I would like to point out that often the right of way is obstructed by signs and wait stations, as was the case along Elm when I walked there yesterday, in front of Cafe D

...

[Message clipped]

Hisel-McCoy, Elza

From: Santiago Bortman <sanbortman@gmail.com>
Sent: Wednesday, September 28, 2016 4:38 PM
To: Hisel-McCoy, Elza
Subject: Sidewalks

Follow Up Flag: Follow up
Flag Status: Flagged

We need our sidewalks in Bethesda!!!
Don't take them away!

MCP-Chair

RECEIVED
SEP 29 2016
OFFICE OF THE CHAIRMAN
THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

From: Tara Clifton <tarataratara@gmail.com>
Sent: Wednesday, September 28, 2016 6:51 PM
To: MCP-Chair; elza.hizel-mccoy@montogmeryplanning.org
Subject: Current violation and opposition to the application for plan 82007018c

Silver currently has seating in the right of way.

I am opposed to the application for plan 82007018C.

As a frequent pedestrian in the area, most often with small children, I believe we need to maintain maximum pedestrian space. This is a busy area already. If sidewalks become small and are overcrowded , I won't want to walk in the area for shopping and dining.

Thank you,
Tara Clifton
5515 Huntington Pkwy
Bethesda MD. 20814
724-683-8272

Hisel-McCoy, Elza

From: Caitlin Drew <cncarlock@gmail.com>
Sent: Wednesday, September 28, 2016 7:59 PM
To: Hisel-McCoy, Elza
Subject: Concern

Follow Up Flag: Follow up
Flag Status: Flagged

Hello Ms Hizel-MCCoy,
I am writing to express my concern regarding the walk ability of downtown Bethesda sidewalks. The recent re-development has lead to significant flaws in pedestrian flow on sidewalks. Please accept my comment that sidewalks should not be narrowed to 6 ft.
Thank you,
Caitlin Drew
Crescent Plaza Ow

Sent from my iPhone

Hisel-McCoy, Elza

From: Mindy Schwarcz <mindy.schwarcz@gmail.com>
Sent: Thursday, September 29, 2016 10:35 AM
To: Hisel-McCoy, Elza
Subject: keep our sidewalks free and clear

Follow Up Flag: Flag for follow up
Flag Status: Flagged

I am a unit owner at 7111 Woodmont Ave condominium.
I strongly oppose reducing the sidewalk width in front of Lot 31!!

We need more walking space Not less. Must keep the required 10ft clearance.

Agnes Mindy Schwarcz
301 661 3444

Hisel-McCoy, Elza

From: Hisel-McCoy, Elza
Sent: Monday, October 03, 2016 10:52 AM
To: 'Keith Geimer'
Subject: RE: Lot 31 Amendment

No hearing date has been set, though the Planning Board typically meets every Thursday. We will send out a notice postcard 10 days before the hearing when we post the staff recommendation on the amendment.

Elza Hisel-McCoy, Assoc. AIA, LEED-AP
Master Planner, Regulatory Supervisor
Area One
Montgomery County Planning Department
M-NCPPC
8787 Georgia Avenue
Silver Spring, MD 20910
301.495.2115, elza.hisel-mccoy@montgomeryplanning.org
montgomeryplanning.org

From: Keith Geimer [mailto:keith.geimer@clarkus.com]
Sent: Monday, October 03, 2016 10:44 AM
To: Hisel-McCoy, Elza <elza.hisel-mccoy@montgomeryplanning.org>
Subject: Re: Lot 31 Amendment

Thank you for your response. That's what I thought.
It makes sense that they comply with the rules until you find a solution.
When are public hearings?

On Mon, Oct 3, 2016 at 10:30 AM, Hisel-McCoy, Elza <elza.hisel-mccoy@montgomeryplanning.org> wrote:

> Good day Keith,
>
> The Site Plan Amendment (No. 82007018C) proposes to remove a note on one of the approved Certified Site Plan sheets that allowed that the "Applicant may use Woodmont Avenue right-of-way from face of curb to 10'+/- face of building for tenant restaurant (if any) outdoor seating."
>
> The current condition is closer to about 6'. This Site Plan Amendment is in response to a violation of that provision. County Department of Permitting Services (DPS) issued a Notice of Non-Compliance (NONC) to the developer in May of this year. Since the violation has not been resolved, on August 26 the Planning Department issued to the developer an Administrative Citation for the violation, which was followed up with another on September 16. The developer has been working on alternatives to meet and/or modify the requirement and DPS and our agency continue to review those alternatives.

If you would like to the view the application that was submitted, please go to www.montgomeryplanning.org/development and enter the project number 82007018C.

Please let me know if you have further questions.

Sincerely,

Elza

Elza Hisel-McCoy, Assoc. AIA, LEED-AP

Master Planner, Regulatory Supervisor

Area One

Montgomery County Planning Department

M-NCPPC

8787 Georgia Avenue

Silver Spring, MD 20910

301.495.2115, elza.hisel-mccoy@montgomeryplanning.org

montgomeryplanning.org

From: Keith Geimer [mailto:keith.geimer@clarkus.com]
Sent: Wednesday, September 28, 2016 5:09 PM
To: Hisel-McCoy, Elza <elza.hisel-mccoy@montgomeryplanning.org>
Subject: Lot 31 Amendment

I received a vague and confusing notice in the mail regarding a proposed amendment to the lots next door to my home (7111 Woodmont Avenue).

From the best I can gather, the idea is to grant further space for sidewalk retail.

While I've got no grudge against the new neighbors or the heavy new density surrounding our building on all sides, like most everyone I've talked to in my building, I would still like to get reasonably to and from our building.

The area in front of "Silver" is a pedestrian log jam and (on a separate note) the median has created a riddle of unintended driving consequences. Where's the balance?

Again, all the added traffic doesn't bother me, the large street and sidewalk obstructions already brought into being, however are senseless. Please let me know what precisely is being considered.

The current constrictions to the free flow of all these folks have made normal navigation a chore.

Thank you for your response.

Keith

--
Keith Geimer
Asset Manager
Clark Enterprises, Inc.
7500 Old Georgetown Road
Bethesda, MD 20814
(Phone) 301-657-7212
(Fax) 301-657-7173

Hisel-McCoy, Elza

From: Hisel-McCoy, Elza
Sent: Monday, October 03, 2016 11:12 AM
To: 'Lilian'; Kronenberg, Robert
Cc: 'ehsan.motazedi'; Greg Nichols (james.nichols@montgomerycountymd.gov); MCP-CTRACK; MCP-Chair; 'vikrum.mathur@montgomerycountymd.gov'; Wright, Gwen; Krasnow, Rose; Pfefferle, Mark; Dumais, Nicholas; Neam, Dominique
Subject: Lot 31 Update (CTRACK #2016-0986)
Attachments: Lot 31_31A new citation.pdf

Hello again,

I am following up on an e-mail conversation between you and Vikrum Mathur of Councilmember Berliner's office, which you forwarded to the Planning Board Chair. On September 19, our Department issued another citation (attached) with associated fines for continued non-compliance with the Certified Site Plan. Last week, DPS met on-site with the developer and restaurant owner to discuss possible alternatives, which are still under review. Once DPS completes their review, the Planning Department will complete our review and prepare a recommendation for the Board.

This is still a developing issue, but I wanted to circle back with you to keep you up to date.

Sincerely,

Elza

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Silver Spring, MD 20910
301.495.2115, elza.hisel-mccoy@montgomeryplanning.org
montgomeryplanning.org

From: Hisel-McCoy, Elza
Sent: Friday, September 02, 2016 8:45 AM
To: 'Lilian' <tiggerlil@gmail.com>; Kronenberg, Robert <robert.kronenberg@montgomeryplanning.org>
Cc: ehsan.motazedi <ehsan.motazedi@montgomerycountymd.gov>; Greg Nichols (james.nichols@montgomerycountymd.gov) <james.nichols@montgomerycountymd.gov>
Subject: RE: Honest truth

Hello Lilian,

Sorry for the delay in responding. I will start off by saying that this Site Plan Amendment is in response to a violation of the approved Certified Site Plan. I have attached for your reference an updated Notice of Non-Compliance (NONC) which the County Department of Permitting Services issued to the developer in May of this year, which includes updated Site Inspection Reports. Since the violation has not been resolved, on August 26 the Planning Department issued to the developer an Administrative Citation for the violation. I have included this citation as well.

The Site Plan Amendment application itself (No. 82007018C) was accepted by our Department on August 29. The applicant is required to post signs and mail notices to adjoining and confronting property owners and homeowners associations within a mile. There will be a Planning Board hearing, the date of which has not been set, but I would expect it in the next few months. When the date is set, I will let you know. In advance of the hearing, the review team (to be lead by me) will prepare a staff report that lays out the issues and makes a recommendation. The Planning Board will take into account this report, as well as other information provided in writing and orally by the applicant and members of the public, in making their decision on the proposed amendment. At the hearing, staff will present its recommendation, the applicant will present their case, and the public will be invited to provide comment. The Board can ask questions of all of these parties. If you (or anyone) provide written comment on the application before the staff report is written, it will be discussed in the report. Comment received after the report is written will be discussed at the hearing. The Planning Board will receive copies of all correspondence. The Planning Board will then typically render a decision, which can approve or deny any or all elements of the application, and can also include alternative elements.

I would be happy to meet with you on-site to discuss if you would like. Please let me know if you have any questions.

Sincerely,

Elza

Elza Hisel-McCoy, Assoc. AIA, LEED-AP
Master Planner, Regulatory Supervisor
Area One
Montgomery County Planning Department
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Silver Spring, MD 20910
301.495.2115, elza.hisel-mccoy@montgomeryplanning.org
montgomeryplanning.org

From: Lilian [mailto:tiggerlil@gmail.com]
Sent: Tuesday, August 30, 2016 2:32 PM
To: Kronenberg, Robert <robert.kronenberg@montgomeryplanning.org>; Hisel-McCoy, Elza <elza.hisel-mccoy@montgomeryplanning.org>
Subject: Honest truth

Robert & Elza,

I am writing to you for some truthful answers. Of all the people I have encountered in this two year long struggle to right what was wrong, you are the only people who have not stonewalled me or lied to me. So I would like to ask you some questions and hope that you will give me honest answers.

1. What are the chances Lot 31 will get their amendment application approved and reduce the right of way to 6 feet? Will the planning board ask for your recommendation even if they don't take it?
2. I now realize Lot 31 installed the signs so the wording is their attorneys'. How do we make the public aware of the whole picture and the whole truth?
3. Will there be a hearing for the application? When will it be held or has it already been held? There is no date on the signs.

4. What is the best way for me and my neighbors to be heard by the planning board before their decision on the amendment?

If there is still a chance for me to not let the right of way be reduced, I would like to meet with you both to understand what, if any, role the two minor changes involve and how it plays into the right of way. Is it possible to approve only parts of the application or is it all or nothing?

Thank you
Lilian

Hisel-McCoy, Elza

From: Lilian <tiggerlil@gmail.com>
Sent: Monday, October 03, 2016 11:40 AM
To: Hisel-McCoy, Elza
Cc: Kronenberg, Robert; ehsan.motazedi; Greg Nichols (james.nichols@montgomerycountymd.gov); MCP-CTRACK; MCP-Chair; vikrum.mathur@montgomerycountymd.gov; Wright, Gwen; Krasnow, Rose; Pfefferle, Mark; Dumais, Nicholas; Neam, Dominique; Jones, Diane; Keith Geimer; Patrick Brettell; Annette Gatten; Anis Mungapen; management@crescentplaza.net; County Council; Jordan Cooper
Subject: Re: Lot 31 Update (CTRACK #2016-0986)

Hello Elza, thank you for keeping me informed. Please let me know the most effective way to have our voices heard by Planning. Petition? Individual emails? Phone calls?

Also, Lot 31 needs to mail out the redlined plan to all owners and residents in the affected area. The plan they mailed out does not adequately show what they are asking to be changed. And they need to change the wording on the public signs to reflect that they are decreasing the right of way from 10 feet to 6 feet. Currently, the signs only say "6 feet free and clear" which means nothing when not put in context of the bigger picture. Lot 31 should not be allowed to deceive the people by not telling the whole truth.

Diane,

As I said in a previous email, Silver has rearranged their seating but it still does not provide the 10 feet of right of way required by the site plan. Furthermore, it now requires wait staff to stand in the right of way to serve the tables against the building. Bottom line is there has to be 10 feet of right of way for pedestrians (including wheelchairs, strollers, dogs, etc). The increased occupancy density (of residents in the buildings on Lot 31 and occupants of vehicles parked in the garage) requires it. Woodmont Avenue is also a major pedestrian path from Wisconsin Ave to Bethesda Row. And do not forget that the Solaire is nearing completion and soon will add its occupants to the foot traffic on Woodmont Ave.

Many residents of our building have told me they avoid the Silver side of the street because it is too crowded. We should not have to feel restricted to use only one side of the street just to advance the financial gains of a developer that willfully and knowingly violated their site plan.

Why are we wasting so much time even entertaining Lot 31's attempts to avoid compensating Silver monetarily for their mistake. They sold Silver rights to the sidewalk that were not theirs to sell. They should not be allowed to take those rights that belong to the people. Their amendment application should not even be entertained.

The only alternative that would be acceptable is to have all seating against the building (per DPS guidelines) but with 10 feet of right of way from seating to curb, as specified in the site plan that Lot 31 accepted. I hope this will be the recommendation of DPS and Planning review. Seating against the building makes the most sense. I hope Planning keeps this in mind for all buildings that will house restaurants.

Thank you.
Lilian

On Monday, October 3, 2016, Hisel-McCoy, Elza <elza.hisel-mccoy@montgomeryplanning.org> wrote:

> Hello again,

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This is still a developing issue, but I wanted to circle back with you to keep you up to date.

Sincerely,

Elza

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Master Planner, Regulatory Supervisor

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Silver Spring, MD 20910

301.495.2115, elza.hisel-mccoy@montgomeryplanning.org

montgomeryplanning.org

From: Hisel-McCoy, Elza
Sent: Friday, September 02, 2016 8:45 AM
To: 'Lilian' <tiggerlil@gmail.com>; Kronenberg, Robert <robert.kronenberg@montgomeryplanning.org>
Cc: ehsan.motazedi <ehsan.motazedi@montgomerycountymd.gov>; Greg Nichols (james.nichols@montgomerycountymd.gov) <james.nichols@montgomerycountymd.gov>
Subject: RE: Honest truth

Hello Lilian,

Sorry for the delay in responding. I will start off by saying that this Site Plan Amendment is in response to a violation of the approved Certified Site Plan. I have attached for your reference an updated Notice of Non-Compliance (NONC) which the County Department of Permitting Services issued to the developer in May of this year, which includes updated Site Inspection Reports. Since the violation has not been resolved, on August 26 the Planning Department issued to the developer an Administrative Citation for the violation. I have included this citation as well.

The Site Plan Amendment application itself (No. 82007018C) was accepted by our Department on August 29. The applicant is required to post signs and mail notices to adjoining and confronting property owners and homeowners associations within a mile. There will be a Planning Board hearing, the date of which has not been set, but I would expect it in the next few months. When the date is set, I will let you know. In advance of the hearing, the review team (to be lead by me) will prepare a staff report that lays out the issues and makes a recommendation. The Planning Board will take into account this report, as well as other information provided in writing and orally by the applicant and members of the public, in making their decision on the proposed amendment. At the hearing, staff will present its recommendation, the applicant will present their case, and the public will be invited to provide comment. The Board can ask questions of all of these parties. If you (or anyone) provide written comment on the application before the staff report is written, it will be discussed in the report. Comment received after the report is written will be discussed at the hearing. The Planning Board will receive copies of all correspondence. The Planning Board will then typically render a decision, which can approve or deny any or all elements of the application, and can also include alternative elements.

I would be happy to meet with you on-site to discuss if you would like. Please let me know if you have any questions.

Sincerely,

Elza

Elza Hisel-McCoy, Assoc. AIA, LEED-AP

Master Planner, Regulatory Supervisor

Area One

Montgomery County Planning Department

M-NCPPC

8787 Georgia Avenue

Silver Spring, MD 20910

301.495.2115, elza.hisel-mccoy@montgomeryplanning.org

montgomeryplanning.org

From: Lilian [mailto:tiggerlil@gmail.com]
Sent: Tuesday, August 30, 2016 2:32 PM
To: Kronenberg, Robert <robert.kronenberg@montgomeryplanning.org>; Hisel-McCoy, Elza <elza.hisel-mccoy@montgomeryplanning.org>
Subject: Honest truth

Robert & Elza,

I am writing to you for some truthful answers. Of all the people I have encountered in this two year long struggle to right what was wrong, you are the only people who have not stonewalled me or lied to me. So I would like to ask you some questions and hope that you will give me honest answers.

1. What are the chances Lot 31 will get their amendment application approved and reduce the right of way to 6 feet? Will the planning board ask for your recommendation even if they don't take it?

2. I now realize Lot 31 installed the signs so the wording is their attorneys'. How do we make the public aware of the whole picture and the whole truth?

3. Will there be a hearing for the application? When will it be held or has it already been held? There is no date on the signs.

4. What is the best way for me and my neighbors to be heard by the planning board before their decision on the amendment?

If there is still a chance for me to not let the right of way be reduced, I would like to meet with you both to understand what, if any, role the two minor changes involve and how it plays into the right of way. Is it possible to approve only parts of the application or is it all or nothing?

Thank you

Lilian

Hisel-McCoy, Elza

From: Lilian <tiggerlil@gmail.com>
Sent: Wednesday, October 05, 2016 5:11 PM
To: Leventhal's Office, Councilmember
Cc: Hisel-McCoy, Elza; MCP-Chair; Kronenberg, Robert; Jordan Cooper; management@crescentplaza.net; Anis Mungapen; Annette Gatten; Patrick Brettell; Keith Geimer; Jones, Diane; Pfefferle, Mark
Subject: Re: Silver site plan violation

Dear George,

I and my neighbors have been sharing our views with the planning board as well as thr planner reviewing the amendment application. I can only hope our emails are reaching the planning board and will be considered. It just seems the planning board rarely does not approve amendments.

Still, I am encouraged to hear that you share my opinion about the seating. I would ask you to make that known to the planning board, as a private citizen not a councilmember. Submit your comments via email to the planning board. I think it can only help.

Thank you
Lilian

On Wednesday, October 5, 2016, Leventhal's Office, Councilmember <Councilmember.Leventhal@montgomerycountymd.gov> wrote:

Dear Lilian,

I appreciate you keeping me updated on this situation. I remain sympathetic to your concerns, and I share your opinion that the current seating configuration at the restaurant is suboptimal.

I would share my views with the Planning Board, but councilmembers are precluded from communicating with Planning Board members on issues involving site plan amendments. The Planning Board website states the following:

"When the Planning Board makes decisions on subdivision plans, site plans and project plans, it is subject to ex-parte provisions that restricts its members from speaking on these issues outside the public record. Residents who wish to express their views on these issues should not attempt to communicate directly with members of the Planning Board, but should submit oral or written testimony for the public record. Letters may be submitted in advance of the public hearing and will be included in the public record."

That said, I strongly encourage you and your neighbors to testify when the matter is before the Planning Board, which, according to planning staff, is expected sometime in December.

Best regards,

George Leventhal

From: Lilian [mailto:tiggerlil@gmail.com]
Sent: Monday, September 26, 2016 1:20 PM
To: Nichols, James <James.Nichols@montgomerycountymd.gov>
Cc: Motazedi, Ehsan <Ehsan.Motazedi@montgomerycountymd.gov>; Jones, Diane <Diane.Jones@montgomerycountymd.gov>; Kronenberg, Robert <robert.kronenberg@montgomeryplanning.org>; #CCL.Leventhal Staff <#CCL.LeventhalStaff@montgomerycountymd.gov>; Pfefferle, Mark <mark.pfefferle@montgomeryplanning.org>; WashPost Metro <metro@washpost.com>; management@crescentplaza.net; Leventhal's Office, Councilmember <Councilmember.Leventhal@montgomerycountymd.gov>; Mathur, Vikrum <Vikrum.Mathur@montgomerycountymd.gov>; Ike Leggett <Ike.Leggett@montgomerycountymd.gov>; Berliner's Office, Councilmember <Councilmember.Berliner@montgomerycountymd.gov>; Councilmember Berliner <councilmember.berliner@mccouncilmd.lmhostediq.com>; Elza Hisel-McCoy <elza.hisel-mccoy@montgomeryplanning.org>; MCP-Chair@mncppc-mc.org
Subject: Re: Silver site plan violation

It appears Lot 31 and Silver continue to dodge the citation. They still have not removed the seating in the right of way but what they have now done is moved it next to the building. That is still a violation of their site plan as they are still in the 10 feet of right way that is supposed to extend from the building. The actual pedestrian right of way is still less than 10 feet. With the placement of seating next to the building, the wait staff will have to stand in the right of way to serve the customers, which is also a violation.

Just because they have an application to amend the site plan does not mean they can continue to violate their site plan as it exists now. They are assuming their amendment will be approved, which would be a blow to the residents of and visitors to Bethesda. Visitors need the right of way to walk from the garage entrance to Bethesda Ave. My neighbors are telling me they avoid walking on the Silver side of Woodmont because there is not enough room. Instead, they walk on the opposite side of the street. The amendment proposes reducing the right of way on both sides of Woodmont, leaving no side wide enough for anyone.

Lot 31 has to acknowledge they made a mistake in signing a lease with Silver that allowed them to place seating in the right of way and re-negotiate that lease to compensate Silver for whatever revenue they think they will lose, instead of passing the buck to the people of Bethesda and Montgomery County.

Since my neighbors have become aware of the true nature of this amendment application, a number of them have already filed complaints with DPS and Planning.

Lilian

On Mon, Aug 29, 2016 at 5:53 PM, Lilian <tiggerlil@gmail.com> wrote:

Mr Nichols & Mr Pfefferle,

It appears my optimism was premature. I just saw the notice in the attached photo on the sidewalk not at Silver but across the street near the garage entrance. I knew this is what the developers would do since they have an army of attorneys at their beck and call to file changes to site plans that they agreed to but choose to ignore and violate.

It must be true then that the developers do own Montgomery county, the county council and the planning board. First they are allowed to not follow the guidelines that sidewalk seating must be next to the building. Then Federal Realty is allowed to reduce the right of way in front of their properties. Now Stonebridge is going to be allowed to reduce the 10' right of way in the site plan that they knew about and agreed to before construction so that they can avoid being in violation? It's akin to changing a law after I've broken it and gone unpunished for breaking it - I wish I had that kind of power.

As I feared, Planning is going to let Stonebridge and Silver weasel out of the 10' right of way by allowing this change to the site plan. Hence the delay in enforcing the site plan and insisting that Silver remove the tables. I'm sure Stonebridge will get their way just like every other developer in downtown Bethesda. I am very disappointed in our elected officials and the people who are supposed to be working for the citizens and residents of Bethesda and Montgomery county and protecting our quality of life. Won't someone stand up to these property mongers?

Not only will Stonebridge change the site plan, they will have gone two years without any penalty or consequence for the violation. That is just adding insult to injury. I am truly ashamed of the lack of integrity of all involved.

Lilian Burch

On Wednesday, August 10, 2016, Lilian <tiggerlil@gmail.com> wrote:

Dear Mr Nichols,

Thank you for bringing me up-to-date on this site plan violation. I am encouraged that there has been no mention of changing the site plan to reduce the 10' setback or giving Silver an exception, at least at this point.

Mr Pfefferle, I would like very much to be kept up-to-date on your enforcement actions. It still baffles me that it has taken so long for this to get to you for enforcement. I reported this violation last year and again this spring before outdoor seating began but they were not issued a notice of non-compliance until 5/9/16. I am also amazed that Silver can be granted a 30 extension two months after the notice. I hope it is obvious to you that these are just delay tactics employed by developers, and you will not allow any further extensions or delays in enforcing the 10' setback.

Knowing the tactics that developers use and the army of attorneys at their disposal, I am most concerned that they will manage to get the Planning Board to change the site plan and reduce the 10' setback, and avoid any penalties for this more than year-long violation. I hope you will not let that happen.

I look forward to seeing the seating removed and setback restored to what was approved by M-NCPPC.

Thank you

Lilian Burch

On Tue, Aug 9, 2016 at 4:25 PM, Nichols, James <James.Nichols@montgomerycountymd.gov> wrote:

Dear Ms. Burch,

I manage the Site Plan Enforcement Section (SPES) within DPS' Zoning & Site Plan Enforcement Division. I want to bring you up to date with my office's enforcement action regarding the seating area within the public right-of-way associated with the Silver. In response to your complaint, SPES inspected the seating areas and confirmed that the 10' setback was not being maintained. Accordingly, and following our enforcement procedure, SPES issued a Notice of Non-Compliance (NONC) to the developer on 05/09/16. Subsequently, we met with M-NCPPC staff, the developer, and owner of the Silver on 06/28/16 to review the NONC and site plan requirements. At that time, the developer requested a 30-day extension of the

NONC compliance date in order to seek possible solutions from the various authorities. DPS has clearly communicated to the developer and the Silver that the seating needs to be pulled back to an appropriate distance to facilitate pedestrian access through his area. Although there have many communications and meetings in the interim, no solution has been proposed to date and the extended compliance date has passed. Therefore, following the enforcement procedure for such site plan issues, SPES has recently referred this case to M-NCPPC's DARC Chief, Mark Pfefferle, for further enforcement action. From this point, M-NCPPC will proceed to process this violation in accordance with the Planning Board's Enforcement Rules. Any further determination of corrective actions and/or penalties will come from that process and the Planning Board.

DPS has taken this situation very seriously and we look forward to its resolution. I have copied Mr. Pfefferle on this so he may respond to any future inquires you may have.

Sincerely,

James Gregory Nichols (Greg)

Manager, SPES

Zoning & Site Plan Enforcement

Department of Permitting Services

255 Rockville Pike, 2nd Floor

Rockville, MD 20850

240-777-6278 **T**

240-777-6263 **F**

Have you tried DPS eServices?
http://permittingservices.montgomerycountymd.gov/DPS/eServices/AbouteServices.aspx

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From: Leventhal's Office, Councilmember
Sent: Tuesday, August 09, 2016 11:26 AM
To: Lilian <tiggerlil@gmail.com>
Cc: Jones, Diane <Diane.Jones@montgomerycountymd.gov>; robert.kronenberg@montgomeryplanning.org; #CCL.Leventhal Staff <#CCL.LeventhalStaff@montgomerycountymd.gov>
Subject: RE: Enforcing removal of objects in right of way

Dear Lilian:

I see that you copied Diane Schwartz Jones on your July 27 message but I have not seen her response. Did she reply to you?

Regards,

George Leventhal

From: Lilian [mailto:tiggerlil@gmail.com]
Sent: Wednesday, July 27, 2016 11:31 AM
To: Leventhal's Office, Councilmember <Councilmember.Leventhal@montgomerycountymd.gov>
Cc: Jones, Diane <Diane.Jones@montgomerycountymd.gov>; robert.kronenberg@montgomeryplanning.org
Subject: Re: Enforcing removal of objects in right of way

Mr Leventhal,

It has been several weeks since the "meeting" and there are still tables, chairs, railings, plants, etc in the right of way. What was the outcome of the meeting? I hope that Silver or Stonebridge or someone will be fined for the 2 years of violation of the site plan, with the money going towards site plan enforcement and parking enforcement in downtown Bethesda. Please do not accept any offer from the developers or Silver to change the site plan. We need our right of way and no price is worth giving it up, especially for residents in the vicinity. We must stop making concessions to the developers. They are only interested in exploiting downtown Bethesda and have no regard for quality of life. The Planning Board allows too much development at too fast a pace. We understand that development boosts our county's economy but Bethesda should not be bearing the brunt of the development and

longtime residents should not be made to suffer with their quality of life and the reason we like living in Bethesda torn to shreds.

I assure you that if you lived in downtown Bethesda, you would agree with me. I hope you can help us suspend further development until the community has had a chance to adjust and serious thought given to truly planning future development.

Thank you.

Lilian

Lilian

On Wed, Jul 6, 2016 at 9:56 AM, Leventhal's Office, Councilmember <Councilmember.Leventhal@montgomerycountymd.gov> wrote:

Dear Lilian:

Thank you for your detailed messages. You raise legitimate concerns. I appreciate knowing of the interaction between residents and Bethesda's bustling restaurant scene. I hope the Department of Permitting Services is able to enforce restaurant compliance to accommodate both diners and pedestrians.

The Bethesda sector plan is still currently with the Planning Board; however, we expect to receive it later this summer. I will notify you when it comes before the County Council. In the interim, you may want to contact Leslye Howerton, the planner in charge of developing the draft plan (301-495-4551). A dog park would also come before Planning Board.

Thank you for bringing these issues to my attention.

Best regards,

George Leventhal

From: Lilian <tiggerlil@gmail.com>
Sent: Friday, June 24, 2016 3:27:54 PM
To: Jones, Diane
Cc: Leventhal's Office, Councilmember; #CCL.Leventhal Staff; Motazedi, Ehsan; Nichols, James; Mansouri, Hadi; management@crescentplaza.net; WashPost Metro
Subject: Re: Enforcing removal of objects in right of way

I honestly don't understand why a meeting is even necessary or why it took so long to set up a meeting. If the developer misrepresented the space available for outdoor seating to the restaurant, then it's an issue between the restaurant and the developer. I hope the county will not make any concessions to the developer or restaurant such as what was made to Federal Realty where the right of way was reduced from 6 feet (county standard) to 5 feet. As congested as Bethesda Avenue is, that one foot would make a lot of difference. Even so, the restaurants on Bethesda Ave and Elm continue to push the limit, creeping inch by inch into the right of way and hanging planters on the railings to take up more right of way space. Add to that wait staff serving customers from the right of way and not watching out for pedestrians when they cross the right of way.

Throughout the entire construction of lot 31, Stonebridge showed no regard or consideration to the residents living adjacent to the construction, from placing porta johns in the middle of Woodmont Ave directly in front of our building, to allowing their construction crew and contractors to trample on and decimate our landscaping, and subjecting our residents to polluting fumes while their dump trucks parked and idled directly under our windows. No matter how many times we asked Jane Mahaffie to remedy these issues, we were either stonewalled or ignored, and the county did very little to help us. So I hope the county will enforce the site plan and not allow any deviation or concession.

There is only one way to "resolve" non compliance -- make them comply. They should be fined for each day they have not complied. Don't sell us (taxpayers who were residents in Bethesda long before the developer and restaurant) out.

On Friday, June 24, 2016, Jones, Diane <Diane.Jones@montgomerycountymd.gov> wrote:

> Thank you Mr. Leventhal.
>
> The Department of Permitting Services has in fact issued a notice of non-compliance due to some of the seating and has been working with MNCPPC and the developer to resolve the non-compliance. In fact, I have been advised that my staff and planning staff will be meeting with the Developer representative next week.
>
> *Diane Schwartz Jones, Director*

Montgomery County Department of Permitting Services

255 Rockville Pike

Rockville, MD 20850

240.777.6363

Have you tried DPS eServices? http://permittingservices.montgomerycountymd.gov/DPS/eServices/AboutServices.aspx

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From: Leventhal's Office, Councilmember
Sent: Thursday, June 23, 2016 1:23 PM
To: Lilian <tiggerlil@gmail.com>
Cc: #CCL.Leventhal Staff <#CCL.LeventhalStaff@montgomerycountymd.gov>; Jones, Diane <Diane.Jones@montgomerycountymd.gov>
Subject: RE: Enforcing removal of objects in right of way

Dear Ms. Burch:

I am copying Diane Schwartz Jones, director of the Department of Permitting Services, on this reply with a request that she investigate your concerns regarding pedestrian right-of-way in front of Silver restaurant on Woodmont Avenue.

Best regards,

George Leventhal

Montgomery County Councilmember

From: Lilian [mailto:tiggerlil@gmail.com]
Sent: Wednesday, June 22, 2016 8:30 PM
To: Leventhal's Office, Councilmember <Councilmember.Leventhal@montgomerycountymd.gov>; Floreen's Office, Councilmember <Councilmember.Floreen@montgomerycountymd.gov>
Cc: Nichols, James <James.Nichols@montgomerycountymd.gov>; Hisel-McCoy, Elza <elza.hisel-mccoy@montgomeryplanning.org>; Panjshiri, Atiq <Atiq.Panjshiri@montgomerycountymd.gov>; Kronenberg, Robert <robert.kronenberg@montgomeryplanning.org>; Hartman, Ken <Ken.Hartman@montgomerycountymd.gov>; management@crescentplaza.net; Berliner's Office, Councilmember <Councilmember.Berliner@montgomerycountymd.gov>; County Council <County.Council@montgomerycountymd.gov>; Director DOT <Director.DPWT@montgomerycountymd.gov>; Liang, Kyle <Kyle.Liang@montgomerycountymd.gov>; Bilgrami, Khursheed <Khursheed.Bilgrami@montgomerycountymd.gov>; WashPost Metro <metro@washpost.com>; Contreras, Christina <Christina.Contreras@montgomerycountymd.gov>
Subject: Enforcing removal of objects in right of way

Councilmember Leventhal,

When I heard you on the radio talking about enforcing the removal of signs in public right of way, you gave me hope that you may be able to help me enforce a similar right of way violation. I have completed the online contact form that is supposed to distribute my complaint to all council members, in which I stated that I would forward this chain of emails I have sent Ms Contreras and other officials of Montgomery County who have knowledge of the site plan and the 10 feet pedestrian right of way in front of the Silver restaurant. In December, Ms Contreras said it was being handled but it is now summer and the tables are still there. There is no other way to handle this but remove the tables. If Passion Fish on the other side of Woodmont can operate without taking up pedestrian right of way, why can Silver not? There is a good amount of foot traffic from the garage to Bethesda Row, not to mention residents who live on the east side of Silver.

If you meant what you said about being fair and not allowing objects in right of way, then please get someone to enforce the site plan and give us residents the right of way we were promised.

Lilian Burch

On Wed, May 25, 2016 at 12:14 PM, Lilian <tiggerlil@gmail.com> wrote:

> You have had all winter and most of spring to bring Silver into compliance with the site plan. Whether you want to call it a ROW issue or not, they are still in violation of the site plan which specifies the 10 feet right of way. They continue to use an extra row of tables that infringe on the right of way. I can assure you that everyone who lives in the vicinity are upset about this and knowing that I have been pursuing this issue with you, ask me

when anything will be done. The key word here is "anything" because the residents of downtown Bethesda feel we have already been sold us out to the developers. And the developers continue to take more than what was approved. How difficult is it to have Silver remove the row of seating nearest the building?

While I am airing our complaints, I may as well air another one -- not enough dog parks. The downtown Bethesda plan does not include any dog parks even though it increases population density and almost all the residential buildings are or will be pet friendly. So why are the developers not required to pay for or provide a park for dogs? I have written to MNCPPC about dog parks, especially at Norwood and Willow, and have been told it costs $250,000 to put one in. So why not have the developers pay for it since they are the ones contributing to the dog population?

In both cases, the developers are getting what they want and making money hand over fist while the residents are paying the price. The County Council just approved a property tax increase which will impact individual homeowners more than developers who will just pass it on to their tenants. When is the County Council going to make the developers pay for the problems they are causing?

I am on the board of our condo and all our owners feel disenfranchised and ignored. We are bombarded with numerous complaints at every board meeting. Access to our street and garage has been curtailed without consent which has added burden to our private driveway which people use for U turns. Traffic and parking violations go unchecked regardless of how many times we report it and ask for regular patrols. Traffic signs removed by construction are tossed aside and not replaced, even when DOT is informed of the exact location of the discarded sign. Our property prices have dropped because of all these things and the constant construction. And yet our property taxes will be increased? How much do you expect us to bear? We are all at our limits and some attention to the smaller matters such as Silver site plan, access to Miller Ave, and no U turns using our private driveway, will help relieve some of the stress.

On Thu, May 5, 2016 at 8:35 PM, Lilian <tiggerlil@gmail.com> wrote:

> Silver is still not complying with 10 feet pedestrian right-of-way. The attached photos were taken today. I include one with people to give you a perspective that there is not 10 feet between the wall and railing. The outer row of seating should not be there. The monstrous table around the tree is at the 10 feet limit and there should be no seating or additional tables past it.
>
> It is very frustrating and disappointing that the county does not enforce its own planning regulations. And businesses and developers are allowed to do as they please with no consequences. It is bad enough

that the county council allows excessive development against the objections of residents, but allowing the developers to further violate resident rights is unconscionable.

On Friday, March 11, 2016, Lilian <tiggerlil@gmail.com> wrote:

Took the attached photos when I took my dog out. It's better but it's still not 10 feet. They are still trying to have seating around the large counter they put around a tree but the edge of the counter is at the 10 feet limit without stools. The stantions should probably line up with the end of the permanent railing next to the loading dock area. Silver needs to remove the counter seating.

Sent from my iPhone

On Mar 11, 2016, at 1:35 PM, Lilian <tiggerlil@gmail.com> wrote:

Christine,

Bethesda Row just announced the opening of outdoor seating. I have not yet checked the clearance in front of Silver but I hope they are following the site plan. I will go there within the next couple of days and send you photos if they are not adhering to the 10 feet right of way.

Thank you

Lilian

Sent from my iPhone

On Dec 21, 2015, at 4:47 PM, Contreras, Christina <Christina.Contreras@montgomerycountymd.gov> wrote:

Ms. Burch –

I apologize for using the abbreviation ROW which stands for Right of Way. My staff is handling the issue with regards to the Outdoor Café. You are in fact being heard. As noted, we(the DPS Land Development Division specifically the Public Right of Way Inspection section) are currently working with the permittee to resolve all issues as it relates to the Silver. We (the Public Right of Way Inspection section) work together daily with the DPS Zoning and Site Plan Enforcement Division to ensure all development work is appropriate.

Again, as noted, this issue is currently still being handled as it has not been forgotten nor overlooked.

Thank you again –

Christina

Christina Tadle Contreras, P.E., Manager

Sediment Control/Stormwater Management and Right of Way Inspections

Montgomery County Department of Permitting Services

Division of Land Development

255 Rockville Pike, 2nd Floor

Rockville, MD 20850

240-777-6307

240-777-6339 (fax)

Have you tried DPS eServices?
http://permittingservices.montgomerycountymd.gov/DPS/eServices/AbouteServices.aspx

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From: Lilian [mailto:tiggerlil@gmail.com]
Sent: Monday, December 21, 2015 4:28 PM
To: Contreras, Christina <Christina.Contreras@montgomerycountymd.gov>
Cc: Nichols, James <James.Nichols@montgomerycountymd.gov>; Hisel-McCoy, Elza <elza.hisel-mccoy@montgomeryplanning.org>; Panjshiri, Atiq <Atiq.Panjshiri@montgomerycountymd.gov>; Kronenberg, Robert <robert.kronenberg@montgomeryplanning.org>; Hartman, Ken <Ken.Hartman@montgomerycountymd.gov>; management@crescentplaza.net
Subject: Re: Right of way in front of Silver is in violation of site plan

Who is or are ROW? How do we contact them so that we can be heard?

Lilian

On Monday, December 21, 2015, Contreras, Christina <Christina.Contreras@montgomerycountymd.gov> wrote:

> Ms. Burch –
>
> This is in fact a ROW issue and being that ROW has the lead with this, it is currently being handled. It has not been forgotten nor overlooked.
>
> Thank you again for your concern and again, your continued patience is appreciated.
>
> Happy Holidays.
>
> Christina
>
> Christina Tadle Contreras, P.E., Manager
>
> Sediment Control/Stormwater Management and Right of Way Inspections

Montgomery County Department of Permitting Services

Division of Land Development

255 Rockville Pike, 2nd Floor

Rockville, MD 20850

240-777-6307

240-777-6339 (fax)

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From: Lilian [mailto:tiggerlil@gmail.com]
Sent: Monday, December 21, 2015 2:42 PM
To: Contreras, Christina <Christina.Contreras@montgomerycountymd.gov>; Nichols, James <James.Nichols@montgomerycountymd.gov>
Cc: Hisel-McCoy, Elza <elza.hisel-mccoy@montgomeryplanning.org>; Panjshiri, Atiq <Atiq.Panjshiri@montgomerycountymd.gov>; Kronenberg, Robert <robert.kronenberg@montgomeryplanning.org>; Hartman, Ken <Ken.Hartman@montgomerycountymd.gov>; management@crescentplaza.net
Subject: Re: Right of way in front of Silver is in violation of site plan

Dear Mr Nichols,

I am including you in this email thread because from the DPS web site, it appears you are in charge of enforcing site plans and this is a violation of the site plan, even though Christina has been treating it as a right of way issue. I hope you can bring Silver in line with the site plan.

Thank you

Lilian Burch

On Monday, December 21, 2015, Lilian <tiggerlil@gmail.com> wrote:

> Christina,
>
> Attached are photos I just took today of the sides in front of Silver. They continue to be in violation of 10 feet right of way. There is no one sitting outside but they have not removed any of the tables and chairs, especially the large one built around the tree in the third photo. I am not patronizing the Silver and will encourage my neighbors to boycott the restaurant until they comply with the right of way requirements approved by the county planning. It is bad enough we have to give up any pedestrian right of way to businesses especially when the county wants to be pedestrian friendly.
>
> This violation particularly affects residents of my building because it is one of our paths to Bethesda Row.
>
> Thank you
>
> Lilian

On Sunday, October 18, 2015, Lilian <tiggerlil@gmail.com> wrote:

> Christina,
>
> There is much more foot traffic on the Silver than the Darby side of Woodmont because the pedestrian exit from the garage is on the Silver side. That is why a 10 foot right of way is necessary. As I returned from walking my dog this afternoon, there was a lot of foot traffic from the pedestrian access to the garage and with the wait staff traffic and people loitering in the right of way as well as entering and exiting the restaurant, it was difficult to navigate without being hit by an opening door.

As the weather cools, they should be removing the outdoor seating soon. Even so, I hope you will not let up on this and ensure they respect the site plan right of way when warm weather returns. The foot traffic on that sidewalk will only increase as construction ends and retail and dining options continue to grow.

Thank you

Lilian

On Friday, October 9, 2015, Lilian <tiggerlil@gmail.com> wrote:

> Thank you for letting me know something is being done. As of last email from you, it seemed you felt they were in compliance.
>
> On Friday, October 9, 2015, Contreras, Christina <Christina.Contreras@montgomerycountymd.gov> wrote:
>
> > Ms. Burch –
> >
> > DPS is and has been working on remedying the situation at the Silver. Your patience is much appreciated as this is handled.
> >
> > Christina
> >
> > Christina Tadle Contreras, P.E., Manager
> >
> > Sediment Control/Stormwater Management and Right of Way Inspections
> >
> > Montgomery County Department of Permitting Services
> >
> > Division of Land Development
> >
> > 255 Rockville Pike, 2nd Floor
> >
> > Rockville, MD 20850
> >
> > 240-777-6307
> >
> > 240-777-6339 (fax)

Have you tried DPS eServices?
http://permittingservices.montgomerycountymd.gov/DPS/eServices/AboutServices.aspx

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From: Lilian [mailto:tiggerlil@gmail.com]
Sent: Friday, October 09, 2015 2:34 PM
To: Hisel-McCoy, Elza <elza.hisel-mccoy@montgomeryplanning.org>
Cc: Contreras, Christina <Christina.Contreras@montgomerycountymd.gov>; Panjshiri, Atiq <Atiq.Panjshiri@montgomerycountymd.gov>; Kronenberg, Robert <robert.kronenberg@montgomeryplanning.org>
Subject: Re: Right of way in front of Silver

Hello Elza,

Are you telling me that Permitting Services can decide what is in compliance even if it does not follow approved site plans? If that is the case, what is the point of planning approvals?

Atiq, I ask that you review the approved site plan and enforce the 10 feet right of way approved by planning. An exception of 4 feet is

just not right or acceptable. We cannot allow developers who only have profit in mind to decide what is acceptable and livable for residents. Haven't we given away enough already to the developers? Federal Realty got an exception to reduce right of way from 6 feet to 5 feet. With increased foot traffic in Bethesda Row, you cannot let Stonebridge and Silver to reduce right of way by 4 feet.

Thank you

Lilian

On Friday, October 9, 2015, Hisel-McCoy, Elza <elza.hisel-mccoy@montgomeryplanning.org> wrote:

> Hello Lilian,

Hisel-McCoy, Elza

From: Jane G. Mahaffie <mahaffie@stonebridgecarras.com>
Sent: Tuesday, October 11, 2016 5:19 PM
To: Kronenberg, Robert; Hisel-McCoy, Elza
Subject: Lot 31 Development Amendment C sign defaced

Sometime last week 2 of the 5 signs on the property related to the official notification of Amendment were defaced.

We consider that destruction of private property. It also speaks to us volumes – in our opinion we have diligently complied with requests of MNCPPC and DPS related to this matter and do so in a professional and reasonable manner. It is obvious to us and demonstrated that those in opposition do not behave in a reasonable manner.

We do feel it is important that this destruction of the approved signs be noted to MNCPPC.

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8787 Georgia Av

Thank you,

We are pleased to announce the launch of our new website www.stonebridgecarras.com

---

Jane Galbraith Mahaffie
Principal

STONEBRIDGECARRAS

7200 Wisconsin Avenue, Suite 700
Bethesda, MD 20814-5332
Direct 301.652.8349
Mobile 301.529.4489
Office 301.913.9610
mahaffie@stonebridgecarras.com

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Hisel-McCoy, Elza

From: Jane G. Mahaffie <mahaffie@stonebridgecarras.com>
Sent: Monday, October 31, 2016 9:24 AM
To: Kronenberg, Robert; Hisel-McCoy, Elza
Cc: Jane G. Mahaffie
Subject: Lot 31 Amendment C signs defaced again

Good morning Robert and Elza,

Wanted to let you know that the signs were once again defaced last week. The perpetrator defaced all five signs this time, including it appears removing the covering from the last defacing.

Thank you,

Jane Mahaffie

We are pleased to announce the launch of our new website www.stonebridgecarras.com

Jane Galbraith Mahaffie
Principal

STONEBRIDGE CARRAS

7200 Wisconsin Avenue, Suite 700
Bethesda, MD 20814-5332
Direct: 301.652.8349
Mobile: 301.529.4489
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mahaffie@stonebridgecarras.com

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Hisel-McCoy, Elza

From: Lilian <tiggerlil@gmail.com>
Sent: Monday, November 07, 2016 1:52 AM
To: Hisel-McCoy, Elza
Cc: Kronenberg, Robert; ehsan.motazedi; Greg Nichols (james.nichols@montgomerycountymd.gov); MCP-CTRACK; MCP-Chair; vikrum.mathur@montgomerycountymd.gov; Wright, Gwen; Krasnow, Rose; Pfefferle, Mark; Dumais, Nicholas; Neam, Dominique; Jones, Diane; Keith Geimer; Patrick Brettell; Annette Gatten; Anis Mungapen; management@crescentplaza.net; County Council; Jordan Cooper
Subject: Re: Lot 31 Update (CTRACK #2016-0986)

Follow Up Flag: Follow up
Flag Status: Flagged

A month has gone by and:
1 - redlined site plans still have not been mailed out
2 - the verbiage of the signs on the streets around Lot 31 still have not been updated to reflect the verbiage of the revised application notice
3 - there are still tables and chairs in the 10 feet right of way, specifically against the building and railings with hanging planters.

How are people supposed to be informed if 1 and 2 are not remedied? Not making Lot 31 update the signs and mail out the redlined site plan would be prejudicial.

Lilian

On Mon, Oct 3, 2016 at 11:39 AM, Lilian <tiggerlil@gmail.com> wrote:

> Hello Elza, thank you for keeping me informed. Please let me know the most effective way to have our voices heard by Planning. Petition? Individual emails? Phone calls?
>
> Also, Lot 31 needs to mail out the redlined plan to all owners and residents in the affected area. The plan they mailed out does not adequately show what they are asking to be changed. And they need to change the wording on the public signs to reflect that they are decreasing the right of way from 10 feet to 6 feet. Currently, the signs only say "6 feet free and clear" which means nothing when not put in context of the bigger picture. Lot 31 should not be allowed to deceive the people by not telling the whole truth.
>
> Diane,
>
> As I said in a previous email, Silver has rearranged their seating but it still does not provide the 10 feet of right of way required by the site plan. Furthermore, it now requires wait staff to stand in the right of way to serve the tables against the building. Bottom line is there has to be 10 feet of right of way for pedestrians (including wheelchairs, strollers, dogs, etc). The increased occupancy density (of residents in the buildings on Lot 31 and occupants of vehicles parked in the garage) requires it. Woodmont Avenue is also a major pedestrian path from Wisconsin Ave to Bethesda Row. And do not forget that the Solaire is nearing completion and soon will add its occupants to the foot traffic on Woodmont Ave.

Many residents of our building have told me they avoid the Silver side of the street because it is too crowded. We should not have to feel restricted to use only one side of the street just to advance the financial gains of a developer that willfully and knowingly violated their site plan.

Why are we wasting so much time even entertaining Lot 31's attempts to avoid compensating Silver monetarily for their mistake. They sold Silver rights to the sidewalk that were not theirs to sell. They should not be allowed to take those rights that belong to the people. Their amendment application should not even be entertained.

The only alternative that would be acceptable is to have all seating against the building (per DPS guidelines) but with 10 feet of right of way from seating to curb, as specified in the site plan that Lot 31 accepted. I hope this will be the recommendation of DPS and Planning review. Seating against the building makes the most sense. I hope Planning keeps this in mind for all buildings that will house restaurants.

Thank you.
Lilian

On Monday, October 3, 2016, Hisel-McCoy, Elza <elza.hisel-mccoy@montgomeryplanning.org> wrote:

Hello again,

I am following up on an e-mail conversation between you and Vikrum Mathur of Councilmember Berliner's office, which you forwarded to the Planning Board Chair. On September 19, our Department issued another citation (attached) with associated fines for continued non-compliance with the Certified Site Plan. Last week, DPS met on-site with the developer and restaurant owner to discuss possible alternatives, which are still under review. Once DPS completes their review, the Planning Department will complete our review and prepare a recommendation for the Board.

This is still a developing issue, but I wanted to circle back with you to keep you up to date.

Sincerely,

Elza

Elza Hisel-McCoy, Assoc. AIA, LEED-AP

Master Planner, Regulatory Supervisor

Area One

Montgomery County Planning Department

M-NCPPC

8787 Georgia Avenue

Silver Spring, MD 20910

301.495.2115, elza.hisel-mccoy@montgomeryplanning.org

montgomeryplanning.org

From: Hisel-McCoy, Elza
Sent: Friday, September 02, 2016 8:45 AM
To: 'Lilian' <tiggerlil@gmail.com>; Kronenberg, Robert <robert.kronenberg@montgomeryplanning.org>
Cc: ehsan.motazedi <ehsan.motazedi@montgomerycountymd.gov>; Greg Nichols (james.nichols@montgomerycountymd.gov) <james.nichols@montgomerycountymd.gov>
Subject: RE: Honest truth

Hello Lilian,

Sorry for the delay in responding. I will start off by saying that this Site Plan Amendment is in response to a violation of the approved Certified Site Plan. I have attached for your reference an updated Notice of Non-Compliance (NONC) which the County Department of Permitting Services issued to the developer in May of this year, which includes updated Site Inspection Reports. Since the violation has not been resolved, on August 26 the Planning Department issued to the developer an Administrative Citation for the violation. I have included this citation as well.

The Site Plan Amendment application itself (No. 82007018C) was accepted by our Department on August 29. The applicant is required to post signs and mail notices to adjoining and confronting property owners and homeowners associations within a mile. There will be a Planning Board hearing, the date of which has not been set, but I would expect it in the next few months. When the date is set, I will let you know. In advance of the hearing, the review team (to be lead by me) will prepare a staff report that lays out the issues and makes a recommendation. The Planning Board will take into account this report, as well as other information provided in writing and orally by the applicant and members of the public, in making their decision on the proposed amendment. At the hearing, staff will present its recommendation, the applicant will present their case, and the public will be invited to provide comment. The Board can ask questions of all of these parties. If you (or anyone) provide written comment on the application before the staff report is written, it will be discussed in the report. Comment received after the report is written will be discussed at the hearing. The Planning Board will receive copies of all correspondence. The Planning Board will then typically render a decision, which can approve or deny any or all elements of the application, and can also include alternative elements.

I would be happy to meet with you on-site to discuss if you would like. Please let me know if you have any questions.

Sincerely,

Elza

Elza Hisel-McCoy, Assoc. AIA, LEED AP

Master Planner, Regulatory Supervisor

Area One

Montgomery County Planning Department

M-NCPPC

8787 Georgia Avenue

Silver Spring, MD 20910

301.495.2115, elza.hisel-mccoy@montgomeryplanning.org

montgomeryplanning.org

From: Lilian [mailto:tiggerlil@gmail.com]
Sent: Tuesday, August 30, 2016 2:32 PM
To: Kronenberg, Robert <robert.kronenberg@montgomeryplanning.org>; Hisel-McCoy, Elza <elza.hisel-mccoy@montgomeryplanning.org>
Subject: Honest truth

Robert & Elza,

I am writing to you for some truthful answers. Of all the people I have encountered in this two year long struggle to right what was wrong, you are the only people who have not stonewalled me or lied to me. So I would like to ask you some questions and hope that you will give me honest answers.

1. What are the chances Lot 31 will get their amendment application approved and reduce the right of way to 6 feet? Will the planning board ask for your recommendation even if they don't take it?

2. I now realize Lot 31 installed the signs so the wording is their attorneys'. How do we make the public aware of the whole picture and the whole truth?

3. Will there be a hearing for the application? When will it be held or has it already been held? There is no date on the signs.

4. What is the best way for me and my neighbors to be heard by the planning board before their decision on the amendment?

If there is still a chance for me to not let the right of way be reduced, I would like to meet with you both to understand what, if any, role the two minor changes involve and how it plays into the right of way. Is it possible to approve only parts of the application or is it all or nothing?

Thank you

Lilian

Hisel-McCoy, Elza

From: Robert Giaimo <robertgiaimo@gmail.com>
Sent: Wednesday, March 08, 2017 12:10 PM
To: Wright, Gwen; Hisel-McCoy, Elza; Kronenberg, Robert
Cc: Doug Firstenberg; Jane G. Mahaffie; Dale Stewart X21; Mark Russell; Office Giaimo; Dalrymple C. Robert
Subject: Lot 31/Silver Discussion with DOT Parking Lot District
Attachments: Bethesda Outdoor Cafe - seating plans.pdf

Follow Up Flag: Flag for follow up
Flag Status: Flagged

Dear Gwen, Elza and Robert,

After endless study with our design team, we believe that we have accomplished an ***updated compromise proposa***l, that while not perfect, we believe can work for both M-NCPPC and SILVER. **This solution achieves a most of the sidewalk with 10 clear feet for pedestrians,** with in excess of 7' at the door "pinch point". It must be noted that due to the streetlight near our entrance and the door swing, a 10' pedestrian path everywhere is not feasible. (We couldn't reach your optimal 8ft at pinch point but got to 7ft 4 inches by squeezing out every possible inch)

This redesign process began with the ***2014 permitted plan*** after which we reduced seating to the ***October compromise plan***, agreed to at the October 12 meeting on site with DPS, Silver, and M-NCPPC (both attached) That plan had tables flanking the entrance in order to provide a physical barrier for handicapped pedestrians and to guard the door swing. The ***permitted plan had 67 seats & compromise plan had 23 tables and 60 seats.*** We researched different table layouts (round vs rectangular) per Gwen's suggestion and found no significant savings in space. Rectangular tables offer flexible seating and are extremely important for large parties that request them. The large parties are also an important segment of our business and due to the grade at the café near the loading dock we were unable to place rectangular tables there.

This ***March 1-updated plan*** (attached) removes the 2 trees along the sidewalk, and reduces our seating to 53 seats from 62, or a reduction in seating of an additional approximately 15%. At opening, the outdoor café had in excess of 67 seats permitted seats, so this is a reduction of 21% which entails a major loss of revenue ($25,000 x 14 seats = $350,000) on a business already operating in the red. The plan also reflects the placement of the bus stations and heaters, which are absolutely crucial to the operation of the café & have been reflected in every plan. Please note that the tables removed from the October plan along the storefront are noted with dotted lines for your reference.

I am sure you appreciate that we have taken ongoing significant seating reduction compromises from the original, approved design that SILVER, DPS, and M-NCPPC worked diligently in 2013 prior to our opening. This original design was also the basis of our business plan, and the reduction in seating is

creating an economic hardship. These compromises also put us at a competitive disadvantage from the other restaurants on Bethesda Row who all have a much tighter pedestrian area. We tried to preserve one tree as shown in the prior Stonebridge plan however once you lay out the tables on the ground the tree reduces another 6 seats (3 tables) taking us down to 43 seats or 35% which is clearly economically impossible. Frankly, 1 immature tree along the length of the whole patio looks somewhat out of balance in any event. (Of course, the October compromise plan had 5 extra tables along the window -which allowed us to retain the trees.)

We are requesting your recommendation to the planning board in support of the attached ***March 1 Updated Compromise plan*****,** and will provide a cross-hatched plan that shows the seating area for submission to the planning board. Recognizing that this process will take a few weeks we assume you would have no objection to us operating temporarily effective 3/17 St Patty's Day (weather permitting) under October compromise without any tables along the storefront (thereby maintaining 10 feet) for a few weeks until we get through planning Board & make next round of necessary improvements.

Frankly, exhausted and broke after over 3 years of permitting good faith efforts but happy to meet if you have any questions or issues with this plan. We can demonstrate with our architect that we looked at every conceivable alternative and this is the closest we can come to your criteria without effectively putting us out of business.

--

Robert Giaimo
President/CEO
Founder
Silver Diner Development LLC.
O: 301-770-4187
F: 301-770-2832
www.silverdiner.com
~Please forgive my typos, sent from my mobile device. ~

Attachment E: Complete List of Previous Approvals

- **Pre-Preliminary Plan 720060150** (January 19, 2006)
- **Mandatory Referral 06806-DPWT-1** (June 22, 2006)
- **Abandonment of a portion of Woodmont Avenue** (via Resolution 15-1584 dated August 1, 2006)
- **Zoning application G-850** (by Resolution 15-1632 adopted October 10, 2006)
- **Preliminary Plan 120070690** (via Resolution 07-184 dated December 20, 2007
- **Site Plan 820070180** (via Resolution 07-198 dated December 20, 2007)
- **Site Plan Amendment 82007018A** (via Resolution 11-57 dated August 9, 2011)
- **Preliminary Plan Amendment 12007069A** (via Resolution 12-01 dated February 2, 2012)
- **Site Plan Amendment 82007018B** (via a Memorandum dated April 3, 2015)

Appendix F: Precedent Analysis

To establish a basis for analysis for the adequacy of the pedestrian path, Staff looked at sidewalk seating configurations in the region.

Bethesda Row

This image from the next block north on Woodmont Avenue, shows a clear pedestrian path of 6’ from face of building to the seating enclosure.

Woodmont Avenue looking south, Bethesda Row

Rockville Town Center

The first condition, at the Rockville Town Center central plaza, has a clear sidewalk area of about 8’ to the tree pits.

Rockville Town Center, at the central plaza

The second image from the Town Center looks down Gibbs Street, and features 8’ from building face to the bollard, with an additional 2’ to the edge of the tree pit.

Rockville Town Center, Gibbs Street looking north

Arlington

The first image, from the Clarendon Area on Wilson Boulevard, shows a 6’ clear pedestrian area, and another 6’ area that has tree pits, a lamp post, and signage.

Wilson Boulevard, Clarendon

The second image, from Campbell Avenue in Shirlington, shows a clear pedestrian way of 7’ to the tree pit, and another 6’ of pedestrian area to the curb.

Campbell Avenue, Shirlington

Washington

The first image, on 18th Street, NW, in Adams-Morgan, shows an 8’ clear pedestrian area, with another 4’ for the tree pit to the curb.

18th Street, NW, Adams-Morgan

The second image, on 20th Street, NW, near Dupont Circle, shows a 9’ clear pedestrian area, with another 5’ for the tree pit.

20th Street, NW, Dupont Circle

These locations were selected over others to reflect a comparable intensity and mix of uses. For both Woodmont Avenue examples, the clear pedestrian path is 6’. But in both examples the pedestrian is confined to that clear area, the building face to one side and restaurant seating on the other, with no way around. The other examples from the region have a clear pedestrian area ranging from 6’ to 9’, but also have “overflow” space between the street trees next to the curb, giving a range of usable pedestrian area between 10’ and 14’ wide. This additional space flexibly accommodates pedestrians in groups or with strollers, as seen in the Adams-Morgan image above.