

MEMORANDUM

DATE: June 8, 2006

TO: Montgomery County Planning Board
Rose Krasnow, Chief *RK*
Michael Ma, supervisor *Ma*
Development Review Division

VIA:

FROM: Marilyn Clemens, Planner/Coordinator *Clemens*
Community Based Planning Division
(301) 495-4572

REVIEW TYPE: **Project Plan Review**

CASE #: **920060050**

PROJECT NAME: **The Rugby Condominium**

APPLYING FOR: Approval of 71 multi-family dwelling units including
11 MPDU's on .47 gross acres

REVIEW BASIS: Sec. 59-D-2, Montgomery County Zoning Ordinance

ZONE: CBD-1

LOCATION: North Side of Rugby Avenue at the intersection of
Auburn and Rugby Avenues; 300 feet east of Norfolk Avenue

MASTER PLAN: 1994 Sector Plan for the Bethesda CBD
2006 Woodmont Triangle Amendment to the
1994 Sector Plan for the Bethesda CBD

APPLICANT: 4851 Rugby Avenue, LLC

FILING DATE: August 29, 2005

HEARING DATE: June 22, 2006

PREVIOUS HEARING: **March 30, 2006**

Attached is the staff report for the proposed Rugby Condominium Project Plan. The Planning Board public hearing for this application is scheduled for June 22, 2006. The Staff recommends **Denial** of the proposed plan as described in the report.

TABLE OF CONTENTS

	Page
SUMMARY	3
STAFF RECOMMENDATION	3
PROJECT DESCRIPTION	
Surrounding Vicinity.....	4
Site Description.....	5
Proposed Development.....	6
Site Layout.....	7
Site Design, Public Use Space, Amenities.....	8
Facility Plan for Battery Lane Urban Park.....	9
PLANNING AND REGULATORY FRAMEWORK	10
Sector Plan.....	10
2006 Amendment to the Sector Plan.....	10
Prior Approvals.....	10
Preliminary Plan.....	10
BASIS FOR CONSIDERATION OF ISSUES	10
REQUIRED FINDINGS	12
Compliance with the intents and requirements of the Zone.....	12
Project Plan Data Table.....	15
Conformance to the approved and adopted Sector Plan.....	17
Conformance with the 2006 Woodmont Triangle Amendment to the 1994 Sector Plan.....	17
Compatibility with the general neighborhood.....	18
Adequacy of existing or programmed public services.....	18
More desirable than the standard method of development.....	18
Provision of moderately priced dwelling units.....	19
Requirement for forest conservation.....	19
Requirements for water quality resource protection.....	19
APPENDIX	19
Page C6-19, Section 59-C-6.235(b) footnote 1, Montgomery County Zoning Ordinance	
District Council Resolution # 15-1316	
Revised conditions submitted March 30, 2006	
March 30, 2006 Staff Report to the Planning Board	

SUMMARY

The Application proposes 104,644 gross square feet of residential development, consisting of 71 multi-family dwelling units, including 11 moderately priced dwelling units (MPDUs) in a 10-story, 101-foot building. A density bonus of 22% can be achieved through the provision of 15% MPDUs on site. The project's amenity component would include approximately 1,250 square feet of artists' studio space open to the public, a small public plaza in front of the building, a small amount of the Bethesda streetscape, and a facility plan for improvements to Battery Lane Urban Park.

ISSUE

Height

An amendment to both the zoning ordinance and the Woodmont Triangle Amendment would be required to permit the building height proposed for this project.

The Application was brought before the Planning Board on March 30, 2006 (See attachment #3) and, after discussion, was deferred at the applicant's request. The Application is for a height of 101 feet in the CBD-1 zone. The Zoning Ordinance normally allows a height of 60 feet in the CBD-1 zone using the optional method of development and permits an increase to 90 feet with a specific finding of no adverse impacts on surrounding properties. In staff's view, the Woodmont Triangle Amendment does not allow development to exceed the maximum height permitted in the various zones. To attain a height above 90 feet in the CBD-1 zone, specific criteria must be met. This Application does not meet these criteria.

The recently approved Woodmont Triangle Amendment to the Sector Plan for the Bethesda CBD has two goals: Retail revitalization and housing for all income levels, and mixed-use projects were, therefore, the focus of 3 years of work. To provide incentives for mixed-use projects (which this Application is not), the Woodmont Triangle Amendment expressly recommends, for such developments, additional height over 90 feet in the CBD-1 zone when 15% MPDUs are provided on site; however, the Woodmont Triangle amendment underscores that this additional height may not exceed the maximum permitted in the CBD-1 zone.

STAFF RECOMMENDATION

The staff recommends **denial** of Project Plan 920060050.

PROJECT DESCRIPTION: Surrounding Vicinity

The proposed development is located on the north side of Rugby Avenue between Norfolk Avenue on the west and Woodmont Avenue on the East. It is near the intersection of Auburn Avenue and Rugby Avenue. Multi-family rental apartments of 3-5 stories front on Battery Lane and are located to the north of the site in the R-10 zone. A paved parking lot for the apartments extends to the north edge of the Rugby site. The proposed development is in the CBD-1 zone, as are the properties immediately to the west, east and south. A 8-story office building is located to the east, and a variety of older, low-rise office and retail buildings are to the south. A plumbing company occupies a converted single family home to the west. Several small arts related businesses are on the south side of Rugby Avenue and on Auburn Avenue, such as Jerry's Music, the Washington School of Photography, the Little City Art Studio and the Gallery Neptune.

THE RUGBY CONDOMINIUM (120060290)



Battery Lane Urban Park is located 350 feet to the west of the site at the intersection of Norfolk and Rugby Avenues. The site is within the study area of the recently approved Woodmont Triangle Amendment to the 1994 Sector Plan for the Bethesda CBD.

PROJECT DESCRIPTION: Site Description

The 4851 Rugby Avenue site is on the north side of Rugby Avenue. The property is comprised of parts of Lots 443, 444, 447, 448 and 627, Northwest Park, totaling 15,835 net square feet. Approximately 4,423 square feet were previously dedicated for roadways, amounting to a gross tract area of 20,258 square feet.

The site currently consists of a gravel parking lot with approximately 18 parking spaces, a two-story, 5,200 square foot retail and office building and a 3-story, 5,600 square foot office building. Retail tenants on the ground floor of the 2-story building are Just Cakes and Just Lobsters.

Overhead utility wires exist along both sides of Rugby Avenue. There are two utility poles in front of the property, which carry Pepco, Comcast and Verizon cables. The nearest intersections of Rugby with Auburn and Norfolk Avenues are not signalized.

The topography is flat with approximately two feet of drop from the northwest to the southeast side of the site. There are no existing trees or other vegetation on the site.

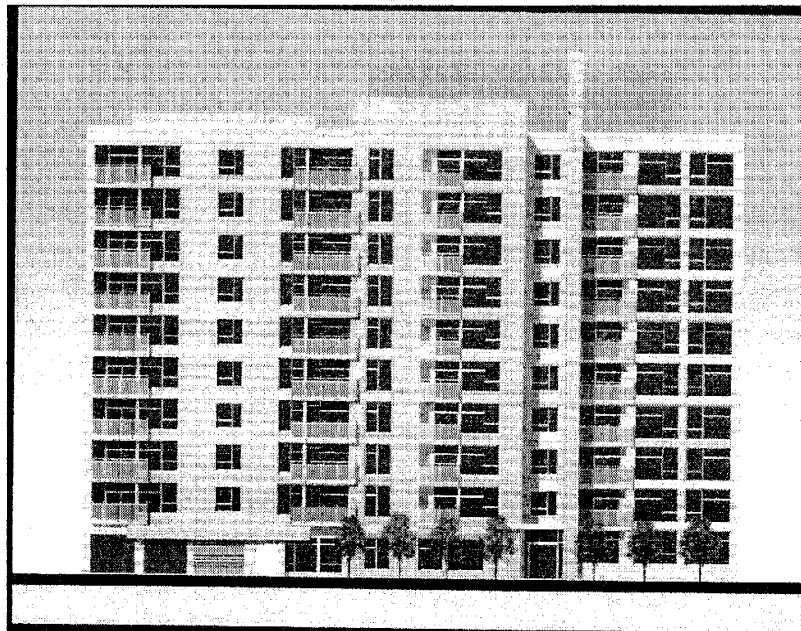


PROJECT DESCRIPTION: Proposal

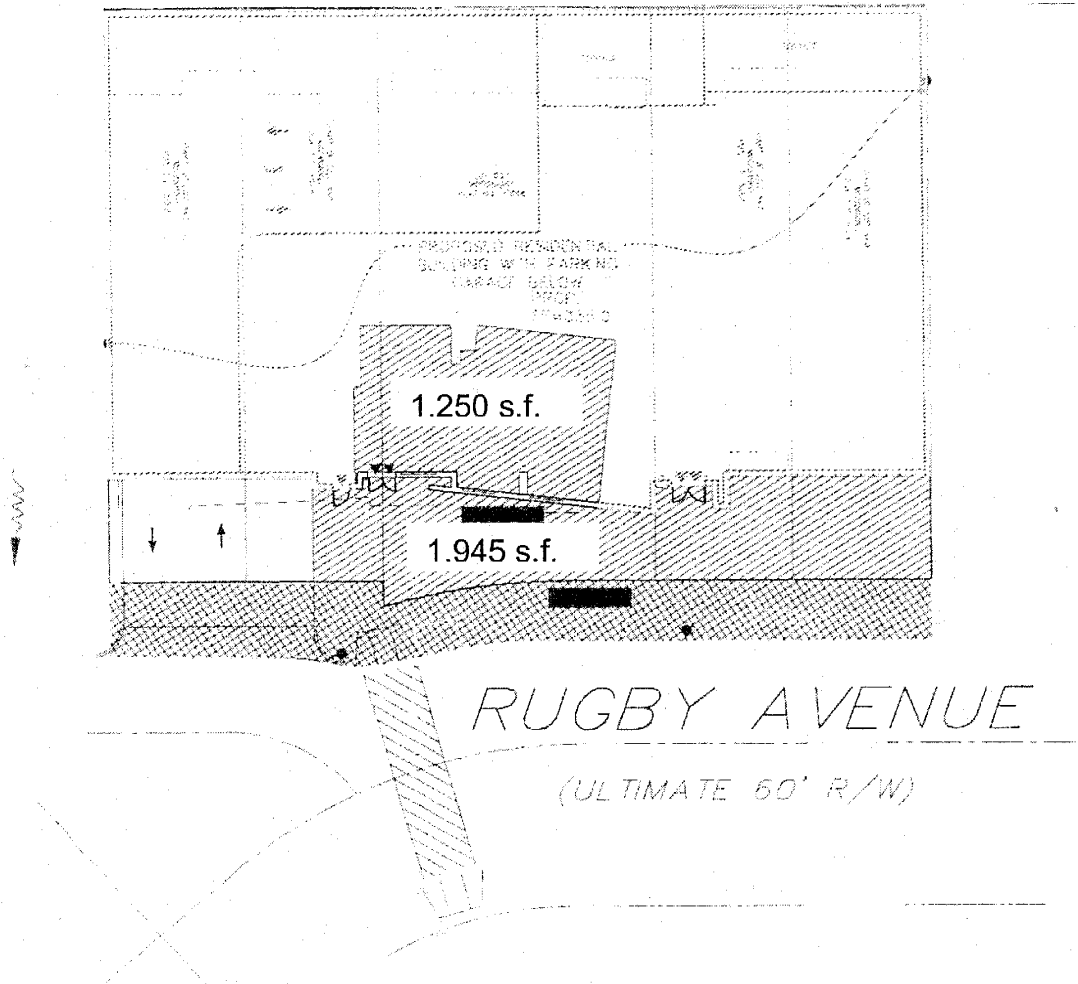
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The proposed masonry and steel building features a stepped south-facing front façade with glass and metal balcony screen rails. The north-facing units also feature balconies, and the rear first floor units would have terraces. Entrances to the parking garage and the loading dock would be on the west side of the site frontage. A paved walk to the art studio space, green space, and the main entrance to the condominiums would occupy the remainder of the 150-foot frontage on Rugby Avenue. The building would have an indoor fitness center and a picnic area on the roof.

This would be the first residential building on Rugby Avenue east of Norfolk Avenue. The other buildings in this area are a mix of older office, retail and commercial buildings dating from the 50's and 60's.

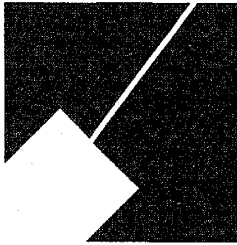


Proposed 101 Foot Building – Front Facade



Site Layout

This plan view shows the distribution of uses on the site. The building occupies a major portion of the site with the driveway and loading area on the left. The interior public use space is 1,250 square feet, and the exterior public use space is 1,945 square feet. The dark, double-hatched area represents the sidewalk in the public right-of-way to be improved with the Bethesda streetscape. The lighter, single-hatched area represents the public use space on site, divided between exterior and interior space, as described below. A crosswalk would be provided to the south side of Rugby Avenue.

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SUMMARY	3
STAFF RECOMMENDATION	3
PROJECT DESCRIPTION	
Surrounding Vicinity.....	4
Site Description.....	5
Proposed Development.....	6
Site Layout.....	7
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Facility Plan for Battery Lane Urban Park.....	9
PLANNING AND REGULATORY FRAMEWORK	10
Sector Plan.....	10
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Prior Approvals.....	10
Preliminary Plan.....	10
BASIS FOR CONSIDERATION OF ISSUES	10
REQUIRED FINDINGS	12
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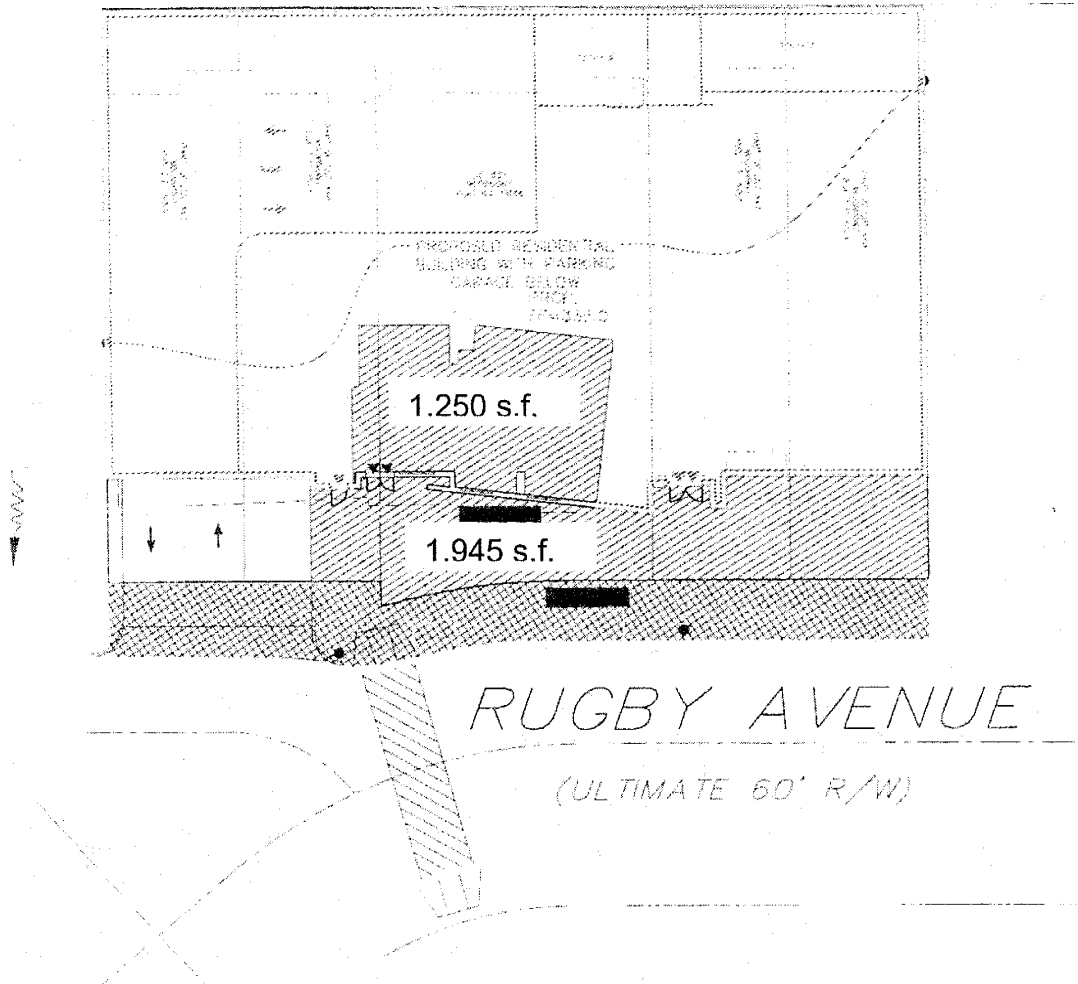
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Site Design

The architecture of the residential building is of a straightforward modern style. The south-facing units will have great solar exposure and a view out over the Woodmont Triangle while the north facing units will have the advantage of a greener view.

Public Use Space and Amenities

The Applicant would provide a minimal amount of on-site public use space.

1. Exterior Public Use Space

The applicant agreed to keep the small public use space in front of the building as simple and versatile as possible to serve as both a gathering area outside the art studio and a sunny sitting area for residents and passersby. This outdoor space constitutes approximately 61%, or 1,945 square feet, of the applicant's public use space requirement. When artists are working in the studio or art tours are in progress, the outdoor space can be a pleasant place to meet or stop on the way to the next exhibit.

2. Interior Public Use Space

The Art Studio

The art studio space represents approximately 39%, or 1,250 square feet, of the applicant's on-site public use space requirement.

The Woodmont Triangle Amendment to the 1994 Sector Plan for the Bethesda CBD contains a list of prioritized amenities desired by the greater Woodmont community. An "arts incubator", a space where "emerging" artists who do not have their own studios can work and exhibit, was on the list of amenities. Arts incubators come in many sizes and shapes with a variety of management structures. Some have publicly sponsored and supported space and in others, the artists pay rent. The art space in this project is small and will accommodate approximately 3-4 artists, depending on their medium of expression.

Members of the Bethesda Arts and Entertainment District and the Arts and Humanities Council now prefer to call these public art spaces "work and exhibit" or "studio" space, because in most situations, an "arts incubator" is a much larger space in its own building. As with the previously approved art space in the 8400 Wisconsin project, members of the Arts and Entertainment District Board will select the artists for a specific time frame. The studio space will be manned by the artists and the Bethesda Urban Partnership and will be open to the public at regular scheduled hours and during Bethesda art festivals.

FACILITY PLAN FOR BATTERY LANE URBAN PARK

The Applicant would provide a Facility Plan for Battery Lane Urban Park as part of the amenity package for the optional method density. Renovations to Battery Lane Urban Park are on the list of priority amenities in the recently approved Woodmont Triangle Amendment to the 1994 Sector Plan for the Bethesda Central Business District (CBD). The Applicant will work with Park Development staff to develop the Facility Plan, present it to the community, make revisions and present the Plan to the Planning Board for review prior to or at the time of site plan review. Parks staff has participated in meetings with the Applicant. While a concept for renovations to the park has been submitted, Parks staff has not yet reviewed it. The Facility Plan process will begin with alternative design concepts for the park.

A Facility Plan is a specific document with construction drawings at a 30% level of completion. The Applicant acknowledges the responsibility to accomplish the Facility Plan in a letter dated March 3, 2006, (Attachment #3 of the March 30, 2006 Staff Report).

Pedestrian and Vehicular Access

The site is conveniently located for residents to walk to the Medical Center Metro Station, approximately 2,800 feet away, or to a bus at Woodmont and Rugby Avenues. The Bethesda trolley stops across Rugby Avenue from the site. The many shops, restaurants and services in the Woodmont Triangle are all within walking distance.

Rugby Avenue has a continuous sidewalk on the north side of Rugby Avenue from Battery Lane Urban Park past the site to Woodmont Avenue on the east. The applicant will improve the frontage of the site with the Bethesda streetscape and will underground the utilities in front of the site.

The 3-floor parking garage in the building will adequately serve the needs of the residents. It will include bicycle and motorcycle parking.

PLANNING AND REGULATORY FRAMEWORK:

Master Plan

The Project Plan is not in conformance with the 2006 Woodmont Triangle Amendment to the Sector Plan for the Bethesda Central Business District. The Amendment allows heights up to 110 feet in the CBD-1 zone when 15% MPDU's are provided on site for solely mixed-use projects and only in those specific instances where such a height is permitted in the zone. This is stated on page 13 of County Council Resolution No. 15-1316 ("Resolution"), attachment #4.

The 1994 Sector Plan did recommend housing for the Woodmont Triangle, but it also recommended a step-down in height at the edges of the CBD.

The Woodmont Triangle Amendment does not specifically discuss the project site, retained the CBD-1 zoning, and removed the 1994 Sector Plan 50-foot height limit, generally permitting "properties within the study area (to) develop to heights permitted in the respective zones," Resolution at page 12. The Amendment encourages mixed-use projects.

The Application would meet some of the amenity goals of the Woodmont Triangle Amendment by providing a Facility Plan for Battery Lane Urban Park, a small art studio space, and a small amount of streetscape.

Prior Approvals

The proposed development is zoned CBD-1. The property is comprised of parts of Lots 443, 444, 447, 448 and 627, Northwest Park.

Preliminary Plan

A Preliminary Plan of subdivision (1-20060290) is being reviewed concurrently with the Project Plan.

BASIS FOR CONSIDERATION OF ISSUES

Per Sec. 59-D-2.43, in making its decision on an application for an Optional Method project plan, the Planning Board must consider:

- a. *The nature of the proposed site and development, including its size and shape, and the proposed size, shape, height, arrangement and design of structures, and its consistency with an urban renewal plan approved under chapter 56.*
- b. *Whether the open spaces, including developed open space, would serve as convenient areas for recreation, relaxation and social activities for the residents and patrons of the development and are*

planned, designed and situated to function as necessary physical and aesthetic open areas among and between individual structures and groups of structures, and whether the setbacks, yards and related walkways are located and of sufficient dimensions to provide for adequate light, air, pedestrian circulation and necessary vehicular access.

- c. Whether the vehicular circulation system, including access and off-street and loading, is designed to provide an efficient, safe and convenient transportation system.*
- d. Whether the pedestrian circulation system is located, designed and of sufficient size to conveniently handle pedestrian traffic efficiently and without congestion; the extent to which the pedestrian circulation system is separated from vehicular roadways so as to be safe, pleasing and efficient for movement of pedestrians; and whether the pedestrian circulation system provides efficient, convenient and adequate linkages among residential areas, open spaces, recreational areas, commercial and employment areas and public facilities.*
- e. The adequacy of landscaping, screening, parking and loading areas, service areas, lighting and signs, in relation to the type of use and neighborhood.*
- f. The adequacy of provisions for construction of moderately priced dwelling units in accordance with Chapter 25A if that Chapter applies.*
- g. The staging program and schedule of development.*
- h. The adequacy of forest conservation measures proposed to meet any requirements under Chapter 22A.*
- i. The adequacy of water resource protection measures proposed to meet any requirements under Chapter 19.*

FINDINGS for Project Plan Review:

Section 59-D-2.42 of the Zoning Ordinance sets forth the findings that must be made by the Planning Board and form the basis for the Board's consideration of approval. In accordance herewith, the staff recommends that the Planning Board make the following findings:

(a) As conditioned, the proposal complies with all of the intents and requirements of the zone.

DISCUSSION OF INTENT OF THE ZONE

The Montgomery County Zoning Ordinance states the purposes, which the CBD zones are designed to accomplish. The following statements analyze how the proposed Project Plan conforms to these purposes:

(1) ***"to encourage development in accordance with an adopted and approved master or sector plan, or an urban renewal plan approved under chapter 56 by permitting an increase in density, height, and intensity where the increase conforms to the master or sector plan or urban renewal plan and the site plan or combined urban renewal project plan is approved on review by the Planning Board."***

The proposed Project Plan is **not** in accordance with the Approved and Adopted 1994 Sector Plan for the Bethesda Central Business District and the 2006 Wisconsin Triangle Amendment to the Sector Plan approved by the County Council and adopted by the full Park and Planning Commission on March 15, 2006.

The proposed development consists of a 101-foot, 10-story residential condominium building containing 71 dwelling units. Under the 1994 Plan, a maximum height of 50 feet was recommended at this location. The 2006 Woodmont Triangle Amendment limits projects to the maximum height allowed in the zone, which, as applied to this proposal, is a maximum of 90 feet. To approve a height of 90 feet, the Planning Board must make a finding that the project does not adversely impact the surrounding properties. See Attachment #1, Section 59-C-6.235 (b) of the zoning ordinance.

This project plan would accomplish certain Sector Plan and Woodmont Triangle Amendment objectives by providing more housing, MPDUs on site, a public arts studio space, and a Facility Plan for the Battery Lane Urban Park. However, it cannot be approved at the proposed height, which exceeds the maximum height permitted under the zone.

(2) ***"to permit a flexible response of development to the market as well as to provide incentives for the development of a variety of land uses and activities in***

central business districts to meet the needs and requirements of workers, shoppers and residents.”

The project plan responds to the need for a variety of housing near metro in the Bethesda CBD.

(3) “to encourage designs which produce a desirable relationship between the individual buildings in the central business district, between the buildings and the circulation system and between the central business district and adjacent areas.”

The proposed project would begin a revitalization of Rugby Avenue east of Norfolk Avenue and contribute to the supply of residential choices in the Bethesda CBD.

(4) “to promote the effective use of transit facilities in the central business district and pedestrian access thereto.”

The site is located approximately 2,800 feet from the Medical Center Metro Station and approximately 2,000 feet from the Bethesda Metro Station. Bus stops for six bus routes are located at Woodmont and Rugby Avenues, and the Bethesda Circulator stops across the street. Future residents would be able to walk to the numerous places of employment and restaurant, retail, service, and arts uses within the Woodmont Triangle and along Wisconsin Avenue.

(5) “to improve pedestrian and vehicular circulation.”

The project would provide an improved pedestrian sidewalk, replacing a 5-foot wide concrete sidewalk and a long expanse of driveway and head-in parking with a 10-foot wide sidewalk with the Bethesda brick pavers. Providing street trees and placing utilities underground would make walking along this site to the park or to Norfolk Avenue a more pleasant experience.

(6) “to assist in the development of adequate residential areas for people with a range of different incomes.”

This project would provide 60 market rate units and 11 MPDUs on site. One of the main goals of the Woodmont Triangle Amendment to the 1994 Bethesda Sector Plan is to provide housing near metro for a variety of income levels.

(7) “to encourage land assembly and the most desirable use of land in accordance with a sector plan.”

The project would replace a gravel parking lot and two older retail and commercial buildings with a modern residential building and public open space. This is a more desirable use of the land, adding residents who will use the

businesses and services of the area, helping revitalize the Triangle, and providing pedestrian activity on the street in a part of the CBD that has been underutilized. .

Section 59-C-6.213 states that it is further the intent in the CBD-1 Zone:

- (1) "to foster and promote the orderly development of the fringes of the Central Business Districts of the county so that these areas will provide land uses at a density and intensity which will encourage small business enterprises and diverse living accommodations, while complementing the uses in the interior portions of these districts; and
- (2) "to provide a density and intensity of development which will be compatible with adjacent land uses outside the Central Business Districts."

The 4851 Rugby Avenue project proposes additional residential units for the edge of the CBD at an appropriate density. It would provide a transition from rental and condominium units to the north, northeast and northwest to the greater density of the central part of the CBD. It does not provide any space for small businesses in an area where mixed-use is encouraged.

REQUIREMENTS OF THE CBD-1 ZONE

Section 59-C-6.23 sets forth the development standards for the CBD-1 zone. The following table summarizes the required and proposed project features:

PROJECT PLAN DATA TABLE

Development Standard	Permitted/Required	Proposed for Approval
Gross Tract Area (s.f.): zoning ordinance min.18,000 s.f.*		20,258 s.f.**
Net Lot Area (s.f.):		15,835 s.f.
Gross Floor Area (s.f.): Residential		104,644 s.f.
Public arts space		1,250 s.f.
*The Woodmont Triangle Amendment removed the min. lot size in the OMD		
**4,423 s.f. previously dedicated		
Density		
Dwelling Units (d.u./ acre)	125 .	151(inc. 22% bonus)
No of units allowed = 58 PLUS 22% bonus		71
		(60 market rate, 11 MPDUs)
Public Use Space (% s.f.):		
On-site: 20% min.net lot	3,167 s.f.	3,195 s.f.(20.17%)
outdoor public use space		1,945 s.f. (61%)
interior public art space		1,250 s.f. (39%)
Public Amenity Space		
(in public r.o.w.)	-	1,790 s.f.
Max. Building Height (ft.)		
	90 feet	101 feet
	(measured from center line of Rugby Avenue in front of the project)	
Parking Required:		
	90***	95
Minus 10% or 9 spaces	81	
Residential Uses(Mkt. Rate)		
1 BR @ 1.25 sp/unit(32 x 1.25)	40	
2 BR @ 1.50 sp/unit (28 x 1.5)	42	
Residential Uses (MPDUs)		
1 BR @ 0.625 sp/unit (6 x 0.625)	4	
2 BR @ 0.75 sp/unit (5 x 0.75)	4	

***Note: The site is within the limits of the Bethesda Parking Lot District.. The Planning Board may approve a 10 percent reduction in the standard parking requirement for multiple-family dwelling units in a central business district pursuant to Section 59-E-3.33 of the Montgomery County zoning ordinance. The Applicant would provide 5 more spaces than required for the convenience of residents.

Height

Zoning Ordinance

Under 59-C-6.235, 60 feet is the maximum height normally permitted for development under the optional method of development. The Planning Board may approve 90 feet on a finding that the development does not adversely affect surrounding properties. To achieve even greater height (up to 143 feet) in the CBD-1 zone, the proposal would have to involve more than one lot, and the Planning Board would have to make 5 additional findings. This project does not involve more than one lot, and, therefore, height above 90 feet is not permitted.

The 2006 Woodmont Triangle Amendment

The Amendment limits projects to the maximum height allowed in the zone. For a project on one lot, for which the Planning Board makes a finding of no adverse impacts to surrounding properties, the maximum height allowed is 90 feet.

Amenities and Facilities Summary

On-Site Improvements

An on-site public open space of approximately 1,945 square feet would be provided. The outdoor public space is connected to interior art space open to the public and would serve as a south-facing open space for residents and passersby alike.

Off-Site Improvements

Streetscape

The Applicant proposes the Bethesda streetscape, including street trees, Washington Globe street lights, undergrounding of utilities, benches, and trash receptacles on the site frontage.

Facilities Plan for Battery Lane Urban Park

The applicant proposes a Facilities Plan for improvements to Battery Lane Urban Park. This Plan, representing 30% drawings, would be based on one of several concepts submitted by the applicant. The concepts would be presented to community groups, revised, and brought before the Planning Commission for review. The Plan would include revised grading to correct drainage problems. A letter dated March 3, 2006 from David D. Freishtat, Attachment #3 to the March

30, 2006 Staff Report, describes the applicant's commitment to developing the Facility Plan.

The Rugby Avenue Right-of-Way (60 foot right-of-way.)

Rugby Avenue is a two lane commercial street with parking on both sides. The full Bethesda CBD streetscape would be provided on the north side of Rugby Avenue along the extent of the property. The sidewalk would be improved with Bethesda pavers, the Washington Globe street lights would be installed at 60 feet on center, and Red Oak street trees would be planted at approximately 30 feet on center in improved tree pits. A Memorandum from Transportation Planning is Attachment #1 to the March 30, 2006 Staff Report.

(b) As conditioned, the proposal conforms to the approved and adopted Master or Sector Plan or an Urban Renewal Plan approved under Chapter 56.

Zoning, Land Use and Sector Plan Conformance:

The approved and Adopted 1994 Bethesda CBD Sector Plan recommends the CBD-1 zoning for this site. The site is included in the Woodmont Triangle Amendment Study Area, and no changes were made to the zoning for the site.

Conformance with the Purpose of the Woodmont Triangle Amendment:

The Woodmont Triangle Amendment builds on the goals of the 1994 Plan and seeks to spur the development of a variety of housing in the Woodmont Triangle, promotes revitalization by having more people living, walking and working in the Triangle, promotes additional streetscape in the area and seeks to support the Arts and Entertainment District by implementing a series of art amenity features. The Application does not, however, propose a mixed-use project.

The project does not conform to the Woodmont Triangle Amendment because it exceeds 90 feet and is not a mixed-use project. While it would add to the supply of affordable housing in the area, it exceeds the maximum height allowed in the zone.

Section 59-D-2.42(b), regarding MPDUs, permits an Application to "exceed ...any applicable ... building height limit established in a ...sector plan if a majority of (the) Alternative Review Committee find(s) that a development including all required MPDUs on site ... would not be financially feasible within the constraints of any applicable ...height limit." The above-quoted language expressly allows a development to exceed a sector plan height limit but does not permit a proposed structure to exceed the maximum height permitted in the zone. To approve height in excess of the maximum height recommended in a sector plan, the Planning Board would be required to find that the project would "exceed an applicable height limit, lower than the maximum height in the zone, that is recommended in a ... sector plan(.) (Emphasis added) The Woodmont

Triangle Amendment "recommends using the standards of the existing zones to determine the building height." Resolution at p. 6. As discussed above, the CBD-1 zone, as applied to this property, permits a maximum height of 90 feet. Therefore, even though all MPDUs are proposed on-site, a height of 101 feet is not permitted, because it exceeds the maximum height permitted in the zone.

c) As conditioned, because of its location, size, intensity, design, operational characteristics and staging, it would be compatible with and not detrimental to existing or potential development in the general neighborhood.

Compatibility: The proposed residential project is located between apartments and condominiums on the north, single-family residences on the west, and older businesses on the east and south. The apartment building directly to the north is separated from the proposed building by 125 feet of surface parking lot. The proposed project would be an improvement over the existing gravel parking lot and office buildings. The proposed development is not compatible in size and exceeds the height allowed in the zone.

(d) As conditioned, the proposal would not overburden existing public services nor those programmed for availability concurrently with each stage of construction and, if located within a transportation management district designated under chapter 24A, article H, is subject to a traffic mitigation agreement that meets the requirements of that article.

The project will be built in one phase.

A memorandum from Transportation Planning is attachment #1 to the March 30, 2006 Staff Report. The project will enter into a traffic mitigation agreement with the Planning Board as specified. The residential project will not severely impact the adjacent intersections. 95 parking spaces are provided within the project for 71 dwelling units. The Applicant is providing 5 more parking spaces than required. In addition, a public parking structure is located one block away, and public transit is available. The site is within the Bethesda Parking District.

Regarding potential impacts on public schools, high-rise projects typically generate a low rate of students. Studies prepared for the Woodmont Triangle Amendment found that no additional school facilities would be required, even with an increase of 1,500 hundred housing units over the next 10-15 years.

e) The proposal will be more efficient and desirable than could be accomplished by the use of the standard method of development.

The optional method of development permits a more efficient and desirable product than the standard method of development.