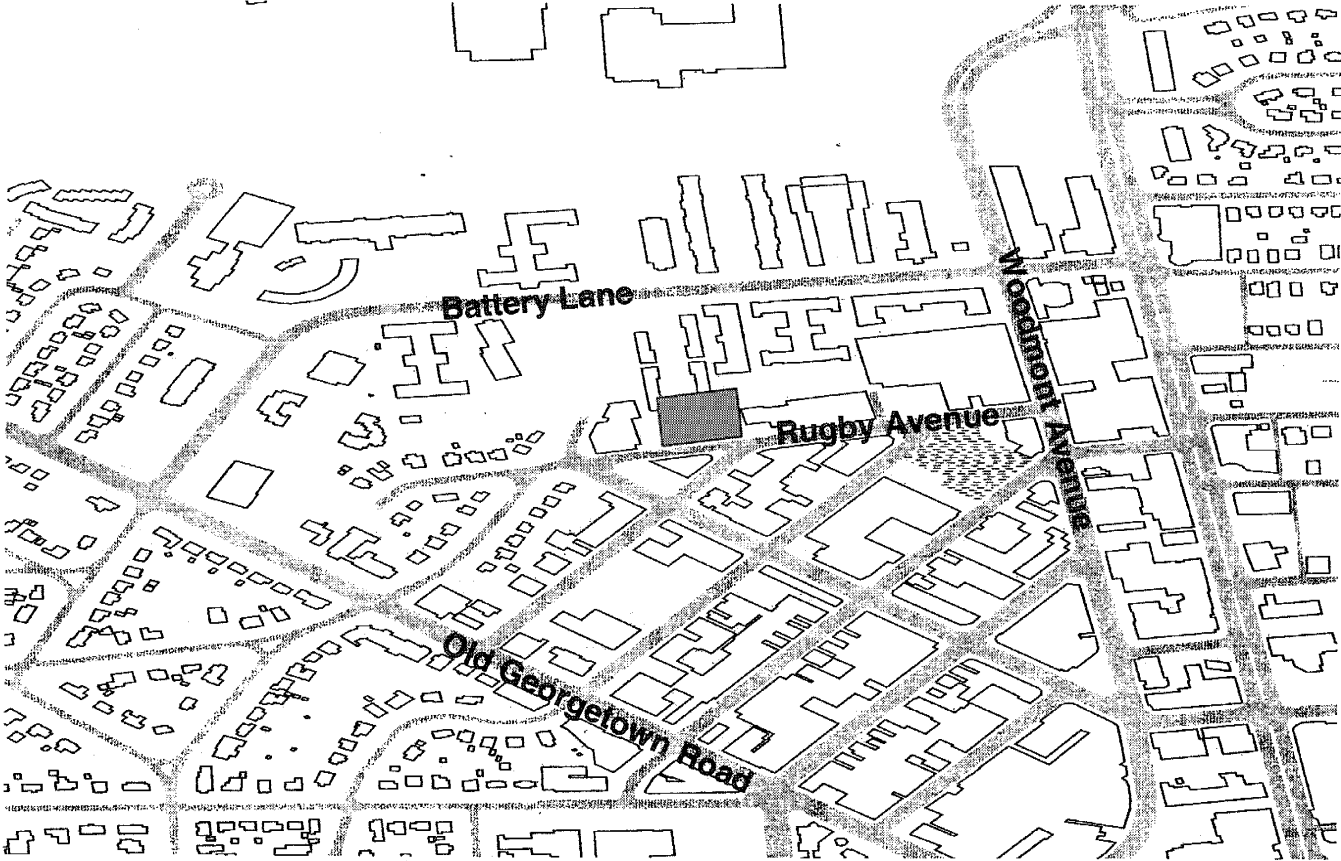


MEMORANDUM

DATE: July 20, 2006
TO: Montgomery County Planning Board
VIA: Rose Krasnow, Chief *RK*
Michael Ma, Supervisor *Ma*
Development Review Division
FROM: Marilyn Clemens, Planner/Coordinator/Urban Designer *MC*
Community Based Planning Division
(301) 495-4572
REVIEW TYPE: **Project Plan Review**
CASE #: **920060050**
PROJECT NAME: **The Rugby Condominium**
APPLYING FOR: Approval of 70 multiple-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 HEARINGS: March 30, 2006, June 22, 2006

Attached is the staff report for the proposed Rugby Condominium Project Plan.
The Planning Board public hearing for this application is scheduled for July 20, 2006.
The Staff recommends **Denial** of the Application as described in the report.

RUGBY CONDOMINIUMS



PROJECT PLAN #920060050
July 20, 2006

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SUMMARY AND BACKGROUND

The Application was brought before the Planning Board on March 30, 2006 (Appendix 3) and was deferred at the applicant's request to June 22, 2006. Late on June 21, 2006, the attorney for the Applicant submitted a document responding to the staff report. The staff and members of the Planning Board had no time to read this document and consider the validity of its arguments. Commission Robinson requested a postponement and the Planning Board agreed to hear the Application on July 20, 2006.

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-high building. The project's proposed amenity component would include approximately 1,250 square feet of artists' studio space, a small public open space in front of the building, streetscape in front of the property, and a facility plan for improvements to Battery Lane Urban Park.

Under the optional method of development, a density bonus of 22% can be achieved through the provision of 15% MPDUs on site. The Woodmont Triangle Amendment to the 1994 Sector Plan for the Bethesda CBD allows heights up to 110 feet in some circumstances for properties in the CBD-1 zone. Staff does not believe that this specific Application qualifies for height over 90 feet under the Montgomery County Zoning Ordinance, the Woodmont Triangle Amendment or the 1994 Sector Plan for the Bethesda Central Business District (CBD).

The Application does not provide sufficient public use space off or on-site and does not meet the requirements of the optional method of development.

ISSUES

1. Height

The Application is for a height of 101 feet in the CBD-1 zone under the optional method of development. The Zoning Ordinance normally allows a height of 60 feet in the CBD-1 zone and permits an increase to 90 feet under 59-C-6.23 with a specific finding of no adverse impacts on surrounding properties. Height over 90 feet, but not more than 143 feet, is allowed in the CBD-1 zone if the proposal involves more than one lot and five specific findings can be made. This is known as "the Barlow Amendment" or Section 59-C-6.2351 of the Zoning Ordinance.

In general, the Woodmont Triangle Amendment to the 1994 Sector Plan does allow heights up to 110 feet in the CBD-1 zone when 15% MPDU's are provided on site. Properties in the CBD-1 zone can even attain 143 feet under specific conditions defined in the Zoning Ordinance. Appendix 4 is the block map created by M-NCPPC staff. The Council Resolution notes specific permitted heights at 118 and 143 for CBD-1 properties in other blocks (Appendix 2, page 16). The Rugby property was not discussed during the County Council hearings. It was included in Block 15 by M-

NCPPC staff along with other CBD zoned properties for ease of reference and to separate them from the multi-family R-10 zoned properties immediately to the north in block 16. There was no intent to guarantee individual properties in block 15 the maximum height or to override the provisions of the Zoning Ordinance. Not all the CBD-1 properties in the Woodmont Triangle study area will attain 110 feet or 143 feet, because they will go through project plan or site plan review and must conform to the Zoning Ordinance. In addition, the Rugby property is located at the north end of the CBD where a step-down in height is called for in the 1994 Sector Plan and in the Woodmont Triangle Amendment to the Sector Plan.

The Applicant believes the Woodmont Triangle Amendment allows all properties in the CBD-1 zone to reach 110 feet if the proposal provides 15% MPDU's on site. Appendix 5 is a statement of the Applicant's position dated July 5, 2006. Staff will provide additional comments on this statement in this report.

2. PUBLIC USE SPACE AND AMENITIES

In the early stages of review, the Applicant stated that they could not provide 20% public use space on site and they would not or could not acquire it off site alone or with another developer. The Applicant believed the public use space requirement was eliminated through the Woodmont Triangle Amendment, but this was clarified through discussions with staff. The Applicant would not provide additional streetscape beyond what is proposed. To find a solution, staff proposed the Applicant provide a small sitting area in front of the project, public art studio space inside the first floor, and a facility plan for Battery Lane Urban Park. The Applicant agreed to this minimal amount of amenities and public use space.

In the process of finalizing the first public art studio space for the Woodmont Triangle, in the 8400 Wisconsin project, the Bethesda Urban Partnership (BUP) and the Bethesda Arts and Entertainment District Board determined that BUP cannot manage, maintain and staff a public art space smaller than 2,000 square feet. A Letter from the Chair of the Arts and Entertainment District Board is Appendix 6. Therefore, BUP cannot accept the management of the 1,250 square foot public art space proposed by the Rugby project. The Rugby Condominium project does not currently have the required minimum 20% per cent public use space on or off-site. This project must provide a combination of public use space and amenities on a level proffered by other optional method of development projects, i.e., between 40 and 60 per cent of their net lot area. This Application's current proposed public use space and amenity space combined is approximately 30% of the net lot area.

3. POSSIBLE SOLUTIONS

- a. The Applicant can resubmit a proposal at 90 feet with 20% public use space on or off-site, if it can be proven that 20% can not be provided on site while providing 15% MPDUs on site, and an amenity package representing between 40 and 60 per cent of their net lot area.
- b. The Applicant can wait until the Woodmont Triangle Amenity Fund is established with approved criteria for paying for public use space and amenities. The first Amenity fund meeting was held on June 30, 2006. By paying an appropriate amount for their public use space requirement into the amenity fund, the Applicant could use the entire site for a 90-foot residential building and provide additional public amenities off-site.
- c. The Applicant can seek a clarification or amendment to the Woodmont Triangle Amendment regarding their specific property location, as did the Plank, Trojiano and American Inn properties referenced on page 16 of Appendix 2. They must also request or propose a Zoning Text Amendment to 59C-6.235 and 59-C-6.2351.

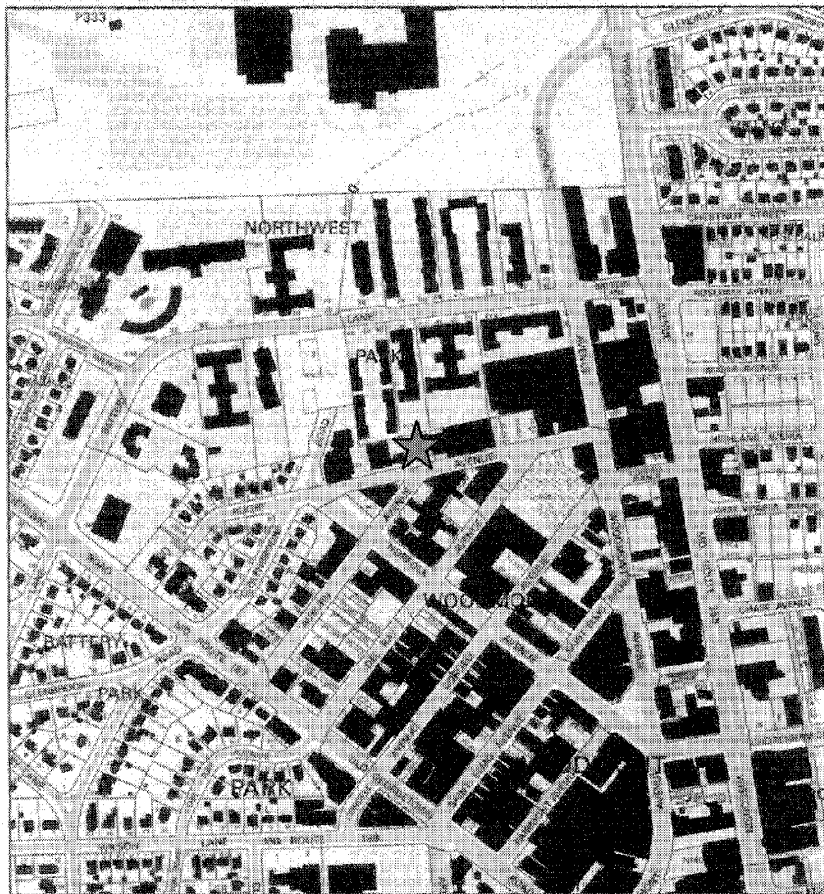
STAFF RECOMMENDATION

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

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 fronting on Battery Lane are located to the north of the site in the R-10 zone. A paved parking lot for some of the apartments extends to the north edge of the Rugby site. Another apartment complex is 25 feet to the northwest of the property line. The Application is in the CBD-1 zone, as are the properties immediately to the west, east and south. An 8-story office building and parking deck 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 Application is within the study area of the recently approved Woodmont Triangle Amendment to the 1994 Sector Plan for the Bethesda CBD.

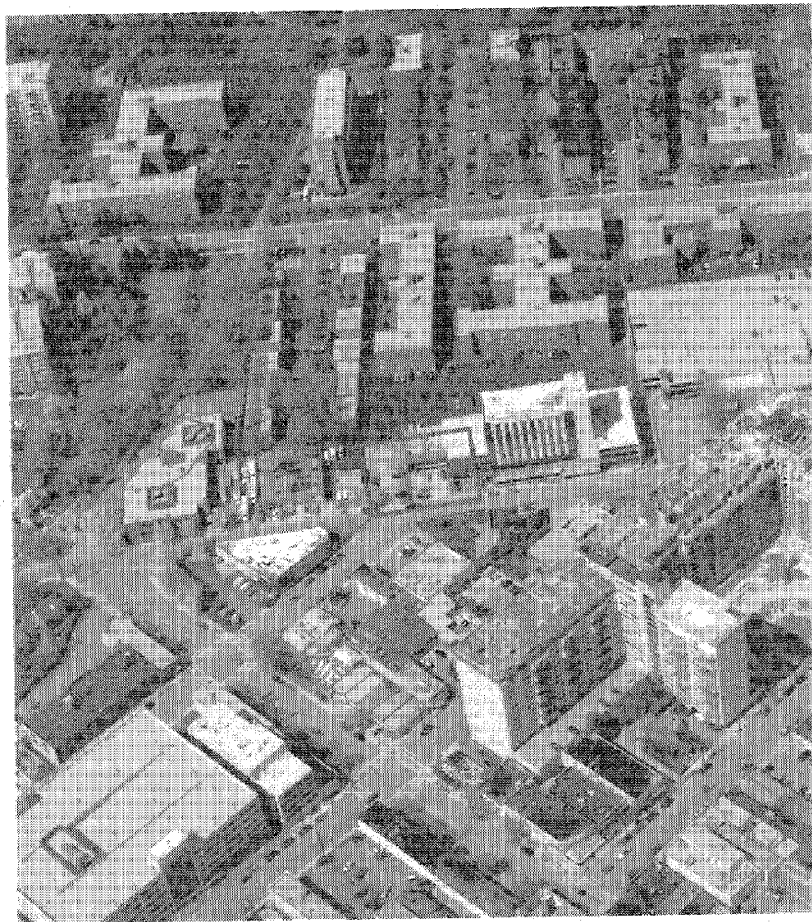
PROJECT DESCRIPTION: Site Description

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

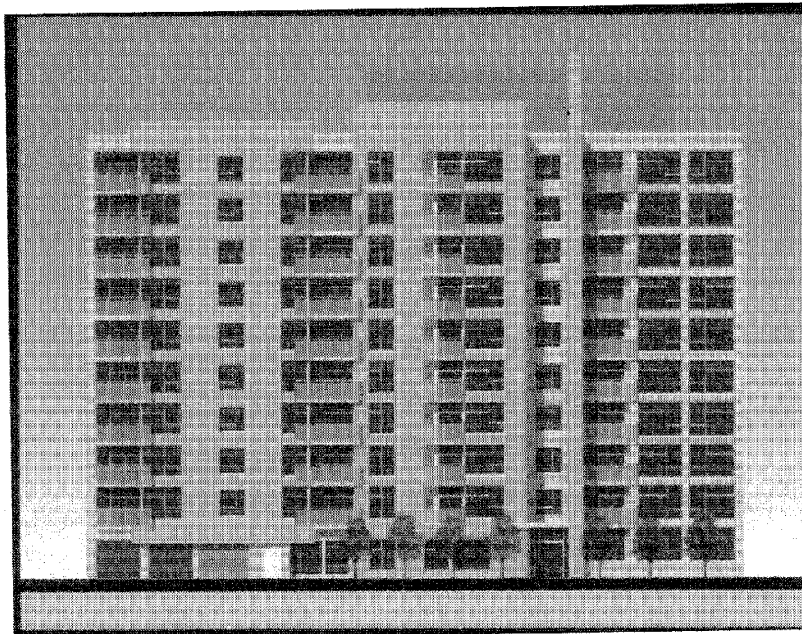


PROJECT DESCRIPTION: Proposal

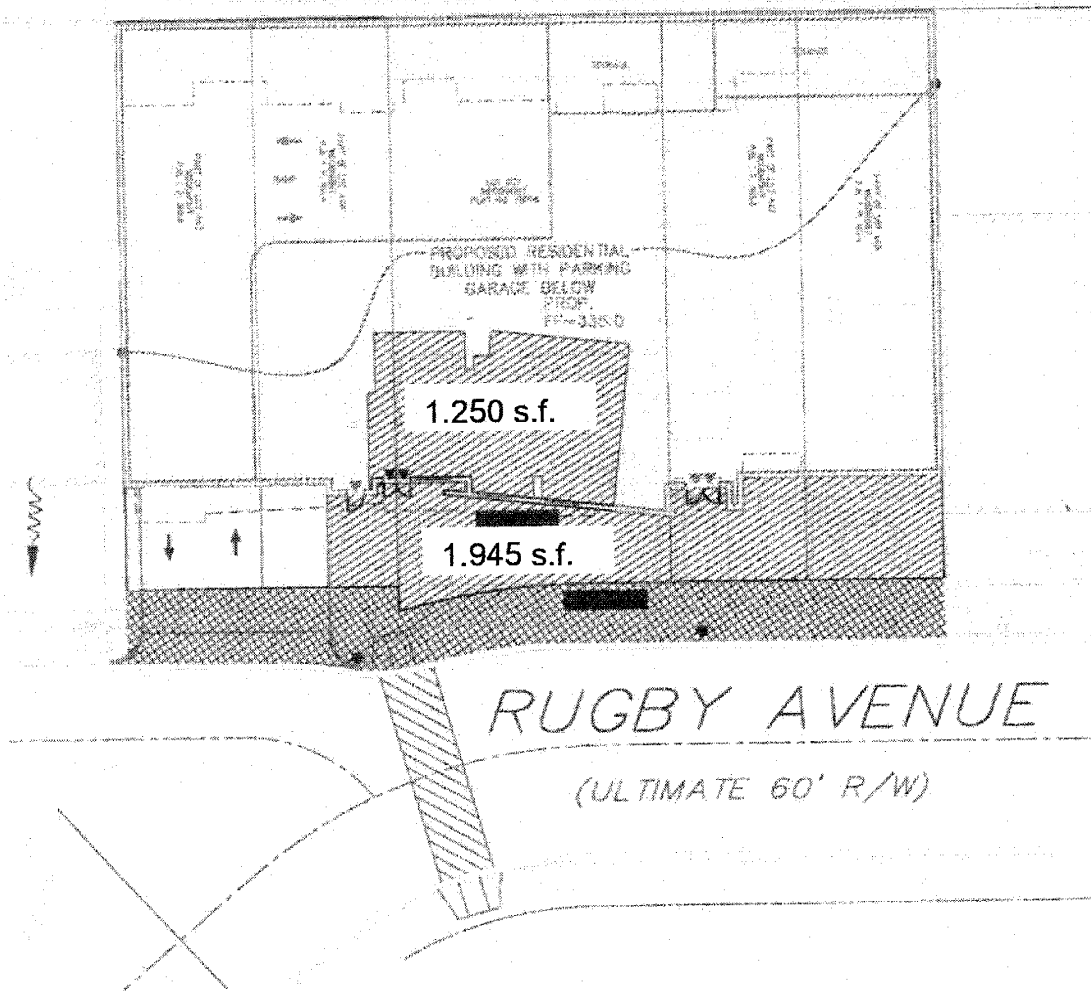
The Applicant, 4851 Rugby Avenue, LLC, proposes a 10-story, 101-foot condominium building with 15% percent MPDU's built on site. The maximum height allowed in the CBD-1 zone is 90 feet unless specific findings can be made. The Applicant proposes 1,250 square feet of art studio space open to the public within the condominium building. BUP is no longer able to the accept management of this small space. The frontage of the site would be developed with a small green space and a gathering area near the arts space. The applicant would also provide a facility plan for Battery Lane Urban Park.

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 proposed interior public use space is a 1,250 square foot artists' work space, 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.

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 no longer has an acceptable 20% public use space. Appendix 6 is a letter from BUP explaining why they must establish 2,000 square feet as minimum size for an indoor public art studio space. The Applicant must find another minimum 39% of its public use space requirement on or off-site.

1. Exterior Public Use Space

The applicant would provide a small public use space in front of the building to serve as both a gathering area 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

2. Interior Public Use Space

The Art Studio

The 1,250 square foot art studio space is no longer acceptable as fulfillment of part of the public use space requirement. Appendix 6 explains the reasons for 2,000 square feet being the minimum size BUP can manage, maintain, supply and staff. In the process of the Woodmont Triangle Amendment hearings, concern was expressed that the County could incur expenses for public facilities that are developer responsibilities. The 1,250 square foot studio space would only accommodate two artists, because space must be allotted for restrooms, common areas, handicap access and circulation. This means each artist would have a higher monthly fee, and the expenses for BUP would be increased. In the future, BUP will only consider larger art studio spaces and would prefer an entire floor in a mixed-use project or separate building.

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 would work with Park Development staff to develop several concepts for the Facility Plan, present it to the community, make revisions, and present a 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 along Rugby Avenue across 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:

Sector Plan

The Woodmont Triangle Amendment to the 1994 Sector Plan

In general, the Woodmont Triangle Amendment does allow heights up to 110 feet in the CBD-1 zone when 15% MPDU's are provided on site for mixed-use projects. This does not mean that all properties on the north side of Rugby Avenue can automatically achieve 110 feet or even 90 feet. Each Application still has to be reviewed by the Planning Board in accordance with the Zoning Ordinance, and a finding of no adverse impacts has to be made at site plan for heights over 90 feet.

For the County Council discussions on the Woodmont Triangle Amendment, M-NCPPC staff drew a block map, Appendix 4, for easy reference to groups of properties by zone and proximity to each other. The Applicant's property is in Block 15. Properties in Block 15 were not examined in any detail and were grouped together because of their CBD-1 or CBD-R2 zones and to separate them from Block 16, zoned R-10. An example of properties that were discussed in detail and are also zoned CBD-1 are the Plank, Troiano and American Inn properties located along Wisconsin Avenue in blocks 10 and 11 shown on Appendix 7. The County Council allowed additional height for these specific properties for circumstantial reasons, such as being adjacent to existing tall buildings or properties zoned for CBD-R2. Should they redevelop, these CBD-1 properties along Wisconsin Avenue would not impact existing residences with their additional height nor are they located at the north end of the CBD. Should these properties file plans for review before the Planning Board, they may still not achieve the

maximum heights allowed by the Woodmont Triangle Amendment for a variety of reasons, such as property size, configuration and compatibility.

Block 15 and the Applicant property were not discussed during the Council hearings. However, block 16 to the north, with its R-10 zoned multi-family residences along Battery Lane, was discussed in detail. It was considered so important to the retention of affordable housing in the Woodmont Triangle and the Bethesda area that it was taken out of the plan for special study. The Battery Lane area of blocks 16,17 and 18 (Appendix 7) will be the subject of an additional amendment to the Bethesda Sector Plan. The Woodmont Triangle Amendment, in allowing a maximum of 110 feet for CBD-1 properties in block 15, did not intend that all the properties along the north side of Rugby Avenue would be guaranteed that height, particularly given their relationship to block 16, the multi-family apartments just to the north.

The Woodmont Triangle Amendment does not specifically discuss the project site, retained its 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 1994 Sector Plan for the Bethesda CBD

The 1994 Sector Plan recommends housing for the northern part of the Woodmont Triangle. It limited the height of the Applicant's site to 50 feet and recommended a step-down in height at the edges of the CBD.

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 1994 Sector Plan and the Amendment call for a step down in height at the north end of the CBD.

The proposed development consists of a 101-foot high, 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, 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. Height over 90 feet would not create a desirable relationship between the site and the R-10 existing multi-family apartments to the northwest.

*(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. 90 feet is the maximum recommended height at the edge of the CBD for compatibility with the adjacent land uses, existing 3-5 story

multi-family apartments. The Application 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.

The Application is exercising the right to file under the units per acre provision of Section 59-C-6.234 for 100 percent residential projects. Therefore, it is able to exceed the FAR limit that would be applied to a mixed-use project. This Application, if approved, would achieve the equivalent of 5 FAR, instead of the 3 FAR allowed in the CBD-1 zone.

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.	152(inc. 22% bonus)
No of units allowed = 58 PLUS 22% bonus		70
		(59 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%)

As discussed, 39% of the public use space is no longer acceptable.

Off-Site Public Amenity Space

(in public r.o.w.)	-	1,790 s.f.
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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 was not filed as more than one lot, and, therefore, height above 90 feet is not permitted. If, as the Applicant contents, the project involves more than one lot, the following findings listed in Appendix 1 must be made:

1. "The additional height is specifically recommended for the property in the applicable sector plan or urban renewal plan;" The property fall into block 15 which was globally allowed 110 feet with no specific discussion of this property.
2. "The additional height is consistent with the criteria and guidelines for the property as contained in the applicable sector plan or urban renewal plan;" Block 15 as a whole was allowed a maximum of 110 feet with 15% MPDUs on site.
3. "Except as recommended in an urban renewal plan the portion of the property upon which the additional height is to be used is on all sides abutted by or adjacent to property recommended in the applicable sector plan or urban renewal plan for classification in the CBD-0.5, CBD-1, CBD-2, or CBD-3 zone. **The proposed project would abuts multi-family apartments in the R-10 zone to the north. It is therefore not abutted on all sides by CBD zones. This finding can not be made.**
4. "The proposed development is compatible with the surrounding development, considering but not limited to the relationship of the building or buildings to the surrounding uses, the need to preserve light and air for the residents of the development and residents of surrounding properties, and any other factors relevant to the height of the building;" The proposed development would not shade the apartment building directly to its north at 90 feet. It would, however, cast a shadow on the building to the northeast in the morning and

mid-day hours. The Applicant has not provided a sun/shade study, but height over 90 feet would not be compatible with some of the existing buildings.

5. "The proposed development will produce a substantial amount of consolidated public open space in excess of that which would be required if this process were not used. The public open space must be designated as public amenity space and be accessible to and usable by the public in accordance with the applicable sector or master plan, or urban renewal plan." **This Application is not providing a substantial amount of public open space.** This footnote to 59-C-6.2351 refers back to its origin as the "Barlow Amendment" where a project in Friendship Heights was built on three separate lots and provided a large public park on one lot in exchange for extra height on one lot along Wisconsin Avenue and away from residences. **This finding cannot be made for the proposed project.**

In addition, under Section 59-D-2.42(b), regarding MPDUs, the Zoning Ordinance 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 Application has not gone to the Alternative Review Committee.** 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 doesn't meet the requirement of the zone to exceed 90 feet.

The 2006 Woodmont Triangle Amendment

The Amendment limits projects to the maximum height allowed in the zone. While 143 feet may be achieved for some CDB-1 mixed-use projects with 15% MPDUs on site, each property must be considered in its context. The Amendment did not intend to promote a 110 building wall on the north side of Rugby Avenue just south of existing apartments. The Amendment calls for a step-down in height at the north end of the CBD. 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.

The staff concludes that there is no basis for approving height over 90 feet for this Application.

Amenities and Facilities Summary

On-Site Improvements

An on-site public open space of approximately 1,945 square feet would be provided. The Application is deficient a minimum of 39% of the public use space requirement for the optional method of development.

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 provided 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 zone for this site. The proposed project is in general conformance with the 1994 Plan although the Plan calls for a step-down in height at the edges of the CBD.

Conformance with the Purpose of the Woodmont Triangle Amendment:

The Woodmont Triangle Amendment builds on the goals of the 1994 Plan, seeks to spur the development of a variety of housing in the Woodmont Triangle and encourages mixed-use development proposals to foster the revitalization of the area. The project site is included in the Woodmont Triangle Amendment Study Area but was not discussed in the Amendment.

The project does not conform to the Woodmont Triangle Amendment, because it does not step-down in height at the edge of the CBD. Additional height is recommended by the Amendment for mixed-use projects. While the Application would add to the supply of affordable housing in the area, it does not provide any significant public amenities in exchange for what amounts to great density.

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. At 90 feet the proposal would be compatible with that existing building, but it would cast a shadow on the three-story building 25 feet from the property line to the northwest. Any additional height would negatively impact the apartments to the northwest. All the apartment buildings to the north and northwest are in the Battery Lane District, zoned R-10. While the R-10 zone has no height limit, it cannot be assumed that the existing affordable apartments will be replaced for new and higher buildings. The County Council removed the Battery Lane area from the Woodmont Triangle Amendment and requested a separate master plan Amendment to carefully study the area, to conserve as much affordable housing as possible, and to increase affordable housing in line with the reduction of green area approved for the R-10 zone, (Section 59-C-2.422).

(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 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.

Under the standard method of development, the project could achieve approximately half the proposed dwelling units and would provide only 5 MPDUs. 11 MPDUs are provided by this project as well as streetscape, a green space and a facility plan for the Battery Lane Park. Under the standard method of development, 10% public use space, a minimal amount of streetscape, and no amenity space would be achieved.

f) The proposal will include moderately priced dwelling units in accordance with Chapter 25A of the Code, if the requirements of that chapter apply.

The proposed development is providing 11 MPDU's on site, 15 percent of the total number of units, in accordance with the provision of Chapter 25A of the Montgomery County Zoning Ordinance.

g) As conditioned, the proposal satisfies any applicable requirements for forest Conservation under chapter 22A.

The Environmental Planning Division reviewed the proposed project. The Plan qualifies for an exemption for a small property, less than 1.5 acres in size. This property is not subject to a Tree Save Plan nor is it within a Special Protection Area. Please see attachment #2 to the March 30, 2006 Staff Report..

h) As conditioned, the proposal satisfies any applicable requirements for water quality resources protection under Chapter 19.

A stormwater management concept plan has been submitted for review to the Department of Permitting Services. The application proposes on-site management.

Community Outreach

On March 9, 2006 the Applicant send a letter to 3 individuals and 2 civic associations offering to meet and discuss the Application (Appendix 3, attachment #4). Staff has received no correspondence from the Battery Lane Residents or the Edgewood Glenwood Civic Associations or any adjacent property owners. The Battery Lane Residents Association has recently expressed concern about the height of the proposed project and about not having met with the Applicant.

APPENDIX

1. Page C6-19, Article 59-C-6.235 of the Montgomery Co. Zoning Ordinance
2. District Council Resolution No. 15-1316
3. Revised Project Plan Conditions presented to the Planning Board on March 30, 2006 and March 30, 2006 Staff Report on The Rugby Condominium w. Attachments
4. Block Map of the Woodmont Triangle Amendment
5. July 5, 2006 letter from David Freishtat
6. June 26, 2006 letter from Chair Carol Trawick of the Bethesda Arts and Entertainment District
7. Development Review Checklist for Project Plan Review

CBP/mc/rugbydenial.doc

MONTGOMERY COUNTY CODE
 ZONING ORDINANCE
 Chapter 59

§59-C-6.2

	CBD-0.5		CBD-R1 ²		CBD-1		CBD-2		CBD-3		CBD-R2	
	S'	O	S	O	S'	O	S'	O	S'	O	S	O
(b) Optional method of development.												
—Normally:		60		60		60		143		143		143
—If approved by the Planning Board in the process of site plan or combined urban renewal project plan approval as not adversely affecting surrounding properties, height may be increased to:		60 ¹²		143		90 ¹		200 ¹¹		200		200

For projects using the optional method of development involving more than one lot under Section 59-C-6.2351, the Planning Board may approve height over 90 feet, but not more than 143 feet. In order to approve height over 90 feet, the Planning Board must find that:

- (1) The additional height is specifically recommended for the property in the applicable sector plan or urban renewal plan;
- (2) The additional height is consistent with the criteria and guidelines for the property as contained in the applicable sector plan or urban renewal plan;
- (3) Except as recommended in an urban renewal plan the portion of the property upon which the additional height is to be used is on all sides abutted by or adjacent to property recommended in the applicable sector plan or urban renewal plan for classification in the CBD-0.5, CBD-1, CBD-2, or CBD-3 zones;
- (4) The proposed development is compatible with the surrounding development, considering but not limited to the relationship of the building or buildings to the surrounding uses, the need to preserve light and air for the residents of the development and residents of surrounding properties, and any other factors relevant to the height of the building; and
- (5) The proposed development will produce a substantial amount of consolidated public open space in excess of that which would be required if this process were not used. The public open space must be designated as public amenity space and be accessible to and usable by the public in accordance with the applicable sector or master plan, or urban renewal plan.

² Nonresidential structures in existence at the time the property is placed in the zone, that exceed the normal limit imposed for such uses will not be regarded as nonconforming and may be repaired, remodeled, or replaced so long as there is no increase in the amount of floor area.

³ In order to provide services to residents and continuity of retail street frontage activity, at least 5 percent of the gross floor area must consist of retail or personal service commercial uses. The Planning Board may

MONTGOMERY COUNTY CODE
ZONING ORDINANCE
Chapter 59

waive a portion of this requirement during the course of project plan approval upon a finding that full compliance with this requirement is not practical, feasible, or would result in such uses being required on other than the ground or first floor. A hotel or motel up to FAR 1 is permitted. A hotel or motel with up to 3 FAR may be allowed where recommended as appropriate in the relevant sector plan.

4 Not to exceed 67 percent of the gross floor area.

5 Not to exceed 60 percent of the gross floor area.

6 Not to exceed 62.5 percent of the gross floor area.

7 Not to exceed 20 percent of the gross floor area.

8 All provisions of Section 59-C-18.10, entitled the Wheaton Retail Preservation Overlay Zone, shall continue in effect and remain unaltered, except that additional FAR for residential density may be included in a standard method project, provided the restrictions on the utilization of street level space for multi-story buildings constructed or reconstructed after July 16, 1990 are followed.

9 Additional density for housing purposes may be permitted, so long as the degree of nonconformity from the setback (59-C-6.231), lot coverage (59-C-6.232), and the public open space (59-C-6.233) requirements is not increased. The maximum density cannot exceed the density provisions in section (59-C-6.234)(a)(ii).

10 Development that exceeds this FAR is subject to the procedures set forth in Div. D-3.

11 Under the optional method of development process, the Planning Board may approve height over 143 feet, but not more than 200 feet. In order to approve height over 143 feet, the Planning Board must find that:

- (1) The additional height is specifically recommended for the property in the applicable sector plan or urban renewal plan or the property is within a revitalization area designated in the applicable sector plan and is located fully or partially within 800 feet of an entrance to a metro station;
- (2) The additional height is consistent with the criteria and guidelines for the property as contained in the applicable sector plan or an urban renewal plan approved by the County Council under Chapter 56, or in the case of a site outside an urban renewal area, accomplishing the objectives of incorporating residential development with commercial development in a mixed use project in close proximity to a metro station otherwise unobtainable due to site conditions, proximity of adjacent non-residential buildings, or other physical constraints which prevent the achievement of sector plan objectives;
- (3) The proposed development is compatible with the surrounding development, considering but not limited to the relationship of the building or buildings to the surrounding uses, the need to preserve light and air for the residents of the development and residents of surrounding properties, and any other factors relevant to the height of the building; and
- (4) The proposed development will provide additional public facilities and amenities beyond what could otherwise have been provided if the excess height were not approved. Such facilities must be accessible to and usable by the public in accordance with the applicable sector or master plan or urban renewal plan.

12 The Planning Board may approve height over 60 feet, but not more than 90 feet, if the additional height is consistent with an applicable sector plan or an approved urban renewal plan.

13 An historic resource recommended in the relevant master or sector plan to be preserved and reused, which does not occupy more than 10% of the gross floor area, is excluded from the FAR calculation.

14 Subject to the provisions of Sec. 59-C-6.2353, the maximum permitted nonresidential development may be increased to FAR 1 and the maximum building coverage to 75%.

15 May be exceeded under the special regulations of Sec. 59-C-6.2354.

16 This requirement may either be reduced by the Planning Board, or satisfied by the provision of off-site public use space or improvements to existing public use space, if the site will be owned and occupied by a nonprofit organization that provides needed child care and adult day care services under a partnership agreement with the Montgomery County Department of Health and Human Services in effect on December

Resolution No.: 15-1316
 Introduced: January 31, 2006
 Adopted: January 31, 2006

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

By: District Council

SUBJECT: Approval of Planning Board Draft Woodmont Triangle Amendment to the Bethesda CBD Sector Plan

1. On December 22, 2004, the Montgomery County Planning Board transmitted to the County Executive and the County Council the Planning Board Draft Woodmont Triangle Amendment to the Bethesda CBD Sector Plan.
2. The Planning Board Draft Woodmont Triangle Amendment to the Bethesda CBD Sector Plan amends the approved and adopted 1980 Master Plan of Bikeways; The General Plan (On Wedges and Corridors) for the Physical Development of the Maryland-Washington Regional District in Montgomery and Prince George's Counties; The Countywide Park Trails Plan; and The Master Plan of Highways within Montgomery County.
3. On February 23, 2005, the County Executive transmitted to the County Council his fiscal analysis of the Woodmont Triangle Amendment to the Bethesda CBD Sector Plan.
4. On May 10, 2005 and July 12, 2005, the County Council held a public hearing regarding the Planning Board Draft Woodmont Triangle Amendment to the Bethesda CBD Sector Plan. The Sector Plan was referred to the Planning, Housing, and Economic Development Committee for review and recommendation.
5. On September 15, September 26, October 10, October 24, and October 31, 2005 the Planning, Housing, and Economic Development Committee held worksessions to review the issues raised in connection with the Planning Board Draft Woodmont Triangle Amendment to the Bethesda CBD Sector Plan.
6. On November 22, 2005, the County Council reviewed the Planning Board Draft Woodmont Triangle Amendment to the Bethesda CBD Sector Plan and the recommendations of the Planning, Housing, and Economic Development Committee.

Action

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

The Planning Board Draft Woodmont Triangle Amendment to the Bethesda CBD Sector Plan, dated December 2004, is approved with revisions. Council revisions to the Planning Board Draft Woodmont Triangle Amendment to the Bethesda CBD Sector Plan are identified below. Deletions to the text of the Plan are indicated by [brackets], additions by underscoring.

Page 1: Under Purpose of the Amendment, revise paragraph as follows:

In October 2003, the Montgomery County Council requested that the M-NCPPC examine the potential for a limited amendment to the [existing Sector Plan for the Bethesda Central Business District, dated July 1994] 1994 Approved and Adopted Sector Plan for the Bethesda Central Business District. The [primary] purpose of this amendment was to [increase opportunities for housing to serve a variety of income levels and to improve the retail environment in the Woodmont Triangle area], reconsider how redevelopment could both provide more opportunities for housing close to the Metro station and retain the qualities and ambience of the small-scale retail that distinguishes the study area from other parts of the Bethesda CBD.

Page 1: Under Summary of Community Outreach revise first two sentences of the first paragraph as follows:

An [unique] outreach program was developed to address the issues in the Woodmont Triangle Study Area. The M-NCPPC with the Conflict Resolution Center of Montgomery County held five[,] public workshops and several focus group meetings.

Page 2: Revise first paragraph as follows:

Separate meetings with individuals, government agencies and civic associations were also held to augment the discussions in the workshops. [The use of e] Electronic media, phone messages and written announcements were used to notify individuals of the date and location of the workshops.

Page 2: Delete the section entitled "Relationship to the 1994 Sector Plan" and replace with the following:

BACKGROUND – THE 1994 SECTOR PLAN

The 1994 Sector Plan had four objectives for the Woodmont Triangle District:

- Preserve the predominantly low-density and low-scale character of the district.
- Provide additional housing particularly in the north end of the district.

- Support a diverse specialty retail community serving retail and restaurant environment, including sidewalk cafes and dispersed parking.
- Improve the pedestrian environment with up-graded streetscape including street trees and green open spaces.

The 1994 Sector Plan recommended the use of CBD zones to further the goals of the plan. Development in the CBD zones may occur under two options: the standard method and the optional method. The standard method requires the development to comply with a specific set of standards and density compatible with the standards. The optional method does not have as many specific standards and allows higher densities if certain public facilities and amenities are provided. The CBD zones permit an increase in density, height and intensity where such increases conform to the sector plan.

The design concept for the 1994 Bethesda CBD Sector Plan encourages the greatest height at the Metro and a "step down" in height away from the CBD Core. To ensure that the desired heights would be achieved, the Sector Plan recommended lower floor area ratios (FAR) and capped building heights to lower than the maximum allowed in the zone to address scale, shading, and compatibility with the existing neighborhood character. The Sector Plan further directed future development with a series of Urban Design Guidelines and priority public improvements.

After the Sector Plan was approved and the District Council granted the Sectional Map Amendment implementing the zoning recommendations of the Plan, development in the Bethesda CBD proceeded in conformance with the Sector Plan. While portions of Bethesda CBD redeveloped as recommended, the Woodmont Triangle District did not realize the vision of the 1994 Plan. Although the Sector Plan envisioned an increase in housing in the Woodmont Triangle District, the building height and density limits inhibited redevelopment. Retail and housing did not expand in this area, and some businesses began to relocate to the newly developed areas in south Bethesda, leading some to believe that the area was beginning to decline.

Since 1994, market forces, lack of redevelopment and the need for more housing, especially housing for all income levels, indicated that reconsideration of objectives in the sector plan was warranted. The Woodmont Triangle area appeared to be an appropriate area to address the County's housing needs and provide incentives to encourage revitalization and redevelopment.

Page 2: Following new section entitled Background – The 1994 Sector Plan, add a new section as follows:

CHANGES TO DEVELOPMENT POTENTIAL

As a result of zoning, height and floor area ratio changes proposed in this plan and changes in law and regulation that have occurred since the adoption of the 1994 Sector Plan, the estimated residential development increases and the estimated commercial development decreases as indicated below.

Changes to Development Potential

<u>1994 Sector Plan</u>		<u>2005 Amendment</u>		<u>Difference</u>	
<u>Commercial Development SF</u>	<u>Residential Development</u>	<u>Commercial Development SF</u>	<u>Residential Development</u>	<u>Commercial Development SF</u>	<u>Residential Development</u>
2,957,900 SF	3,400 DUs	2,661,710 SF	5,012 DUs	-296,190 SF	+1612 DUs
11,350 Jobs		10,491 Jobs		-859 jobs	

Recommendations to monitor the actual development on an ongoing basis are contained in the Implementation chapter of this plan.

Page 2: Replace Woodmont Triangle Study Area Boundary with the following:

STUDY AREA BOUNDARY

This Amendment analyzed an area larger than the Woodmont Triangle District described in the Sector Plan in order to evaluate more comprehensively the effect the recommended changes might have on the surrounding districts. The study area includes the entire Woodmont Triangle District, as defined in the 1994 Approved and Adopted Sector Plan, the west side of the Wisconsin Avenue North District, the east side of the Old Georgetown Road Corridor District, and the entire Battery Lane District.

The study area is bounded on the north by the National Institutes of Health (NIH), on the east by Wisconsin Avenue, on the southeast by Woodmont Avenue, and on the southwest by Old Georgetown Road.

Page 3: Delete first paragraph and rename chapter as follows

[SUMMARY OF THE AMENDMENT] VISION AND GOALS

[This section of the amendment provides a summary of the Vision, Challenges, and Actions necessary to implement the objectives of this amendment.]

Page 3: Under Vision, revise as follows:

[The Woodmont Triangle will be] This Amendment envisions the Woodmont Triangle Study Area as a vibrant [and] urban, mixed-use neighborhood [emphasizing] that emphasizes residential, small-scale retail, [and] the arts and public amenities. One-of-a kind, small-scale specialty retail stores, art galleries, studio space and people strolling on pedestrian-friendly local streets characterize this neighborhood.