

APR 20 2009



## MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 09-33  
Project Plan No. 920070060  
Project Name: Bonifant Plaza  
Date of Hearing: March 12, 2009

### MONTGOMERY COUNTY PLANNING BOARD

#### RESOLUTION<sup>1</sup>

WHEREAS, pursuant to Montgomery County Code Division 59-D-2, the Montgomery County Planning Board ("Planning Board") is vested with the authority to review project plan applications; and

WHEREAS, on February 2, 2007, 949-961, LLC ("Applicant"), filed an application for approval of a project plan for 72 multi-family dwelling units, including a minimum of 12.5% MPDUs ("Project Plan"), on 0.59 acres in the CBD-1 and Fenton Village Overlay zones, located on the north side of Bonifant Street approximately 130 feet from Georgia Avenue ("Property" or "Subject Property") in the Silver Spring Central Business District Sector Plan area ("Sector Plan"); and

WHEREAS, Applicant's project plan application was designated Project Plan No. 920070060, Bonifant Plaza (the "Application"); and

WHEREAS, Planning Board Staff ("Staff") issued a memorandum to the Planning Board, dated March 2, 2009, setting forth its analysis of, and recommendation for approval of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the staff of other governmental agencies, on March 12, 2009, the Planning Board held a public hearing (the "Hearing") on the Application; and

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

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<sup>1</sup> This Resolution constitutes the written opinion of the Board in this matter and satisfies any requirement under the Montgomery County Code for a written opinion.

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Approved as to  
Legal Sufficiency:

  
M-NCPPC Legal Department

WHEREAS, on March 12, 2009, the Planning Board approved the Application subject to conditions, on motion of Commissioner Alfandre; seconded by Commissioner Robinson; with a vote of 4-0, Commissioners Alfandre, Cryor, Hanson, and Robinson voting in favor; Commissioner Presley being absent.

NOW, THEREFORE, BE IT RESOLVED that, pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Montgomery County Planning Board APPROVES Project Plan No. 920070060 for 72 multi-family dwelling units, including a minimum of 12.5% MPDUs, on 0.59 gross acres in the CBD-1 and Fenton Village Overlay zones, subject to the following conditions:

1. Development Ceiling

The proposed development is limited to a maximum of 72 multi-family dwelling units, including a minimum of 12.5% moderately priced dwelling units (MPDUs).

2. Building Height and Mass

The proposed development is limited to the building footprint as delineated in the Project Plan drawings submitted to MNCPPC dated February 2, 2009 unless modified at site plan review and to 90 feet in height from the delineated building height measurement point.

3. Architecture

The final design of the building façade will substantially conform to the architectural renderings presented in the Project Plan Application, including fenestration and the provision of balconies unless modified at site plan review.

4. Environment

The Applicant must achieve a LEED Silver rating, or other certification based on equivalent energy and environmental design standards, unless the Planning Board finds at site plan review that this requirement may be waived in light of the final quantity, quality, and expense of the other amenities provided by the Applicant such as the final design of the public use space.

5. Public Use Space

- a. The Applicant must provide a minimum of 25% of the net lot area for on-site public use space and a minimum of 19% of the net lot area for on and off-site public amenity space. The final design and details will be determined during site plan review.
- b. The proposed public use space must be easily and readily accessible to the general public and available for public enjoyment.
- c. The Applicant may be required to present the terrace design and public artwork to the art review panel for comment prior to approval of the site plan as determined necessary by site plan review staff.

6. Staging of Amenity Features

- a. The proposed development will be completed in one phase. A detailed development program will be required prior to approval of the certified site plan.
- b. The Applicant must complete the on-site public use space improvements prior to issuance of use-and-occupancy permits unless modified by the site plan development program.
- c. The Applicant must install the landscaping no later than the next growing season after completion of the building and site work.

7. Maintenance and Event Management Organization

Prior to issuance of use-and-occupancy permits, the Applicant will create and implement a maintenance plan for all on-site public use space unless an alternative arrangement is made with another entity.

8. Coordination for Additional Approvals Required Prior to Preliminary Plan and Site Plan Approval

The Applicant must obtain written approval from the Montgomery County Department of Transportation (MCDOT) for the final design and extent of any and all streetscape improvements within the rights-of-way.

BE IT FURTHER RESOLVED that, having given full consideration to the recommendations and findings of its Staff, which the Planning Board hereby adopts and incorporates by reference, and upon consideration of the entire record and all applicable elements of § 59-D-2.43, the Montgomery County Planning Board, with the conditions of approval, FINDS:

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

Intents and Purposes of the CBD Zones

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."*

With respect to density, the Sector Plan recommends providing new housing to establish consumer support and employees for local businesses. Due to the site's location near transit facilities, businesses, and cultural facilities, maximum density of use is appropriate in order to increase efficiency of land use and sustainability within the larger context of County development. Where suitable, buildings that can take advantage of higher height limits provide more environmentally and economically resourceful use of land. This Project Plan provides such an efficient use of land in accordance with the recommendations of the Sector Plan.

In accordance with the Sector Plan, the following building height recommendations are indicated in the Fenton Village Overlay Zone: "Building height in the Overlay Zone within the area between a major highway and a street that confronts a block that includes property zoned in any one-family residential classification, must not exceed 60 feet but may increase up to 90 feet the maximum height allowed [sic] if at least 33% of the project's floor area is residential...". Thus, between Georgia Avenue and the less dense areas of Fenton Village, building heights should step from 90 feet to 60 feet. This project is on the western side of the area under this authority and, therefore, is suitable as a 90-foot tall building.

*(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 Sector Plan indicates that a mix of residential and commercial uses is appropriate for this area. The current Application is providing residential uses in order to maintain the balance of jobs to housing locally. Although it would have been optimal to maintain some amount of commercial use along the frontage of this Property, this mix of uses would have required the Applicant to meet different development standards that would have precluded the density they have proposed. Namely, the density standard for a mixed-use building in the CBD-1 is a maximum 3.0 floor area ratio (FAR). This project, as proposed, is controlled by units/acre, not FAR. And if calculated by floor area, the building would lose approximately 10,000 square feet of floor area – about one story – and be a less efficient use of land in the core of the CBD. The Project Plan provides housing – including affordable housing – for the locale in a largely retail and office oriented area of Fenton Village.

*(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 Project Plan will enhance pedestrian and cyclist circulation by providing better sidewalks, amenity space, and bike facilities. The layout of doors, sidewalks, and open space will direct pedestrians in and around the sidewalk frontage to access this building and provide seating for local pedestrian traffic.

The relationship of the proposed buildings to existing buildings is typical and appropriate for a Central Business District. In most cases in the CBD, adjacent buildings with windows are required to be set back at least 15 feet from one another; this Project Plan meets this standard in order to minimize the impacts on available sunlight and existing views and does not adversely impact any important open spaces or sidewalks.

*(4) "To promote the effective use of transit facilities in the central business district and pedestrian access thereto."*

The proposed development is within one-half mile of Metro, Marc, and bus lines. It is a local and regional imperative that infill development is provided at such sites as an alternative to suburban sprawl. The location and accessibility of the proposed development to the local transit system meets the transit and sustainability goals of the Sector Plan. The Project Plan provides housing within walking distance of the Metro and shopping areas and therefore promotes the effective use of transit facilities in the Central Business District.

*(5) "To improve pedestrian and vehicular circulation."*

Vehicular circulation around the site will remain largely unchanged, although upgraded to new commercial alley standards. The provision of a sidewalk along the alley will provide access to the sidewalk along the northern property line. This sidewalk connects internal alleys and provides emergency access to adjacent properties.

The pedestrian environment provides numerous enhancements to help realize the aesthetic and functional potential of the site. The landscaping will enhance a sense of comfort and safety and the new sitting areas will provide interest and beauty as well as space to rest and relax.

*(6) "To assist in the development of adequate residential areas for people with a range of different incomes."*

The proposed development provides a variety of housing with three different unit types and moderately priced dwelling units composed of a proportional mix of these unit types. This will enhance the variety of housing opportunities for

people in various income ranges. Further, the residents will have access to their own community and fitness rooms, augmenting the appeal of living downtown.

(7) *"To encourage land assembly and most desirable use of land in accordance with a sector plan."*

The proposed development consolidates several lots and creates an assemblage that meets the minimum lot size for optional method projects in the CBD zones. This assemblage allows for the development of a project that can meet the Sector Plan goals of maximizing density near Metro, creating a more unified and pleasing pedestrian environment, and creating a green downtown.

#### Further Intentions of the CBD-1 Zone

Section 59-C-6.213(a) of the Zoning Ordinance states:

*In the CBD-0.5, CBD-R1, and CBD1 zones it is further the intent:*

- 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 District.*

Although not on the "fringe" or edge of the Silver Spring CBD, the proposed development does provide a density and intensity of use compatible with the adjacent buildings with regard to mass, use, and height. At a location close to the interior of the CBD with buildings up to 200 feet tall, but visible from 35-foot residential buildings, this mid-range building is designed to fit within its transitional location. The proposed development takes advantage of its allowed height and density to provide a diversity of living accommodations and publicly accessible open space.

#### Requirements of the CBD-1 Zone

The table below demonstrates the conformance of the Project Plan with the development standards under the optional method of development. Among other standards, the Project Plan meets the area, public use space, building height, and density requirements of the zone.

<b>Development Standard</b>	<b>Permitted/ Required</b>	<b>Proposed for Approval</b>
<b>Maximum Building Height (feet)</b>	90	90

<b>Minimum Setbacks (feet)</b>		
East Property Line	n/a	0
North Property Line	n/a	0
West Property Line	n/a	0
South Property Line	n/a	0
<b>Minimum Site Area (square feet)</b>		
Net Tract Area	n/a	18,380
Dedications	n/a	7,389
Gross Tract Area	18,000	25,769
<b>Maximum Density</b>		
Dwelling Units /Acre	125 (73 units)	122 (72 units)
<b>Minimum Public Use Space (% of net lot)</b>		
On-Site Public Use Space	20	25 <sup>2</sup>
Off-Site Amenity Space	n/a	19
Total Public Use & Amenity Space	20	44

According to the Zoning Ordinance (59-C-6.215(b)) a further requirement of optional method projects is the provision of additional public amenities:

“Under the optional method greater densities may be permitted and there are fewer specific standards, but certain public facilities and amenities must be provided by the developer. The presence of these facilities and amenities is intended to make possible the creation of an environment capable of supporting the greater densities and intensities of development permitted.”

To this end, the proposed development is proffering the following package of amenities and public facilities:

Amenities and Facilities Summary

*On-Site Public Use Space Improvements*

- Sidewalks/Paving
- Art Elements
- Seating
- Landscaping

*Off-Site Amenity Improvements*

- Sidewalk

<sup>2</sup> If the total amount of public use space provided on site is decreased by the site plan, the balance will be provided by a fee in lieu.

A minimum area equal to 44% of the net lot area will be improved pedestrian space. Although most CBD projects that are maximizing their density provide improvements on land equal to at least 50% (and up to 70%) of their lot, the lack of adjacent "improvable" rights-of-way has led this Applicant to provide other public benefits to support the greater density allowed by the optional method. As mentioned, the quantity of improved public space is one of four elements typically analyzed during project plan review, the others being affordable housing, quality of design, and environmental sustainability.

The height and coverage requirements limit the suitability of using an increased MPDU count to develop greater density, so it is not apt to require additional units save the possibility of adding workforce housing units for a height bonus. This may be further analyzed during site plan review if the Board finds that the binding height limit may be increased to 110 feet (two more floors). But this Applicant is not subject to workforce housing and any changes in height or unit density by the site plan would require a project plan amendment.

As with most CBD public use space applications, this site is rather small, and even a 20% requirement is difficult to design such that the space "feels" public. After several discussions and re-designs, the Planning Board finds that the proposed space is adequately open and inviting to be usable by the public, but the exact details of the space may be finessed to maximize the "public" aspect of the terrace. These changes would include a greater emphasis on the design quality of the space and the integrated nature of the art elements.

Last, regarding environmental sustainability, the Applicant must adhere to the County's Green Building Law. As conditioned, the project must meet LEED Silver (or equivalent) standards to offset the lack of public improvements and affordable housing proffered by this optional method project.

- (b) *The proposal conforms to the approved and adopted Master or Sector Plan or an Urban Renewal Plan approved under Chapter 56.*

#### Zoning and Land Use

The Subject Property is zoned CBD-1, which is recommended by the Sector Plan. The proposed use is allowed in the zone and the proposed development is in keeping with the general guidelines to provide housing opportunities indicated in the Sector Plan. Specifically, the Sector Plan recommends a variety of residential uses to provide employees and customers for local businesses. The proposed multi-family use is appropriate for the Subject Property and conforms to the Sector Plan.

#### Sector Plan Conformance



The Approved and Adopted Silver Spring CBD Sector Plan is organized around several goals that the Project Plan satisfies:

- Creation of a residential downtown,
- Creation of a green downtown, and
- Creation of a pedestrian-friendly downtown.

As analyzed above, the Project Plan is in conformity with the Sector Plan by providing new residential development that meets the LEED Silver (or equivalent) standard, is Metro accessible, and improves the quality of the pedestrian environment through the addition of streetscaping and artistic elements.

- (c) *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.*

The location of the proposed development allows for a high density and intensity of use and does not adversely affect adjacent buildings and uses. In this Project Plan, the architecture and open space have been designed to enhance the streetscape, maintain sunlight along the southern terrace and sitting areas, and transition to the greater setbacks existing on the sites to the east. The height is compatible with adjacent uses.

The operational characteristics will maintain a minimally intrusive vehicular impact by limiting curb cuts and strengthening pedestrian circulation. The stormwater management facilities and utilities will be integrated into the site and result in higher quality water outflow and a less-cluttered streetscape.

- (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 42A, article II, is subject to a traffic mitigation agreement that meets the requirements of that article.*

A draft traffic management agreement has been submitted by the Applicant and will be finalized during the preliminary plan review process, which is being analyzed concurrent to this Application. Other public facilities exist on or near the site and no expansion or renovation of these services will be required to be completed by the County. Further, requirements for public safety and fire will be minimally impacted due to the nature of the land use and must be approved by the respective agencies prior to preliminary plan approval.

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

A standard method project would only allow a density of 43 dwelling units per acre on this site. Further, the requirement for public amenities would be removed and the public use space requirement would be reduced by one-half. Because infill development and density at transit hubs is a core value of smart growth and given the quality of public benefits conditioned and being proffered, the optional method of development is more desirable and more efficient for this particular site.

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

The proposed development will provide 12.5% MPDUs as required by Chapter 25A. A final agreement between the Applicant and the Department of Housing and Community Affairs will be required at the time of site plan review.

- (g) *When a Project Plan includes more than one lot under common ownership, or is a single lot containing two or more CBD zones, and is shown to transfer public open space or development density from one lot to another or transfer densities, within a lot with two or more CBD zones, pursuant to the special standards of either section 59-C 6.2351 or 59-C 6.2352 (whichever is applicable), the Project Plan may be approved by the Planning Board based on the following findings:*

The proposed development will be located on one lot and does not propose any open space or density transfers.

- (h) *As conditioned, the proposal satisfies any applicable requirements for forest conservation under Chapter 22A.*

The project is exempt from the requirements of the Forest Conservation Law under the small property exemption.

- (i) *As conditioned, the proposal satisfies any applicable requirements for water quality resources protection under Chapter 19.*

The stormwater management concept consists of on-site water quality control via a green roof, flow-based storm filter and a MCDPS approved hydro-dynamic separator. A partial waiver for water quality was granted for a small portion of the site. Onsite recharge is not required since this is an application for redevelopment. Channel protection volume is not required because the one-year post development peak discharge is less than or equal to 2.0 cubic feet per second.

BE IT FURTHER RESOLVED that all elements of the plans for Project Plan No. 920070060, Bonifant Plaza stamped received by M-NCPPC on February 2, 2009 are required except as modified by the above conditions of approval; and

BE IT FURTHER RESOLVED that this Project Plan shall remain valid as provided in Montgomery County Code § 59-D-2.7; and

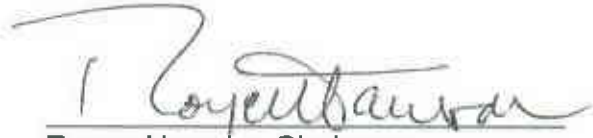
BE IT FURTHER RESOLVED that the date of this Resolution is ~~APR 20 2009~~ (which is the date that this Resolution is mailed to all parties of record); and **APR 20 2009**

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

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CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner Presley, seconded by Commissioner Hanson, with Commissioners Hanson, Cryor, and Presley voting in favor of the motion, and with Commissioners Alfandre and Robinson absent, at its regular meeting held on Thursday, April 9, 2009, in Silver Spring, Maryland.



Royce Hanson, Chairman  
Montgomery County Planning Board