

SEP 14 2009

MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

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

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

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

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

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

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

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

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

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

Approved as to
Legal Sufficiency:

8787 Georgia Avenue, Suite 100, Silver Spring, MD 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

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

Conformance with Previous Approvals

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

Environment

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

Architecture

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

Parks, Open Space, & Recreation

7. Common Open Space Covenant

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

8. Recreation Facilities

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

Adequate Public Facilities (APF)

9. Adequate Public Facilities (APF)

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

10. Transportation

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

Density & Housing

11. Moderately Priced Dwelling Units (MPDUs)

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

Site Plan

12. Lighting

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

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

13. Development Program

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

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

14. Certified Site Plan

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

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

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

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

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

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

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

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

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

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

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

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

Data Table

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

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

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

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

a. Buildings and Structures

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

b. Open Spaces

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

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

c. Landscaping and Lighting

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

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

d. Recreation Facilities

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

e. Vehicular and Pedestrian Circulation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

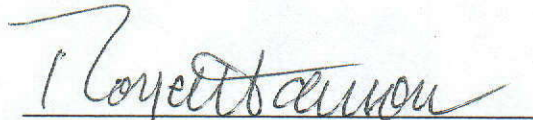
BE IT FURTHER RESOLVED, that the date of this resolution is SEP 14 2009 (which is the date that this resolution is mailed to all parties of record); and

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

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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 Wells-Harley, seconded by Commissioner Presley, with Commissioners Hanson, Alfandre, Presley, and Wells-Harley voting in favor of the motion, and with Commissioner Cryor absent, at its regular meeting held on Thursday, September 10, 2009, in Silver Spring, Maryland.



Royce Hanson, Chairman
Montgomery County Planning Board