



MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 09-150
Site Plan No. 82006013B
Project Name: The Galaxy
Hearing Date: December 3, 2009

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

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

WHEREAS, on January 12, 2006 the Planning Board approved Site Plan No. 820060130 ("Site Plan"), subject to conditions, for 321 dwelling units including 41 MPDUs;

WHEREAS, on January 24, 2008, the Planning Board approved amendment A, subject to conditions, to the Site Plan which reduced the number of multi-family dwelling units to 241 and added 3, 663 square feet of retail space;

WHEREAS, on September 14, 2009, RST Development ("Applicant"), filed a site plan amendment application designated No. 82006013B, The Galaxy (the "Amendment") for approval of the following modifications:

Parking

The Amendment eliminates part of the G-3 parking level that is located beneath Building 2 at the corner of Eastern Avenue and 13th Street. The resulting configuration of level G-3 covers the extent of Building 1 only and is approximately the same size and layout as the G-4 parking level below.

Approved as to
 Legal Sufficiency:


 M-NCPPC Legal Department

This modification results in a reduction in the private parking provided by 66 spaces. The new total of 368 parking spaces includes 208 in the private parking garage and 160 in the public parking garage. In accordance with the General Development Agreement between the Applicant and Montgomery County, the number of parking spaces available for public use - 160 spaces - remains unchanged from the prior approval.

Aside from the obligation of the Applicant for 160 public parking spaces, the Applicant is not required to provide the full complement of parking spaces for the private development because the site is located in the Silver Spring Parking Lot District. The Applicant is permitted to minimize the number of spaces provided on-site to take advantage of the existing County facilities. Within the immediate vicinity of the site, there is the Kennett Street garage, approximately 100 feet to the north, and the public garage that is part of this proposal.

At the time of the previous approval, the Applicant had an Option Agreement with 75 residents in the adjacent Aurora Building that gave them the option of purchasing a space in the Galaxy parking garage. This is a private agreement, and therefore, it is not part of Staff's purview. However, Staff understands that the Agreement is still in place and the existing options for the Aurora residents will be honored despite the current amendment to the private parking garage.

DATA TABLE

Development Standards	Approved by the Planning Board & Binding on the Applicant
Automobile Parking (spaces)	
Private	
- Residential subtotal	191
- Commercial subtotal	17
Public (County Parking Garage)	160
Total Automobile Parking	368*
Bicycle Parking (spaces)	
Bike lockers	16
Inverted-U bike racks	4
Total bicycle parking	20
Motorcycle parking (spaces)	
	10

* The development is located within the limits of the Silver Spring Parking Lot District and, therefore, is not required to provide any parking onsite; however, the project is subject to the Parking District Tax. The Applicant has an agreement to provide 160 spaces to the Parking Lot District as part of their General Development Agreement.

Phasing

The amendment will develop the project in two phases as opposed to one as previously anticipated.

Phase I includes the construction of the following:

- 1) The 201,954 square foot building to be located along the eastern portion of the property ("Building 1"), including all 31 MPDUs and 3,663 square feet of retail space;
- 2) Recreation facilities related to Building 1 including an indoor fitness facility, indoor community space, seating areas, and tot lot (see Table 1);
- 3) 17,899 square feet of on-site public use space improvements, including the project's main plaza and two pedestrian connections from King Street to 13th Street (see Table 2);
- 4) 11,784 square feet of off-site public amenity space improvements adjacent to Building 1, including streetscaping along 13th street and King Street (see Table 2);
- 5) 1,373 square feet of offsite public amenity space improvements located on the north side of 13th street in front of the Gramax buildings (see Table 2); and
- 6) All parking and loading areas for the project.

Phase II includes the construction of the following:

- 1) The 56,126 square foot building to be located at the corner of Eastern Avenue and 13th Street ("Building 2");
- 2) Recreation facilities related to Building 2 including an indoor fitness facility, and a pedestrian system (see Table 1).
- 3) 5,569 square feet of onsite public use space improvements located adjacent to Building 2 (see Table 2);
- 4) 4,134 square feet of offsite improvements to be located within the Eastern Avenue right-of-way (subject to the jurisdiction of the District of Columbia) (see Table 2).

Table 1 - Approved phasing of the Recreation Facilities

Recreation Facilities	Phase I	Phase II	Total approved w/ 82006013A*
Indoor fitness room	1	1	2
Community space	1	0	1
Seating areas	10	0	10
Tot lot	1	0	1
Pedestrian system	0.5	0.5	1

* Amendment B does not change the overall total of recreation facilities approved with Amendment A.

Table 2 - Approved phasing of the PUS and Off-site Amenities

Public Use Space (PUS) and Off-site Amenities (square feet)	Phase I	Phase II	Total approved w/ 82006013A*
On-site PUS	17,899	5,569	23,468
Off-site PUS adjacent to site	11,784	0	11,784
Eastern Ave PUS **	0	4,134	4,134
Off-site PUS (in front of Gramax Bldg)	1,373	0	1,373
Total **	31,056	5,569	36,625

* Amendment B does not change the overall total of PUS and Off-site Amenities approved with Amendment A.

** The off-site improvements within the Eastern Avenue public right-of-way fall in the District of Columbia boundary, and therefore, the Applicant is not given credit toward off-site public use space due to lack of regulatory control within a public right-of-way in another jurisdiction.

WHEREAS, following review and analysis of the Amendment by Planning Board staff ("Staff") and the staff of other applicable governmental agencies, Staff issued a memorandum to the Planning Board dated November 19, 2009, setting forth its analysis and recommendation for approval of the Amendment ("Staff Report"); and

WHEREAS, on December 3, 2009, Staff presented the Amendment to the Planning Board at a public hearing on the Amendment (the "Hearing") where the Planning Board heard testimony and received evidence submitted for the record on the Amendment; and

WHEREAS, on December 3, 2009, the Planning Board approved the Amendment subject to conditions on the motion of Commissioner Alfandre, seconded by Commissioner Wells-Harley, with a vote of 4-0, Commissioners Alfandre, Hanson, Presley, and Wells-Harley voting in favor and with one seat being vacant.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Planning Board hereby adopts the Staff's recommendation and analysis, as set forth in the Staff Report, and hereby approves the Site Plan No. 82006013B; and

NOW, THEREFORE, BE IT RESOLVED, that pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Montgomery County Planning Board hereby APPROVES the Amendment, subject to the following conditions:

Conformance with Previous Approvals

1. Project Plan Conformance

The development must comply with the conditions of approval for Project Plan Amendment No. 92005005B.

2. Preliminary Plan Conformance

The development must comply with the conditions of approval for preliminary plan 12005089A as listed in the Planning Board Resolution dated March 18, 2008 unless amended. This includes but is not limited to all references to density, rights-of-way, dedications, easements, transportation conditions, DPWT conditions, and DPS stormwater conditions.

3. Site Plan Conformance

The development must comply with the conditions of approval for site plan 82006013A as listed in the Planning Board Resolution dated April 24, 2008, unless amended by this application.

Environment

4. Stormwater Management

The development is subject to Stormwater Management Concept approval conditions dated May 9, 2007, and reconfirmed on November 20, 2009, unless amended and approved by the Montgomery County Department of Permitting Services.

Open Space & Recreation

5. Recreation Facilities

During Phase I, the Applicant must provide all recreation facilities related to Building 1, including an indoor fitness facility, indoor community space, tot lot, ten picnic/sitting areas, and the pedestrian system surrounding Building 1. During Phase II, the Applicant must provide the remaining recreation facilities related to Building 2, including an indoor fitness facility, and the pedestrian system surrounding Building 2.

6. Maintenance of Public Amenities

Initially, the Applicant, and subsequently, within ninety days of formation, the Condominium Association of each building must become a member and enter into an agreement with the Silver Spring Urban District for the purpose of maintaining the on-site public open spaces, including the public art, seating areas, landscaping and lighting and participating in community events.

Density & Housing

7. Moderately Priced Dwelling Units (MPDUs)

- a. The Applicant must provide 31 Moderately Priced Dwelling Units (12.5% of the total number of units) onsite, consistent with Chapter 25A.
- b. The MPDU agreement with DHCA must be executed prior to the release of the first building permit.
- c. All MPDUs must be provided during Phase I in Building 1.

Site Plan

8. Performance Bond and Agreement

The Applicant is subject to the following provisions for surety as described in Section 59-D-3.5 of the Montgomery County Zoning Ordinance and Site Plan approval:

- a. The Applicant must provide a cost estimate from the landscape architect or landscape contractor indicating the installed costs of site plan elements, such as, but not limited to landscaping, lighting, recreation facilities, site furnishings, special paving, and public art. The cost estimate should include a 10% inflation factor for the site plan elements to account for changes in price and materials and modifications to the approved plans.
- b. Prior to the release of the first building permit, the Applicant must submit a Performance Bond or other satisfactory form of surety as approved by M-NCPPC to cover the installed costs of site plan elements, such as, but not limited to landscaping, lighting, recreation facilities, site furnishings, special paving, and public art, as shown and described in the cost estimate.
- c. The Applicant must execute an agreement for site plan elements in conjunction with the performance bond indicating the Applicant's agreement to install, construct and maintain the site plan elements.

9. 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. All site features associated with each building as defined by the Site Plan drawings dated September 14, 2009, must be installed no later than six (6) months after the occupancy of the last residential unit for each building. The Applicant must provide the use and occupancy permits to M-NCPPC Staff in order to inspect the site for streetscape within the respective street rights-of-way, including the street trees, street lights and pavers, as well as construction of the public plaza and art, on-site landscaping, lighting, recreation and paver materials.

- b. Offsite public use space and amenities, including streetscaping and areas adjacent to the site and in front of the Gramax Building, must be completed during Phase I and no later than the issuance of the last use and occupancy permit for Building 1.
- c. Landscaping for each building must progress as construction of each unit is completed, but no later than six (6) months after completion of each building.
- d. The recreation facilities located within each building must be installed prior to occupancy of the first unit in each building. The seating areas located around the perimeter of Building 1 must be installed upon completion of Building 1.
- e. The public plaza, including the light display, specialty paving, terraced lawn area and seating, must be completed and installed upon completion of Building 1.
- f. The new mid-block alley connecting 13th Street to King Street must be installed within 6 months of the last use and occupancy permit for Building 1.
- g. The commissioned public art components must be completed and installed within 6 months of the last use and occupancy permit for Building 1.
- h. Clearing and grading must correspond to the construction phasing, to minimize soil erosion.
- i. Phasing of dedications, stormwater management, sediment/erosion control, public use space, streetscape, recreation, community paths, trip mitigation or other features.

10. 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 stormwater management concept approval, development program, inspection schedule, and site plan resolution on the approval or cover sheet.
- b. Revise parking garage plans to be consistent with the parking space tabulations.
- c. Update inspection schedule to reflect approved phasing.

BE IT FURTHER RESOLVED, that the Planning Board adopts the Staff's recommendation and analysis, as set forth in the Staff Report, and FINDS that the Amendment is consistent with the provisions of § 59-D-3.7 of the Zoning Ordinance and that the Amendment does not alter the intent, objectives, or requirements expressed or imposed by the Planning Board in connection with the originally approved site plan; and

BE IT FURTHER RESOLVED, that all site development elements as shown on The Galaxy drawings stamped by the M-NCPPC on September 14, 2009, and November 13, 2009, shall be required, except as modified by the above conditions of approval; and

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

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

BE IT FURTHER RESOLVED, that the date of this written resolution is JAN 6 2010 (which is the date that this resolution is mailed to all parties of record); and

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

* * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner Wells-Harley, seconded by Commissioner Alfandre, with Commissioners Hanson, Alfandre, and Wells-Harley voting in favor of the motion, and Commissioner Presley absent, with a four-member Board, at its regular meeting held on Thursday, December 17, 2009, in Silver Spring, Maryland.


Royce Hanson, Chairman
Montgomery County Planning Board