

NOV 22 2010



MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 10-139
Site Plan No. 82005038A
Project Name: Gallery Park
Hearing Date: September 23, 2010

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, the Montgomery County Planning Board approved a Site Plan and Final Water Quality Plan designated Site Plan No. 820050380 on June 20, 2007 for 265 dwelling units, including 34 MPDUs on 23.82 acres, subject to conditions; and

WHEREAS, on April 21, 2010, Miller and Smith at Eastside, LLC ("Applicant"), filed a site plan and final water quality plan amendment application designated 82005038A, Gallery Park (the "Amendment"), for approval of the following modifications:

1. Revision of parking, road, lot, and building layouts;
2. Change of the two-over-two condominiums to condominium townhouse units;
3. Changes to the green area and landscape and lighting plans;
4. Changes to the final water quality plan; and
5. Reduction of units to 256 units; and

WHEREAS, following review and analysis of the Amendment by Planning Board staff ("Staff") and the staffs of other applicable governmental agencies, Staff issued a memorandum to the Planning Board dated September 13, 2010, setting forth its analysis and recommendation for approval of the Amendment ("Staff Report"); and

WHEREAS, on September 23, 2010, 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 September 23, 2010, the Planning Board approved the Amendment subject to conditions on the motion of Commissioner Alfandre, seconded

Approved as to
Legal Sufficiency:

8787 Georgia Avenue, Silver Spring, Maryland 20910

M-NCPPC Legal Department
www.MCParkandPlanning.org

Chairman's Office: 301.495.4605 Fax: 301.495.1320

E-Mail: mcp-chairman@mncppc.org

by Commissioner Presley, with a vote of 5-0; Commissioners Alfandre, Carrier, Dreyfuss, Presley, and Wells-Harley voting in favor.

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:

1. Development Plan Conformance

The proposed development must comply with the binding elements of the approved District Council Resolution 15-881 for rezoning case G-824.

2. Preliminary Plan Conformance

The proposed development must comply with the conditions of the approved Resolution for Preliminary Plan 120050101A, unless amended and approved by the Planning Board.

3. Forest Conservation

- a. The proposed development must comply with the conditions of the approved final forest conservation plan.
- b. Show originally approved easement area and remove permanent stormwater management facilities not shown on FFCP dated November 15, 2007 per staff review prior to certified site plan.

4. Maintenance

The Applicant is responsible for maintenance of landscaping on HOA parcels until turned-over to the HOA.

5. Recreation Facilities

- a. The Applicant must meet the square footage requirements for all of the applicable proposed recreation elements and demonstrate that each element is in conformance with the approved M-NCPPC Recreation Guidelines.
- b. The Applicant must provide the following recreation facilities: 1 "multi-age playground," 12 "picnic/sitting areas," 1 "open play area I," 2 "open play area II," 1 "bike system," 1 "pedestrian system," 1 "nature trail," and 1 "natural area." The larger open play area II must be modified to incorporate a boulder play area to be approved by Staff.

6. Moderately Priced Dwelling Units (MPDUs)

- a. The proposed development must provide 12.5 percent MPDUs on-site in accordance with the letter from the Department of Housing and Community Affairs dated September 8, 2010 (Appendix A), or as subsequently amended through the MPDU Agreement to Build or the

MPDU Offering Agreement, provided the amendments do not conflict with other conditions of the site plan approval.

- b. The revised MPDU agreement shall be executed prior to the release of any building permits.

7. Common Open Space Covenant

Record plat of subdivision must reference the Common Open Space Covenant recorded at Liber 28045 Folio 578 ("Covenant"). Applicant must provide verification to M-NCPPC staff prior to issuance of the 200th building permit that Applicant's recorded Homeowners Association Documents incorporate by reference the Covenant.

8. Landscape Surety

The Applicant must provide a performance bond in accordance with Section 59-D-3.5(d) of the Montgomery County Zoning Ordinance with the following provisions:

- a. The amount of the surety must include plant material, on-site lighting, recreational facilities, and site furniture within the relevant phase of development. Surety to be posted prior to issuance of first building permit within each relevant phase of development and shall be tied to the development program.
- b. Provide a cost estimate of the materials and facilities, which, upon staff approval, will establish the initial bond amount.
- c. Completion of plantings by phase, to be followed by inspection and bond reduction. Inspection approval starts the 1 year maintenance period and bond release occurs at the expiration of the one year maintenance period.
- d. Provide a landscape amenities agreement that outlines the responsibilities of the Applicant and incorporates the cost estimate. Agreement to be executed prior to issuance of the first building permit.

9. Development Program

The Applicant must construct the proposed development in accordance with a revised Development Program. A Development Program shall be reviewed and approved by M-NCPPC staff prior to approval of the Certified Site Plan. The Development Program shall include a phasing schedule as follows:

- 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. Clearing and grading must comply with the Final Forest Conservation Plan, Sediment Control Plan, and M-NCPPC inspection and approval of all tree-save areas and protection devices.
- c. The development program must provide phasing for installation of on-site landscaping and lighting.

- d. Community-wide pedestrian pathways and recreation facilities, including play areas, sidewalks, trails, and bike racks must be completed prior to issuance of the 200th building permit.
- e. Pedestrian pathways and seating areas associated with each phase must be completed as construction of each area is completed.
- f. Provide each section of the development with necessary roads.
- g. The Development Program must provide phasing of dedications, stormwater management, sediment and erosion control, afforestation, trip mitigation, and other features.

10. Certified Site Plan

Prior to Certified Site Plan approval the following revisions shall be included and/or information provided, subject to staff review and approval:

- a. Minor corrections and clarifications to site details and labeling;
- b. Changes addressing conditions above; and
- c. Development Program, Inspection Schedule, Approved Forest Conservation Plan, and Site Plan Resolution.

BE IT FURTHER RESOLVED, that the Planning Board adopts the Staff's recommendation and analysis 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 or objectives of the originally approved site plan; and

BE IT FURTHER RESOLVED that all site development elements as shown on Gallery Park drawings stamped by the M-NCPPC on July 27, 2010, 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 NOV 22 2010 (which is the date that this resolution is mailed to all parties of record); and

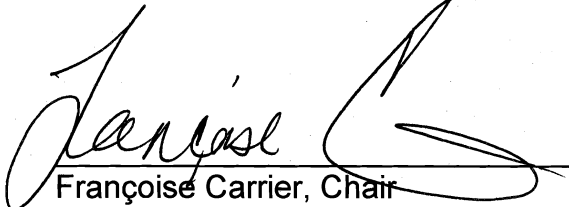
BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this

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 Dreyfuss, seconded by Commissioner Alfandre, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Alfandre, Dreyfuss, and Presley present and voting in favor of the motion, at its regular meeting held on Thursday, November 18, 2010, in Silver Spring, Maryland.


Françoise Carrier, Chair
Montgomery County Planning Board

APPENDIX A



SEP 9 2010

DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Isiah Leggett
County Executive

Richard Y. Nelson, Jr.
Director

September 8, 2010

Mr. Joshua Sloan
Development Review Division
M-NCPPC
8787 Georgia Ave.
Silver Spring, MD 20910

RE: Gallery Park (aka Eastside) Site Plan Amendment Application No. 82005038A

Dear Mr. Sloan:

Per your request, the following are DHCA's comments regarding the revised Site Plan Amendment application for Gallery Park:

1. DHCA agrees that the proposed 186 multifamily townhouse condominium units in Gallery Park (32 MPDUs and 154 market rate units) are multifamily units under the current zoning classification (and master plan requirements) for this site.
2. The proposed geographic distribution of MPDUs, as shown on the submitted site plan amendment, is acceptable to DHCA.
3. The 14' wide multifamily MPDUs are permitted based on examples provided by the builder. As with any development, DHCA will need to review and approve schematic floorplans for the MPDUs in Gallery Park prior to certified site plan.
4. The proportion of 3 bedroom MPDUs must be at least equivalent to the proportion of 3 bedroom multi-family market rate units. DHCA has requested that the applicant propose a minimum number of 3 bedroom (and maximum number of 2 bedroom) MPDUs. Miller and Smith will voluntarily build at least 25% of the MPDUs with 3 bedrooms and a maximum of 75% 2 bedroom MPDUs. Wherever possible, the 3 bedroom MPDUs will be located in 4 story sticks which include 3 bedroom market rate units (as per paragraph number 8, below).
5. The MPDU Agreement will need to provide a specific mix of 2 and 3 bedroom MPDUs. The bedroom mix may be changed within the stated limits by letter amendment with DHCA. DHCA would welcome more 3 bedroom MPDUs than required, if these are in the 4-story configuration (see paragraph number 8, below).
6. The 3rd bedroom located on the 1st floor in a 3-story MPDU would only be constructed if no 3 bedroom market rate multifamily unit residences are constructed in the same

Division of Housing and Code Enforcement

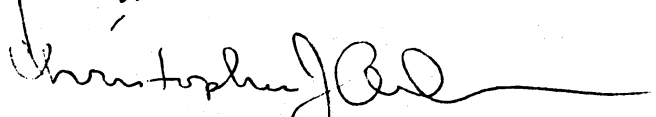
Code Enforcement FAX 240-777-3701	Moderately Priced Dwelling Unit FAX 240-777-3709	Housing Development and Loan Programs FAX 240-777-3691	Landlord-Tenant Affairs FAX 240-777-3691
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townhouse stick. The number of bedrooms in the fee simple single family attached townhomes would not affect the above condition.

7. If 4-story townhouse condominiums are built in the same townhouse stick, three bedroom MPDUs will have a garage on the first floor. The 3rd bedroom will be located above the first floor.
8. In recognition that the number (and type) of units in a stick affects the ability to stay strictly on pace with MPDU construction, DHCA requires that the on-going mix of MPDUs to Market Rate Units stay within 10-15% of the 12.5% MPDUs. Miller and Smith has agreed to be mindful in drafting the MPDU Agreement that the construction of a certain number of MPDUs required at a certain phase does not conflict with the construction of other amenities, such as lighting, green space and/or recreation space.
9. Construction cost and sales cost calculations will be discussed with DHCA as Miller and Smith moves forward.
10. In order to achieve lower condominium fees for both MPDU and market rate owners, Miller and Smith will make every effort to include all of the multi-family units within a single condominium association. However, in any case no condominium association at Gallery Park will contain fewer than 50 units.

If you have any questions, please contact Lisa Schwartz, Senior Planning Specialist, at 240-777-3786.

Sincerely,



Christopher J. Anderson
Manager, Single Family Housing Programs

cc: Robert J. Spalding, Miller & Smith
Joseph T. Giloley, Chief, Division of Housing and Code Enforcement, DHCA
Lisa S. Schwartz, Senior Planning Specialist, DHCA