

APR 8 2011



MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 10-166
Project Plan No. 92000001B
Project Name: Air Rights Center – 7300 Pearl Street
Date of Hearing: December 2, 2010

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

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 December 2, 1999, the Planning Board approved Project Plan No. 920000010 for a 182-unit multi-family residential building; and

WHEREAS, on April 28, 2005, the Planning Board approved Project Plan No. 92000001A, superseding Project Plan No. 920000010, for the addition of 132,421 sf. of new hotel space; and

WHEREAS, on July 27, 2010, Donohoe Development Company (“Applicant”) filed an application for approval of a Project Plan for the addition of 149,611 sf. of office uses to the Air Rights Center project, for a total 513,711 sf. of office, hotel, and retail uses, and a waiver of 61 parking spaces (“Project Plan”), on 3.73 acres of CBD-2-zoned land located in the Bethesda CBD, south of Montgomery Avenue between Waverly Street and Pearl Street (“Property” or “Subject Property”); and

WHEREAS, Applicant’s Project Plan application was designated Project Plan No. 92000001B, Air Rights Center – 7300 Pearl Street (the “Application”); and

WHEREAS, Planning Board Staff (“Staff”) issued a memorandum to the Planning Board, dated November 22, 2010, setting forth its analysis and recommendation for approval of the Application subject to certain conditions (“Staff Report”); and

Approved as to
Legal Sufficiency:

Christina Sont 3/22/11
M-NCPPC Legal Department

8787 Georgia Avenue, Silver Spring, Maryland 20910 Chairman’s Office: 301.495.4605 Fax: 301.495.1320

www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

WHEREAS, following review and analysis of the Application by Staff and the staff of other governmental agencies, on December 2, 2010, 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 December 2, 2010, the Planning Board approved the Application subject to conditions, on motion of Commissioner Dreyfuss; seconded by Commissioner Wells-Harley; 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 APPROVES Project Plan No. 92000001B for the addition of 149,611 sf. of office uses to the Air Rights Center project, for a total 513,711 sf. of office, hotel, and retail uses, and a waiver of 61 parking spaces, on 3.73 gross acres in the CBD-2 zone, subject to the following conditions:

1. Conformance with Previous Approvals
The Applicant must comply with the conditions of approval for Project Plan No. 92000001A, except as modified herein.
2. Development Ceiling
The development is limited to 513,711 square feet of gross floor area.
3. Building Height
 - a. The development is limited to a maximum building height of 97 feet as determined by the Department of Permitting Services approved building height measurement point.
 - b. The building at 7300 Pearl Street must maintain a maximum base building height along Pearl Street of 61 feet, as measured from the sidewalk at the front of the building, before stepping back, as illustrated in the Certified Site Plan, up to the maximum height allowed above.
4. Public Use Space and Amenities
 - a. The Applicant must provide a minimum of 24% of the net lot area for on-site public use space, to be easily and readily accessible to the general public and available for public enjoyment.
 - b. Where sufficient right-of-way exists, the Applicant must install streetscape improvements consistent with the full Bethesda Streetscape Standard, including undergrounding of utilities, along the west side of Pearl Street and, where it does not presently exist, the south side of Montgomery Avenue. The

existing utility pole at the southwest corner of the intersection of Pearl Street and Montgomery Avenue will remain.

- c. Where sufficient right-of-way does not exist to afford full implementation of the Bethesda Streetscape Standard along the west side of Pearl Street and the south side of Montgomery Avenue, the Applicant must provide interim streetscape improvements to be approved by Development Review Staff prior to certified site plan.
- d. The Applicant must provide a master plan for the redevelopment of the northern portion of Elm Street Park in the Town of Chevy Chase. This plan must be approved by Parks Department staff and the Town of Chevy Chase and be included in the certified site plan.

5. 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.

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) The proposed development complies with all of the intents and requirements of the CBD-2 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 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 development responds to dual goals of the 1994 Bethesda Central Business District Sector Plan ("Sector Plan") by promoting density near metro while reducing the visual impact of the building's height and massing as it

moves towards the one-family residential units south of the Purple Line alignment.

- (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.”*

While the amendment proposes only additional office space and integrated structured parking, the larger site includes both hotel and retail uses, and provides a diversity of land uses for workers, visitors, shoppers, and residents.

- (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 redevelopment of the office building fills out the larger Air Rights Development, complementing the existing uses and taking advantage of shared parking and loading areas. The architectural treatments promote compatibility not only with the lower commercial buildings just outside the CBD to the east, but endeavor to minimize the visual impact of the project on the residential neighborhood to the south through the use of building massing and materials. Further, pedestrian and vehicular circulation to the building remains largely unchanged from the existing accommodating arrangement.

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

The development is within easy walking distance of the Bethesda Metro station and several bus lines. As conditioned, the location and accessibility of the development to the local transit system is an excellent realization of the Sector Plan transit and sustainability goals, providing jobs, retail, and hotel uses within walking distance of the Metro and shopping areas.

- (5) *“To improve pedestrian and vehicular circulation.”*

The development will improve Pearl Street and complete the streetscape improvements along this corner of the block. Further, the Applicant's transportation mitigation contributions will help to improve interim access between Pearl Street and the existing Capital Crescent Trail.

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

The development provides no housing directly, but promotes the development of the immediate Central Business District and has potential to provide employment opportunities for nearby multi-family and one-family residences.

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

The development will consolidate two properties and will take advantage of shared facilities for parking, loading, and internal pedestrian circulation.

Further Intentions of the CBD-2 Zone

Section 59-C-6.213 of the Zoning Ordinance states:

- (b) *In the CBD-R1, CBD-R2, CBD-2 and CBD-3 zones it is further the intent to foster and promote the orderly development of the Central Business Districts of the county so that these areas will enhance the economic status of the county as well as providing an expanding source of employment and living opportunities for its citizens in a desirable urban environment.*
- (c) *In the CBD-2 zone it is further the purpose:*
- (1) *To provide a density and intensity of development which will permit an appropriate transition from the cores of central business districts to the less dense peripheral areas within and adjacent to the districts; and*
 - (2) *To provide an incentive for the development of residential uses to meet the needs of those employed within the central business districts and those who will be able to use the district transit facilities to travel to and from places of employment.*

The development will increase the amount of office space available for employers in the Bethesda CBD. The architectural treatment, including façade materials and the stepping down of the building height from the middle of the Property to the edge opposite the single-family homes on the other side of the Purple Line Alignment promote compatibility along the edge of the CBD by mitigating the visual impact of the project. The building heights are consistent with development on this tract and previously approved buildings within the general area.

Requirements of the CBD-2 zone

The Staff Report contains a data table that lists the Zoning Ordinance required development standards and the development standards proposed for approval. The Board finds, based on the aforementioned data table, and other evidence and testimony of record, that the Application meets all of the applicable requirements of the CBD-2 zone. The following data table sets forth the development standards approved by the Planning Board and binding on the Applicant.

DATA TABLE

Development Standards
 Approved by the Board and
 Binding on the Applicant

| | |
|--|---------|
| Gross Tract Area (sf.) | 162,683 |
| Previous Dedication (sf.) | 23,320 |
| Proposed Dedication (sf.) | 2,119 |
| Net Lot Area (sf.) | 137,244 |
| Density, Maximum (FAR) | 4 |
| Density, Maximum (sf.) | 650,732 |
| Office (sf.) | 513,711 |
| Retail (sf.) | 4,600 |
| Hotel (sf.) | 132,421 |
| Building Height, 7300 Pearl St., Maximum (ft.) Measured from the building height measuring point approved by the Department of Permitting Services | 97 |
| Building Setbacks, Minimum (ft.) See the Certified Site Plan for dimensions | 0 |
| On-Site Public Use Space, Minimum (%) Per of Net Lot Area | 24 |
| On-Site Public Use Space, Minimum (sf.) Per of Net Lot Area | 32,676 |
| Off-Site Public Amenity Space, Minimum (%) Per of Net Lot Area | 78 |
| Off-Site Public Amenity Space, Minimum (sf.) Per of Net Lot Area | 106,503 |
| Parking Spaces, Maximum | 1,062* |

* The Planning Board approves a waiver for the remaining 61 spaces required by the zoning code, equivalent to a waiver of the 193-space deficit for 7300 Pearl Street, as offset over the whole project by a 132-space excess on Parcel G.

(b) The proposed development conforms to the Bethesda CED Sector Plan.

The development is consistent with the Sector Plan's recommendations for "optional method employment uses on most CBD-2 sites at 4 FAR" (p.58). The Applicant will consolidate two Air Rights Center properties on Block 5 into one recorded lot.

As conditioned, the development substantially conforms to the Sector Plan's recommendations. Immediately west of Pearl Street, the Sector Plan recommends heights of 60 feet and 90 feet extending to Waverly Street. The building height of the addition, 97 feet, exceeds the recommended 90 feet. The highest segment of the building is located adjacent to the existing parking garage and the office building at 4550 Montgomery Avenue. Further, the right-of-way for the Purple Line, which is approximately 65 feet wide, separates the building from the Town of Chevy Chase.

The Applicant has made significant efforts to redesign the building to improve compatibility with the adjacent residential community and compliance with the Sector Plan's recommendations. Several features were added to the southern portion of the building, including minimization of reflective glass, limitation of lights, and reduced building height for certain sections of the building to establish compatibility. The building has four tiers, ranging from 97 feet to 61 feet.

Specifically for the Air Rights Center area, the Sector Plan states that "on the parking deck of the second Air Rights Building, the Plan recommends a small residential building, if compatibility with the adjacent single-family area is maintained. Development should have a maximum height of 90 feet, stepping down to 60 feet toward Pearl Street." (p.61). In 2006, the Hotel (Site Plan No. 820070010), located along Waverly Street on the Air Rights property, was approved at 116 feet at its highest point, and 89 feet at its lowest point. The recommended height for this Property was also 90 feet.

The building's transition in height towards Pearl Street, the Capital Crescent Trail (Purple Line) and the Town of Chevy Chase is consistent with the Sector Plan's recommendation to reduce a building's height and impact at the edges of CBD. Further, lower heights contribute to achieving compatibility with the adjacent areas.

- (c) Because of its location size, intensity, design, operational characteristics and staging, the proposed development is compatible with and not detrimental to existing or potential development in the general neighborhood.**

Within the context of the Bethesda CBD, the project integrates seamlessly into the established Air Rights Center and provides a well-defined building entrance on Pearl Street. At the same time, the architectural choices for façade materials and stepped-back massing help to reduce the visual impact of the project from, and therefore promote compatibility with, the single-family homes across the Purple Line alignment that is the southern edge of the CBD in this neighborhood.

- (d) The proposed development does 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.**

The development is located within the Bethesda CBD, replete with public services. The development will not overburden the existing utilities. As a condition of approval, the Applicant will enter into a Traffic Mitigation Agreement with MCDOT and the Planning Board to participate in the Bethesda Transportation Management Organization.

- (e) The proposed development is 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 2 FAR 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 number and quality of public amenities being proffered, the optional method of development is much more desirable and more efficient for this particular site.

- (f) *When a Project Plan includes more than one lot under common ownership, or is a single lot containing two or more CBD zones, and would transfer public open space or development density from one lot to another, or transfer densities within a lot with two or more CBD zones, under 59-C 6.2351 or 59-C 6.2352, the Planning Board may approve the Project Plan only if...the project will result in an overall land use configuration that is significantly superior in meeting the goals of the applicable master or sector plan and the zone than what could be achieved without the proposed transfer.***

The development will transfer density between two contiguous lots under common ownership, which will be consolidated into a single lot with a preliminary plan under concurrent review with this Project Plan Amendment. As outlined above, the configuration allows the development to realize the goals of the Sector Plan and the zone in a more effective way.

(g) The proposed development satisfies any applicable requirements for forest conservation under Chapter 22A.

The Property is already developed and there is no existing forest on-site. All forest conservation requirements are being met offsite. Therefore, the project meets the requirements of the forest conservation law.

(h) The proposed development satisfies any applicable requirements for water quality resources protection under Chapter 19.

The Project Plan has an approved stormwater management concept. Stormwater management requirements will be met on-site via a green roof.

BE IT FURTHER RESOLVED that all elements of the plans for Project Plan No. 92000001B, Air Rights Center – 7300 Pearl Street stamped received by M-NCPPC on October 22, 2010, are 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 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 8 2011 (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).

* * * * *

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 Vice Chair Wells-Harley, 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, March 31, 2011, in Silver Spring, Maryland.



Françoise M. Carrier, Chair
Montgomery County Planning Board

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Garcia, Joyce

From: Debbie Feldman [debbiefeldman8@gmail.com]
Sent: Wednesday, December 01, 2010 5:42 PM
To: MCP-Chair
Cc: Howard Feldman
Subject: Air Rights -- 7300 Pearl Street, Bethesda
Attachments: Pearl Street Testimony.DOC

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OFFICE OF THE CHAIRMAN
THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

Dear Chair Carrier:

We would appreciate it if you would consider the attached testimony in connection with the Pearl Street Project. Please note that we did not get certain pertinent information from the developer to assist us in our evaluation of our position until yesterday.

Thanks,

Debra Feldman