

APR 8 2011



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

MCPB No. 10-167
Preliminary Plan No. 120110010
Air Rights Center – 7300 Pearl Street
Date of Hearing: December 2, 2010

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Chapter 50, the Montgomery County Planning Board (“Planning Board” or “Board”) is vested with the authority to review preliminary plan applications; and

WHEREAS, on July 27, 2010, Donohue Development Company (“Applicant”), filed an application for approval of a preliminary plan of subdivision of property that would create one, 3.51 acre lot and allow an additional 149,611 square feet of office uses located south of Montgomery Avenue between Waverly Street and Pearl Street in the Bethesda Central Business District Sector Plan area (“Sector Plan”); and

WHEREAS, Applicant’s preliminary plan application was designated Preliminary Plan No. 120110010, Air Rights Center – 7300 Pearl Street (“Preliminary Plan” or “Application”); and

WHEREAS, 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

WHEREAS, following review and analysis of the Application by Planning Board staff (“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 certain conditions, on motion of Commissioner Dreyfuss, seconded 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 50, the Planning Board approved

Approved as to
Legal Sufficiency:

Christina Sorrento 3/16/11

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

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Preliminary Plan No. 120110010 to create one, 3.51 acre lot limited to an additional 150,000 square feet of office space as allowed under the Adequate Public Facilities test on property located south of Montgomery Avenue between Waverly Street and Pearl Street in the Bethesda Central Business District Sector Plan area, subject to the following conditions:

1. Approval under this Preliminary Plan is limited to an additional 150,000 square feet of general office space added to the existing approved uses on proposed Parcel H.
2. The Applicant must comply with the conditions of approval for the preliminary forest conservation plan. The Applicant must satisfy all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permits, as applicable.
3. Prior to issuance of any building permits, the Applicant must satisfy the Policy Area Mobility Review (PAMR) test by paying \$565,000 (i.e., \$11,300 per PAMR trip) to the Montgomery County Department of Transportation (MCDOT) towards the following non-auto transportation improvements within the overall Bethesda/Chevy Chase Policy Area (listed in order of priority):
 - a. Implement, including property acquisition and/or all necessary means of access easement for, and construction, of an ADA-compliant interim pedestrian/bicycle connection between the existing Georgetown Branch Interim Trail and Pearl Street.
 - b. Improve the pedestrian, bicycle storage, and transit passenger waiting area underneath 3 Bethesda Metro Plaza at Washington Metropolitan Area Transit Authority's (WMATA) Bethesda Metro Station. Specific improvements will be identified in future discussions with WMATA.
 - c. Fund design, engineering, and construction of pedestrian and bicycle improvements identified by MCDOT in the overall Bethesda/Chevy Chase Policy Area.
4. The Applicant must enter into a Traffic Mitigation Agreement with MCDOT and the Planning Board to participate in the Bethesda Transportation Management Organization. The Traffic Mitigation Agreement must be fully executed prior to issuance of any building permits.
5. The certified Preliminary Plan and certified site plan must show a perpetual easement to accommodate the Purple Line. The certified Preliminary Plan must also show the additional future easement area north of the perpetual easement which shall accommodate the future trail. Prior to recordation of the plat, the owner must enter into an agreement with MTA and Montgomery

- County to grant a future perpetual easement to be located north of the existing perpetual easement to accommodate the trail. The agreement and the required area of this easement must be referenced on the record plat.
6. The certified Preliminary Plan and certified site plan must show the location of the retaining wall moved outside of the 32-foot transitway easement for the Purple Line and be verified by MTA. Prior to certification of Site Plan, the Applicant must provide the following information related to the wall as requested by MTA:
 - a. Commitment from the developer to construct the retaining wall outside of the 32' transitway easement.
 - b. Elevation of the top of new retaining wall.
 - c. Type, size and elevation of wall footings.
 - d. Horizontal and vertical datum used for 7300 Pearl Street Plans.
 7. The Applicant must provide twelve bike lockers in a secured bike storage area within the parking garage. Final location and details to be determined by staff at the time of Certified Site Plan.
 8. The record plat must show dedication of Pearl Street thirty feet from the centerline.
 9. The Applicant must construct all road improvements within the rights-of-way shown on the approved Preliminary Plan to the full width mandated by the Sector Plan and to the design standards imposed by all applicable road codes. Only those roads (or portions thereof) expressly designated on the Preliminary Plan, "To Be Constructed By _____" are excluded from this condition.
 10. The Applicant must comply with the conditions of approval for Project Plan No. 92000001B.
 11. The certified Preliminary Plan must contain the following note: "Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the preliminary plan are illustrative. The final locations of buildings, structures and hardscape will be determined during the site plan process."
 12. The Applicant must comply with the conditions of approval of the Montgomery County Department of Transportation (MCDOT) letter dated November 18, 2010. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
 13. The Applicant must comply with the conditions of the MCDPS stormwater management approval dated April 7, 2010. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
 14. The Adequate Public Facility (APF) review for the Preliminary Plan will remain valid for eighty-five (85) months from the date of mailing of the Planning Board Resolution.
 15. The record plat must show necessary easements

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

The Preliminary Plan substantially conforms to the Sector Plan.

The Approved and Adopted 1994 Bethesda Central Business District (CBD) Sector Plan confirms the Central Business District (CBD-2) zone for the Subject Property. The Property is located in the Sector Plan's Metro Core District where the highest intensities of development are expected. Increased choices and activities, highest intensity, distinctive infill buildings, and lower densities and heights near the edge of the district are objectives of the Metro Core district.

The Sector Plan's guidelines for new development in the district recommend that projects reinforce Metro Center as the focus of urban activity and that adjacent properties should develop in a manner that complements the activities and urban open space at Metro Center. Further, the Sector Plan recommends maintaining a compact development with the tallest buildings concentrated in the center. Development at perimeter locations of the Metro Core should step down in height to achieve a more gradual transition and better compatibility with the adjacent areas. New open space should tie into the existing "Discovery Trail" network and to expand the pedestrian connections and, where appropriate, locate new open space in a manner that reinforces the gateways and provides a transition between districts. New buildings should step down in height to six floors along East-West Highway for the McDonald's property on Pearl Street.

The Planning Board considered the use proposed by this Application and the location of the building with respect to the Sector Plan vision and finds that the commercial office building will reinforce the Metro Core as an urban activity center and that it complements the open space at Metro Center. The building height is in conformance with Zoning Ordinance limitations and the Board finds it adequately respects the Sector Plan guidance to lower building heights at the perimeter of the Metro Core boundary with the Town of Chevy Chase. Further, the Board finds that the Applicant's contributions to refurbish the Elm Street Park satisfy the open space and pedestrian connection needs identified in the Sector Plan. Based upon an evaluation of the Staff Report and the testimony received at the Hearing, the Planning Board finds that the Application is in substantial conformance with the Bethesda Central Business District Sector Plan.

Public facilities will be adequate to support and service the area of the proposed subdivision.

Roads and Transportation Facilities

The primary vehicular access for employees and service vehicles is proposed from Pearl Street. Pearl Street abuts the site to the east and is designated as a business district street. In accordance with the Countywide Bikeways Functional Master Plan, a signed shared roadway, SR-11, is designated along Pearl Street. The Applicant requested a waiver to reduce the right-of-way of Pearl Street from 85 to 60 feet wide. The Board considered the following Sector Plan language located within the Technical Appendix and determined that a waiver of right-of-way was not necessary, finding that a 60 feet wide right-of-way width for Pearl Street satisfied road width requirements specified by the Sector Plan.

The Sector Plan recommends retaining the right-of-way of 60 feet on Pearl Street south of East-West Highway to the Georgetown Branch to allow space for pedestrians and a Class II hiker-biker trail. Additional building setbacks may be required to achieve at least a 15-foot sidewalk on both sides of the street.

Montgomery Lane (i.e., the eastbound lanes of MD 410) is designated as a business district street with a recommended 80-foot right-of-way and no bikeway. Waverly Street is designated as a business district street with a recommended 80-foot right-of-way and no bikeway. The Board finds that the Application accurately shows the specified right-of-way requirements and that all vehicular and pedestrian facilities are adequate for the proposed office building.

Capital Crescent Trail

The Preliminary Plan reflects a perpetual easement for the Purple Line along the southern boundary of the site that is estimated to ultimately be 66 feet wide when combined with the existing Georgetown Branch right-of-way. This width is consistent with the width provided for along a large segment of the Georgetown Branch right-of-way shown within the Maryland Transportation Authority's (MTA) concept plans to accommodate both the Purple Line and the adjacent trail.

The Application proposes a building with a maximum building height of 61 feet for the area directly above the Capital Crescent Trail. The first floor of the building is at an elevation of 330 feet above sea level. The highest elevation of the trail at any point along the southern boundary of the Applicant's site is 336 feet above sea level so the Applicant's plan reflects ample room above the trail.

The MTA has reviewed the Application and determined that, except for the retaining wall shown on the Preliminary Plan and Site Plan, there will be sufficient

space for the construction and operation of the Purple Line and Trail. Condition #6 addresses this issue.

Local Area Transportation Review (LATR)

In accordance with the Local Area Transportation Review and Policy Area Mobility Review Guidelines, a traffic study was submitted by the Applicant to satisfy Local Area Transportation Review (LATR) because the proposed land uses generate 30 or more peak-hour trips within the weekday morning and evening peak periods. Based on the results of the traffic study performed by Staff and included in the Staff Report, the Planning Board finds that all studied intersections are operating at less than the congestion standard of 1,800 CLV for the Bethesda CBD Policy Area and, thus, the LATR test is satisfied.

Policy Area Mobility Review (PAMR)

As a development located in the overall Bethesda/Chevy Chase Policy Area, the required trip mitigation is 30% of the new peak-hour vehicular trips generated by the proposed land uses within the weekday morning and evening peak periods. As calculated by the traffic study and reviewed by Staff, 62 new trips must be mitigated based on using countywide trip-generation rates. However, 12 of these 62 new peak-hour trips are mitigated by being located in a Metrorail station policy area that has viable non-auto transportation alternatives. Some of the required PAMR trips can be satisfied by being located in the Bethesda CBD Metrorail Policy Area. For the remaining PAMR trips, the Applicant proposes to pay \$11,300 per PAMR trip to mitigate the remaining PAMR trips as described in the recommended conditions. The Planning Board finds that PAMR requirements have been met for the Application.

Other Public Facilities

The Board finds that all other public facilities and services are available and will be adequate to serve the proposed dwelling units. The Subject Property will be served by public water and sewer house connections. Gas, electric and telecommunications services are also available to serve the Property. Police stations, firehouses and health services are currently operating within the standards set by the Growth Policy Resolution currently in effect. The Application proposes no new residential component; therefore, the Application is not subject to a School Facilities Payment. The Application has been reviewed and approved by the Montgomery County Fire and Rescue Service (MCFRS) which has determined that the Property has adequate access for emergency vehicles.

The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A.

There are no significant environmental features on the Subject Property and there is no forest on-site. The submitted forest conservation plan dated September 3, 2010 requires that all forest conservation requirements be met off-site. The Board finds that the Preliminary Plan complies with Chapter 22A of the Montgomery County Code, Forest Conservation Law. Although not a requirement of Chapter 22A, the project will implement the Bethesda Streetscape Standards where right-of-way exists, therefore, street trees will be provided in accordance with those standards.

The Application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by the Montgomery County Department of Permitting Services ("MCDPS") that the Stormwater Management Concept Plan meets MCDPS' standards.

The stormwater management concept for this project was approved on April 7, 2010 by the Montgomery County Department of Permitting Services. Under this approval, stormwater management will be provided by using green roof technology for the new building. Stormwater management for the sidewalks will be addressed by using permeable pavement or grass filter strips adjacent to the sidewalks.

Compliance with the Subdivision Regulations and Zoning Ordinance

This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Board finds that the Application meets all applicable sections of the Subdivision Regulations. The proposed lot size, width, shape and orientation are appropriate for the location of the subdivision and public facilities will be adequate to serve the project.

The proposed subdivision was reviewed for compliance with the dimensional requirements for the CBD-2 zone as specified in the Zoning Ordinance. The lot as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. The Application has been reviewed by other applicable county agencies, all of whom have recommended approval of the Preliminary Plan.

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter and 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



SOUTH ELEVATION
NTS

AIR RIGHTS CENTER
BETHESDA, MARYLAND

11.30.10

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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