

[APR 8 2011]



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

MCPB No. 10-168  
Site Plan No. 82007001C  
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-3, the Montgomery County Planning Board (“Planning Board”) is vested with the authority to review site plan applications; and

WHEREAS, on December 2, 1999, the Planning Board approved Project Plan No. 920000010, and on January 4, 2001, approved Site Plan No. 820010080, 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, and on December 14, 2006, approved Site Plan No. 820070010, superseding Site Plan No. 820010080, for the addition of 132,421 sf. of new hotel space; and

WHEREAS, on June 23, 2008, the Planning Director approved Site Plan No. 82007001A for minor changes to the site plan; and

WHEREAS, on June 23, 2009, the Planning Director approved Site Plan No. 82007001B for minor changes to the site plan; and

WHEREAS, on December 2, 2010, the Planning Board approved Project Plan No. 92000001B and Preliminary Plan No. 120110010 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 on one consolidated lot, and a waiver of 61 parking spaces; and

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Approved as to  
Legal Sufficiency:

*Christina Sorrento* 3/23/11

8787 Georgia Avenue, Suite 300, Silver Spring, MD 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

[www.MCParkandPlanning.org](http://www.MCParkandPlanning.org) E-Mail: [mcp-chairman@mncppc.org](mailto:mcp-chairman@mncppc.org)

WHEREAS, on July 27, 2010, Donohoe Development Company (“Applicant”) filed an application for approval of a Site 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 (“Site 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 Site Plan application was designated Site Plan No. 82007001C, 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 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 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 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 APPROVES Site Plan No. 82007001C 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. Project Plan Conformance
  - a. The development must comply with the conditions of approval for Project Plan No. 92000001B as listed in the Planning Board Resolution.
2. Preliminary Plan Conformance
  - a. The development must comply with the conditions of approval for Preliminary Plan No. 120110010 as listed in the Planning Board Resolution, 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. Elm Street Park

- a. The Applicant must provide the following in the northern portion of Elm St. Urban Park:
  - i. Tree protection, as required;
  - ii. Stormwater management/sediment and erosion control facilities, as required;
  - iii. Demolition of all existing elements in northern portion of existing park (unless otherwise directed), following the Department of Park's Construction Waste Management Specification;
  - iv. Temporary construction fencing and signage;
  - v. Excavation and grading;
  - vi. New 8'-10' wide asphalt bike path around perimeter of northern area with connection to Capital Crescent Trail;
  - vii. High quality paved walkways throughout park, including east-west promenade;
  - viii. Sand play area with concrete seat wall;
  - ix. 12" wide flush concrete curb at playgrounds;
  - x. 16"-18" high colored concrete seat wall with form liner or other pattern (approx. 265 lf.);
  - xi. Ornamental metal fence (approx. 400 lf.);
  - xii. Pedestrian walkway lighting;
  - xiii. Bed preparation, landscape planting, and two year warranty and aftercare;
  - xiv. High quality site furnishings including benches, picnic tables, trash and recycling containers, bike racks, etc.;
  - xv. Park signage;
  - xvi. Water line for future drinking fountain;
  - xvii. All design and engineering (Landscape Architectural, Civil, Structural, MEP) fees for entire northern portion of park;
- b. Prior to approval of the Certified Site Plan the following revisions must be made and/or information provided subject to Staff review and approval:
  - i. The Applicant shall obtain either an exemption or stormwater concept approval from the Montgomery County Department of Permitting Services (DPS) and an exemption or approval of a Forest Conservation/Tree Protection Plan from the M-NCPPC's Environmental Planning Division.
  - ii. A complete site plan for the entire northern portion of the park shall be approved by the Park Development Division. The plan shall include the same amount of detail comparable to a typical park

Facility Plan. In addition to detailed grading, the plan shall include any storm water management facilities approved as part of the stormwater concept approval and any requirements associated with Forest Conservation/tree protection. The plan shall specify all proposed materials, finishes, catalog cuts, equipment, and proposed plant lists with sizes and spacing of plant material.

- c. Following approval of the Certified Site Plan, the Applicant shall complete Design Development and Construction documents for the park improvements listed above and for those to be provided by others. Minor revisions may be made to the design of the park during the design development/construction documentation process if approved by Parks staff, including the realignment and revised grading of the paths and play areas, and the substitution of materials, equipment and furnishings with equivalent quality materials. These types of revisions will not necessitate a formal revision to the Site Plan, unless otherwise recommended by Staff. Submissions of plans and specifications shall be submitted to Parks staff for review and approval at the 50%, 75%, 90% and 100% complete stages.
- d. The Applicant will be required to obtain a Park Permit for Construction before beginning construction of the park. As part of the Park Permit, the Applicant may be required to post a bond.
- e. Construction of the park improvements must be completed by the Applicant and accepted by the Department of Parks prior to issuance of the Use and Occupancy Permit for 7300 Pearl Street.

4. LEED Certification

The Applicant must achieve a LEED (Leadership in Energy and Environmental Design) Certified Rating Certification at a minimum. The Applicant must make good faith efforts to achieve a LEED Silver rating. Before the issuance of any use and occupancy certificate, the Applicant must inform M-NCPPC Staff of the LEED Certification Level for which they are applying. If this level is less than a Silver rating, before the issuance of the final use and occupancy certificate the Applicant must provide to Staff a written report for public record purposes only from the Applicant's LEED consultant analyzing the feasibility of achieving a LEED-Silver rating, to include an affidavit from a LEED-Accredited Professional identifying the minimum additional improvements required to achieve the LEED Silver rating, including their associated extra cost. Submission of this report constitutes compliance with this condition.

5. Site Design

- a. The exterior architectural character, proportion, materials, and articulation must be substantially similar to the schematic elevations shown on the architectural drawings included in the Certified Site Plan.
- b. The Applicant must install lighting sensors in the south-facing and east-facing perimeter offices of the 7300 Pearl Street building in order that the office lights are off after hours when not in use.
- c. By Certified Site Plan, the Applicant must revise the building facades to remove all of the aggregate along the east façade and the eastern portion of the south façade, as illustrated in the rendered perspective entitled “South Elevation”, dated November 30, 2010, and attached to the Resolution.
- d. The Applicant must include opaque spandrel panels and baffles or screens to the garage openings of the 7300 Pearl Street building.
- e. Trash and delivery services are limited to weekdays between the hours of 7:00 AM and 9:00 PM and weekends between the hours of 9:00 AM and 9:00 PM.
- f. The Applicant must add new spandrel panels to the eastern façade of the existing parking garage.

6. Lighting

- a. The lighting distribution and photometric plan with summary report and tabulations must conform to IESNA standards for commercial CBD development.
- b. All onsite down- light fixtures must be full cut-off 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.

7. Landscape Surety

Exclusive of improvements associated the Elm Street Park, 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 shall include plant material, on-site lighting, and site furniture within the relevant block 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 one year maintenance period and bond release occurs at the expiration of the one year maintenance period.

- d. Provide a screening/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.

8. 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. Required streetscape improvements along Pearl Street and Montgomery Avenue must be completed prior to any use and occupancy permit, though planting may wait until the next planting season.
- b. The Applicant must complete installation of the Elm Street Park improvements described in Site Plan Condition 3.e. before any building use and occupancy permit, though planting may wait until the next planting season.
- c. Clearing and grading must correspond to the construction phasing to minimize soil erosion and must not occur prior to approval of the Final Forest Conservation Plan, 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, afforestation, trip mitigation, and other features.

9. 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 forest conservation exemption, 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 "M-NCPPC staff must inspect all tree-save areas and protection devices prior to clearing and grading".
- c. Modify data table to reflect development standards enumerated in the Staff report.
- d. Ensure consistency off all details and layout between Site Plan and landscape plan.

BE IT FURTHER RESOLVED, that all site development elements as shown on Air Rights Center – 7300 Pearl Street drawings stamped by the M-NCPPC on October 22, 2010, 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, which the Planning 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:

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.*

Except as modified by this approval, the proposal conforms to the requirements of Project Plans 920000010, 92000001A, and 92000001B.

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

The Site Plan meets all of the intents, purposes, and requirements of the CBD-2 zone. The Site Plan meets all of the development standards of the zone. With respect to building height, setbacks, and density the development is under all the maximum standards allowed.

#### **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
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Building Setbacks, Minimum (ft.) See the Certified Site Plan for dimensions	0
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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*
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\* 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.

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 existing hotel and office buildings, as well as the proposed office building, line the street edge of the block with street-activating building entrances. The structured parking garage is located on the interior of the block, but is conveniently accessed from the surrounding streets. The location of the existing and proposed buildings is adequate, safe, and efficient.

b. Open Spaces, Landscaping, and Lighting

The open space provided on-site, including an elevated plaza, streetscaping, and improvements to the Capital Crescent Trail, is existing and is not significantly increased by this redevelopment. The existing improvements, however, enhance the pedestrian and bicycle access through and along the site. There are no recreation facilities required for



this Site Plan. The open spaces, landscaping, and site details adequately and efficiently address the needs of the proposed use and the recommendations of the Master Plan, while providing a safe and comfortable environment.

c. Recreation Facilities

As there is no residential use component for this project, there is no requirement for recreation facilities.

d. Vehicular and Pedestrian Circulation

Pedestrian access from adjacent sidewalks adequately and efficiently integrates this site into the surrounding area. Safety will be enhanced through streetscape improvements, while additional contributions toward the implementation of an accessible connection between Pearl Street and the existing Capital Crescent Trail will significantly improve the safety and facility of this movement. Vehicular access to the site efficiently directs traffic into and through the site with minimal impacts to pedestrian circulation. This balance of design with the site, the recommendations of the Master Plan, and the needs of the use is an efficient and adequate means to provide a safe atmosphere for pedestrians, cyclists, and vehicles.

The parking waiver request, as drafted by the Applicant, seeks relief from 193 parking spaces. This calculation is based not on the requirements of the code – for the project as a whole – but rather by parcel. Analyzed by parcel, the 149,611 sf. of office space on Parcel D, 7300 Pearl Street, needs 315 parking spaces but provides only 122. The resulting difference is 193 spaces.

However, the existing office, retail, and hotel uses on Parcel G require 808 spaces, while providing 940 spaces, yielding a surplus of 132 spaces. When looking at the project as a whole under a single Project Plan, this surplus works to the benefit of the new development under proposal. Thus per the zoning code, the existing and proposed uses included on the site as a whole require 1,123 parking spaces. The existing and proposed parking on site totals 1,062 parking spaces. The waiver request covers the 61 parking spaces not being provided on site.

The Planning Board approves the Applicant's parking waiver. The parking waiver will remove the need to construct additional parking within a CBD well served by transit, and will help to reduce the number of cars

circulating within the site. With the reduced parking, the development is adequate, safe, and efficient.

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

Within the context of the Bethesda CBD, the proposal 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.

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 development meets the requirements of the forest conservation law and has an approved stormwater management concept that consists of a vegetated green roof.

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Planning 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 APR 8 2011 (which is the date that this Resolution is mailed to all parties of record); and

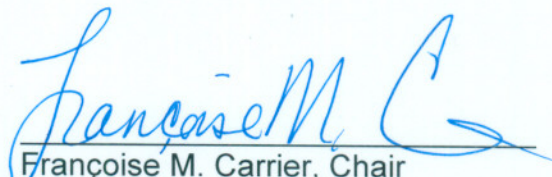
BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this

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**

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**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

**RECEIVED**

DEC 02 2010

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