



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

MCPB No. 13-107
Project Plan No. 920130070
4990 Fairmont Avenue
Date of Hearing: July 18, 2013

JUL 26 2013

RESOLUTION

WHEREAS, under Montgomery County Code Division 59-D-2, the Montgomery County Planning Board is authorized to review project plan applications; and

WHEREAS, on May 1, 2013, 4990 Fairmont, LLC ("Applicant") filed an application for approval of Project Plan No. 920130070 for a mixed-use development of 138,052 square feet of space, consisting of 7,000 square feet of ground floor retail/restaurant uses and artist incubator space and 131,052 square feet of residential space for 72 multi-family dwelling units at 4990 Fairmont Avenue, located in the northeast quadrant of the intersection of Fairmont Avenue and Old Georgetown Road ("Subject Property") on 0.52 acres of land comprised of three CBD-2 zoned lots located in the 2006 Woodmont Triangle Amendment to the 1994 Bethesda Central Business District ("CBD") Sector Plan ("Sector Plan") area; and

WHEREAS, Applicant's project plan application was designated Project Plan No. 920130070, 4990 Fairmont Avenue ("Application" or "Project Plan"); and

WHEREAS, following review and analysis of the Application by Planning Board Staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated July 5, 2013, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 18, 2013, the Planning Board held a public hearing on the Application, and at the hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, at the hearing, the Planning Board voted to approve the Application subject to certain conditions, by the vote as certified below.

Approved as to
Legal Sufficiency:

Christina Sorenson 7/11/13

NOW, THEREFORE, BE IT RESOLVED that, the Planning Board APPROVES Project Plan No. 920130070, 4990 Fairmont Avenue, for a mixed-use development consisting of no more than 138,052 square feet of gross floor area, including 7,000 square feet of retail uses with a minimum of 2,000 square feet for artist incubator space and 131,052 square feet of residential uses consisting of no more than 72 dwelling units, including 15% MPDU's and on the Subject Property, subject to the following conditions:¹

1. Development Ceiling

The development is limited to a maximum of 138,052 square feet of gross floor area with a maximum 6.03 FAR consisting of the following uses:

- a) A maximum 7,000 square feet of retail uses inclusive of a minimum of 2,000 square feet for artist incubator space
- b) A maximum 131,052 square feet of residential uses for a maximum 72 residential multi-family dwelling units.

2. Housing

The Applicant must provide on-site a minimum of 15% of the total number of units as Moderately Priced Dwelling Units, consistent with the requirements of Chapter 25A.

3. Building Height and Mass

The development is limited to the building footprint as delineated in the Project Plan drawings submitted to MNCPPC dated June 19, 2013, unless modified at Site Plan review. The development is limited to a maximum building height of 174 feet as determined by the Department of Permitting Services approved building height measurement point.

4. Architecture

The exterior architectural character, proportion, material, and articulation must be substantially similar to the schematic elevations shown on Sheets A1.01-A1.06 of the submitted architectural drawings, as determined by Staff, unless modified during Site Plan review.

¹ For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

5. Public Use Space and Amenities

- a) The Applicant must provide a minimum of 2,937 square feet of public use space (20% of net lot area) on-site, including a minimum 2,000 square feet for artist incubator space.
- b) The Applicant must provide public art on-site, integrated into the overall site design.
- c) The Applicant must present final public art concepts to the Art Review Panel for review and comment that will be available to the Planning Board prior to scheduling the Planning Board hearing for the site plan application.
- d) Final design of the public art must be determined by Certified Site Plan.
- e) As a public amenity, the Applicant must provide streetscape improvements per the Bethesda CBD Streetscape Standards, or as amended, including the undergrounding of public utilities, along the Property's frontage on Fairmont Avenue and Old Georgetown Road.
- f) The Applicant must provide the agreement between the Bethesda Urban Partnership and the Applicant for the management of the artist incubator public use space component with the initial site plan submittal.

6. Staging of Amenity Features

- a) The development must be completed in one phase. A detailed development program will be required prior to approval of the certified Site Plan.
- b) The Applicant must complete the on-site public use space improvements prior to issuance of use and occupancy permits unless modified by the Site Plan development program.
- c) The Applicant must install the landscaping no later than the next growing season after completion of the building and site work.

7. Building Design

The Applicant must provide to Staff alternative design considerations for the columns located at the southern corner of the building, for the purposes of greater visibility and accessibility to the public use space in this location.

BE IT FURTHER RESOLVED that all elements of Project Plan No. 920130070, 4990 Fairmont Avenue, stamped received by The M-NCPPC on June 19, 2013, are required except as modified by the above conditions of approval; and

BE IT FURTHER RESOLVED that, having considered the recommendations and findings of its Staff as presented at the hearing and as set forth in the Staff Report, which the Planning Board hereby adopts and incorporates by reference (except as modified herein) and having considered the entire record, all applicable elements of § 59-D-2.43, and the relevant provisions of Section 59-D-2.42, the Planning Board, with the conditions of approval, FINDS:

(a) The development complies with all of the intents and requirements of the CBD-2 zone as applied comprehensively to the Project.

The Subject Property is zoned CBD-2. Section 59-C-6.212 of the Montgomery County Zoning Ordinance establishes the CBD-2 Zone, and this section outlines the description, intent and general requirements of the zone.

The proposal for 72 residential units (including 15% MPDUs) results in a residential gross floor area of 131,052 square feet and residential FAR of 5.73. When the 7,000 square feet of street front retail/artist incubator space is added to the residential square footage to arrive at the overall 138,052 square feet of gross floor area, the total FAR is 6.03. The maximum FAR permitted in the CBD-2 zone is 5.0, however, Section 59-C-6.215(b) states that the maximum dwelling unit density or residential FAR may be increased in proportion to any MPDU density bonus provided on-site. Since the Applicant is providing 15% MPDUs on-site, a 22% residential density bonus is allowable under the MPDU Law outlined in County Code Chapter 25A-5. The baseline allowable residential gross floor area is 107,420 square feet, and with a 22% density bonus, 131,052 square feet is permissible.

The Project Plan Application includes a building with a maximum height of 174 feet, which exceeds the 143 feet maximum in the CBD-2 zone. Section 59-C-6.2 footnote 11, on Zoning Ordinance page C6-43 allows the Planning Board to approve a height that exceeds 143 feet, but not 200 feet in the CBD-2 zone under the optional method of development process if:

(ii) the additional height is specifically recommended for the property in the applicable sector plan or urban renewal plan or the property is within a revitalization area designated in the applicable sector plan and is located fully or partially within 800 feet of an entrance to a metro station.

A building height of 174 feet is specifically recommended for the Property in the Woodmont Triangle Amendment to the Bethesda CBD Sector Plan on pages 22 and 24 as follows:

This project is in "Block 45."

- "There are parcels in Block 45, zoned CBD-1, that could redevelop and may be able to use the transfer of density option. In order to encourage residential redevelopment, this Amendment recommends changing the CBD-1 properties to CBD-2 ...The Amendment recommends a FAR of 5.0 for all properties in these blocks and a height limit of 143 feet or 174 with a 22 percent MPDU bonus."

This project includes 15% MPDUs and therefore is receiving a density bonus of 22 percent.

More specifically, Section 59-C-6.212 outlines the intent of the CBD zones:

- (a) 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.
- (b) 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.
- (c) 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.
- (d) To promote the effective use of transit facilities in the central business district and pedestrian access thereto.
- (e) To promote improved pedestrian and vehicular circulation.
- (f) To assist in the development of adequate residential areas for people with a range of different incomes.
- (g) To encourage land assembly and the most desirable use of land in accordance with a sector plan.

The density and amenities achieved through the optional method of development enable the realization of the recommendations of the Bethesda CBD Sector Plan, as described in Finding b) below. Until recently, a BP gas station operated on the

Subject Property which was a use that did not take full advantage of the site's close proximity to mass transit facilities and the employment opportunities in the Bethesda CBD. The Applicant acquired the property with the intent of assembling the lots to construct an optional method, mixed use project that offers retail and artist incubator space with residential units above at a prominent corner location within the Bethesda CBD. Much of the development adjacent to the Property is commercial in nature, although residential development is located approximately 150 feet southeast of the site at the intersection of Woodmont Avenue and Old Georgetown Road. Removing the current gas station vehicular access points from Old Georgetown Road to have only one access point to the Property will minimize vehicular traffic that interferes with the pedestrian realm in this area.

(b) The development conforms to the Sector Plan and the Master Plan.

The Application is consistent with the 2006 Woodmont Triangle Amendment to the 1994 Bethesda CBD Sector Plan. The Goals of the Plan include a housing goal to increase the supply of housing for a variety of income levels; a small-scale retail goal to provide opportunities to retain existing business and expand opportunities for new businesses; an arts and entertainment goal to enhance the existing public arts program in the Bethesda CBD and provide opportunities for both the visual and performing arts, and a public space goal to focus on improving the safety and character of the existing streets and increase the flexibility in providing the public use space through the Optional Method of Development.

For housing, the project includes up to 72 multi-family residential units, with 15% on-site MPDUs, in a variety of unit sizes so that persons at a range of income levels can reside in the Woodmont Triangle Area. For small-scale retail, the project provides street level space for retail, restaurant or service use. For the Arts and Entertainment District, this project offers approximately 2,000 square feet of new studio space for artists in the visual arts on a street level arts alley, an important contribution to the A&E District. This is a high priority to the community and has proved challenging to achieve in the past. For public spaces such as safe and attractive streets, this project improves the continuity of pedestrian routes by closing driveways from Old Georgetown and consolidating them on Fairmont. The Bethesda streetscape will be installed and the existing public alley will be enlivened. Entrances to street oriented retail and the residential lobby will enliven the street as well. In terms of on-site public amenities, the studio space for artists that is open to the public is highly desirable, and widening the current alley width to 11 feet will increase visibility and

accessibility for the adjacent public alley which can be used to walk to side entrance to Garage 11.

Furthermore, the "arts alley" that the arts incubator space will create contributes to a variety of public spaces in the area. Similar narrow linear spaces in the Woodmont Triangle include the Imagination Stage Intermission Terrace which is a through block connection, the Monty/Bainbridge public use space as a through block connection to Fairmont Avenue, and the future Fairmont Avenue pedestrian connection to Garage 11. This will be the first such space in the Woodmont Triangle that is oriented to Old Georgetown Road, and will be the first space lined with glass walled artist's studios on one side and a projected light display on the off-site wall on the other side.

Building height limits and density are also addressed on pages 11 and 12 of the Sector Plan. A step down concept is encouraged to protect the neighborhoods at the edge of the CBD and to concentrate the tallest buildings near the Metro Station. The specific heights recommended in the Sector Plan provide flexibility while supporting that general concept. This project is consistent with the Sector Plan recommendation for this site which allows a maximum of 174 feet for projects that include MPDUs. Properties may develop to the density permitted in the CBD-1, CBD-2 and CBD-R2 zones. In order to encourage residential development, the recommended increase in density up to the maximum allowed is for residential development, and all CBD zoned parcels within the study area will be limited to a FAR of 1.0 for non-residential development. This Project Plan is in the CBD-2 Zone and according to the Sector Plan may develop to the density permitted in the zone. As previously discussed, the Zoning Ordinance permits the FAR to increase above 5.0 to accommodate MPDUs. This Project Plan includes a residential FAR of 5.73 in order to accommodate MPDUs. It is consistent with the intent of the Sector Plan because the additional density is for residential development. Non-residential development on the site is less than 1.0 FAR at a 0.40 FAR, consistent with the intent of the Sector Plan.

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

The location, size and intensity of the Project Plan are compatible with the existing and potential development in the general neighborhood. The building's orientation responds to the surroundings. The majority of the ground floor retail has entry and

exit points from Old Georgetown Road where visibility and pedestrian activity will be greatest. The garage entry and loading dock entry is located off of Fairmont Avenue to minimize vehicular and pedestrian conflicts on Old Georgetown Road. The garage of the building is located on the first four floors of the structure to correspond with the 40 foot tall public parking garage height. The treatment of the garage ends at the fifth floor where balconies are present on the top 12 floors but the stone or precast treatment of the garage is partially extended to the top floor of the building to provide subtle continuity. The block in which the building is located is the closest in the Woodmont Triangle Amendment area to the Bethesda Metrorail station. Redevelopment potential exists to construct additional buildings to a similar height within the block. The building will be the same height as the approved Monty project (Site Plan No. 820090110, The Monty), located north of the Subject Property on the opposite side of Fairmont Avenue, and the same height as the approved 4900 Fairmont Avenue project (Site Plan No. 820120120), located northeast of the Site on the same side of Fairmont Avenue; the building will, therefore, be consistent with the emerging redevelopment pattern in the general neighborhood. Ground floor retail and the artist incubator space will draw pedestrians to this section of Old Georgetown Road, replacing a vehicular-oriented gas station use. Additional residents in this location will enliven the block at night and on weekends when the surrounding commercial buildings are primarily vacant.

(d) As conditioned, the development would 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, is subject to a traffic mitigation agreement that meets all the applicable requirements.

The Project Plan Application will not overburden existing public facilities and services nor those programmed for availability. The Application for the residential and commercial development satisfies the transportation requirements of the Adequate Public Facilities (APF) review. The Subject Property is located within a transportation management district, therefore, the Applicant is required to enter into a Traffic Mitigation Agreement (TMAg) with the Planning Board and Montgomery County Department of Transportation. The project is located within the Bethesda-Chevy Chase High School Cluster. The 72 condominium units are subject to the Annual School Test effective for FY14. A School Facilities Payment is required at the high school level in this cluster.

(e) The development is more efficient and desirable than could be accomplished by the use of the standard method of development.

The Applicant proposes to develop the site using the optional method of development, which is more efficient and desirable than the standard method of development. The optional method allows greater densities at key locations, such as proximity to mass transit, in exchange for greater public amenities and facilities. Construction of a standard method project would yield a building constructed to a maximum of 2.0 FAR with a maximum 60 foot building height. For a site located in the Bethesda CBD, a building constructed to standard method requirements would have little public amenities or open space, and would be insufficient to reach the critical mass and density envisioned for the Woodmont Triangle Area of Bethesda and areas within close proximity to a Metrorail station. Additionally, the greater number of affordable housing units provided far exceeds what could be achieved under the standard method. Given the recommendations of the Master Plan and the Subject Property's proximity to transit, employment, and services, the optional method of development is much more desirable and efficient for this particular site.

(f) The development will include moderately priced dwelling units in accordance with Chapter 25A of the Montgomery County Code.

The total number and bedroom mix of MPDUs provided on site has been reviewed and approved by the Montgomery County Department of Housing and Community Affairs. The Application provides 11 MPDUs, or 15% of the total number of units, as MPDUs, consistent with the requirements of Chapter 25A, and as approved by the Montgomery County Department of Housing and Community Affairs.

(g) The development satisfies applicable requirements for forest conservation under Chapter 22A of the Montgomery County Code.

There are no onsite wetlands, floodplains, streams or their associated buffers on the Property. There is neither onsite forest nor specimen trees onsite. The Applicant applied for an exemption from submitting a forest conservation plan. Exemption 42013105E was confirmed on January 16, 2013 because the Property is less than 1.5 acres in size. This Property qualified for an exemption under section 22A-5(s)(1) of the Montgomery County Forest Conservation Law, where an activity occurring on a tract of land less than 1.5 acres with no existing forest or existing specimen or

champion trees, and the afforestation requirements would not exceed 10,000 square feet.

(h) The development satisfies applicable requirements for water quality resources protection under Chapter 19 of the Montgomery County Code.

The stormwater management concept approved on June 11, 2013, meets the required stormwater management goals by the use of Environmental Site Design (ESD) to the Maximum Extent Practicable (MEP) with the use of a green roof and micro-bioretenion/planter box. A waiver for structural treatment is granted since full treatment of ESD volume is not possible due to the existing shallow storm drain and onsite constraints.

(i) Any public use space or public facility or amenity to be provided off-site is consistent with the goals of the applicable master or sector plan and serves the public interest better than providing the public use space or public facilities and amenities on-site.

The Application does not include public use space and amenities off-site, other than the improvements to the Subject Property frontages for Fairmont Avenue and Old Georgetown Road.

BE IT FURTHER RESOLVED, that this Resolution 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 this Resolution constitutes the written opinion of the Planning Board, and that the date of this Resolution is JUL 26 2013 (which is the date that this Resolution is mailed to all parties of record); and

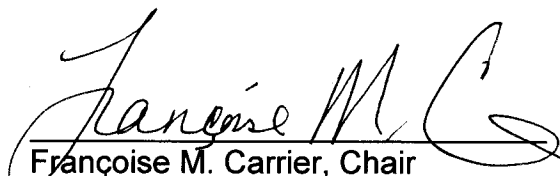
BE IT FURTHER RESOLVED that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this

Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

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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 Anderson, seconded by Vice Chair Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley voting in favor at its regular meeting held on Thursday, July 18, 2013, in Silver Spring, Maryland.


Françoise M. Carrier, Chair
Montgomery County Planning Board