



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

NOV 15 2013

MCPB No. 13-156
Preliminary Plan No. 120120070
Bethesda Center
Date of Hearing: October 10, 2013

RESOLUTION

WHEREAS, under Montgomery County Code Chapter 50, the Montgomery County Planning Board is authorized to review preliminary plan Preliminary Plans; and

WHEREAS, on March 7, 2012, the Planning Board, by Resolution MCPB No. 11-138, approved Preliminary Plan No. 120120070, creating one lot on 2.14 acres of land in the CBD-2 zone, located between Woodmont Avenue and Wisconsin Avenue south of Norfolk Avenue ("Subject Property"), in the Bethesda CBD Sector Plan ("Sector Plan") area for up to 466,470 square feet of commercial mixed-use development comprised of 256,672 square feet of office uses, 193,999 square feet of hotel uses, and 15,799 square feet of retail uses; and

WHEREAS, on April 4, 2013, by Resolution MCPB No. 13-50, the Planning Board approved Preliminary Plan No. 12012007A to reallocate 2,885 square feet of office to restaurant/retail and hotel uses, increasing the amount of hotel to 222 rooms and the amount of restaurant/retail to 16,326 square feet, while retaining the approved maximum square footage of development; and

WHEREAS, on June 26, 2013, the Applicant filed a petition for reconsideration of Condition 18(b) of Preliminary Plan No. 120120070 (as approved by MCPB No. 11-138 and amended by MCPB No. 13-50), arguing that a mathematical error in calculating the PAMR mitigation requirement resulted in an excessive payment; and

WHEREAS, on September 4, 2013, on motion of Commissioner Anderson, seconded by Commissioner Wells-Harley, by a vote of 3-0, Commissioners Anderson, Carrier, and Wells-Harley voting in favor; Commissioner Presley abstaining; and Commissioner Dreyfuss absent, the Planning Board voted to grant the Applicant's reconsideration request for the limited purpose of considering the appropriate mitigation payment under PAMR; and

Approved as to
Legal Sufficiency

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WHEREAS, on September 30, 2013, Planning Board staff ("Staff") issued a memorandum to the Planning Board setting forth its analysis and recommendation for approval of a reduced PAMR mitigation requirement ("Staff Report"); and

WHEREAS, on October 10, 2013, the Planning Board held a public hearing for the limited purpose of deciding the appropriate PAMR mitigation requirement ("Hearing"); and

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence concerning the PAMR mitigation requirement; and

WHEREAS, on October 10, 2013, on motion of Commissioner Anderson, seconded by Commissioner Dreyfuss, by a vote of 4-0, Commissioners Anderson, Carrier, Dreyfuss, and Wells-Harley voting in favor, and Commissioner Presley absent, the Planning Board approved a modified PAMR mitigation requirement, leaving all other conditions of approval from MCPB No. 11-138, as amended by MCPB No. 13-50, in place;

NOW, THEREFORE, BE IT RESOLVED that the Planning Board approves a modified PAMR mitigation requirement for, and restates its approval of all other aspects of, Preliminary Plan No. 120120070, as set forth in MCPB No. 11-138 and amended by MCPB No. 13-50,¹ to create one lot on the Subject Property, subject to the following conditions:

1. Approval under this Preliminary Plan is limited to one lot for up to 466,470 square feet of commercial mixed-use development comprised of 253,787 square feet of office uses, 196,357 square feet of hotel uses, and 16,326 square feet of restaurant/retail uses.
2. The Applicant must comply with the conditions of approval for Project Plan No. 920120010.
3. 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 Montgomery County Department of Permitting Services ("MCDPS") issuance of sediment and erosion control permits, as applicable.
4. The Applicant must obtain approval of a Final Forest Conservation Plan, consistent with the approved Preliminary Forest Conservation Plan and associated conditions, prior to any clearing, grading or demolition on the site.
5. No clearing, grading, demolition, or recording of plats prior to certified site plan approval unless specified with the site plan approval.

¹ Under the Planning Board's Rules of Procedure, the approval of a reconsideration request voids the resolution reconsidered. Therefore, this resolution reflects the approvals and conditions of MCPB No. 11-138, as modified by MCPB No. 13-50 and further modified to reflect the Board's reconsideration of Condition No. 18(b).

6. The fee-in-lieu or certificate of compliance for the off-site forest mitigation must be submitted by the Applicant and approved by M-NCPPC Staff prior to land disturbing activities occurring on the Subject Property.
7. The Applicant must dedicate and the record plat must show dedication of 40 feet of right-of-way as measured from the centerline along the property frontage for Woodmont Avenue and 57 feet of right-of-way as measured along the centerline along the property frontage for Wisconsin Avenue. An additional 5-foot-wide public improvement easement ("PIE") must be provided adjacent to the Woodmont Avenue right-of-way along the Subject Property boundary.
8. 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 master plan and to the design standards imposed by all applicable road codes.
9. The Applicant must satisfy MCDPS requirements prior to recordation of the plat to ensure the construction of the sidewalks per Bethesda Streetscape Standards along the property frontages on Wisconsin Avenue and Woodmont Avenue.
10. The final density and mix of uses will be determined at Site Plan.
11. The Applicant must comply with the conditions of the MCDPS stormwater management approval dated September 8, 2011. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
12. The Applicant must comply with the conditions of the Montgomery County Department of Transportation ("MCDOT") letter dated November 29, 2011. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
13. Prior to site plan approval, the Applicant must satisfy provisions for access and improvements as required by MCDOT prior to recordation of plat(s) and/or Maryland State Highway Administration ("MDSHA") prior to issuance of access permits, as applicable.
14. The Applicant must satisfy requirements of Montgomery County Fire and Rescue pertaining to addressing, emergency vehicle access, fire access walk path and the locations of proposed fire department connection, hydrants, door locations and fire control rooms.
15. Final approval of the number and location of buildings, onsite parking, site circulation, sidewalks, and bike paths will be determined at site plan.
16. The record plat must show necessary easements.
17. 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, onsite parking, site circulation, and sidewalks shown on the preliminary plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of site plan review. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot.

Other limitations for site development may also be included in the conditions of the Planning Board's approval."

18. Transportation

- a. The Applicant must limit future development on the site to a 222-room hotel, 253,787 SF of office, and 16,326 SF of restaurant/retail.
- b. The Applicant must pay \$339,300 to the Montgomery County Department of Transportation ("MCDOT") to satisfy the Policy Area Mobility Review ("PAMR") requirement of the adequate public facilities ("APF") test to mitigate twenty-nine (29) net "new" weekday site-generated peak-hour trips at \$11,700 per peak-hour trip, of which \$57,000 is satisfied by the Applicant's proffered payment for construction of a bike share station in the vicinity. The payment may be split into two payments of 50% each, the first made prior to issuance of a building permit for the development, and the second prior to issuance of the first building use and occupancy permit.
- c. The Applicant must dedicate and show on the final record plat the following rights-of-way along property frontage consistent with the 1994 Approved and Adopted *Bethesda CBD Sector Plan*:
 - i. Wisconsin Avenue – minimum of 57 feet from the roadway right-of-way centerline, and
 - ii. Woodmont Avenue – minimum of 40 feet from the roadway right-of-way centerline.
- d. Frontage improvements must be finalized at site plan.
- e. The Applicant must enter into a Traffic Mitigation Agreement ("Agreement") with the Planning Board and MCDOT to participate in the Bethesda Transportation Management District (TMD) and must execute the Agreement prior to the release of any building permit for the proposed development.
- f. The Applicant, as part of the above Agreement or separately, must grant an easement to MCDOT to install a future bike-share station on the site, preferably along Woodmont Avenue. If a bike share station is appropriate at this site, then the location for the proposed bike-share station and the easement agreement with MCDOT for the proposed bike-share station must be finalized at least 30 days prior to any Planning Board hearing on the site plan for the development.

19. The APF review for the Preliminary Plan will remain valid until April 7, 2019.

BE IT FURTHER RESOLVED that having given full consideration to the recommendations and findings of its Staff, and for the reasons set forth in MCPB No. 11-138 and MCPB No. 13-50, and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

1. *The Preliminary Plan substantially conforms to the Sector Plan.*

The Subject Property lies within the boundaries of the Approved and Adopted 1994 Bethesda Central Business District ("CBD") Sector Plan. The Sector Plan supports mixed use development, including office uses near Metro. The Planning Board approves a mixed-use development with 466,470 square feet of commercial uses including 253,787 square feet of office space and 16,326 square feet of restaurant/retail use. There will be 196,357 square feet of hotel space, including a ballroom on the second level of the hotel. The maximum density allowed under the CBD-2 Zone is 5.0 FAR; the proposed density is 5.0 FAR. The development maximizes the building height at 143 feet, which is allowed by the zone. The project steps down in height from 143 feet closest to the Metro Core to 122 feet on the northern edge furthest away from the core. This is consistent with adjoining and nearby properties, some of which have been constructed with others being approved but not yet built, including Bethesda Place located directly to the south at 143 feet, 4900 Fairmont at 174 feet to the west, and the Lionsgate to the south at 143 feet.

The Sector Plan indicates that a mix of office, retail, restaurant, as well as residential uses is appropriate for the site. The Preliminary Plan will provide office, retail, restaurant and hotel uses that will be visible and accessible to a greater number of pedestrians. In addition, the Applicant has committed to provide a contribution to the Housing Initiative Fund as part of its amenity package. In light of the large number of residential and retail proposals in the vicinity that have recently been approved by the Planning Board, this intensity and diversity of land use conforms to the Sector Plan recommendations. Both the general goals of the Sector Plan and the specific objectives of the area advocate approval of optional method projects that provide employment and housing opportunities near both transit stations and other day-to-day necessities.

The ground-floor uses and off-site public space will serve not only the weekday office workers, but also the evening and weekend residents of the CBD, bringing pedestrian activity and vitality to what is currently an underutilized space.

The Preliminary Plan is in substantial conformance with the recommendations in the Sector Plan by:

- Establishing a vibrant and diverse downtown;
- Providing infill development that complements the existing urban fabric;
- Creating employment opportunities;
- Creating an appealing environment for working, shopping, and entertainment; and
- Creating circulation patterns that encourage walking, cycling, and the use of mass transit.

The Planning Board finds that the mixed-use development substantially conforms to the general goals and additional specific recommendations of the Sector Plan, including downtown environment, urban form, and employment, housing and land use described below.

Downtown Environment

The Downtown Bethesda Metro Core District is envisioned as a place that has a choice of retail, restaurant, cultural programming, open space and pathways. It should also include office uses with the potential for additional residential uses. The Board finds that the Preliminary Plan provides several features that address this goal:

- The mix of office, hotel and retail uses fulfills the Sector Plan goal of increasing the mix of uses.
- The public use space expands the existing network of open spaces in the area and provides a more direct connection to the Metro through connections to existing pedestrian routes. The design will reflect Bethesda as a “garden” through the imaginative use of onsite rain gardens and Low Impact Development techniques.
- The physical character of the public realm is well defined by building edges. The open spaces will shape the form of the buildings and relate well to the surrounding context of public spaces.
- The design of the architecture will add a contemporary structure to the urban fabric of Downtown Bethesda. It will provide a landmark and gateway element to Wisconsin Avenue that responds to views and vistas within the CBD. It will create a focal point that improves the orientation and strengthens the perception of a sub-center at the northern edge of the Bethesda core.
- The amenities will provide an animated space through the use of waterfalls, shade trees, seating areas, and art features.

Urban Form

In general, the Sector Plan encourages mixed-use development that includes retail, office and residential uses located in buildings on active streets.

- The Preliminary Plan will fulfill this goal by including restaurant/retail uses on the ground floor and office and hotel use above.
- The Preliminary Plan strengthens the urban form of the surrounding neighborhood by creating active street frontages both on Woodmont and Wisconsin Avenues.
- The open spaces will be activated by outdoor cafes and retail seating and open, tree-shaded plaza areas that will attract people to gather and stay.
- The new pedestrian circulation connections and choices will increase foot traffic and provide more efficient pedestrian connectivity.

- The cultural and artistic amenities will provide a sense of identity through the unique design of water features, lighting, and landscaping.

With regard to building height and the surrounding context, numerous Sector Plan recommendations speak to anticipated infill development with higher-density employment and housing uses downtown. The Applicant conducted shade studies to show the impact of the height and massing of the project on adjacent properties. The studies showed that the shade and massing relationships associated with this development will not cast significant shadow on presently used public areas or block direct sunlight from surrounding properties. The studies show that a significant portion of the shadows fall on roadways and only during portions of the day will there be detrimental impacts, while adverse effects on adjacent properties are minimal. In addition, the glass facades included in the building design further offset the shadow effect. During the summer months, when outdoor spaces get the most usage, the shadow impact of the proposed building is minimal on the surrounding properties, streets and sidewalks.

Employment, Housing, & Land Use

The applicable references in the Sector Plan refer to the need for increased choices associated with retail, restaurants, cultural programming, open space, and pathways in this area. The specific objectives with regard to this site are met as indicated:

- The Preliminary Plan creates job opportunities by providing a variety and mix of uses that are employment generators including hotel, office, and retail uses.
- The Applicant will contribute to the affordable housing goals of Montgomery County by contributing to the Housing Initiative Fund. The Applicant will make a payment to the fund based upon a formula of \$5 per FAR foot approved above a 4 FAR. The total payment for the maximum FAR approved for the project will be \$466,479 (93,294 square feet of gross tract area multiplied by 5).
- The design promotes a pedestrian and street-activating environment by applying the Bethesda Streetscape standards to frontage along Woodmont and Wisconsin Avenues. In accordance with these standards, the Preliminary Plan provides widened sidewalks paved with brick, street trees, seating areas, and pedestrian scaled lighting.
- The development consolidates multiple properties for an optional method of development to accommodate the maximum density in the CBD.
- The infill development is more environmentally sustainable because it concentrates growth near transit and other day-to-day needs, thereby reducing vehicular travel and saving open space in our suburban and agricultural areas. In addition the project provides green roofs and bio-

filtration techniques at grade that will significantly improve the quality of water flowing off-site during rain events.

Based upon the testimony provided at the Hearing and evidence provided by Staff, the Board finds that the Preliminary Plan is in substantial conformance with the Sector Plan.

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

Public facilities are adequate to accommodate the Preliminary Plan. Vehicular and pedestrian access will be safe and adequate with the proposed improvements. Sidewalks will be reconstructed along Woodmont and Wisconsin Avenues to facilitate pedestrian mobility.

As conditioned, the Preliminary Plan satisfies the LATR and PAMR requirements. The Applicant submitted a traffic study (dated October 31, 2011) per the LATR/PAMR Guidelines since the proposed development was estimated to generate 30 or more peak-hour trips during the typical weekday morning (6:30 a.m. – 9:30 a.m.) and evening (4:00 p.m. – 7:00 p.m.) peak periods. The traffic study determined traffic-related impacts of the proposed development on nearby roadway intersections during weekday morning and evening peak periods. By this resolution, the Board has reduced the Applicant's PAMR requirements from 62 to 29 trips.

Trip Generation

The peak-hour trip generation estimate for the Preliminary Plan was based on trip generation rates included in the LATR/PAMR Guidelines. The Preliminary Plan will generate 441 peak-hour trips during the weekday morning peak period and 471 peak-hour trips during the weekday evening peak period. After accounting for existing density on the site, the Preliminary Plan is estimated to generate 406 net "new" peak-hour trips during weekday morning peak period and 380 net "new" peak-hour trips during weekday evening peak period.

Local Area Transportation Review

Under Total (Build) traffic conditions, Critical Lane Volume (CLV) values for intersections included in the study were estimated to be below the Bethesda CBD congestion standards (1,600 and 1,800 CLV, respectively). Based on the analysis presented in the traffic study, this development satisfies the LATR requirements of the APF test.

Policy Area Mobility Review

To satisfy the PAMR requirements of the APF test, a development located within the Bethesda CBD Policy Area is currently required to mitigate 25% of "new" peak-hour trips generated by the development.

Based on the site trip generation summary, the PAMR mitigation requirement for the proposed development is calculated as 102 peak-hour trips for the morning peak period and 95 peak-hour trips for the evening peak period.

By virtue of being located within the Bethesda CBD, the Applicant is also eligible to receive a PAMR trip mitigation credit (determined by comparing Countywide and CBD trip generation estimates for a development). This peak-hour trip mitigation credit is equivalent to the difference in trip generation (i.e., net "new" trips) between similar developments located outside the CBD (determined using countywide trip generation rates) and located within the CBD (determined using CBD trip generation rates).

Thus, a development outside the CBD, similar to that proposed on the site, after discounting for existing onsite density, would generate 488 net "new" peak-hour trips during the morning peak-period and 412 net "new" peak-hour trips during the evening peak-period. The Preliminary Plan, as a result of being located within the Bethesda CBD, will receive a credit of 100 peak-hour trips for the morning peak period and 66 peak-hour trips (adjusted to reflect a zero impact for the decrease in restaurant/retail on the site) for the evening peak period towards its PAMR mitigation requirement. With the above credit, the proposed development is required to mitigate 2 peak-hour trips during the morning peak period and 29 peak-hour trips during the evening peak period. The Applicant is therefore required to mitigate 29 peak-hour trips to satisfy the PAMR requirements of the APF test.

Other Public Facilities

The Subject Property will be served by public water and sewer. The Preliminary Plan has been reviewed by the Montgomery County Fire and Rescue Service, which has determined that the Property has appropriate access for fire and rescue vehicles. Other public facilities and services, such as police stations, firehouses, schools, and health services, are operating according to the Subdivision Staging Policy and will be adequate to serve the Property. The Preliminary Plan is not proposing any residential, and therefore does not impact any local area school facilities. Electrical, telecommunications, and natural gas services are also available to serve the Subject Property.

3. *The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision.*

The Preliminary Plan meets all applicable requirements of the Montgomery County Code, Chapter 50. Access and public facilities will be adequate to support the proposed lot and uses. The proposed lot size, width, shape and orientation are appropriate for the location of the subdivision.

The Preliminary Plan 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. Proposed onsite Public Use Space exceeds the minimum requirement of 20 percent.

4. *The Preliminary Plan satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A.*

A Natural Resources Inventory/Forest Stand Delineation (No. 420111760) for the site was approved on July 1, 2011. The urban site is located within two separate watersheds, Little Falls Branch, a use class I-P watershed and the Lower Rock Creek, a use I watershed.

The submitted Preliminary Forest Conservation Plan identifies an afforestation planting requirement of 0.33 acres. The planting requirement will be met by payment of fee-in-lieu. The conditions of this Resolution require that the forest conservation planting requirements are satisfied prior to land disturbing activities occurring onsite.

The Planning Board finds that with the conditions imposed by this Resolution the Preliminary Forest Conservation Plan complies with the requirements of Chapter 22A, the Montgomery County Forest Conservation Law.

5. *The Preliminary Plan meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site.*

The MCDPS Stormwater Management Section approved the stormwater management concept for the site on September 8, 2011. The stormwater management concept consists of meeting required stormwater management goals via environmental site design guidelines to the maximum extent possible through the use of green roofs and micro-bioretenment. Onsite recharge is not required for redevelopment Preliminary Plans.

BE IT FURTHER RESOLVED that for the purpose of these conditions, the term "Applicant" also means the developer, the owner, or any successor(s) in interest to the terms of this approval; and

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 60 months from April 6, 2012, which was the initiation Date for the originally approved preliminary plan (as defined in Montgomery County Code Section 50-35(h)) and that prior to the expiration of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded among the Land Records of Montgomery County, Maryland or a request for an extension must be filed; and

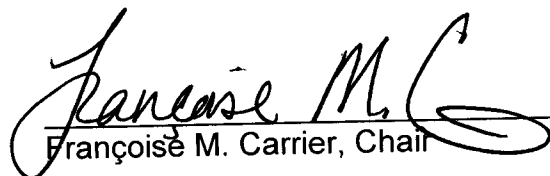
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is NOV 15 2013 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal was required to initiate such an appeal within thirty days of the date of the original mailing dates of MCPB No. 11-138 and amended by MCPB No. 13-50, respectively, for an appeal that pertains to matters decided in those resolutions, but to the extent that the appeal relates to Condition No. 18(b) of this resolution may file a petition for judicial review within 30 days of the date of issuance 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 Dreyfuss, seconded by Commissioner Anderson, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson and Dreyfuss voting in favor, and Commissioner Presley absent, at its regular meeting held on Thursday, November 7, 2013, in Silver Spring, Maryland.


Françoise M. Carrier, Chair