



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

FEB 27 2014

MCPB No. 13-191
Site Plan No. 820140020
8001 Newell Street
Date of Hearing: December 19, 2013

RESOLUTION

WHEREAS, under Montgomery County Code Division 59-D-3, the Montgomery County Planning Board is authorized to review site plan applications; and

WHEREAS, on August 27, 2013, Comstock Newell, LLC ("Applicant") filed an application for approval of a site plan for a seven-story mixed-use building containing 3,100 square feet of retail uses and 156,815 square feet of multi-family residential uses consisting of 187 dwelling units, including 12.5% Moderately Priced Dwelling Units ("MPDUs"), on 1.2 acres of CBD-1 and Ripley/South Silver Spring Overlay zoned land, located in the southeast quadrant of the intersection of Newell Street and Eastern Avenue ("Subject Property"), in the Silver Spring CBD Policy Area, Silver Spring CBD Sector Plan ("Sector Plan") area; and


WHEREAS, Applicant's site plan application was designated Site Plan No. 820140020, 8001 Newell Street ("Site Plan" or "Application"); 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 December 6, 2013, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on December 19, 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, on motion of Commissioner Dreyfuss, seconded by Commissioner Wells-Harley, by a vote of 5-0, Commissioners Anderson, Carrier, Dreyfuss, Presley, and Wells-Harley voting in favor, the Planning Board voted to approve the Application subject to certain conditions:

Approved as to
Legal Sufficiency


Georgia Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320
M. NCPPC Legal Department
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NOW, THEREFORE, BE IT RESOLVED that the Planning Board approves Site Plan No. 820140020 for a seven-story mixed-use building containing 3,100 square feet of retail uses and up to 156,815 square feet of multi-family residential uses consisting of a maximum of 187 dwelling units subject to the following conditions:¹

Conformance with Previous Approvals

1. The Applicant must comply with the conditions of approval for Project Plan No. 920130020 in MCPB Resolution No. 13-74.

Environment

2. Noise Attenuation

- a. Prior to issuance of a building permit, the Applicant must provide Staff with certification from an engineer specializing in acoustics that the building shell has been designed to attenuate projected exterior noise levels to an interior level not to exceed 45 dBA Ldn. The Applicant must construct the units in accord with these design specifications, with any changes that may affect acoustical performance approved by the engineer and Staff in advance of installation.
- b. After construction is complete, and prior to issuance of final residential occupancy permits, the Applicant must provide Staff a certification from an engineer specialized in acoustics confirming that units were constructed in accord with the required design specifications for noise attenuation.

3. Stormwater Management

The Planning Board has accepted the recommendations of the Montgomery County Department of Permitting Services ("MCDPS") – Water Resources Section in its stormwater management concept letter dated September 16, 2013, and hereby incorporates them as conditions of the Site Plan approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources Section provided that the amendments do not conflict with other conditions of the Site Plan approval.

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 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

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.

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.

Parks, Open Space, and Recreation

5. Recreation Facilities

- a. The Applicant must meet the square footage requirements for all of the applicable recreational elements and demonstrate that each element is in conformance with the approved M-NCPPC Recreation Guidelines.
- b. The Applicant must provide the following on-site recreation facilities, unless modified by Staff prior to approval of the Certified Site Plan:
 - i. Six picnic/seating areas
 - ii. Pedestrian walkway system
 - iii. Indoor community space
 - iv. Indoor fitness facility

6. Public Art

- a. The Applicant must provide and install the public artwork by artist David Hess, as presented to the Planning Department's Art Review Panel on October 2, 2013, and illustrated on the Certified Site Plan.
- b. Any significant changes to the public artwork concept presented on October 2, 2013, must be presented to the Art Review Panel and approved by Staff prior to approval of the Certified Site Plan.
- c. Significant changes to the concept, as determined by Staff, proposed after approval of the Certified Site Plan, will require a Site Plan Amendment.

7. Public Use and Amenities

- a. The Applicant must provide a minimum of 9,014 square feet of on-site public use space, as illustrated on the Certified Site Plan.
- b. The Applicant must provide the Silver Spring streetscape standard improvements, as revised, along the Subject Property frontage along Newell Street, as illustrated on the Certified Site Plan.

8. Maintenance of Publicly Accessible Amenities

The Applicant is responsible for maintaining all publicly accessible amenities including, but not limited to, landscaping, walkways, lighting, benches and artworks.

Transportation and Circulation

9. Transportation

- a. The Planning Board has accepted the recommendations of the MCDPS – Right-of-Way Section in its email dated November 25, 2013, and hereby incorporates them as conditions of the Site Plan approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the email, which may be amended by the MCDPS – Right-of-Way Section provided that the amendments do not conflict with other conditions of the Site Plan approval.
- b. The Applicant must enter into a Traffic Mitigation Agreement (TMAg) with the Planning Board and the Montgomery County Department of Transportation (“MCDOT”) to participate in the Silver Spring Transportation Management District and must execute the TMAg prior to the release of any building permit for development on the site, exclusive of any sheeting and shoring permit.
- c. Prior to issuance of a certificate of occupancy, in addition to providing the required private motorcycle spaces and private bicycle spaces, the Applicant must provide a minimum of ten public bicycle parking spaces (“inverted U” or similar), the location of which to be determined prior to approval of the Certified Site Plan.

Density and Housing

10. Moderately Priced Dwelling Units (MPDUs)

- a. The Applicant must provide 12.5% percent MPDUs in accordance with the letter from the Department of Housing and Community Affairs (“MCDHCA”) dated December 19, 2013.
- b. The MPDU agreement must be executed prior to the release of any building permit, exclusive of the sheeting and shoring permit.
- c. The Planning Board has accepted the recommendations of MCDHCA in its letter dated December 19, 2013, and does hereby incorporate them as conditions of the Site Plan approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDHCA provided that the amendments do not conflict with other conditions of the Site Plan approval.

Site Plan

11. Site Design

The exterior architectural character, proportion, materials, and articulation must be substantially similar to the schematic elevations shown on the Certified Site Plan, as determined by Staff.

12. Private Lighting

- a. The lighting distribution and photometric plan with summary report and tabulations must conform to the Illuminating Engineering Society of North America ("IESNA") standards for residential development.
- b. All onsite down-light fixtures must be full cut-off fixtures.
- c. Illumination levels shall not exceed 0.5 footcandles (fc) at any property line abutting county roads and residential properties, unless modified by Staff prior to approval of the Certified Site Plan.
- d. Deflectors must be installed on all fixtures causing potential glare or excess illumination, specifically on the perimeter fixtures abutting the adjacent residential properties.
- e. The height of the light poles must not exceed the height specified on the Certified Site Plan.

13. Surety

Prior to issuance of a building permit within each relevant phase of development, the Applicant must provide a performance bond(s) or other form of surety in accordance with Section 59-D-3.5(d) of the Montgomery County Zoning Ordinance with the following provisions:

- a. The Applicant must provide a cost estimate of the materials and facilities, which, upon Staff approval, will establish the initial surety amount.
- b. The amount of the bond or surety must include plant material, on-site lighting, recreational facilities, and site furniture.
- c. Prior to issuance of the above-grade building permit, the Applicant must enter into a Site Plan Surety & Maintenance Agreement with the Planning Board in a form approved by the Office of General Counsel that outlines the responsibilities of the Applicant and incorporates the cost estimate.
- d. The bond/surety must be tied to the development program, and completion of plantings and installation of particular materials and facilities covered by the surety for each phase of development will be followed by inspection and reduction of the surety.

14. 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. On-site amenities including, but not limited to, sidewalks, benches, artwork, and trash receptacles must be installed prior to release of the final residential use and occupancy permits for the building.
- b. Clearing and grading must correspond to the construction phasing to minimize soil erosion and must not occur prior to approval of the Sediment Control Plan.

- c. The development program must provide phasing for installation of on-site landscaping and lighting.
- d. Landscaping associated with the building must be completed as construction of each facility is completed.
- e. The development program must provide phasing of stormwater management and sediment and erosion control.
- f. The indoor residential recreational facilities must be completed prior to issuance of the final occupancy permit.

15. 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 stormwater management concept approval, development program, inspection schedule, and Site Plan Resolution on the approval or cover sheet.
- b. Ensure consistency of all details and layout between the Site Plan and landscape plan.
- c. Provide final details for proposed artwork.
- d. Provide the height of all on-site light poles including the mounting base.

16. Adequate Public Facilities Review

The Adequate Public Facility ("APF") review for the Site Plan will remain valid for eighty-five (85) months from the date of mailing of this Planning Board Resolution.

BE IT FURTHER RESOLVED, that all site development elements as shown on the 8001 Newell Street drawings filed by the Applicant in M-NCPPC's electronic filing system on October 11, 2013, shall be 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 Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the 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.*

The Application did not require a development plan, a diagrammatic plan, or a schematic development plan. As conditioned, the Site Plan is consistent

with Project Plan No. 920130020 with respect to density, public use space and amenities, massing, and the provisions of the zone.

2. *The Site Plan meets all of the requirements of the zone in which it is located.*

The approved uses are allowed in the CBD-1 and Ripley/South Silver Spring Overlay zones, and the Site Plan fulfills the specific purposes of each zone. The Site Plan fulfills the purposes of the CBD-1 zone by providing a design that will produce a desirable relationship between buildings in the Silver Spring Central Business District ("CBD"). The height of the approved building is comparable to the adjacent 8045 Newell Street building, which will be substantially separated from the approved building by green space. For the building as approved, the zone permits heights up to 90 feet; however, the Applicant is providing a maximum height of 74 feet specifically to address the relationship with existing adjacent buildings and structures. The building materials will be compatible with surrounding buildings and will fit with the urban context.

The relationship of the approved building to existing adjacent buildings is appropriate for a CBD. In the CBD, adjacent buildings with windows are required to be set back at least 30 feet from each other if both buildings have windows. By setting the building 30 feet back from the rear property line and 60 feet from the adjacent 8045 Newell Street building, the Site Plan exceeds that standard in order to minimize the impacts on available sunlight and existing views from adjacent buildings. The increased setback provides for increased green space between the adjacent 8045 Newell Street building and the approved building, adding to a desirable relationship between existing and approved buildings. The building is also set back 60 feet from Eastern Avenue to fulfill the Zoning Ordinance requirement and to allow for a stronger relationship with the adjacent Eastern Village Co-housing development. By virtue of the setback from Eastern Avenue, the building also complies with the required setback along Newell Street where it confronts residential development in the District of Columbia.

The Site Plan will enhance pedestrian, cyclist, and vehicular circulation by limiting auto access to one point on-site and providing all required residential parking on-site, thereby limiting future demand for on-street parking and spaces in public parking garages. It will also enhance the circulation system within the CBD.

The Site Plan fulfills the purposes of the Ripley/South Silver Spring Overlay zone by providing a cohesive development pattern and mixed-use building that is appropriate for an urban environment. The application will redevelop an under-utilized site in South Silver Spring while protecting

surrounding residential neighborhoods. In addition, the Site Plan provides an attractive design that is compatible with adjacent existing buildings and uses. Because no part of the approved building will be within 60 feet of the Eastern Avenue right-of-way or the corner of Newell Street confronting a residential zone in the District of Columbia, all parts of the building may exceed 45 feet in height under the Ripley/South Silver Spring Overlay Zone, up to a maximum of 90 feet. As approved, no portion of the building will exceed 74 feet in height.

The subject property is located in the Silver Spring parking lot district. In accordance with Section 59-E-5 of the Zoning Ordinance, a new use that is located within a parking lot district is not required to provide the full complement of parking spaces on-site. Parking that is not provided on the site will be subject to an ad valorem tax. The parking spaces in the public garages provided by the parking lot district will be available to visitors to the subject property.

Requirements of the CBD-1 and Ripley/South Silver Spring Overlay Zones

Based on the following data table, which sets forth the development standards approved by the Planning Board and binding on the Applicant, and based on other evidence and testimony of record, the Application meets all of the applicable requirements of the CBD-1 and Ripley/South Silver Spring Overlay zones.

Data Table

Development Standard	Permitted/ Required	Approved
Building Height (feet)		
Ripley/South Silver Spring Overlay Zone ("RSSOZ")		
Within 60' of Eastern Avenue	45'	n/a
Beyond 60' of Eastern Avenue	90'	54' facing Eastern Avenue 74' facing Newell Street
Setbacks (feet)		
CBD-1/RSSOZ		
Front (Newell Street)	n/a	0
Front (Eastern Avenue)	60' ¹	60' ²
Site Area (square feet)		
Net Tract Area	n/a	41,245
Dedications	n/a	12,060
Gross Tract Area	18,000	53,305
Density		
CBD-1: Floor Area Ratio	3.0	3.0
Allowable square footage	159,915	159,915
-Residential		156,815 (187 units)
-Non-residential		3,100
MPDUs	12.5%	12.5% (24 units)
Public Use Space (% of net lot area)		
On-Site Public Use Space	20	21.85
Off-Site Amenity Space	n/a	18.17
Total Public Use & Amenity Space	20	40.02
Parking		
Residential Parking	196	199
Retail Parking	14	0
Total Vehicle Spaces	210	199³

¹ Section 59-C-18.202(b)(1) requires a 60-foot setback for buildings on Eastern Avenue or Newell Street that confront a residential zone in the District of Columbia and exceed 45 feet in height, up to a maximum of 90 feet.

² The sixty foot setback from Eastern Avenue satisfies the requirement that "[b]uilding height in the overlay zone along Newell Street and Eastern Avenue that confronts a residential zone in the District of Columbia must not exceed a height of 45 feet" as the Board interpreted it with the project plan.

³ The Subject Property is located in the Silver Spring parking lot district, and as such is not required to provide the full complement of parking spaces. Parking that is not provided on-site, consistent with Section 59-E, will be subject to an ad valorem tax.

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 approved building is located close to the property line along the Newell Street frontage but set back 60 feet from the Eastern Avenue frontage. This location provides easy access to the building from adjoining sidewalks, while maintaining an adequate distance from the one-family detached dwellings on the opposite side of Eastern Avenue. In addition, the building is set back from the rear and side property lines to maintain adequate distance from other residential properties in this block. The location of the building is adequate and efficient, while meeting the aesthetic concerns of the area, and it does not pose any safety concerns on the Subject Property.

b. Open Spaces

The Application provides 9,014 square feet of public use space, which is 21.8% of the Subject Property's net lot area. This exceeds the 20% requirement established in the Zoning Ordinance. The public use space is largely comprised of an approximately 7,700 square-foot pocket park located at the intersection of Newell Street and Eastern Avenue. The park will include lawn, trees, shrubs, perennials, artwork, and stormwater best management practices. This location for the public use space brackets Newell Street with publicly accessible open space at both ends, because there are several open spaces at the intersection of Newell Street and East West Highway, including developer-provided public use spaces and the publicly owned Acorn Park. In addition, the location of the public use space on the Subject Property ensures that it will be prominently visible and allows the placement of a diagonal pedestrian walkway between Eastern Avenue and Newell Street that will shorten the path of travel to the Silver Spring Metrorail station and the remainder of the CBD beyond. The Site Plan's open spaces, landscaping, and site details adequately and efficiently address the needs of the approved use and the recommendations of the Sector Plan, while providing a safe and comfortable environment.

c. Recreation Facilities

The Site Plan meets the recreation facilities requirements for all age groups (tots, children, teens, adults, and seniors) by providing six picnic/seating areas, a pedestrian pathway system, an indoor community room, and an indoor fitness facility. As shown in the tables in the Staff Report, the provision of these

facilities exceeds the calculated demand for recreational facilities generated by the future residents of the Subject Property.

d. Vehicular and Pedestrian Circulation

Pedestrian access from adjacent sidewalks adequately and efficiently integrates the Subject Property into the surrounding area. Safety is enhanced by reduction of the two current curb cuts into one curb cut, thereby reducing conflicts between pedestrians and drivers. Provision of the diagonal walkway from Newell Street to Eastern Avenue will increase efficiency for pedestrians.

The approved vehicular circulation design efficiently directs traffic into and through the Subject Property with minimal impacts to pedestrian circulation. The underground parking will separate parking facilities from the pedestrian realm above ground.

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

The Subject Property's building and its use will be compatible with other existing and proposed development. The building massing, step-backs, and heights are compatible with adjacent and surrounding uses, especially with the one-family detached neighborhood across Eastern Avenue to the west and the adjacent multi-family buildings. The building massing has been designed so as not to adversely affect adjacent buildings and uses.

The CBD-1 Optional Method of Development has no setback requirement. However, the applicant has set the building back 30 feet from the rear property line it shares with the multi-family building at 8045 Newell Street in order to minimize any impact to that building. The Ripley/South Silver Spring Overlay Zone limits building heights fronting on Eastern Avenue to 45 feet for the first 60 feet from the street where proposed development confronts a residential zone in the District of Columbia. Beyond 60 feet from the right-of-way, building height may increase to 90 feet. The applicant has chosen to locate their public use space within the 60 foot setback, therefore negating the 45-foot height limitation along Eastern Avenue. Furthermore, the building is approved for 54 feet in height at this setback line, after which it steps back an additional 12 feet to reach a total height of 74 feet. The Applicant has exceeded the requirements of the Ripley/South Silver Spring Overlay zone to reduce the impact the approved building will have on the neighbors in South Silver Spring and in the District of Columbia. The shadows cast by the approved building will have a similar impact upon the 8045 Newell Street Condominium building as the 8045 Newell Street Condominium building has upon the land directly to its southeast.

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.*

A Forest Conservation Exemption was approved on May 14th, 2012, for the Subject Property. The Subject Property qualifies for an exemption because it is less than 1.5 acres with no existing forest, specimen trees, or champion trees, and the afforestation requirements would not exceed 10,000 square feet. The Subject Property is 41,245 square feet, with an additional off-site disturbance area of 12,060 square feet in the right-of-way for a total net tract area of 53,305 square feet. This is under the 65,340 square-foot (1.5-acre) limit allowed under Section 22A-5(s)(1).

The stormwater management concept will meet required stormwater management goals via environmental site design to the maximum extent practicable with the use of a green roof and micro-bioretenion. A waiver was granted by MCDPS for the volume that could not be treated due to a shallow storm drain.

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 Site Plan shall remain valid as provided in Montgomery County Code § 59-D-3.8; 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 FEB 27 2014 (which is the date that this resolution is mailed to all parties of record); and

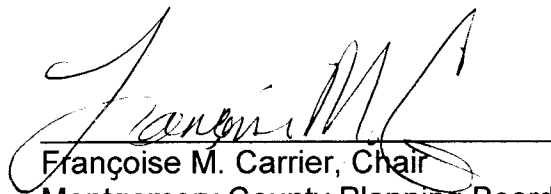
BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this

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 Vice Chair Wells-Harley, seconded by Commissioner Presley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley voting in favor at its regular meeting held on Thursday, February 20, 2014, in Silver Spring, Maryland.



Françoise M. Carrier, Chair
Montgomery County Planning Board