





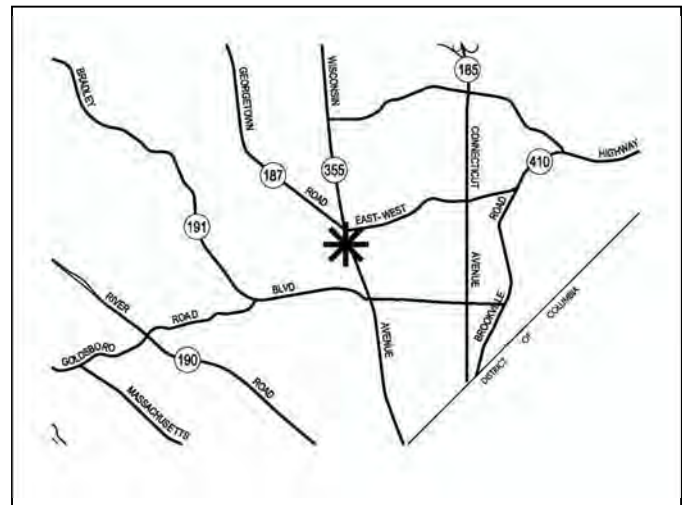
Project Name: Lot 31/31A Bethesda, Site Plan Amendment, No. 82007018C

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Description

Completed: 3.20.2017

- Request to remove a note limiting the area within the public right-of-way that may be used for outdoor restaurant seating and instead provide a 6-foot clear pedestrian area on the sidewalk
- Current use: Mixed-use development, with restaurants, retail, and multi-family housing
- Located on the south side of Bethesda Avenue astride the intersection with Woodmont Avenue
- 3.07 gross acres zoned CR 2.75 C 0.5 R 2.5 H 55T in the *Bethesda CBD Sector Plan* area;
- Applicant: Lot 31 Associates/Stonebridge
- Accepted as complete on 8.29.2016



Summary

- Under Section 7.7.1.B.1, this amendment is being reviewed under the standards and procedures of the property's zoning on October 29, 2014.
- Staff recommends APPROVAL with Conditions.
- The application was submitted in response to a violation of the Certified Site Plan for outdoor restaurant seating outside of the area designated on the Plan, and within the pedestrian area of the sidewalk. The violation has since been resolved.
- The Planning Board has not reviewed a layout plan for outdoor seating in this location for any previous Site Plan application.
- Staff received complaints about the condition leading to the violation before this application and much correspondence opposing the amendment.
- After initially preparing to recommend denial of the proposed amendment, staff worked with the Applicant to produce a compromise plan, upon which the current recommendation of conditional approval is based.

SECTION 1: RECOMMENDATION AND CONDITIONS

Staff recommends approval of Site Plan 82007018C. All site development elements shown on the latest electronic version as of the date of this Staff Report submitted via ePlans to the M-NCPPC are required except as modified by the following conditions.¹

1. Clear Pedestrian Path

Except as illustrated on the Certified Site Plan for the area outside the main patron entrance to the Silver Restaurant, the Applicant must provide along the site street frontage a minimum free and clear pedestrian path of 10’.

2. Street Trees

- a) As illustrated on the Certified Site Plan, for purposes of accommodating outdoor dining for the Silver Restaurant tenant in the abutting non-residential bay(s), the Applicant may remove the two street trees located immediately north of the loading dock on the west side of Woodmont Avenue.
- b) For tree removal, the Applicant must leave in place the tree pit and any associated amended soil panel, but may remove surface soil as necessary to accommodate installation of a level streetscape, with detail to be approved by Staff at Certified Site Plan.
- c) Not later than the next growing season after Silver Restaurant ceases to be the tenant in the abutting non-residential bay(s), the Applicant must replant the street trees identified above.
- d) By Certified Site Plan, the Applicant must illustrate, for Staff approval, landscape, streetscape, or similar measures to be taken to provide year-round visual interest along the Silver Restaurant frontage.

¹ For the purposes 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.

SECTION 2: SITE DESCRIPTION

Site Vicinity

The subject site (Subject Property or Property) consists of one lot in the Bethesda Row area of Downtown Bethesda, occupying both sides of Woodmont Avenue south of Bethesda Avenue, in the 1994 *Bethesda CBD Sector Plan* area. The surrounding area includes mixed commercial, office, and residential development to the west, east, and north of the site, and single-family residential development immediately to the south.



Vicinity Map

Site Analysis

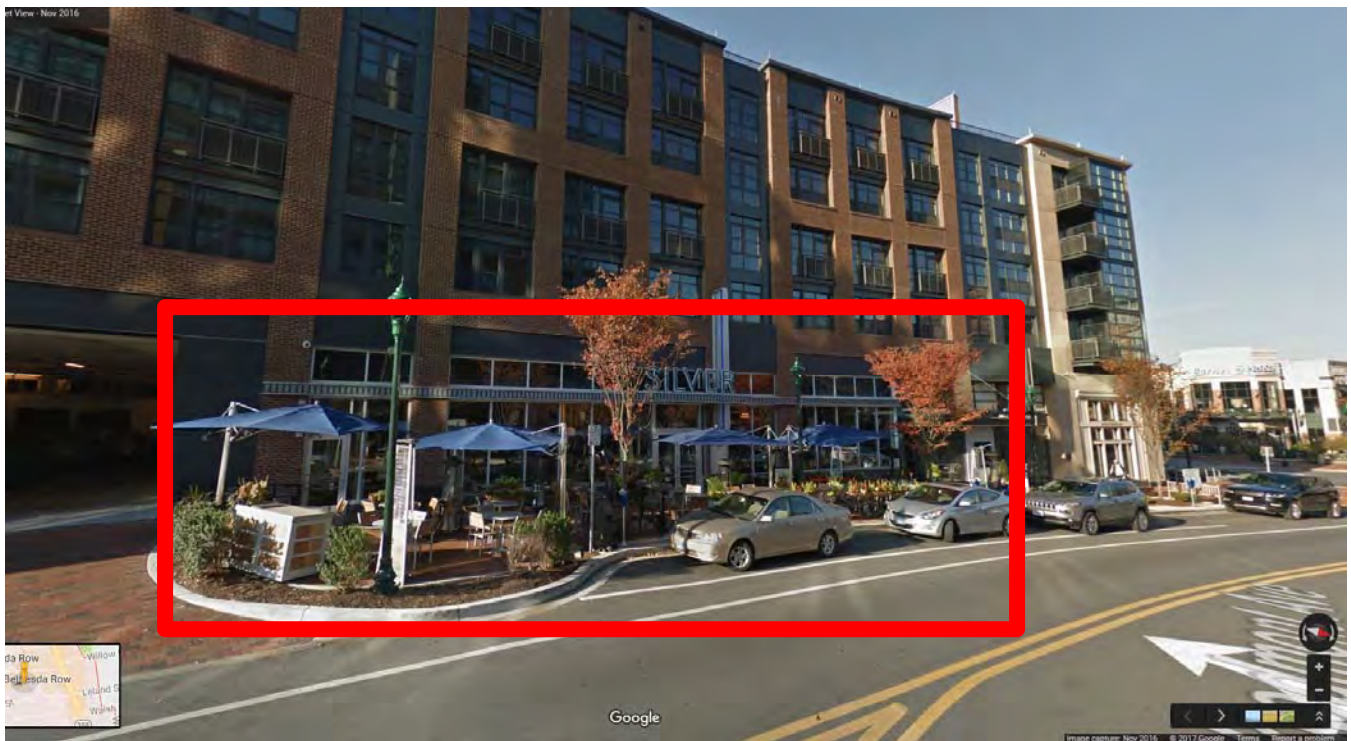
The 3.07-acre Property is developed with a mixed-use development with multi-family residential and retail uses. The focus of this amendment is the sidewalk along the west side of Woodmont Avenue, outside the Silver restaurant.



Aerial View



Woodmont Avenue, Looking South



Woodmont Avenue, Looking North

SECTION 3: PROJECT DESCRIPTION

Previous Approvals

The Lot 31/31A Bethesda redevelopment is the product of a public-private partnership between Montgomery County Department of Transportation (then Department of Public Works and Transportation) and Stonebridge Carras Development. The project involved the redevelopment of two County surface parking lots, where the developer would acquire the County Land, including a portion of Woodmont Avenue, and build new below-grade public parking facilities and reconstruct Woodmont Avenue through the site.

The approvals required to realize this development included a Mandatory Referral for the new parking garage, abandonment of a portion of Woodmont Avenue, rezoning the site from CBD-1 and R-60 to TS-M, and Preliminary and Site Plans:

- On October 10, 2006, the County Council approved **zoning application G-850** (by Resolution 15-1632 adopted October 10, 2006) to rezone the site from CBD-1 and R-60 to TS-M, with Binding Elements. The Associated Development Plan and Binding Elements limited the maximum number of dwelling units to 250, and addressed parking, building setbacks and height, and open space, among other issues.
- On September 20, 2007, the Planning Board approved **Preliminary Plan 120070690** (via Resolution 07-184 dated December 20, 2007) and **Site Plan 820070180** (via Resolution 07-198 dated December 20, 2007) creating two lots for a mixed-use development with a up to 250 multi-family dwelling units and 40,000 square feet of retail space in the TS-M zone.
- On the July 21, 2011, Consent Agenda, the Planning Board approved **Site Plan Amendment 82007018A** (via Resolution 11-57 dated August 9, 2011) for minor changes to the approved Final Forest Conservation Plan.
- On January 26, 2012, the Planning Board approved **Preliminary Plan Amendment 12007069A** (via Resolution 12-01 dated February 2, 2012) to consolidate the two lots into one lot.
- On April 6, 2015, the Planning Director administratively approved **Site Plan Amendment 82007018B** (via a Memorandum dated April 3, 2015) for minor modifications to the details of the public spaces and streetscape.

Selected approvals are included in Attachment A.

Notice of Violation

The Applicant submitted this Site Plan Amendment in response to a violation of the Certified Site Plan for this development for outdoor seating for the Silver Restaurant that was located outside of the area designated on the Certified Site Plan, and within the pedestrian area of the sidewalk.

Staff received complaints that the sidewalks on Woodmont Avenue in front of the Silver restaurant were too narrow and were impeding pedestrian traffic, and created an unsafe and undesirable condition. The Department of Permitting Services (DPS) conducted an inspection and on May 9, 2016, issued the Applicant with a Notice of Non-Compliance (NONC) with the Certified Site Plan. On

September 16, the Planning Department issued the developer an Administrative Citation (SP002) for continued violation of the Certified Site Plan. (Attachment B)

The Applicant has since removed the non-compliant elements and the violation has been addressed.

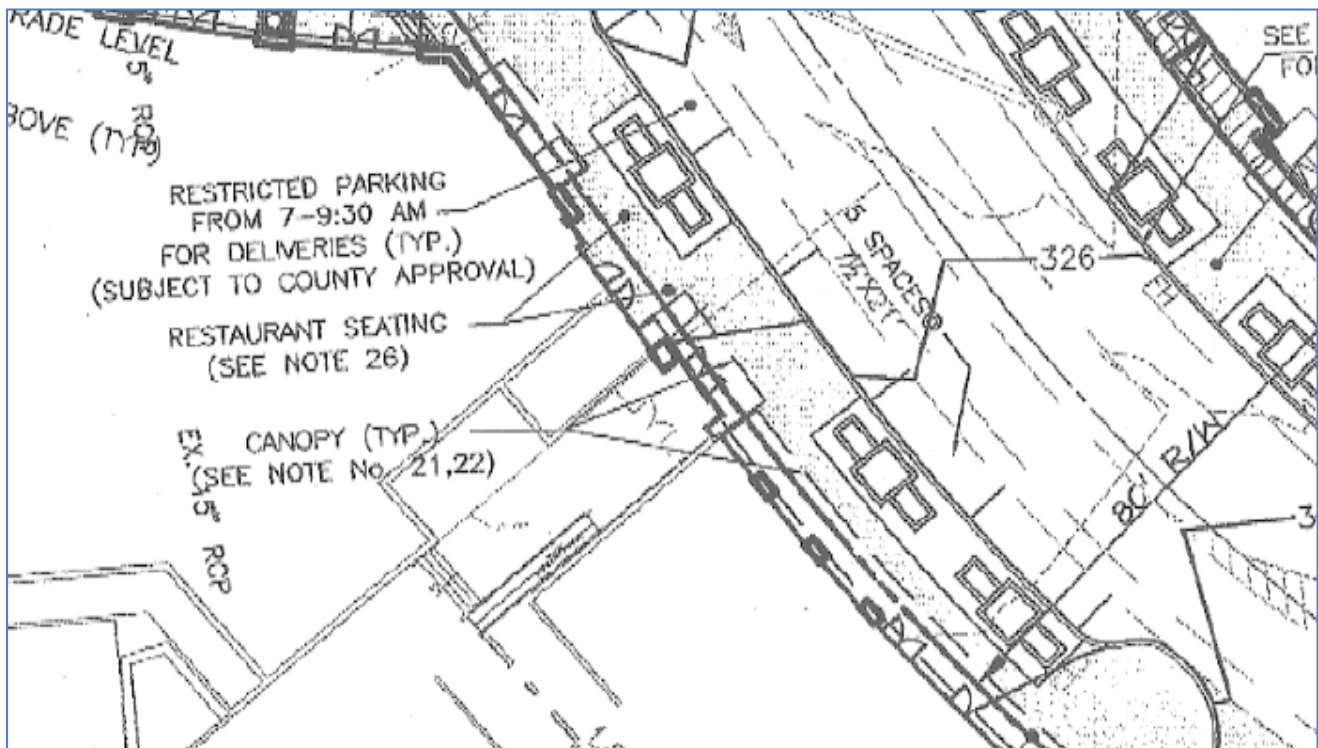
Approved Plans v. Installed Condition

The Certified Site Plan for 820070180 included in the General Notes on sheet C-4 the following:

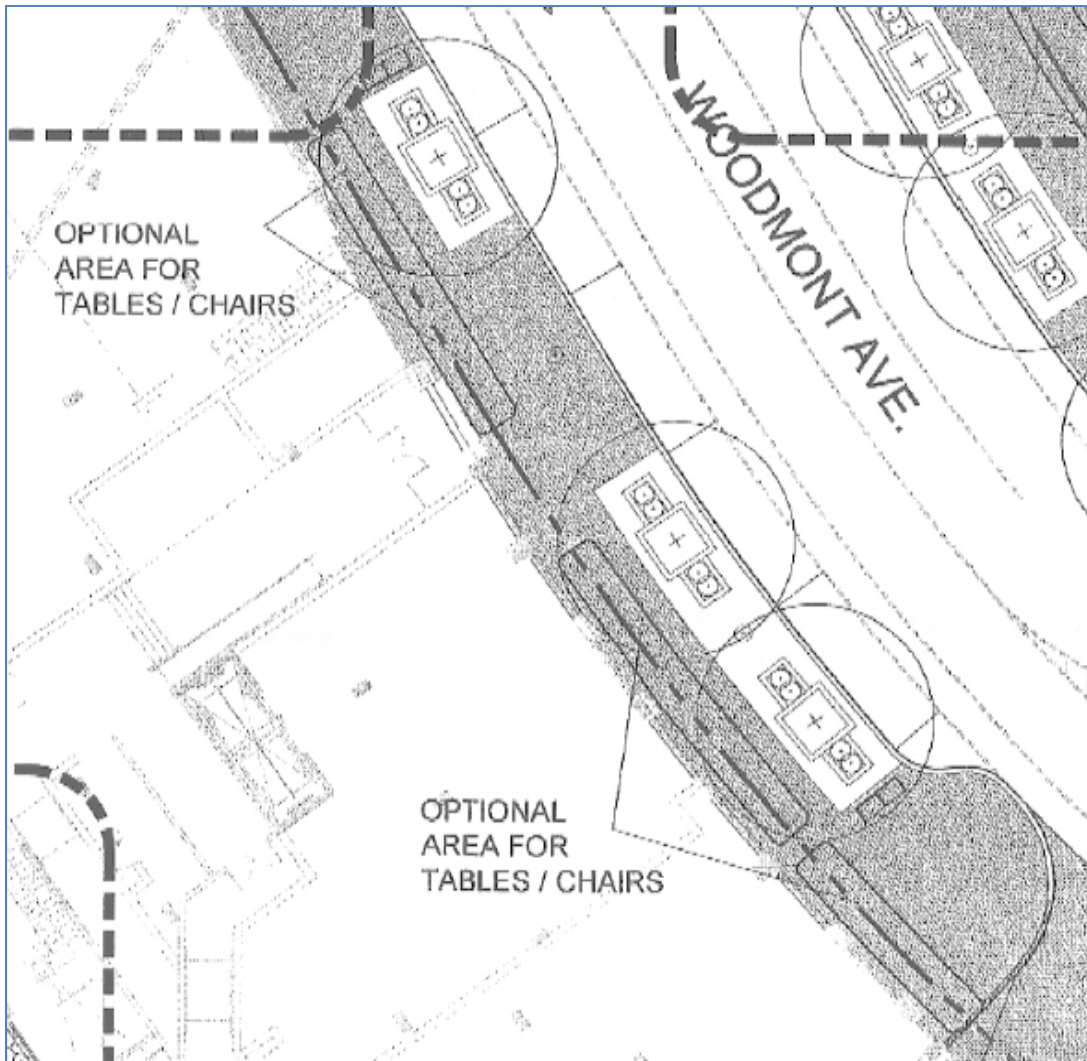
26. Applicant may use Woodmont Avenue right-of-way from face of curb to 10' +/- face of building for tenant restaurant (if any) outdoor seating.

While the note appears in a modified form (“The Applicant requests...”) on the plans submitted to staff in advance of the original Planning Board hearing, and graphically presented in reduced form in the staff report, the location of outdoor restaurant seating is not specifically discussed in the application, staff report, Planning Board hearing, or resolution for the 820070180 Site Plan, nor was it addressed in the zoning case. (Though the expectation that public seating would be limited to “non-restaurant areas” was referenced in the zoning case.)

The Certified Site Plan drawings inconsistently show the area dedicated to outdoor seating at the Silver restaurant. The site plan sheet identifies the area between the tree pits and the building face as “Restaurant Seating (See Note 26)”. The Landscape Plan shows “Optional Area for Tables/Chairs” next to the building face.

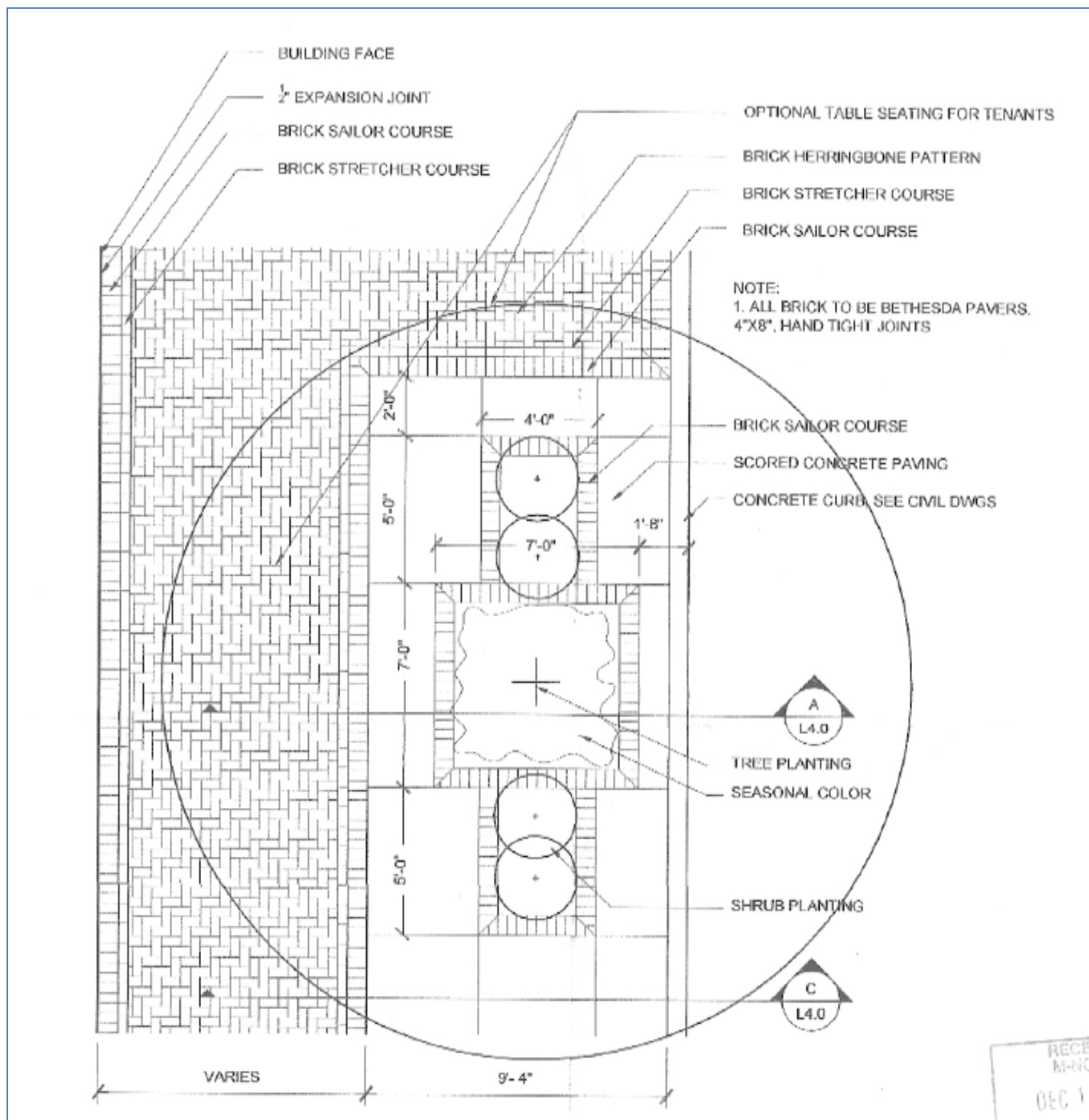


Detail, Certified Site Plan Sheet, 82007018A



Detail, Certified Site Plan Landscape Sheet, 82007018A

The Certified Site Plan also includes a streetscape detail that covers the sidewalk, illustrated below. This detail indicates that the depth of the tree-pit area, as differentiated from the brickwork area, is 9'-4" inside the curb, and that "Optional Table Seating for Tenants" could be located in the bricked sidewalk area between the tree-pit treatment as well as between that treatment and the building face. Given that the sidewalk in front of the Silver is about 17-18' wide, depending on where you measure, this detail would suggest that table seating would perforce be limited to the area between the tree pits to be consistent with Note 26.



Detail, Certified Site Plan Streetscape Detail, 82007018A

As shown below, the table seating the restaurant tenant installed, however, was well within the 10' clear area described by Note 26. (photos courtesy of Lilian Burch) This seating was installed pursuant to an approved DPS permit, which DPS withdrew after it was determined to be in conflict with the Certified Site Plan.



Sidewalk outside Silver Restaurant, looking northwest, Summer 2016



Sidewalk outside Silver Restaurant, looking southeast, Summer 2016

Proposed Amendment

The Site Plan Amendment proposes to remove General Note 26, and instead use the Certified Site Plan to clearly define pedestrian and seating areas.

Initial Proposal

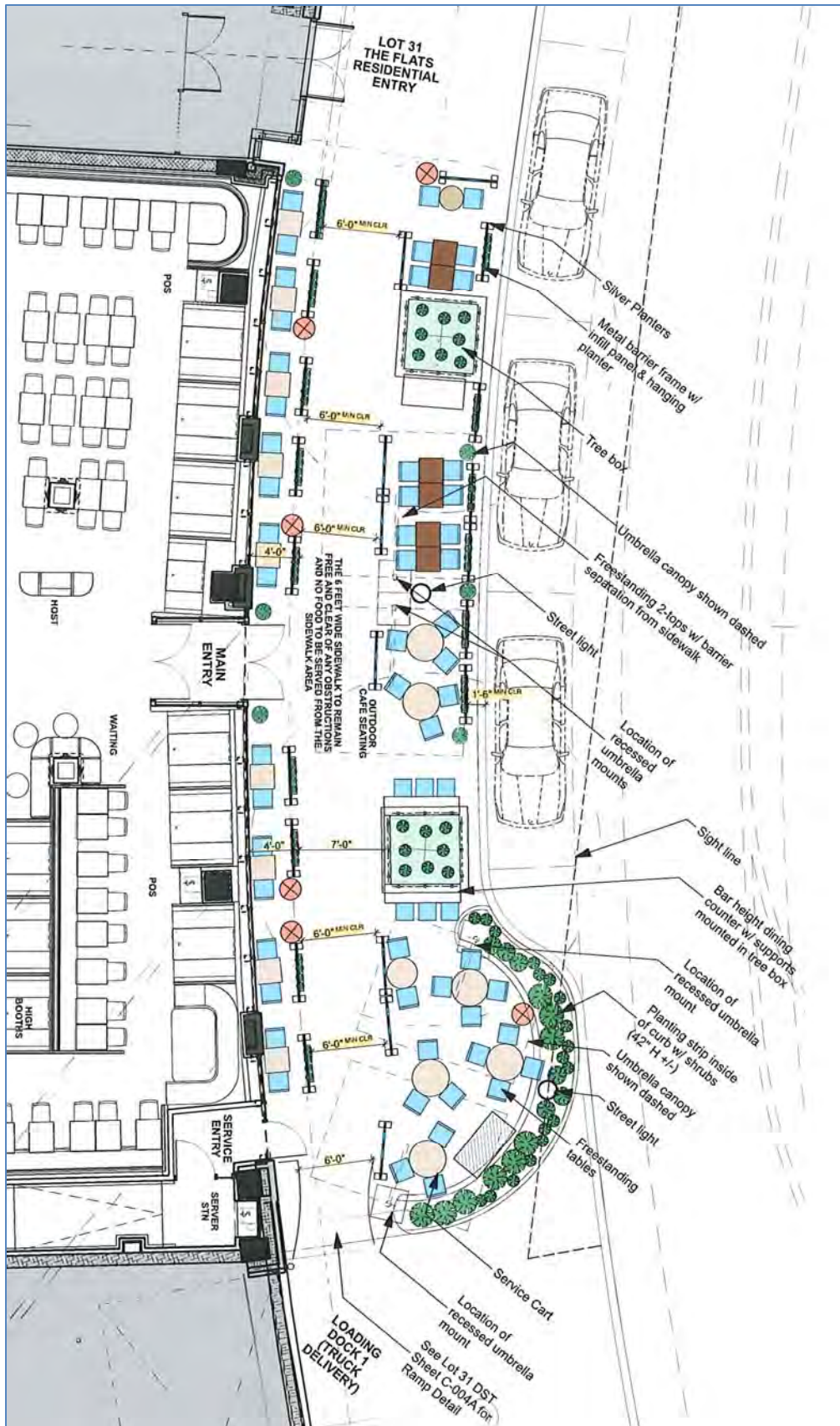
Instead of having a clear pedestrian area extending out approximately 10' from the face of the building, with seating between the pedestrian area and the curb, the Applicant initially proposed:

- 4' table seating area next to the building,
- 6' wide pedestrian area,
- 6-7' of table seating in the area between the street trees, and
- 1.5' clear area at the curb to accommodate car door swings.

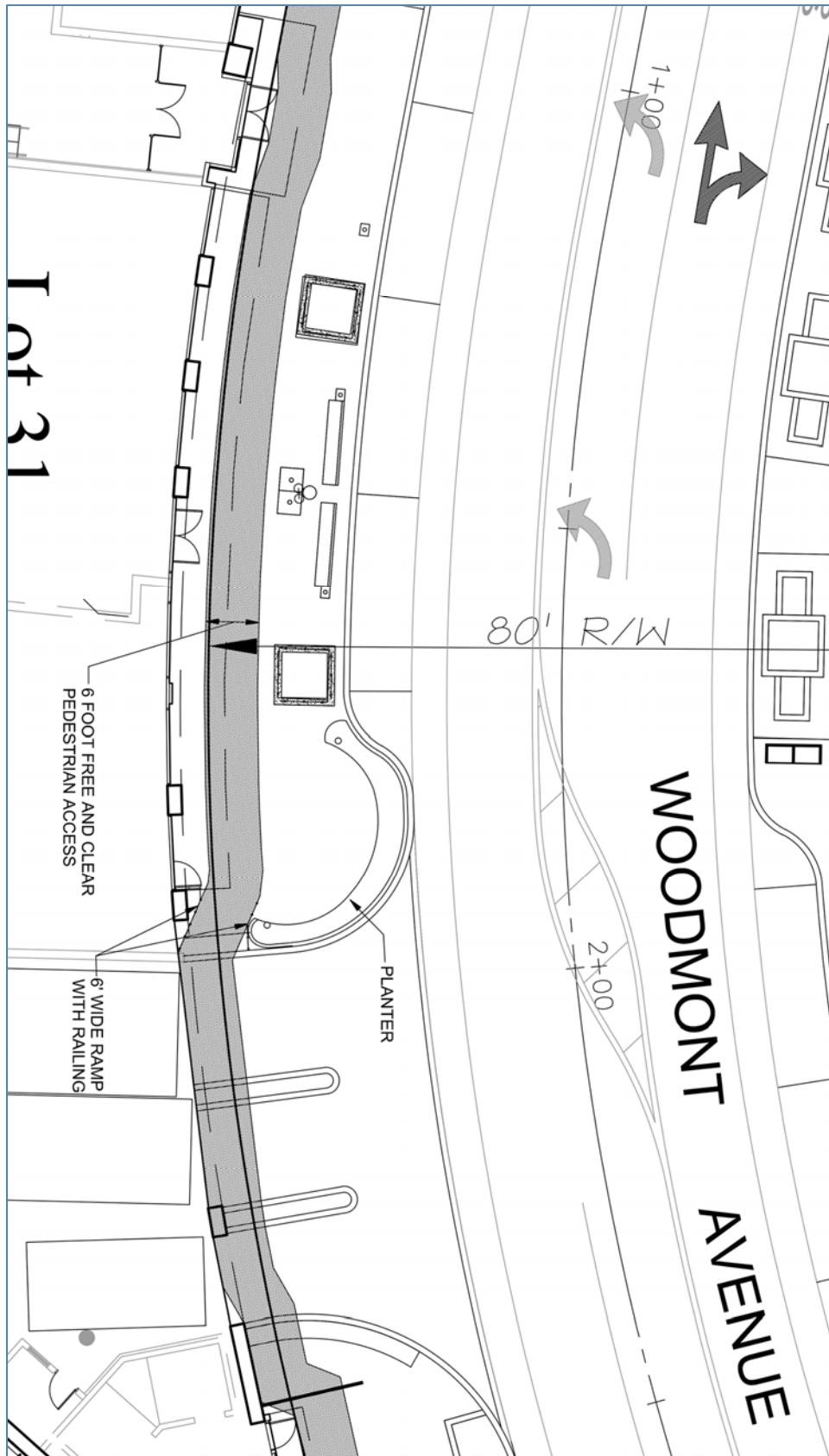
The diagram on the next page further notes that "The 6 feet wide sidewalk to remain free and clear of any obstructions and no food to be served from the sidewalk area." The Applicant installed the alternative layout as a demonstration, shown below.



Sidewalk outside Silver Restaurant, looking southeast, Fall 2016



Initial Proposed Woodmont Avenue Seating Layout, Silver



Initial Proposed 6'-Minimum Clear Pedestrian Area

On October 3, staff from DPS and the Planning Department met on-site with the Applicant to look at the initial layout. On October 24, 2016, the DPS Director sent a letter to the Planning Director advising that DPS:

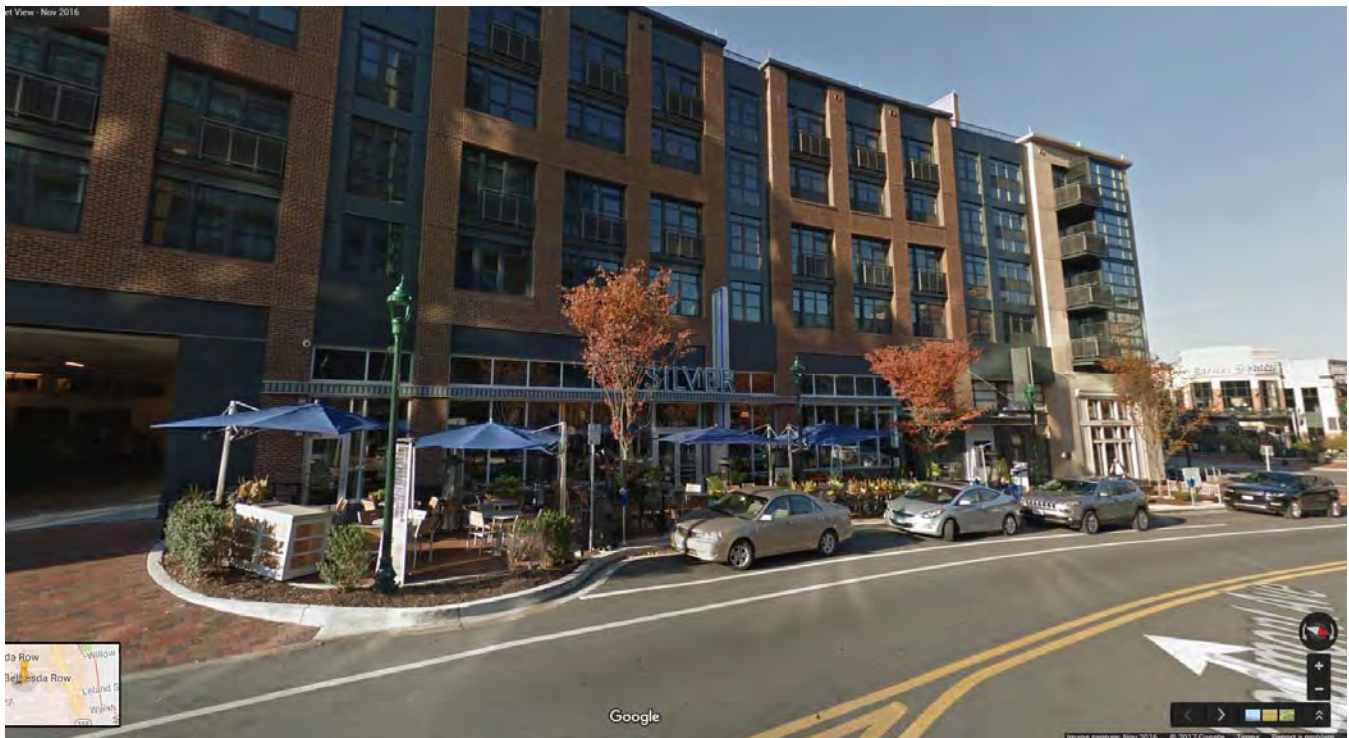
is prepared to approve the plan provided that the minimum 6 feet wide sidewalk in the public right-of-way (the “Free and Clear Area”) is maintained free and clear of obstruction, no food or drink is served in or from the public sidewalk Free and clear Area, and the Planning Board approves a conforming site plan amendment. (Attachment C)

Revised Proposal

As discussed below, Staff determined that a clear pedestrian path of six feet, with service on both sides, was too narrow to properly balance the public needs of reasonably unimpeded pedestrian movement and the private needs of servicing Silver’s outdoor seating. After discussions with Staff, the Applicant submitted an updated design, illustrated on the next page.

The revised proposal provides a minimum free-and-clear pedestrian path of 10’ along the outside approximately two-thirds of the Silver Restaurant façade, reduced to 7’-4” for the remaining third about the main entrance. Grading limitations in the transition area between the adjacent loading dock and the sidewalk in front of the restaurant also limit the pedestrian way.

This proposal eliminates the two street trees located immediately to the north of the adjacent loading dock on the west side of Woodmont Avenue.



Street View Showing Seating Area and Two Street Trees Proposed for Removal



Revised Proposal

Correspondence

Staff has received numerous e-mails regarding the violation and the proposed amendment, from eight citizens. The bulk of the correspondence, received between May 25, 2016, and November 7, 2016, emphasizes the need, in view of the high volume of pedestrian and stroller traffic in the Bethesda Row area, to maintain the maximum amount of pedestrian area on the sidewalk, and encourages the Board not to approve the amendment to reduce the pedestrian area to 6'.

Additionally, Robert Giaimo, owner of the Silver Restaurant, sent an e-mail dated November 28, 2016, citing the deleterious economic impact to the Silver restaurant of any reduction in outdoor seating and the prevalence of the 6' passageway in other urban locations within the area. On March 8, 2017, Mr. Giaimo sent along with the revised proposal another e-mail describing its estimated economic impact on the Silver Restaurant (See Attachment D).

The Applicant has met all notice requirements.

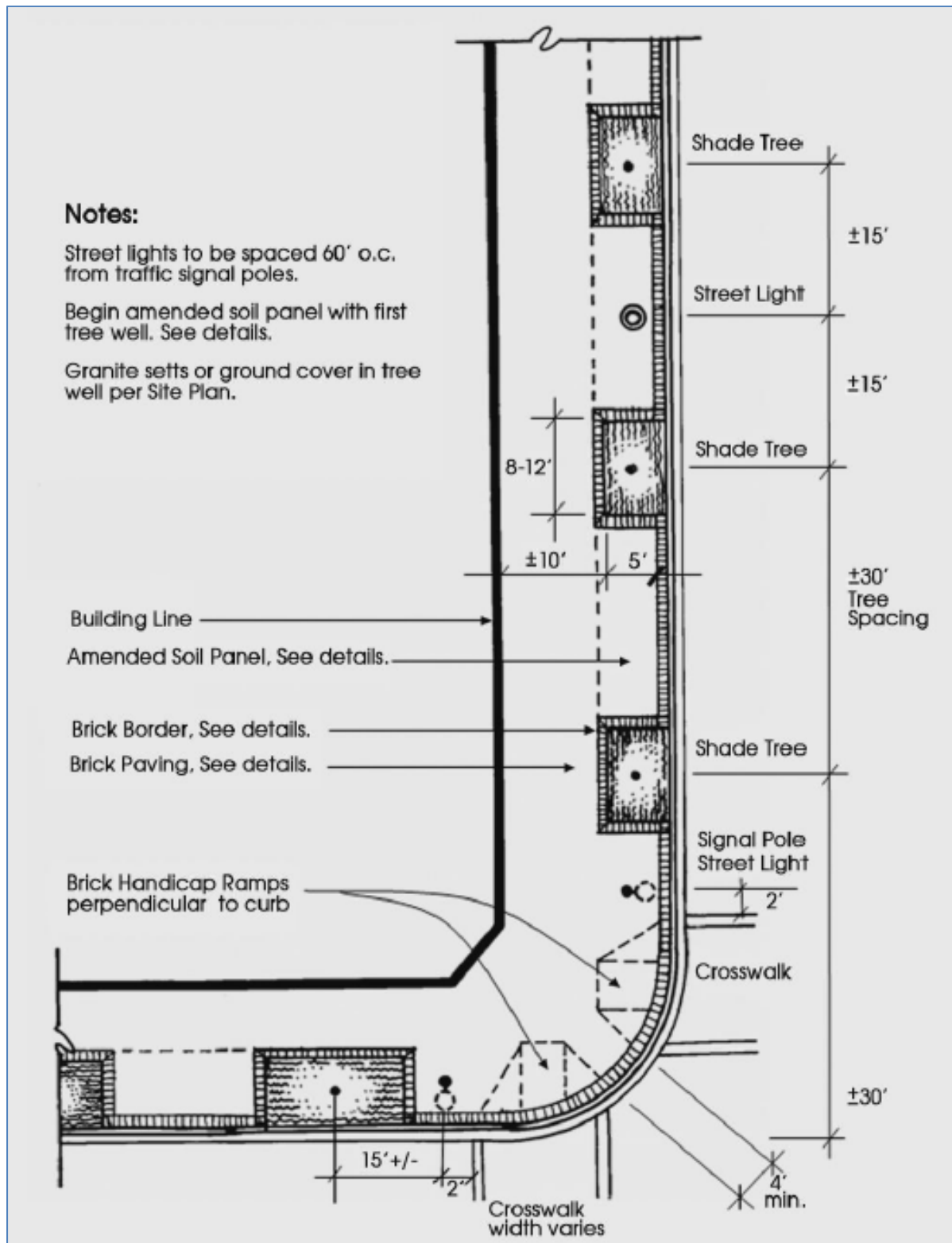
SECTION 4: DISCUSSION

The findings made by the Planning Board with the original Site Plan approval did not specifically address the layout of the Woodmont Avenue sidewalk area being discussed as part of this amendment. The Board did more generally find that the buildings "are massed and detailed to provide adequate, safe, and efficient pedestrian and vehicular access, visibility to public spaces, and various types of enclosures and pedestrian environments. They are designed such that they complement the existing context..."

For Pedestrian and Vehicular Circulation Systems, the Board found that:

The proposed development is providing numerous pedestrian, bicycle, and vehicular improvements and new resources that are more than adequate, safe and efficient. First, is the realignment of Woodmont Avenue, which will provide much safer and more efficient vehicular circulation as well as better sight distances and shorter crosswalks for pedestrians. Second, are the Capital Crescent Trail improvements, including widening and more bicycle racks. Third, is the new pedestrian link between the trail and the new bicycle drop-off on Woodmont Avenue. Fourth, is the bicycle drop-off, which allows bicyclists to pull off of Woodmont Avenue into a small turn-around that will allow them to remove their bikes from their vehicles, temporarily lock them up, and then find a parking space before they return to retrieve them. Last, all of the streets will be upgraded to the Sector Plan standards with respect to paving, street trees, and lighting fixtures. [emphasis added]

The *Bethesda Streetscape Plan Standards* (Streetscape Standards) calls out the minimum sidewalk width, between the building face and the tree pit, as 10'+/-, as shown below.



Bethesda Streetscape Standard

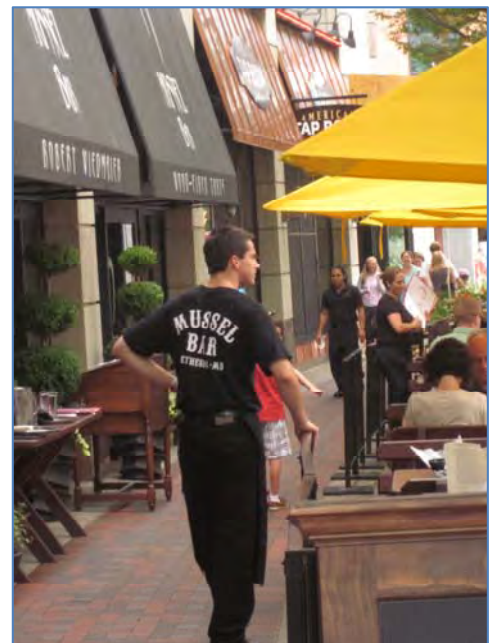
Staff conducted precedent research on regional examples of how outdoor seating is accommodated within the sidewalk (See Attachment F). The originally proposed design for the Silver Restaurant, and the block of Woodmont Avenue directly to the north of the site, have a clear pedestrian path of 6'. But in both examples the pedestrian is confined to that clear area, with the building face to one side and restaurant seating on the other, with no way around. The other examples from the region have a clear pedestrian area ranging from 6' to 9', but also have "overflow" space between the street trees next to the curb, giving a range of usable pedestrian area between 10' and 14' wide. This additional space flexibly accommodates pedestrians in groups or with strollers, as seen in the Adams-Morgan example.

The following image, taken from the internet, illustrates a busy evening's foot traffic at Bethesda Row on the east side of Woodmont Avenue, which has a similar 6' clear pedestrian area. At the moment of the photograph, the pedestrians are moving in the same direction but leave little room for another group going the other way to pass.



Woodmont Avenue looking north, Bethesda Row

Pinch-points created by dining chairs, partitions, and other elements will create opportunities for further conflict, as illustrated in the photo (with apologies to the nameless server).



Woodmont Avenue looking north, Bethesda Row

SECTION 5: CONCLUSION

In presenting the Lot 31 development to the Hearing Examiner and the Planning Board, the Applicant team highlighted its “Pedestrian First” objective. The County Council resolution approving the TS-M zoning explains that “The applicant proposes street level retail and streetscape amenities to enhance the pedestrian experience along Bethesda avenue and Woodmont avenue” (p. 6).

The initially proposed 6’ pedestrian area along the front of Silver was too narrow to comfortably accommodate the amount and diversity of pedestrian traffic along its front. A person in a wheelchair or with a double-wide stroller would take up over half of the pedestrian way. With its length and pedestrian impermeability, the 6’ pedestrian area did not put pedestrians first, did not enhance the pedestrian experience, and was neither adequate nor efficient.

The revised proposal, however, strikes a good balance between two important and, in this case, competing objectives. The revised layout provides a 10’ clear pedestrian path across two-thirds of the Silver Restaurant façade, narrowing to 7’-4” about the middle third, while maintaining the outdoor restaurant seating that is a signature element to the public enjoyment and economic success of Bethesda Row.

Temporarily sacrificed in this balance are two street trees, themselves a signature element of the Bethesda Streetscape Standard. Staff does not recommend lightly approval to remove these essential features of the urban environment and recommends conditions of approval requiring that the Applicant leave the tree pit in place (to be covered over) and replace the trees should the Silver Restaurant cease operating in that location. Additionally, Staff recommends that the Applicant provide, by Certified Site Plan, details of how to provide year-round visual interest along the Silver Restaurant frontage, particularly for the months when outdoor seating is impracticable.

The Streetscape Standards include flexibility. They do not require 10’ minimum, but 10’ +/- . The precedents explored show that a 6’ pedestrian path enclosed on both sides is not a regional standard. The regional standards show the importance of flexibility to accommodate variety in lot and building depth, in tenant requirements, and the other elements that make up a vibrant mixed-use pedestrian environment. A 6’ pedestrian area may serve, but must be improved upon. As conditioned, the revised proposal meets that standard and is in keeping with and does not alter the original findings.

Staff recommends APPROVAL with Conditions.

ATTACHMENTS

- A. Selected Previous Approvals
- B. Enforcement Documentation
- C. DPS Letter
- D. Correspondence
- E. Complete List of Previous Approvals
- F. Precedent Research