



Item #5
MCPB
06.19.03


THE MARYLAND-NATIONAL CAPITAL PARK & PLANNING COMMISSION

MEMORANDUM

DATE: June 12, 2003
TO: Montgomery County Planning Board
VIA: Michael Ma, Supervisor
Joseph R. Davis, Division Chief
Development Review Division
FROM: Mary Beth O'Quinn
Planning Department Staff
(301) 495-1322

REVIEW TYPE: Site Plan AMENDMENT
CASE #: 8-00014B
PROJECT NAME: Bethesda Theater Residential
APPLYING FOR: Approval of a time extension for completion of the restoration of the historic theater
PROJECT NAME: **Bethesda Theater Residential**
REVIEW BASIS: Sec. 50-D-3 of the Zoning Ordinance

ZONE: CBD-2
LOCATION: Bounded by Wisconsin, Cheltenham, Tilbury and Middleton
MASTER PLAN: Bethesda CBD Sector Plan
APPLICANT: Bethesda Theatre LLC, c/o The Bozzuto Group
FILING DATE: May 19, 2003
HEARING DATE: June 19, 2003



SUMMARY

This amendment proposes solely to extend deadlines for completing the restoration of the historic Bethesda Theater, as stated in Condition #4 of the Site Plan approved by the Montgomery County Planning Board (MCPB) on March 2, 2000. The applicant has developed, with the Historic Preservation Commission, a program of restoration of the interior and incorporation of certain exterior features into the design of the apartment building to be constructed over the theater.

The approved Site Plan required the full completion of the theater exterior restoration prior to occupancy of the 1st residential unit in the apartment tower. The completion of the theater interior restoration was required prior to occupancy of the 105th residential unit in the apartment tower.

The amended condition, as recommended by staff will allow a time extension for a portion of the elements of restoration construction. The design and configuration of the remaining restoration elements rely significantly on the functional program of the future tenant. The time extension will allow the applicant to avoid redundant design and engineering efforts, as well as duplicative construction time and costs.

The applicant has demonstrated his commitment through the ongoing efforts to secure an operator for the Bethesda Theater. The applicant will continue to submit quarterly reports to the Planning Board on the progress in leasing the theater. The extension of the deadlines for the final restoration elements will facilitate the applicant's ability to customize interior specifications to a particular tenant and enhance the probability of a obtaining an attractive tenant in the near term.

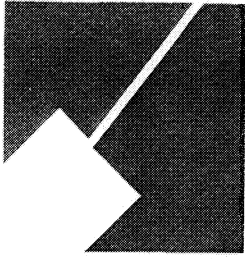
STAFF RECOMMENDATION: Approval to allow a time extension for completion of the restoration of the historic theater, as follows:

1. Conditions of all previous approvals remain in full force and effect except as modified by this approval.
2. Restoration Construction Prior to Occupancy
Applicant must complete all elements of the exterior preservation of the theater prior to the issuance of occupancy permit(s) for the apartment tower, as follows:
 - a. Exterior Restoration
Applicant must complete these elements prior to issuance of the 105th permit:
 - i. Remove existing roof trusses and install new apartment tower trusses while protecting interior finishes;
 - ii. Retain and preserve the decorative brick and cast stone west parapet wall in original location;
 - iii. Remove and replace wood frame roof and floor construction at the west retail areas;
 - iv. Install new structural columns at the north and south elevations to support the new apartment trusses;
 - v. Clean and point the brick on the west, north, and south elevations;
 - vi. Provide level exiting from the Theatre by raising the grade on the north and south sides;
 - vii. Remove and reinstall the original marquee sign including repairing the support structure, sheet metal cladding and lighting to match original configuration;
 - b. Exterior Restoration
Applicant must complete these elements prior to issuance of the 200th permit:
 - i. Clean and repair existing original aluminum and glass storefront on the west and south elevations, replacing any missing or altered portions of the trim to match the original;
 - ii. Replicate the original storefront materials and detailing on the north elevation with a modification to add an aggress door;
 - iii. Restore the existing, original ticket booth, entry doors, and entrance lobby; remove added ceilings and signs and repair existing stone, plaster, metal and wood details while replacing any missing elements to match the original and repainting the original decorative scheme;
 - iv. Replace the steel exit doors, frames and hardware at the north and south elevations.
 - c. Interior Restoration
Applicant must complete these elements of the interior restoration prior to the 105th occupancy permit for the apartment tower:
 - i. Remove and replace wood ceiling and floor framing at west retail spaces;
 - ii. Remove the added floor structure, kitchen, and service facilities in the theatre in order to install the apartment tower;
 - iii. Remove all existing mechanical, electrical and plumbing systems;

- iv. Install new support columns in the north and south retail spaces and along the north wall of the theatre;
 - v. Install a new egress stair and exit corridor from the apartment tower at the north retail space.
3. Restoration Construction after Occupancy
- a. Interior Restoration
Applicant must complete these elements of the interior restoration prior to December 31, 2004:
 - i. Support and protect theatre ceiling during construction;
 - ii. Install all new plumbing, mechanical, and electrical systems;
 - iii. Preserve existing plan configuration and finishes of the theater and lobby subject to necessary modification to accommodate new toilet facilities, accessibility, food service and theatre operations;
 - iv. Replicate and supplement lighting as necessary and repair any original remaining light fixtures.
4. Posting of Bond
Applicant must post a bond prior to issuance of the 200th occupancy permit in the amount of \$750,000 to secure the completion of the interior restoration work..

Attachments

Memo from Shariar Etemadi, MNCPPC Transportation Planning dated June 5, 2003
MCPB Opinion, *Bethesda Theater Residential*, Site Plan 8-00014 dated June 12, 2002
Letter from Emily Vaias, Linowes and Blocher LLP, dated May 19, 2003
Letter from Artie L. Harris, Bozzuto Development Company, dated February 25, 2003



June 5, 2003

MEMORANDUM

TO: Mary Beth O'Quinn, Planner
Development Review Division

VIA: Daniel Hardy, Supervisor *DKH*
Transportation Planning

FROM: Shahriar Etemadi, Coordinator
Transportation Planning

SUBJECT: Site Plan No. 8-00014, Bethesda Theatre Residential
Bethesda CBD

This memorandum is Transportation Planning staff's Adequate Public Facilities review of the subject application.

RECOMMENDATION

Transportation Planning staff recommends no conditions to support approval of the above referenced application.

Local Area Transportation Review (LATR)

The applicant is requesting a change in schedule for completing the exterior renovation of the theatre prior to the first occupancy permit issued for the residential building. This request has no impact on the transportation system in the area. We have no objection to approval of this application as it relates to LATR.

Transportation issues were evaluated and approved during the preliminary plan and site plan approval for this project.

Site Access and Circulation

Access, circulation and providing pedestrian facilities for this project have been approved previously and there are no requested design changes as part of this application. Therefore, adequate access, circulation and pedestrian facilities exist for this project.

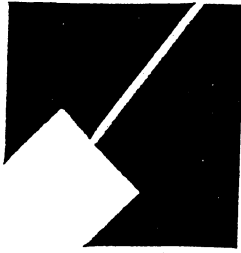
Policy Area Review/Staging Ceiling Analysis

The site is located within the Bethesda CBD Policy area, which has a remaining capacity of 847 jobs and 414 housing units as of May 31, 2003.

SE:ct

mno to o'quinn re 8-00014 bethesda cbd.doc

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

MONTGOMERY COUNTY PLANNING BOARD

OPINION

DATE MAILED: June 12, 2000

SITE PLAN REVIEW: #8-00014

PROJECT: Bethesda Theater Residential

Action: Approval subject to conditions. Motion by Commissioner Bryant, seconded by Commissioner Wellington, with a vote of 4-0, Commissioners Bryant, Hussmann, Perdue and Wellington voting for. Commissioner Holmes was absent.

The date of this written opinion is June 12, 2000, (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal, as provided in the Maryland Rules of Procedure, on or before July 12, 2000, (which is thirty days from the date of this written opinion). If no administrative appeal is timely filed, this site plan shall remain valid for as long as Preliminary Plan #1-97104 is valid, as provided in Section 59-D-3.8. Once the property is recorded, this site plan shall remain valid until the expiration of the project's APFO approval, as provided in Section 59-D-3.8.

On March 2, 2000, Site Plan Review #8-00014 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application. Based on the testimony and evidence presented and on the staff report which is made a part hereof, the Montgomery County Planning Board finds:

1. The Site Plan is consistent with the approved development plan or a project plan for the optional method of development, if required;
2. The Site Plan meets all of the requirements of the CBD-2 and PD-35 zones in which it is located;

3. The locations of the buildings and structures, the open spaces, the landscaping, and the pedestrian and vehicular circulation systems are adequate, safe, and efficient;
4. Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development;
5. The site plan meets all applicable requirements of Chapter 22A regarding forest conservation.

The Montgomery County Planning Board APPROVES Site Plan Review #8-00014, which consists of 249 multifamily apartments including 32 MPDUs, 9 townhouses, a 400-car public parking garage and restoration of the Bethesda Theater, subject to the following conditions:

1. Standard Conditions dated October 10, 1995, Appendix A, as modified herein.
2. Approval subject to finalization of pending abandonment of portions of Tilbury Street (Case AB 636).
3. If the residents of Sleaford Road who desire to close the street to through traffic obtain the necessary approvals, the applicant agrees to construct a barrier at the west end of Sleaford Road, in accordance with MCDPWT guidelines. If a street closing is not authorized, the applicant agrees to the following actions, subject to MCDPWT approval:
 - a.. Retain the existing one-way north configuration on Tilbury Street, and
 - b. Provide channelization of the intersection of Tilbury Street and Cheltenham Drive (in lieu of the channelization at Tilbury and Sleaford Road) to discourage illegal turns onto Tilbury Street and thence onto Sleaford Road.
4. Applicant to complete the exterior preservation of the theater prior to the first occupancy permit for the apartment tower and the interior restoration prior to the 105th occupancy permit for the apartment tower.
5. Starting on June 1, 2000 applicant shall make quarterly reports to the Board on the progress of his efforts to secure a user for the Theater. Any proposal to change the use from a cinema or performing arts use requires an amendment to the Site Plan.
6. Applicant will comply with the binding elements of Zoning Case LMA G-749 (County Council resolution No. 13-1422), and the conditions of approval of Abandonment Case AB 617 (County Council Resolution No. 13-1420).

APPENDIX A: STANDARD CONDITIONS OF APPROVAL DATED 10-10-95:

1. Submit a Site Plan Enforcement Agreement, Development Program, and Homeowners Association Documents for review and approval prior to approval of the signature set as follows:
 - a. Development Program to include a phasing schedule as follows:
 - 1) Street tree planting must progress as street construction is completed, but no later than six months after completion of the units adjacent to those streets.
 - 2) Community-wide pedestrian pathways and recreation facilities must be completed prior to seventy percent occupancy of each phase of the development.
 - 3) Landscaping associated with each building shall be completed as construction of each is completed.
 - 4) Pedestrian pathways and seating areas associated with each facility shall be completed as construction of each facility is completed.
 - 5) Coordination of each section of the development and roads;
 - 6) Phasing of dedications, stormwater management, sediment/erosion control, recreation, forestation, community paths, trip mitigation or other features.
2. Signature set of site, landscape/lighting, forest conservation and sediment and erosion control plans to include for staff review prior to approval by Montgomery County Department of Permitting Services (DPS):
 - a. Conditions of DPS Stormwater Management Concept approval (waiver) letter
 - b. The development program inspection schedule.
 - c. Street trees along all public streets;
3. Forest Conservation Plan shall satisfy all conditions of approval prior to recording of plat and DPS issuance of sediment and erosion control permit.
4. No clearing or grading prior to M-NCPPC approval of signature set of plans.

G:\SP_STAFF\8-00014

LINOWES
AND BLOCHER LLP
ATTORNEYS AT LAW

May 19, 2003

Emily J. Vaias
301.961.5174
evaias@linowes-law.com

BY HAND DELIVERY

Mr. Michael Ma
Maryland National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Request for Amendment of Condition to Site Plan No. 8-00014
Bethesda Theatre Residential

Dear Mr. Ma:

We represent the owner/developer of the Bethesda Theatre Residential project, Bethesda Theatre, LLC. As you are aware, this Project has been an on-going process since 1996. Over the past seven years, the Applicant has worked to receive Project Plan, Zoning, Abandonment, Preliminary Plan and Site Plan Approvals, in addition to designation on the National Historic Registry. The conclusion of these numerous approvals has been the current construction and development of 249 apartment units, 9 townhouses, 2 underground parking garages, and preservation of the historic Bethesda Theatre (the "Project"). Throughout this process, the Applicant has worked closely with the numerous interested parties to design and develop a Project that is truly an asset to the Bethesda Central Business District area ("CBD") and surrounding communities.

As part of the numerous approvals, the residential portion of the Project has been contingent upon making certain improvements or preservation actions related to the Theatre. Despite diligent and good faith efforts by the Applicant to find an appropriate user for the Theatre, as required by its various approvals, an operating agreement has not yet been signed to finalize the tenancy. Further, as explained by the Applicant in a letter dated February 25, 2003 to you (attached hereto as Exhibit "A"), each potential tenant has had significantly different interior requirements for the Theatre. Therefore, the Applicant has learned that until a tenant is located, it would be costly and wasteful to complete all of the Theatre interior renovations without a firm commitment from a tenant to occupy the space. In addition, the Applicant could not have anticipated the complexity and difficulty of making some of the exterior renovations which has also resulted in unavoidable delays. Consequently, we are respectfully requesting that the Planning Board amend Condition No. 4 of the Site Plan Opinion (dated June 12, 2000) (attached hereto as Exhibit "B") which states as follows:

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“4. Applicant to complete the exterior preservation of the Theater prior to the first occupancy permit for the apartment tower and the interior restoration prior to the 105th occupancy permit for the apartment tower.”

As part of the information submitted with the Historic Area Work Permit (“HAWP”) for the Theatre, the work which makes up the “exterior preservation of the Theatre,” and the “interior restoration” includes the following [with its construction status in brackets]:

A. Exterior Preservation

1. Remove existing roof trusses and install new apartment tower trusses while protecting interior finishes. [work completed]
2. Retain and preserve the decorative brick and cast stone west parapet wall in original location. [work completed]
3. Remove and replace wood frame roof and floor construction at the west retail areas. [work completed]
4. Install new structural columns at the north and south elevations to support the new apartment trusses. [work completed]
5. Clean and point the brick on west, north and south elevations. [work completed]
6. Provide level exiting from the Theatre by raising the grade on the north and south sides. [work completed]
7. Clean and repair existing original aluminum and glass storefront on the west and south elevations, replacing any missing or altered portions of the trim to match the original. [shop drawings approved and work expected to begin in June]
8. Replicate the original storefront materials and detailing on the north elevation with a modification to add an egress door. [shop drawings approved and work expected to begin in June]
9. Restore the existing, original ticket booth, entry doors, and entrance lobby. Remove added ceilings and signs and repair existing stone, plaster, metal and wood details while replacing any missing elements to match the original and repainting the original decorative scheme. [work expected to begin in June]

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10. Remove and reinstall the original marquee sign including repairing the support structure, sheet metal cladding and lighting to match original configuration. [sign has been repaired, support structure is being replaced and sign expected to be re-installed in June]
11. Replace the steel exit doors, frames and hardware at the north and south elevations. [work expected to begin in June]

B. Interior Restoration

The interior restoration consists of the following:

1. Remove and replace wood ceiling and floor framing at west retail spaces. [work completed]
2. Support and protect Theatre ceiling during construction. [ceiling protected during construction and restoration work is in progress but completion dependent upon tenancy]
3. Remove the added floor structure, kitchen, and service facilities in the Theatre in order to install the apartment tower. [work completed]
4. Remove all existing mechanical, electrical and plumbing systems. [work completed]
5. Install new support columns in the north and south retail spaces and along the north wall of the Theatre. [work completed]
6. Install a new egress stair and exit corridor from the apartment tower at the north retail space. [new stair reconfigured to exit on south wall of Theatre and is under construction, expect to be completed in June]
7. Install all new plumbing, mechanical and electrical systems. [majority of systems installed in the main Theatre but remainder dependent upon tenancy]
8. Preserve existing plan configurations and finishes of the Theatre and the lobby subject to necessary modifications in order to accommodate new toilet facilities, accessibility, food service and Theatre operations. [configurations and finishes preserved but remainder is dependent upon tenancy]

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9. Replicate and supplement lighting as necessary and repair any original remaining light fixtures. [dependent upon tenancy]

The Applicant has completed, or believes it can soon complete, the work for seven (7) of the eleven (11) items listed as part of the Exterior Preservation. However, the Applicant has experienced some unavoidable delays with regard to items Nos. 7 and 8 (storefronts); No. 9 (ticket booth, entry doors and entrance lobby); and No. 11 (exit doors). Each of these items is either underway or about to begin, however, the Applicant does not believe it can complete these items prior to the first occupancy for the apartment tower.

The Applicant has completed, or believes it can shortly complete, five (5) of the nine (9) Interior Restoration items. However, Items No. 2 (complete Theatre ceiling); No. 7 (new plumbing, mechanical and electrical system); No. 8 (final configurations and finishes of Theatre and lobby space); and No. 9 (lighting) will not be completed by the time the Applicant is ready to obtain the 105th occupancy permit for the apartment tower.

The Applicant is therefore requesting modification to the above-referenced Site Plan Condition to state as follows:

“Prior to the first occupancy permit for a residential unit in the apartment tower, the Applicant must complete Items Nos. 1 – 6 and No. 11 of the Exterior Preservation of the Theatre and Items No. 1 and Nos. 3 –6 of the Interior Restoration of the Theatre. Further, by December 31, 2003, the Applicant must complete Items Nos. 7 – 10 of the Exterior Preservation of the Theatre. By December 31, 2004, the Applicant must complete the Interior Restoration Items Nos. 2 and 7-9.”

As an ongoing effort and commitment to find the proper user and complete the Theatre, the Applicant will continue to submit quarterly reports to the Planning Board on its progress to secure a user for the Theatre. The Applicant is hopeful that a user can be secured within the near future and that the Theatre preservation and restoration can move forward as quickly as possible. However, to complete the remaining construction work without having identified a user and the exact design specifications would result in possible re-construction and unnecessary delay as well as inefficient use of both public and private funds. In addition, the Applicant needs to move forward with the residential occupancy of the Project to support the financing that is driving the overall development. It is important that the residential piece of the Project be occupied as soon as possible so that funding continues to be available to the Applicant to work on completing the Theatre.

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Further, the Applicant appreciates the need to find an appropriate user for the Theatre and is firmly committed to doing so. The Applicant, consistent with all the prior approvals and the Sector Plan, recognizes that the use of the Theatre is just as important as its physical characteristics. This use will be an asset for the residential Project as well as for the overall Bethesda CBD.


Thank you for your consideration of this request. Because the occupancy for the apartment tower is currently scheduled to begin the second week of June 2003, we would request that this matter be heard by the Planning Board as soon as possible and without the need for Development Review Committee review as we have met with Staff several times and are not asking for any design changes.

We have included herewith a completed Site Plan Application, a check in the amount of \$2,600 (as discussed), two sets of mailing labels for the adjoining and confronting property owners, and 10 sets of the approved Site Plan.

Please contact me if you have any questions.

Sincerely,

LINOWES AND BLOCHER LLP


Emily J. Vaias

EJV:sec

cc: Mr. Charles R. Loehr
Michele Rosenfeld, Esq.
Mr. John Carter
Mr. Artie Harris
Mr. Eugene Smith
Mr. Thomas Baum
Ms. Mary A. Oehrlein
Robert H. Metz, Esq.