



Committee: T&E
Committee Review: Completed
Staff: Carlos Camacho, Legislative Analyst
Purpose: Final action – vote expected
Keywords: #Abandonment

AGENDA ITEM #4E
February 1, 2022
Action

SUBJECT

Amendment to Abandonment Resolution 18-711: Portion of Rugby Avenue and Alley in the Samuel T. Robertson's Addition to Bethesda Subdivision, Bethesda.

EXPECTED ATTENDEES

None.

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

The Transportation and Environment (T&E) Committee met on January 24, 2022 to discuss and make a recommendation on amending Council Resolution 18-711, which allows for the conditional abandonment of a portion of Rugby Avenue and an alley off Glenbrook Road in the Samuel T. Robertson's Addition to Bethesda Subdivision in Bethesda.

The Committee unanimously (2-0 with one member absent) recommended that the Council amend Resolution 18-711 to, among other things, extend the time to satisfy the conditions in the resolution. The right of way (ROW) and alley have been approved twice for conditional abandonment but neither the previous owner nor the current owner of the property abutting the areas to be abandoned have been able to satisfy all the conditions for abandonment due to previous delays in litigation related to the abandonment and redevelopment of the surrounding property. These appeals have since been resolved.

DESCRIPTION/ISSUE

The County Council will take action on amending Council Resolution 18-711 such that:

- The term “applicant’s” is replaced with “JLB Georgetown Road, LLC.”
- The resolution specifies that JLB Georgetown Road, LLC must complete all the conditions required for the abandonment, as specified in Resolution 18-711 and the amended resolution, by August 7, 2024, otherwise approval of the abandonment is automatically revoked.
- The resolution specifies, pursuant to Sec. 49-65(c), that the County Attorney must record among the Land Records of the county, a copy of this Resolution and Amendments approving the abandonment of the subject area.

The intent of these amendments is to clarify JLB Georgetown Road, LLC’s (JLB) responsibility to satisfy the conditions set forth in the resolution and to allot an additional 30 months to satisfy the conditions for abandonment.

SUMMARY OF KEY DISCUSSION POINTS

- On November 4, 2021, Miles & Stockbridge P.C., on behalf of their client JLB, sent a letter to the County Council requesting a 30-month extension of the validity period for JLB to satisfy all the conditions of the approved abandonment specified in Resolution 18-711. The letter states that “JLB will not be able to fulfill all of the conditions of approval...primarily due to delays in litigation related to its Sketch Plan approval.” JLB is requesting a 30-month extension to fulfill the requirements in the resolution. JLB believes that all the conditions except for one – the installation of a compliant emergency vehicle turnaround or compliant connection from Rugby Ave to Old Georgetown Rd – will be satisfied by February 7, 2021. JLB argues that because of delays due to litigation, that have since been resolved as of July 2021, construction for the redevelopment of the site was not able to begin and the compliant emergency vehicle turnaround or connection was unable to be built within the five-year time frame.
- Resolution 18-711 adopted by the Council on February 7, 2017 approves the conditional abandonment of 4,043 square feet portion of right-of-way (ROW) at the terminus of Rugby Avenue and a 1,970 square foot alley off Glenbrook Road. The Council approved the abandonment on the basis of support from the County Executive and MCDOT, as well as the Public Hearing Officer’s report, which concluded that the proper abandonment procedures were followed and that that the portion of the ROW and alley are “not needed for a public purpose, that the granting of the current petition would enhance pedestrian and vehicular flow, will serve the health, safety, and welfare of the community, and...provides a safe and efficient pedestrian traffic pattern.”
- The current resolution does not provide a specified time frame for which the applicant must satisfy all the conditions. As such, pursuant to Section 49-65(d) of the County Code, the abandonment is automatically revoked within five years of approval if all the conditions are not satisfied. Five years from when the abandonment was approved is February 7, 2022.
- This abandonment was also conditionally approved via Council Resolutions 16-834 and 16-835, but these two resolutions expired as the previous applicant, Christ Evangelical Church of Bethesda Chevy Chase (the Church), was also unable to satisfy the conditions of abandonment due to appeals filed by an adjacent landowner. The appeals have since run their course and the adjacent landowner who brought forth the past appeals has since moved from the area. However, these delays, in part, prompted the Church to sell the property to JLB in November 2021.
- MCDOT and the Montgomery County Planning Department were both in favor of granting the extension to facilitate the multifamily residential redevelopment of the current site abutting the areas to be abandoned.

This report contains:

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| 1. January 24, 2022 T&E Committee Staff Report | ©1-5 |
| 2. Letter on Behalf of JLB Requesting Extension of Time to Fulfill Abandonment Conditions | ©6-8 |
| 3. Council Resolution 18-711 | ©9-10 |
| 4. Description of Proposed Abandonment | ©11-13 |
| 5. Draft Amendment to Resolution 18-711 | ©14-15 |
| 6. Public Hearing Officer Report (Nov 9, 2016) | ©16-20 |
| 7. Council Resolution 16-834 (with attachment) | ©21-24 |
| 8. Council Resolution 16-835 | ©25-26 |
| 9. Public Hearing Officer Report (May 6, 2008) | ©27-42 |
| 10. Montgomery County Planning Board Amended Sketch Plan Approval (2021) | ©43-46 |
| 11. Montgomery County Planning Department Staff Recommendations on Preliminary Plan Amendment and Site Plan (2020) | ©47-83 |
| 12. Resolution 16-705: Amendment to Council Resolution 15-1222 to Extend Time for Compliance with Condition of Abandonment | ©84 |

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M E M O R A N D U M

January 19, 2022

TO: Transportation & Environment Committee

FROM: Carlos Camacho, Legislative Analyst

SUBJECT: Extension of Time to Satisfy Conditions of Council Resolution No. 18-711 - DOT Docket No. AB751 - Abandonment of a Portion of Rugby Avenue and Alley in the Samuel T. Robertson's Addition to Bethesda Subdivision, Bethesda

PURPOSE: Discuss and make recommendation for Council consideration

Expected Attendees:

- Eric Willis, Chief, Property Acquisition Section, Montgomery County Department of Transportation (MCDOT)
- Elza Hisel-McCoy, Chief, DownCounty Planning, Montgomery County Planning Department
- Stephanie Dickel, Supervisor, DownCounty Planning, Montgomery County Planning Department
- Katie Mencarini, Planner Coordinator, Montgomery County Planning Department

Today, the Transportation & Environment (T&E) Committee will review a request to extend the time to satisfy the conditions specified in Council Resolution No. 18-711 related to the conditional approval of the abandonment of a portion of Rugby Avenue and a 20-foot-wide alley off Glenbrook Road in the Samuel T. Robertson's Addition to Bethesda Subdivision of Bethesda.

Executive Summary

On November 4, 2021, Miles & Stockbridge P.C., on behalf of their client, JLB Georgetown Road LLC (JLB), sent a letter to the County Council (see ©1) requesting a 30-month extension of the validity period for JLB to satisfy all of the conditions of the approved abandonment specified in Resolution No. 18-711 (see © 4).

Resolution 18-711 adopted by the Council on February 7, 2017, approves the conditional abandonment of 4,043 square feet portion of right-of-way (ROW) at the terminus of Rugby Avenue and a 1,970 square foot alley off of Glenbrook Road. The Council approved the abandonment on the basis of support from the County Executive and MCDOT, as well as the Public Hearing Officer's report (see ©11), which concluded that the proper abandonment procedures were followed and that the portion of the ROW and alley are "not needed for a public

purpose, that the granting of the current petition would enhance pedestrian and vehicular flow, will serve the health, safety, and welfare of the community, and...provides a safe and efficient pedestrian traffic pattern.”

The applicant, Christ Evangelical Lutheran Church of Bethesda Chevy Chase, which has since sold the property abutting the areas in question to JLB, was required to satisfy the following conditions prior to the abandonment becoming effective:

- 1) Either the installation of a compliant emergency vehicle turnaround or a compliant connection from Rugby Avenue to Old Georgetown Road as required by the Department of Fire and Rescue Service vehicular access and water supply plan;
- 2) Granting WSSC a sufficient easement to protect the integrity of existing lines and infrastructure;
- 3) The granting of any necessary easements for County storm drains and public utility facilities, or at Applicant's expense, relocating those facilities and the granting of appropriate easements; and
- 4) The filing of a new record plat.
- 5) Any person aggrieved by the action of the Council for abandonment may appeal to the Circuit Court within 30 days after the date such action is taken by Council.

The resolution does not provide a specified time frame for which the applicant must satisfy each condition. As such, pursuant to Section 49-65(d)¹ of the County Code, the abandonment is automatically revoked within five years of approval if all of the conditions are not satisfied. Five years from when the abandonment was approved is February 7, 2022.

The aforementioned letter from the applicant to the Council states that “JLB will not be able to fulfill all of the conditions of approval...primarily due to delays in litigation related to its Sketch Plan approval.” JLB is requesting a 30-month extension to fulfill the requirements in the resolution. JLB believes that all of the conditions except for condition one – installation of a compliant emergency vehicle turnaround or compliant connection from Rugby Ave to Old Georgetown Rd – will be satisfied by February 7, 2021. JLB argues that because of delays due to litigation, that have since been resolved as of July 2021, construction for the redevelopment of the site was not able to begin and the compliant emergency vehicle turnaround or connection was unable to be built within the five-year time frame.

Background

The abandonment of the portion of Rugby Ave and alley off Glenbrook Road dates back to January 18, 2007, when the original applicants - Christ Evangelical Church of Bethesda Chevy Chase (the Church) and BA Old Georgetown, LLC – first submitted their abandonment application to the County.

¹ [Montgomery County Code Section 49-65](#)

The Council approved the abandonment on February 3, 2009 via Resolution 16-834 and 16-835 with essentially the same conditions found in the current resolution. The abandonment was revoked because the conditions were not satisfied within the five-year time frame pursuant to the County Code. The Public Hearing Officer's report from November 7, 2016 provides some context for why the applicants were previously not able to satisfy the conditions with the five-year time. The report states that the Council remanded the associated Local Map Amendment (LMA) to allow the applicants to revise their plans to address issues identified in the initial application. On October 26, 2010, the Council approved the LMA as a result of the revised development plan submitted by the applicants. The LMA was subsequently appealed by an adjacent landowner but dismissed in January 2013. Due to these unforeseen setbacks, the applicants were unable to meet the conditions required in the approved resolution within the five-year statutory requirement.

The Church then reapplied for the abandonment of the ROW and alley in May 2016. In December 2016, a developer working with the Church, Bush at 8015 Old Georgetown Road Associates, LLLP, was granted approval to redevelop the area surrounding the ROW and alley in question, located at 8011 and 8015 Old Georgetown Road. The Planning Board approved Preliminary Plan 120160220², and Site Plan 820160090³ to allow the property to redevelop with a 53,000 square-foot church/community center building and a 145,863 square-foot multi-family residential building containing a maximum of 107 units. The abandonment was then approved by the Council on February 7, 2017.

Both the original Preliminary Plan and Site Plan were then appealed by an adjacent neighbor. According to the attorneys representing the current applicant, JLB, the neighbor challenged the Planning Board's findings of compatibility with adjacent properties and approval of the parking calculations. These challenges were stayed before the Court of Special Appeals and arguments were never heard. Due to the delays in litigation and changes in economics of the redevelopment, The Church finalized the sale of the property to JLB in November 2021.

JLB has continued to seek approval to move forward with the redevelopment of property at 8015 Old Georgetown Road but because the Church would no longer be located on the property, JLB planned a complete multifamily residential redevelopment. As such, JLB amended the original 2016 Preliminary Plan to increase the maximum density, remove the commercial and church uses, increase the number of residential units, and remove Development Plan requirements that were no longer applicable (see ©42). JLB filed for Sketch Plan approval, which was granted in 2019⁴, but were subsequently appealed by the same neighbor. JLB amended the Sketch Plan (see ©38), which was approved on July 27, 2021 to reduce the previously approved maximum density from 320,000 square feet to 316,500 square feet.

² [Planning Board Approval of Preliminary Plan 120160220](#)

³ [Planning Board Approval of Site Plan 820160090](#)

⁴ [Planning Board Approval of Sketch Plan 320190100](#)

Previous Public Hearing Testimony

During the public hearing held on August 31, 2016, legal counsel representing the Church explained the delay associated with the remanding, approval, and appeal of the LMA, which caused the originally approved abandonment resolution to expire.

The Church's legal counsel also explained opposition that was previously expressed by the community during the initial abandonment process in 2009. Residents living near the Church would use the ROW and alley to cut through the Church parking lot to reach other ROWs in an effort to circumvent walking down Old Georgetown Road. Counsel stated that the Site Plan (from 2016) would provide a connection to the adjacent Rescue Squad property and through the site from Rugby Avenue to Glenbrook Road, thus actually enhancing the through-block connection. This through-block connection was maintained as part of the approved 2021 amended Sketch Plan.

Finally, the applicant's legal counsel noted that prior to 2007, the law governing the abandonment of ROWs did not include the sunset provision specifying that if the conditions within the approved abandonment resolution are not met within five years, or another timeframe specified in the resolution, then the abandonment would automatically be revoked. The original abandonment application was submitted prior to the law going into effect (via Bill 48-06) but the abandonment was not approved until after the bill had already been enacted.

Agency Input and Recommendations

The Public Hearing Officer's Report from November 7, 2016 also detailed the comments received from the appropriate government agencies and public utilities.

Montgomery County Fire and Rescue. Responded and required either the installation of a compliant emergency vehicle turnaround or a compliant connection from Rugby Avenue to Old Georgetown Road.

Washington Suburban Sanitary Commission (WSSC). Responded and consented to the abandonment contingent upon the applicant granting a sufficient easement to protect the integrity of existing infrastructure.

MCDOT. Wrote a memorandum explaining their conditional approval contingent upon the construction of a compliant turnaround at the end of Rugby Avenue, the granting of any necessary easements for County storm drains and public utility facilities or the relocation of those facilities at the applicant's expense, and the filing of a new record plat incorporating the former ROWs.

The Montgomery County Police Department, Pepco, Verizon, Washington Gas, and the Montgomery County Planning Board did not provide comment and their concurrence was assumed. The Hearing Examiner did note that the Planning Board did not feel the need to comment since they had already approved the Preliminary Plan for Development.

The Public Hearing Officer recommended conditional approval (as previously outlined) as the ROWs were not needed for public use, the abandonment and subsequent plan for redevelopment would enhance pedestrian and vehicular traffic patterns, and would serve the health, safety, and welfare of the community.

Council staff reached out to MCDOT and the Planning Board regarding the recent extension requested by the new applicant, JLB. Both agencies had no issues with the extension as the abandonment has already been granted multiple times.

Committee Decision Points

The Committee may:

1) Recommend no action and allow the resolution to expire.

- a. This would prompt JLB to have to re-apply for abandonment of the ROW and alley. As stated in JLB's November 4, 2021 letter to the Council, the denial of the applicant's request for extension would have a negative impact on the proposed residential development project.
- b. Allowing the resolution to expire would prompt a new abandonment process whereby all new information, including additional testimony from the public, could be included in the official record used by the Council to make a decision on an abandonment.

2) Amend Council Resolution 18-711

- a. This action would provide JLB with additional time to satisfy the conditions in the resolution and move forward expeditiously with the redevelopment project.
- b. Council staff drafted an amendment to Resolution 18-711 (see ©9), which:
 - i. Replaces the term "applicant's" with "JLB Georgetown Road, LLC"
 - ii. Specifies that JLB must complete all of the conditions required for the abandonment, as specified in Resolution 18-711 and the amended resolution, by August 7, 2024, otherwise approval of the abandonment is automatically revoked.
 - iii. Specifies, pursuant to Sec. 49-65(c), that the County Attorney must record among the Land Records of the county, a copy of this Resolution and Amendments approving the abandonment of the subject area.
- c. There is precedent for the Council amending an abandonment resolution to extend the time an applicant needed to satisfy the conditions listed in a resolution (see ©79). Furthermore, the Council approved an abandonment in 2021⁵ while granting the applicant seven years, instead of five, to satisfy the conditions listed in the abandonment resolution due to potential delays related to the COVID-19 pandemic.
- d. The Council has twice approved the areas in question for abandonment.

Council staff recommends amending Resolution 18-711.

⁵ [Council Resolution 19-939](#)

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November 4, 2021

Mr. Tom Hucker, President
and Members of the Montgomery County Council
100 Maryland Avenue, 6th Floor
Rockville, MD 20850

Re: Abandonment Extension Request– Rugby Avenue and Alley; County Council
Resolution No. 18-711

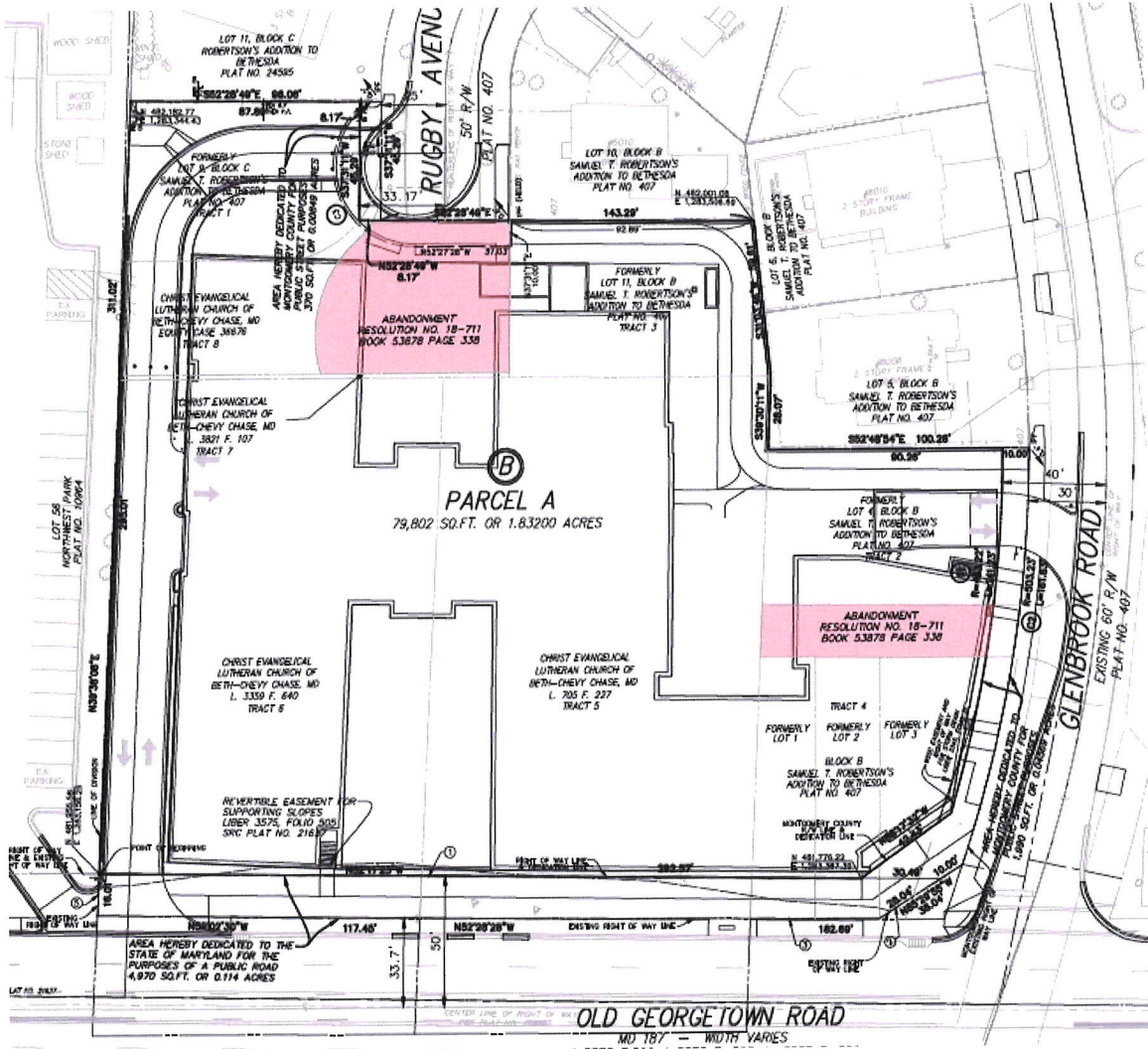
Dear Council President Hucker and Members of the County Council:

On behalf of our client, JLB Georgetown Road LLC (“JLB”), the purpose of this letter to request an extension of the validity period for the abandonment of a portion of Rugby Avenue (4,043 square feet) and an alley (1,970 square feet) off of Glenbrook Road in Bethesda (the “Abandonment”), previously approved by the County Council with conditions by Resolution No. 18-711 on February 7, 2017 (the “Resolution”) (Attachment 1). Without the requested extension, the Abandonment will be automatically revoked by operation of law on February 7, 2022.¹ As detailed below, JLB will not be able to fulfill all of the conditions of approval in order to validate the Abandonment by that date, primarily due to delays caused by litigation related to its Sketch Plan approval. Accordingly, JLB requests that the County Council amend the Resolution to provide JLB thirty (30) additional months in which to complete the conditions imposed therein.

At the time the Abandonment was approved in 2017, the surrounding property, generally located at 8011 and 8015 Old Georgetown Road (“Property”), had recently been approved for redevelopment with up to 107 multifamily units and up to 53,000 square feet of institutional uses. Those approvals were obtained by a previous developer, working with the property owner, the Christ Evangelical Lutheran Church of Bethesda-Chevy Chase (“Church”), and contemplated that the Church would remain on-site in a new facility while the developer constructed a new multifamily building adjacent to the new church facility. However, those approvals were appealed by a neighbor and, after years of litigation, the Church ultimately decided that it would no longer be feasible for it to

¹ Pursuant to Montgomery County Code § 49-65(d), “[a]ny abandonment [. . .] is automatically revoked by operation of law if each condition specified in the approval resolution, including any later amendment to that resolution, has not been completed within the time specified in the resolution or, if the resolution did not specify a completion date, within 5 years after the Council approved the resolution.” The Resolution does not contain a completion date; therefore, the completion date is 5 years after February 7, 2017 or February 7, 2022.

continue its operations on the Property. The Church therefore sought out a new development partner, JLB, who subsequently pursued new and amended approvals for redevelopment of the Property with an all-multifamily residential project (“Project”) under the recommendations and zoning effectuated by the Bethesda Downtown Plan. As with the previous approval, and as depicted below, the Project requires the incorporation of the Abandonment areas into the Property, as such areas would otherwise significantly inhibit any substantive redevelopment.



Unfortunately, the Sketch Plan for the Project, approved in September 2019, was appealed by the same neighbor who had appealed the prior approvals, and resolution of the appeal and issues related thereto was not concluded until July of 2021.

Pursuant to the conditions contained in the Resolution, in order for the Abandonment to become effective, JLB must: (1) install a compliant emergency vehicle turnaround or a compliant connection from Rugby Avenue to Old Georgetown Road; (2) grant WSSC an

easement for its lines and infrastructure; (3) grant the County necessary storm drain and public utility easements or relocate those facilities; and (4) file a new record plat. While Conditions 2-4 will likely be completed prior to February 7, 2022, Condition 1, the installation of a compliant emergency vehicle turnaround or compliant connection through the Property, cannot occur until construction of the Project is well underway and the exterior phase of construction nearing completion. While construction is scheduled to commence at the end of this year, it will take over two years to complete. Thus, a 30 month extension of the Abandonment is being requested to allow for adequate time for all of the conditions of approval to be satisfied.

As noted and depicted above, the viability of the Project depends on the incorporation of the Abandonment areas into the Property. Therefore, denial of the extension request and revocation of the Abandonment would have catastrophic impacts on JLB's ability to construct the Project, which Project furthers the goals and objectives of the Bethesda Downtown Plan this Council adopted in May 2017. Additionally, the delays that have prevented JLB's satisfaction of the conditions of the Abandonment were not the result of any inaction or failures on the part of JLB, but rather the result of litigation beyond its control. As such, JLB respectfully requests that the County Council amend the Resolution to extend the validity of the Abandonment for an additional 30 months, pursuant to its authority in Section 49-65 of the Montgomery County Code.

Thank you for your consideration of this request. Please do not hesitate to contact us should you have any questions or require any additional information.

Sincerely,

Miles & Stockbridge P.C.



Erin E. Girard



Laura M. Tallerico

CC: Mr. Carlos Camacho
Mr. Graham Brock
Mr. Martin Mankowski

Resolution No.:	<u>18-711</u>
Introduced:	<u>February 7, 2017</u>
Adopted:	<u>February 7, 2017</u>

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

Lead Sponsor: County Council

SUBJECT: DOT Docket No. AB751
Abandonment –Rugby Avenue and Alley
Samuel T. Robertson’s Addition to Bethesda Subdivision, Bethesda

Background

1. By letter dated May 17, 2016 from Linowes and Blocher on behalf of its client, Christ Evangelical Lutheran Church of Bethesda-Chevy Chase (the Applicant) to the County Executive a request was made for the County to abandon a portion of Rugby Avenue (4,043 square feet) and an alley (1,970 square feet) off Glenbrook Road in the Samuel T. Robertson’s Additional to Bethesda Subdivision in Bethesda.
2. A Public Hearing to consider the abandonment proposal was held on August 31, 2016 by the designee of the County Executive.
3. Verizon did not respond within 60 days and therefore, concurrence is presumed.
4. Washington Suburban Sanitary Commission consent conditioned upon being granted an easement to protect the integrity of existing lines and infrastructure.
5. Washington Gas did not respond within 60 days and therefore, concurrence is presumed.
6. PEPCO did not respond within 60 days and therefore, concurrence is presumed.
7. The Montgomery County Police Department did not respond within 60 days and therefore, concurrence is presumed.
8. The Department of Transportation (DOT) by memorandum dated August 31, 2016 recommended approval of the abandonment request conditioned upon (a) Applicant constructing a turnaround at the end of Rugby Avenue; (b) granting any necessary easements for County storm drains and public utility facilities or at Applicant’s expense relocating these facilities and granting easements; and (c) filing a new record plat incorporating the former rights-of-way.

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) BHM 53878, p. 0338, MSA_CE63_53835. Date available 03/07/2017. Printed 03/24/2021.
NO FEE-MONTG. CO. MD.


- 9. The Office of the Fire Marshal by e-mail dated 08/16/16 requires either installation of a compliant emergency vehicle turnaround or a compliant connection from Rugby Avenue to Old Georgetown Road.
- 10. The Montgomery County Planning Board did not respond within 60 days and therefore, concurrence is presumed.
- 11. The County Executive recommends approval of the proposed abandonment.

Action

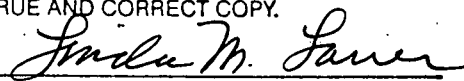
The County Council for Montgomery County, Maryland, finds that the portion of Rugby Avenue and the 20-foot alley off Glenbrook Road in the Samuel T. Robertson's Addition to Bethesda Subdivision of Bethesda as shown on the attached metes and bounds description and drawing by Loiederman Soltesz Associates, Inc. proposed for abandonment are no longer necessary for public use, pursuant to Section 49-63 of the Montgomery County Code, and approves the abandonment subject to the following conditions which must be satisfied at Applicant's sole cost and expense prior to the abandonments becoming effective:

- 1. Either the installation of a compliant emergency vehicle turnaround or a compliant connection from Rugby Avenue to Old Georgetown Road as required by the Department of Fire and Rescue Service vehicular access and water supply plan;
- 2. Granting WSSC a sufficient easement to protect the integrity of existing lines and infrastructure;
- 3. The granting of any necessary easements for County storm drains and public utility facilities, or at Applicant's expense, relocating those facilities and the granting of appropriate easements; and
- 4. The filing of a new record plat.
- 5. Any person aggrieved by the action of the Council for abandonment may appeal to the Circuit Court within 30 days after the date such action is taken by Council.

This is a correct copy of Council Action.


Linda M. Lauer, Clerk of the Council

I HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE AND CORRECT COPY.


CLERK OF THE COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

Loiederman Soltesz Associates, Inc.

November 7, 2006

Project No.: 0990-18-00

Exhibit "C"

**DESCRIPTION OF THE
PROPOSED ABANDONMENT
OF PART OF
RUGBY AVENUE & PUBLIC ALLEY
P.B.5 P.407
BETHESDA (7TH) ELECTION DISTRICT
MONTGOMERY COUNTY, MARYLAND**

PART ONE:

Being part of Rugby Avenue as shown on a plat of subdivision entitled "SAMUEL T. ROBERTSON'S ADDITION TO BETHESDA" and recorded among the Land Records of Montgomery County, Maryland in Plat Book 5 as Plat 407; and being more particularly described in Maryland State Plane Meridian as follows:

Beginning for the same at a point at the end of the fifth (5th) or South 37°48'19" West, 12.47 foot line as described in a conveyance to the CHRIST EVANGELICAL LUTHERAN CHURCH OF BETHESDA-CHEVY CHASE from MONTGOMERY COUNTY, MARYLAND by Equity Case 36676 and on file with Montgomery County, Maryland; thence departing said line and running so as to cross and include part of said Rugby Avenue the following two (2) courses

- 1.) South 37°10'40" West, 12.05 feet to a point; thence
- 2.) South 52°49'20" East, 50.00 feet to a point at the northwesterly end of the North 52°27' East, 93.16 foot common division line between said Lot 11 and Lot 10, Block C, passing in transit a three-quarter (3/4") inch iron pin found at a distance of 49.45 feet from the beginning hereof, said point also lying on the southeasterly right of way of Rugby Avenue; thence running with and along said Rugby Avenue
- 3.) South 37°10'40" West, 57.96 feet to a point on the northeasterly side of the "Two Foot Reservation" as shown on the aforementioned plat, P.B.5 P.407, and described in a conveyance to the CHRIST EVANGELICAL LUTHERAN CHURCH OF BETHESDA-CHEVY CHASE from SAMUEL T. ROBERTSON and MABEL M. ROBERTSON by deed dated December 1, 1968 and recorded among the said Land Records in Liber 3821 at Folio 107; thence running with and along said "Two Foot Reservation"
- 4.) North 53°10'26" West, 72.74 feet to a point at the end of the seventh (7th) or 59.20 curved line as described in the aforementioned Equity Case 36676; thence running reversely with said seventh (7th) line and the sixth (6th) line the following two (2) courses
- 5.) 56.82 feet along the arc of a non-tangent curve, deflecting to the right, having a radius of 50.00 feet and a chord of North 52°43'43" East, 53.81 feet to a point of reverse curvature; thence

- 6.) 20.99 feet along the arc of curve, deflecting to the left, having a radius of 25.00 feet and a chord of North 61°13'55" East, 20.38 feet to the POINT OF BEGINNING; Containing 4,043 square feet or 0.0928 of an acre of land, and being graphically depicted on a Description Plat labeled Exhibit "B", attached hereto and made a part hereof by this reference.

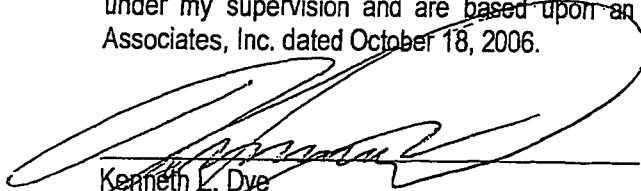
PART TWO:

Being all of the 20 foot wide Alley on the northwesterly side of Glenbrook Road, 60 foot right of way, as shown on a plat of subdivision entitled "SAMUEL T. ROBERTSON'S ADDITION TO BETHESDA" and recorded among the Land Records of Montgomery County, Maryland in Plat Book 5 as Plat 407; and being more particularly described in Maryland State Plane Meridian as follows:

Beginning for the same at a point marking the southeasterly end of the North 52°27' West, 99.1 foot line of Lot 4, Block B, as shown on the aforementioned plat, P.B.5 P.407, said point also lying on northwesterly side of Glenbrook Road, 60 foot right of way, as shown on said plat; thence running with and along said right of way so as to cross and include said alley

- 1.) 20.18 feet along the arc of curve, deflecting to the right, having a radius of 503.23 feet and a chord of South 44°52'18" West, 20.18 feet to a point of non-tangency at the southeasterly end of the North 52°27' West, 50.53 foot line of Lot 3, Block B, as shown on said plat; thence running with and along said line and the northeasterly lines of Lot 2 and Lot 1, Block B
- 2.) North 52°49'20" West, 97.41 feet to a point on the second (2nd) or North 51°49' East, 250.00 foot line as described in a conveyance to the CHRIST EVANGELICAL LUTHERAN CHURCH OF BETHESDA-CHEVY CHASE from ANN BROOKE KNIGHT by deed dated June 16, 1938 and recorded among the said Land Records in Liber 705 at Folio 227; thence running with and along part of said line
- 3.) North 39°09'40" East, 20.01 feet to a point at the northwesterly end of the aforementioned North 52°27' West, 99.1 foot line of Lot 4, Block B; thence running with and along said line
- 4.) South 52°49'20" East, 99.41 feet to the POINT OF BEGINNING; Containing 1,970 square feet or 0.0452 of an acre of land, and being graphically depicted on a Description Plat labeled Exhibit "B", attached hereto and made a part hereof by this reference.

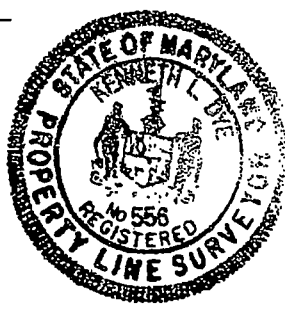
I hereby certify that this description and the accompanying description plat have been prepared under my supervision and are based upon an ALTA/ACSM Survey prepared by Loiederman Soltesz Associates, Inc. dated October 18, 2006.



 Kenneth L. Dye
 Property Line Surveyor
 Maryland Registration No. 556

11-17-06

 Date



MONTGOMERY COUNTY CIRCUIT COURT (Land Records) BHM 53878, p. 0341, MSA_CE63_53835. Date available 03/07/2017. Printed 03/24/2021.

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) BHM 53878, p. 0342, MSA_CE63_53835. Date available 03/07/2017. Printed 03/24/2021.

Exhibit "D"

I hereby certify that this description plat and accompanying description have been prepared under my supervision and are based upon an ALTA/ACSM Survey prepared by Ladagerman Solletz Associates, Inc. dated October 18, 2006.

Ladagerman Solletz Associates, Inc.
Matthew L. Dye
Property Line Surveyor
Maryland Registration No. 556

SCALE: 1" = 60'
Maryland State
Plane (NAD 83/91)

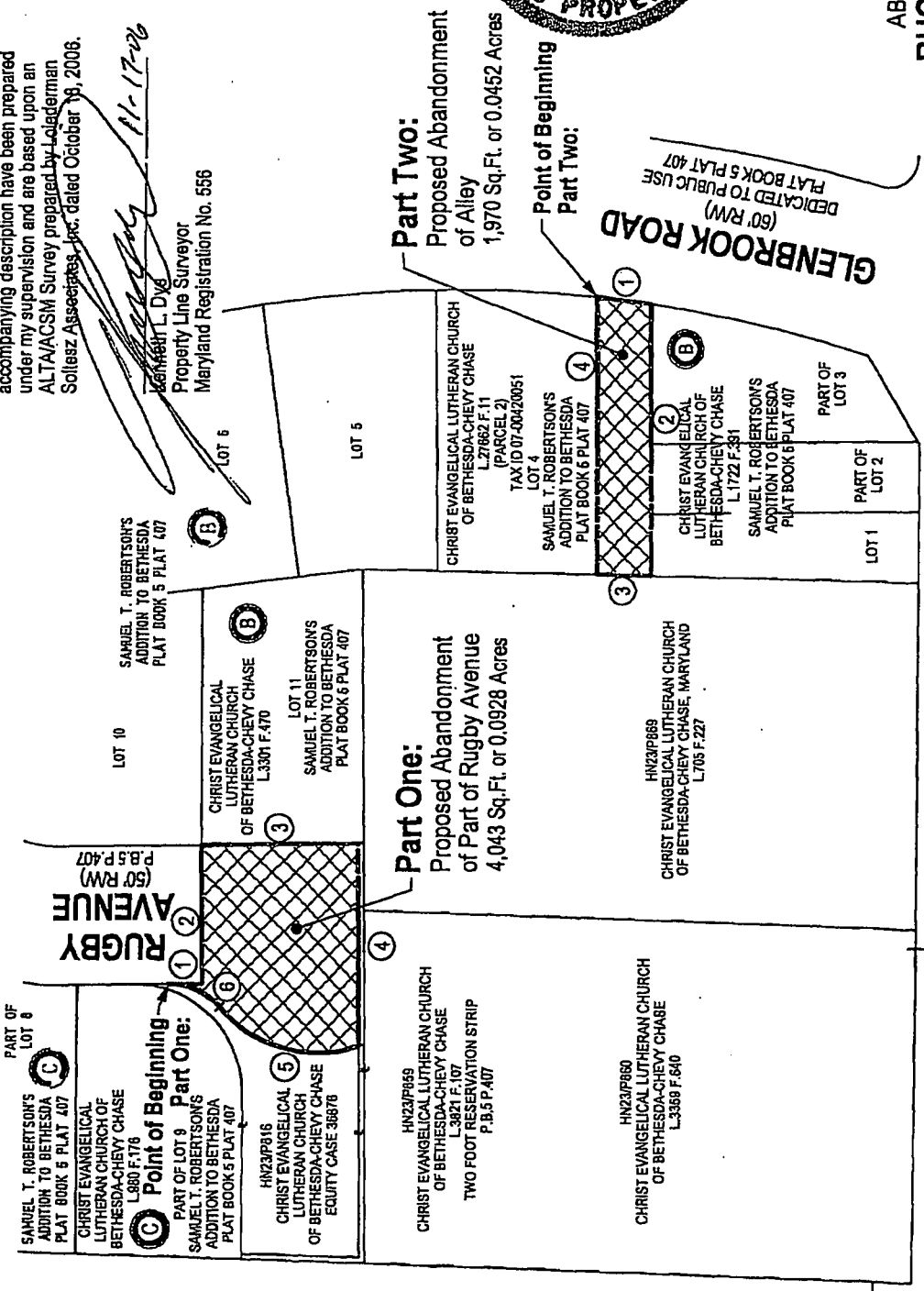


DESCRIPTION PLAT
SHOWING PROPOSED
ABANDONMENT OF PART OF
RUGBY AVENUE & ALLEY
P.B.5 P.407

BETHESDA (7TH) ELECTION DISTRICT
MONTGOMERY COUNTY, MARYLAND
SCALE: 1" = 60' DATE: NOVEMBER, 2006



ROCKVILLE OFFICE
2 Research Place, Suite 100 Rockville, MD 20850 301.948.2760 301.948.8087
www.LSAinc.com
Engineering Planning Surveying Environmental Sciences



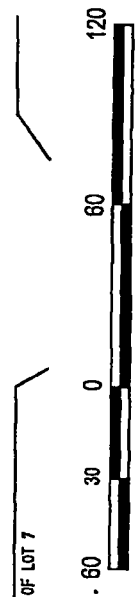
Part Two:
Proposed Abandonment
of Alley
1,970 Sq.Ft. or 0.0452 Acres

**Point of Beginning
Part Two:**

Part One:
Proposed Abandonment
of Part of Rugby Avenue
4,043 Sq.Ft. or 0.0928 Acres

GLENBROOK ROAD
(60' R/W)
DEDICATED TO PUBLIC USE
PLAT BOOK 5 PLAT 407

OLD GEORGETOWN ROAD
MD RTE. 187
R/W WIDTH VARIES
SRC PLAT NO. 21637



LOT 3 | LOT 4 SECTION 3, BATTERY PARK P.B.5 P.261 | LOT 5 | LOT 6 | PART OF LOT 7

11-17-06

Resolution No.: _____
Introduced: _____
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

Lead Sponsor: County Council

SUBJECT: Amendment to Resolution 18-711; Extension of Time for Compliance with Conditions of Abandonment; Portion of Rugby Avenue and Alley in the Samuel T. Robertson's Addition to Bethesda Subdivision, Bethesda

Background

1. Council Resolution No. 18-711, adopted on February 7, 2017, approved the conditional abandonment of a portion of Rugby Avenue and an alley off Glenbrook Road in the Samuel T. Robertson's Addition to Bethesda Subdivision in Bethesda.
2. On November 4, 2021, Miles & Stockbridge P.C., on behalf of their client JLB Georgetown Road LLC (JLB), sent a letter to the County Council requesting a 30-month extension of time to comply with the conditions outlined in Resolution No. 18-711. Pursuant to Section 49-65(d) of the County Code, the abandonment is automatically revoked within five years of approval if all of the conditions are not satisfied. Five years from when the abandonment was approved is February 7, 2022.
3. The Council first approved the abandonment on February 3, 2009 via Resolutions 16-834 and 16-835. The abandonment was revoked because the conditions were not satisfied by the previous applicant, Christ Evangelical Church of Bethesda Chevy Chase (the Church) and BA Old Georgetown, LLC, within the five-year time frame pursuant to the County Code.
4. The Church re-petitioned for abandonment, which was approved via Resolution No. 18-711. However, litigation delayed redevelopment plans, which incorporated the two ROWs to be abandoned. The Church opted to sell the property/lots abutting the areas to be abandoned to JLB who has since pursued the necessary approvals for redevelopment of said property. JLB completed purchase of the Church's property/lots on November 22, 2021.
5. JLB will not be able to satisfy the conditions specified in Resolution No. 18-711 within the five-year time-frame pursuant to the County Code, particularly the condition relating to the installation of a compliant emergency vehicle turnaround or compliant connection from Rugby Avenue to Old Georgetown Road.

Action

The County Council for Montgomery County, Maryland approves the following amendment to Council Resolution No. 18-711:

1. The word “Applicant’s” in the Action Section of the resolution is deleted and replaced by: “JLB Georgetown Road LLC’s.”
2. Action Clause #6 is added to state: “JLB Georgetown Road LLC must complete all of the conditions required for the abandonment of the portion of Rugby Avenue and alley off of Glenbrook Road. Approval of the abandonment is automatically revoked if all conditions specified in Resolution No. 18-711, and as amended by this resolution, are not completed by August 7, 2024.
3. Action Clause #7 is added to state: “The County Attorney must record among the Land Records of Montgomery County, Maryland, a copy of this Resolution and Amendments approving the abandonment of the subject area.”
4. All other terms and conditions of Resolution No. 18-711 remain in full force and effect.

Any person aggrieved by the action of the Council for the abandonments may appeal to the Circuit Court within 30 days after the date such action is taken by Council.

This is a correct copy of Council action.

Selena Mendy Singleton, Esq.
Clerk of the Council



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

**IN THE MATTER OF: AB751, ABANDONMENT OF A PORTION OF RUGBY AVE.
AND TWENTY-FOOT ALLEY IN BETHESDA, MD**

**Proposed abandonment 4,043 square feet of Rugby Ave. and 1,970 square feet of an alley
off Glenbrook Rd., Bethesda, MD**

BEFORE: Michael L. Subin, Public Hearing Officer

PUBLIC HEARING OFFICER'S REPORT AND RECOMMENDATION

I. BACKGROUND

On May 17, 2016, Christ Evangelical Church of Bethesda-Chevy Chase (the "Applicant"), sent a letter to the Montgomery County Executive requesting the abandonment of 4,043 square feet of right-of-way (ROW) at the terminus of Rugby Ave. into Applicant's property, and 1,970 square feet of an existing 20-foot ROW alley serving the Applicant's property off Glen Brook Rd. (Exhibit 1) The abandonments had previously been approved by the Montgomery County Council via Resolution Nos. 16-834 (AB699) (Exhibit A to Exhibit 1) and Resolution 16-834 (AB700) (Exhibit B to Exhibit 1) Exhibit 12 contains the Hearing Officer's report and recommendation in both cases. The abandonments were revoked in accordance with sec. 49-65(d) (Notice to Planning Board; filing subdivision plat) of the Montgomery County Code (2004), as amended, in that the Montgomery County Planning Board's (the "MCPB") conditions for approval of the subdivision plat had not been satisfied within five (5) years.

The intent of §49-62, Procedures; Hearings, of the Montgomery County Code (2004), as amended, Abandonment authority (the "Code"), is to establish procedures for the closure to public use or abandonment of the County's right to use a right-of-way ("ROW"). Pursuant to §49-62(f), Executive Order 110-16, authorizing a hearing, was issued on June 22, 2016. (Exhibit 2) In accordance with §49-62(d), notices were sent to nearby civic associations and residents. (Exhibit 3) Pursuant to §49-62(e), public notice of the hearing appeared in *The Montgomery*

Sentinel on August 18 and 25, 2016. (Exhibit 4) Signage announcing the public hearing was posted at the sites of the abandonments on August 11, 2016. (Exhibit 6) In accordance with §49-62(h)(1-8), comment was requested from appropriate governmental agencies, public utility companies, and the public. The following comments were received:

Exhibit 7: The Montgomery County Department of Fire and Rescue Service, in an e-mail dated August 16, 2016, requires either the installation of a compliant emergency vehicle turnaround or a compliant connection from Rugby Ave. to Old Georgetown Rd.

Exhibit 8: The Washington Suburban Sanitary Commission, in a letter dated July 20, 2016, stated its consent to the request subject to the Applicant granting a sufficient easement to protect the integrity of existing lines and infrastructure.

Exhibit 9: The Director, Montgomery County Department of Transportation, in a memorandum dated August 31, 2016, conditioned approval upon construction of a turnaround at the end of Rugby Ave. and the granting of any necessary easements for County storm drains and public utility facilities or, at Applicant's expense, relocating those facilities and the granting of appropriate easements; and, the filing of a new record plat incorporating the former ROWs.

Missing were comments from: the Montgomery County Police Department; Pepco; Verizon; the Montgomery County Planning Board (the "Planning Board")¹; and, Washington Gas. The Code assumes concurrence with the proposal if an agency does not respond to the request within 60 days.

A public hearing was held at 8:00 pm, August 31, 2016 in the Executive Office Building Lobby Auditorium, 101 Monroe Street, Rockville, Maryland. The record remained open until 5:00 pm, September 13, 2016.

II. EVIDENCE AND SUMMARY OF TESTIMONY

A. Project Description

Mr. Michael Cassidy testified on behalf of the Montgomery County Department of Transportation ("MCDOT") as to the elements of the project. He stated that while the subject ROW abandonments were approved by the County Council in 2009, that circumstances prevented the new record plat from being filed within the five (5) year statutory requirement. Mr. Cassidy ceded explanation of the circumstances to the Applicant. (*See sec. II(B)*)

¹ Mr. Cassidy stated that he was told the Planning Board did not feel they needed to comment since they had already approved the preliminary plan of development.

B. Favorable Testimony

Erin E. Girard, Esq. and Stephen Z. Kaufman, Esq., of the Law firm of Linowes and Blocher, LLP, presented testimony on behalf of the Applicant. Ms. Girard stated that Mr. Cassidy had related much of the history regarding the request and that the history and facts were also contained in the initial request. (Exhibit 1) Ms. Girard explained that while the Council had approved the abandonments related to AB 699 and AB 700, it remanded the associated Local Map Amendment (the "LMA"), which took an additional eighteen (18) months to approve. Although the Council recommended approval of the LMA, it was subsequently appealed by an adjacent landowner. The appeal was denied in January of 2013, at which point the Applicant needed to find a new partner and was unable to complete the process within the five (5) year statutory requirement. Ms. Girard then entered the original Planning Board Staff Recommendations and the original Public Hearing Officer's Report and Recommendation into the record. (Exhibits 11 and 12)

C. Unfavorable Testimony

No opposition, either written or oral, was presented relative to *this* Application. Prior opposition to the abandonment was expressed as part of the AB 699 and AB 700 applications.

III. CONCLUSIONS AND RECOMMENDATIONS

The abandonment of road rights-of way is governed by the provisions of section 49-63, Montgomery County Code (2004) as amended. Section 49-63 permits application for abandonment of a right-of way (the "ROW") by any person or government agency, provides for public agency and utility company review, and requires a public hearing with notice. I find that the hearing and notice procedures have been satisfied, and the public, public agencies, and utility companies have been given an opportunity to review the petition for abandonment and closure as described above.

Section 49-63 allows abandonment if the ROW is not needed for public use or if abandonment is necessary to protect the health, safety and welfare of the residents in the neighborhood. In determining health, safety and welfare issues, the Council may consider: 1) any adopted land use plan applicable to the neighborhood; 2) the safe and efficient pedestrian and vehicular traffic patterns and flows, together with alternatives in the immediate neighborhood for local and through traffic; or, 3) changes in fact and circumstances since the original dedication of the ROW.

In this case, the abandonment turns on whether or not the right-of-way is needed for public use and the safe and efficient pedestrian and vehicular traffic patterns and flows in and around the subject property and ROWs. In incorporating, but not merging the original Public Hearing Officers Report and Recommendation in AB Petitions 699 and 700, I find that the evidence and the record demonstrate that the ROWs are not needed for a public purpose, that the granting of the current petition would enhance pedestrian and vehicular flow, will serve the health, safety, and welfare of the community, and that it provides a safe and efficient pedestrian traffic pattern.

Consequently, I find that the proposed abandonment would be in the public interest and should be APPROVED. The “public interest” is a broad concept that manifests itself in a variety of contexts. When, as here, an abandonment is involved, the abandonment will be considered to be in the public interest if it will do such things as promote the general health and safety of the citizenry, protect the environment, preserve open space, or otherwise advance the community’s quality of life. (*See City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 701(1999)). This includes providing for the safe and efficient flow of vehicular and pedestrian traffic. (*See Wheaton Moose Lodge No. 1775 v. Montgomery County, MD*, 41 Md. App. 401, 397 (1979)).

However, approval of the request is conditioned upon:

1. The installation of a compliant emergency vehicle turnaround and a compliant connection from Rugby Ave. to Old Georgetown Rd. as required by the Department of Fire and Rescue Service vehicular access and water supply plan;
2. Granting WSSC a sufficient easement to protect the integrity of existing lines and infrastructure;
3. The granting of any necessary easements for County storm drains and public utility facilities or, at Applicant’s expense, relocating those facilities and the granting of appropriate easements; and,
4. The filing of a new record plat.

SIGNATURE PAGE FOLLOWS

Respectfully submitted,



Michael L. Subin

November 7, 2016

Date:

The Public Hearing Officer's Recommendations regarding AB 751, Rugby Ave. and an Alley off Glenbrook Rd., in Bethesda, MD, have been reviewed and are APPROVED.



Isiah Leggett, County Executive

Date: November 9, 2016

Resolution No.: 16-834
Introduced: February 3, 2009
Adopted: February 3, 2009

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By County Council

SUBJECT: DPWT Docket No. AB699
Abandonment – Portion of Rugby Avenue
Bethesda, Maryland

Background

1. By letter dated January 18, 2007, from Linowes and Blocher on behalf of its clients, Christ Evangelical Lutheran Church of Bethesda-Chevy Chase and BA Old Georgetown, LLC, the Applicants, application to the County was made to abandon a portion of Rugby Avenue in Bethesda as described and shown on the attached Exhibits "A" and "B".
2. A Public Hearing to consider the abandonment proposal was conducted on January 7, 2008, by the designee of the County Executive.
3. The Department of Police did not respond and concurrence is assumed.
4. The Department of Fire and Rescue Services conditioned approval upon Applicants either constructing a compliant turnaround at the end of Rugby Avenue or a compliant connection from Rugby Avenue to Old Georgetown Road.
5. By letter dated January 4, 2008, the Montgomery County Planning Board expressed unconditioned support for the proposed abandonment.
6. Washington Suburban Sanitary Commission did not respond and concurrence is assumed.
7. Washington Gas conditioned approval upon being granted an easement.
8. Verizon did not respond and concurrence is assumed.
9. PEPCO conditioned approval upon Applicants either granting easements or at Applicants' expense relocating facilities and granting easements.

TOTAL 9.00
Res#0007 Ropt#9999999
LEN RC 311-41060
Mar 24 2009 10:35 AM

FILED
LORETTA E. KNIGHT
CLERK'S OFFICE
MONTGOMERY CO. MD

2009 MAR 24 PM 3:40

I.D. W/A RC

NO FEE

RC


10. The Department of Public Works and Transportation conditioned approval upon (a) construction of a turnaround at the end of Rugby Avenue, (b) granting any necessary easements for County storm drains and public utility facilities or at Applicants' expense relocating these facilities and granting easements, and (c) filing of a new record plat incorporating the former right-of-way.
11. The County Executive recommends approval of the proposed abandonment.

Action

The County Council for Montgomery County, Maryland, finds that the portion of Rugby Avenue proposed for abandonment is no longer necessary for public use, pursuant to Section 49-63 of the Montgomery County Code (2004) as amended, and approves the abandonment, subject to the following conditions:

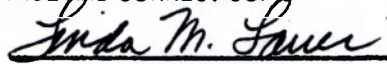
1. The Applicants must construct a code compliant turnaround at the end of Rugby Avenue or a fire department compliant connection must be made from Rugby Avenue to Old Georgetown Road.
2. The Applicants must grant, prepare and record any necessary easements for County storm drains and public utility facilities, including those for PEPCO, to the satisfaction of the County or the utility, as applicable, allowing facilities to remain at their current or relocated locations and providing the perpetual right of ingress to and egress from the easement area at any time.
3. Petitioner must prepare a new record plat incorporating the abandoned area into the lots.
4. The County Attorney must record among the Land Records of Montgomery County, Maryland, a copy of this Resolution approving the abandonment of the subject area.
5. Any person aggrieved by the action of the Council for abandonment may appeal to the Circuit Court within 30 days after the date such action is taken by Council.

This is a correct copy of Council Action.



Linda M. Lauer, Clerk of the Council

I HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE AND CORRECT COPY



CLERK OF THE COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

36813 317



H 2
 H 122
MAP HN 123
 W.S.S.C. 210 NW 05
 Location: WOODMONT

**MONTGOMERY CO.,
 MARYLAND**



PROPERTY LINE
 INTERSECTION
 WATER MAIN
 FIRE MAIN
 UTILITY LINE
 IDENTIFIED OWNERSHIP
 UNDEVELOPED LANDS
 LOCAL 1-30P (RP 12.600)

SCALE 1"=50' (RP 12.600)

DATE: 7/19/09

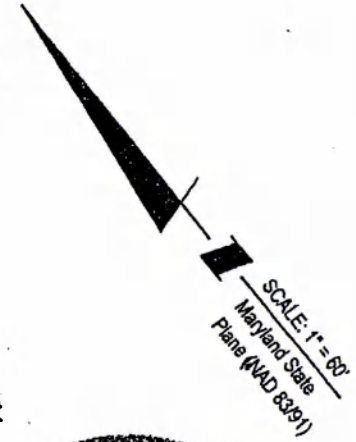
QUARTER CORNERS: SEE GRID

Exhibit "A"

EXHIBIT "B"

I hereby certify that this description plat and accompanying description have been prepared under my supervision and are based upon an ALTA/ACSM Survey prepared by Loiederman Soltesz Associates, Inc. dated October 18, 2006.

Kenneth L. Dye 11-17-06
 Kenneth L. Dye
 Property Line Surveyor
 Maryland Registration No. 556



36813 318



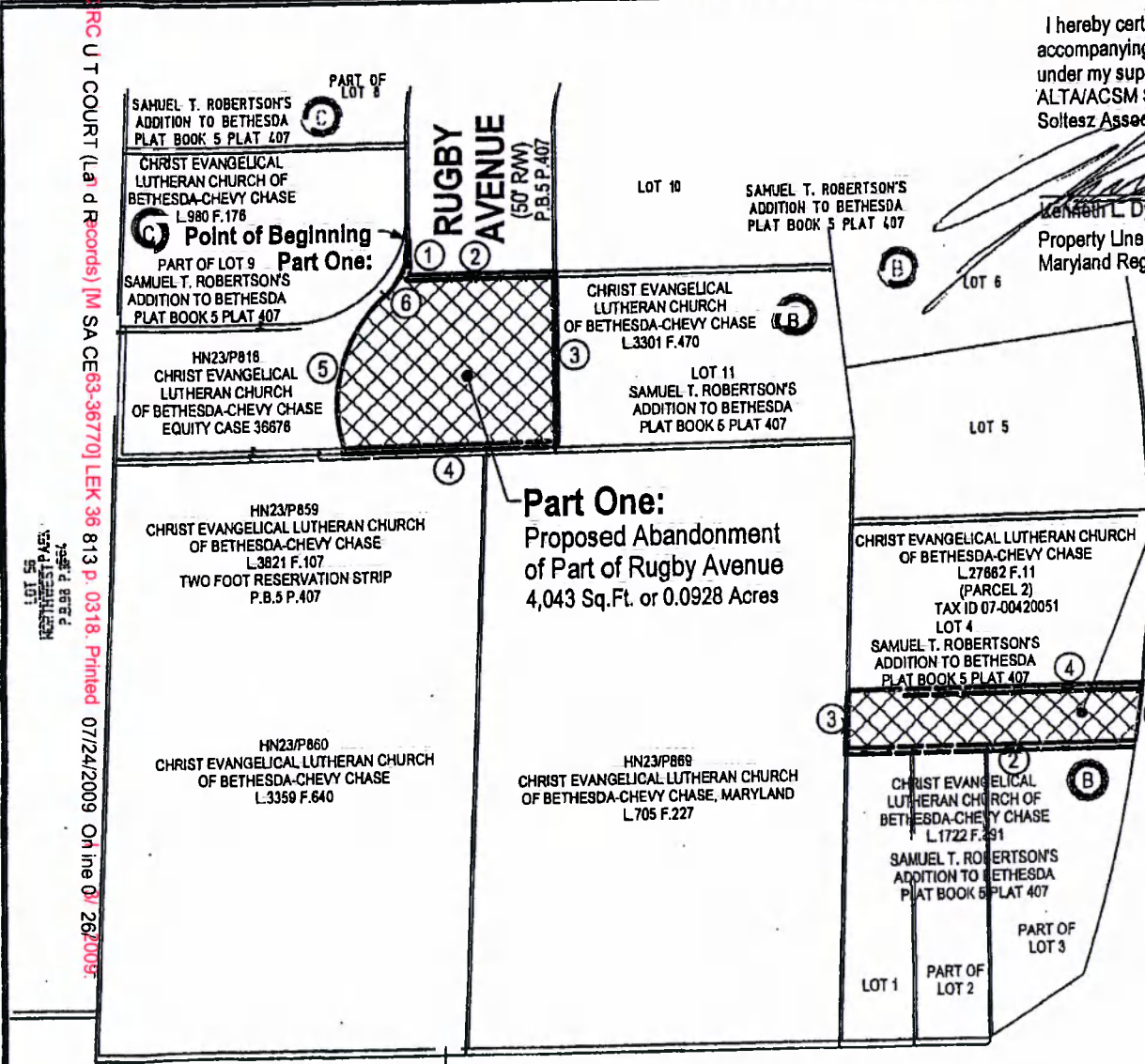
Part Two:
 Proposed Abandonment
 of Alley
 1,970 Sq.Ft. or 0.0452 Acres

Point of Beginning
 Part Two:

GLENBROOK ROAD
 (60' R/W)
 DEDICATED TO PUBLIC USE
 PLAT BOOK 5 PLAT 407

Part One:
 Proposed Abandonment
 of Part of Rugby Avenue
 4,043 Sq.Ft. or 0.0928 Acres

M O D R C U T COURT (Land Records) | M SA CE: 63-367701 LEK 36 813 P. 0318. Printed 07/24/2009 On line 07/26/2009



OLD GEORGETOWN ROAD
 MD RTE. 187
 R/W WIDTH VARIES
 SRC PLAT NO. 21837

DESCRIPTION PLAT
 SHOWING PROPOSED
 ABANDONMENT OF PART OF
RUGBY AVENUE & ALLEY
 P.B.5 P.407
 BETHESDA (7TH) ELECTION DISTRICT
 MONTGOMERY COUNTY, MARYLAND
 SCALE: 1" = 60' DATE: NOVEMBER, 2006

Attachment to Resolution No.: 16-834



ROCKVILLE OFFICE
 2 Research Place, Suite 100 Rockville, MD 20850 L301.948.2760 f.301.948.8087
 Professional Planning Surveying Environmental Sciences www.LSAssociates.net



LOT 3 | LOT 4 | SECTION 3, BATTERY PARK P.B.3 P.251 | LOT 5 | LOT 6 | PART OF LOT 7

Resolution No.: 16-835
Introduced: February 3, 2009
Adopted: February 3, 2009

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: County Council

SUBJECT: DPWT Docket No. AB700
Abandonment – Alley off of Glenbrook Road
Bethesda, Maryland

Background

1. By letter dated January 18, 2007, from Linowes and Blocher on behalf of its clients, Christ Evangelical Lutheran Church of Bethesda-Chevy Chase and BA Old Georgetown, LLC, the Applicants, application to the County was made to abandon an alley off of Glenbrook Road in Bethesda as described and shown on the attached Exhibits "A" and "B".
2. A Public Hearing to consider the abandonment proposal was conducted on January 7, 2008, by the designee of the County Executive.
3. The Department of Police did not respond and concurrence is assumed.
4. The Department of Fire and Rescue Services conditioned approval upon Applicants either constructing a compliant turnaround at the end of Rugby Avenue or a compliant connection from Rugby Avenue to Old Georgetown Road (Commented associated with related AB699 case).
5. By letter dated January 4, 2008, the Montgomery County Planning Board expressed unconditioned support for the proposed abandonment.
6. Washington Suburban Sanitary Commission did not respond and concurrence is assumed.
7. Washington Gas conditioned approval upon being granted an easement.
8. Verizon did not respond and concurrence is assumed.
9. PEPCO conditioned approval upon Applicants either granting easements or at Applicants' expense relocating facilities and granting easements.

TOTAL 0.00
Reg#M007 Rcpt#999999
LEK KC BIK#6060
Mar 24, 2009 03:39 PM

I.D. WALC

NO FEE

FILED
CLERK'S OFFICE
MONTGOMERY COUNTY, MARYLAND
2009 MAR 24 PM 3:40

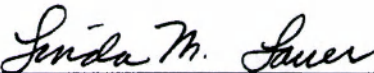
10. The Department of Public Works and Transportation conditioned approval upon (a) construction of a turnaround at the end of Rugby Avenue, (b) granting any necessary easements for County storm drains and public utility facilities or at Applicants' expense relocating these facilities and granting easements, and (c) filing of a new record plat incorporating the former right-of-way.
11. The County Executive recommends approval of the proposed abandonment.

Action

The County Council for Montgomery County, Maryland, finds that the alley off of Glenbrook Road proposed for abandonment is no longer necessary for public use, pursuant to Section 49-63 of the Montgomery County Code (2004) as amended, and approves the abandonment, subject to the following conditions:

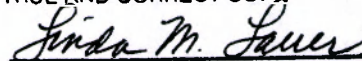
1. The Applicants must construct a code compliant turnaround at the end of Rugby Avenue or a fire department compliant connection must be made from Rugby Avenue to Old Georgetown Road.
2. The Applicants must grant, prepare and record any necessary easements for County storm drains and public utility facilities, including those for PEPCO, to the satisfaction of the County or the utility, as applicable, allowing facilities to remain at their current or relocated locations and providing the perpetual right of ingress to and egress from the easement area at any time.
3. Petitioner must prepare a new record plat incorporating the abandoned area into the lots.
4. The County Attorney must record among the Land Records of Montgomery County, Maryland, a copy of this Resolution approving the abandonment of the subject area.
5. Any person aggrieved by the action of the Council for abandonment may appeal to the Circuit Court within 30 days after the date such action is taken by Council.

This is a correct copy of Council Action.



Linda M. Lauer, Clerk of the Council

I HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE AND CORRECT COPY.



CLERK OF THE COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

OFFICE OF THE COUNTY EXECUTIVE
EXECUTIVE OFFICE BUILDING
ROCKVILLE, MARYLAND 20850

IN THE MATTER OF:

PETITIONS OF CHRIST EVANGELICAL	*	
LUTHERAN CHURCH OF BETHESDA-CHEVY	*	DEPARTMENT OF PUBLIC
CHASE AND BA OLD GEORGETOWN, LLC	*	WORKS AND
ABANDONMENT OF A PORTION OF	*	TRANSPORTATION
RUGBY AVENUE AND A PORTION OF AN	*	PETITION NOS. AB 699
ALLEY OFF OF GLENBROOK ROAD	*	AND AB 700
IN THE SAMUEL T. ROBERTSON'S	*	
ADDITION TO BETHESDA	*	

BEFORE: Diane Schwartz Jones, Public Hearing Officer

PUBLIC HEARING OFFICER'S REPORT AND RECOMMENDATION

I. Background

The hearing and public comment in the captioned matter pertains to a request dated January 18, 2007, from Linowes and Blocher, on behalf of Christ Evangelical Lutheran Church of Bethesda-Chevy Chase ("CELC") and BA Old Georgetown, LLC (collectively "Petitioners"), to abandon portions of two separate rights-of-way.¹ *Hearing Exhibit 1*. Abandonment Case AB699 seeks the abandonment of a 4,043 square foot area of public right-of-way at the terminus of Rugby Avenue (the "Rugby Abandonment Area"). Abandonment Case AB 700 seeks the abandonment of 1,970 square feet of the existing 20 foot wide public alley off Glenbrook Road (the "Alley Abandonment Area"). The rights-of-way to be abandoned are in the Samuel T. Robertson's Addition to Bethesda and are shown on the attachments designated as Exhibits A and B to *Hearing Exhibit 1*, a

¹ BA Old Georgetown, LLC is a petitioner with CELC by virtue of a joint development agreement for redevelopment of the Property (defined below) as described herein.

copy of which is Attachment 1 to this Report and Recommendation (the areas are referred to collectively as the “Abandonment Areas”).

CELIC owns approximately 1.87 acres of land at the corner of the intersection of Old Georgetown Road and Glenbrook Road in Bethesda, Maryland, consisting of 9 lots as shown on *Hearing Exhibit 15* which is attached as Attachment 2 (the “Property”). The Property has been used as a church performing both religious and social services since the 1930s. *Hearing Exhibit 11, Letter from Evangelical Lutheran Church in America*. The Property is improved with a chapel, an administrative building, several secondary residential structures, and a large surface parking lot, all of which improvements are used by CELIC for its church and programs. The programs and services performed by CELIC include a day care center, a counseling center, a homeless lunch program, an elderly day care center, and a variety of support group programs. Both those sending comments in support of the proposed abandonments and those sending comments against the proposed abandonments recognize the significant benefit and contributions that CELIC makes to the community.

Petitioners have requested the proposed abandonments in connection with their plans to redevelop the Property by renovating the existing chapel, demolishing the administrative building and the secondary structures, constructing a new multi-purpose church building with administrative offices, gathering space and a multi-purpose room, and construction of housing with up to 107 dwelling units. The entire project will be served by underground parking. Petitioners wish to incorporate the Abandonment Areas into the Property. As part of their plans they intend to construct a traffic circle at the terminus of Rugby Avenue.

The proposed Abandonment Areas are paved surfaces used for vehicular access to and from the private parking on the Property in connection with CELC's operations and programs on the Property. Each of the proposed Abandonment Areas is surrounded on three sides by land owned by CELC. The areas sought to be abandoned provide access to no other site other than that of CELC and are not needed for present or future access to any landlocked parcel, but they do include a water line, fire hydrant, sewer line and PEPCO utility pole, which are to be included in the Petitioner's future redevelopment plan.

Executive Order No. 329-07 dated November 1, 2007 authorized a public hearing on the petition for AB 699 (a portion of Rugby Avenue) and Executive Order No. 330-07 authorized a public hearing on the petition for AB 700 (a portion of the public alley). Public notice was provided by way of newspaper publication and a sign posted within the right-of-way. The hearing was convened as scheduled on January 7, 2008, and testimony and evidence were received. At the conclusion of the hearing the record was left open until 5:00 pm on January 22, 2008.

In addition to the below described testimony at the hearing, 175 written comments were received in support of the proposed abandonments and 23 written comments were received in opposition to the proposal. *See Hearing Exhibits 11 and 12.*

II. Summary of Testimony and Evidence of Record

Mike Cassedy of the Department of Public Works and Transportation identified the two Abandonment Areas for which abandonment has been requested by the Petitioners and pointed out that the two areas for which abandonment is sought are within the Property. He described that his office requested comments from the public,

appropriate governmental agencies, and public utility companies that might be affected by the proposed abandonments. Mr. Cassidy listed Exhibits 1 – 13 that were entered as part of the hearing record. The full listing of exhibits that were entered into the hearing record through the close of the record is attached hereto as Attachment 3. Mr. Cassidy noted that, at the time of hearing, comments were missing from the Police Department, Verizon, WSSC and the Planning Board, and that the Planning Board had recommended approval of the proposed abandonments at its January 3, 2008 hearing. Mr. Cassidy indicated that he would again contact Verizon, WSSC, and the police for their comments.

Steve Kaufman, an attorney with Linowes and Blocher and representing Petitioners, presented a brief overview of the project describing the proposed abandonment area for Rugby Avenue (AB 699) as consisting of 4,043 square feet and the requested abandonment of the alleyway (AB 700), serving only the church, as consisting of approximately 1,970 square feet. Mr. Kaufman submitted Hearing Exhibit 14 which are the deeds reflecting CELC's ownership of the Property²; Hearing Exhibit 15 which includes an aerial photograph, plat showing Abandonment Areas, Fire Department Access Plan, and cul-de-sac drawings; and Hearing Exhibit 16 which includes a variety of Pedestrian Access Plans (pages 1a, 1b, 2, 3, 4 and 5).

Mr. Kaufman testified that both of the Abandonment Areas serve only the Property. He presented evidence that there is no established foot path or dedicated right-of-way, that any pedestrian use of the property is permissive and not by way of a right-of-way, that the Bethesda Rescue Squad, an adjacent property that pedestrians have used in

² Deeds for lots 1,2 and 3 and 9, 4, 11 and the strip Adjacent to 9 in Samuel T. Robertson's Addition to Bethesda are included along with deeds for parcels 869 and 860 in Clagett's Purchase are included in Exhibit 14 reflecting CELC's ownership. Applicants submitted a petition in equity case number 36676 as

connection with access to CELC's Property, has been fenced off, that there are adequate alternative public pedestrian accesses, that utilities within the proposed Abandonment Areas (which per the testimony are only in the Rugby Abandonment Area) serve only the Property, and that the rights-of-way proposed for abandonment are not necessary for present or future use for either pedestrians or vehicular traffic.

Mr. Kaufman described the project for the Property as including a new, larger administrative and recreation building for the church, up to 107 residential units, and underground parking for all of CELC's activities. He further indicated that there will be the ability for pedestrians to traverse the property and that there will be emergency vehicle access. Additionally, Mr. Kaufman described that there will be a traffic circle built in connection with the Rugby Abandonment Area to allow trucks and vehicles to safely maneuver and turn around, which they cannot presently do.

Two expert witnesses testified on behalf of Petitioners, Michael Lenhart, a professional traffic operations engineer and Edward Wallington, a civil engineer who studied utilities at the site. Mr. Lenhart testified that he is a professional traffic operations engineer and discussed the numerous alternative routes for pedestrian travel along established rights-of-way. Mr. Lenhart testified that pedestrian passage across CELC's Property required that pedestrians cross parking lots that have vehicles moving on them "all of the time," that there are no marked or dedicated pathways, that the proposed Abandonment Areas are not needed for pedestrian use and that there are "better and safer" proposed routes along public rights-of-way. *Hearing Transcript pps. 23 and 24.*

being reflective of title to P816, however, this document is only a petition and not a decree. However, no one contested CELC's ownership of the Property.

Mr. Wallington, a civil engineer, testified that he studied the utilities at the site and determined that there are several utilities in the Rugby Abandonment Area which serve only the Property and can be relocated without interruption of service.

At the hearing Mr. Strongin, with the firm of Knopf and Brown, testified on behalf of the "Committee of Concerned Residents of Glenbrook Road and Rugby Avenue" (the "Committee"). Mr. Estreicher, the chair of the referenced Committee testified with Mr. Strongin. Mr. Strongin testified that that the Committee did not believe that the community services provided by CELC require abandonment of the rights-of-way and that pedestrians and vehicles have used the proposed Abandonment Areas and the CELC's property to cut through from points on Old Georgetown Road, Glenbrook Road, Rugby Avenue and Battery Lane for a long time. Mr. Strongin pointed out that the rights-of-way were dedicated a longtime ago and there is no evidence that any fact or circumstance has changed such that the rights-of-way are no longer needed for present or future public use, acknowledging that the rights-of-ways have "always dead ended" into private property. *Hearing Transcript p. 34.* Mr. Strongin further pointed out that the letter from Pepco indicates that the rights-of-way have utilities and are needed for that public use. Mr. Strongin testified that the Sector Plan requires a mid-block crossing. However, upon questioning by the Public Hearing Officer as to whether the Sector Plan specifically requires a mid-block crossing for the Property, Mr. Strongin offered Exhibit 17 and noted the requirement for a mid-block crossing was one block away. Mr. Strongin also presented Exhibit 18 which is a letter from Mr. Marshall and read an extract from the letter indicating an objection to the abandonment due to concerns of safety walking along the public sidewalk on Old Georgetown Road and noting that when it rains

cars splash the pedestrians on the sidewalk. Mr. Strongin then placed his own written testimony into evidence as Exhibit 19 and the testimony of David Brown that was presented to the Planning Board on the proposed project for the Property was introduced as Exhibit 20. Upon inquiry by the Public Hearing Officer, Mr. Strongin clarified that the Committee is an ad hoc committee of neighbors and not a formally established organization.

Mr. Brad Marshall then testified both on his own behalf and on behalf of the City Commons of Bethesda Condominium Complex. Mr. Marshall and his family moved to the area two years ago. He further testified that he frequently goes through the gate of the Bethesda Rescue Squad, across its parking lot, and through the CELC parking lot. Mr. Marshall is concerned for safety reasons about having to walk on the sidewalk along Old Georgetown Road, and described a circumstance where a vehicle was flipped over on the sidewalk. Mr. Marshall expressed his intent and that of his 10 year old daughter and other children in the area to continue to use the CELC parking lot to cut through rather than walking on Old Georgetown Road.

Mr. Kaufman testified in rebuttal that those opposed to the abandonment were applying zoning standards and not the standards set out in the Montgomery County Code for abandonment of rights-of-way. He further pointed out that the mid-block crossing in the Master Plan referenced by Mr. Strongin does not pertain to the Property and that the usage made of the Property for crossing could be construed to be a trespass.

Extensive letters and emails in support of the proposed abandonments were received. In total, 175 comments in support of the proposed abandonments were received from interested parties, including from fellow religious institutions, social service

providers, day care staff and users, members of the community, church members and others. *See, Hearing Exhibit 11.* Uniformly, the written comments noted that CELC, in its present location since approximately the 1930s, has been an important member of the community and plays a vital role in providing public services, including, serving new resident immigrant population, serving a rapidly growing senior population, adding positive youth development programs, childcare, lunches for the homeless, coat drives, public environmental forums, toys for tots, backpacks for the homeless, cell phone collections for abused women, refuge for Katrina victims, mental health services, 12-step programs and support groups. Many of those commenting in favor of the abandonments felt that the plans for redevelopment of the site would allow CELC to enhance the services it provides.

The Christ Church Children's Center (the "Children's Center") in its comments dated January 17, 2008 raised safety concerns with current cut-through traffic at the Property indicating that CELC's parking lot is used for drop off and pickup and for services for the children in the day care facility. The children, their parents and staff frequently walk across the parking lot on a daily basis, and the Children's Center commented that because of the location of the Property, many vehicles use the Property for a cut-through "including taxis, pizza delivery, commuters and neighbors frequently cut through the private parking lot and driveways without regard to posted signs or our safety concerns." The Children's Center is further concerned because of the proximity of cut-through pedestrian traffic to the children's play area on the Property.

Additionally, several of the 175 people providing comments in support of the project pointed out that the project that will follow the proposed abandonments is located

close to Metro and would result in additional affordable housing, a reduction of the carbon footprint by concentrating buildings on less space, using existing infrastructure in its urban environment, and providing additional green space.

There were 23 comments received in opposition to the proposed abandonments. *See, Hearing Exhibit 12.* These comments focused largely on use of the rights-of-way for pedestrian and vehicular routes to and from work between Old Georgetown Road, Battery Lane, Glenbrook Road, and Rugby and Norfolk Avenues. The routes used, by necessity, would have to travel through CELC's property because as noted in Mr. Strongin's testimony, the Abandonment Areas have always dead ended into private property. *Hearing Transcript p. 34.*

Comments were sought from government agencies and utilities listed in Montgomery County Code Section 49-62(h). The evidence of record indicates that the relevant public agencies and utilities have reviewed the petition or foregone the opportunity to review the petition. Those responding either had no objection to the abandonments, or if they did object, they proposed conditions which if satisfied will eliminate the objection to the abandonments. Responses were not received from the Washington Suburban Sanitary Commission, Verizon and the Montgomery County Police Department. Pursuant to Montgomery County Code Section 49-62(g), these entities are presumed not to oppose the proposed abandonments because the required sixty days has elapsed from the date of the notices of the hearing which were December 26, 2007 and January 2, 2008 for the *Gazette Bethesda*, and December 27, 2007 and January 3, 2008 for the *MC Sentinel*. *Hearing Exhibit 4.*

The Montgomery County Department of Public Works and Transportation, by memorandum dated January 7, 2008, recommended approval subject to Petitioners 1) constructing a turnaround at the end of Rugby Avenue, 2) granting any necessary easements for County storm drains and public utility facilities or at Petitioners' expense relocating any facilities and granting new easements, and 3) a new record plat being filed to incorporate the abandoned areas into the lots.

The Montgomery County Planning Board ("Planning Board") by letter dated January 4, 2008, recommended its unconditional support of both abandonment petitions. The Planning Board staff had recommended that the Planning Board support the proposed abandonments with conditions to require a public use easement at time of preliminary plan, site plan and record plat to permit a) vehicles to turn around at the terminus of Rugby Avenue at a turning radius required by the Department of Public Works and Transportation, and b) Pedestrians to walk through the site between the terminus of Rugby Avenue and Old Georgetown Road via a path along the north property line. The Planning Board did not adopt its staff recommendations and elected to unconditionally approve the proposed abandonments. *See Hearing Exhibit 21.*

Washington Gas, by letter dated January 2, 2008, stated that it objects to abandonment because it has a gas line, "unless Washington Gas is granted an easement to protect its pipeline now located in the Public ROW". *See Hearing Exhibit 8.*

The Potomac Electric Power Company ("Pepco"), by letter dated November 26, 2007, stated that it has existing facilities within the public rights of way in AB 699 and AB 700 and therefore objects to abandonment. However, Pepco went on to state that "We can withdraw or objection provided that the petitioner(s) are willing to: (1) grant,

prepare and record easement(s) to Pepco's satisfaction allowing our facilities to remain at their current locations to provide the perpetual right of ingress to and egress from the easement area at any time; (2) the petitioner(s) are willing to pay the costs to relocate these facilities and grant any easement necessary to do so, or (3) provide accurate plat documents verifying we have no facilities." *See Hearing Exhibit 6.*

The Montgomery County Fire and Rescue Service, by electronic mail dated January 2, 2008, from MCDFRS Marie LaBaw, PE stated its concern that there be either a compliant turnaround or that the currently proposed fire department compliant connection is made from Rugby Avenue to Old Georgetown Road. This concern was stated with more detail by Ms. LaBaw in an email attached to Mr. Strongin's opposition letter contained in Exhibit 22, "[t]he cul-de-sac as proposed is not FD compliant (<90' diameter), so the developer offered the compliant connection to Old Georgetown as an option. If they prefer to increase the cul-de-sac diameter, either option is fine as long as we can get apparatus in and out." *See Hearing Exhibits 7 and 23.*

III. Conclusions and Recommendations

The abandonment of road rights-of-way is governed by the provisions of sections 49-62 and 49-63, Montgomery County Code. Section 49-62 permits application for abandonment of a right-of-way by any person or government agency, provides for public agency and utility company review, and requires a public hearing with notice. The hearing and notice procedures have been satisfied, and the public agencies and utility companies have been given an opportunity to review the petition for abandonment as described above.

Section 49-63 allows abandonment if the right-of-way is not needed for public use or if abandonment is necessary to protect the health, safety and welfare of the residents in the neighborhood. In determining health, safety and welfare issues, the Council may consider 1) any adopted land use plan applicable to the neighborhood; 2) the safe and efficient pedestrian and vehicular traffic patterns and flows, *together with alternatives*, in the immediate neighborhood, for local and through traffic, and 3) changes in fact and circumstances since the original dedication of the right-of-way.

The evidence of record demonstrates that the proposed Rugby Abandonment Area and the proposed Alley Abandonment Area are not needed for present or future public use as a road right-of-way. Both the Rugby Abandonment Area and the proposed Alley Abandonment Area provide access only to the Property that is owned by CELC and to no other properties. Furthermore, while the testimony at the hearing and in comments indicates that residents in the area use the Abandonment Areas and the Property for pedestrian passage, the only way access to or from either the Rugby Abandonment Area or the proposed Alley Abandonment Area is achieved is through CELC's Property. No evidence was presented by those testifying or commenting against the abandonments that they had any legal right to pass across the property of CELC. CELC's counsel testified that any pedestrian passage across CELC's property was permissive only.

Additionally, CELC's expert, Michael Lenhart testified that the access across CELC's property is across a parking lot creating an unsafe pedestrian situation by placing pedestrians in conflict with vehicles. Mr. Lenhart testified that there are no footpaths evident across the parking lot. Thus, pedestrians cutting across the parking lot on CELC's Property are placing themselves in conflict with vehicles rather than using

sidewalks intended for pedestrians and where motorists would reasonably expect to find pedestrians. Mr. Lenhart testified that there are a number of alternative pedestrian routes with sidewalks that would provide better pedestrian access. *See, Hearing Transcript p. 24.* Planning Board Staff agreed that the sidewalks in the area surrounding the Property were suitable routes for pedestrians in lieu of pedestrians crossing private property and that therefore the areas proposed for abandonment are not necessary for present public use or anticipated public use in the foreseeable future. *See, Hearing Exhibit 21.*

While Mr. Marshall testified that pedestrians are splashed when using sidewalks during the rain, and that he has seen an SUV flipped over on the sidewalk on Old Georgetown Road, the combined weight of the testimony of Mr. Lenhart that use of the public sidewalks is safer than unauthorized cut-through pedestrian traffic, the review of the Planning Board staff concluding that there are suitable routes for pedestrians on the public sidewalks and the written comments from the Children's Center about unauthorized cut-through of vehicles lead to the conclusion by the undersigned Public Hearing Officer that the public sidewalks are preferred pedestrian routes.

None of those testifying against the proposed abandonments or providing written testimony against the abandonments claimed a legal right of passage across CELC's Property, and they did not offer any evidence of a legal right of passage to or from either the Rugby Avenue Abandonment Area or the Alley Abandonment Area. Without such a right, the areas proposed for abandonment dead end at private property owned by CELC. Absent the public having a legal right of passage across CELC's property, these areas are not needed for present or future public use and there are adequate established alternative routes for pedestrian use. Given CELC's plans to redevelop the Property and the

Planning Board's recommendations on the proposed abandonments, the Abandonment Areas are not needed for anticipated public use in the foreseeable future. This is particularly so because the applicable *Master Plan* does not provide for a mid-block crossing of the Property.

In addition to the foregoing, considering Mr. Lenhart's testimony and the written comments of the Children's Center, the abandonments are justified under Montgomery County Code section 49-63(c)(2) as well. The abandonment will protect the health, safety and welfare of the residents near the right-of-way by directing pedestrians to proper and convenient pedestrian paths and precluding vehicles from cutting through private property. Abandonment of the subject rights-of-way will eliminate cut-through traffic that belongs on area roads that are designed to handle it, rather than using the private Property of CELC and putting the children, staff, parents and other pedestrians in conflict with the cut-through vehicles.

While testimony was presented that implied that the Sector Plan requires pedestrian passage across the Property, upon further questioning about this it was noted that the contemplated pedestrian passage is actually a block away. *See, Hearing Transcript pps.37-8.* Additionally, the relevant extract from the Master Plan shows that no pedestrian pathway is projected through the site. *See, Hearing Exhibit 22.* Presently area residents pass through the Property crossing drive aisles and parking lots, putting them in direct conflict with vehicles. Mr. Lenhart, an expert traffic engineer, testified that this is not a safe condition and offered a number of safer alternative routes using public sidewalks that would not add an unreasonable distance to any destination thus providing efficient alternative routes in the neighborhood for pedestrians. In some

instances, the route was even shorter. Mr. Lenhart further indicated that some vehicles impermissibly cut through the Property from Rugby to Glenbrook and that there is not sufficient turning distance for a safe movement. Mr. Lenhart indicated that the abandonment would also remedy that situation. *See, Hearing Transcript, p 25 and Hearing Exhibit 16.* The report of the Planning Board staff supports the testimony of Mr. Lenhart.

Finally, Petitioners have asserted that they should not have been required to pay two filing fees for the AB699 and AB700. While the imposition of the charges is not part of the findings to be made for the proposed abandonments, to complete the record, the undersigned Public Hearing Officer finds that the two filing fees were properly imposed by the Department of Public Works and Transportation. Montgomery County Code section 49-62(c) requires each applicant to pay a filing fee for an application. Montgomery County Code section 49-62(b) provides that any person may file “an application ...to close or abandon any right-of-way.” In this case the Abandonment Areas are two separate rights-of-way at different locations. The purpose of the filing fees is to defray the cost of processing the requests and conducting the hearing. The rights-of-way at issue in this matter are not part of the same roadway. They have two separate postings, two separate sets of notice to abutting property owners, potential comments from different property owners and independent review by agencies for each proposed Abandonment Area. Each area must be reviewed and considered as independent areas. For these reasons, the fees were properly imposed.

Based on a thorough review of the testimony and evidence of record, I recommend that the petitions to abandon the Rugby Abandonment Area consisting of

approximately 4,043 square feet and the Alley Abandonment Area consisting of approximately 1,970 square feet as more fully shown on *Hearing Exhibit 15B* and Attachment 1, be granted, subject to the following requirements:

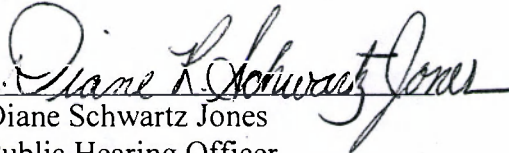
1) Petitioners must construct a code compliant turnaround at the end of Rugby Avenue or a fire department compliant connection must be made for the Property from Rugby Avenue to Old Georgetown Road;

2) Petitioners must grant, prepare and record any necessary easements for County storm drains and public utility facilities, including those of Pepco to the satisfaction of the County or the utility, as applicable, allowing facilities to remain at their current or relocated locations and providing the perpetual right of ingress to and egress from the easement area at any time; and

3) Petitioners must prepare a new record plat incorporating the abandoned areas into the lots.

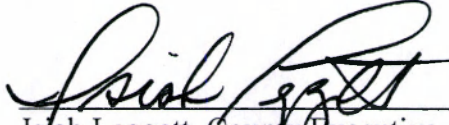
Respectfully submitted,

May 5, 2008


Diane Schwartz Jones
Public Hearing Officer

The Public Hearing Officer's Recommendations have been reviewed and are approved.

Date: May 6, 2008


Isiah Leggett, County Executive



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

MCPB No. 21-076
Sketch Plan No. 3201910A
8015 Old Georgetown Road
Date of Hearing: July 22, 2021

JUL 27 2021

RESOLUTION

WHEREAS, under Section 59-7.1.2 of the Montgomery County Zoning Ordinance, the Montgomery County Planning Board is authorized to review sketch plan applications; and

WHEREAS, on September 5, 2019, by Resolution MCPB No. 19-108, the Planning Board approved Sketch Plan No. 320190100, to allow up to 320,000 square feet of multi-family residential development on 2.5 acres of CR 2.5 C 0.75 R 1.75 H-120 zoned-land, located on the north quadrant of the intersection of Old Georgetown Road and Glenbrook Road in Downtown Bethesda ("Subject Property") in the Bethesda CBD Policy Area and 2017 *Bethesda Downtown Sector Plan* ("Sector Plan") area; and

WHEREAS, on June 1, 2021, JLB Realty, LLC ("Applicant") filed an application to reduce the previously approved maximum density from 320,000 square feet to 316,500 square feet, comprising an increase in commercial density of up to 82,270 square feet, and up to 234,230 square feet of residential density, and a decrease in allocation of BOZ density from 124,536 to 42,266 square feet on the Subject Property; and

WHEREAS, Applicant's sketch plan application was designated Sketch Plan No. 32019010A, 8015 Old Georgetown Road ("Sketch 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 July 9, 2021, setting forth its analysis and recommendation for approval of the Application subject to certain binding elements and conditions ("Staff Report"); and

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www.montgomeryplanningboard.org E-Mail: mcp-chair@mncppc.org

Approved as to
Legal Sufficiency: /s/ Matthew T. Mills
M-NCPPC Legal Department

WHEREAS, on July 22, 2021, the Planning Board held a public hearing on the Application at which it heard testimony and received evidence submitted for the record on the Application; and

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

NOW, THEREFORE, BE IT RESOLVED that the Planning Board approves Sketch Plan No. 32019010a, to reduce the previously approved maximum density from 320,000 square feet to 316,500 square feet, comprising an increase in commercial density of up to 82,270 square feet, and up to 234,230 square feet of residential density, and a decrease in allocation of BOZ density from 124,536 to 42,266 square feet on the Subject Property, by modifying the following condition:¹

Modified Condition

1. Density

The Sketch Plan is limited to a maximum of 316,500 total square feet of residential development. The maximum number of dwelling units and use mix will be determined at Preliminary Plan. The maximum density includes an allocation of up to 42,266 square feet of density from the Bethesda Overlay Zone (BOZ) density. The final square footage and BOZ allocation will be determined at Site Plan.

BE IT FURTHER RESOLVED that all other sketch plan conditions of approval for this project remain valid, unchanged, and in full force and effect.

BE IT FURTHER RESOLVED that having given full consideration to the recommendations and findings of its Staff as presented at the hearing and set forth in the Staff Report, which the Planning Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record and all applicable elements of the Zoning Ordinance, the Board finds that as conditioned the necessary elements of the Sketch Plan are appropriate in concept and appropriate for further review at site plan and that unless specifically set forth herein, this Amendment does not alter the intent, objectives, or requirements in the originally approved sketch plan as revised by previous amendments, and all findings not specifically addressed remain in effect.

1. *Meet the objectives, general requirements, and standards of this Chapter;*

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

The Sketch Plan Amendment meets the development standards of Section 59.4.5.4, as shown in the following Data Table:

Table 1 – Sketch Plan 32019010A Data Table

Section 59.4	Development Standard	Permitted/ Required	Approved w/ 320190100	Approved w/ 32019010A
	Tract Area per Zone			
	CR 2.5 C-0.75 R-1.75 H-120	n/a	109,694 sf (2.52 ac)	109,694 sf (2.52 ac)
	Prior Dedication	n/a	22,562 sf (0.52 ac)	22,562 sf (0.52 ac)
	Proposed Dedication	n/a	7,330 sf (0.17 ac)	7,330 sf (0.17 ac)
	Site Area sf (acres)	n/a	79,802 sf (1.83 ac)	79,802 sf (1.83 ac)
	Residential Density sf (FAR)	191,964 sf (1.75)	191,964 sf (1.75) ¹	191,964 sf (1.75)
	Commercial Density sf (FAR)	82,270 sf (0.75)	0 sf	82,270 sf (0.75)
	Bethesda Overlay Zone Density	n/a	128,036 sf (1.17)	42,266 sf (0.39)
	Total sf (FAR)		320,000 sf (2.92)	316,500 sf (2.89)
	Building Height			
	CR 2.5 C-0.75 R-1.75 H-120	110 feet	90 feet	90 feet
	Public Open Space (min)	10%	10% (sf)	10% (sf)
	Minimum Setbacks	0	0	0
	Green Cover	35%	35% ²	35% ¹

¹ The *Bethesda Downtown Sector Plan* allows developments that provide renewable energy infrastructure to provide less than 35% green cover. The Applicant is proposing to provide 21% of green cover through green roof, canopy cover, and the remaining 14% through solar panel installation.

- a) *Implement the recommendations of applicable master plans.*

As amended, the Project remains in conformance with the 2017 *Bethesda Downtown Sector Plan* recommendations for the Property. The inclusion of commercial density for live/work units will enhance the area and provide flexibility for change in the working environment.

BE IT FURTHER RESOLVED that the Board's approval of a sketch plan is in concept only and subject to further review at site plan, when, based on detailed review the Board may modify the Sketch Plan's binding elements or conditions based on the Montgomery County Code, the Sector Plan, or other requirements; and

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 all binding site development elements shown on the latest version of 32019010A, 8015 Old Georgetown Road, received by M-NCPPC as of the date of the Staff Report, are required, except as modified by the above conditions of approval; 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 ~~JUL 27 2021~~ (which is the date that this Resolution is mailed to all parties of record); and

* * * * *

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 Cichy, seconded by Commissioner Verma, with Chair Anderson, Vice Chair Fani-González, and Commissioners Cichy and Verma voting in favor of the motion, and Commissioner Patterson absent at its regular meeting held on Thursday, July 22, 2021, in Wheaton, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board

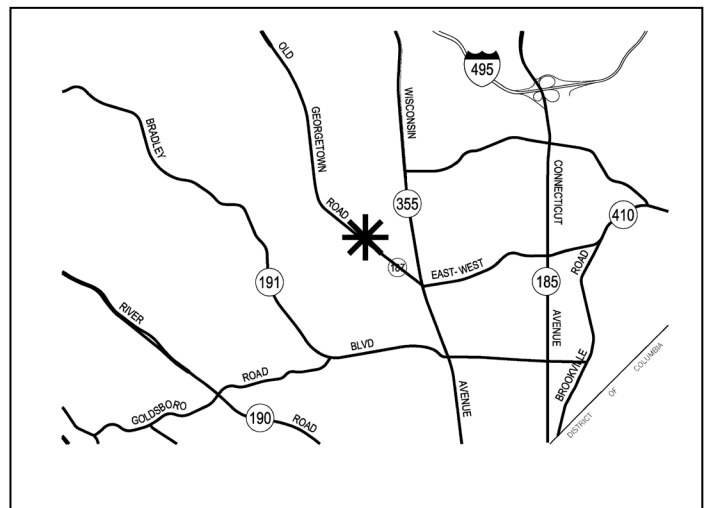
8015 Old Georgetown Road Preliminary Plan Amendment No. 12016022A & Site Plan No. 820200130

- [GB] Grace Bogdan, Planner Coordinator, Area 1, Grace.Bogdan@montgomeryplanning.org, 301.495.4533
- [SD] Stephanie Dickel, Supervisor, Area 1, stephanie.dickel@montgomeryplanning.org, 301.495.4527
- [M] Elza Hisel-McCoy, Chief, Area 1, Elza.Hisel-McCoy@montgomeryplanning.org, 301.495.2115

Description

Completed: 6.22.2020

- Preliminary Plan Amendment: Request to increase maximum density from 145,863 square feet to 316,500 square feet, increase residential units from 107 to 297 units, remove the commercial/church use, and remove Development Plan requirements;
- Site Plan: Request to construct a multi-family residential building of up to 316,500 square feet for a maximum of 297 units with 15% MPDUs, including up to 124,536 square feet of BOZ Density with a Park Impact Payment;
- Current use: church, parking lot, and detached single family home;
- Located on the north quadrant of the intersection of Old Georgetown Road and Glenbrook Road in Downtown Bethesda;
- 2.52 acres zoned CR 2.5 C 0.75 R 1.75 H-120 and the Bethesda Overlay Zone, in the 2017 *Bethesda Downtown Sector Plan*;
- Applicant: JLB Realty, LLC;
- Acceptance date: February 27, 2020.



Summary

- Staff recommends approval of the Preliminary Plan amendment and Site Plan with conditions.
- The Preliminary Plan Amendment and Site Plan Application received an administrative extension on June 19, 2020, extending the review period by 30 days from June 26, 2020 to July 26, 2020.
- In June of 2019, the Planning Board approved Sketch Plan 320190100 to allow a maximum of 320,000 square feet of multi-family residential development with a maximum allocation of BOZ density of 128,036 square feet.
- The site was previously approved for development under the PD-44 zone prior to the adoption of the 2017 *Bethesda Downtown Sector Plan*, which allowed expansion of the existing church and daycare, and construction of a new building of up to 107 units.
- Pursuant to Section 59.7.7.1.B.5.a.i, the Property is no longer subject to the previously approved Development Plan (G-864) as a Sectional Map Amendment was approved implementing the 2017 *Bethesda Downtown Sector Plan*. The related Sketch Plan requires the Applicant to submit a letter of withdrawal for the Development Plan prior to certification of the Preliminary Plan.
- The expansion of the existing church and daycare is no longer part of the Proposal, which will redevelop the existing site with a new 90-foot-tall multi-family building of up to 297 units with 15% MPDUs.
- The Applicant is seeking approval of alternative compliance for Section 59.6.4.1, Driveway Access Requirements.
- The Project includes an allocation of Bethesda Overlay Zone density of up to 124,536 square feet and a Park Impact Payment of \$974,253.32.

SECTION 1: RECOMMENDATION AND CONDITIONS

Preliminary Plan Amendment No. 12016022A

Staff recommends approval of Preliminary Plan Amendment No. 12016022A subject to the following conditions that supersede the previous conditions in their entirety:

1. This Preliminary Plan is limited to one (1) lot for up to 316,500 square feet of total development, for a multi-family residential building with a maximum of 297 units.
2. The Adequate Public Facility (“APF”) review period granted for Preliminary Plan 120160220 remains valid for 85 months from the date of mailing MCPB Resolution 16-061, December 12, 2016.
3. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation (“MCDOT”) in its letter dated May 12, 2020, and incorporates them as conditions of the Preliminary Plan Amendment approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
4. Before recording a plat for the Subject Property, the Applicant must satisfy MCDOT’s requirements for access and improvements.
5. The Planning Board has reviewed and accepts the recommendations of the Maryland State Highway Administration (“MDSHA”) in an email, dated May 7, 2020, and incorporates them as conditions of the Preliminary Plan Amendment approval. The Applicant must comply with each of the recommendations as set forth in the email, which may be amended by MDSHA if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
6. Before the issuance of access permits, the Applicant must satisfy the Maryland State Highway Administration’s requirements for access and improvements.
7. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services (“MCDPS”) – Water Resources Section in its stormwater management concept letter dated May 28, 2020, and incorporates them as conditions of the Preliminary Plan Amendment approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources Section if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
8. The development must comply with the binding elements and conditions of approval for Sketch Plan No. 320190100 as listed in MCPB Resolution No. 19-108.
9. Before recordation of a plat or issuance of any demolition, clearing or grading permit for the Subject Property, the Applicant must receive Staff certification of Site Plan No. 820200130.
10. If an approved Site Plan amendment for the Subject Property substantially modifies the lot or right-of-way configuration or quantities shown on this Preliminary Plan Amendment, the Applicant must obtain approval of a Preliminary Plan amendment before certification of the Site Plan amendment.

11. The Applicant must provide the following dedications and show them on the record plat(s) for the following existing roads:
 - a. A dedication of the Old Georgetown Road frontage necessary to provide the Sector Plan-recommended 100-foot-wide right-of-way between the Subject Property line and right-of-way centerline.
 - b. A dedication of the Glenbrook Road frontage necessary to provide the Sector Plan-recommended 80-foot-wide right-of-way between the Subject Property line and right-of-way centerline.
 - c. Dedication for the proposed cul-de sac at the terminus of Rugby Avenue, as illustrated on the Certified Preliminary Plan.
 - i. Sidewalks on private property located outside the right-of-way around Rugby Avenue are to be contained within a Public Improvement Easement (PIE).
 - ii. The Applicant must record the Declaration of PIE document in the Land Records of Montgomery County prior to plat recordation. The deed reference is to be provided on the record plat.
12. A Traffic Mitigation Agreement (TMAg) was required under the previously approved Preliminary Plan (120160220). The draft TMAg must be updated, finalized and executed prior to issuance of any building permits to participate in the Bethesda Transportation Management District (TMD) and work toward the Sector Plan goal of 55 percent Non-Auto Driver Mode Share.
13. Short-term public bicycle parking must be installed near the main entrance to the building. Secure long-term private bicycle parking must be installed, internal to the private parking garage, for residential use. The exact number and location of bicycle parking spaces will be determined at the time of Site Plan.
14. The record plat must show necessary easements.
15. The Applicant must include the stormwater management concept approval letter and any other applicable agency letters and Preliminary Plan Resolution on the approval or cover sheet(s).
16. 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, on-site 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 approval. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot.

Site Plan No. 820200130

Staff recommends approval of Site Plan No. 820200130, which supersedes the previous Site Plan approval (820160090; MCPB No. 16-062) in its entirety. The Project includes an allocation of up to 124,536 square feet of Bethesda Overlay Zone density. 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. Sketch Plan Conformance
The development must comply with the binding elements and conditions of approval for Sketch Plan No. 320190100 as listed in MCPB Resolution No. 19-108.
2. Preliminary Plan Conformance
The development must comply with the conditions of approval for Preliminary Plan Amendment No. 12016022A and any subsequent amendments.

Density, Height & Housing

3. Density
The Site Plan is limited to a maximum of 316,500 square feet of residential development on the Subject Property, including up to 297 dwelling units including a minimum of 15% MPDUs.
4. Height
The development is limited to a maximum height of 90 feet, as measured from the building height measuring point, as illustrated on the Certified Site Plan.
5. Bethesda Overlay Zone Density
 - a. The Planning Board approves 124,536 square feet of Bethesda Overlay Zone (BOZ) density for this Application.
 - b. Per Section 59.4.9.2.D.4 of the Zoning Ordinance, the Applicant must have a building permit application accepted by MCDPS that includes the core and shell of the principal building within two years of the mailing date of the Planning Board's Resolution. Within two years of MCDPS accepting the building permit application, the Applicant must obtain the building permit. The deadlines may not be extended. If the Applicant fails to comply with any of the deadlines in this condition, the entire Site Plan approval is revoked.
 - c. In the event the final allocation of density from the BOZ is less than the approved amount, the Applicant may apply to reduce the allocation of density from the BOZ through a minor amendment.
6. Park Impact Payment
The Applicant must pay to the M-NCPPC a Park Impact Payment of \$974,253.32, prior to release of the first above-grade building permit, or as may be adjusted through a minor amendment as set forth in Condition 5.c above.
7. Moderately Priced Dwelling Units (MPDUs)
The Planning Board has reviewed and accepts the recommendations of Montgomery County Department of Housing and Community Affairs (DHCA) in its letter dated May 12, 2020, and incorporates them as conditions of the Site Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which DHCA may amend provided that the amendments do not conflict with other conditions of the Site Plan approval.

8. Public Benefits

The Applicant must provide the following public benefits and meet the applicable criteria and requirements of the Zoning Ordinance and the CR Zone Incentive Density Implementation Guidelines for each one.

- a. Connectivity between Uses, Activities, and Mobility Options
 - i. Minimum Parking – The Applicant must provide no more than 298 parking spaces for the residential use.
 - ii. Through-Block Connections – The Applicant must provide the pedestrian connection between Glenbrook Road and the western Property Line, as shown on the Certified Site Plan. The through-block connection must have a minimum width of 15 feet with a minimum 8-foot-wide ADA-accessible pathway. The through-block connection must remain open to the public between the hours of 8:00 AM and 9:00 PM.
- b. Diversity of Uses and Activities
 - i. Enhanced Accessibility - The Applicant must construct a minimum of 5 dwelling units that satisfy American National Standards Institute A117.1 Residential Type A standards or an equivalent County Standard.
- c. Quality Building and Site Design
 - i. Architectural Elevations – The exterior architectural elevations must be substantially similar to those shown on the Certified Site Plan, as determined by M-NCPPC Staff and include minimum door spacing, maximum ground floor transparency, and other elements such as balconies and material changes.
 - ii. Exceptional Design – The Planning Board has reviewed and accepts the recommendations of the Design Advisory Panel as described in their memorandum, dated January 22, 2020.
 - a) At Certified Site Plan, Staff must review and approve corner treatment per Design Advisory Plan recommendations.
 - b) 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 M-NCPPC Staff.
 - c) Any significant changes to the design must be presented to the Design Advisory Panel and approved by M-NCPPC Staff prior to certification of the Site Plan, and significant changes to the design may require a Site Plan Amendment.
 - iii. Structured Parking – The Applicant must provide all parking within a below-grade garage, as shown on the Certified Site Plan.
- d. Protection and Enhancement of the Natural Environment
 - i. Building Lot Terminations (BLTs) – Before issuance of any building permit, the Applicant must provide proof of purchase and/or payment of 0.5358 BLTs to MCDPS and M-NCPPC staff.
 - ii. Cool Roof - The Applicant must install a cool roof, having a minimum solar reflectance index of 75, covering a minimum of 30,000 square feet of roof area, as shown on the Certified Site Plan.

9. Recreation Facilities

The Applicant must provide the minimum required recreation facilities as shown on the Certified Site Plan.

10. Public Open Space, Facilities, and Amenities

- a. The Applicant must construct the streetscape improvements, including the undergrounding of utilities, along the property’s frontage on Old Georgetown Road and Glenbrook Road, consistent with the 2019 *Bethesda Streetscape Standards*.
- b. The Applicant must provide a minimum of 8,775 square feet of public open space, as illustrated on the Certified Site Plan.

- c. Before the issuance of the final residential Use and Occupancy Certificate, all public open space areas on the Subject Property must be completed.

11. Maintenance of Public Amenities

The Applicant is responsible for maintaining all publicly accessible amenities including, but not limited to streetscape improvements and the through-block pedestrian connection.

Site Plan

12. Landscaping

- a. Prior to issuance of the final residential Use and Occupancy Certificate, all on-site amenities, including, but not limited to: lights, sidewalks/pedestrian pathway, hardscape, benches, trash receptacles, bicycle facilities, recreation amenities, and rooftop amenities must be installed.
- b. The Applicant must install landscaping no later than the first growing season after completion of site work.

13. Lighting

- a. Prior to Certified Site Plan, the Applicant must provide certification to Staff from a qualified professional that the exterior lighting in this Site Plan conforms to the latest Illuminating Engineering Society of North America (IESNA) recommendations (Model Lighting Ordinance-MLO: June 15, 2011, or as superseded) for a development of this type. All on-site exterior area lighting must be in accordance with the latest IESNA outdoor lighting recommendations (Model Lighting Ordinance-MLO: June 15, 2011, or as superseded).
- b. All on-site down-lights must have full cut-off fixtures or BUG-equivalent fixtures.
- c. Deflectors must be installed on all proposed fixtures to prevent excess illumination and glare.
- d. Streetlights and other pole-mounted lights must not exceed the height illustrated on the Certified Site Plan.
- e. On the rooftop of the building, the light pole height must not exceed the height illustrated on the Certified Site Plan.

14. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services (“MCDPS”), Fire Department Access and Water Supply Section in its letter dated May 13, 2020, and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which MCDPS may amend if the amendment does not conflict with other conditions of Site Plan approval.

Environment

15. Noise Attenuation

- a. Prior to issuance of a building permit for any residential dwelling unit(s) to be constructed within the projected 65 dBA Ldn noise contour, 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.
- b. The Applicant must provide a signed commitment to construct the units in accord with the noise mitigation design specifications, with any changes that may affect acoustical performance approved by the engineer and M-NCPPC Staff in advance of installation.
- c. If the plan changes in any manner that affects the validity of the noise analysis for acoustical certifications and noise attenuation features, the Applicant must conduct a new noise analysis to reflect the revised plans, and new noise attenuation features may be required.

- d. Before issuance of the use and occupancy permit for the noise impacted residential units, the Applicant must obtain certification that the noise impacted units have been constructed in accordance with the recommendations of an engineer that specializes in acoustical treatments. The certification must be based on the testing of at least five representative residential units.

16. Green Cover

- a. The Applicant must provide a minimum of 27,931 square feet of Green Cover, including 14,905 square feet of tree cover, 7,572 square feet of green roof, and 5,500 square feet of rooftop photovoltaic panels, which is equivalent to 35% of the site area, as illustrated on the Certified Site Plan.
- b. Any green roof installed pursuant to this condition must have a minimum soil depth of 6 inches.

Transportation

17. Pedestrian & Bicycle

The Applicant must provide a minimum of 95 long-term and five short-term bicycle parking spaces (three (3) inverted-U racks or Staff-approved equivalent) in the following configuration:

- a. 95 long-term bicycle parking spaces in a secured, well-lit bicycle room located in the garage, and
- b. Five short-term bicycle parking spaces installed in a location convenient to the main entrances (weather protected preferred). The specific location(s) of the short-term bicycle rack(s) must be identified on the Certified Site Plan.

19. Department of Permitting Services-Right-of-Way

The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services Right-of-Way (DPS-ROW) Section in its memo dated April 28, 2020. The Applicant must comply with each of the recommendations as set forth in the letter, which MCDPS may amend if the amendment does not conflict with other conditions of Site Plan approval.

20. Development Program

The Applicant must construct the development in accordance with a development program table that will be reviewed and approved prior to Certified Site Plan.

21. Site Plan Surety and Maintenance Agreement

Prior to issuance of any building permit, sediment control permit, or Use and Occupancy Certificate, the Applicant must enter into a Site Plan Surety and Maintenance Agreement with the Planning Board in a form approved by the M-NCPPC Office of General Counsel that outlines the responsibilities of the Applicant. The Agreement must include a performance bond(s) or other form of surety in accordance with Section 59.7.3.4.K.4 of the Montgomery County Zoning Ordinance, with the following provisions:

- a. A cost estimate of the materials and facilities, which, upon Staff approval, will establish the surety amount.
- b. The cost estimate must include applicable Site Plan elements, including, but not limited to plant material, on-site lighting, indoor and outdoor recreational facilities, site furniture, trash enclosures, private utilities, associated improvements of development, including the through block connection, sidewalks, bikeways, and storm drainage facilities. The surety must be posted before issuance of any building permit for development and will be tied to the development program.
- c. The bond or surety must be tied to the development program, and completion of all improvements covered by the surety will be followed by a Site Plan completion inspection. The surety may be reduced based upon inspector recommendation and provided that the remaining surety is sufficient to cover completion of the remaining work.

22. Certified Site Plan

Before approval of the Certified Site Plan the following revisions must be made and/or information provided subject to Staff review and approval:

- a. Include all applicable approval letters, development program and related Sketch Plan, Preliminary Plan, and Site Plan resolutions, and withdrawal letter for the development plan on the cover sheets.
- b. Add a note stating that “Minor modifications to the limits of disturbance shown on the site plan within the public right-of-way for utility connections may be done during the review of the right-of-way permit drawings by the Department of Permitting Services.”
- c. Modify data tables and public benefit point tables to reflect development standards approved by the Planning Board.
- d. Show all public benefit point calculations on the cover sheet.
- e. Ensure consistency of all details and layout between Site and Landscape plans.
- f. The pedestrian through-block connection, sidewalks, and pedestrian pathways, including sidewalk ramps at the Genbrook Road/ Old Georgetown Road intersection, will be in compliance with Americans with Disabilities Act (ADA) design standards including but not limited to path width, path slope and cross slope, access ramps, etc.
- g. Modify site plan to show the sidewalks’ grade, treatments, materials, and cross slopes continue across the proposed private driveway on Old Georgetown Road, the proposed garage entrance on Glenbrook Road, and the fire access lane on Rugby Avenue.
- h. Modify data table and parking plans to demonstrate at least ten (10) motorcycle parking spaces are being provided.

SECTION 2: SITE DESCRIPTION

Site Vicinity and Analysis

Subject Property

The Property (Subject Property or Property) is located at the corner of Old Georgetown Road and Glenbrook Road in the Battery Lane District of the 2017 *Bethesda Downtown Sector Plan* (Sector Plan). The Property has a tract area of 2.52 acres and is located outside the Bethesda Parking Lot District (PLD).

Site Vicinity and Analysis

The vicinity contains a mix of land uses given its location at the edge of the Sector Plan. Established single-family residential neighborhoods are located directly north of the Site and across Old Georgetown Road to the south. Farther north along Battery Lane are garden apartments and higher-density multi-family developments and the campus of the National Institutes of Health (NIH). To the west is the Bethesda Chevy Chase Rescue Squad. To the east is an 8-story commercial building and the beginning of the Woodmont Triangle District that is comprised of lower- to higher-density office, retail, and residential mixed-use development.

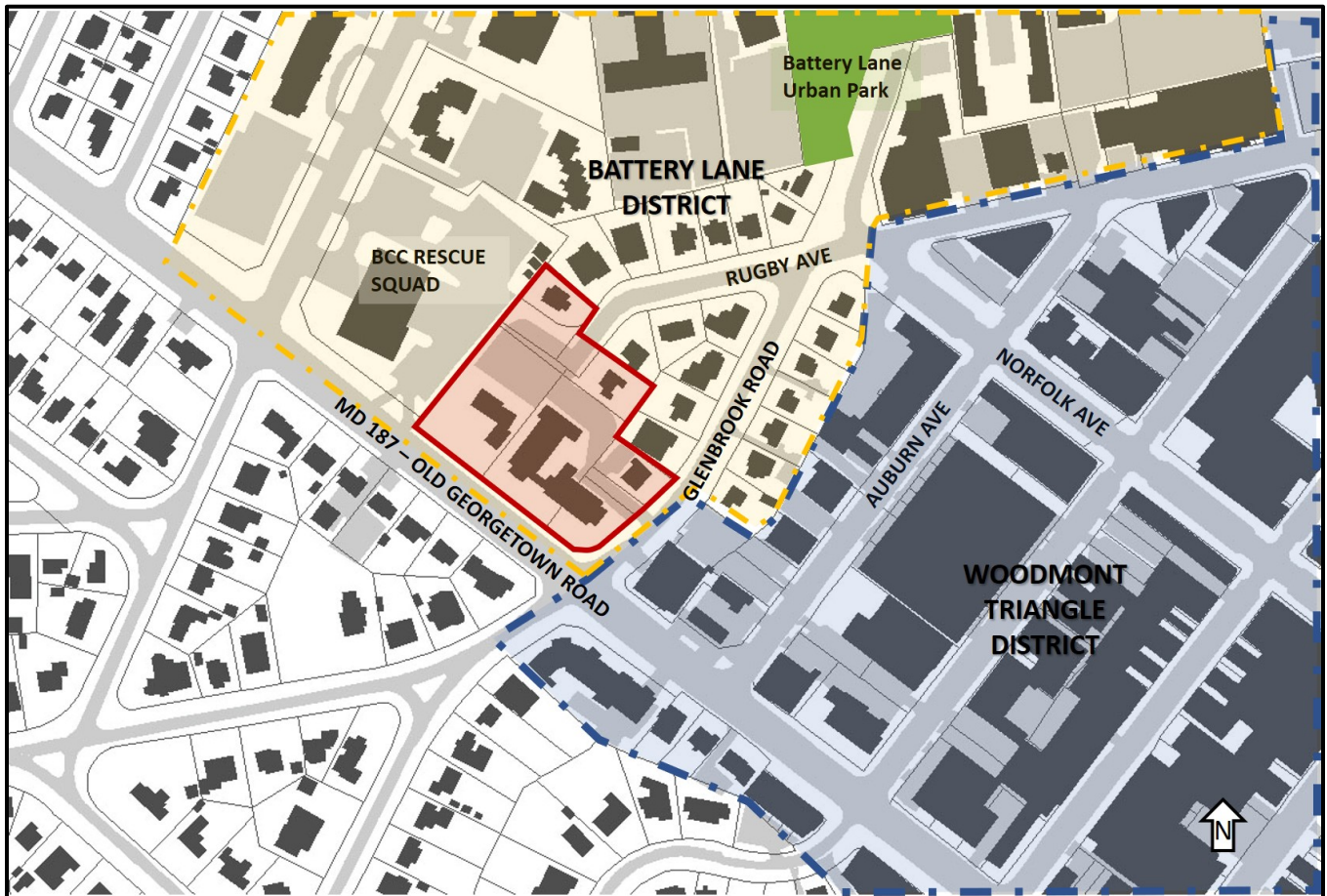


Figure 1: Vicinity Map

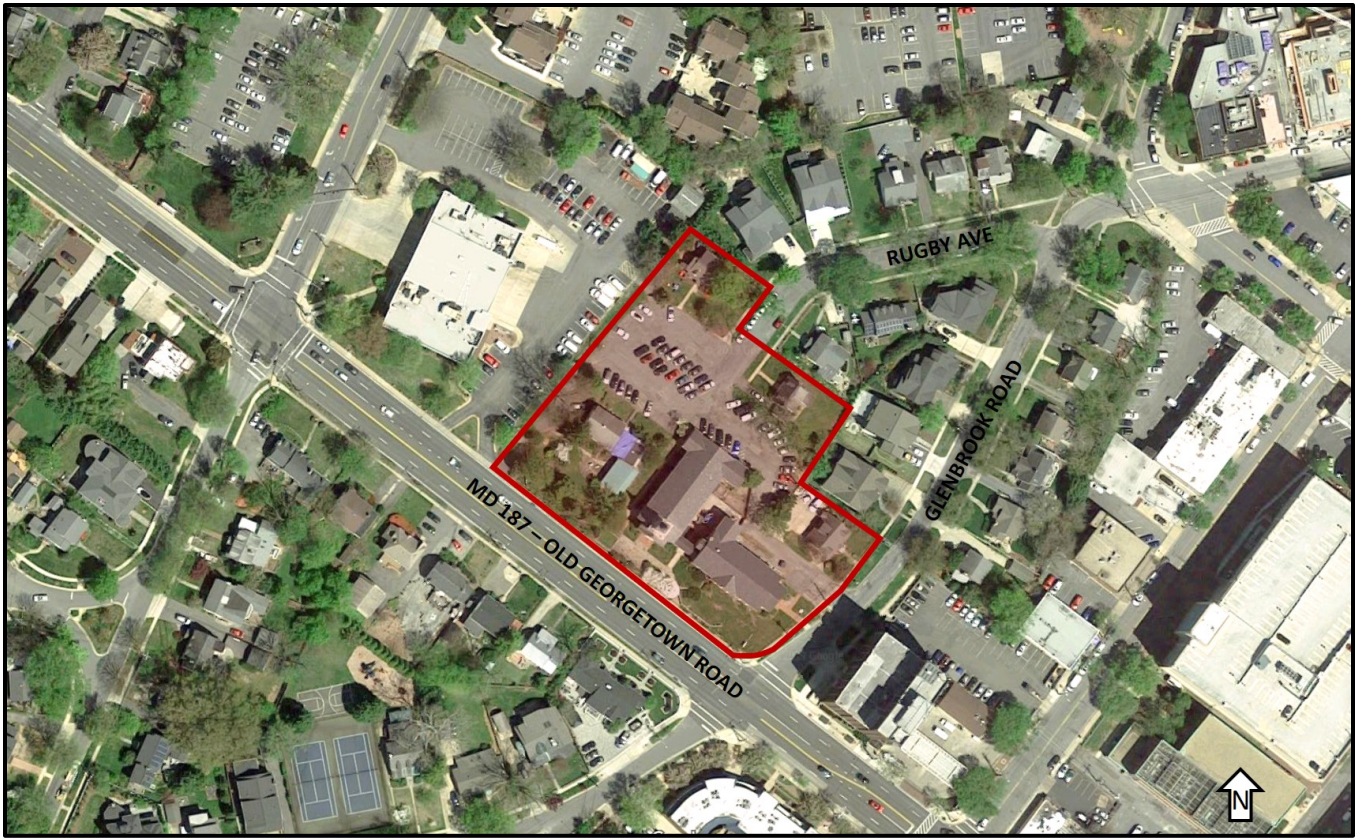


Figure 2: Boundary Map

The Property is zoned CR 2.5, C 0.75, R 1.75, H-120 and Bethesda Overlay Zone. The Site is currently improved with the Christ Evangelical Lutheran Church of Bethesda-Chevy Chase, consisting of a church building and adjoining three-story community building, three single-family detached houses used for a child daycare and other community purposes, and a surface parking lot. This section of Old Georgetown Road is comprised of five lanes in the following configuration: two lanes of northbound and two lanes of southbound traffic with a turning lane, and no on-street parking. Glenbrook Road is a two-way street with no on-street parking. There is an existing 6-foot sidewalk along Old Georgetown Road directly adjacent to the roadway, and a green strip buffer with a 4-foot sidewalk along Glenbrook Road. There is a gradual change in topography on-site that rises approximately 14 feet from the corner of Old Georgetown Road and Glenbrook Road to Rugby Ave. The Property does not contain any forest, streams, or environmental buffers. There are no known rare, threatened, or endangered species on-site; there are no 100-year floodplains, stream buffers, or wetlands on-site. There are no historic properties on-site.

SECTION 3: PROJECT DESCRIPTION

Previous Approvals

Prior to the adoption of the 2017 *Bethesda Downtown Sector Plan*, the County Council approved Zoning Application No. G-864 by Resolution No. 16-1540. This approval reclassified the Property from the R-60 zone to the PD-44 zone, subject to the binding elements and requirements of the approved Development Plan. Subsequently, the Planning Board approved Preliminary Plan 120160220, and Site Plan 820160090 to allow the Property to redevelop with a 53,000 square-foot church/community center building with a maximum height of 76 feet, and a 145,863 square-foot multi-family residential building containing a maximum of 107 units and with a maximum height of 94 feet. Given the rezoning of the Property implemented through the *Bethesda Downtown Sector Plan*, and the approval of the Sketch Plan discussed below, the Property is no longer subject to the Development Plan.

In June of 2019, the Planning Board approved Sketch Plan 320190100 (MCPB No. 19-108) to allow up to 320,000 square feet of multi-family development with an allocation of up to 128,036 square feet of BOZ density. The Sketch Plan required subsequent amendments for the previously approved Preliminary Plan and Site Plan, and conditioned the Applicant to submit a letter of withdrawal for the Development Plan prior to certification of the Preliminary Plan Amendment.

Proposal

The Applicant proposes to create one (1) lot for a multi-family residential development with a maximum density of 316,500 square feet for residential uses (up to 297 residential dwelling units) on 2.52 tract acres or 109,771 square feet, zoned CR 2.5, C 0.75, R 1.75, H-120 and Bethesda Overlay Zone. The total density includes up to 124,536 square feet of Bethesda Overlay Zone density. The Preliminary Plan Amendment will dedicate land necessary on Old Georgetown Road, Glenbrook Road, and Rugby Avenue to accommodate master planned rights-of-way and streetscape improvements per the Sector Plan and Bethesda Streetscape guidelines.

As the original Preliminary Plan was approved in December of 2016, the associated preliminary plan validity period is set to expire in 2022. Per Section 50.4.2.G.4 of the Subdivision Ordinance, the Applicant requests the Planning Board to extend the validity period by one year to allow additional time to address the newly recommended conditions related to this Preliminary Plan Amendment application, resulting in a validity period that will expire in January 2023. Staff is supportive of this request given the many changes proposed with the Preliminary Plan Amendment.

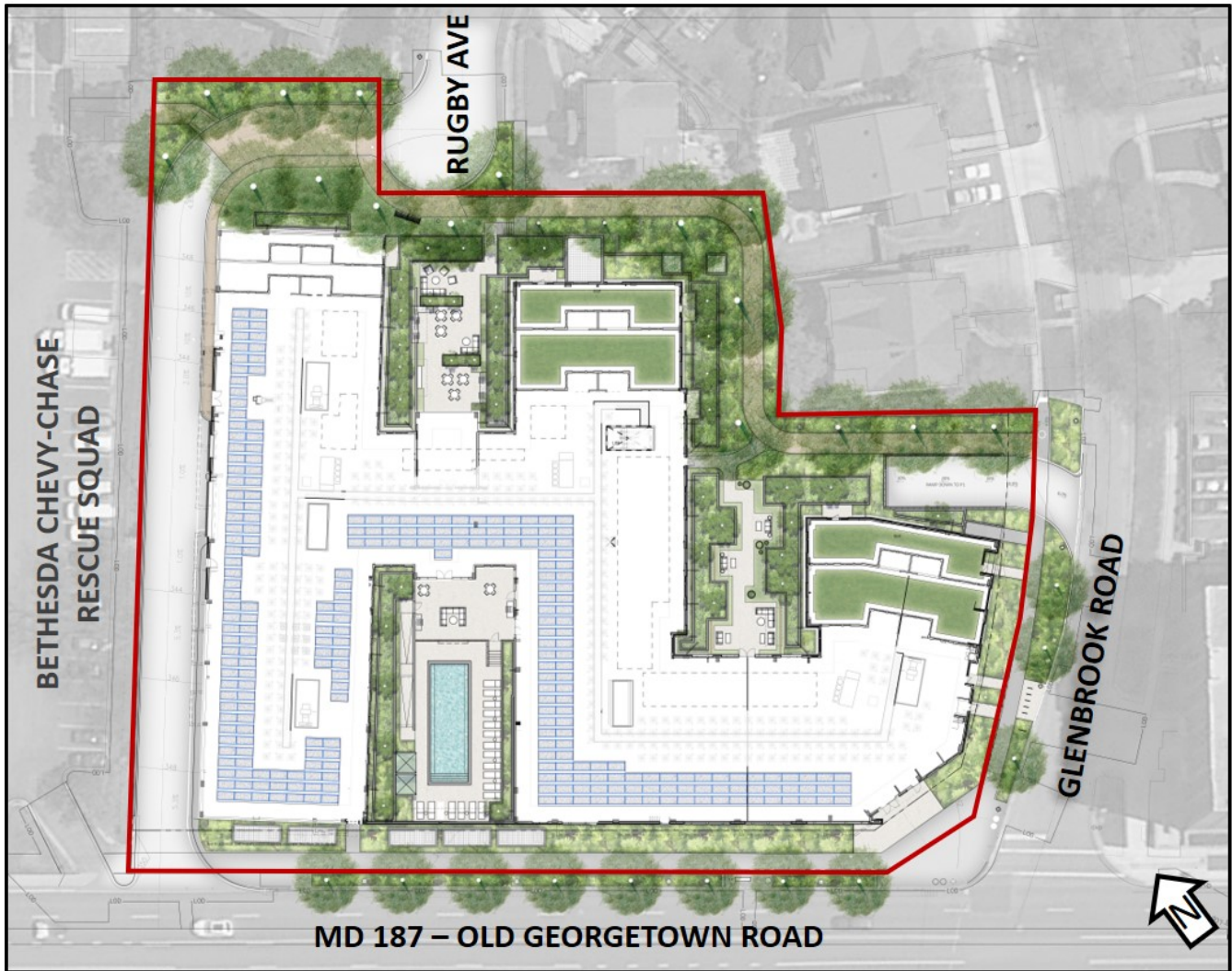


Figure 3 – Illustrative Site Plan

Building

The 90-foot-tall building will be broken down through the inclusion of three elevated courtyards, one of which will be visible from Old Georgetown Road and two at the rear of the Site facing the residential homes along Glenbrook Road and Rugby Avenue. The first story of the building along Old Georgetown Road will feature a double height of 20 feet with gridded windows to activate the pedestrian realm and accommodate residential amenity space. Within this residential amenity space is a second story courtyard area, which divides the building into two separate towers, further defining the shape. The upper stories are articulated through the use of bays, floating planes, elevation setbacks, integrated balconies and material changes. The articulation of the massing creates a focal point at the corner of Old Georgetown Road and Glenbrook Road, where the main entry is located. This corner consists of a metal and glass canopy that wraps and extends up Old Georgetown Road. Building signage and down lighting will be integrated into this canopy and corner design.



Figure 4 – Old Georgetown Road Façade

The Glenbrook Road facade will include individual unit entries and present as a townhouse style base with a material and color change above the first three stories. This façade wraps around the corner to Old Georgetown Road, extending the residential character into the chamfered corner. During Sketch Plan review, there were concerns from the Design Advisory Panel on the corner of the building at Old Georgetown Road and Glenbrook Road. While the Proposal maintains a chamfered corner, the addition of Bethesda Streetscape and enhanced building design and articulation has significantly improved the character of the building.



Figure 5 – Glenbrook Road Façade (Street level)

While the maximum height for this Property per the mapped zone is 120 feet, the Applicant proposed a lower building of 90 feet at the time of Sketch Plan to be more compatible with the adjacent residential neighborhood. Additionally, the Project is required to conform with the residential compatibility standards in Section 59.4.8.1.A of the Zoning Ordinance. As proposed, the Site Plan demonstrates conformance with these standards through a large building setback at the rear of the Property (ranging from 34-60 feet in depth), where the through block connection and outdoor courtyards will be located. The building height at the rear (adjacent to the residential neighborhood along Rugby Avenue) will match the residential neighborhood heights and increase with upper story stepbacks towards Old Georgetown Road. Due to the topography of the Site, the underground parking structure will partially extend into the rear building setback and the roof of the garage will be utilized as a private courtyard with a green roof.



Figure 6 – Perspective of Building’s rear setback and stepbacks from residential neighborhood looking towards Old Georgetown Road

The rear of the building features two courtyards and three residential wings with stepbacks to respond to the residential dwellings along Rugby Avenue. During review of the Sketch Plan, the Design Advisory Panel suggested additional stepbacks at the rear to further break down the massing, or incorporating other design alternatives that reduce perceived height and mass of the building. The current proposal has addressed these comments by defining the base of the building facing the residential neighborhood with a light brick material, and contrasting this base with plane changes and a substantially different material, fiber cement paneling with a dark color. The Design Advisory Panel reviewed the updated proposal at their January 22, 2020 meeting and voted unanimously in support of the Project.



Figure 7 – View from Rugby Avenue looking towards the rear of the building

Open Space and Through Block Connection

The Project is required to provide 10% of the Site as public open space (7,890 square feet) which will be achieved within the through block connection at the rear of the site (Figure 9). The Proposal will exceed the minimum requirement and provide 8,775 square feet of public open space. This Sector Plan recommended connection will link Glenbrook Road to the western property line, and when the adjacent property (Bethesda Chevy-Chase Rescue Squad) redevelops, the connection will be completed to Battery Lane. The through-block connection also links Glenbrook Road to Rugby Avenue to the rear, which ultimately connects to Battery Lane Urban Park. The through block connection will be a minimum of fifteen feet in width with an 8-foot pathway for pedestrians and bicyclists, with vegetation and tree plantings on either side of the pathway. The pathway will be completely uncovered and accessible to the public at all hours. The building will step back from the path to provide more sunlight to the area. As shown in Figure 8 below, the pathway will be lined with a variety of vegetation including canopy trees and ornamental shrubs. The landscaped area on either side of the pathway further conveys a feeling of open air and improves sight lines throughout the connection.



Figure 8 – Mid-block connection (Looking westbound from Glenbrook Road)

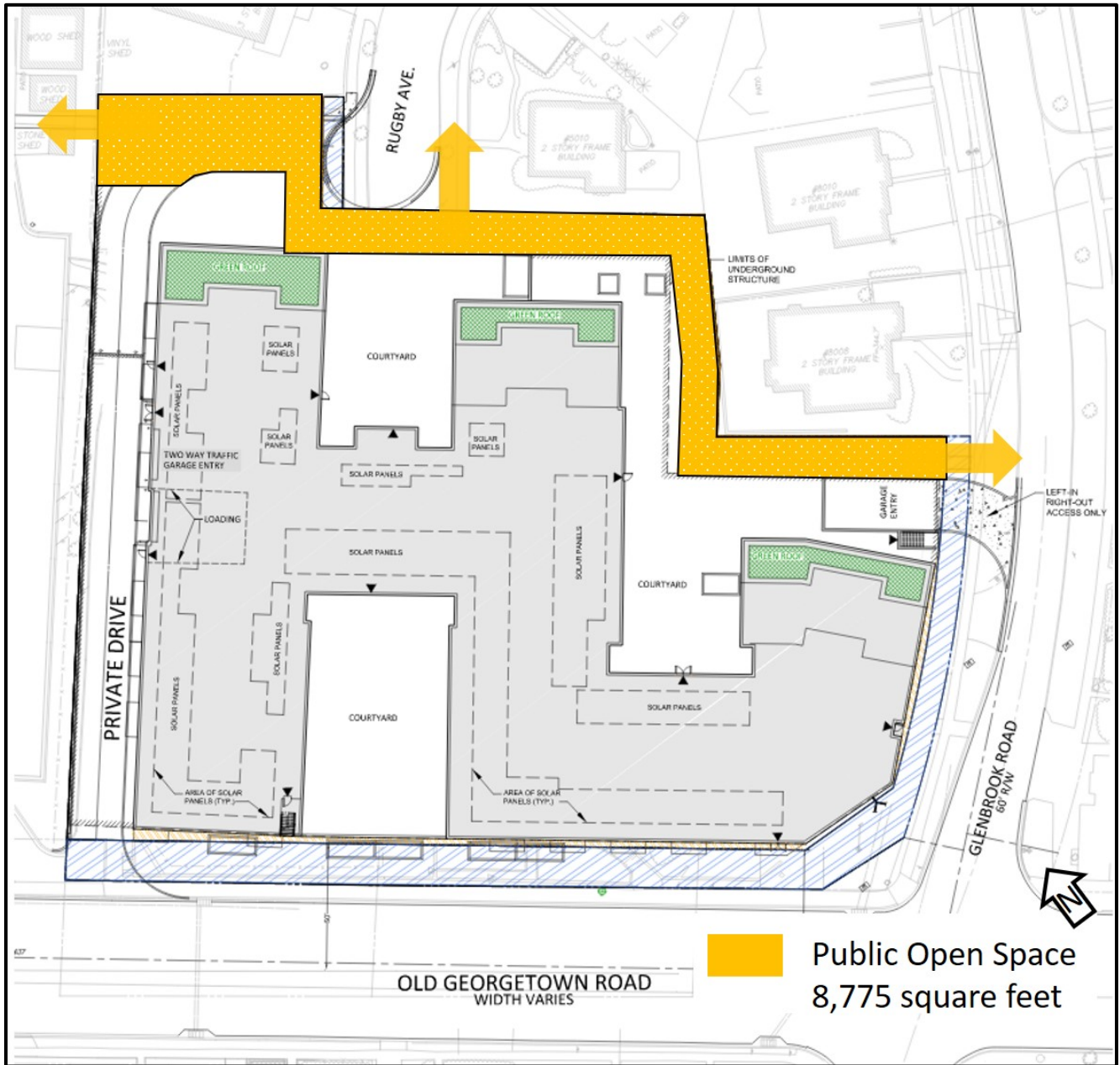


Figure 9 – Public Open Space Exhibit

Access & Circulation

Access to the Project will be provided from Old Georgetown Road (MD 187) and Glenbrook Road. No vehicular access will be permitted from Rugby Avenue except for emergency vehicles. Pedestrian and bicycle access to the property will be maintained along the property’s frontage sidewalks and adjacent public roadways. Additional pedestrian access will be provided through the Site from Rugby Avenue to Glenbrook Road, via a new public through-block connection, as recommended in the Sector Plan. Parking will be contained within a new structured garage internal to the proposed building.

Pedestrian access to the site will be from the established sidewalk network on Old Georgetown Road, Glenbrook Road, and Rugby Avenue and will be enhanced by streetscape improvements along each of the Site frontages, consistent with the Bethesda Streetscape Standards.

Vehicular Access will be provided by two new driveways: one on Old Georgetown Road and the other on Glenbrook Road. The driveway on Old Georgetown Road is considered the main driveway, which proposes full movement ingress and egress access for both the parking garage and the designated loading and trash collection area. The driveway on Glenbrook Road has been designed to minimize safety concerns and impacts to pedestrians and the existing single family dwellings by only permitting left turns into the parking garage from Glenbrook Road, and right turns from the parking garage (westbound movement) onto Glenbrook Road. This design and operation is directed by proposed signage and the curvature of the driveway to restrict vehicular movement from turning left onto Glenbrook Road, or turning right into the parking garage from Glenbrook Road. This configuration of the driveway on Glenbrook Road is the result of direction provided by the Board from the approval of the original Preliminary Plan (120160220) for the Subject Site.

The original Preliminary Plan approved two access points to the Subject Site which was not subject to the current standards of the Zoning Ordinance, however, this Site Plan is subject to the current standards. Section 59.6.1.4.E states that a vehicle must access a corner lot with only one driveway or a through lot from the street with the lower road-way classification. The Applicant is seeking Alternative Compliance under Section 59.6.8 for this requirement, which the Planning Board may approve if it finds that the site has unique characteristics and the alternative design will satisfy the intent of the Section and further the public interest. The Applicant states that the single-family neighborhood along Glenbrook Road has expressed strong objections to the sole use of Glenbrook Road for access, resulting in the Applicant's minimal driveway design. Additionally, given the high usage of Old Georgetown Road, having all access focused on the alley entrance would not be appropriate, resulting in the need for both entrances to properly disperse traffic to and from the Site. Given the surrounding neighborhood context and the previous approvals, Staff is supportive of this request.

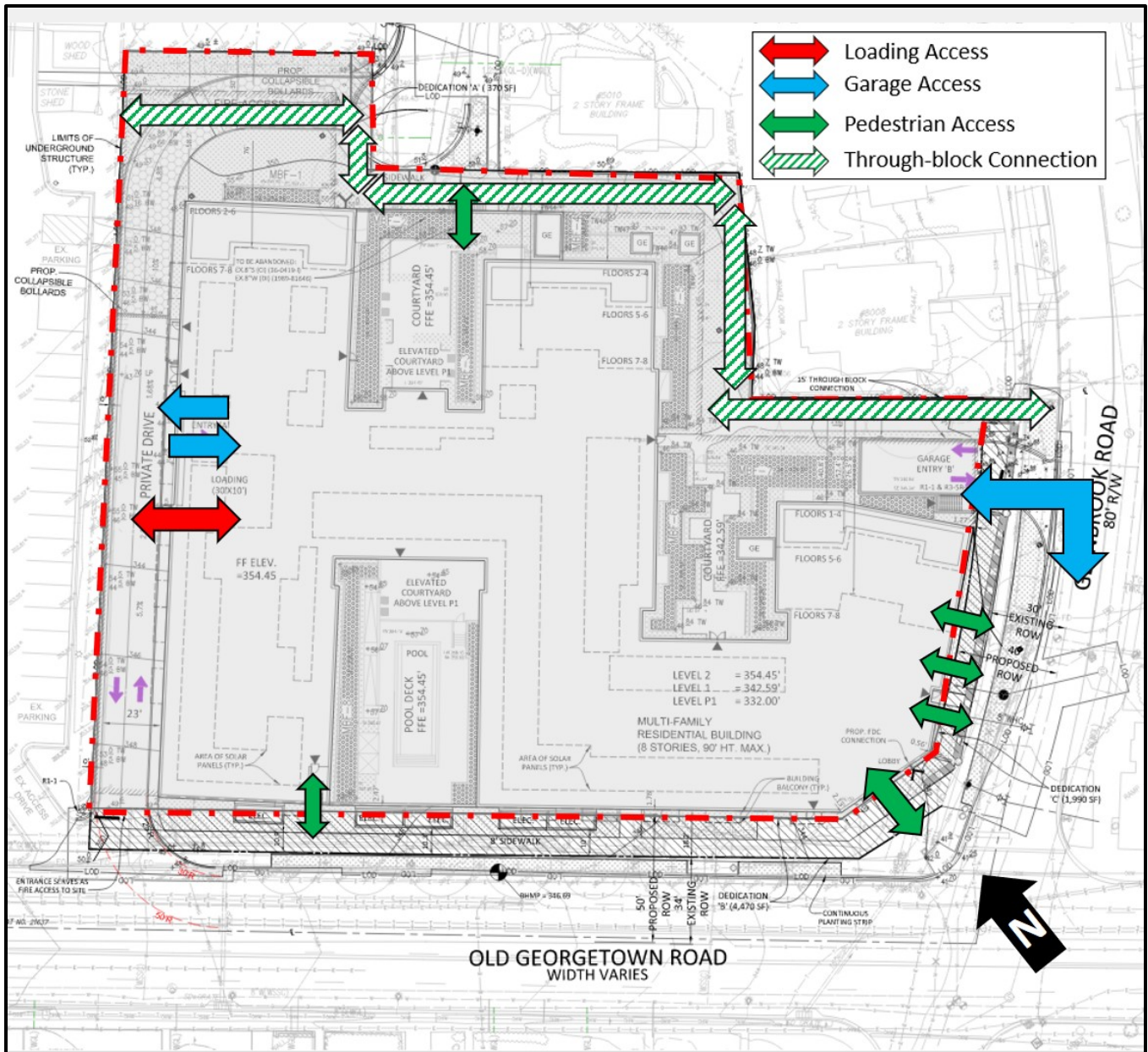


Figure 10 – Circulation Plan

The through-block connection will be a minimum of 15-feet wide, with a minimum 8-foot pathway that will allow pedestrians and bicyclists access between Glenbrook Road, Rugby Avenue, and the Bethesda Chevy Chase Rescue Squad property to the northwest. When completed, it will implement a segment which is part of a longer public through-block connection between Battery Lane and Glenbrook Road, envisioned in the 2017 *Bethesda Downtown Sector Plan*. The remaining connection will be achieved when the Bethesda Chevy Chase Rescue Squad property redevelops.

The Project is required to provide a minimum of five short-term bicycle parking spaces (three inverted-U racks or approved alternative) along the Old Georgetown Road building frontage. Additionally, the Project is required to provide a bicycle parking room to provide 95 long-term bicycle storage for the residents. This requirement is satisfied through the provision of one room within the garage, accessible via the parking garage, residential lobby, or the secondary entrance on Old Georgetown Road.

Environment

Forest Conservation

A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) for the site was submitted for review on August 21, 2019 and was subsequently approved. The plan, designated No. 420200100, identifies the existing man-made and natural features associated with the Property, such as the buildings, associated parking, the street trees and landscape elements. The site is situated approximately 6-feet higher than the elevation of Old Georgetown Road with a stone retaining wall running along the southern property line. There are no rare, threatened, or endangered species, no stream/buffers, steep slopes, or known historical or cultural resources on site. The site is located within the Lower Rock Creek Watershed, as use I-P watershed¹.

There is no forest on-site or adjacent to the Property, however there is an afforestation requirement of 0.30 acres. The Applicant is proposing to meet this requirement through the planting of on-site canopy trees. Additionally, the study area includes nine specimen trees, found both on-site and within 100-feet of the property line, ranging in size from 30 to 46-inches in diameter at breast-height (DBH). One specimen tree, number 71 which was observed to be a 34-inch DBH Black Walnut was observed in previous Applications for the Subject Property, but has since been removed to avoid hazardous conditions for a neighboring residence; for the purposes of this Application this tree is to be included in all necessary Forest Conservation calculations and Variance mitigation requirements.

Variance

Due to the impact on existing trees anticipated by the proposed project, this Application is subject to a forest conservation variance. Section 22A-12(b)(3) of the Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection. The Law requires no impact to trees that: measure 30 inches or greater in DBH; are part of a historic site or designated with a historic structure; are designated as current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species ("Protected Trees"). Any impact to a Protected Tree, including removal or disturbance within the Tree's critical root zone ("CRZ") requires a variance. An application for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the Montgomery County Forest Conservation Law.

The Applicant submitted a variance request in a letter dated January 22, 2020 for the removal of five specimen trees and for specimen tree 71 which was previously removed. This results in a mitigation requirement of at least 54.35 caliper-inches of replacement native canopy trees. The Applicant proposes to meet this requirement through the on-site planting of eleven 3.5" caliper trees and six 3" caliper trees. This results in a total of 56.5" of mitigation planting, which exceeds the requirement. The estimated on-site 20-year canopy coverage provided by these mitigation tree plantings will also be used towards the Sector Plan green cover requirement. Due to the dual purposes of the proposed trees, the Sketch Plan required the Applicant to prioritize at-grade, rather than over structure, planting of trees to ensure long-term health. Despite the Site's restricted space within the property line, which was further limited by the proposed through-block connection, the Applicant currently proposes at-grade planting and at least 600 cubic feet of soil volume for all canopy trees.

Green Cover

The Subject Property consists of a net lot area of 79,803 square feet which results in a green cover requirement of at least 27,931 square feet (35% of site area). Section 2.4.1(B) of the *Bethesda Downtown Sector Plan* also states

¹ Use I-P: WATER CONTACT RECREATION, PROTECTION OF AQUATIC LIFE, AND PUBLIC WATER SUPPLY

Waters that are suitable for: water contact sports: play and leisure time activities where the human body may come in direct contact with the surface water; fishing; the growth and propagation of fish (other than trout); other aquatic life, and wildlife; agricultural water supply; industrial water supply; and public water supply.

that “if on-site energy generation requires the use of either the roof or open space, accommodations for these features may alter the 35 percent minimum green cover requirement”.

The green cover exhibit submitted by the Applicant shows a proposed green cover area of approximately 22,569 square feet composed of intensive green roof, tree canopy coverage, and bioretention planting. The Sector Plan allows the green cover to be reduced to allow for on-site energy generation, therefore the Applicant proposes 5,550 sf of rooftop solar panels in lieu of green cover to achieve the 35% green cover recommendation.

In the Sketch Plan Application for this project, the Applicant proposed approximately 16,931 square feet of traditional green cover and 11,000 square feet of rooftop solar panels. As conditioned in the approved Sketch Plan, the Applicant was required to maximize the green cover area composed of green roof, canopy cover, and bioretention plantings in pursuit of the Sector Plan’s urban green goals. The resulting change in green cover composition, as shown in the current Application, reflects an ongoing collaboration between the Applicant Team and Staff to reach a solution that adheres to Sector Plan recommendations and goals as closely as possible.

Noise

The Subject Application provides residential units fronting an arterial roadway and is therefore subject to the noise regulations associated with residential development. To address development standards regarding noise mitigation, the Applicant coordinated with Phoenix Noise & Vibration, LLC, an engineer specializing in acoustics. The analysis shows that noise levels upon the proposed building facades and within the pool terrace are appropriately mitigated by the future topography and building structure. A portion of the 2nd floor pool terrace, facing Old Georgetown Road, will be exposed to noise levels greater than 65 dBA Ldn. Phoenix Noise & Vibration notes that mitigation for noise in this area can be provided through the construction of a five-foot noise barrier at the edge of the terrace. Given the adverse impact a tall parapet would have on the building’s architecture and massing, the Applicant is requesting a waiver of this requirement pursuant to Section 2.2.2. of the Noise Guidelines to allow for the increased noise levels in this courtyard. This request is typical in urban centers throughout the County where vehicular movement and activity is concentrated. As such, Staff is recommending approval of the Applicant’s waiver request.

Phoenix Noise & Vibration, LLC further states that all residential units located along the Old Georgetown Road elevation will be exposed to future transportation noise levels greater than 65 dBA Ldn and up to 73 dBA Ldn. Additionally, a portion of the residential units located on the southeast and northwest ends of the building, as well as at the ends of the pool terrace elevations will also be exposed to future transportation noise levels greater than 65 dBA Ldn. These units require further analysis to determine whether the proposed building architecture will be capable of maintaining interior noise levels below 45 dBA Ldn. If necessary, interior noise levels can be maintained below 45 dBA Ldn by increasing the STC ratings of the exterior building components such as windows and doors. The remaining residential units will not be exposed to significant transportation noise levels and do not require mitigation as currently proposed.

SECTION 4: PRELIMINARY PLAN AMENDMENT 12016022A

ANALYSIS AND FINDINGS

The Preliminary Plan Amendment will create one lot, measuring approximately 79,802 square feet or 1.83 acres of Site area, to allow for a maximum density of up to 297 multi-family dwelling units. This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, Subdivision Regulations. The Application meets all applicable sections. The size, width, shape, and orientation of the proposed lot is appropriate for the location of the subdivision taking into account the recommendations included in the applicable Master Plan, and for the type of development or use contemplated. The Application has been reviewed by other applicable County agencies, all of which have recommended approval of the Preliminary Plan Amendment.

1. *The layout of the subdivision, including size, width, shape, orientation and density of lots, and location and design of roads is appropriate for the subdivision given its location and the type of development or use contemplated and the applicable requirements of Chapter 59.*

The proposed lot size, width, shape, orientation, and density are appropriate for the location of the subdivision considering the recommendations in the 2017 *Bethesda Downtown Sector Plan* and the type of development and use contemplated. The lots were reviewed and found to be in compliance with the dimensional requirements for the CR zone, as specified in the Zoning Ordinance.

2. *The Preliminary Plan substantially conforms to the Master Plan.*

The Project substantially conforms to the recommendations for the Property included in the 2017 *Bethesda Downtown Sector Plan*. Specifically, this Sector Plan builds on the past successes of Downtown Bethesda to create a truly sustainable downtown by focusing on components that will bolster the elements most in need of enhancement. The recommendations increase:

1. **Parks and open spaces**, including new civic greens at Veteran's Park, Bethesda Farm Women's Cooperative Market, Capital Crescent Trail and new urban parks, pathways and gateways.
2. **Affordable housing**, including the preservation of existing market-rate affordable housing, providing a mix of housing options and the provision of Moderately Priced Dwelling Units in exchange for development incentives.
3. **Environmental innovation**, including more energy-efficient buildings, better stormwater management, improved sidewalks and bicycle routes, and other measures to enhance community health and quality of life.
4. **Economic competitiveness**, based on new development, public amenities and proximity to public transit to attract businesses and visitors from throughout the region, and foster entrepreneurship and innovation.

The Property is located in the Battery Lane District, designated as Site 17 on page 130 of the Sector Plan, and specifically recommended the CR zone to promote infill redevelopment with high density residential and increased building heights. This District consists of a range of housing types including garden style apartments along Battery Lane as well as single unit homes and low- to high-rise buildings. Battery Lane Park and the North Bethesda Trail are located in the center of the District and are heavily utilized, however wider buffered sidewalks and connections through long blocks are needed to make this neighborhood a

truly walkable area. Specifically, the Project addresses the following applicable goals as outlined in the Sector Plan:

- *Promote enhanced redevelopment opportunities to foster a quality mix of housing options.*

The Project proposes to replace a church, associated day care, and three single-family dwellings with a multi-family residential building which will increase housing options and density as envisioned in the Sector Plan.

- *Improve pedestrian and bike connectivity through the district and along the park.*

The Project will provide a through block connection through the rear of the site as recommended in the Sector Plan. The through block connection will be at least 15 feet wide with a minimum 8-foot path to accommodate both pedestrians and bicyclists.

- *On private property, provide a minimum of 35 percent green cover, which may include singularly or a combination of intensive green roof and tree canopy.*

The green cover exhibit submitted by the Applicant shows a net lot area of 79,803 square feet and a resulting green coverage requirement of at least 27,931 square feet (35% of site area). The Applicant proposes approximately 22,569 sf be achieved through intensive green roof, bioretention planting, and canopy cover. The Sector Plan allows the green cover to be reduced to allow for on-site energy generation, therefore the Applicant proposes 5,550 sf of rooftop solar panels in lieu of green cover to achieve the 35% green cover recommendation.

The Preliminary Plan Amendment substantially conforms with 2017 *Bethesda Downtown Sector Plan*, including the specific density recommendations, applicable urban design, roadway, and general recommendations outlined in the Sector Plan for the Subject Property.

3. *Public facilities will be adequate to support and service the area of the subdivision.*

Vehicular access to the Property is proposed directly from Old Georgetown Road and Glenbrook Road. Pedestrian and bicycle access to the Property will be provided along the established sidewalk network on Old Georgetown Road, Glenbrook Road, Rugby Avenue and via the proposed pedestrian throughblock connection.

Transit Connectivity

The immediate area is well served by transit that includes the Red Line Bethesda Metrorail Station (located less than a half-mile to the north of the Site), Metrobus, RideOn, the Bethesda Circulator and future Purple Line.

Master Plan Roadways and Pedestrian/Bikeway Facilities

The 2017 *Bethesda Downtown Sector Plan* recommends the following along property frontages:

1. Old Georgetown Road, along the western site frontage, as a major highway (M-4) with a minimum right-of-way width of 100 feet;
2. Glenbrook Road, along the southern site frontage, as a business district roadway with a minimum right-of-way width of 80 feet.
3. Rugby Road, along the northeastern site frontage, as a business district roadway with a minimum right-of-way of 50 feet.

4. No designated bicycle facilities are master-planned on any of the three site frontages.

Right-of-Way Abandonment

The Site contains two improved public rights-of-way that were recently abandoned by the County Council through abandonment application AB751 (County Council Resolution 18-711). Those rights-of-way include the terminus of Rugby Avenue, located along the north eastern portion of the Site, and a twenty-foot wide alley, located along the eastern portion of the Site.

Sector-Planned Transportation Demand Management

The Sector Plan encourages a Non-Auto Driver Mode Share (NADMS) of 55 percent, averaged between employees and residents of Downtown Bethesda. In order to meet this goal, Downtown Bethesda is organized into a Transportation Demand Management District (TMD) that strives to promote travel by means other than single occupancy vehicles. A Traffic Mitigation Agreement (TMAg) was required under previously approved Preliminary Plan (120160220; MCPB No. 16-061). The draft TMAg must be updated, finalized and executed prior to issuance of any building permits to participate in the Bethesda TMD.

Adequate Public Facilities

Transportation

The Preliminary Plan Amendment is estimated to generate a net decrease of 56 auto driver trips in the morning peak hour and 43 auto driver trips in the evening peak hour, as compared to the previously approved Preliminary Plan. Since the Project will generate fewer than 50 net new person trips, the Local Area Transportation Review was satisfied with a transportation exemption statement, dated February 24, 2020.

School Capacity

The Project was analyzed based on the FY20 Annual School Test, approved by the Planning Board on June 20, 2019 and effective July 1, 2019. The application proposes development of 297 multi-family high-rise units replacing one existing single-family detached home.

Calculation of Student Generation

To calculate the number of students generated by the proposed development, the number of dwelling units is multiplied by the applicable regional student generation rate for each school level. Dwelling units are categorized by structure type: single family detached, single family attached (townhouse), low- to mid-rise multifamily unit, or high-rise multifamily unit. The Subject Property is located in the southwest region of the County.

Per Unit Student Generation Rates – Southwest Region

	Elementary School	Middle School	High School
SF Detached	0.186	0.109	0.151
SF Attached	0.167	0.085	0.111
MF Low-Rise	0.150	0.068	0.085
MF High-Rise	0.041	0.018	0.025

With a net of 296 units, the proposed Project is estimated to generate the following number of students:

Type of Unit	Net Number of Units	ES Generation Rates	ES Students Generated	MS Generation Rates	MS Students Generated	HS Generation Rates	HS Students Generated
SF Detached	-1	0.186	-0.186	0.109	-0.109	0.151	-0.151
MF High-Rise	297	0.041	12.177	0.018	5.346	0.025	7.425
TOTAL	296		11		5		7

This Project is estimated to generate 11 new elementary school students, 5 new middle school students, and 7 new high school students.

Cluster Adequacy Test

The project is located in the Bethesda-Chevy Chase cluster area. The student enrollment and capacity projections from the FY20 Annual School Test for the cluster are noted in the following table:

School Level	Projected Cluster Totals, September 2024			Moratorium Threshold	Estimated Application Impact
	Enrollment	Program Capacity	% Utilization		
Elementary	3,714	4,020 ¹	92.4%	1,111	11
Middle	1,917	2,024	94.7%	511	5
High	2,410	2,457	98.1%	538	7

The Moratorium Threshold identified in the table is the number of additional projected students that would cause the projected utilization to exceed the 120% utilization threshold and therefore trigger a cluster-wide residential development moratorium. As indicated in the last column, the estimated enrollment impacts of this application fall below the moratorium thresholds at all three school levels. Therefore, there is sufficient capacity at the elementary, middle and high school cluster levels to accommodate the estimated number of students generated by this Project.

Individual School Adequacy Test

The applicable elementary and middle schools for this project are Bethesda ES and Westland MS, respectively. Based on the FY20 Annual School Test results, the student enrollment and capacity projections for these schools are noted in the following table:

School	Projected School Totals, September 2024				Moratorium Threshold	Estimated Application Impact
	Enrollment	Program Capacity	% Utilization	Surplus/Deficit		
Bethesda ES	731	698 ²	104.7%	-33	107	11
Westland MS	899	1,089	82.6%	+190	408	5

¹ The projected cluster elementary school capacity of 3,813 has been modified to reflect the impact of a six-classroom placeholder project at Bethesda ES and a four-classroom placeholder project at Somerset ES included by the County Council in the FY20 Capital Budget.

² The projected Bethesda ES capacity of 560 students has been modified to reflect the impact of a six-classroom placeholder project included by the County Council in the FY2019-2024 Capital Improvements Program.

Under the individual school adequacy test, a school is deemed inadequate if the projected school utilization rate exceeds 120% and the school seat deficit meets or exceeds 110 seats for an elementary school or 180 seats for a middle school. If a school's projected enrollment exceeds *both* thresholds, then the school service area is placed in a residential development moratorium.

The Moratorium Enrollment Thresholds identified in the table above are the numbers of additional projected students that would cause the projected utilization to exceed the 120% utilization threshold and the seat deficit threshold. As indicated in the last column, the estimated enrollment impacts of this application fall below the moratorium thresholds for both Bethesda ES and Westland MS. Therefore, there is sufficient anticipated school capacity to accommodate the estimated number of students generated by this Project.

Based on the school cluster and individual school capacity analysis performed, using the FY2020 Annual School Test, there is adequate school capacity for the amount and type of development proposed by this application.

4. *All Forest Conservation Law, Chapter 22A requirements are satisfied.*

A Natural Resource Inventory Forest Stand Delineation (NRI/FSD) was approved for this Site on August 21, 2019. The plan, designated No. 420200100, identified the existing man-made and natural features associated with the Property. There is no forest on-site or adjacent to the Property, however there is an afforestation requirement of approximately 0.30 acres which will be met by onsite tree canopy coverage.

5. *All stormwater management, water quality plan, and floodplain requirements of Chapter 19 are satisfied.*

A Stormwater Concept Plan was approved by the Montgomery County Department of Permitting Services (MCDPS) on May 28, 2020 (Attachment B). The Applicant proposes to meet stormwater management requirements through environmental site design with the use of micro-bioretenion planter boxes. Due to site limitations and an existing shallow storm drain, additional treatment cannot be provided and therefore a partial waiver was granted by MCDPS.

6. *Any other applicable provisions specific to the property and necessary for approval of the subdivision is satisfied.*

No other provisions apply to the Subdivision.

SECTION 5: SITE PLAN 820200130

FINDINGS

1. *When reviewing an application, the approval findings apply only to the site covered by the application.*

2. *To approve a Site Plan, the Planning Board must find that the proposed development:*

a. *satisfies any previous approval that applies to the site;*

The Site Plan conforms to all binding elements of Sketch Plan No. 320190100.

b. *satisfies under Section 7.7.1.B.5 the binding elements of any development plan or schematic development plan in effect on October 29, 2014;*

Development Plan G-864 was previously approved for this site as a PD zone application, however, the Property is no longer subject to this development plan pursuant to Section 59.7.7.1.B.5.a.i of the Zoning Ordinance. After the 2017 *Bethesda Downtown Sector Plan* was adopted, a Sectional Map Amendment was approved implementing the new CR zone. The associated Sketch Plan (MCPB 19-108) conditioned the Project to submit a letter of withdrawal prior to Certification of the Preliminary Plan Amendment.

c. *satisfies under Section 7.7.1.B.5 any green area requirement in effect on October 29, 2014 for a property where the zoning classification on October 29, 2014 was the result of a Local Map Amendment;*

This Section is not applicable as a Sectional Map Amendment was approved for the Property, implementing the Sector Plan and new CR zone, pursuant to Section 59.7.7.1.B.5.a.i.

d. *satisfies applicable use standards, development standards, and general requirements under this Chapter;*

i. *Division 4.5. Commercial/Residential Zones*

Development Standards

The Tract is approximately 2.52 tract acres or 109,771 square feet, zoned CR 2.5, C 0.75, R 1.75, H-120', and is within the Bethesda Overlay Zone. The following Data Table shows the Application's conformance to the development standards of the zone.

Table 1: Project Data Table (Section 59.4)		
Development Standard	Permitted/ Required	Proposed
Tract Area (Square Feet/ Acres) CR 2.5, C 0.75, R 1.75, H-120		
Total Tract Area	n/a	109,694 sf (2.52)
Site Area (Square Feet/ Acres) Prior Dedication Proposed Dedication Site Area (Tract Area – Dedications)	n/a	22,562 sf (0.52) 7,330 sf (0.17) 79,802 sf (1.83)
Residential Density (GFA/ FAR)	191,964 sf (1.75)	191,964 sf (1.75)
Commercial Density (GFA/ FAR)	82,270 sf (0.75)	0 sf (0)
Total Mapped Density (GFA/FAR)	Residential 191,964 sf (1.75) Commercial 82,270 sf (0.75) Total 274,235 sf (2.5)	191,964 sf (1.75) 0 sf (0) 191,964 sf (1.75)
MPDU Density (GFA/FAR)	15%	15% (45 units) 36,607 sf (0.33)
Bethesda Overlay Zone Density (GFA/ FAR)	n/a	124,536 sf (1.14)
Total GFA/ FAR	n/a	316,500 (2.89)
Building Height	120 feet	90 feet
Public Open Space (min)	10%	11% (8,775 sf)
Green Cover	35%	Tree Cover 14,905 sf Green Roof 7,572 sf Solar Array 5,500 sf Total- 35% (27,977 sf)
Minimum Setbacks	Front: n/a Side: n/a Rear ² : 30'	Front: 0 Side: 22' (western) 0' (eastern) Rear ² : 30'

¹ Sketch Plan 320190100 approved the use of a solar array as a 1 to 1 substitute for Green Cover per Bethesda Downtown Sector Plan recommendations to allow projects proposing onsite energy generation to alter the 35% green cover recommendation.

² Residential Compatibility Standards per Section 59.4.8.1.A apply. Rear setback is based on 1.5 times the minimum rear setback for the abutting residential zone (R60).

Table 1 (Con't): Parking		
Parking	Spaces Required	Spaces Provided
Vehicle Parking		
Residential		
1 Bedroom (192 market rate units); 30 MPDUS	(111 minimum/ 278 maximum)	--
2 Bedroom (60 market rate units); 15 MPDUS	(53 minimum/ 113 maximum)	--
	--	--
Total Residential Units (252 Market rate; 45 MPDUs)	(164 minimum/ 391 maximum)	--
Reduced 20% (Bethesda Overlay Zone)	132 Minimum	292-298⁴
Bicycle Parking (Long Term/ Short Term)		
Residential (297 units)	(95/5) 100 ³	(95/10) 105
Total Bicycle Parking	(96/5) 100	(96/10) 105
Loading Spaces	1	1

³ Bicycle Parking requirement is limited to a maximum of 100 spaces.

⁴ Parking to be finalized at building permit.

The Bethesda Overlay Zone (BOZ) was adopted July 18, 2017, specifically to implement the recommendations of the Bethesda Downtown Sector Plan as it relates to density, building heights, affordable housing, parks, and design. The BOZ set a cap of overall development (32.4 million square feet) whereby the zoning approved for most properties retains the base density but increases the heights on respective sites. An Applicant can request an allocation of density over the base density to build to the maximum height permitted by the Zone, as needed. An allocation of density from the BOZ typically requires a Park Impact Payment (PIP) of \$11.08/square foot based upon the density requested and facilitates acquisition of parkland in the downtown Bethesda area. The amount of density allocated from the BOZ for the Subject Application is deducted from the 32.4 million square feet cap.

ii. *Division 4.7. Optional Method Public Benefits*

In accordance with the Zoning Ordinance, Section 59.4.7.1., the Site Plan proposes the following public benefits to satisfy the requirements: Connectivity and Mobility, Diversity of Uses and Activities, Quality of Building and Site Design, and Protection of the Natural Environment.

Table 2: Public Benefits Calculations			
Public Benefit	Incentive Density Points		
	Max Allowed	Requested	Recommended
59.4.7.3C: Connectivity and Mobility			
Minimum Parking ¹	20	3.17	3.56
Through-Block Connections ¹	30	20	20
59.4.7.3D: Diversity of Uses and Activities			
Enhanced Accessibility	10	5	5
59.4.7.3E: Quality of Building and Site Design			
Exceptional Design ¹	30	20	15
Architectural Elevations ¹	30	30	30
Structured Parking	20	20	20
59.4.7.3F: Protection and Enhancement of the Natural Environment			
BLTs	30	4.82	4.82
Cool Roof	15	5	10.46
TOTAL		110.56	108.84

¹Denotes Sector Plan priority

Connectivity and Mobility

Minimum Parking: The Applicant requests 3.17 points for providing fewer than the maximum allowed number of parking spaces. Points for this incentive are granted on a sliding scale from no points for providing the maximum allowable number of on-site spaces to 20 points for providing no more than the minimum numbers of spaces on site. The Applicant proposes a range of 292-298 parking spaces, which will be finalized at the time of building permit. For purposes of calculating public benefit points, the calculation was based on the maximum proposed, 298 spaces. Based on the formula set forth in the 2017 *Commercial/ Residential and Employment Zones Incentive Density Implementation Guidelines*, provided below, Staff recommends 3.56 public benefit points in this category; the slight increase is due to an error in the Applicant's calculation.

$$\begin{aligned} & \frac{((\text{Maximum Allowed Parking}) - (\text{Parking Provided}))}{((\text{Maximum Allowed Parking}) - (\text{Minimum Parking}))} * 10 \\ & (390 - 298) / (390 - 132) * 10 = 3.56 \text{ points} \end{aligned}$$

Through Block Connection: The Applicant requests 20 points for providing a through-block connection between Glenbrook Road and the western property line, as envisioned in the Sector Plan. The proposed through-block connection will be a minimum of 15 feet in width with plantings on either side of an 8-foot paved path. Points for this incentive are granted on criteria such as public access, minimum width, and minimum hours of operation, as determined by the Guidelines. The Applicant states this through-block connection will be open to the public at all hours, and provide pedestrian access from Glenbrook Road to Rugby Avenue, and onto Battery Lane Urban Park to the north. To the west, the through-block connection will end at the western property line which abuts the neighboring property's parking lot, and when Bethesda Chevy-Chase Rescue Squad redevelops, that property will provide the connection through to Battery Lane. Staff recommends 20 points with this category with the condition that the path be ADA accessible.

Diversity of Uses and Activities

Enhanced Accessibility for the Disabled: The Applicant requested 5 points for exceeding the requirements for the Americans with Disabilities Act (ADA). The Applicant proposes to construct 5 units that satisfy the American National Standards Institute A117.1 Residential Type A standards, or a County equivalent. Staff recommends 5 points for this category.

$$\begin{aligned} & (\text{ANSI 117.1 Units} / \text{Total Units}) * 300 \\ & (5 / 297) * 300 = 5 \text{ points} \end{aligned}$$

Quality of Building and Site Design

Architectural Elevations: The Applicant is requesting 30 points for providing architectural elevations as part of the Certified Site Plan showing particular elements in the façade including minimum amounts of transparency on the first floor, minimal spacing between operable doors, and design priorities of the applicable sector plan or implementing design guidelines.

Approximately 60% of the ground floor along Old Georgetown Road will be transparent, consisting mainly of expansive double height storefront glass and amenity space, and no blank walls along

this façade will exceed 35 feet in length. Along the Glenbrook Road and Rugby Avenue frontages, approximately 32% of the ground floor will be transparent. These amounts far exceed the minimum 20% standard for these frontages established by Section 59.4.5.3 of the Zoning Ordinance. There are two pedestrian entrances along the Project's Old Georgetown Road elevation: one towards the northern end of the Project, and one at the corner of Old Georgetown Road and Glenbrook Road. Given the change in elevation along the Old Georgetown Road façade, additional entries were not feasible. The majority of Glenbrook Road consists of residential units with individual unit entries.

Additionally, the design of the Project furthers the objectives and design priorities of the Sector Plan, as well as its associated guidelines. The Project conforms to the streetscape and massing recommendations of the Design Guidelines and provides an appropriate transition between Old Georgetown Road and the adjacent residential areas. The use of bays, floating planes, elevation setbacks, integrated balconies and material changes are all used in a harmonious manner that creates a successful façade. The bays and floating planes help create a natural 2 story awning/covered space that extends the majority of the Old Georgetown Road elevation. This, coupled with the significant amount of expansive double height storefront looking into the amenity space, creates an enhanced urban edge and pedestrian experience.

As conditioned, the architectural elements must be substantially similar to architectural elevations shown on the submitted architectural drawings. Staff supports 30 points for this category.

Exceptional Design: The Applicant initially requested 20 points for a building or site design that enhances the public realm in a distinct and original manner, however, this request was reduced to 10 points as part of the subsequent plan review. The Applicant presented this Project to the Design Advisory Panel on two occasions, including the Sketch Plan, and actively participated in an iterative public design process to achieve the goals set forth in the Sector Plan.

As evaluated through the exceptional design criteria, the Project incorporates a high quality of articulation, streetscape, and material transitions. As a site receiving an allocation of Bethesda Overlay Zone density, the Project was reviewed by the Design Advisory Panel during their meeting on January 22, 2020. The Applicant requested 20 Exceptional Design points and the Panel supported a maximum of 15 points (based on staff's review of further improvements). All five Panel members voted to support the design, with the following recommendations:

- a. Corner treatment recommendations to be reviewed by Staff, which may determine whether it needs to return to the DAP
- b. Direction on corner treatment:
 - i. Seems to be ambivalence between building entrance and the unit location on the ground floor which is a real problem. Should communicate more as domestic rather than office.
 - ii. Is there an opportunity to inset or project one to emphasize entrance? The blade wall isn't enough and the blade wall on the right side reads very different than the left, but the solid plane glass could be manipulated. Perhaps more detail, with window character.

During Staff's subsequent review of the Project, the Applicant incorporated DAP's comments and supports the revised design. The Glenbrook Road elevation wraps the corner and extends the

residential character of the base of the building with residences and unit entries at the street level. The lobby entrance was moved closer to the Old Georgetown Road frontage and creates an overall strong composition.

Based on the revised design, the Applicant maintains the request for 20 Exception Design points, however based on the notes taken at the DAP, the members did not vote to allow for additional points. Staff recommends 15 points for this category.

Additional context and discussion for the DAP's recommendations are included in the attached DAP meeting summary (Attachment B).

Structured Parking: The Applicant requests 20 points for providing all parking within a below-grade parking structure. The Applicant satisfies the requirements for 20 points because all on-site parking is provided in a below-grade garage. Staff supports 20 points in this category based on the following formula:

$$\begin{aligned} & [(Above\ Grade\ Parking / Total\ Parking) * 10] + [(Below\ Grade\ Parking / Total\ Parking) * 20] \\ & [(0/298) * 10] + [(298/298)] * 20 = 20\ points \end{aligned}$$

Protection and Enhancement of the Natural Environment

Building Lot Termination (BLT): The Applicant requests 4.2 points for the purchase of 0.5358 BLT easements or equivalent payment made for every 31,500 square feet of gross floor area comprising the 7.5% incentive density floor area, exclusive of any density allocated for MPDUs. Based on the calculation set forth in Section 59.4.7.3.F of the Zoning Ordinance, Staff supports 4.82 points for this category.

$$\begin{aligned} & (((Incentive\ Density - Standard\ Method\ Density) * 7.5\%) / 31,500) * 9 = \\ & (((225,046\ sf) - (54,847\ sf)) * 7.5\%) / 31,500 * 9 = 4.82\ points \end{aligned}$$

Cool Roof: The Applicant requests 5 points for proposing to provide 30,000 square feet of cool roof that will collectively meet or exceed a solar reflectance index (SRI) of 75. The Applicant will achieve this through utilizing a system that would go under the solar panels on the roof to maximize cool roof on areas not covered by vegetation. Based on the proposed amount of cool area proportioned with the remaining roof, Staff recommends 10.46 points for this benefit.

iii. *Division 6.1. Site Access*

Pedestrian access to the Site will be from the established sidewalk network along Old Georgetown Road, Glenbrook Road, Rugby Avenue and the through block connection at the rear of the Site. The Old Georgetown Road and Glenbrook Road streetscape will be enhanced, consistent with the Bethesda Streetscape Standards. Bicycle parking for residents will be provided within the parking structure and publicly accessible short-term bicycle parking will be provided near the building front entrance.

Vehicular Access will be provided by two new driveways: one on Old Georgetown Road and the other on Glenbrook Road. The driveway on Old Georgetown Road is considered the main driveway, which proposes full movement ingress and egress access for both the parking garage and the designated loading and trash collection area. The driveway on Glenbrook Road has been designed to minimize

safety concerns and impacts to pedestrians and the existing single-family dwellings by only permitting left turns into the parking garage from Glenbrook Road, and right turns from the parking garage (westbound movement) onto Glenbrook Road. This design and operation is directed by proposed signage and the curvature of the driveway to restrict vehicular movement from turning left onto Glenbrook Road, and turning right into the parking garage from Glenbrook Road. This configuration is the result of direction provided by the Board from the approval of Preliminary Plan (120160220) for the Subject Site.

Preliminary Plan 120160220 approved two access points to the Subject Site, which at that time was not subject to the current standards of the Zoning Ordinance, however, this Site Plan is subject to the current Zoning Ordinance standards. Section 59.6.1.4.E states that a vehicle must access a corner lot with only one driveway or a through lot from the street with the lower road-way classification. The Applicant is seeking Alternative Compliance under Section 59.6.8 for this requirement, which the Planning Board may approve if the alternative design will:

a. Satisfy the intent of the applicable Division;

The alternative design satisfies the intent to ensure safe and convenient vehicular, bicycle, and pedestrian circulation within and between lots on the same block face by allowing two access points to disperse traffic impacts between Old Georgetown Road and Glenbrook Road. The design of the driveway on Glenbrook Road limits turning movements to minimize conflicts with pedestrians and restricts vehicles from travelling into the single-family neighborhood on Glenbrook Road.

b. Modify the applicable functional results or performance standards the minimal amount necessary to accommodate the constraints;

The alternative design modifies the performance standards to the minimal amount by only allowing two access points on the corner lot, while limiting and restricting the vehicular movements off Glenbrook Road.

c. Provide necessary mitigation alleviating any adverse impacts; and

The alternative design minimizes impacts entirely through design and does not require additional mitigation to achieve the intent of the Division.

d. Be in the public interest.

The restriction of movements off Glenbrook Road, which is the lower roadway classification, is a direct result of concerns from the surrounding single family dwelling neighborhood. The design is in the public interest as it takes into account the potential impact of this development within the existing context.

Staff recommends approval of the Alternative Compliance for Driveway Access, Section 59.6.1.4.E.

iv. *Division 6.2. Parking, Queuing, and Loading*

Parking for the residential building will be provided in a below-grade facility with two access points, one from Old Georgetown Road and one from Glenbrook Road. The driveway on Old Georgetown Road is considered the main driveway, which proposes full movement ingress and egress access for both the parking garage and the designated loading and trash collection area.

The Sector Plan recommends each application in downtown Bethesda promote a constrained parking policy that supports a transit-oriented downtown. This is done by providing parking below the minimum and exploring opportunities for co-location of public facilities on Parking Lot District properties and facilities. As a project within the Bethesda Overlay Zone, the Applicant is receiving a 20 percent reduction in number of spaces required and is providing 298 spaces, which may be reduced to 292 spaces (to be finalized at the time of building permit) in a below-grade garage, which is below the minimum required consistent with the Zoning Ordinance.

The Project includes one bicycle parking room on-site within the parking garage to provide long-term bicycle storage for the residents. Bicyclists can access the room via the parking garage, residential lobby, or the secondary entrance on Old Georgetown Road. The bicycle parking rooms will provide secure, private parking for 95 bikes and the proposed layout meets the design and capacity standards set by the Zoning Ordinance. The final number of automobile and bicycle parking spaces will be determined at Certified Site Plan based on the final number of residential dwelling units.

v. *Division 6.3. Open Space and Recreation*

The Project is required to provide 10% of the Site as public open space (7,980 sf); the Applicant proposes to exceed this requirement by providing 11% (8,775 square feet) of public open space, which will be achieved predominantly within the through block connection at the rear of the Site. This Sector Plan recommended connection will link Glenbrook Road to the western property line, and when the adjacent property redevelops, the connection will be completed to Battery Lane. The through-block connection also links Glenbrook Road to Rugby Avenue to the rear, which ultimately connects to Battery Lane Urban Park. The through block connection will be a minimum of fifteen feet in width with an 8-foot pathway for pedestrians and bicyclists, with vegetation and tree plantings on either side of the pathway.

The Application is in conformance with the *Recreation Guidelines*, as demonstrated in the Recreation Facilities Data table provided with the Application (Scenario ID 12475). The Applicant is providing bicycle amenities; indoor community spaces, including lounges and a fitness space; three outdoor courtyards with a pool, grills, and rooftop amenities, among other elements. Final locations and quantities of each of these amenities will be shown on the Certified Site Plan.

vi. *Division 6.4. General Landscaping and Outdoor Lighting*

Landscaping and lighting, as well as other site amenities, will be provided to ensure that these facilities will be safe, adequate, and efficient for year-round use and enjoyment by residents and visitors. The Project will transform existing streetscape along Old Georgetown Road and Glenbrook Road with new street trees, improved, wider sidewalks, street lighting, and street furniture. The Project will also provide a new through-block pedestrian connection, as recommended by the Sector Plan. The on-site lighting will limit the necessary light levels to streets and sidewalks.

As shown in the Development Standards table, the Site Plan meets all general requirements and development standards of Section 4.5 of the Zoning Ordinance, the optional method public benefits provisions of Division 4.7 of the Zoning Ordinance, and the general development requirements of Article 59-6 of the Zoning Ordinance.

e. *satisfies the applicable requirements of:*

i. *Chapter 19, Erosion, Sediment Control, and Stormwater Management; and*

A Stormwater Concept Plan was approved by the Montgomery County Department of Permitting Services (MCDPS) on May 28, 2020 (Attachment B). The Applicant proposes to meet stormwater management requirements through environmental site design with the use of micro-bioretenion planter boxes. Due to site limitations and an existing shallow storm drain, additional treatment cannot be provided and therefore a partial waiver was granted by MCDPS.

ii. *Chapter 22A, Forest Conservation.*

There are no environmentally sensitive features, such as streams, wetlands, floodplains or associated buffers, associated with the Site. This Project is subject to the Chapter 22A, Montgomery County Forest Conservation Law although there is no forest onsite. The proposed project results in an afforestation requirement of 0.30 acres which the Applicant will meet through onsite canopy coverage.

The Subject Application provides residential units fronting an arterial roadway and is therefore subject to the Montgomery County Noise Guidelines associated with residential development. To address development standards regarding noise mitigation, the Applicant coordinated with Phoenix Noise & Vibration, LLC, an engineer specializing in acoustics. The analysis shows that noise levels upon the proposed building facades and within the pool terrace are appropriately mitigated by the future topography and building structure. A portion of the 2nd floor pool terrace, facing Old Georgetown Road, will be exposed to noise levels greater than 65 dBA Ldn. Phoenix Noise & Vibration notes that mitigation for noise in this area can be provided through the construction of a five-foot noise barrier at the edge of the terrace. Given the adverse impact a tall parapet would have on the building's architecture and massing, the Applicant is requesting a waiver of this requirement pursuant to Section 2.2.2. of the Noise Guidelines to allow for the increased noise levels in this courtyard. This request is typical in urban centers throughout the County where vehicular movement and activity is concentrated. As such, Staff is recommending approval of the Applicant's waiver request.

Phoenix Noise & Vibration, LLC further states that all residential units located along the Old Georgetown Road elevation will be exposed to future transportation noise levels greater than 65 dBA Ldn and up to 73 dBA Ldn. Additionally, a portion of the residential units located on the southeast and northwest ends of the building, as well as at the ends of the pool terrace elevations will also be exposed to future transportation noise levels greater than 65 dBA Ldn. These units require further analysis to determine whether the proposed building architecture will be capable of maintaining interior noise levels below 45 dBA Ldn. If necessary, interior noise levels can be maintained below 45 dBA Ldn by increasing the STC ratings of the exterior building components such as windows and doors. The remaining residential units will not be exposed to significant transportation noise levels and do not require mitigation as currently proposed. As conditioned, the Project will meet the standards of the Noise Guidelines.

- f. *provides safe, well-integrated parking, circulation patterns, building massing and, where required, open spaces and site amenities;*

The Project provides adequate, safe, and efficient parking and circulation patterns. The Project provides a private driveway from Old Georgetown Road which consolidates the garage and loading entrance. The private driveway continues to Rugby Avenue which will allow for emergency access only. A second garage access for residents is located off Glenbrook Road. Additionally, the Project improves the public streetscape along Old Georgetown Road, Glenbrook Road and Rugby Avenue. The building provides entrances along Old Georgetown Road, Glenbrook Road, and the through-block pedestrian connection. The Project provides safe and well-integrated open spaces and site amenities.

- g. *substantially conforms with the recommendations of the applicable master plan and any guidelines approved by the Planning Board that implement the applicable plan;*

As discussed in the Preliminary Plan Amendment 12016022A findings of this Staff Report, the Site Plan substantially conforms with the recommendations of the Sector Plan. The Site Plan proposes a residential development with up to 297 multifamily residential dwelling units with a minimum of 15% MPDUs, as well as underground parking and on-site amenities for the residents.

Further, the Applicant will provide a minimum of 35% of the Site Area (27,931 square feet) with Green Cover to meet the 35% Green Cover requirement set forth in Section 2.4.1 of the Sector Plan and Section 2.3.2 of the associated Design Guidelines. In response to this requirement, the Application proposes an intensive green roof, with a minimum depth of 6-inches, on portions of the building in addition to micro-bioretenion planters, canopy cover, and rooftop solar panels.

Section 2.4.1 (B) of the *Bethesda Downtown Sector Plan* recommends the following regarding urban green cover:

On private property, provide a minimum of 35 percent green cover, which may include singularly or a combination of the following: intensive green roof (6 inches or deeper) on 35 percent of rooftop, tree canopy on 35 percent of landscape, [or] a combination of tree canopy and intensive green roof for a total green cover of 35 percent or greater*.

**If on-site energy generation requires the use of either the roof or open space, accommodations for these features may alter the 35 percent minimum green cover requirement.*

The Sector Plan's Urban Ecosystem goals are intended to support biodiversity and local wildlife while providing improved air quality and carbon sequestration. While the use of solar panels supports the Sector Plan's Renewable Energy generation goals, solar panels do not serve as a direct replacement of green cover in achieving all the Urban Green Goals outlined.

With the related Sketch Plan (320190100), the Applicant proposed approximately 16,931 square feet of traditional green cover and 11,000 square feet of rooftop solar panels. The Sketch Plan conditioned the Project to maximize the green cover area composed of green roof, canopy cover, and bioretention plantings in pursuit of the Sector Plan's urban green goals. The resulting change

in green cover composition, as shown in the current Application, reflects an ongoing collaboration to reach a solution that adheres to Sector Plan recommendations and goals as closely as possible.

- h. will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. If an approved adequate public facilities test is currently valid and the impact of the development is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required the Planning Board must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage;*

As discussed in the Preliminary Plan Amendment No. 12016022A findings, the development will be served by adequate public facilities, including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities.

- i. on a property in a Rural Residential or Residential zone, is compatible with the character of the residential neighborhood; and*

The Subject Property is not located in a Rural Residential or Residential zone.

- j. on a property in all other zones, is compatible with existing, approved or pending adjacent development.*

The Project provides high density residential infill in a manner that is appropriate for this area of Downtown Bethesda and adjacency to a residential neighborhood. The redevelopment of an underutilized site with surface parking with multi-family dwelling units and a through block connection is compatible with the adjacent residential and office uses. The Project will construct a building of up to 90 feet in height and stepping down in the rear to match the heights of existing single-family dwellings. The location of the through-block connection in the rear will provide access to the existing Battery Lane Urban Park.

- 3. To approve a Site Plan for a Restaurant with a Drive-Thru, the Planning Board must also find that a need exists for the proposed use due to an insufficient number of similar uses presently serving existing population concentrations in the County, and the uses at the location proposed will not result in a multiplicity or saturation of similar uses in the same general neighborhood.*

Not applicable, this Site Plan does not include a restaurant with a drive-thru.

- 4. For a property zoned C-1 or C-2 on October 29, 2014 that has not been rezoned by Sectional Map Amendment or Local Map Amendment after October 30, 2014, if the proposed development includes less gross floor area for Retail/Service Establishment uses than the existing development, the Planning Board must consider if the decrease in gross floor area will have an adverse impact on the surrounding area.*

Not applicable, the Subject Property is not zoned C-1 or C-2.

Community Outreach

The Applicant has met all signage, noticing, and submission meeting requirements. The Applicant held a pre-submittal public meeting at the Bethesda Elementary School, 7600 Arlington Road, on January 6, 2020. Staff received one letter of correspondence with concerns regarding the driveway on Glenbrook Road. The letter

requests signage for 'right turn only' and 'stop'. The Proposed Signage and Marking Plan includes both of these signs and as previously described, the driveway has been designed to restrict left turn movements onto Glenbrook Road. The letter also requests the Applicant to install screening to block headlights from shining into the residences across the street. The Project is directly opposite a commercial building, and as designed, the driveway directs the vehicles away from the existing residences, therefore additional screening is not necessary.

CONCLUSION

The Project complies with the general requirements and development standards of Section 59.4.5, the optional method public benefits provisions of Division 59.4.7, and the general development requirements of Article 59.6 of the Zoning Ordinance. The Project satisfies the findings of the Subdivision Regulations and is consistent with the goals and recommendations of the 2017 *Bethesda Downtown Sector Plan*. Therefore, Staff recommends approval of Preliminary Plan Amendment No. 12016022A and Site Plan No. 820200130 with the conditions specified at the beginning of this report.

ATTACHMENTS

- A. Sketch Plan Resolution MCPB No. 19-108
- B. Design Advisory Panel Memoranda
- C. Agency Letters
- D. Variance Request
- E. Correspondence

Resolution No.: 16-705
Introduced: September 9, 2008
Adopted: September 9, 2008

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By Council President at the request of the County Executive

SUBJECT: Amendment to Council Resolution 15-1222 to Extend Time for Compliance with Condition of Abandonment

Background


1. Council Resolution No. 15-1222, adopted November 22, 2005, approved the abandonment of a portion of Somerset Lane in the Colesville Farm Estates Subdivision with conditions. Condition No. 2 required the Applicant to file a new record plat incorporating the former right-of-way under Colesville Farm Estates Preliminary Plan No. 1-05004 within 24 months after the date of the Resolution.
2. On August 14, 2008, the County Executive recommended amending Resolution No. 15-1222 to allow the applicant an additional 6 months to file a new record plat.

Action

The County Council for Montgomery County, Maryland approves the following amendment to Council Resolution No. 15-1222:

1. The text of Action Clause #2 is deleted and replaced by: "The Applicant must file a new record plat at his sole expense by March 9, 2009."
2. The County Attorney must record a copy of this resolution among the County land records.
3. Any person aggrieved by this action of the Council may appeal to the Circuit Court within 30 days after this resolution is adopted.

This is a correct copy of Council action.


Linda M. Lauer, Clerk of the Council