

Toby's General Partnership * BEFORE THE
Petitioner * PLANNING BOARD OF
PLANNING BOARD CASE NO. 427 * HOWARD COUNTY, MARYLAND

* * * * *

DECISION AND ORDER

In accordance with Section 125.0.E of the Howard County Zoning Regulations the Planning Board of Howard County, Maryland, held a public hearing on January 19, 2017, to consider the petition of Toby's General Partnership, Petitioner to approve a Final Development Plan, FDP-DC-Crescent-2, for Downtown Mixed Use development of 112,346 square feet of cultural and community use and 202 residences. The 2.89 acre site is located at the intersection of South Entrance Road and Symphony Woods Road in the Fifth Election District of Howard County, Maryland. The site is currently identified as Columbia Town Center, Section 5, Area 1, Lot 1 (Tax Map 36, Parcel 307), Downtown Columbia, Crescent Neighborhood, Parcels G & H (Tax Map 36, Parcel 399) and South Entrance Road right-of-way to be abandoned. The site is zoned New Town (NT) and designated as Downtown Mixed Use Area in the Downtown Columbia Plan.

The notice of the public hearing required by Section 5-104(d)(1) of the Land Use Article of the Maryland Annotated Code was published and the subject property was posted in accordance with the Planning Board's requirements, as evidenced by certificates of publication and posting, all of which were made a part of the record of the case. Pursuant to the Planning Board's Rules of Procedure, the reports and official documents pertaining to the petition, including the Technical Staff Report of the Department of Planning and Zoning, Final Development Plan (FDP-DC-Crescent-2), Crescent Neighborhood Concept Plan, Crescent Neighborhood Design Guidelines, Crescent Neighborhood Implementation Plan, Howard County Code, Downtown Columbia Plan, Downtown-Wide Design Guidelines, Howard County Zoning Regulations, Adequate Public Facilities Act, Howard County Design Manual, and Howard County Sign Ordinance were made part of the record in this case.

PLANNING BOARD HEARING

Department of Planning and Zoning's Technical Staff Report

Julia Boone presented the Technical Staff Report for the Department of Planning and Zoning recommending approval of the Final Development Plan, FDP-DC-Crescent-2, subject to Conditions of Approval by the Planning Board. The Department of Planning and Zoning in its Technical Staff Report outlined the 15 criteria for the Planning Board to review, pursuant to Section 125.0.E.4 of the Howard County Zoning Regulations.

PETITIONER'S TESTIMONY

Mr. Todd Brown, Esq., represented the petitioner. Mr. Brown explained that the proposal incorporates two concepts of the Downtown Columbia Plan - arts and culture and affordable housing. Mr. Brown incorporated the entire Department of Planning and Zoning file into the record and provided résumés, Petitioner's Exhibits #1A-1C, and the petitioner's presentation, Petitioner's Exhibit #2.

Mr. Brown called Mr. Scott Armiger, President of Orchard Development, as petitioner's witness #1. Mr. Armiger testified that Orchard Development is the master developer and will manage the facility for the Howard County Housing Commission. Mr. Armiger testified that the multi-use development will provide space for performing arts, theatres, and galleries; it will also provide apartments on levels 3-7 that will wrap the 750-space parking garage and outdoor amenity space open to the public during business hours. Mr. Armiger testified that half of the 202 housing units will be affordable, approximately 50-60% of area median income.

Mr. Armiger, in response to a question from Planning Board Chair Phil Engelke, testified that Orchard Development will have a management agreement with Howard County Housing Commission. Mr. Armiger testified that Orchard Development would provide daily management for the apartments and separate art providers, such as Howard County Housing Commission and Toby's would manage the art uses.

Mr. Armiger, in response to a question from Board Member Adler, testified that Orchard Development manages everything that they build.

Mr. Armiger, in response to a question from Board Member Roberts, testified that the 750-space parking garage will be available to the community and residents and more information will be available on the future Site Development Plan.

Mr. Brown called Ms. Ada Best, Acting Executive Director of the Howard County Housing Commission, as petitioner's witness #2. Ms. Best testified that the Housing Commission and its Commissioners are fully committed to the project.

Mr. Brown called Mr. Marcus Ervin, Senior Development Officer for the Howard County Housing Commission, as petitioner's witness #3. Mr. Ervin testified the Housing Commission will be a non-profit co-developer with Orchard Development and that project financing will be achieved by developer's agreements and a long term ground lease.

Mr. Brown called Ms. Cecily Bedwell, Principal of Design Collective, as petitioner's witness #4. Ms. Bedwell testified to the changes made from the previously approved Neighborhood Documents recorded with FDP-DC-Crescent-1. Ms. Bedwell testified that the Neighborhood Concept Plan complies with the 15 story maximum indicated in the Downtown Columbia Plan, designates South Entrance Road as a street type, requires 5,653 square feet of secondary amenity space, and identifies a shared use path along South Entrance Road and a portion of future Symphony Woods Road [North/South Connector]. Ms. Bedwell testified that the Neighborhood Implementation Plan projects phasing for the site, specifically 202 residences and 112,346 square

feet of cultural use, in the larger context of downtown revitalization. Ms. Bedwell further testified that the Implementation Plan's multiple exhibits add Area 7.a. and Area 7.b. and the shared use path and delineate the ultimate configuration of the future North/South Connector. Ms. Bedwell testified that the Neighborhood Design Guidelines further develop the character of the individual neighborhood by defining details for materials and methods and building typology and form, and explained the unique vision of the Crescent Neighborhood. Ms. Bedwell testified that the Design Guidelines' multiple exhibits mimic the changes made in the Implementation Plan and the Gateways and Vistas Diagram shows a terminated vista with a signature building, the Street Typology Plan Diagram designates South Entrance Road as a Street Type 3, the Bicycle and Pedestrian Circulation Plan delineates the shared use path along South Entrance Road, the Amenity Space Framework Plan indicates secondary amenity space with primary amenity space in Crescent Area 3, and the Signage Framework Plan denotes proposed locations of signs that are subject to change during site plan review. Ms. Bedwell testified that the Neighborhood Documents will be recorded in the Land Records of Howard County and will become binding on the property, that they provide sufficient detail to guide the appearance of the Crescent Neighborhood, and the property will provide a balance of uses compatible with the existing and proposed development.

Mr. Brown called Mr. Carl Gutschick, Professional Engineer and Principal of Gutschick, Little & Weber, as petitioner's witness #5. Mr. Gutschick testified that the project passed the allocations and open schools Adequate Public Facilities test. Mr. Brown incorporated the Adequate Public Facilities letter dated August 8, 2017, from Jeff Bronow as Petitioner's Exhibit #3. Mr. Gutschick testified about the Final Development Plan (FDP) project scope; including the FDP limits, the existing conditions, proposed engineering and stormwater management, and existing and proposed adjacent roadways, structures and uses. Mr. Gutschick testified that the abandonment area identified on the FDP is public right-of-way for Symphony Woods Road, which is no longer needed and will be abandoned and acquired for the subject property.

Mr. Gutschick, in response to a question from Board Member Adler, testified that the North/South Connector public right-of-way bisects Howard Research and Development Property creating an approximately 0.4 acre out parcel to be merged, along with the abandonment area, to the existing Toby's Dinner Theatre site to create Parcel S.

Mr. Brown called Mr. Michael Workosky, with Wells & Associates, as petitioner's witness #6. Mr. Workosky testified that he prepared and the County approved the Traffic Report in accordance with the Downtown Revitalization Plans and Adequate Public Facilities Ordinance. Mr. Workosky testified that another Traffic Report will be prepared with the Site Development Plan. Mr. Workosky testified that the Traffic Report was prepared assuming a build-out condition in 2020, which includes existing traffic and proposed development within the Crescent Neighborhood and Downtown Columbia, and accounts for future proposed road connections, including Merriweather Drive, North/South Connector and extension of Hickory Ridge Road.

Mr. Workosky, in response to a question from Planning Board Chair Engelke, testified that the South Entrance Road will be realigned to terminate into the North/South Connector. Mr. Workosky testified that traffic from southbound Route 29 to South Entrance Road can only turn right at the North/South Connector and traffic from Little Patuxent Parkway to North/South

Connector can turn left onto South Entrance Road. Mr. Workosky testified that the ramp from Route 29 to South Entrance Road will remain, as constructed.

Mr. Workosky, in response to a question from Board Member Coleman, testified that there will be access to the site from South Entrance Road.

Mr. Workosky, in response to questions from Mr. Jervis Dorton regarding traffic and access, testified that the main entrance and drop-off area for the site is located on the North/South Connector. Mr. Workosky testified that traffic from northbound North/South Connector, or the drop-off area, would turn right at South Entrance Road and then another right to access the site's parking garage. Mr. Workosky testified that the main entrance to the parking garage is from South Entrance Road and a secondary exit is along a one-way westbound service drive, which allows only a right turn on the North/South Connector. Mr. Workosky testified that the secondary access will not be open at all times, in which case a driver would have to use Merriweather Drive to the North/South Connector to pick-up from the main entrance, or meet riders in the garage. Mr. Workosky testified that one cannot drop-off from southbound North/South Connector. Mr. Workosky also testified that a portion of the service drive is for bus parking and the buses must exit right on the North/South Connector before accessing the drop-off/pick-up area. Mr. Workosky testified that the loading area is accessed from South Entrance Road and loading vehicles must back onto South Entrance Road to exit the loading area. Mr. Workosky testified that there is only one access to Symphony Woods Office Park and there may be instances where traffic from Symphony Woods Office Park and the service drive turn right on North/South Connector at the same time. Mr. Workosky testified that the design could change and questions regarding traffic and access will be further reviewed at Site Development Plan.

After careful evaluation of all testimony and information presented, the Planning Board made the following Findings of Facts and Conclusions of Law:

FINDINGS OF FACT

1. The Crescent Neighborhood Concept Plan, the Crescent Neighborhood Design Guidelines, and the Crescent Neighborhood Implementation Plan conform with the Downtown-Wide Design Guidelines, the Downtown Columbia Plan, the Street and Block Plan, the Neighborhoods Plan, the Maximum Building Heights Plan, the Primary Amenity Space Framework Diagram, the Street Framework Diagram, the Bicycle and Pedestrian Plan, and the Open Space Preservation Plan, or that any propose change(s) will not be detrimental to the overall design concept and phasing for Downtown Revitalization, based on testimony from Ms. Bedwell, Petitioner's exhibits, and DPZ's Technical Staff Report, all of which the Board finds convincing.

The Board makes all of these findings recognizing that pursuant to Section 125.0.E.3.a. of the Zoning Regulations the Neighborhood Documents are only binding on property included within the boundaries of Final Development Plan FDP-DC-Crescent-2 and only provide a context to evaluate the initial FDP and guidance for future FDP petitions. The Board also makes its findings of conformance for this criterion of FDP decision-making based on the requirements of Section 125.0A.2.b.(1)-(6) of the Zoning Regulations.

2. The Crescent Neighborhood Design Guidelines, which were modeled after the Downtown-Wide Design Guidelines and Downtown Columbia Plan with minor changes as noted in the testimony of Ms. Bedwell, offer sufficient detail regarding urban design, block standards, street design, architectural design, amenity area design, green building and site design, pedestrian and bicycle circulation features, and signage, which will guide the appearance of the neighborhood over time and promote design features that are achievable and appropriate for Downtown Revitalization. The Board makes these findings based on testimony of Ms. Bedwell, Petitioner's exhibits and DPZ's Technical Staff Report, all of which the Board finds convincing.
3. The Final Development Plan conforms to the Neighborhood Concept Plan, Neighborhood Design Guidelines, and Neighborhood Implementation Plan, submitted with the Final Development Plan, which provide a context for evaluation, but that are only binding on properties within the boundaries of the Final Development Plan, FDP-DC-Crescent-2. The Final Development Plan conforms to the Revitalization Phasing Plan, the Downtown Community Enhancements Programs, and the Public Amenities (CEPPA) Implementation Chart. The Board makes these findings based on testimony of Ms. Bedwell, Petitioner's exhibits and DPZ's Technical Staff Report, all of which the Board finds convincing.
4. The Final Development Plan, in context with the surrounding planned and existing development, provides a balanced mix of housing and arts and cultural uses based on testimony of Ms. Bedwell, Petitioner's exhibits and DPZ's Technical Staff Report, all of which the Board finds convincing.
5. The Final Development Plan satisfies the affordable housing requirement by providing approximately 100 affordable housing units in accordance with Council Bill 52-2016, based on testimony of Mr. Armiger and DPZ's Technical Staff Report.
6. The Final Development Plan's proposed bicycle and pedestrian network creates convenient connections throughout the subject area and to the existing network; in particular to the Downtown Multi-use Pathway, Merriweather Symphony Woods Neighborhood, Crescent West, and the Patuxent Branch Trail, based on testimony of Ms. Bedwell, Petitioner's exhibits and DPZ's Technical Staff Report, all of which the Board finds convincing.
7. The Final Development Plan does not contain lakes or steep slopes. The stream and floodplain areas will be diverted off site and disturbances will require review and permits by the Maryland Department of the Environment. In addition, the Final Development Plan proposes multiple connections to existing and planned open space, based on testimony of Ms. Bedwell, Petitioner's exhibits, and DPZ's Technical Staff Report, all of which the Board finds convincing.
8. The Final Development Plan area is approximately 2.89 acres. The Downtown Community Commons requirement for approximately 0.288 acres was satisfied with

FDP-DC-Crescent-1. The 5% Downtown Community Commons requirement for the remaining 2.60 acres will be satisfied by shared use pathways and potential indoor and rooftop amenity space, to be finalized at Site Development Plan, based on testimony of Ms. Bedwell, Petitioner's exhibits, and DPZ's Technical Staff Report, all of which the Board finds convincing.

9. The Final Development Plan is in harmony with existing and planned vicinal land uses. The site will remain as a cultural and community use and include new residential dwellings, based on testimony of Ms. Bedwell, Petitioner's exhibits and DPZ's Technical Staff Report, all of which the Board finds convincing.
10. The Final Development Plan is served by Adequate Public Facilities. The proposed residences have received tentative allocations and passed the schools test, based on the testimony of Mr. Gutschick, Petitioner Exhibit #3, and DPZ's Technical Staff Report, all of which the Board finds convincing. The Final Development Plan does not propose new roads. The Traffic Study met Adequate Public Facilities requirements and will be further reviewed along with the Site Development Plan, based on the testimony of Mr. Workosky, and DPZ's Technical Staff Report, all of which the Board finds convincing.
11. Redevelopment of the site and construction of the North/South Connector will impact the environmental features that have been previously disturbed by existing development. The North/South Connector was approved with FDP-DC-Crescent-1/1A and will be constructed with F-16-114. Environmental restoration has been approved with FDP-DC-Crescent-1/1A. Environmental impacts require approval by the Maryland Department of the Environment. These findings are made based on the testimony of Mr. Gutschick and DPZ's Technical Staff Report, all of which the Board finds convincing.
12. The Final Development Plan does not impact any historic or culturally significant existing sites, buildings or structures, and public art.
13. The Petitioner will provide art equivalent to 1% of the construction cost of the residences only, or pay a fee-in-lieu as required in Section 125.0.A.9.f.2 of the Zoning Regulations and as noted on Sheet 3 of the Final Development Plan. New cultural facilities are not subject to this requirement. These findings are made based on the Petitioner's exhibits and DPZ's Technical Staff Report, all of which the Board finds convincing.
14. The Final Development Plan indicates common or quasi-public amenity use will be held, owned, maintained by the property owner, except a separate maintenance agreement may be entered into for the shared use pathway that traverses the property as noted on Sheet 3 of the Final Development Plan.
15. Community Enhancements, Programs and Public Amenities (CEPPA) payments are not required for Downtown Arts, Cultural and Community Uses and CEPPA #26 was removed by passage of Council Bill 52-2016.

LIST OF PETITIONER'S EXHIBITS:

- Applicant's Exhibit #1A – Résumé of Michael Workosky
- Applicant's Exhibit #1B – Résumé of Cecily Bedwell
- Applicant's Exhibit #1C – Résumé of Carl Gutschick
- Applicant's Exhibit #2 – Petitioner's Presentation
- Applicant's Exhibit #3 – Adequate Public Facilities Letter

CONCLUSIONS OF LAW

The proposed Final Development Plan, FDP-DC-Crescent-2, satisfies the criteria for Downtown Revitalization Final Development Plans, according to Section 125.0.E.4 of the Howard County Zoning Regulations, for the reasons stated in the above Findings of Fact and in the Department of Planning and Zoning Technical Staff Report, which the Board finds persuasive and which it adopts as its own in this decision.

For the foregoing reasons, the petition of Toby's General Partnership, to approve a Final Development Plan, FDP-DC-Crescent-2, the Crescent Neighborhood Design Guidelines, the Crescent Neighborhood Implementation Plan, and the Crescent Neighborhood Concept Plan, is this 22nd day of February, 2017 APPROVED by the Planning Board of Howard County, Maryland.

HOWARD COUNTY PLANNING BOARD

Phil Engelke /PB
Phil Engelke – Chairperson

Erica Roberts /PB
Erica Roberts – Vice-Chairperson

Delphine Adler /PB
Delphine Adler

Ed Coleman /PB
Ed Coleman

ABSENT
Jacqueline Easley

PB Case No. 427

ATTEST:

Valdis Lazdins
Valdis Lazdins
Executive Secretary

REVIEWED FOR LEGAL SUFFICIENCY BY:

HOWARD COUNTY OFFICE OF LAW

Gary W. Kuc, County Solicitor

Paul Johnson
Paul Johnson, Deputy County Solicitor