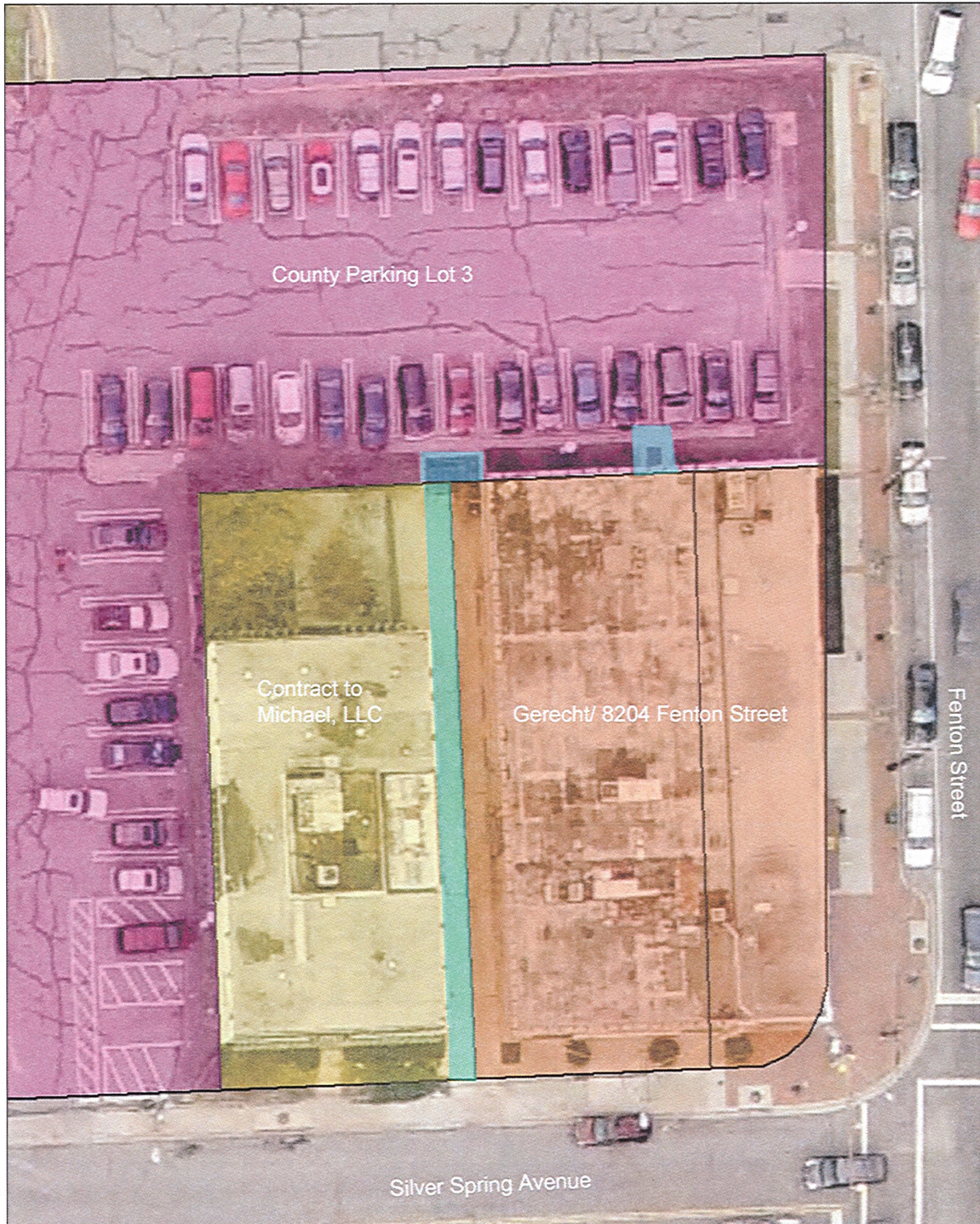


The Gerecht property enjoys easements on two adjoining properties. One easement covers a shared private alley, accessed from Silver Spring Avenue, between the Gerecht property and the Applicant's contract property to the west. A second easement, for a garbage dumpster area cut into the hill on the County Parking Lot, is at the northwest corner of the Gerecht property, accessed from the shared private alley. A third easement covers a concrete pedestrian bridge extending from the building to Parking Lot 3.



*Approximate Location of Current Easements (in green) for 8204 Fenton Street*



The Gerecht property does not load directly from the platted or deeded alleys contained within Parking Lot 3, loading instead directly from the Parking Lot itself. Access to this portion of Parking Lot 3 is gained from the 20-foot platted alley off Fenton Street.



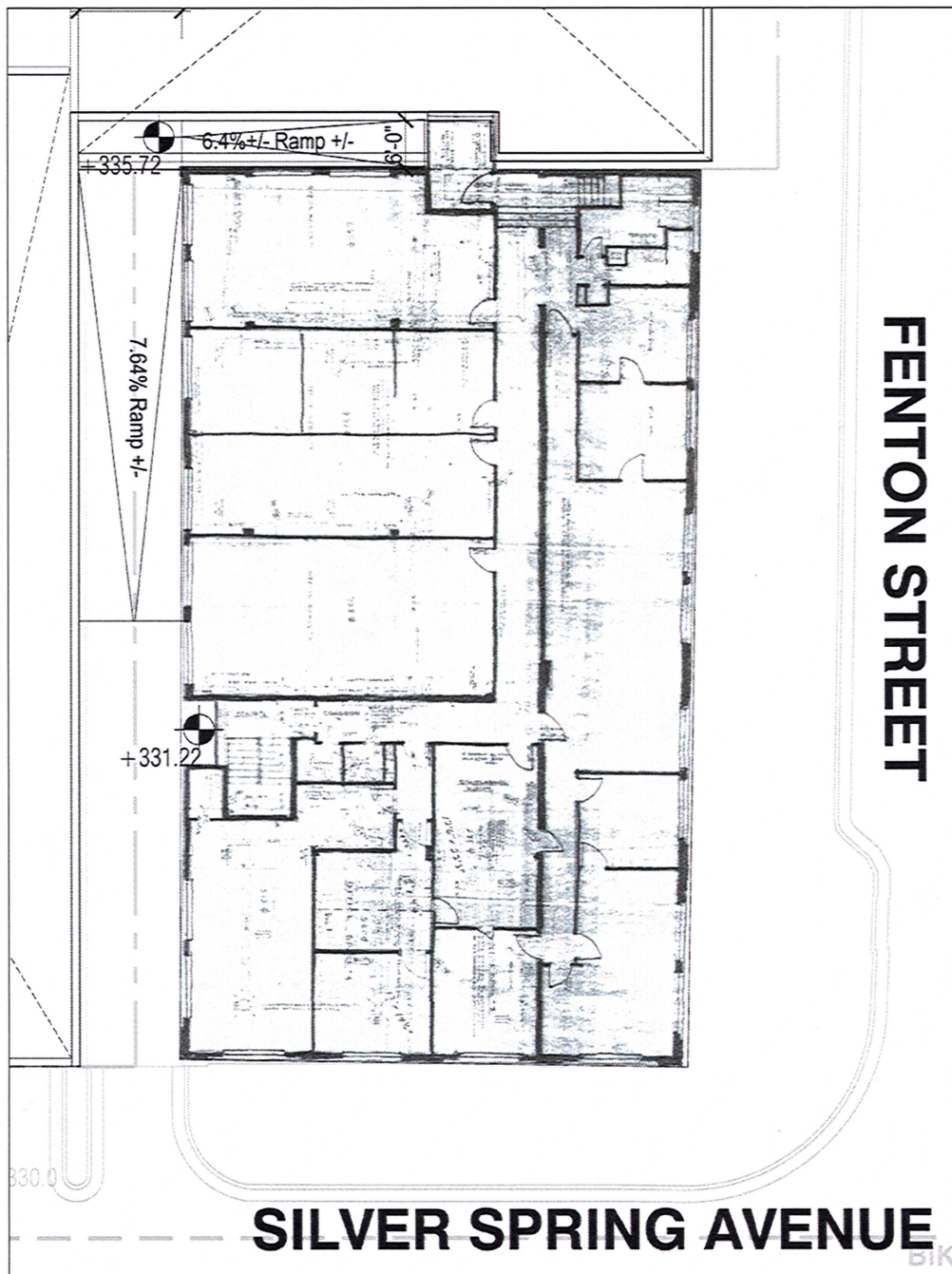
*Approximate Location of Existing Public Alleys near 8204 Fenton Street*

On December 16, 2008, staff received two letters, from Mr. Gerecht and his attorney Mr. Joseph Lynott, expressing concerns about the relationship between 8204 Fenton Street and the proposed development (see Appendix E). In response, staff met with Mr. Gerecht at M-NCPPC on January 15, 2009, to discuss his concerns. Staff encouraged Mr. Gerecht to negotiate a reasonable accommodation from the Applicant, possibly to include revisions to the building interior (at the Applicant's expense). The Applicant and Mr. Gerecht held discussions to find a mutually agreeable accommodation, but were unable to achieve a compromise by the February 12 hearing.

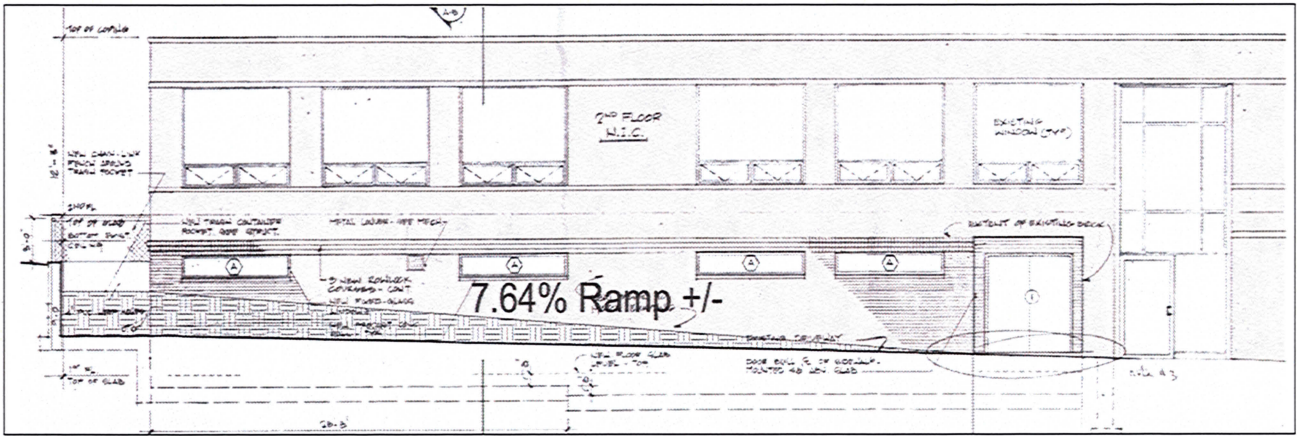
Again with the intent to mediate between the parties, staff met alone on site with Mr. Gerecht on February 19, 2009, to discuss design alternatives that could be explored by the Applicant's design team. Proposals developed by the Applicant and shared with Mr. Gerecht before the February 12 meeting included the installation of a service elevator within 8204 Fenton Street. Mr. Gerecht declined these interior proposals as unworkable, so staff focused discussion on exterior alternatives. Staff relayed these alternatives to the Applicant for development.



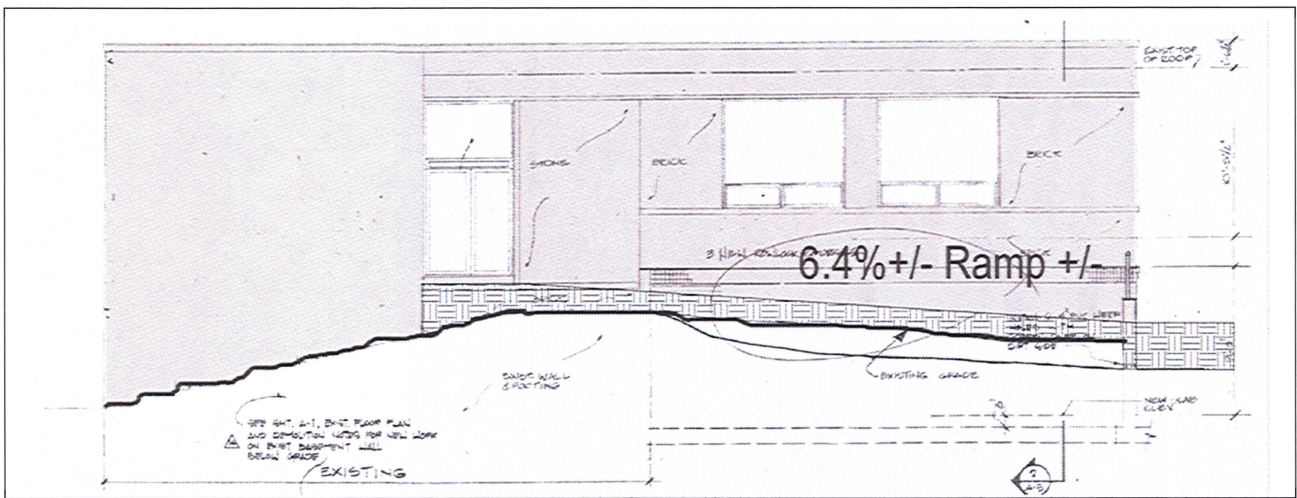
On Tuesday, March 17, 2009, Development Review, Urban Design, and Community Planning staff met with Mr. Gerecht and the Applicant's design team to discuss alternatives. The first option created a ramp in the joint alley that would allow a box-type truck to back up to the corner of the building and unload to the concrete pedestrian bridge via handcart.



*Ramp Option Plan*

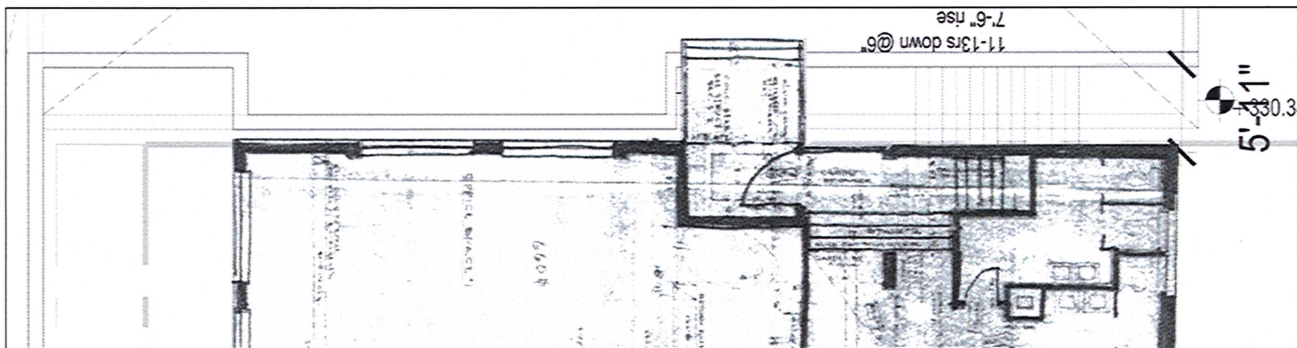


*Ramp Option Alley Elevation*



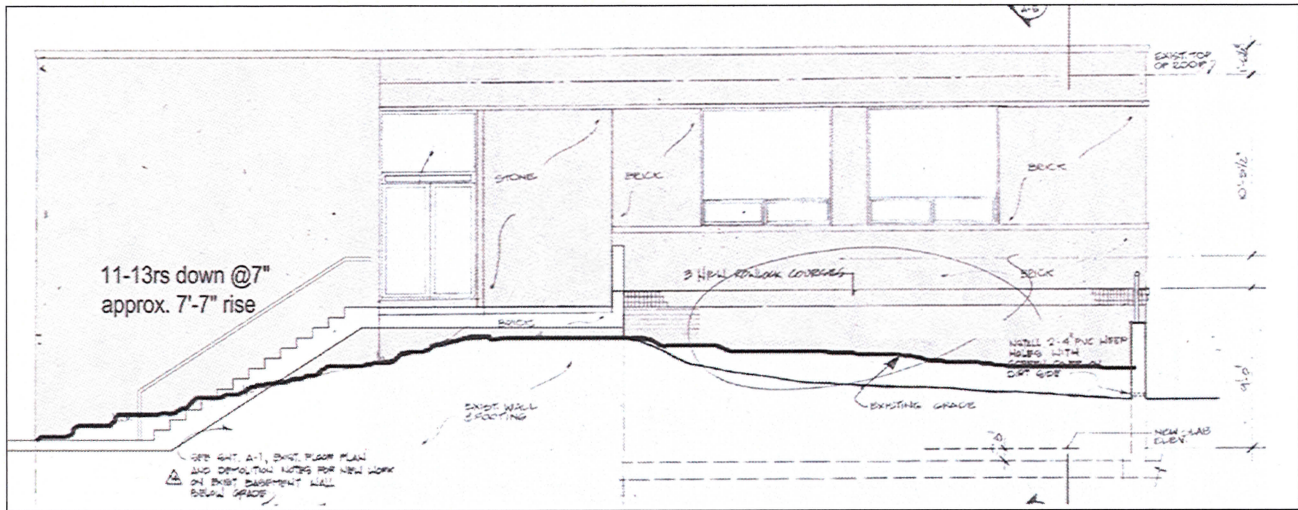
*Ramp Option Parking Lot Elevation*

The second option intended to meet the spirit of the pedestrian bridge easement by constructing, entirely on the proposed development, a concrete stair connecting the pedestrian bridge to the Fenton Street sidewalk. Loading in this case would be from the shared alley and up the internal stairs.



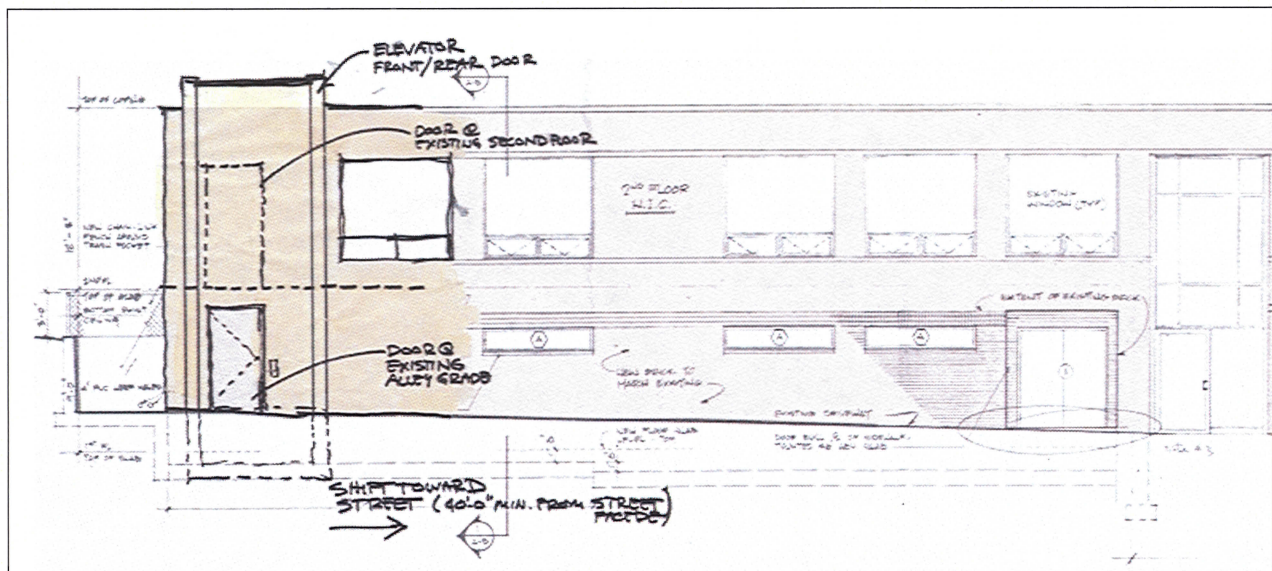
*Exterior Stair Option Plan*





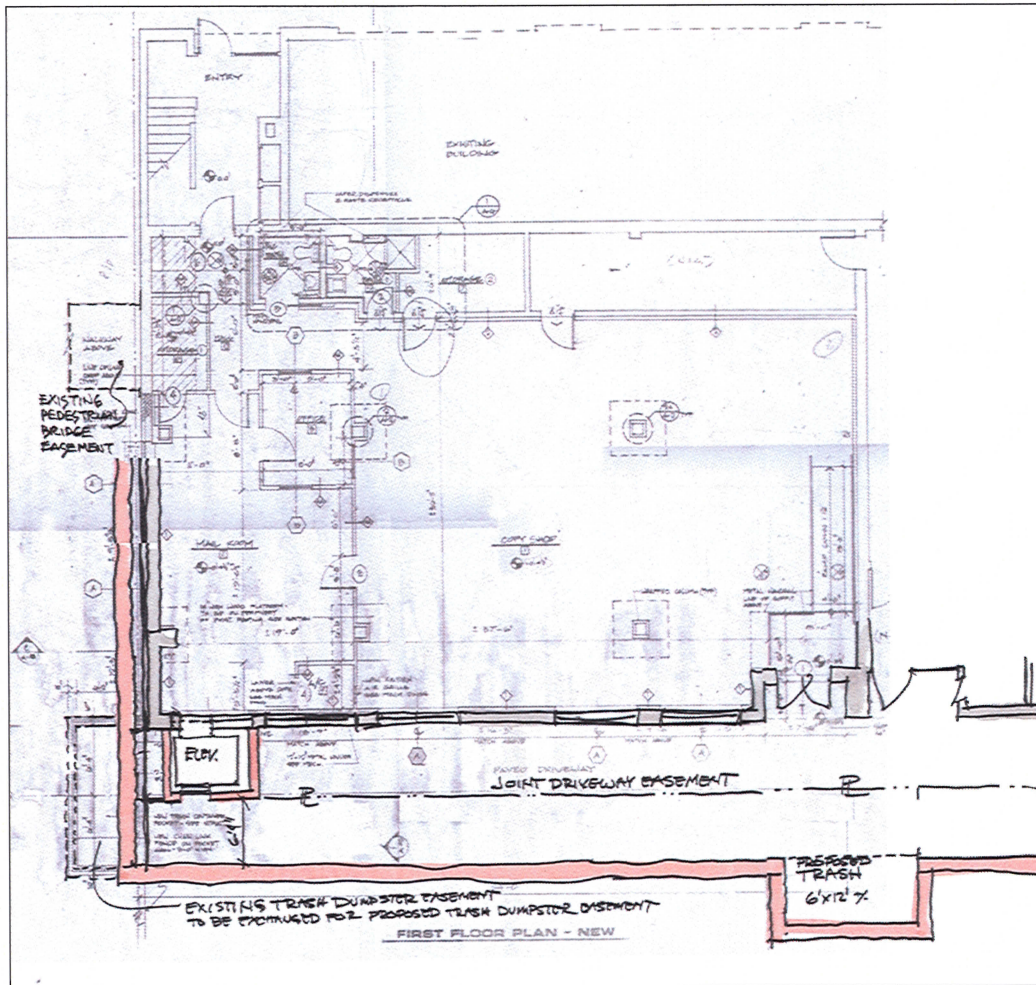
Stair Option Parking Lot Elevation

In a final attempt to get the parties together to achieve a mutually agreeable accommodation, staff set up a meeting on April 17, 2009, at M-NCPPC. Attending the meeting were representatives from 8204 Associates, CD Publications, Development Review, Urban Design, and Community Planning, MC DOT, the County Executive, Councilmember Ervin's office, and the Applicant (see Appendix F for the attendance list). At this meeting, Mr. Gerecht formally declined the exterior ramp and stair options and reiterated a reluctance to accede to the installation of an interior elevator due to concerns about disruption of business operations on the second floor. Another alternative was, however, suggested that involved the construction of a service elevator outside the building in the shared alley, an elevator which could then be connected to the building at the last stages to minimize interruption. Mr. Gerecht and his colleagues agreed to consider the design and the Applicant set about preparing the drawings.



Exterior Elevator Scheme Alley Elevation





### *Exterior Elevator Option Plan*

In addition to providing an exterior service elevator in the shared alley to service 8204 Fenton Street, the scheme also proposes to exchange the easement for the garbage bins currently located at the end of the shared alley with another on the proposed development that would be more conveniently located to the building's alley service entrance. As of this writing, staff has not received a formal response to this latest proposal.

Staff did receive on May 1, 2009, from Mr. Gerecht's attorney, David Brown, a series of conditions for accommodation between Mr. Gerecht and the Applicant (see Appendix E). While maintaining opposition to the project, the general terms of the conditions include, but are not limited to, requiring that the Applicant to, at no expense to 8204 Associates:

- install a commercial elevator inside the building convenient to the Fenton Street entrance
- enclose the alcove at the parking lot entry as conditioned space
- make modifications to the building interior to accommodate the addition of the elevator
- remove the pedestrian bridge
- replace signage on the Fenton Street façade
- set back the proposed building to the north to allow a measure of light and air to the existing windows on the north elevation.



Staff is prepared to recommend these selected conditions as conditions of approval before the Board, with the understanding that the final details of these accommodations will be determined at Site Plan. Mr. Gerecht's conditions also included requests that various financial considerations be paid to him by the Applicant. Staff is not prepared to recommend these as conditions of approval. Staff is further recommending that, if the parties cannot agree to changes inside their building, the Applicant accommodate that property by the installation either of an exterior elevator, as illustrated in the "Exterior Elevator Option," or an exterior stair connecting the pedestrian bridge to the Fenton Street right-of-way, as illustrated in the "Exterior Stair Option."

### **Loading/Unloading from County Parking Lot**

In a letter dated March 9, 2009, staff requested clarification from MC DOT regarding several issues related to the Kalivas and Gerecht properties, particularly with regard to their use of Public Parking Lot 3 for loading purposes. Their response, dated April 3, 2009, (see Appendix G for both letters) states:

It is our opinion that neither Kalivas, nor Gerecht have an express right to perform "loading" from Lot 3. By deed and plat (though the latter appears to be unrecorded), Kalivas is allowed access to the rear of her property via a 16-foot "public alleyway" that crosses Lot 3. Access could include loading and unloading of vehicles, though Kalivas would have to confine those activities within the easement area.

The County has granted an easement for the benefit of the Gerecht property. The County granted to 8204 Associates Limited Partnership "an easement and right-of-way" for a "pedestrian bridge" that connects Gerecht's building to Lot 3 (*Liber 9322, Folio 513*). Other than provisions that allow 8204 Associates, and the County, access to the bridge for the purposes of reconstruction, repair, maintenance and the like, the easement implies pedestrian access only and would not allow loading from Lot 3.

In addition, Sec. 31-29(10) of the County Code specifically prohibits the loading or unloading of commercial vehicles on a County parking lot.

### **Parking**

Parking, particularly short-term parking for the businesses along the east side of Fenton Street, is an issue that will need to be given significant attention and coordination at Site Plan. Although the surface spaces of Parking Lot 3 will be relocated to an underground structure just half a block away and the on-street parking along Fenton Street and adjacent streets will not be reduced by this development, the removal of the small parking lot immediately adjacent to Fenton Street will need to be ameliorated. Possible solutions could include additional interim short-term parking facilities along Fenton Street, shorter-term parking meters, and strategic project phasing.

### **Phasing**

For an infill project of this stature, phasing of the various buildings and other components will be an essential tool for its successful integration into the existing community fabric. Issues of parking,



development of community amenities, and minimizing disruption, among others, will be addressed at Site Plan.

### **Safety**

Several community members have cited safety and security concerns on this project, particularly with the underground public parking garage. Staff generally shares these concerns and will be working with the Applicant, MCDOT, and CPTED (Crime Prevention Through Environmental Design) experts in the Montgomery County Police Department to produce a design that will help ensure a safe and secure environment. Many existing area retail and mixed-use developments in downtown areas with more urban densities, including Mazza Galerie in Friendship Heights, downtown Washington, DC, and Arlington, VA, feature viable underground parking. There are safe and secure ways to design and operate underground garages and staff will acquire the necessary input to make sure these best practices are identified and implemented. While the street-oriented buildings and public spaces and street-activating ground-floor retail spaces will provide additional pedestrians on the sidewalks and eyes on the street, significantly improving security over what is now a largely unsupervised area, staff will coordinate with both safety experts and the future operators of the underground public garage to produce an optimal design.

### **Public Green Space design**

The central public space will be the largest of its kind in Fenton Village (and for the foreseeable future the Ripley District as well) and will have to serve many functions. The final design, to be determined at Site Plan, will address the frequently noted need for a large communal green space in Fenton Village. The draft Silver Spring Green Space Plan, prepared in response to the loss of “green” space in downtown Silver Spring, specifically identified this location as a unique and prime opportunity to secure a much-needed and –desired public space in this area. The final design will feature strong spatial, visual, and kinetic connections to the surrounding streets, inviting the larger community into the public green space.

### **Small businesses**

The commercial character of Fenton Village is defined by small businesses: convenience retail, cafes and eateries, and specialty shops. The proposed mixed-use development will introduce new office tenants and residents into the neighborhood, providing an expanded customer base seven days a week, morning, noon, and night. It will also bring more retail space and likely increase property values, increasing retail competition and potentially rents to rise for existing businesses. With the assumption that Fenton Village will eventually redevelop, more densely than it is currently, these opportunities and challenges sooner or later will come to the small businesses of Fenton Village.

It is a goal of the Master Plan to maintain the “Village” character of Fenton Street. During Site Plan review, staff will engage with the Applicant, the County Office of Economic Development, local business owners, and others to explore options for retaining, promoting, and improving upon that character.

### **Other easements**

The attorney representing the Kalivas property and 8204 Fenton Street, and now 911 Silver Spring Avenue (the office building located immediately adjacent to the intersection of Silver Spring Avenue and the proposed new private street, the alley behind whose building is proposed to remain), has submitted for the record a legal argument regarding private easements he asserts that his clients have over the subject property. Staff is consulting with the Legal Department and is providing the documents for reference (Appendix L).



## **CORRESPONDENCE**

Staff received 27 letters and e-mails in support of the proposed development (Appendix H). Commenters cited the many benefits of redevelopment, particularly in Fenton Village. Some identified minor issues to be addressed at Site Plan. Supporters include many small businesses, retailers, and restaurants in the immediate vicinity, as well as citizens and the Greater Silver Spring Chamber of Commerce.

In opposition, staff received letters from 2 Silver Spring residents and a third from the East Silver Spring Citizens Association (ESSCA) (Appendix I), the latter of which very helpfully and constructively recommended solutions to address their concerns.

From Mr. Gerecht, staff has also received a petition raising concerns about the impacts of the proposed Project Plan on Fenton Village (for a sample page, see Appendix J; the entire petition may be found in the project file). Staff analysis of petition (Appendix XX) counted 695 signatures, mostly from residents of greater Silver Spring (65 percent), but also from Washington, DC, (10 percent) Takoma Park (6 percent), and other areas within Montgomery, Prince George's, Baltimore, Howard, and other Maryland counties, as well as Virginia, Pennsylvania, Tennessee, and Texas. The primary issues identified by respondents included the loss of the amount, location, and convenience of the current parking arrangement (51 percent), the safety of the proposed replacement underground parking garage (25 percent), and concern for the survival of the small business in Fenton Village (12 percent). Other concerns included the adjacent property owners' loss of their current loading arrangement (5 percent), increased traffic congestion (3 percent), and a perceived lack of public input in the awarding of the redevelopment for Parking Lot 3 (2 percent).

These data suggest a great many of the retailers in Fenton Village are patronized by people who drive (sometimes apparently from great distances) to the area. The addition of several hundred new residences within one block's walk will have a significant impact. About 60 of the respondents identified themselves as "businesses". Though the petition was received too late for inclusion in this report, at the hearing staff will provide a visual analysis of the location of the Silver Spring businesses in support of, and those having concerns with, this project.

Staff agrees with the main issues and concerns raised by the respondents and has conditioned its recommendation of approval on the resolution of such issues at the time of Site Plan.

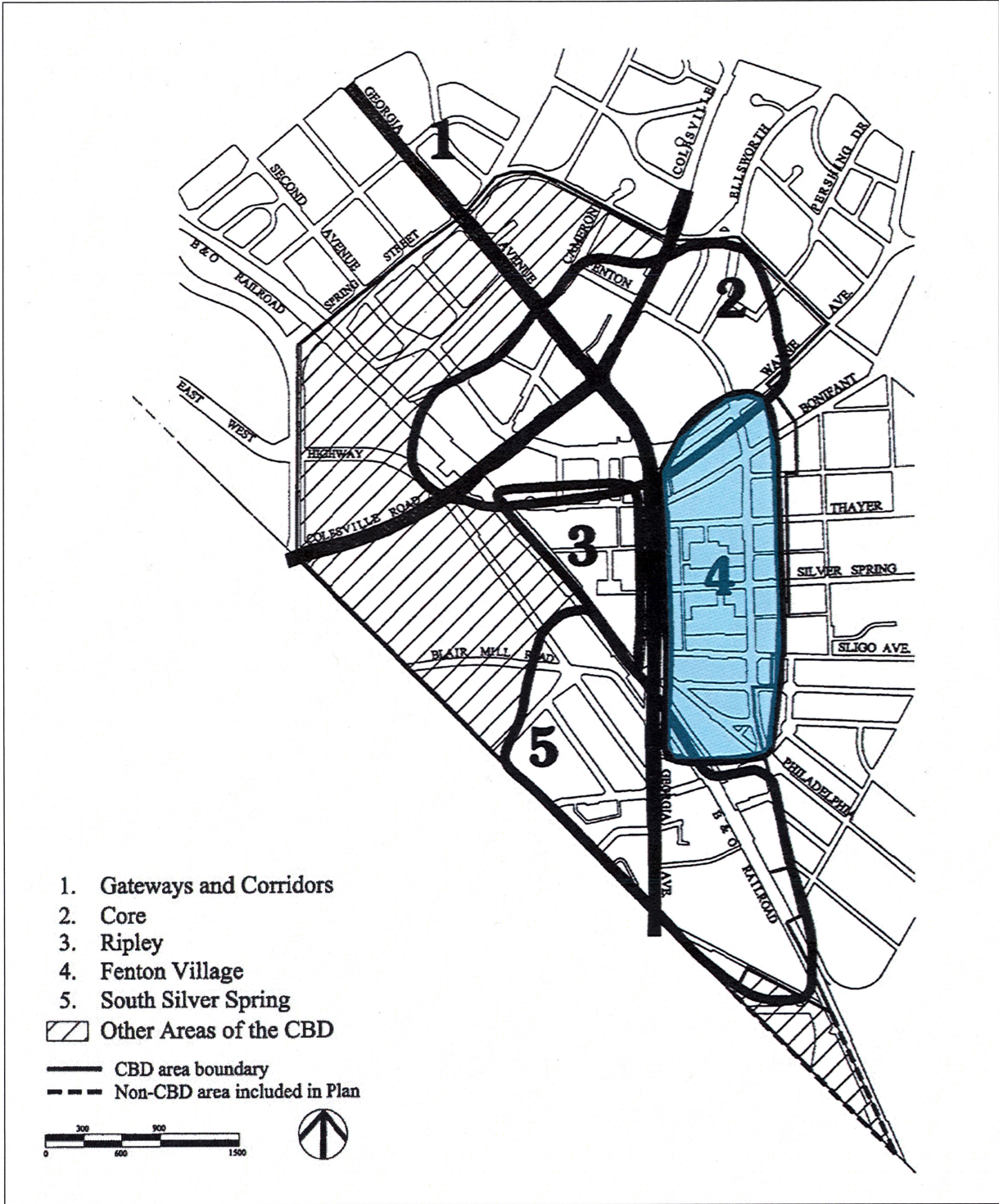
## **PROJECT ANALYSIS**

### **Sector Plan**

The Silver Spring CBD Sector Plan sets forth a vision for the redevelopment of downtown Silver Spring based on six themes:

- Transit-oriented downtown
- Commercial downtown
- Residential downtown
- Civic downtown
- Green downtown
- Pedestrian-friendly downtown.





*Silver Spring CBD Revitalization Areas*