



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

Staff Report: Limited Site Plan Amendment 81988046D, City Place

ITEM #: _____

MCPB HEARING DATE: March 4, 2010

REPORT DATE: February 22, 2010

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief *RAK*
Robert Kronenberg, Supervisor *RAK*
Development Review Division

FROM: Joshua Sloan, Coordinator *J.S.*
Development Review Division
301.495.4597
Joshua.Sloan@mncppc.org

APPLICATION

DESCRIPTION: Supplemental plan submittal for open space entrance design at the corner of Fenton Street and Colesville Road within the Silver Spring CBD Sector Plan area.

APPLICANT: City Place Air Rights, LLC & City Place Limited Partnership

FILING DATE: January 4, 2010

RECOMMENDATION: Approval with conditions

EXECUTIVE

SUMMARY: The conditions of approval for project plan amendment 91987001A and site plan amendment 81988046B regarding public use space, streetscape and amenities required that a supplemental plan be presented to the Art Review Panel because questions regarding the removal of existing amenities were not completely resolved. This plan was to detail the paving, lighting, planting, site details, and artwork for the pedestrian area of the corner mall entrance on Fenton Street and Colesville Road. The plan was submitted and reviewed and is being presented in compliance with that condition.

SITE DESCRIPTION

Vicinity

The subject site occupies most of the block along Fenton Street between Ellsworth Avenue and Colesville Road within the commercial center of downtown Silver Spring.

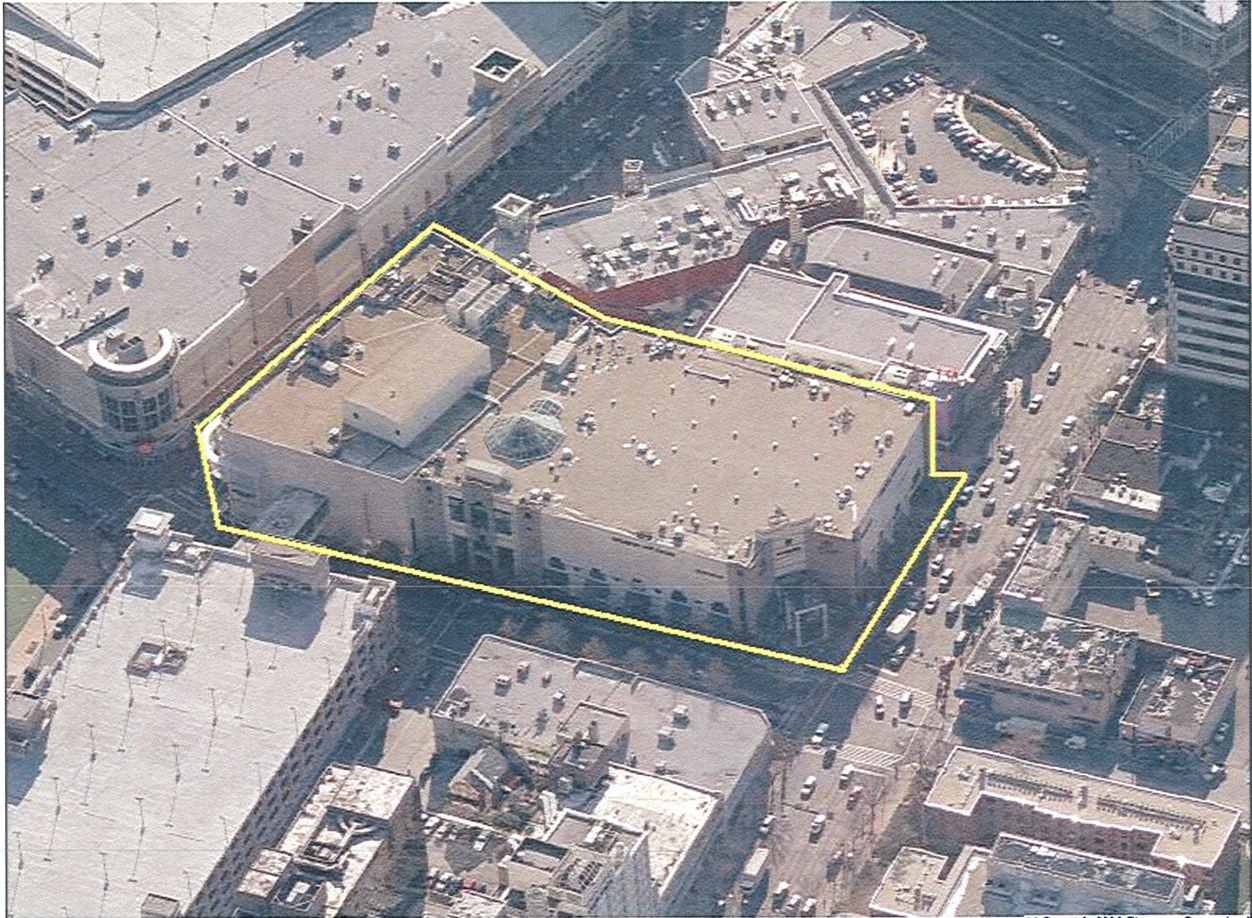


Vicinity Map

The surrounding properties are a mix of residential and commercial uses within various CBD zones. More specifically, properties north of the site, across Fenton Street, include multiple family residences within the CBD-R1 zone, restaurants and retail establishments within the CBD-2 zone, and a parking garage within the CBD-1 zone. Properties to the south of the site contain restaurants, service and retail establishments, and a movie theater within the CBD-2 zone. Properties to the east of the site, across Ellsworth Drive, contain retail establishments, a movie theater, and a parking garage within the CBD-1 zone. Properties to the west of the site, across Colesville Road, contain restaurants and retail establishments within the CBD-2 and CBD-3 zones.

Site Analysis

The subject property consists of one 2.48-acre platted lot in the Central Business District-3 (CBD-3) Zone. The site is currently developed with the City Place mall, a five-story structure with approximately 491,235 square feet of retail space and 1,177 square feet of office space. The existing mall takes up the entire site and is located in a dense urban setting. No environmental features exist on the site.



Aerial Photo

PROJECT DESCRIPTION

Previous Approvals

Project plan amendment 91987001A was approved on October 16, 2007 for 647,497 square feet of gross floor area and 91,772 square feet of cellar area for retail and office space. This amendment required the subsequent submittal of a plan for review of the pedestrian area at the Fenton Street/Colesville Road entrance to the mall.

Preliminary plan amendment 11987190A was approved on October 16, 2007 for 299,307 square feet of office space and 439,962 square feet of retail space, including the 91,772 square feet of

cellar area. This amendment was primarily required to allow an APF review to ensure that the proposed traffic volumes and intersection capacities would be supported by existing infrastructure..

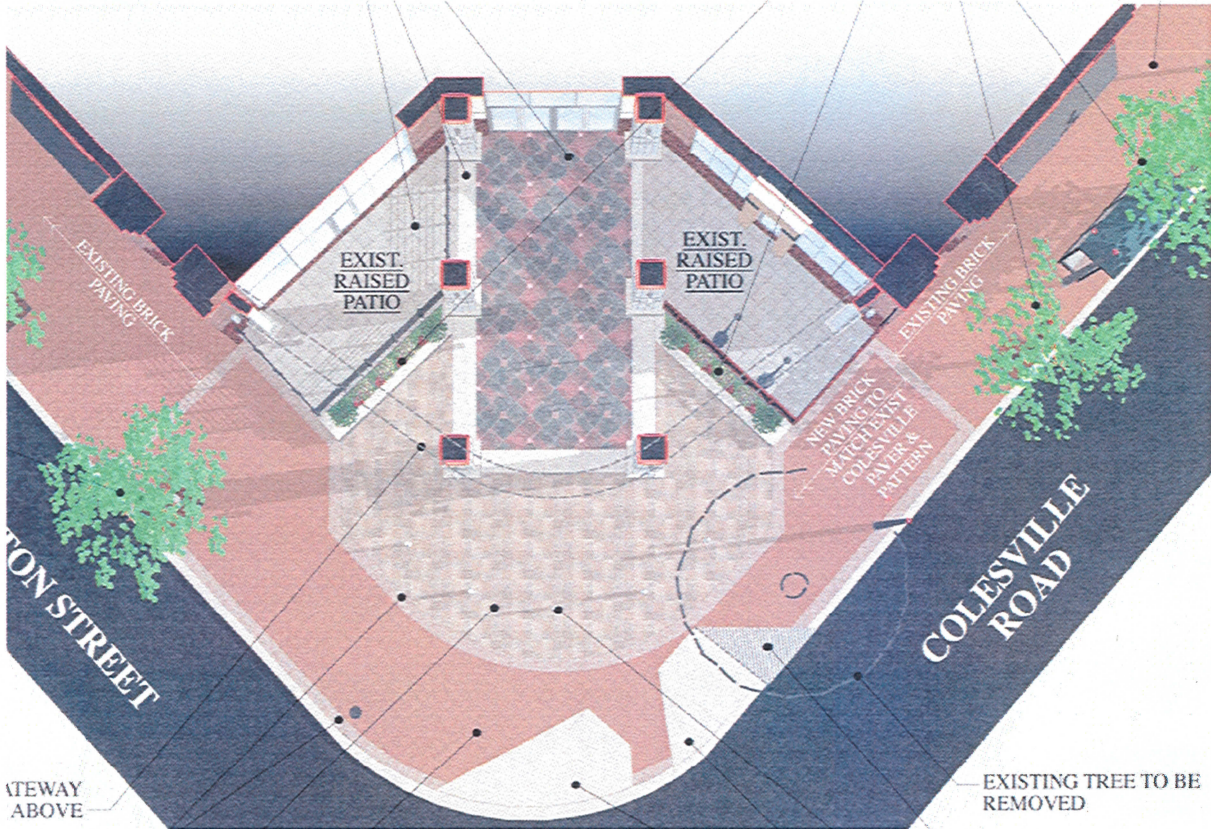
Site plan amendment 81988046B was approved on October 16, 2007 for 647,497 square feet of gross floor area and 91,772 square feet of cellar area for retail and office space. As with the projectry plan, this amendment required the subsequent submittal of a plan for review of the pedestrian area at the Fenton Street/Colesville Road entrance to the mall. A further condition of this approval was the reconstruction of the Fenton Street streetscape; the Applicant is requesting a modification of this condition.

Site plan amendment 81988046C was approved on May 14, 2008 to remove one tree and relocate a bus shelter.

Proposal

The Applicant requests the following modifications:

- Be permitted to retain the existing Fenton Street streetscape;
- Approval of a new design for the Fenton Street/Colesville Road pedestrian area;
- Replacement of the variety of street trees along Colesville Road and removal of a tree at the corner of Colesville Road and Fenton Street; and
- Architectural modifications.



Illustrative Plan

AMENDMENT ANALYSIS

Pedestrian Circulation

The proposed changes include removal of the “fountain”, which has become more of a sculptural impediment than an attraction. The removal of this piece and reconfiguration of the circulation paths will enhance the ability to enter the building and move along the street. An earlier amendment to move a bus shelter has already enhanced the freedom of movement around this corner.

Although it is always unfortunate to remove a tree, the amendment proposes removal of the tree at the corner of Colesville Road and Fenton Street. The decision to do this is twofold: to enhance visibility and to allow the modified handicapped ramp that leads to the crosswalk on Colesville Road to be reconstructed. Because of the tree’s location, DOT has built a strangely curbed ramp that will only suffer damage in the future due to its proximity to the tree’s base. Removal will enhance the ability to properly construct this ramp and further open pedestrian circulation.

The Applicant has proposed that removal and replacement of the existing brick sidewalk along Fenton Street creates more landfill waste and financial burden than it is worth when compared with to the previously approved detail. It is true that the change would only be cosmetic – substituting one brick pattern for another – and Staff agrees that the environmental and financial cost is greater than the aesthetics achieved is the sidewalk is replaced.

Environment
There are not many environmental features on the subject site. The loss of the tree, however, is significant and is being mitigated only slightly by the addition of plantings near the raised patios by the entrance. This proposed modification is a trade-off between tree canopy and better pedestrian circulation and visibility. It is hoped that the change to a more appropriate street tree along the rest of Colesville Road will ensure that the trees grow larger and partially mitigate this loss.

On-site stormwater management will not change.

Architectural Design

A significant modification will be the proposed wrapping of the existing canopy with an armature similar in style and scale to the existing metal façade at the corner of Fenton Street and Ellsworth Avenue. This armature will serve three significant objectives:

1. Relocation of signage;
2. Visual continuation of the street wall; and
3. Location for artistic interventions.

The relocation of the signage for mall tenants is important for two reasons. First, the signs currently sit too high for most pedestrians to see them behind the trees. Second, the signs are placed on a wall that will be modified to accommodate windows when the office phase of the project is built. The visual continuation of the street wall with a landmark feature will reinforce the pedestrian experience along the street, providing scale and interest, and will mimic circulation movement along the street as it wraps the corner. The armature will also provide

specialized lighting and a screen that will televise events, ads, and information as an aesthetic response to this admittedly commercial enterprise.



Night Rendering



Daytime Rendering

Development Standards

The subject site is zoned CBD-3 and no changes to the development standards are proposed. The proposed amendment continues to meet the purpose and requirements of the zone.

COMMUNITY OUTREACH

The Applicant has met all proper signage, noticing, and submission meeting requirements. Notice of the subject amendment was sent to all parties of record on December 15, 2009. Staff has not received correspondence on this matter.

RECOMMENDATION AND CONDITIONS

The proposed modifications to the site plan are beneficial and appropriate changes to the overall design character of the development in relation to the original approval. The site remains compatible with existing and proposed development adjacent to the site. The removal of the tree, construction of the armature, and general aesthetic enhancements will provide a landmark feature along this corner and enhance the viability of the mall and immediate vicinity. These modifications positively impact the efficiency, adequacy, and safety of the site with respect to vehicular and pedestrian circulation, open space, landscaping, and lighting.

Staff recommends approval of site plan amendment 81988046D, City Place, for the amendments delineated above. All site development elements shown on the site and landscape plans stamped "Received" by the M-NCPPC on January 4, 2010 are required except as modified by the following conditions.

Conformance with Previous Approvals

1. Site Plan Conformance

The proposed development must comply with the conditions of approval for Site Plan 81988046C as listed in the Planning Board resolution dated May 14, 2008 except as modified herein.

Transportation & Circulation

2. Pedestrian Circulation

The Applicant must finalize the construction of the handicapped ramp to Colesville Road per the existing detail.

Miscellaneous

3. Display of Public Information and Events

The Applicant must enter into an agreement with the Urban District, or other appropriate agency or organization, to televise event calendars and public information on the "JumboTron" for a minimum of 5 minutes per hour that the screen is on. This agreement must be executed prior to the issuance of any building permit.

4. Fenton Street Streetscape

The Applicant may retain the existing sidewalk paving on Fenton Street but must cover any utility grates that do not require ventilation with removable brick panels, subject to approval by the relevant utility companies.

5. Development Program

The Applicant must construct the proposed development in accordance with a development program that will be reviewed and approved prior to approval of the Certified Site Plan. The development program must include the following items in its phasing schedule:

- a. Street lamps and sidewalks must be installed within six months after structural construction is completed. Street tree planting may wait until the next growing season.
- a. On-site amenities including, but not limited to, sidewalks, benches, trash receptacles, and bicycle facilities must be installed prior to release of any new office building occupancy permit.
- b. The development program must provide phasing for installation of on-site landscaping and lighting.
- c. The development program must provide phasing of stormwater management, sediment and erosion control, and other features.

6. Certified Site Plan

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

- a. Include the final forest conservation exemption letter, stormwater management concept approval, development program, inspection schedule, and site plan resolution on the approval or cover sheet.
- b. Ensure consistency of all details and layout between site plan and landscape plan.
- c. Minor modifications to layout and notations per Staff's request.

APPENDICES

A. Prior Resolutions



MONTGOMERY COUNTY PLANNING DEPARTMENT

THE MARYLAND NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Memorandum

TO: Rollin Stanley, Planning Director

FROM: Rose Krasnow, Chief of Development Review *RK*

VIA: Robert Kronenberg, Supervisor, Development Review *RAK*
Joshua Sloan, Coordinator, Development *JAS*

RE: City Place
SITE PLAN #81988046C

DATE: May 13, 2008

Pursuant to Montgomery County Code Division 59-D-3.7 (Minor Amendments), the Planning Director may approve in writing any application for an amendment to the Certified Site Plan. Administrative or "Director Level" Amendments are modifications to the approved Certified Site Plan that are considered minor in nature and do not alter the intent and objectives of the plan.

A Pre-Application meeting with the community/public/parties of record is not required. A Pre-Submittal meeting with the DRD Intake Section is also not required; however, submittal of the application to DRD is applicable. Administrative Amendments must satisfy the noticing and posting requirements as identified in Sections 4.C and 4.D (a) (ii) of the Development Manual and require approval of the Planning Director.

On April 11, 2008, Petrie-Ross Ventures ("Applicant"), filed a site plan amendment application designated Site Plan No. 81988046C ("Amendment") for approval of the following modifications:

1. Removal of one street tree to relocate a bus shelter. The existing location of the bus shelter, near the corner of Fenton Street and Colésville Road, is too close to an outdoor café area and within an area currently being designed for public art and open space.

A notice regarding the subject site plan amendment was sent to all parties of record by the Applicant on April 15, 2008. The notice gave the interested parties 15 days to review and comment on the contents of the amended site plan. Staff received one inquiry via email regarding the location and reason from removal, but no objections were received.

The proposed amendment is consistent with the provisions of Section 59-D-2.6 of the Montgomery County Zoning Ordinance for Minor Plan Amendments. The amendment does not alter the intent, objectives, or requirements expressed or imposed by the Planning Board for the originally approved site plan.

This Amendment shall remain valid as provided in Montgomery County Code § 59-D-3.8. The Applicant is responsible for submitting a certified site plan after approval by the Director for the specific modifications.

ACCEPTED & APPROVED BY:



Rollin Stanley, Planning Director

5-14-08

Date Approved



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

MCPB No. 07-185
Site Plan No. 81988046B
City Place
Date of Hearing: July 26, 2007

OCT 16 2007

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Division 59-D-3, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review site plan applications; and

WHEREAS, on August 16, 2006, City Place Air Rights, LLC ("Applicant"), filed an application for approval of a site plan for a total of 647,497 square feet of gross floor area and 91,772 square feet of cellar area for retail and office space on one existing lot ("Site Plan" or "Plan"), on 2.48 acres of CBD-3-zoned land, on the southwest quadrant of the intersection of Colesville Road and Fenton Street, Lot 16 of the Edward W. Byrns subdivision ("Property" or "Subject Property"); and

WHEREAS, Applicant's site plan application was designated Site Plan No. 81988046B, City Place (the "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated July 11, 2007, setting forth its analysis of, and recommendation for approval of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the staffs of other governmental agencies, on July 26, 2007, the Planning Board held a public hearing on the Application (the "Hearing"); and

WHEREAS, on July 26, 2007, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on July 26, 2007 the Planning Board approved the Application subject to conditions on the motion of Commissioner Lynch, seconded by Commissioner Bryant, with a vote of 4-0, Commissioners Bryant, Cryor, Hanson, and Lynch voting in favor, Commissioner Robinson being absent.

APPROVED AS TO LEGAL SUFFICIENCY



M-NCPPC LEGAL DEPARTMENT

8787 Georgia Avenue, Silver Spring, Maryland 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320
DATE 10/16/07
www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

NOW, THEREFORE, BE IT RESOLVED that, pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Montgomery County Planning Board APPROVES Site Plan No. 81988046B for a total of 647,497 square feet of gross floor area and 91,772 square feet of cellar area for retail and office space on one existing lot, on 2.48 acres of CBD-3-zoned land subject to the following conditions:

1. Project Plan Conformance
The proposed development shall comply with the conditions of approval for Project Plan No. 91987001A.
2. Preliminary Plan Conformance
The proposed development shall comply with the conditions of approval for Preliminary Plan No. 11987190A.
3. Supplemental Plan
The Applicant will submit a Supplemental Plan to the Art Review Panel for approval, which will then be submitted as a Minor Site Plan Amendment to the Planning Board for approval before the issuance of any use-and-occupancy permits for the office tower addition. The Supplemental Plan is limited to the pedestrian area from the northern retail entrance to Fenton Street and Colesville Road. Upon approval by the Art Review Panel, the Supplemental Plan will be presented to Staff as a Minor Site Plan Amendment for inclusion in the Certified Site Plan. The Supplemental Plan will include complete layout and details of the following items:
 - a. Public artwork design and maintenance program.
 - b. Landscaping and lighting layout, details, and photometrics.
 - c. Structure and paving layout and details.
 - d. Site details and amenities.
4. Lighting
Deflectors shall be installed on all fixtures within the property boundaries causing potential glare or excess illumination, specifically on the perimeter fixtures abutting the adjacent roads.
5. Maintenance Responsibility
The Applicant shall be responsible for maintaining all on-site public use space and all public amenity features.
6. Transportation
 - a. Total development under the Site Plan is limited to 739,269 square feet of retail and office space.
 - b. The Applicant must provide two inverted-U bike racks at each of the four main entrances to the office and retail portion for a total of eight on site and a storage area for ten bicycles within the office entrance.

- c. The Applicant must provide four showers accessible to office employees who bicycle or walk to work.
7. Historic Preservation
Architectural modifications are limited to non-historic buildings. Specifically, no alterations of The Hecht Company building are permitted.
9. Public Amenity Contribution
In lieu of providing off-site public amenity space or facilities, the Applicant will make a contribution to M-NCPPC toward parkland acquisitions or improvements or other public amenities or facilities in the Silver Spring CBD in the amount of \$250,000.
10. Development Program
The Applicant must construct the proposed development in accordance with the Development Program. A Development Program will be reviewed and approved by Staff prior to approval of a Certified Site Plan. The Development Program will include a phasing schedule as follows:
 - a. Landscaping associated with each pedestrian area will be completed as construction is completed.
 - b. Pedestrian seating areas associated with each area will be completed as construction is completed.
 - c. Phasing of dedications, site amenities, artwork installation, trip mitigation or other features.
11. Certified Site Plan
Prior to approval of the Certified Site Plan, the following revisions must be included and/or information provided, subject to Staff review and approval:
 - a. Development program, inspection schedule, and Site Plan Resolution.
 - b. Limits of disturbance.
 - c. Revised development tabulations and phasing narrative.
 - d. Revised public use space table and calculations.

BE IT FURTHER RESOLVED that all site development elements as shown on City Place drawings stamped by the M-NCPPC on July 11, 2007, shall be required, except as modified by the above conditions of approval; and

BE IT FURTHER RESOLVED that, having given full consideration to the recommendations and findings of its Staff, which the Planning Board hereby adopts and incorporates by reference (except as modified herein) and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

1. *The Site Plan conforms to all non-illustrative elements of a development plan or diagrammatic plan, and all binding elements of a schematic development plan, certified by the Hearing Examiner under Section 59-D-1.64, or is consistent with an approved project plan for the optional method of development, if required, unless the Planning Board expressly modifies any element of the project plan.*

As conditioned, the proposed Site Plan Amendment is consistent with the concurrent proposed Project Plan Amendment with respect to Sector Plan conformance, architectural and streetscape details, and inclusion of public use space and amenities.

2. *The Site Plan meets all of the requirements of the zone in which it is located, and where applicable conforms to an urban renewal plan approved under Chapter 56.*

As amended in accordance with recommended conditions, the Site Plan meets all of the requirements of the CBD-3 zone as demonstrated in the following project Data Table.

PROJECT DATA TABLE FOR CBD-3 ZONE

<u>Development Standard</u>	<u>Permitted/ Required</u>	<u>Previously Approved</u>	<u>Approved by the Planning Board</u>
Gross Tract Area (square feet):	18,000	103,370	108,144
Net Site Area ¹ (square feet):	N/A	103,370 ²	91,248 ³
Floor Area Ratio (FAR)	6.0	5.34	6.0
Building Height (feet):	143/200 ⁴	158	192
Public Use Space (% of net lot area):			
On-Site	20% (18,250 SF)	20.1% (18,555 SF)	22.5% (20,216 SF) ⁵
Off-Site			5.7% (5,181 SF)
Total			28.2% (25,397 SF)
Parking	1822	none	none ⁶

¹ Net Site Area is calculated after the dedication of 16,896 square feet of previous recorded dedications on Plat Numbers 17983, 1602, and 2717.

² Including Kughn Park at 11,295 square feet.

³ Reflects additional previous dedications of 16,896 square feet.

⁴ The Montgomery County Zoning Ordinance permits buildings up to 143 feet normally or up to 200 feet in height under the optional method if, during site plan review, the Board finds that the additional height will not adversely affect surrounding properties.

⁵ Including 11,295 credits for Kughn Park.

⁶ The proposed development is within the Silver Spring Parking District and is not required to provide any parking on-site; however, the project is subject to the Parking District Tax.

3. *The locations of buildings and structures, open spaces, landscaping, recreation facilities, and pedestrian and vehicular circulation systems are adequate, safe, and efficient.*

Locations of buildings and structures

The proposed office tower will be built according to the setbacks approved by the previous project and site plans. This footprint is determined, in part, by the structural engineering of the existing retail mall. When built, the office tower will become a dominant feature in the Silver Spring CBD and is detailed and massed accordingly.

Open Spaces

The plan proposes 28.2 percent of the net property as public use and amenity space. This space is distributed between the existing façade and the property line, within the retail mall, within the pedestrian bridge and along the Fenton Street right-of-way. The open space along the sidewalks will continue to provide shade and efficient access into and around the site. The interior amenity space will continue to be programmed with activities for local citizens and the pedestrian bridge will be enhanced as a space for local artists to display their work. The corner area of Colesville Road and Fenton Street that is subject to the Supplemental Plan will provide a cultural landmark, visual interest, and improved pedestrian circulation patterns.

Landscaping and Lighting

The existing street trees and lights will remain. The office tower entry will feature a mix of container plantings, light fixtures, and benches. These landscape features will provide interest and beauty and the lighting will provide safety within and around the entrance court during the night. The corner of Colesville Road and Fenton Street will provide a combination of lighting, landscaping, new paving patterns, and public art that will provide visual interest, enhanced circulation patterns, and a landmark focal point for the community.

Recreation Facilities

There are no recreation facilities required or provided on-site.

Pedestrian and Vehicular Circulation Systems

Vehicular access will not change from the approved existing circulation pattern.

Sidewalks along Colesville Road and Ellsworth Drive will not change. Fenton Street will be renovated with new brick pavers in a pattern to match the existing frontages along Colesville Road and Ellsworth Drive. Further, pedestrian circulation around the corner of Colesville Road and Fenton Street will be improved through the Supplemental Plan approval.

4. *Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development.*

The proposed structure is compatible with other uses in and around the subject site and with the adjacent development patterns and scale. The proposed use of office space complements the surrounding uses by providing a center of employment within an existing retail and cultural urban context.

5. *The Site Plan meets all applicable requirements of Chapter 22A regarding forest conservation, Chapter 19 regarding water resource protection, and any other applicable law.*

The site is exempt from forest conservation requirements and additional stormwater management approvals.

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 this Site Plan shall remain valid as provided in Montgomery County Code § 59-D-3.8; and

BE IT FURTHER RESOLVED, that the date of this Resolution is OCT 16 2007 (which is the date that this Resolution is mailed to all parties of record); and

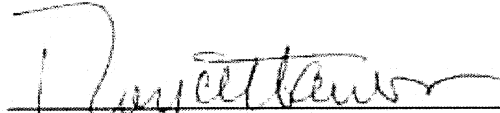
BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

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At its regular meeting, held on Thursday, October 4, 2007, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, on motion of Commissioner Lynch, seconded by

MCPB No. 07-185
Site Plan No. 81988046B
City Place
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Commissioner Cryor, with Commissioners Hanson, Bryant, Cryor, and Lynch voting in favor, and Commissioner Robinson abstaining, ADOPTED the above Resolution, which constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law for Site Plan No. 81988046B, City Place.

A handwritten signature in cursive script, appearing to read "Royce Hanson", written over a horizontal line.

Royce Hanson, Chairman
Montgomery County Planning Board



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

MCPB No. 07-186
Project Plan No. 91987001A
City Place
Date of Hearing: July 26, 2007

OCT 16 2007

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION¹

WHEREAS, pursuant to Montgomery County Code Division 59-D-2, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review project plan applications; and

WHEREAS, on February 2, 2007, City Place Air Rights, LLC ("Applicant"), filed an application for approval of a project plan for a total of 647,497 square feet of gross floor area and 91,772 square feet of cellar area for retail and office space on one existing lot ("Project Plan"), on 2.48 acres of CBD-3-zoned land, on the southwest quadrant of the intersection of Colesville Road and Fenton Street, Lot 16 of the Edward W. Byrns subdivision. ("Property" or "Subject Property"); and

WHEREAS, the Applicant's project plan application was designated Project Plan No. 91987001A, City Place (the "Application"); and

WHEREAS, Planning Board Staff ("Staff") issued a memorandum to the Planning Board, dated July 11, 2007, setting forth its analysis of and recommendation for approval of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the staffs of other governmental agencies, on July 26, 2007, the Planning Board held a public hearing on the Application (the "Hearing"); and

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

APPROVED AS TO LEGAL SUFFICIENCY



 M-NCPPC LEGAL DEPARTMENT

DATE 10/02/07

This Resolution constitutes the written opinion of the Board in this matter and satisfies any requirement under the Montgomery County Code for a written opinion.

WHEREAS, on July 26, 2007, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Lynch; seconded by Commissioner Bryant; with a vote of 4-0, Commissioners Bryant, Cryor, Hanson, and Lynch voting in favor, Commissioner Robinson being absent.

NOW, THEREFORE, BE IT RESOLVED that, pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Montgomery County Planning Board approved Project Plan No. 91987001A for a total of 647,497 square feet of gross floor area and 91,772 square feet of cellar area for retail and office space on one existing lot ("Project Plan"), on 2.48 gross acres in the CBD-3 zone, subject to the following conditions:

1. Development Ceiling
The proposed development is limited to 647,497 square feet of gross floor area and 91,772 square feet of cellar area for retail and office space.
 2. Building Height & Mass
The building height is limited to 192 feet as determined by the Montgomery County Department of Permitting Services ("DPS") standards for height measurement.
 3. Public Use Space, Streetscape, & Amenities
 - a. The Applicant will provide a minimum of 20% of the net site area as on-site public use space and a minimum of 30% of the net site area as combined on-site public use space and off-site amenity space.
 - b. The public use space must be easily and readily accessible to the general public, used for public enjoyment, and open to public exercise of First Amendment rights.
 - c. The Applicant will re-pave the Fenton Street frontage to match the paving adjacent to the existing building along Ellsworth Avenue and Colesville Road. All utility grates along Fenton Street that do not require ventilation will be covered with removable brick panels, subject to approval by the relevant utility companies.
 - d. The Applicant will submit a Supplemental Plan for approval by the Art Review Panel detailing the paving, lighting, planting, site details, and artwork for the entire area of the corner mall entrance on Fenton Street and Colesville Road. Upon approval of the Supplemental Plan, the Art Review Panel will present the design to the Planning Board as a Minor Site Plan Amendment for approval and inclusion in the Certified Site Plan. The fee for this Minor Site Plan Amendment will be waived, but no use-and-occupancy permits will be granted for the office tower addition until the Supplemental Plan is approved.
 - e. The Applicant will develop and manage an art exhibition space within the bridge connecting the existing building to the public garage. A copy of the
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management plan for this space must be submitted with the Supplemental Plan and reviewed by M-NCPPC and the Art Review Panel prior to the release of any use-and-occupancy permits for the proposed office tower.

- f. The Applicant will construct the project to achieve a LEED Silver Certification. The Applicant may seek to amend this condition either through a Minor Site Plan Amendment or at the time the Supplemental Plan is reviewed by the Planning Board.

4. Staging of Amenity Features

- a. The proposed project will be developed in one phase.
- b. Landscaping to be installed no later than the next growing season after completion of the building and paving.
- c. All site amenities and artwork will be installed before the issuance of any use-and-occupancy permits for the proposed office tower.

5. Maintenance

The Applicant will maintain all on-site public use space, amenities, and artwork to be consistently clean and usable by the public. A separate maintenance program for the proposed artwork will be submitted with the Supplemental Plan.

BE IT FURTHER RESOLVED that, having given full consideration to the recommendations and findings of its Staff, 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 § 59-D-2.43, the Montgomery County Planning Board, with the conditions of approval, FINDS:

- (a) *As conditioned, the proposal complies with all of the intents and requirements of the zone.*

Intents and purposes of the CBD zones

The Montgomery County Zoning Ordinance states the purposes, which the CBD zones are designed to accomplish. The following statements analyze how the proposed Project Plan conforms to these purposes:

- (1) *"To encourage development in accordance with an adopted and approved master or sector plan, or an urban renewal plan approved under Chapter 56 by permitting an increase in density, height, and intensity where the increase conforms to the master or sector plan or urban renewal plan and the site plan or combined urban renewal project plan is approved on review by the Planning Board."*

The Project Plan proposes to use the optional method of development and is in conformance with the Silver Spring Central Business District and Vicinity Sector Plan. The plan uses the optional method of development standards and conforms to the goals of the Sector Plan. The proposed development is an office building constructed above a retail mall. Office and commercial retail uses are permitted in the CBD-3 zone.

The proposed building height is 192 feet, which is in conformance with the Zoning Ordinance that permits buildings up to 200 feet in height under the optional method if, during site plan review, the Board finds that the height will not adversely affect surrounding properties. The Planning Board believes that there are no adverse effects on the surrounding properties, and that, in fact, the increased density and employment base will be beneficial for local businesses -- as there are no adjacent residential sites. The proposal reflects a floor area ratio ("FAR") of 5.99. The maximum allowed density is 6.0 FAR.

The Project Plan will accomplish important Sector Plan objectives. Namely, the proposed project expands the employment base in the downtown and does so in proximity to transit facilities. It encourages active urban streets by providing building entrances on Colesville Road and Fenton Street and will make downtown Silver Spring more pedestrian-friendly through the provision of streetscape improvements.

- (2) *"Permit a flexible response of development to the market as well as to provide incentives for the development of a variety of land uses and activities in central business districts to meet the needs and requirements of workers, shoppers and residents."*

The Project Plan responds to the need for an employment base in the downtown Silver Spring area. By retaining the retail space, the project will continue to meet the needs of workers, shoppers, and nearby residents.

Under the optional method, this project encourages the development of active urban streets by providing public spaces along street edges and improves the quality of the pedestrian environment within the improved streetscapes. The improved streetscape, along with the public amenities, addresses the need for public interaction to enhance the ambiance of downtown Silver Spring. This project will also increase the vitality of downtown Silver Spring and add to the economic infrastructure for commercial and retail businesses.

- (3) *"To encourage designs which produce a desirable relationship between the individual buildings in the central business district, between the buildings and*
-

the circulation system and between the central business district and adjacent areas."

The proposed project has little effect on the ground-level relationships between buildings because the proposed office tower is to be built on the existing retail mall and set back from the street. But visually the office tower will become an important focal point on the Silver Spring skyline. The new office lobby and increased use of the pedestrian bridge by employees will strengthen the entire project's relationship to existing sidewalks. There are no changes to vehicular circulation proposed by this amended Project Plan.

In all, the amended Project Plan will provide a compatible and desirable relationship with adjacent and surrounding uses. The design provides an effective relationship with adjacent uses and amenities and allows for a more interactive pedestrian environment due to the upgraded streetscape and artwork.

- (4) *"To promote the effective use of transit facilities in the central business district and pedestrian access thereto."*

The proposed development is located two blocks from the Silver Spring Metro Station. This proximity to transit facilities as well as other downtown shopping, restaurants, and cultural establishments will help alleviate the dependency on the automobile for the employees of the development. The streetscape improvements along Fenton Street and Colesville Road will facilitate the desire for pedestrian connectivity to the metro station core areas of development within Silver Spring.

The Applicant will also provide amenities for employees commuting by bicycle and enter into a traffic mitigation agreement ("TMA") with the Planning Board to help the project achieve the non-driver commuting goal for development in the Silver Spring CBD. The TMA will outline possible transit alternatives, monitoring of the program and commuter display information.

- (5) *"To improve pedestrian and vehicular circulation."*

This Project Plan encourages the development of active urban streets and improves the quality of the pedestrian environment by providing the enhancement to the streetscape as prescribed in the Silver Spring Streetscape Plan (April 1992) Technical Manual, as amended, and through the inclusion of public art. Vehicular circulation is unchanged.

The streetscape improvements along Fenton Street and Colesville Road, as well as the new office tower entrance on Colesville Road, facilitate the desire for pedestrian connectivity to the bus and metro station. The streetscape improvements are being expanded along Fenton Street to complement that portion of the streetscape frontage along Colesville Road and Ellsworth Drive. The several existing entrances to the retail mall and gym provide easy pedestrian access to the site.

- (6) *"To assist in the development of adequate residential areas for people with a range of different incomes."*

The project does not propose any residential units. This is in keeping with the vision of the core area as an employment and retail center of the CBD.

- (7) *"To encourage land assembly and most desirable use of land in accordance with a sector plan."*

The Project Plan responds to the need for employment opportunities in downtown Silver Spring and addresses the need for smart growth policies where infrastructure, community facilities and elements of an urban district already exist. The project is not creating any new lots and the proposed building footprint is above an existing retail mall, thus requiring no assemblage or partition of land. The Project Plan introduces almost 300,000 square feet of office space into an existing framework of commercial, retail, and cultural uses in downtown Silver Spring, further encouraging revitalization in the CBD.

Further intents of the CBD-3 Zone

Section 59-C-6.213(b) of the Zoning Ordinance states that it is further the intent that the CBD-3 zone to:

"Foster and promote the orderly development of the CBDs of the county so that these areas will enhance the economic status of the county as well as providing an expanding source of employment and living opportunities for its citizens in a desirable urban environment."

The proposed development will enhance the economic status of the county by providing additional employment opportunities within the core area of the Silver Spring CBD. Increasing the employment base through the addition of almost 300,000 square feet of office space will expand the CBD workforce in an area that is currently expanding other retail and residential opportunities. Further, the

renovation of the streetscape and public artwork will enhance the urban environment for all of the county's citizens and visitors.

Requirements of the CBD-1 Zone

The following data table demonstrates the conformance of the Project Plan with the development standards under the optional method of development.

PROJECT DATA TABLE FOR CBD-1 ZONE

<u>Development Standard</u>	<u>Permitted/ Required</u>	<u>Previously Approved</u>	<u>Proposed</u>
Gross Tract Area (square feet):	18,000	103,370	108,144
Net Site Area ² (square feet):	N/A	103,370 ³	91,248 ⁴
Floor Area Ration (FAR)6.0		5.34	6.0
Building Height (feet): 143/200 ⁵		158	192
Public Use Space (% of net lot area):			
On-Site	20% (18,250 SF)	20.1% (18,555 SF)	22.5% (20,216 SF) ⁶
Off-Site			5.7% (5,181 SF)
Total			28.2% (25,397 SF)
Parking	1822	none	none ⁷

Amenities and Facilities Summary

On-Site Improvements

² Net Site Area is calculated after the dedication of 16,896 square feet of previous recorded dedications on Plat Numbers 17983, 1602, and 2717.

³ Including Kughn Park at 11,295 square feet.

⁴ Reflects additional previous dedications of 16,896 square feet.

⁵ The Zoning Ordinance permits buildings up to 143 feet normally or up to 200 feet in height under the optional method if, during site plan review, the Board finds that the additional height will not adversely affect surrounding properties.

⁶ Including 11,295 credits for Kughn Park.

⁷ The proposed development is within the Silver Spring Parking District and is not required to provide any parking on site; however, the project is subject to the Parking District Tax.

- ξ Renovation of corner entrance plaza at Fenton Street and Colesville Road including new public art feature, paving, landscaping, and lighting.
- ξ Installation of art display area in the pedestrian bridge to the public parking garage.
- ξ New entry plaza and lobby to the proposed office tower.

Off-Site Improvements

- ξ Replacement of brick paving along Fenton Street with herringbone pattern to match existing sidewalks along Ellsworth Drive and Colesville Road frontages.
- ξ Removal of metal utility grates along Fenton Street, whenever possible subject to utility company approvals.
- ξ Contribution of \$250,000 for public amenities to be determined by M-NCPPC.

- (b) *The proposal conforms to the approved and adopted Master or Sector Plan or an Urban Renewal Plan approved under Chapter 56.*

Zoning and Land Use

The 91,248 square foot property is zoned CBD-3. The approved Sector Plan recommended CBD-3 zoning for this site and this zoning was applied through the Sectional Map Amendment adopted on July 18, 2000 per County Council Resolution 14-600. The zone permits up to 6.0 FAR, which is the maximum proposed under the subject Application.

In 1988 and 1989 the Planning Board approved project and site plans for City Place that provided for the construction of a shopping mall with an office building over it, up to a maximum of height of 158 feet. These approvals stipulated that construction of the office tower must commence within four years following the occupancy of the retail mall, or within one year of certain intersection improvements. Since this did not occur, the approval of the office tower expired.

The original application included a 2,000 square foot lower level atrium as part of the required public use space, subject to certain conditions. It also included an area known as "the annex site" within the proposed public use space. The finished public space at the annex site, renamed Kughn Park, was acquired by Montgomery County for a financial consideration as part of the Downtown Silver Spring Urban Renewal project.

The proposed development calls for a 299,307 square foot office building on top of the existing City Place Mall. The vacant movie theaters on the top of the mall would be converted to office space. The resulting building would be 192 feet

tall; however, it would be stepped back from Colesville Road in accordance with the original City Place approvals, which called for the 160-foot office tower to "be stepped back as much as possible so as to avoid conflict with the pedestrian scale of Colesville Road." Primary public access to the new office building would be through a new entrance on Colesville Road. No parking is proposed on-site to serve the proposed use.

As part of the Application, the Applicant has proposed to redesign the existing public space at the intersection of Colesville Road/Fenton Street to make it more useful and inviting. They have also proposed to improve the streetscaping along Fenton Street and are counting this as part of their off-site amenity package.

Sector Plan Conformance

The Silver Spring Central Business District Sector Plan outlines six themes, which articulate the shared goals and vision for a revitalized Silver Spring. Three of these themes apply to the proposed project:

- ③ A commercial downtown,
- ③ A pedestrian-friendly downtown, and
- ③ A transit-oriented downtown.

The proposed project expands the employment base in the downtown and does so in proximity to transit facilities. It encourages active urban streets by providing building entrances on Colesville Road and Fenton Street. It will make the downtown more pedestrian-friendly through the provision of streetscape improvements.

- (c) *Because of its location size, intensity, design, operational characteristics and staging, it would be compatible with and not detrimental to existing or potential development in the general neighborhood.*

The project is complementary to the range of commercial and cultural uses of the surrounding neighborhood. The design and scale of the project, pedestrian and vehicular circulation, and improvements to the streetscape provide an enhanced and interactive relationship with the core of downtown Silver Spring. The surrounding and adjacent properties are a mix of different uses, building heights and massing that is integral to the vitality of an urban downtown area. The proposed development is compatible with the existing development occurring in downtown Silver Spring and encourages redevelopment of nearby properties in the CBD.

- (d) *As conditioned, the proposal would not overburden existing public services nor those programmed for availability concurrently with each stage of construction and, if located within a transportation management district designated under Chapter 42A, article II, is subject to a traffic mitigation agreement that meets the requirements of that article.*

The project proposes office uses amid an existing context of commercial, residential, and cultural uses within the downtown Silver Spring area. Because the site is located within the Silver Spring Parking District, parking for the proposed office tower will be provided in local parking lots and garages. This parking arrangement was previously approved during the original project plan approval for the provision of 1,824 spaces. If parking were required, 2,390 spaces would be necessary.

The Planning Board believes the Applicant is promoting smart growth within the urban environment by providing bicycle facilities and developing near the existing Silver Spring Metro Station and will, therefore, not overburden existing public services by the proposed project. In addition, the improvements that are being made to the streetscape facilitate and encourage pedestrian accessibility to the metro station and encourage the future employees and retail patrons to take advantage of existing infrastructure.

- (e) *The proposal will be more efficient and desirable than could be accomplished by the use of the standard method of development.*

The optional method of development permits a more efficient and desirable development than can be obtained using the standard method of development. The Project Plan proposes to use the optional method of development and is in conformance with the goals and objectives of the Silver Spring Sector Plan. The proposed development intends to maximize its total floor area on site to 739,269 square feet, including 91,772 square feet of cellar space. In return for this increased density, the project will include a significant new public use space and art amenity at the corner of Colesville Road and Fenton Street as well as other amenities on site as detailed above.

- (f) *The proposal will include moderately priced dwelling units in accordance with Chapter 25A of this Code, if the requirements of that chapter apply.*

There is no proposed residential development.

- (g) *As conditioned, the proposal satisfies any applicable requirements for forest conservation under Chapter 22A.*

The Property is exempt from forest conservation requirements.

(h) *As conditioned, the proposal satisfies any applicable requirements for water quality resources protection under Chapter 19.*

The Applicant has been granted an exemption from additional stormwater management requirements.

BE IT FURTHER RESOLVED that all elements of the plans for Project Plan No. 91987001A, City Place, stamped received by M-NCPPC on July 11, 2007 are required except as modified herein; and

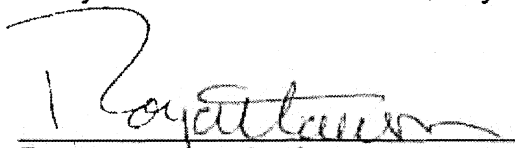
BE IT FURTHER RESOLVED that this Project Plan shall remain valid as provided in Montgomery County Code § 59-D-2.7; and

BE IT FURTHER RESOLVED that the date of this Resolution is OCT 16 2007 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

* * * * *

At its regular meeting, held on Thursday, October 4, 2007, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, on motion of Commissioner Lynch, seconded by Commissioner Cryor, with Commissioners Hanson, Bryant, Cryor, and Lynch voting in favor, and Commissioner Robinson abstaining, ADOPTED the above Resolution, which constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law for Project Plan No. 91987001A, City Place.



Royce Hanson, Chairman
Montgomery County Planning Board