



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

**Staff Report: Preliminary Plan 120070420, Silver Spring Park
Site Plan 820100120, Silver Spring Park**

ITEM #: _____

MCPB HEARING

DATE: October 28, 2010

REPORT DATE: October 18, 2010

TO: Montgomery County Planning
Board

VIA: Rose Krasnow, Chief *RK*
Robert Kronenberg, Supervisor *RK*
Cathy Conlon, Supervisor *CC*
Development Review Division

FROM: Neil Braunstein, Coordinator *NB*
Development Review Division
301.495.4532
Neil.Braunstein@mncppc-mc.org

Elza Hisel-McCoy, Assoc. AIA, LEED-AP *EH*
Development Review Division
301.495.2115
Elza.Hisel-McCoy@mncppc-mc.org

**APPLICATION
DESCRIPTION:**

Combine seven lots into one 50,238 square-foot lot for a multi-building, mixed-use development of 147,888 sf., to include a 110-room hotel with 3,602 sf. of ground-floor retail; a 28,170-sf. office building including 5,632 sf. of ground-floor retail; and a multi-family residential building with 58 dwelling units (including 7 MPDUs and 5 WFHU), on 1.57 acres in the CBD-1, CBD-0.5, and Fenton Village Overlay zones, located in the southeast corner of the intersection of Fenton Street and Silver Spring Avenue in the Silver Spring CBD within the Silver Spring CBD sector plan.

APPLICANT: Fenton Group, LLC

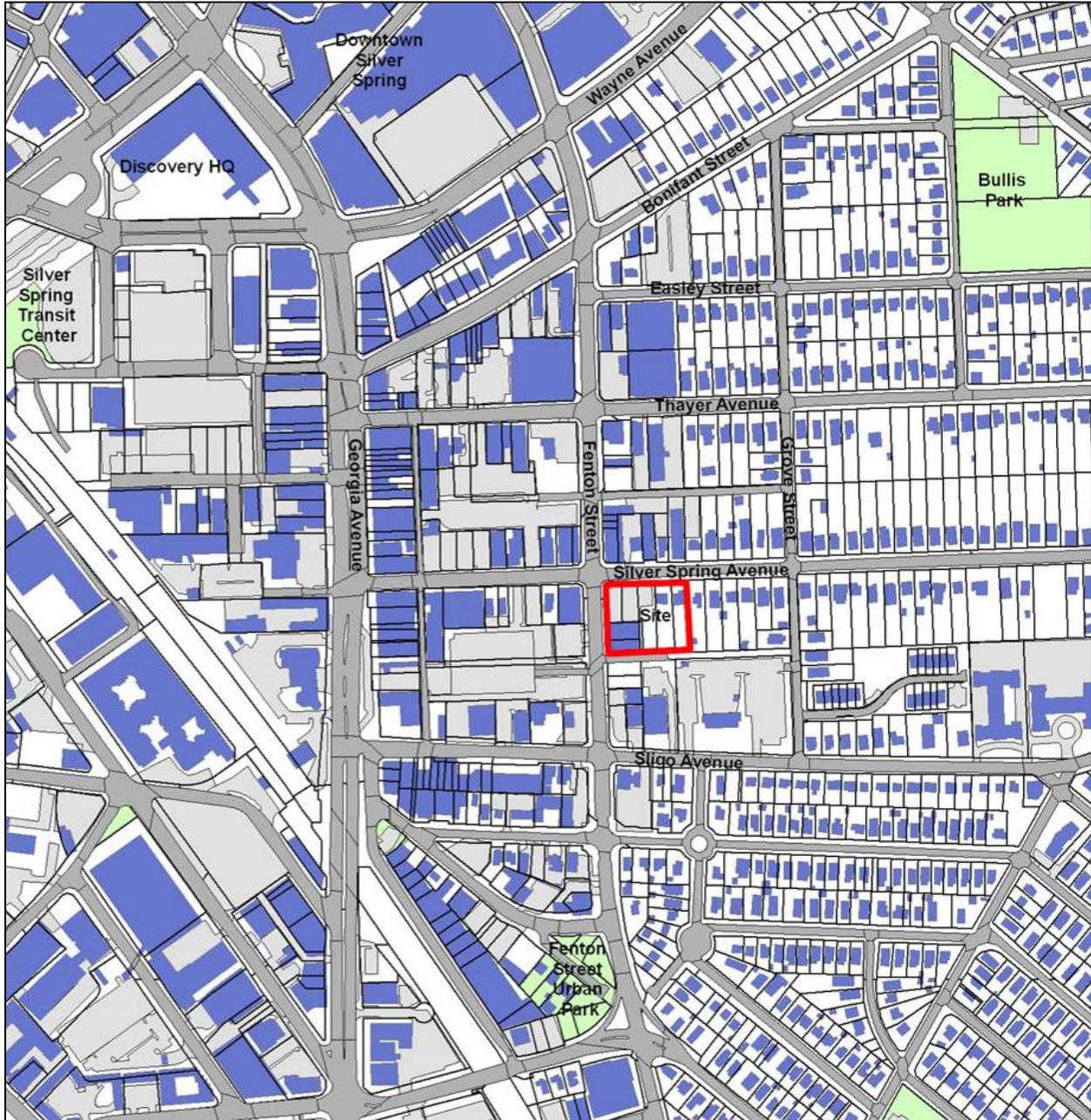
FILING DATE: Preliminary Plan: November 30, 2006; Site Plan: July 19, 2010

RECOMMENDATION: Approval with conditions

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SITE DESCRIPTION



Vicinity Map

Vicinity

The subject property is located in the Fenton Village section of the Silver Spring CBD, on the southeast quadrant of the intersection of Fenton Street and Silver Spring Avenue. The uses along Fenton Street are primarily commercial, and include a supermarket, convenience retail, small office buildings, restaurants, and two gas stations in the CBD-1, CBD-0.5, and Fenton Village Overlay zones. Although there is one existing multi-family building located directly on Fenton



Aerial Photo Looking North

Street two blocks north, the bulk of the housing is found immediately east of Fenton and consists mostly of one-family detached housing in the R-60 zone with a handful of multi-family towers. Planned Development planned in Fenton Village includes mixed-use multi-family residential buildings, office buildings, and the future Silver Spring Public Library and Purple Line station.

The proposed development is within walking distance of the Silver Spring Transit Center, the Downtown Silver Spring retail center, and existing and proposed neighborhood parks and trails.

Site Analysis

The subject property consists of seven platted lots comprising 54,500 square feet. The western portion of the subject property is within the CBD-1 and Fenton Village Overlay zones and the eastern portion of the property is within the CBD-0.5 zone. The property is developed with an existing three-story, 28,170 square-foot office building, which is proposed to remain – but 5,632 square feet of the building are proposed to be converted to retail use. The site also contains two, one-family detached dwellings and a surface parking lot, which will be removed to accommodate the proposed development.

The site is located within the Sligo Creek watershed. The site is entirely developed and contains no forest, streams, wetlands, or other environmental features.

There are several large trees on-site, including poplars, cherries, and locusts ranging from 20-42” DBH. The vast majority of these will be felled. The site slopes downward towards Silver Spring Avenue, with approximately 15 feet of grade separating the alley elevation on the south and Silver Spring Avenue to the north.

PROJECT DESCRIPTION

Previous Approvals

On July 12, 2007, the Planning Board approved the Moda Vista Project Plan (920070130) for 94 multi-family dwelling units including 12 MPDUs (12.5% of the total units) and 3,500 square feet of retail, on an abbreviated site that did not include the existing office building. Since the Applicant did not submit a Site Plan to validate this approval, the Project Plan expired on October 20, 2009.

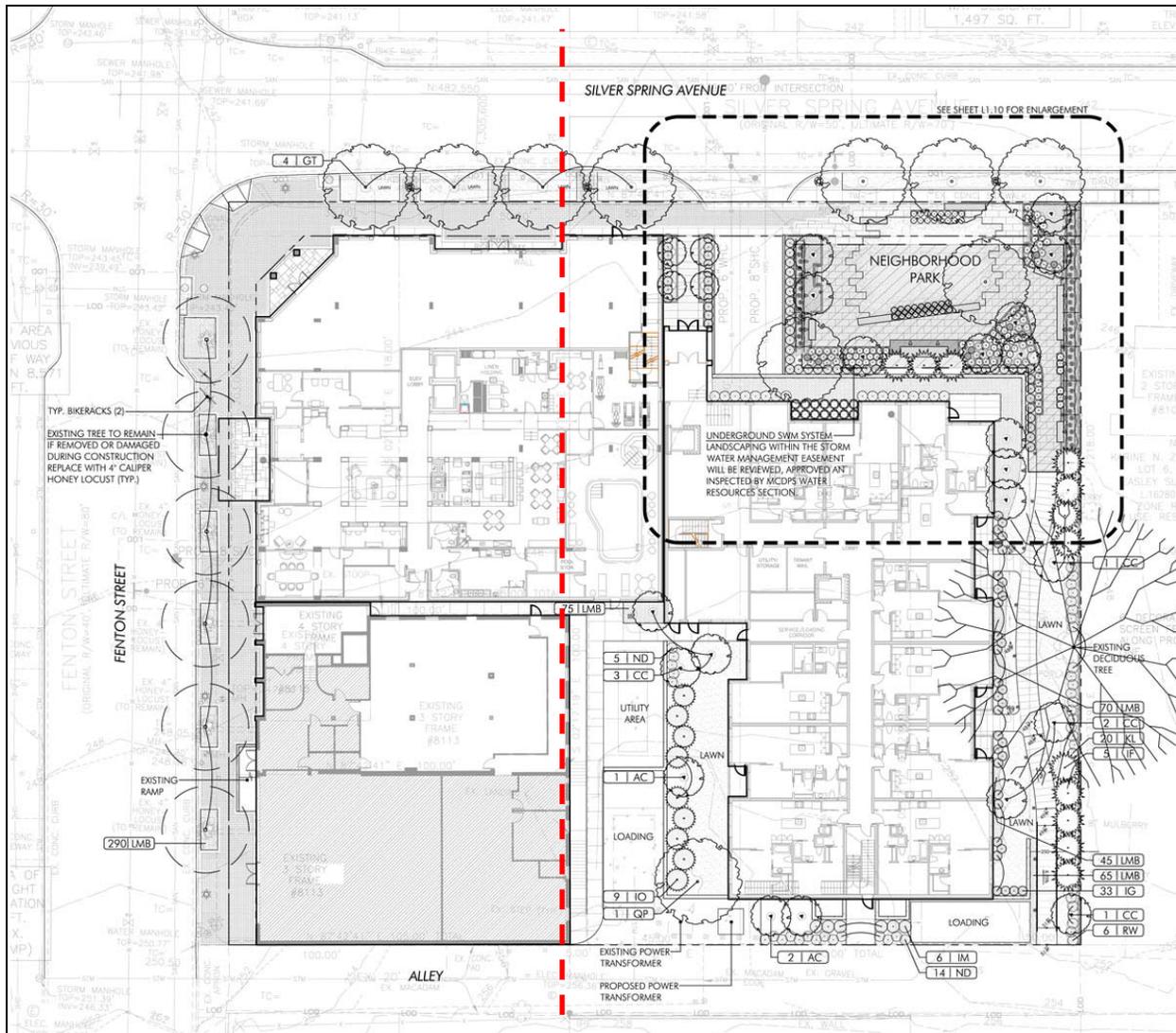
In the interim, the Applicant began exploring the feasibility of expanding the project to include a hotel, additional ground floor retail, and the existing office buildings. During preliminary discussions with the Applicant, staff determined that a building height of 60 feet for the envisioned hotel conflicted with the 45-foot height limit recommended in the Sector Plan and codified in the Fenton Village Overlay Zone for non-residential buildings. On the east side of Fenton Street, only buildings containing a threshold percentage of residential uses were permitted up to 60 feet in height. With community support, the Applicant pursued a Zoning Text Amendment (ZTA 08-10), which the County Council approved, to amend the Fenton Village Overlay Zone to allow the hotel’s height to exceed that recommended in the Sector Plan.

On March 4, 2010, the Planning Board approved Project Plan 920100030 for a multi-building, mixed-use development of 147,888 sf., to include a 110-room hotel with 3,602 sf. of ground-floor retail; a 28,170-sf. office building including 5,632 sf. of ground-floor retail; and a multi-family residential building with 58 dwelling units (including 7 MPDUs and 5 WFHUs).

Proposal

Land Use

The preliminary plan would consolidate seven existing lots into one new 50,238 square foot lot, with an additional 4,262 square feet being dedicated for the rights-of-way for Fenton Street and Silver Spring Avenue. The Plans propose a 59,870 square foot hotel building with 110-rooms and 3,602 sf. of ground-floor retail; a 28,170-sf. office building including 5,632 sf. of ground-floor retail; and a multi-family residential building with 58 dwelling units. Seven of the proposed dwelling units will be moderately priced dwelling units (MPDUs) and five will be workforce housing.



Illustrative Site Plan (CBD-1/CBD-0.5 boundary highlighted)

The off-site public amenity area provides full streetscape treatment to a considerable street frontage along Fenton Street and Silver Spring Avenue. In addition to improving the streetscape in front of the site to Silver Spring Streetscape standards, the Applicant is committing to achieve LEED-NC (New Construction) Silver certification for each of the new buildings.

Pedestrian and Vehicular Circulation

On this CBD site, pedestrian access to each building will come from the public sidewalk on either Fenton Street or Silver Spring Avenue. The pedestrian path extended from the public use space has the potential to provide additional through-block access at a future date. Vehicular access to the underground parking for all of the uses is provided from a single access point off Silver Spring Avenue. Service access will be provided from the public alleyway on the south end of the project.

PRELIMINARY PLAN

FINDINGS

Conformance with the Sector Plan

The proposed preliminary plan is in substantial conformance with the 2000 Silver Spring CBD Sector Plan. The Sector Plan encourages a mix of housing and neighborhood-scale commercial development in the Fenton Village area. To encourage land assemblage to improve the redevelopment potential of the area, the Sectional Map Amendment for the 2000 Silver Spring CBD Sector Plan rezoned part of this site, along with most of the other sites in the Fenton Village area, from CBD-0.5 to CBD-1. The proposed project has met this goal by assembling seven lots and by providing a mix of housing and commercial uses including the existing office uses.

The Silver Spring CBD Sector Plan also recommends pedestrian improvements along Fenton Street and Silver Spring Avenue. Furthermore, the Sector Plan designated Silver Spring Avenue as a green street to emphasize the need for landscaping improvements along this road. The project complies with this vision by proposing streetscaping improvements along both Fenton Street and Silver Spring Avenue.

Other recommendations in the Sector Plan with which the preliminary plan is in substantial conformance are facilitating new housing, strengthening the area's economic vitality, attracting additional retail uses to the area, and encouraging redevelopment through application of the Fenton Village Overlay zone.

Roads and Transportation Facilities

A traffic study is required for any preliminary plan that will generate 30 or more total peak-hour trips during the typical weekday morning (6:30 a.m.-9:30 a.m.) and evening (4:00 p.m.-7:00 p.m.) peak periods. Because the subject preliminary plan was expected to exceed the 30 trip threshold, a traffic study was submitted in March 2010.

Using Silver Spring CBD trip generation rates for the proposed uses and after accounting for the existing office use on the property, the study estimated that the proposed development will generate 44 net new peak-hour trips during the morning peak period and 57 net new peak-hour trips during the evening peak period.

For comparison purposes, the study also determined that if non-Silver Spring CBD trip generation rates were used, the development would generate 107 net new peak-hour trips during the morning peak period and 132 net new peak-hour trips during the evening peak period. The development, as a result of it being located within the Silver Spring CBD, therefore generates less peak-hour trips during the morning (63 trips) and evening (75 trips) peak periods. The CBD and non-CBD trip generation estimate for the proposed development is summarized in Table 1.

**TABLE 1
SUMMARY OF SITE TRIP GENERATION
PROPOSED SILVER SPRING PARK DEVELOPMENT**

Trip Generation	Morning Peak-Hour			Evening Peak-Hour		
	In	Out	Total	In	Out	Total
<i>Based on Silver Spring CBD Rates</i>						
22,538 SF Office	31	5	36	5	31	36
9,234 SF Retail	3	2	5	9	9	18
58 MFDU's (High-rise Apartments)	5	21	26	17	9	26
110 Room Hotel	13	9	22	12	10	22
Less Existing 28,170 SF Office	-38	-7	-45	-7	-38	-45
Net new trips	14	30	44	36	21	57
<i>Based on non- Silver Spring CBD Rates</i>						
22,538 SF Office	27	4	31	9	42	51
9,234 SF Retail (57% Primary/Diverted)	8	8	16	19	18	37
58 MFDU's (High-rise Apartments)	5	21	26	18	10	28
110 Room Hotel (ITE LUC 310)	43	31	74	37	40	77
Less Existing 28,170 SF Office	-35	-5	-40	-10	-51	-61
Net "new" trips	48	59	107	73	59	132

Source: Silver Spring Traffic Impact Study. ITS, Inc. March 2010.

Local Area Transportation Review (LATR)

A summary of the capacity/Critical Lane Volume (CLV) analysis results for intersections included in the traffic study for the weekday morning and afternoon peak-hours is presented in Table 2.

**TABLE 2
SUMMARY OF CAPACITY CALCULATIONS (CLV)
PROPOSED SILVER SPRING PARK DEVELOPMENT**

Intersection	Traffic Conditions					
	Existing		Background		Total	
	AM	PM	AM	PM	AM	PM
Fenton St/Thayer Ave	658	822	904	1,100	909	1,106
Fenton St/Silver Spring Ave	601	816	875	1,154	884	1,178
Fenton St/Sligo Ave	871	842	899	882	900	883
Georgia Ave/Silver Spring Ave	687	797	843	1,233	865	1,266
Silver Spring Ave/Proposed Site Driveway	--	--	--	--	122	210

Source: Silver Spring Traffic Impact Study. ITS, Inc. March 2010.
Congestion Standard for Silver Spring CBD Policy Area: 1,800 CLV

As shown in Table 2, the capacity analysis demonstrates that under total traffic conditions, CLV at intersections included in the traffic study would be below the applicable congestion standard for Silver Spring CBD Policy Area (1,800 CLV). The preliminary plan, therefore, satisfies the LATR requirements of the adequate public facilities (APF) test.

Policy Area Mobility Review (PAMR)

To satisfy the PAMR requirements of the APF test, the Silver Spring CBD Policy Area requires mitigation of ten percent of new peak-hour trips generated by a development.

The site trip comparison summary provided in Table 1 demonstrates that the proposed development, as a result of being located within the Silver Spring CBD, will generate approximately 59 percent fewer peak-hour trips during the morning peak period and 57 percent fewer peak-hour trips during the evening peak period. Since these percentages are higher than the required PAMR trip mitigation percentage for the Silver Spring CBD Policy Area, the preliminary plan satisfies the PAMR requirements of the APF test.

Truncation

Section 50-26(c)(3) of the Subdivision Regulations requires that the property lines of corner lots be truncated 25 feet from the intersection. This provides additional right-of-way area at intersections that ensures that adequate sight distance is available and creates space for traffic channelization. But the regulation also allows the Planning Board to specify a greater or lesser truncation depending on the specific sight distance and channelization needs at the intersections adjacent to the subject property.

In this case, the Applicant is proposing to provide an approximately 14-foot truncation at the intersection of Fenton Street and Silver Spring Avenue. Full truncation at this intersection is not necessary because adequate sight distance exists. The intersection is signalized, which further enhances its safety and removes the concern that there is not sufficient space within the right-of-way to place traffic signal equipment. Providing full truncation would negatively impact the design of the proposed project and the relationship of the proposed building to the public street. The Maryland State Highway Administration and Montgomery County Department of Transportation have expressed no objection to approval of the preliminary plan without full truncation. For these reasons, Staff recommends that the Planning Board find that the proposed truncation in this location is appropriate at this intersection.

Other Public Facilities and Services

Public facilities and services are available and will be adequate to serve the proposed development. The property will be served by public water and sewer systems. The application has been reviewed by the Montgomery County Fire and Rescue Service who has determined that the property has appropriate access for fire and rescue vehicles. Other public facilities and services, such as schools, police stations, firehouses and health services are operating according to the Growth Policy resolution currently in effect and will be adequate to serve the property. The Application is not within a school moratorium area, and a school facilities payment is not required. Electrical, gas, and telecommunications services are also available for the Property.

Environment

Forest Conservation

The site is subject to Section 22A of the County code. The Planning Board previously approved the preliminary forest conservation plan with the project plan on March 4, 2010. That plan generated a 0.17 acre planting requirement. The applicant will meet the requirement by an in-lieu fee payment.

Forest Conservation Variance

The applicant is required to obtain approval of the variance because they will either remove or impact four trees 30 inches or greater diameter on the site. When the Planning Board approved the preliminary forest conservation plan, it did not act on the associated tree variance. The Planning Board was unable to approve the variance with the preliminary forest conservation plan because the variance request was submitted late and the County Arborist review period extended beyond the Planning Board hearing date for the project plan.

On October 1, 2009, Section 1307(c) of the Natural Resources Article of the Maryland Annotated Code went into effect statewide and affects the Montgomery County Forest Conservation law. This section requires applicants to obtain approval of a variance for the removal or impact of trees 30 inches and greater diameter at breast height and certain vegetation prior to the approval of a forest conservation plan. Section 22A-21 of the County code indicates that only the Planning Board has the authority to approve a variance to the forest conservation law. Therefore, the Planning Board is asked to approve the variance with the final forest conservation plan.

Variance Request

Under Chapter 22A-21 of the County Code a person may request in writing a variance from that Chapter or any regulation adopted under it if the person demonstrates that enforcement would result in unwarranted hardship to the person. The applicant requests a variance for the removal of three trees with a diameter of 30 inches and greater on the subject property (Appendix D). The table below identifies all of the trees on the site with a diameter of 30 inches that will be removed and impacted based on the final forest conservation plan received on September 24, 2010.

On-Site Specimen Tree Data

Tree No.	Common Name	Botanical Name	D.B.H.	C.R.Z. Radius	C.R.Z. Area	% C.R.Z. Area Disturbed	Condition
1	Tulip Poplar	<i>Liriodendron tulipifera</i>	44 In.	66 feet	13,685 s.f.	100 %	Poor/Remove
2	Tulip Poplar	<i>Liriodendron tulipifera</i>	40 In.	60 feet	11,310 s.f.	100 %	Good/Remove
3	Black Cherry	<i>Prunus Serotina</i>	36 In.	54 feet	9,160 s.f.	100 %	Good/Remove
5	Tulip Poplar	<i>Liriodendron tulipifera</i>	36 In.	54 feet	9,160 s.f.	45 %	Fair/Save

On March 5, 2010, the County Arborist recommended denial of the variance and, at the same time, recommended mitigation for each tree disturbed or removed based on the area of critical root zone lost. The County Arborist's recommendation changed on April 20, 2010 when the Arborist indicated that the variance could be approved but with mitigation. The Arborist's recommendation is not binding, but, rather, should be considered by the Planning Board along with staff's recommendations and the applicant's request letter when deliberating the variance request.

The applicant's variance request letter has some factual errors that need to be corrected. First, the submitted final forest conservation plan shows the removal of three trees 30 inches or greater DBH and impact to a fourth tree. The applicant's letter does not identify the one tulip tree that will be impacted as part of the variance but it clearly needs to be included because of the impact to the critical root zone for this tree. Second, the applicant's request letter indicates that the applicant has prepared a preliminary water quality plan. This is actually a stormwater management concept plan; water quality plans are prepared only for properties in Special Protection Areas. Downtown Silver Spring is not in a Special Protection Area.

Variance Findings

According to Section 22A-21(e) of the County Code, in reaching its determination on the variance the Planning Board, must consider 4 factors. As the following findings demonstrate, in staff's opinion, the subject forest conservation plan and variance adequately addresses each of these factors:

- 1. Will it confer on the applicant a special privilege that would be denied to other applicants?*

Granting the variance will not confer a special privilege as the removal and/or disturbance of the specimen trees noted above are the minimum necessary in order to develop the property. Furthermore, the need for the variance is necessary and unavoidable in order to develop property according to the master plan. The same criteria have been applied to other projects where the impacts and removals are unavoidable.

- 2. Is it based on conditions or circumstances which are the result of the actions by the applicant?*

The requested variance is not based on conditions or circumstances which are the result of actions of the applicant. The property is located in the Silver Spring Central Business District and is split zoned CBD 0.5 and CBD 1.0. The master plan envisions this property as a transition area from the CBD to the single family residential R-60 lots along Silver Spring Avenue. The variance is necessary to achieve the master planned densities and provide the required green space and stormwater management facilities associated with the development. Furthermore, the property owner proposes to remove the specimen trees that are internal, or unavoidable, to achieve the master plan objectives, and preserve the one specimen tree on the edge of the property.

3. *Is it based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property?*

The requested variance is not the result of a condition, either permitted or non-conforming, on a neighboring property. The neighboring properties are developed residential or commercial properties, or public rights-of-way.

4. *Will it violate State water quality standards or cause measurable degradation in water quality?*

The requested variance will not violate State water quality standards or cause measurable degradation in water quality. The specimen trees being removed or disturbed are not within a stream buffer, wetland, or a special protection area. The development will actually improve the water quality generated from the site because the new development will introduce stormwater management onto a location that currently has none. The majority of the site is covered by building, driveway, parking lots, and gravel surfaces, all of which generate considerable stormwater runoff. The proposed stormwater management system includes green roofs and underground stormwater management structures. The green roof will treat rainfall at the roof level limiting the amount of water that needs on-site surface treatment and the underground structures will increase the amount of the water that is recharged into groundwater. Both systems will reduce the quantity and increase the quality of the stormwater discharged into the County's public storm sewer system along Silver Spring Avenue and Fenton Street.

Mitigation

The County Arborist recommended mitigation for the impact to the critical root zones of the specimen trees. When necessary, staff requests mitigation for the removal of trees, but never requests mitigation for impacts to critical root zones of individual trees. The typical mitigation requested by staff is based on the caliper of tree inches lost and the availability to replant on site. In the case of Silver Spring Park, Environmental Planning staff does not believe any additional mitigation is necessary to offset the impact of critical root zones for the following reasons:

1. Removal and impact to the trees greater than 30 inches are internal to the site and unavoidable to achieve the master plan densities.
2. Two of the specimen trees to be removed are in the exact location of a proposed stormwater management facility. The location of this facility was approved by the Montgomery County Department of Permitting Services prior to the Planning Board's approval of the project plan.
3. The applicant is committed to saving the 36 inch tulip tree that is on the eastern property line and has identified that the removal of this tree is not part of the variance. The final forest conservation plan includes a statement that the applicant will seek an amended variance if more impact to the tree is necessary than currently shown on the plan.
4. The applicant is planting 14 new canopy trees and 22 new mid-story trees either internal to the site or along Silver Spring Avenue as part of the landscape plan.
5. The forest conservation plan generates a 0.17 acre forest planting requirement for a

property that currently has no forest.

6. The applicant is preserving all street trees along Fenton Avenue.

Staff recommends approval of the forest conservation variance.

Stormwater Management

The MCDPS Stormwater Management Section approved the stormwater management concept for the project on May 20, 2010. The stormwater management concept includes on-site environmental site design to the maximum extent practicable by using green roofs and a micro-biofilter. The environmental site design is augmented with two underground proprietary filters. Due to site conditions and existing shallow storm drains, channel protection is waived. Recharge will also be waived due to site limitations and urban type soils.

Compliance with the Subdivision Regulations and Zoning Ordinance

This application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The application meets all applicable sections. Access and public facilities will be adequate to support the proposed lot and uses. The proposed lot size, width, shape and orientation are appropriate for the location of the subdivision.

The proposed subdivision was reviewed for compliance with the dimensional requirements for the CBD-0.5, CBD-1, and Fenton Village Overlay zones as specified in the Zoning Ordinance. The lot as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. A summary of this review is included in the table below. The application has been reviewed by other applicable county agencies, all of whom have recommended approval of the plan.

RECOMMENDATION AND CONDITIONS

Preliminary Plan

Approval of Preliminary Plan 120070420 pursuant to Chapter 50 of the Montgomery County Subdivision Regulations and subject to the following conditions.

1. Approval under this preliminary plan is limited to one lot for a maximum of 22,538 square feet of office use, 9,234 square feet of retail use, 60,459 square feet of residential use (consisting of no more than 58 multi-family dwelling units, including 12.5% moderately-priced dwelling units (MPDUs) and 10% workforce housing units), and 59,870 square feet of hotel use (consisting of no more than 110 guest rooms).
2. Final approval of the number and location of buildings, dwelling units (including MPDUs), on-site parking, site circulation, and sidewalks will be determined at site plan.
3. The Applicant must comply with the conditions of approval for the preliminary forest conservation plan. The applicant must satisfy all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permits, as applicable.

4. The Applicant must dedicate and the record plat must show dedication of 40 feet of right of way, as measured from the centerline, along the property frontage for Fenton street and 35 feet of right-of-way, as measured from the centerline, along the property frontage for Silver Spring Avenue, with a 14-foot corner truncation at the intersection of these streets.
5. The Applicant must construct all road improvements within the rights-of-way shown on the approved preliminary plan to the full width mandated by the master plan and to the design standards imposed by all applicable road codes. The required roadway improvements must be open to traffic prior to issuance of any new building occupancy permit for the development.
6. The Applicant must enter into a Traffic Mitigation Agreement (Agreement) with the Planning Board and Montgomery County Department of Transportation (MCDOT) to participate in the Silver Spring Transportation Management District (TMD). The final Agreement must be executed prior to the certification of the site plan for the proposed development.
7. The Applicant must comply with the conditions of the MCDPS stormwater management approval dated May 20, 2010. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the preliminary plan approval.
8. The Applicant must comply with the conditions of the MCDOT letter dated September 15, 2010, as amended by an e-mail dated September 27, 2010, from MCDOT. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the preliminary plan approval.
9. The Applicant must satisfy provisions for access and improvements as required by MCDOT prior to recordation of plat(s) and Maryland State Highway Administration (MDSHA) prior to issuance of access permits.
10. No clearing, grading or recording of plats prior to certified site plan approval.
11. Site Plan #820100120 must be approved by the Board and certified by the Development Review Staff prior to the approval of the record plat.
12. The record plat must show necessary easements.
13. 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 during the site plan process. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot. Other limitations for site development may also be included in the conditions of the Planning Board’s approval.”

14. The Adequate Public Facility (APF) review for the preliminary plan will remain valid for eighty-five (85) months from the date of mailing of the Planning Board Resolution.

SITE PLAN

Analysis

Architecture

Each of the three buildings proposed for the site has a distinct character. The two existing buildings fronting on Fenton Street will be combined internally into one, with office uses above ground-floor retail. The facades will remain largely the same, with minor emendations. The proposed hotel building will wrap the corner from Fenton Street to Silver Spring Avenue, with the hotel entrance on Fenton Street and access to the ground-floor retail either at the corner or from Silver Spring Avenue.

The multi-family building, located further down Silver Spring Avenue adjacent to the existing one-family homes, is proposed to sit back somewhat from the residential sidewalk, comparable to the front setback of the adjacent residences. As noted below, the area within this setback is proposed as the bulk of the on-site public use space.



Fenton Street Elevation



Silver Spring Avenue Elevation

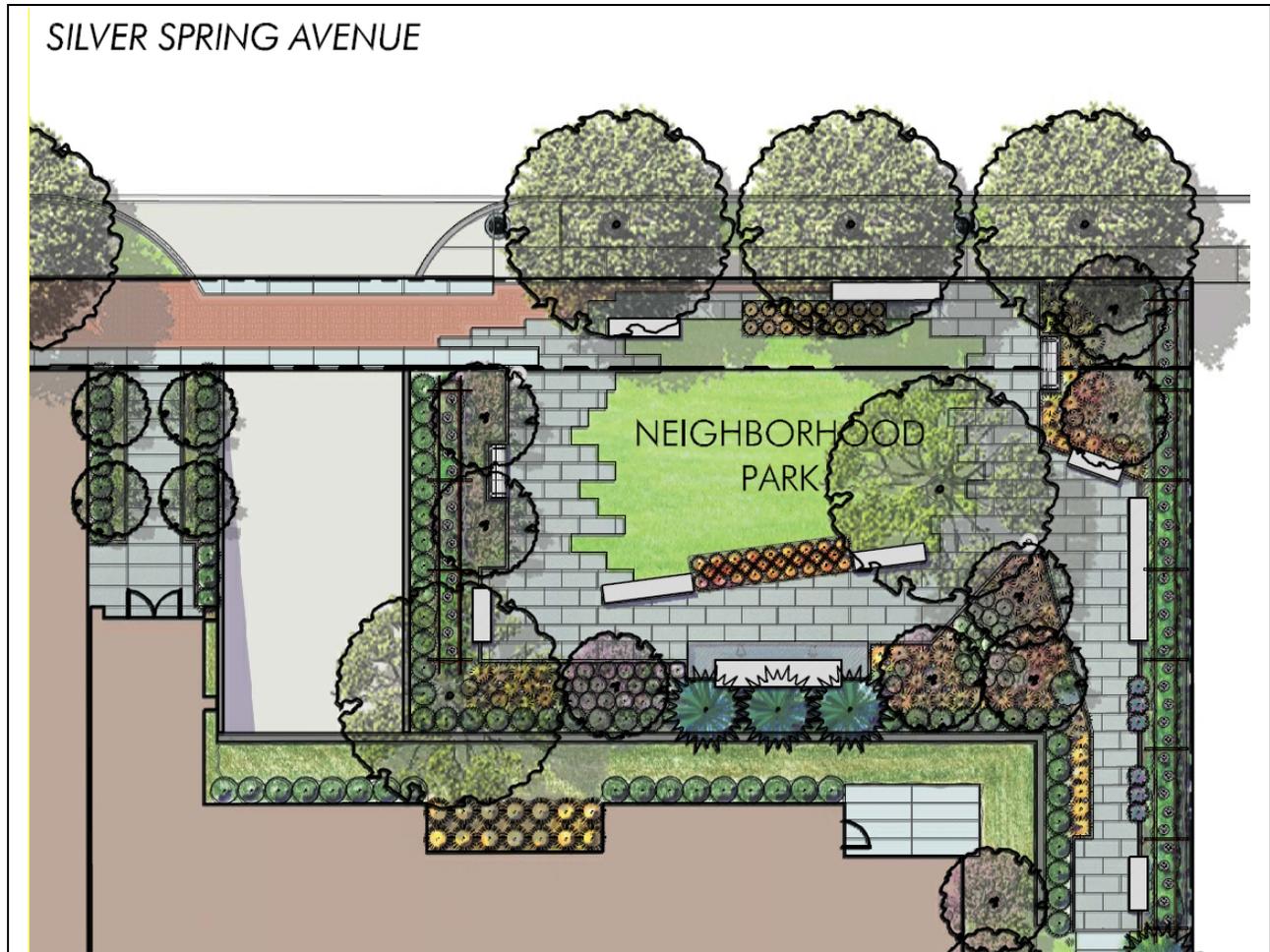
Public Use Space



Public Use and Amenity Diagram

The development proposes 8,543 square feet of on-site public use space (17% of the net lot area) and 8,681 square feet of off-site public *amenity* space (17.3% of the net lot area).

The on-site public use space consists of a “pocket park” located in the northeast corner of the site on Silver Spring Avenue adjacent to the existing one-family homes, and an extended pedestrian path along the eastern edge of the site. This path currently terminates at the mid-block public alley on the southern boundary of the site (see discussion in Project Analysis below). The park also integrates the stormwater management infrastructure for the site.



Detail, Public Use Space

The balance of the required on-site public use space (1,505 sf., or 3% of the net lot area) will be met via a contribution to the Amenity Fund, as discussed below.

Pedestrian path extension

The Applicant proposes to substantially increase the amount of “Public Use Space” provided on-site (and accordingly significantly decrease the Amenity Fund contribution) by proposing as Public Use Space a pedestrian connection along the eastern edge of the site, between the multi-family apartment building and the property line.

Presently, this path terminates at a public alley. Typically, staff would not recommend the Board accept this type of space as Public Use Space. The path, while recognizable from Silver Spring Avenue, does not currently lead to a desirable space for public gathering or locomotion. However, on the other side of the public alley lies the 3rd District Police Headquarters, which is being studied for relation to White Oak. As illustrated below, staff believes that the future redevelopment of this site provides a number of opportunities to enrich the interconnectivity of the neighborhood.

Staff is therefore recommending the Board accept this area as Public Use Space.



Location of Pedestrian Path Extension and Potential Future Connection

Amenity fund

Under Section 59-D-2.31, the “Planning Board may approve a payment instead of any required public use space, public facilities, or amenities off-site...” For this Site Plan, the Applicant proposes to use an amenity fund contribution for 3% of the required minimum 20% public use space.

As directed under 59-D-2.31(a), the Planning Board must develop and approve guidelines for the implementation of an “Amenity Fund,” including the methods of calculation, collection, and distribution of payment amounts. For the purposes of this Site Plan, staff proposes to use an interim calculation method outlined in an April 18, 2008, memo from Jeff Zyontz to the County Council and discussed below. On July 10, 2008, the Planning Board approved an Amenity Fund

payment using this same formulation, for the Veneto, Project Plan 920060070, in the Woodmont Triangle section of the Bethesda CBD, and again on November 19, 2009, for 8621 Georgia Avenue, Project Plan 920100010, in the Silver Spring CBD, among others.

The Amenity Fund payment is based on the proportion of the 20% public use space requirement to be satisfied off-site, in this instance 3%, and has two components:

- The first component is based on the assessed land value for the subject site. The Maryland Department of Assessments and Taxation records show a combined assessed land value for the site, as of January 1, 2010, of \$3,335,100 (see Appendix A for breakdown by property), 3% of which is \$100,053.
- The second component is calculated at a rate of \$35/sf. for each square foot of public use space to be provided off-site. The rate of \$35 is based on the estimated cost of providing one square foot of streetscape. For this plan, the Applicant proposes to provide 1,505 sf. off-site (3% of the net site area), yielding a subtotal of \$52,675.

The total amount of the Amenity Fund payment for this Project Plan is thus calculated, as demonstrated below, to be \$152,728.

Area	Rate	Fee
Assessed land value (\$3,335,100)	3%	\$100,053
1,505 sf. of public use space (14.2% of Net Lot Area) provided off-site	\$35/sf	\$52,675
On-site public use contribution		\$152,728

Under the terms of the Fund, the amenity targeted to receive the payment must be selected either from the relevant master or sector plan recommendations or from a list of improvements approved by the Planning Board. Furthermore, projects making payments into the Amenity Fund must identify the associated off-site improvement to be implemented. In consultation with staff from the Vision, Design, and Park Development Divisions, and in accordance with the recommendation of the Silver Spring CBD Sector Plan and Green Space Plan, staff is recommending the Amenity Fund contribution be directed towards the development of a “Bike Station” for Gene Lynch Urban Pak, in the Silver Spring CBD immediately adjacent to the Silver Spring Transit Center, specifically to include the development of architectural schematic design drawings.



Gene Lynch Urban Park, Approximate Location

Development Standards

The proposed development is located within two Central Business District zones, CBD-1 and CBD-0.5, created to accommodate lower development densities in transition to the edge of the CBD. The development standards are minimal within these zones to encourage flexibility through the Optional Method of Development, with final details determined at Site Plan.

The purposes of these CBD zones include:

- 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;
- promote the effective use of transit facilities in the central business district and pedestrian access thereto as well as an improved pedestrian and vehicular circulation;
- assist in the development of adequate residential areas for people with a range of different incomes;
- encourage land assembly and the most desirable use of land in accordance with a sector plan;
- foster and promote development of the fringes of the CBD to yield development density sufficient to encourage small business and diverse housing opportunities while retaining compatibility with adjacent uses.

The site is also located partly within the Fenton Village Overlay zone, which serves the goals of the sector plan primarily by promoting compatibility with adjacent lower-density residential uses by limiting building height between Georgia Avenue and the R-60 residential neighborhood just

east of Fenton Street. The building height conforms to the recommendation of the Overlay Zone, and the site has been designed and detailed to create a comfortable, functional environment.

The following data table indicates the proposed development's compliance with the Zoning Ordinance.

Data Table for the CBD-1, CBD-0.5, and Fenton Village Overlay Zones

Zoning Ordinance Development Standard	Permitted/ Required			Approved Project Plan 920100030			Proposed Site Plan 820100120		
	CBD-0.5	CBD-1	Total	CBD-0.5	CBD-1	Total	CBD-0.5	CBD-1	Total
Lot Area, Minimum (sf.)	18,000	18,000		37,950	30,371		37,950	30,373	
Aggregate Site Area Allowed by 59-C-6.2352(3)			22,000			68,321			68,323
Previous dedication				5,250	8,571	13,821	5,250	8,573	13,823
Proposed dedication				1,497	2,761	4,258	1,497	2,765	4,262
Net lot area				31,203	19,039	50,242	31,203	19,035	50,238
Density, Combined Maximum(FAR)	1.5	3					1.5	3	
Density, Total Maximum (sf.)	56,925	91,113	148,038			147,888			147,888*
*does not include 4,213 sf. of Workforce Housing									
Density, Non-Residential Maximum (FAR)	1	2							
Density, Non-Residential Maximum (sf.)	37,950	60,742	98,692			91,642			91,642
MPDUs, Minimum (percentage)			12.5			12.5			12.5
MPDUs (of pre-WFHU du)						7			7
WFHUs			N/A			5			5
Total Dwelling Units						58			58
Building Height, Maximum (ft.)	60	60				60			60
Building Setbacks, Minimum (ft.)									
Fenton Street			N/A			0			0
Silver Spring Avenue			N/A			0			0
East Alley			N/A			0			0
Parking, Maximum (w/ PLD Tax for balance)			209			123			117

Project Public Use & Amenity Table for the CBD-1, CBD-0.5 Zones

Zoning Ordinance Development Standard	Permitted/ Required	Approved Project Plan 920100030	Proposed Site Plan 820100120
Min. Public Use Space, (% of Net Lot Area)	20	20	20
On-Site Public Use Space, (sf.)	10,048	2,933	8,543
On-Site Public Use Space (% of Net Lot Area)		5.8	17
On-Site Public Use Space provided off-site via Amenity Fund (sf.)		7,116	1,505
Min. On-Site Public Use Space provided off-site via Amenity Fund (% of Net Lot Area)		14.2	3
Contribution to Amenity Fund for implementation of a Bike Station for Gene Lynch Urban Park		\$722,644	\$152,728
Min. Off-Site Public Amenity Space (sf.)		8,796	8,681
Min. Off-Site Public Amenity Space (% of Net Lot Area)		17.5	17.2
Min. Total On- & Off-Site Public Use & Amenity Space (sf.)		18,845	17,224
Min. Total On- & Off-Site Public Use & Amenity Space (% of Net Lot Area)		37.5	37.2

Community Outreach

The Applicant complied with all noticing requirements and conducted extensive community outreach. An architect from the East Silver Spring Citizen’s Association (ESSCA) provided further recommendations on improving the architectural quality of the proposed design. Staff has received no letters or e-mail regarding this proposal, but has had several discussions with community representatives.

FINDINGS

- 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.*

The site plan conforms to the approval conditions of Project Plan 920100030.

- 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.*

The proposed use is allowed in the CBD-1, CBD-0.5, and Fenton Village Overlay zones and the site plan fulfills the purposes of the zones by providing an appropriate density and mix of uses near transit in an urban edge area.

As the project data table on page 22 indicates, the site plan meets all of the development standards of the zone. With respect to building height, setbacks, and density the proposed development meets all the maximum standards allowed. The Applicant is satisfying the on-site public use space requirement through a contribution to the amenity fund, specifically directed to the preparation of schematic design architectural drawings for a Bike Station at Gene Lynch Urban Park in the Silver Spring CBD.

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

The buildings and structures of the proposed development are located along street edges, except to define public use space, which is appropriate for the character envisioned by the Master Plan. These locations provide easy access to the building from adjoining sidewalks and parking. The locations of the buildings and structures are adequate and efficient, and do not pose any safety concerns on the site.

The proposed open space and on-site public use space will provide an attractive community amenity and allow for future expansion of neighborhood interconnectivity with future adjacent development. The landscaping and hardscape elements will provide a diversity of sensorial interest. Street trees and lighting are provided along the adjoining streets to enhance the pedestrian environment. The proposed recreation facilities take advantage not only of the on-site park and seating areas, but nearby neighborhood parks and an extensive pedestrian system as well. The open spaces, landscaping, and site details adequately and efficiently address the needs of the proposed use and the recommendations of the Master Plan, while providing a safe and comfortable environment.

Pedestrian access from adjacent sidewalks adequately and efficiently integrates this site into the surrounding area. The vehicular circulation design efficiently directs traffic into the site with minimal impacts to pedestrian circulation. This balance of design with the site, the recommendations of the Master Plan, and the needs of the use is an efficient and adequate means to provide a safe atmosphere for pedestrians, cyclists, and vehicles.

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

The proposed structures and uses transition well between the more commercial character of Fenton Street and the one-family residences of East Silver Spring. The hotel use will attract new visitors to the southern end of Fenton Village, providing growth opportunities for neighborhood businesses and restaurants. The addition of ground-floor retail uses in the existing office building will further help to activate Fenton Street. Finally, the building height of the multi-family apartment building steps down as it approaches the adjacent one-family residences and provides a generous setback, further promoting compatibility.

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 subject to Section 22A of the County code. The Planning Board previously approved the preliminary forest conservation plan with the project plan on March 4, 2010. The applicant will meet the requirement by an in-lieu fee payment. The approved stormwater concept includes a buried stormwater management system and green roofs.

Recommendation and Conditions for Site Plan

Staff recommends approval of site plan 820100120, Silver Spring Park, for a multi-building, mixed-use development with a 110-room hotel with 3,602 sf. of ground-floor retail; a 28,170-sf. office building including 5,632 sf. of ground-floor retail; and a multi-family residential building with 58 dwelling units, including 7 MPDUs and 5 Workforce Housing Units (WFHUs), on 1.57 acres in the Silver Spring CBD. All site development elements shown on the site and landscape plans stamped “Received” by the M-NCPPC on September 24, 2010, are required except as modified by the following conditions.

1. Project Plan Conformance
The proposed development must comply with the conditions of approval for Project Plan 920100030 as listed in the Planning Board resolution dated April 5, 2010.
2. Preliminary Plan Conformance
The proposed development must comply with the conditions of approval for preliminary plan 120070420.
3. LEED Certification
Beyond the requirements of Project Plan 920100030 Condition 3, for the modification of the existing office building the Applicant must comply with the Montgomery County Green Building Law.
4. Maintenance of Public Amenities
The Applicant is responsible for maintaining all publicly accessible on-site amenities unless a maintenance agreement is entered into with the Silver Spring Urban District.
5. Public Use Space and Amenities
 - a. The Applicant must provide on-site a minimum of 8,543 sf. of public use space (17% of net lot area).
 - b. In lieu of providing the remaining 1,505 sf. on-site public use space (3% of the required 20% of the net lot area), the Applicant must contribute to M-NCPPC \$152,728 in accordance with Section 59-D-2.31 for development of schematic design architectural drawings for a Bike Station in Gene Lynch Urban Park (the “Designated Amenity”), in the Silver Spring CBD, to be coordinated by Parks Department Staff, in cooperation with Development Review and Urban Design Staff;

- c. Within one year of the resolution date, M-NCPPC must place the Designated Amenity on the Capital Improvement Program (CIP), and within two years of the contribution, the Designated Amenity must be completed to the satisfaction of M-NCPPC staff. If these funds are not used for the Designated Amenity within two years of the contribution date, the Planning Board may extend the timeline or approve an alternative amenity site, as recommended by M-NCPPC staff.
 - d. As a public amenity, the Applicant must provide streetscape improvements consistent with the Silver Spring Streetscape Standard, including the undergrounding of utilities, along the property's frontages on Fenton Street and Silver Spring Avenue, as illustrated in the Certified Site Plan, for a total of approximately 8,681 sf., or 17.2% of net lot area.
6. Moderately Priced Dwelling Units (MPDUs) and Workforce Housing Units (WFHUs)
 - a. The proposed development must provide 12.5 percent MPDUs on-site. The MPDU agreement to build shall be executed prior to the release of any building permits.
 - b. The Applicant must provide 10 percent WFHUs on-site.
7. Architecture

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 Development Review and Urban Design staff.
8. Landscaping
 - a. Provide additional landscaping in the on-site park to reduce the proportion of hardscape. Final design to be approved by Development Review and Urban Design staff, in coordination with MCDPS stormwater staff, by Certified Site Plan.
 - b. Before issuance of any building permit, if the planting within the stormwater management easement area approved by MCDPS as a part of the erosion and sediment control plan differs significantly from the planting shown on the landscape plan included with the Certified Site Plan, as determined by M-NCPPC staff, the Applicant must amend the Site Plan to reflect the changes.
9. Lighting
 - a. The lighting distribution and photometric plan with summary report and tabulations must conform to IESNA standards for residential and commercial development.
 - b. All onsite down-light fixtures must be full cut-off fixtures.
 - c. Deflectors shall be installed on all fixtures causing potential glare or excess illumination, specifically on the perimeter fixtures abutting the adjacent residential properties.
 - d. The height of any light poles, including the mounting base, shall not exceed the height specified on the Certified Site Plan.
10. Landscape Surety

The Applicant shall provide a performance bond in accordance with Section 59-D-3.5(d) of the Montgomery County Zoning Ordinance with the following provisions:

 - a. The amount of the surety shall include plant material, on-site lighting, recreational

- facilities, and site furniture within the relevant block of development. Surety to be posted prior to issuance of first building permit within each relevant phase of development and shall be tied to the development program.
- b. Provide a cost estimate of the materials and facilities, which, upon staff approval, will establish the initial bond amount.
 - c. Completion of plantings by phase, to be followed by inspection and bond reduction. Inspection approval starts the 1 year maintenance period and bond release occurs at the expiration of the one year maintenance period.
 - d. Provide a screening/landscape amenities agreement that outlines the responsibilities of the Applicant and incorporates the cost estimate. Agreement to be executed prior to issuance of the first building permit.

11. Development Program

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

- a. Streetscape improvements, including brick paving, street lights, and the undergrounding of utilities must be completed before any use and occupancy permit. Street tree planting may wait until the next growing season.
- b. All on-site amenities including, but not limited to, non-landscape elements of the public use space, site lighting, benches, trash receptacles, and bicycle facilities associated with each building must be installed prior to release of the building occupancy permit for each building. Landscaping may wait until the next growing season.
- c. Clearing and grading must correspond to the construction phasing to minimize soil erosion and must not occur prior to approval of the Final Forest Conservation Plan, Sediment Control Plan, and M-NCPPC inspection and approval of all tree-save areas and protection devices.
- d. The development program must provide phasing of dedications, stormwater management, sediment and erosion control, afforestation, trip mitigation, and other features.

12. 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 approval, stormwater management concept approval, development program, inspection schedule, and site plan resolution on the approval or cover sheet.
- b. Add a note to the site plan stating that “M-NCPPC staff must inspect all tree-save areas and protection devices prior to clearing and grading”.
- c. Modify data table to reflect development standards enumerated in the staff report.
- d. Ensure consistency off all details and layout between site plan and landscape plan.

APPENDICES

Appendix A: Preliminary Plan Data Table and Checklist

Appendix B: Staff Memos and Agency Letters

Appendix C: Project Plan Resolution 920100030

Appendix D: Tree Variance Request and Related Correspondence

Appendix A: Preliminary Plan Data Table and Checklist

Preliminary Plan Data Table and Checklist

Plan Name: Silver Spring Park				
Plan Number: 120070420				
Zoning: CBD-0.5, CBD-1, Fenton Village Overlay				
# of Lots: 1				
# of Outlots: 0				
Dev. Type: Optional				
PLAN DATA	Zoning Ordinance Development Standard	Proposed for Approval the Preliminary Plan	Verified	Date
Minimum Lot Area	18,000 SF	50,238 SF	NB	10/15/10
Minimum Public Use Space	10,070 SF	8,543 SF ¹	NB	10/15/10
Height	60 ft.	May not exceed maximum ²	NB	10/15/10
Max floor area per Zoning	148,044	147,888	NB	10/15/10
MPDUs	12.5%	12.5%	NB	10/15/10
Workforce	10%	10%	NB	10/15/10
Site Plan Req'd?	Yes			
FINDINGS				
SUBDIVISION				
Lot frontage on Public Street		Yes	NB	10/15/10
Road dedication and frontage improvements		Yes	Agency letter	9/15/10
Environmental Guidelines		N/a	Staff memo	10/1/10
Forest Conservation		Yes	Staff memo	10/1/10
Master Plan Compliance		Yes	Staff memo	8/24/10
Historic Preservation		Yes	Staff memo	9/22/10
Stormwater Management		Yes	Agency letter	5/20/10
Water and Sewer (WSSC)		Yes	Agency letter	9/7/10
10-yr Water and Sewer Plan Compliance		Yes	Agency letter	9/7/10
Well and Septic		N/a	NB	10/15/10
Local Area Traffic Review		Yes	Staff memo	9/29/10
Fire and Rescue			Agency letter	10/1/10

¹ Remainder to be provided through the amenity fund.

² As determined by MCDPS at the time of building permit.

Appendix B: Staff Memos and Agency Letters



DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett
County Executive

May 20, 2010

Carla Reid
Director

Mr. John B. Maynard, P.E.
Burgess & Nipple, Inc.
3204 Tower Oaks Boulevard, Suite 200
Rockville, MD 20852

Re: Stormwater Management **CONCEPT** Request
for Silver Spring Park
Preliminary Plan #: 120070420
SM File #: 236832
Tract Size/Zone: 1.25 Acs/CBD-0.5 & CBD-1
Total Concept Area: 1.25 Acs
Lots/Block: 3, 4, 6, 12, 13, 14, & 15/l (eye)
Watershed: Sligo Creek

Dear Mr. Maynard:

Based on a review by the Department of Permitting Services Review Staff, the stormwater management concept for the above mentioned site is acceptable. The stormwater management concept consists of on-site ESD to the MEP by using green roofs and a micro-biofilter. The ESD is augmented with two underground proprietary filters. Due to site conditions and existing shallow storm drains Cpv is waived. Recharge will also be waived due to site limitations and urban type soils.

The following items will need to be addressed during the detailed sediment control/stormwater management plan stage:

1. Prior to permanent vegetative stabilization, all disturbed areas must be topsoiled per the latest Montgomery County Standards and Specifications for Topsoiling.
2. A detailed review of the stormwater management computations will occur at the time of detailed plan review.
3. An engineered sediment control plan must be submitted for this development.
4. All filtration media for manufactured best management practices, whether for new development or redevelopment, must consist of MDE approved material.
5. A minimum of 70% green roof is required. During the design process, try to provide additional area as possible.
6. Due to the existing shallow storm drain the underground filters will be designed as flow based systems.
7. The micro-biofilter will incorporate the Silva Cell filtration system.

This list may not be all-inclusive and may change based on available information at the time.

Payment of a stormwater management contribution in accordance with Section 2 of the Stormwater Management Regulation 4-90 is required.

This letter must appear on the sediment control/stormwater management plan at its initial submittal. The concept approval is based on all stormwater management structures being located outside of the Public Utility Easement, the Public Improvement Easement, and the Public Right of Way unless specifically approved on the concept plan. Any divergence from the information provided to this office; or additional information received during the development process; or a change in an applicable Executive Regulation may constitute grounds to rescind or amend any approval actions taken, and to reevaluate the site for additional or amended stormwater management requirements. If there are subsequent additions or modifications to the development, a separate concept request shall be required.

If you have any questions regarding these actions, please feel free to contact David Kuykendall at 240-777-6332.

Sincerely,



Richard R. Brush, Manager
Water Resources Section
Division of Land Development Services

RRB:dm CN236832 Silver Spring Park.DWK

cc: C. Conlon
M. Pfefferle
SM File # 236832

QN - Waived; Acres: 1.25
QL - Onsite; Acres: 1.25
Recharge is not provided



DEPARTMENT OF TRANSPORTATION

Isiah Leggett
County Executive

Arthur Holmes, Jr.
Director

September 15, 2010

Ms. Catherine Conlon, Subdivision Supervisor
Development Review Division
The Maryland-National Capital
Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

RE: Preliminary Plan #1-20070420
Silver Spring Park

Dear Ms. Conlon:

We have completed our review of the preliminary plan revision dated June 25, 2010. This plan was reviewed by the Development Review Committee at its meeting on January 19, 2010. We recommend approval of the plan subject to the following comments:

All Planning Board Opinions relating to this plan or any subsequent revision, project plans or site plans should be submitted to DPS in the package for record plats, storm drain, grading or paving plans, or application for access permit. Include this letter and all other correspondence from this department.

1. Necessary dedication for Silver Spring Ave and Fenton Street in accordance with the Master Plan.

Provide full 80' dedication on Fenton Street, including the area through the existing ramp that is to remain. The ramp itself will require a Declaration of Covenants per item 18 below.

We support the partial waiver of truncation request on the southeast corner of the intersection of Silver Spring Avenue and Fenton Street to provide a nineteen (19) foot truncation instead of the required twenty five (25) foot truncation. This recommendation is subject to final approval of the Site Plan by the Planning Board and subsequent approval of the record plat and construction drawings by the Department of Permitting Services (DPS).

2. We have accepted the storm drain adequacy analysis for the site. The applicant is proposing to reduce the impervious area on site by 44%. This plan proposes no connection to the existing storm drain system. If the impervious area is increased beyond existing conditions or a connection to the existing storm drain system is proposed at any time, the applicant must re-submit a storm drain capacity analysis to this office for review. This condition shall be noted on the record plat.
3. The sight distances study has been accepted. A copy of the accepted Sight Distances Evaluation certification form is enclosed for your information and reference.

Division of Traffic Engineering and Operations

100 Edison Park Drive, 4th Floor • Gaithersburg, Maryland 20878
Main Office 240-777-2190 • TTY 240-777-6013 • FAX 240-777-2080
trafficops@montgomerycountymd.gov

4. Record plat to reflect denial of access along Fenton Street.
5. For safe simultaneous movement of vehicles, we recommend a driveway pavement width of no less than twenty four (24) feet to allow vehicles to enter and exit the site without encroaching on the opposing lanes. This pavement width will permit an inbound lane width of fourteen (14) feet and an exit lane width of ten (10) feet.
6. Curb radii for intersection type driveways should be sufficient to accommodate the turning movements of the largest vehicle expected to frequent the site.
7. Truck loading space requirements to be determined in accordance with the County's "Off-Street Loading Space" policy. Per that policy this site would be required to provide three (3) loading spaces. We accept the applicants design modification request to provide two (2) loading spaces, presuming any additional delivery vehicles will use the alley east of the truck loading area.
8. Our policy on the spacing of commercial driveway aprons is to have a minimum of one hundred (100) feet of tangent distance between the curb returns of adjacent driveways and intersections – taking into consideration other issues such as sight distances, operational characteristics of the frontage road, opposite and/or adjacent driveways and/or intersections, property frontage limitations, etc. We accept the location of the proposed entrance on Silver Spring Avenue and approve the reduction in driveway spacing request.
9. For any parking facility containing more than fifty (50) parking spaces, the applicant needs to furnish bicycle parking facilities as required Section 59 E-2.3 of the Montgomery County Code. Accordingly, the applicant should provide either bike lockers or inverted "U" type bike racks.
10. The owner will be required to submit a recorded covenant for the operation and maintenance of private streets, storm drain systems, and/or open space areas prior to MCDPS approval of the record plat. The deed reference for this document is to be provided on the record plat.
11. Relocation of utilities along existing roads to accommodate the required roadway improvements shall be the responsibility of the applicant.
12. The applicant will need to coordinate impacts to existing meters with our Division of Parking Management. Please contact Ms. Carmen Zaldivar of that Division at (240) 777-8740.
13. The applicant will need to coordinate impacts to existing bus stops with our Division of Transit Services. Please contact Ms. Stacey Coletta of that Division at (240) 777-5836.
14. If the proposed development will alter any existing street lights, signing, and/or pavement markings, please contact Mr. Dan Sanayi of our Traffic Engineering Design and Operations Section at (240) 777-2190 for proper executing procedures. All costs associated with such relocations shall be the responsibility of the applicant.
15. If the proposed development will alter or impact any existing County maintained transportation system management component (i.e., traffic signals, signal poles, handboxes, surveillance cameras, etc.) or communication component (i.e., traffic signal interconnect, fiber optic lines, etc.), please contact Mr. Bruce Mangum of our Transportation Systems Engineering Team at

(240) 777-2190 for proper executing procedures. All costs associated with such relocations shall be the responsibility of the applicant.

16. Trees in the County rights of way - species and spacing to be in accordance with the applicable Silver Spring streetscape guidelines. Tree planting within the public right of way must be coordinated with Mr. Brett Linkletter of MCDOT Division of Highway Services, Tree Maintenance Section. Mr. Linkletter may be contacted at (240) - 777-7651.
17. Prior to approval of the record plat by MCDPS, the applicant will need to execute and record a Declaration of Covenants (for Maintenance and Liability) or enter into an agreement with the Silver Spring Urban District for the maintenance of special streetscaping amenities within the public rights-of-way.
18. Prior to approval of the record plat by MCDPS, the applicant will need to execute and record a Declaration of Covenants (for Maintenance and Liability) for the existing ramp with handrails which leads to the building entrance on Fenton Street.
19. The hotel drop off and pick up provision remain an issue and must be worked out with MCDPS during the site plan stage. Please contact Ms. Sarah Navid of the Department at (240) 777-6320 to coordinate.
20. Permit and bond will be required as a prerequisite to DPS approval of the record plat. The permit will include, but not necessarily be limited to, the following improvements:
 - A. Street grading, paving, curbs and gutters, sidewalks and handicap ramps and street trees along Silver Spring Avenue.

Improvements to Silver Spring Avenue and Fenton Street between the face of curb and property line to be done in accordance with the Silver Spring Central Business District streetscaping guidelines. As a minimum this will include: urban street trees, street lights, amended soil panels, and pavers per Standard No. MC 111.02.

- B. Improve Silver Spring Avenue from the existing centerline to meet the closed section commercial/industrial roadway standard (MC-214.03).

Provide level pedestrian crossings along the driveway apron on Silver Spring Avenue.

Note: There must be a minimum of five (5) feet of sidewalk free and clear of obstructions along all public roadways. We are particularly concerned about the area on Fenton Street between the existing ramp wall and the tree boxes. The tree boxes may need to be shifted to provide adequate clearance.

- C. Improve the existing Public Alley along site frontage per MCDOT commercial alley standard MC-201.01 to a point thirty (30) feet west of the eastern property line. Remove the existing fence the currently blocks off the Alley (unless the applicant can demonstrate there was a formal approval to close the alley and the fence was installed under permit).
 - D. Removal of existing wall that protrudes out of the south corner of the existing building on Fenton

Ms. Catherine Conlon
Preliminary Plan No. 1-20070420
September 15, 2010
Page 4

Street prior to Public Alley. Wall to be removed out of the public right of way on Fenton Street

- E. Permanent monuments and property line markers, as required by Section 50-24(e) of the Subdivision Regulations.
- F. Erosion and sediment control measures as required by Section 50-35(j) and on-site stormwater management where applicable shall be provided by the Developer (at no cost to the County) at such locations deemed necessary by the Department of Permitting Services (DPS) and will comply with their specifications. Erosion and sediment control measures are to be built prior to construction of streets, houses and/or site grading and are to remain in operation (including maintenance) as long as deemed necessary by the DPS.
- G. Developer shall provide street lights in accordance with the specifications, requirements, and standards prescribed by the Traffic Engineering and Operations Section.

Thank you for the opportunity to review this preliminary plan. If you have any questions or comments regarding this letter, please contact Ms. Dewa Salihi, our Development Review Area Engineer for this vicinity, at (240) 777-2197 or at dewa.salihi@montgomerycountymd.gov.

Sincerely,



Gregory M. Leck, P.E., Manager
Development Review Team

M:\subdivision\SAI 011001\Preliminary Plans\1-20070420 Silver Spring Park\1-20070420 Silver Spring Park.doc

Enclosures (2)

- cc: Ulysses Glee, Fenton Group LLC
Melvin Willis, Burgess & Niple
Todd Brown, Linowes & Blocher
Debra Borden, Linowes & Blocher
Preliminary Plan Folder
Preliminary Plans Note Book
- cc-e: Sarah Navid; MCDPS RWPPR
Henry Emery; MCDPS RWPPR
Shahriar Etemadi; M-NCPPC TP
Neil Braunstein; M-NCPPC DRD
Stacey Coletta; MCDOT DTS
Carmen Zaldivar; MCDOT DPM
Dan Sanayi; MCDOT DTEO
Bruce Mangum; MCDOT DTEO
Dewa Salihi; MCDOT DTEO
Brett Linkletter; MCDOT DHS



MONTGOMERY COUNTY, MARYLAND
 DEPARTMENT OF PUBLIC WORKS AND TRANSPORTATION
 DEPARTMENT OF PERMITTING SERVICES

SIGHT DISTANCE EVALUATION

Facility/Subdivision Name: SILVER SPRING PARK Preliminary Plan Number: 1-20070 420

Street Name: SILVER SPRING AVE Master Plan Road Classification: _____

Posted Speed Limit: 30 mph

Street/Driveway #1 (PARKING GARAGE) Street/Driveway #2 (_____)

Sight Distance (feet) OK?
 Right 397' ✓
 Left 193' ✓*

Sight Distance (feet) OK?
 Right _____
 Left _____

Comments: APPROXIMATELY 150 FT WEST OF OUR ACCESS POINT IS A SIGNALIZED INTERSECTION, THEREFORE THE SPEED WOULD BE 0 MPH AND OUR SIGHT DISTANCE IS ADEQUATE.

Comments: _____

GUIDELINES

Classification or Posted Speed (use higher value)	Required Sight Distance in Each Direction*
Tertiary - 25 mph	150'
Secondary - 30	200'
Business - 30	200'
Primary - 35	250'
Arterial - 40	325'
(45)	400'
Major - 50	475'
(55)	550'

Sight distance is measured from an eye height of 3.5' at a point on the centerline of the driveway (or side street) 6' back from the face of curb or edge of traveled way of the intersecting roadway where a point 2.75' above the road surface is visible. (See attached drawing)

*Source: AASHTO

ENGINEER/ SURVEYOR CERTIFICATE

I hereby certify that this information is accurate and was collected in accordance with these guidelines.

David W. Kern 11/23/09
 Signature Date
14440

PLS/P.E. MD Reg. No.



Montgomery County Review:

Approved
 Disapproved:

By: gmluch
 Date: 9/15/10

Braunstein, Neil

Subject: FW: Silver Spring Park 1-20070420

From: Salihi, Dewa [<mailto:Dewa.Salihi@montgomerycountymd.gov>]

Sent: Monday, September 27, 2010 10:09 AM

To: Braunstein, Neil

Cc: Brown, Todd D. - TDB

Subject: Silver Spring Park 1-20070420

Hello Neil,

I wanted to clarify item 2 of my letter. The proposed connections to the existing storm drain system are acceptable. If the impervious area is increased beyond what is shown on the plan revised computations will need to be submitted to this office for review. Please let me know if you think a revised letter is necessary.

Thanks,
Dewa

Dewa Salihi

Engineer III

Montgomery County Department of Transportation

Division of Traffic Engineering and Operations

100 Edison Park Drive, 4th Floor

Gaithersburg, MD 20878

Phone: 240-777-2173

Fax: 240-777-2080

THINK GREEN...and print this email only if necessary.

Appendix C: Project Plan Resolution 920100030



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

MCPB No. 10-24
Project Plan No. 920100030
Project Name: Silver Spring Park
Date of Hearing: March 4, 2010

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

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

WHEREAS, on December 7, 2009, Fenton Group, LLC, ("Applicant") filed an application for approval of a project plan for a multi-building, mixed-use development of 147,888 sf. (exclusive of the area devoted to Workforce Housing, to a maximum of 10 percent), to include a 110-room hotel with 3,602 sf. of ground-floor retail; a 28,170-sf. office building with 5,632 sf. of ground-floor retail; and a multi-family residential building with 58 dwelling units (including 7 MPDUs and 5 WFHUs) ("Project Plan"), on 1.57 acres of CBD-1, CBD-0.5, and Fenton Village Overlay-zoned land in the southeast corner of the intersection of Fenton Street and Silver Spring Avenue in the Silver Spring CBD ("Property" or "Subject Property"); and

WHEREAS, Applicant's project plan application was designated Project Plan No. 920100030, Silver Spring Park (the "Application"); and

WHEREAS, Planning Board Staff ("Staff") issued a memorandum to the Planning Board, dated February 22, 2010, setting forth its analysis and recommendation for approval of the Application subject to certain conditions ("Staff Report"); and

Approved as to
Legal Sufficiency:


M-NCPPC Legal Department

WHEREAS, following review and analysis of the Application by Staff and the staffs of other governmental agencies, on March 4, 2010, 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

WHEREAS, on March 4, 2010, the Planning Board approved the Application subject to conditions, on motion of Commissioner Alfandre; seconded by Commissioner Dreyfuss; with a vote of 4-0; Commissioners Alfandre, Dreyfuss, Hanson, and Wells-Harley voting in favor, and Commissioner Presley being absent.

NOW, THEREFORE, BE IT RESOLVED that, pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Montgomery County Planning Board APPROVES Project Plan No. 920100030 for a multi-building, mixed-use development of 147,888 sf. (exclusive of the area devoted to Workforce Housing, to a maximum of 10 percent), to include a 110-room hotel with 3,602 sf. of ground-floor retail; a 28,170-sf. office building with 5,632 sf. of ground-floor retail; and a multi-family residential building with 58 dwelling units (including 7 MPDUs and 5 WFHUs), on 1.57 gross acres in the CBD-1, CBD-0.5, and Fenton Village Overlay zones, subject to the following conditions:

1. Development Ceiling

The proposed development is limited to 147,888 square feet of gross floor area (exclusive of area devoted to Workforce Housing, up to a maximum of 10 percent), to include a 110-room hotel with 3,602 sf. of ground-floor retail; a 28,170-sf. office building with 5,632 sf. of ground-floor retail; and a multi-family residential building with 58 dwelling units (including 7 MPDUs and 5 WFHUs).

2. Building Height and Mass

The proposed development is limited to the building footprint as delineated in the Project Plan drawings submitted to MNCPPC dated February 2, 2010, unless modified at Site Plan review.

3. LEED (Leadership in Energy and Environmental Design) Certification

For the proposed new buildings, the Applicant must achieve a LEED-NC Silver Rating Certification. By the time of Site Plan, the Applicant must determine the applicability of the Montgomery County Green Building Regulation to the proposed renovation of the existing commercial buildings.

4. Public Use Space and Amenities

a. The Applicant must provide on-site a minimum of 2,933 sf. of public use space (5.8% of net lot area).

- b. In lieu of providing the remaining 7,116 sf. on-site public use space (14.2% of the required 20% of the net lot area), the Applicant must contribute to M-NCPPC \$722,644 for the implementation of, or acquisition of land for, Fenton Street Urban Park, in the Silver Spring CBD.
- c. At the time of Site Plan, if the area shown on the Project Plan as public use space changes, the Applicant may adjust the amount of the Amenity Fund contribution proportionally without amending the Project Plan.
- d. At the time of Site Plan the Board may approve an alternative amenity site, as recommended by M-NCPPC staff, to satisfy the Applicant's public use space requirement. The alternative site must be in the public interest and consistent with the amenity fund guidelines. Board approval of this alternative would not require an amendment to the Project Plan.
- e. If, by the time of Site Plan review, there are approved Amenity Fund implementation guidelines that yield a different payment amount, the Planning Board may elect to replace the payment amount in Condition 4(b) above, with the new amount.
- f. Final details regarding the Amenity Fund contribution shall be determined at Site Plan, in coordination with the appropriate Parks Department staff.
- g. As a public amenity, the Applicant must provide streetscape improvements per the Silver Spring Streetscape Standard, including the undergrounding of utilities, along the property's frontages on Fenton Street and Silver Spring Avenue, as illustrated in the Certified Site Plan, for a total of approximately 8,796 sf., or 17.5% of the net lot area.

5. Design issues to address at site plan

During Site Plan review, the Applicant must resolve the following design issues:

- a. Design the on-site public use space to distinguish it spatially from the "front yard" of the multi-family building.
- b. Revise the site design as necessary to minimize the width of the parking garage entry driveway.
- c. Further refine the quality of the proposed building facades.
- d. Coordinate with Development Review, Urban Design, Fire and Rescue, DOT, and DPS Stormwater to address outstanding design issues satisfactorily.

6. Forest Conservation

- a. The proposed development shall comply with the conditions of the preliminary Forest Conservation Plan as stated in the Environmental Planning approval letter to the Applicant. The Applicant must satisfy all conditions prior to Montgomery County Department of Permitting Services' issuance of sediment and erosion control permits.
- b. Action on the requested tree removal variance shall be taken as part of the pending review of the Preliminary Plan of Subdivision.

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, 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 Silver Spring CBD Sector Plan, as codified in the Fenton Village Overlay Zone, recommends an intensity of development that allows a successful transition between CBD core and edge. The proposed development combines commercial, hotel, residential, and retail uses within walking distance of transit and the commercial center of the Silver Spring CBD, but limits both the height and overall density to encourage compatibility with and transition into the lower density residential uses at the CBD edge.

- (2) *"To 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 hotel use central to this proposal will provide a much-needed economic engine for the southern end of Fenton Village, providing customers for surrounding purveyors of food, goods, and services. The additional upgraded office space, multi-family dwelling units, and retail uses will greatly expand the diversity of options for workers, shoppers, and residents, providing MPDUs, WFHUs, and smaller scale neighborhood-oriented retail.

- (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 design fosters a variety of desirable relationships between the project, the CBD, and the surrounding residential neighborhood, based on massing, height, and use. The building massing is arranged generally to define public space, both in terms of the adjoining streets and in the pocket park at the edge of the site. The building height continues the step-down from the taller buildings of the CBD core to the two-and-one-half-story one-family homes next door. Finally, the variety of proposed uses - hotel, office, retail, and residential - provides opportunities for increased pedestrian, social, and economic activity for Fenton Village.

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

The proposed development is ten minutes' walk from the Silver Spring Transit Center, directly on several bus lines, one block from a regional bus terminal, and a few blocks away from existing and planned bikeways.

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

The project will improve pedestrian circulation by expanding the implementation of the Silver Spring streetscape standard, and by providing additional destinations for people to circulate to the south end of Fenton Village.

Vehicular circulation is improved by utilizing the public alley on the south side of the site for service access and by bringing residential and hotel parking access onto the secondary residential street, reducing queuing on Fenton Street.

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

The proposed development provides the minimum of both MPDUs and WFHUs distributed among the unit types, increasing the amount of affordable housing in the Silver Spring CBD.

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

The proposed development combines eight parcels currently serving as surface parking lots, tow yards, and office buildings into a single lot providing a strong diversity of land uses.

Further Intents of the CBD-1 and CBD-0.5 Zones

Section 59-C-6.213(a) states that it is further the intent in the CBD-1 and CBD-0.5 Zones:

- (1) *"To foster and promote the orderly development of the fringes of the Central Business Districts of the county so that these areas will provide land uses at a density and intensity which will encourage small business enterprises and diverse living accommodations, while complementing the uses in the interior portions of these districts; and*

The proposed development will provide both rental apartments, including affordable housing, as well as hotel rooms, all of which promote the development of neighborhood-scale restaurant and convenience and service retail, both within the ground-floor space proposed and in the surrounding Fenton Village.

- (2) *"To provide a density and intensity of development which will be compatible with adjacent land uses outside the Central Business Districts."*

The height, setbacks, and landscaping for the project are designed specifically to be compatible with the adjacent residential uses. The proposed multi-family building works to match the setback of the adjacent existing one-family houses, creating the opportunity for a public space to transition between the more urban retail street and the rest of the neighborhood. Further, the architecture of that building is modulated to visually break up the mass the building, improving compatibility.

Purpose of the Fenton Village Overlay Zone

Section 59-C-18.191 states that it is the purpose of the in the Fenton Village Overlay Zone to:

- (1) *"facilitate the implementation of an organized and cohesive development patterns that is appropriate for an urban environment;*
- (2) *encourage attractive design and ensure compatibility with existing buildings and uses within and adjacent to the overlay zone;*

- (3) *provide flexibility of development standards to encourage innovative design solutions;*
- (4) *allow for the transfer of the public use space requirement to other properties within the Overlay District; and*
- (5) *allow new uses.”*

While the proposed development does not include the new uses allowed by the overlay zone or transfer its public use space to other properties it controls in the Overlay District, the development fulfills the purpose of the overlay zone by providing a mixed-use project with the potential to further revitalize the southern end of Fenton Village in a manner compatible with, and supported by, the surrounding community.

Requirements of the CBD-1, CBD-0.5, and Fenton Village Overlay zones

The Staff Report contains a data table that lists the Zoning Ordinance required development standards and the development standards proposed for approval. The Board finds, based on the aforementioned data table, and other evidence and testimony of record, that the Application meets all of the applicable requirements of the CBD-1, CBD-0.5, and Fenton Village Overlay zones. The following data table sets forth the development standards approved by the Planning Board and binding on the Applicant.

DATA TABLE

Development Standards
 Approved by the Board
 and Binding on the
 Applicant

Lot Area, Minimum (sf.)	68,321
Previously dedicated area	13,821
Proposed dedicated area	4,258
Net lot area	50,242
Density, Total Maximum (sf.)	147,888
Density, Non-Residential Maximum (sf.)	91,642
MPDUs, Minimum (percentage of DUs, exclusive of WFHUs)	12.5
MPDUs	7
WFHUs, Minimum (percentage of market-rate DUs)	10
WFHUs	5
Total Dwelling Units	58

Building Height, Maximum (ft.)	60
Building Setbacks, Minimum (ft.)	
Fenton Street	0
Silver Spring Ave.	0
East Side	0
Alley	0
Parking Spaces, Max. (site is located in a Parking Lot District and Applicant will pay tax for parking not provided)	123
Min. Public Use Space, (% of Net Lot Area)	20
On-Site Public Use Space, (sf.)	2,933
On-Site Public Use Space (% of Net Lot Area)	5.8
On-Site Public Use Space provided off-site via Amenity Fund (sf.)	7,116
Min. On-Site Public Use Space provided off-site via Amenity Fund (% of Net Lot Area)	14.2
Contribution to Amenity Fund for implementation of Fenton Street Urban Park	\$722,644
• 14.2% of assessed land value; AND	
• 7,116 sf. @ \$35/sf.	
Min. Off-Site Public Amenity Space (sf.)	8,796
Min. Off-Site Public Amenity Space (% of Net Lot Area)	17.5
Min. Total On- & Off-Site Public Use & Amenity Space (sf.)	18,845
Min. Total On- & Off-Site Public Use & Amenity Space (% of Net Lot Area)	37.5

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

The proposed Project Plan is in substantial conformance with the 2000 Silver Spring CBD Sector Plan. The Plan encourages a mix of housing and neighborhood-scale commercial development in the Fenton Village area. To encourage land assemblage to improve the redevelopment potential for the area, the Sectional Map Amendment for the 2000 Silver Spring CBD plan rezoned part of this site, along with most of the other sites in the Fenton Village area, from CBD-0.5 to CBD-1. The proposed project has met this goal by assembling eight distinct parcels and by providing a mix of housing and commercial uses including the existing office use on the site.

The Silver Spring CBD Plan also recommends pedestrian improvements along Fenton Street and Silver Spring Avenue. Furthermore, the Plan designated Silver

Spring Avenue as a green street to emphasize the need for landscaping improvements along this road. The project complies with this vision by proposing streetscape improvements along both Fenton Street and Silver Spring Avenue.

- (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 scale of the proposed development is compatible with existing and proposed surrounding uses. The proposed mix of uses, including hotel, multi-family residential, office, and retail, has the potential to increase economic and social activity in Fenton Village by providing customers for existing and proposed businesses, restaurants, and shops during the week as well as evenings and weekends.

- (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.*

A traffic management agreement will be finalized during the Preliminary Plan review process. Other public facilities exist on or near the site and no expansion or renovation of these services will be required to be completed by the County. Further, requirements for public safety and fire will be minimally impacted due to the nature of the land use and must be approved by the respective agencies prior to Preliminary Plan approval.

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

A standard method project would only allow a density of 1 FAR for the CBD-0.5 portion (v. 1.5 FAR optional method) and 2 FAR for the CBD-1 portion (v. 3 FAR optional method) on this site, providing insufficient density for the proposed mix of uses. Further, the requirement for public amenities would be removed and the public use space requirement would be reduced by one-half. Because infill development and density near transit hubs is a core value of smart growth and given the number and quality of public amenities being proffered, the optional method of development is much more desirable and more efficient for this particular site.

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

The proposed development will provide 12.5% MPDUs as required by Chapter 25A. A final agreement between the Applicant and the Department of Housing and Community Affairs will be required at the time of site plan review.

- (g) *When a Project Plan includes more than one lot under common ownership, or is a single lot containing two or more CBD zones, and is shown to transfer public open space or development density from one lot to another or transfer densities, within a lot with two or more CBD zones, pursuant to the special standards of either section 59-C 6.2351 or 59-C 6.2352 (whichever is applicable), the Project Plan may be approved by the Planning Board only if the project will result in an overall land use configuration that is significantly superior in meeting the goals of the applicable master or sector plan and the zone than would be achieved without the proposed transfer.*

The Project Plan will combine eight separate lots, variously zoned CBD-0.5 or CBD-1, in a single development. The density appropriate to each of these zones will be consolidated and distributed within the overall development in accordance with 59-C-6.2352. As previously discussed, the overall development provides an urban infill project with a density and mix of uses which is significantly superior in meeting the goals of the sector plan.

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

The site is subject to Section 22A of the County code. There is no forest on-site. Therefore the subject site has an afforestation requirement. Based on the forest conservation law there is a 0.17-acre planting requirement. The Applicant will meet the requirement by an in-lieu fee payment.

Additionally, on the site there are four trees greater than 30 inches in diameter (DBH). The Applicant is proposing to remove three of the trees and preserve the remaining one. Maryland law now requires that local forest conservation laws identify certain individual trees as high priority for protection: all trees 30" DBH and greater; trees that are 75% the diameter of the county champion for that species; and rare, threatened, and endangered species. Since this project did not obtain approval of a Preliminary Forest Conservation Plan prior to October 1, 2009, and the Applicant is proposing to remove specimen trees greater than 30 inches DBH, a variance is required.

Staff notified the Applicant of this variance requirement at the regularly scheduled Development Review Committee (DRC) meeting on January 19, 2010, but did not receive the Applicant's variance request until February 3, 2010, which staff in turn forwarded to Montgomery County Department of Environmental Protection (DEP) on

February 5, 2010. County code requires the Planning Board to refer a copy of each variance request to the County Arborist in DEP for a written recommendation prior to action on the request. The County Arborist has 30 days to comment. In this case, given the date of the Applicant's submittal of the variance request, the 30 days will lapse on March 6, 2010, after the conclusion of the required 90-day Project Plan review period. Therefore, the Planning Board's action on the Project Plan does not include the variance. In order to allow for the full 30-day review period by the County Arborist, the variance review will be part of the future Preliminary Plan of Subdivision.

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

The Applicant has submitted plans to DPS to satisfy applicable requirements of Chapter 19. The review remains ongoing and will be completed at Preliminary and/or Site Plan review.

- (j) *Any public use space or public facility or amenity to be provided off-site is consistent with the goals of the applicable Master or Sector Plan and serves the public interest better than providing the public use space or public facilities and amenities on-site.*

The proposed financial contribution toward the implementation of public use space off-site, specifically the realization of Fenton Street Urban Park, is consistent with, and specifically identified as a public benefit in, the Silver Spring CBD Sector Plan. Given the constraints of the subject site, providing the full complement of public use space required by the zone would necessitate pushing the buildings away from the street and would create an undesirable condition at the street level, with unclear delineation between public and private space. Typically, such places have the residual character of the un-owned space and are uninviting and under-utilized. In contrast, Fenton Street Urban Park is an ideal gateway location into the Fenton Village section of Silver Spring, with residential, commercial, service, educational/civic, retail, and restaurant uses all within walking distance. When realized, this park will provide a valuable community amenity that is scarce in the CBD. The implementation of Fenton Street Urban Park serves the public interest far better than providing the space on the subject site.

BE IT FURTHER RESOLVED that all elements of the plans for Project Plan No. 920100030, Silver Spring Park, stamped received by M-NCPPC on February 2, 2010, 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 and incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; 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 APR 5 2010
(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).

* * * * *

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 Presley, seconded by Commissioner Wells-Harley, with Commissioners Hanson, Wells-Harley, Alfandre, and Presley voting in favor of the motion, and with Commissioner Dreyfuss absent, at its regular meeting held on Thursday, March 18, 2010, in Silver Spring, Maryland.



Royce Hanson, Chairman
Montgomery County Planning Board

Appendix D: Tree Variance Request and Related Correspondence

APPENDIX A. APPLICANT'S VARIANCE REQUEST LETTER

LINOWES
AND BLOCHER LLP
ATTORNEYS AT LAW

February 2, 2010

Todd D. Brown
301.961.5218
TBrown@linowes-law.com

Debra S. Borden
301.961.5250
DBorden@linowes-law.com

Via E-Mail and Hand Delivery

Mr. Doug Johnsen
Environmental Planning
Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Silver Spring Park – Project/Preliminary Plans - Variance Statement

Dear Mr. Johnsen:

On behalf of the Fenton Group, LLC (the "Applicant"), the owner of property located at the southeast quadrant of the intersection of Fenton Street and Silver Spring Avenue, Silver Spring, Maryland, known as Lots 4, 5, 12, 13, 14, 15 and Part of Lot 3 of "Easely's" subdivision (the "Property"), and applicant of the above-referenced Project Plan and Preliminary Plan, we hereby submit this variance request addressing the requirements of Section 22A-21(b) of the Montgomery County Code (the "Code"). The Applicant has filed, along with this correspondence, the above referenced Applications and a Preliminary Forest Conservation Plan ("PFCP"). In response to the new provisions of the Maryland Forest Conservation Act effective October 1, 2009 (the "Act"), the Applicant requests a waiver of the provisions, which limit the removal of certain trees exceeding a specific diameter.

In accordance with Chapter 22A-21(b) of the Code, the proposed removal of 3 trees over 30 inches in diameter on the PFCP, identified on the enclosed list ("Subject Trees"), would satisfy the variance requirements as follows:

Mr. Doug Johnsen

February 2, 2010

Page 2

1. *Describe the special conditions peculiar to the property which would cause the unwarranted hardship;*

The subject property consists of seven small lots or parts of lots with a gross lot area of 68,321 square feet, rectangular-shaped, and located along Fenton Street and Silver Spring Avenue. The Property is currently improved with an office building, two single-family homes and paved surface parking lots. The Property contains a total of five specimen trees as identified on the NRI/FSD No. 4-07090 approved on November 29, 2006. The Property is located within the Silver Spring Central Business District, and is within the Silver Spring CBD Metro Policy Area. The number of small lots to be combined into one, in an urban setting, renders it nearly impossible to re-develop without disturbing the Subject Trees. The Silver Spring CBD Sector Plan (the "Sector Plan") encourages among other things land assembly, along with higher and better uses of the land available by incorporating residential with commercial uses. This project represents the type of well-designed mixed-use development that the Sector Plan envisioned.

2. *Describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas;*

As explained above, the Property a compilation of 7 lots and parts of lots in an urban neighborhood. The Property is already significantly developed. The inability to remove the Subject Trees would cause the Property to be un-developable because the trees are so dispersed on the site. The potential inability to remove the Subject Trees therefore creates a significant disadvantage for the Applicant that deprives the Applicant of the opportunities of the neighboring or similar properties that have not experienced this unique review and approval process.

3. *Verify that State water quality standards will not be violated or that a measurable degradation in water quality will not occur as a result of the granting of the variance; and*

The Applicant has prepared a Preliminary Water Quality Plan and a PFCP to be submitted for review concurrently with the Application. The Property currently contains no stormwater management on-site, therefore the provision of stormwater facilities will improve the stormwater quality in the area. The Forest Conservation Worksheet demonstrates that the goals and objectives of Chapter 22A of the Code, including State water quality standards, are satisfied with the removal of the Subject Trees. Further, the PFCP includes the provision of

Mr. Doug Johnsen
February 2, 2010
Page 3

significant landscaping, including ornamental trees in the proposed park area and along the adjacent street and right-of-way.

4. *Provide any other information appropriate to support the request.*

Please let us know if any other information from the Application is necessary to support removal of the Subject Trees.

Thank you for your continuing assistance with the review of the PFCP.

Very truly yours,

LINOWES AND BLOCHER LLP


Todd D. Brown


Debra S. Borden

Enclosures

cc: Mark Pfefferle (w/out encls.)
Neil Braunstein (w/out encls.)
Dr. Ulysses Glee (w/out encls.)
David Woessner (w/out encls.)

EXHIBIT A
SUBJECT TREES TO BE REMOVED

- | | | | |
|----|--|-----|----------------|
| 1. | Liriodendron Tulipifera – Tulip Poplar | 42" | poor condition |
| 2. | Liriodendron Tulipifera – Tulip Poplar | 36" | good condition |
| 3. | Prunus Serotina- Black Cherry | 36" | good condition |

APPENDIX B. RECOMMENDATION FROM THE COUNTY ARBORIST



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett
County Executive

Robert G. Hoyt
Director

March 5, 2010

Royce Hanson, Chairman
Montgomery County Planning Board
Maryland National Capital Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

RE: Variance Request under the Forest Conservation Law for Silver Spring Park,
DAIC 12007420

Dear Dr. Hanson:

The County Attorney's Office has advised me that the provisions contained in Section 5-1607 of Title 5 (Natural Resources) of the Maryland Code apply to any application required by Chapter 22A of the Montgomery County Code submitted after October 1, 2009. Since the application for the above referenced request was submitted after this date, I am providing the following recommendation pertaining to this request for a variance.

Section 22A-21(d) of the Forest Conservation Law states that a variance must not be granted if granting the request:

1. Will confer on the Applicant a special privilege that would be denied to other Applicants;
2. Is based on conditions or circumstances which are the result of the actions by the Applicant;
3. Arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; or
4. Will violate State water quality standards or cause measurable degradation in water quality.

Applying the above conditions to the plan submitted by the applicant results in the following findings:

1. The granting of a variance in this case would not confer a special privilege on this applicant that would be denied other applicants as long as the same criteria are applied in each case. Therefore, the variance can be granted under this condition.

Royce Hanson
March 5, 2009
Page 2

2. The applicant proposes to remove or disturb trees, or other vegetation, from the site that are covered by Title 5 (Natural Resources), Section 5-1607 of the Maryland Code. The removal of these trees is the direct result of the development plans of the applicant. Therefore, the variance cannot be granted under this condition.
3. The removal of the trees, or other vegetation, by the applicant does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property. Therefore, the variance can be granted under this condition.
4. The removal of the trees, or other vegetation, by the applicant will not result in a violation of State water quality standards or cause measurable degradation in water quality. Therefore, the variance can be granted under this condition.

Based on Condition 2, the variance request made by this applicant should be denied, and the provisions of Article II of the County's Forest Conservation Law should apply to the removal or disturbance of the subject trees or other vegetation. Therefore, I recommend requiring mitigation for each tree, or other vegetation, disturbed or removed based on the area of the critical root zone lost. The mitigation can be met using any currently acceptable method under Section 22A of the Montgomery County Code.

If you have any questions, please do not hesitate to contact me directly.

Sincerely,



Laura Miller
County Arborist

cc: Robert Hoyt, Director
Walter Wilson, Associate County Attorney
Mark Pfefferle, Acting Chief

APPENDIX C. REVISED RECOMMENDATION FROM THE COUNTY ARBORIST



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett
County Executive

Robert G. Hoyt
Director

April 20 2010

Royce Hanson, Chairman
Montgomery County Planning Board
Maryland National Capital Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

RE: Variance Request under the Forest Conservation Law for Silver Spring Park, DAIC 12007420
Variance Request under the Forest Conservation Law for Brookside Gardens Parking Lot
Expansion, #P-95001

Dear Dr. Hanson:

On March 19, representatives from the Department of Environmental Protection, the Maryland-National Capital Park & Planning Commission, and the Maryland Department of Natural Resources (DNR) Forest Service met to discuss the recent changes in the Forest Conservation Act as codified in Section 5-1607 of Title 5 (Natural Resources) of the Maryland Code.

Based on this discussion, the proposed disturbance of trees, or other vegetation, regulated under Section 5-1607 is not interpreted as a condition or circumstance that is the result of the actions by the applicant, and therefore, variances may be granted as long as appropriate mitigation is provided for the resources disturbed.

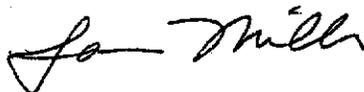
We agreed that applicants must apply for and include mitigation in their requests for variances for all trees, and other vegetation, regulated under Section 5-1607 that are removed or disturbed by the applicant's activity. DNR requested that the County will develop guidelines for appropriate mitigation.

Based on the clarifications and interpretations relating to State law provided by DNR during the meeting, I am revising my position on the above referenced variance requests. I now recommend that these applicants qualify for variances conditioned upon mitigating for the loss of resources due to removal or disturbance to trees, and other vegetation, subject to the law. Until other guidelines are developed, I recommend requiring mitigation based on the area of the critical root zone lost or disturbed. The mitigation can be met using any currently acceptable method under Chapter 22A of the Montgomery County Code.

Royce Hanson
April 20, 2010
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If you have any questions, please do not hesitate to contact me directly.

Sincerely,

A handwritten signature in cursive script, appearing to read "Laura Miller".

Laura Miller
County Arborist

cc: Robert Hoyt, Director
Walter Wilson, Associate County Attorney
Marian Honeczy, Supervisor, Urban and Community Forestry
Mark Pfefferle, Acting Chief

