



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

Staff Report: Project Plan Validity Period Extension, Studio Plaza, 920070010

ITEM #: _____

MCPB HEARING DATE: January 13, 2011

REPORT DATE: December 22, 2010

TO: Montgomery County Planning Board

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

FROM: Elza Hisel-McCoy, Assoc. AIA, LEED-AP
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APPLICATION DESCRIPTION:

Extension of the Validity Period for a Project Plan for a multi-building mixed-use development including, but not limited to, residential, retail, office, and/or hotel uses, with a maximum base density – exclusive of any density bonuses – of 626,781 gross square feet, on 5.11 acres of CBD-1- and CBD-2-zoned land in the Fenton Village Overlay Zone of the Silver Spring CBD Sector Plan.

APPLICANT: Michael, LLC

FILING DATE: November 18, 2010

RECOMMENDATION: Approval

EXECUTIVE SUMMARY:

Section 59-D-2.7 establishes the “Duration of validity period and actions required to validate” a Project Plan. The Applicant requests a 30-month extension to the Validity Period for the Studio Plaza Project Plan, from October 14, 2011, to April 14, 2014. Staff recommends an 18-month extension.

Approval signatures

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SITE DESCRIPTION

Vicinity

The subject property is located in the Fenton Village area of the Silver Spring CBD and is bound by Thayer Avenue to the north, Silver Spring Avenue to the south, Fenton Street to the east, and Georgia Avenue and Mayor Lane to the West.

The site is currently surrounded by small commercial and retail buildings of up to four stories, including a Safeway supermarket at the intersection of Thayer Avenue and Fenton Street and the structured County Parking Garage 4 one block south. The buildings are populated by a diversity of restaurants, ethnic grocers, convenience and specialty retail, and small commercial enterprises.

A five-minute walk from the site will bring you to the Silver Spring Metro Station, the Ripley District and the master-planned Metropolitan Branch Trail, Downtown Silver Spring, the Takoma Park Campus of Montgomery College, and the shops of South Silver Spring.

North and west of the site the density of development increases along the metro and rail tracks and into the core of the CBD. South and east of the site, low-rise commercial development gives way to the single-family neighborhoods of Takoma Park and East Silver Spring.

Site Analysis

The site is currently occupied by a mix of one- and two-story office and retail buildings backing onto a surface parking lot, County Parking Lot 3. The parking lot is currently accessible from each of the surrounding streets, with the exception of Georgia Avenue. Access to the western edge of Parking Lot 3 is from Mayor Lane, a 20-foot-wide public alley that runs behind the retail buildings lining Georgia Avenue. The Project Plan also includes properties immediately adjacent to the block: three density transfer sending sites – on the south side of Silver Spring Avenue and the east side of Fenton Street – and a building site on the south side of Silver Spring Avenue.



Site Map



Aerial Photo Looking North

PROJECT DESCRIPTION

Previous Approvals

This Project Plan was first submitted on July 25, 2006, and formally accepted on March 12, 2007. On June 7, 2007, the Planning Board approved a one-year extension to the review period for the project to allow the Applicant to complete negotiations with the County for the redevelopment of Public Parking Lot 3, negotiations which had been suspended pending the study of potential Purple Line alignments through the site.

On April 3, 2008, the Planning Board approved a further one-year extension of the review period, to June 7, 2009, to allow the Applicant to finalize with Montgomery County a General Development Agreement (GDA) for the redevelopment of Public Parking Lot 3 and to complete preparation of the revised Project Plan drawings to incorporate the County property into the proposal. At that hearing, staff recommended extending the review period by only 6 months.

On May 28, 2009, the Planning Board approved the Studio Plaza Project Plan (920070010) for a multi-building mixed-use development, including, but not limited to, residential, retail, office, and/or hotel uses, with a maximum base density – exclusive of any density bonuses – of 626,781 gross square feet. Throughout the review process and at the hearing, members of the community voiced significant concern about the successful integration of the proposed development into the existing community. Some of those issues remain unresolved and are being pursued in the courts.

Proposal

For an approved Project Plan Section 59-D-2.7 establishes the duration of the validity period and the actions required to validate the plan. An approved Project Plan remains valid for up to 25 months from the mailing date of the Planning Board's resolution, provided the Planning Board approves a Site Plan for the project within that timeframe. If the validity period expires without the approval of a Site Plan, the Project Plan expires and must be resubmitted. The Resolution for the Studio Plaza Project Plan was mailed to parties of record on September 15, 2009. The Validity Period thus expires on October 15, 2011.

Per section 59-D-2.7(c), the Applicant is requesting an extension of the validity period for 30 months, until April 15, 2014. In a letter dated November 1, 2010, the Applicant requests the proposed extension to allow conclusion of ongoing legal appeals associated with a Petition to Abandon public rights-of-way within the project boundaries (see Appendix B).

COMMUNITY OUTREACH

The Manual of Development Review Procedures for Montgomery County, Maryland does not specifically require public notice of Project Plan Validity Period extensions. Given the level of community interest and involvement in the original Project Plan approval, staff recommended that the Applicant voluntarily comply with the public notice requirement, but the Applicant declined, citing cost, the limited nature of the request, and the lack of such a requirement in the Development Manual. To staff's knowledge, no community outreach has been conducted.

RECOMMENDATION

Staff acknowledges the complex nature of the approved Project Plan and the issues associated with the abandonment of the public rights of way contained therein. However, as stated in section 59-D-2.7(b)(1), it is "the timely approval of a site plan" that validates a Project Plan. The Board approved this Project Plan on May 9, 2009. Given the pace of development in Silver Spring, the requested Validity Period extension date of April 14, 2014 – meaning the Site Plan could be approved almost five years after the Project Plan approval – is simply too long.

Rather than a 30-month extension, staff recommends instead an 18-month extension of the Validity Period, from October 15, 2011, to April 15, 2013. Staff believes this is a reasonable timeframe that should allow the Applicant to resolve the outstanding issues or, should those issues remain unresolved, afford the Planning Board an opportunity to reconsider the appropriateness of a further extension.

APPENDICES

- A. Prior Resolution
- B. Correspondence



MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Appendix A
SEP 15 2009

MCPB No. 09-104
Project Plan No. 920070010
Project Name: Studio Plaza
Date of Hearing: May 28, 2009

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

WHEREAS, under 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 July 25, 2006, Michael, LLC, ("Applicant") filed, and on March 12, 2007, staff accepted, an application for approval of a project plan for a multi-building mixed-use development, including, but not limited to, residential, retail, office, and/or hotel uses, with a maximum density – exclusive of any density bonuses for MPDUs or workforce housing – of 626,781 gross square feet ("Project Plan"), on 5.11 acres of CBD-1 and Fenton Village Overlay-zoned land, located on the block bound by Thayer Avenue, Fenton Street, Silver Spring Avenue, and Mayor Lane in the Fenton Village area of the Silver Spring CBD ("Property" or "Subject Property"); and

WHEREAS, Applicant's project plan application was designated Project Plan No. 920070010, Studio Plaza, (the "Application"); and

WHEREAS, Planning Board Staff ("Staff") issued a memorandum to the Planning Board, dated May 15, 2009, setting forth its analysis of, and recommendation for approval of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, on May 28, 2009, following review and analysis of the Application by Staff and the staffs of other governmental agencies, the Planning Board held a public hearing on the Application concurrently with a *pro forma* Mandatory Referral (MR 09-713) and a Petition to Abandon Public Alleys (AB-719) (the "Hearing"); and

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

Approved as to
Legal Sufficiency:


M-NCPPC Legal Department

8787 Georgia Avenue, Silver Spring, Maryland 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

WHEREAS, on May 28, 2009, the Planning Board voted to approve the Application subject to conditions, on motion of Commissioner Alfandre; seconded by Commissioner Robinson; with a vote of 4-0, Commissioners Alfandre, Cryor, Hanson, and Robinson voting in favor, and Commissioner Presley 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. 920070010 for a multi-building mixed-use development, including, but not limited to, residential, retail, office, and/or hotel uses, with a maximum optional method base density – exclusive of any density bonuses for MPDUs or workforce housing – of 626,781 gross square feet, on 5.11 gross acres in the CBD-1 and Fenton Village Overlay zones, subject to the following conditions:

1. Development Ceiling

- a. The maximum density of the proposed development, excluding any residential density bonuses for MPDUs or workforce housing, is limited to 626,781 square feet of gross floor area. The final total development ceiling, including all density bonuses, dwelling unit counts, and distribution of land uses will be determined at Site Plan.
- b. If, by time of Preliminary Plan review, the County Council approves a Zoning Text Amendment revising Section 59-C-6.2351 to allow the transfer of optional method density within CBD zones from lots smaller than 22,000 square feet, at Preliminary Plan the Applicant may propose to revise the maximum density established above without amending this Project Plan.

2. Accommodation of Adjacent Properties

- a. In general, at Preliminary Plan and Site Plan, the Applicant must show adequate access for customers and deliveries for adjacent properties currently enjoying such access;
- b. The final design of the buildings included in this Project Plan, including but not limited to setbacks, vertical stepping, and other design measures, must afford the existing, immediately-adjacent buildings sufficient access to light and air. The Planning Board will approve the final design at Site Plan;
- c. For the Kalivas Property, the Applicant shall:
 - i. relocate the loading entrance to the west side of the building to facilitate loading from the alley behind the GranDesign building;
 - ii. replace, in close proximity to the rear of their building, the parking spaces currently accessible from the 16-foot alley located at the southeast corner of the Kalivas property;
 - iii. provide a secondary entrance to the building that would be more directly accessible to Studio Plaza patrons; and

- iv. coordinate construction phasing to maintain the loading function of Kalivas tenants; or
 - v. if the owners of the Kalivas property are not amenable to the above conditions, construct the alley configuration referred to in the Project Plan staff report as "Revised Option 2".
- d. For the Gerecht Property, the Applicant shall:
- i. install a commercial elevator inside the building convenient to the Fenton Street entrance;
 - ii. enclose the alcove at the parking lot entry as conditioned space;
 - iii. make modifications to the building interior to accommodate the addition of the elevator
 - iv. remove the pedestrian bridge;
 - v. replace signage on the Fenton Street façade;
 - vi. set back the proposed building to the north to allow a reasonable measure of light and air for the existing windows on the north elevation of 8204 Fenton Street as determined by the Planning Board at site plan;
 - vii. if the owners of the Applicant and the owners of the Gerecht Property cannot agree to changes inside their building, the Applicant must provide one of two exterior options:
 - 1. an exterior elevator, as illustrated in the Project Plan staff report as "Exterior Elevator Option"; or
 - 2. an exterior stair connecting the pedestrian bridge to the Fenton Street right-of-way, referred to in the Project Plan staff report as "Exterior Stair Option."
- e. For 911 Silver Spring Avenue (the "Katz Property"), no Site Plan associated with this Project Plan may inhibit direct vehicular access to the 16-foot public alley behind 911 Silver Spring Avenue from the proposed adjacent private street.
- f. The Preliminary Plan must include a public access easement over the proposed private street connecting Thayer Avenue and Silver Spring Avenue.
- g. If the Applicant and adjacent property owners come to mutually agreeable accommodations other than those described in conditions 2.c., 2.d., and 2.e., the Planning Board will consider conformance with condition 2.a. above at Site Plan.

- h. The details of the accommodations required under this Condition No. 2 shall be in writing and determined at Site Plan.
- i. None of the development, permitting, and construction of the above items shall be at the expense of the owners of the Kalivas property, 8204 Fenton Street, or 911 Silver Spring Avenue.
- j. The final approved Project Plan shall illustrate each of the options described within this condition.

3. Public Use Space and Amenities

- a. The Applicant must provide a minimum of 23 percent of the net lot area for on-site public use space and a minimum of 22 percent of the net lot area for on and off-site public amenity space. The final design and details will be determined during Site Plan review.
- b. The proposed public use space must be easily and readily accessible to the general public and available for public enjoyment.
- c. The Applicant must provide a public art installation that announces the central public space and connects it in a meaningful, attractive, and enticing fashion to the surrounding streets and the larger community. This artwork should be integrated into the overall environmental design of the project, including the architecture, landscape, and hardscape features.
- d. The Applicant must present the public artwork to the art review panel for comment prior to approval of the Site Plan.
- e. The Applicant must provide a through-block pedestrian promenade from the intersection of Mayor Lane and Mayor's Promenade east to Fenton Street. The paving on the existing section of Mayor's Promenade must match that of the proposed promenade extension to Fenton Street.
- f. The Applicant must install the Silver Spring Streetscape standard, including paving, street lights, street trees, and undergrounding of utilities, along site frontage on public streets.
- g. The Applicant must underground all utilities along Mayor Lane between Silver Spring and Thayer Avenues.

4. Housing

- a. The proposed development must provide a minimum of 15 percent of the final number of all dwelling units as MPDUs, exclusive of Workforce Housing.
- b. Comply with the Workforce Housing provisions of the General Development Agreement (GDA) for Parking Lot #3, Silver Spring, MD, between Michael, LLC, and Montgomery County, MD, executed on October

24, 2008, by providing 15 percent of the residential density attributable to County Land, per the equation included in the GDA.

- c. The Applicant must provide a minimum of 10 percent workforce housing for residential density attributable to the all portions of the site not included in the original July 25, 2006, Project Plan application, which are grandfathered as exempt, or addressed in the GDA for Parking Lot 3.

5. Sustainability

- a. The development as a whole must achieve at a minimum a Certified rating in the LEED-ND (Neighborhood Development) standard established by the US Green Building Council, provided such Certification is available. The final certification level and timing will be determined at Site Plan.
- b. Each building included in this Project Plan and subsequent Site Plans must achieve at a minimum a Certified rating in LEED-NC (New Construction), or other building-specific LEED rating system, established by the US Green Building Council.

6. The final design of the underground parking garage to be constructed by the Applicant for eventual transfer to Montgomery County under the terms of the General Development Agreement must be approved as part of Site Plan review. The Mandatory Referral heard by the Board at the May 28, 2009, public hearing was *pro forma* only and does not limit or conclude the Board's review of any portion of the site included in the Project Plan.

7. Issues to be Addressed at Site Plan

Among the issues to be addressed at Site Plan are:

- a. The design of the central open space must demonstrate a significant relationship and connection to the adjacent public streets.
- b. Staged interim or alternative public parking accommodation for retailers on Fenton Street, possibly to include shorter-term parking meters on Fenton Street or shared parking arrangements within nearby private parking garages.
- c. Safety review of the project by a Montgomery County Police Department CPTED (Crime Prevention Through Environmental Design) Officer.
- d. A site phasing plan that minimizes negative impacts on the adjacent buildings and surrounding community.

BE IT FURTHER RESOLVED that, having given full consideration to the recommendations and findings of its Staff, which the Planning Board hereby adopts and incorporates by reference (except as modified by herein), and upon consideration of the entire record and all applicable elements of § 59-D-2.43, the Montgomery County Planning Board, with the conditions of approval, FINDS:(a)

As conditioned, the proposal complies with all of the intents and requirements of the zone.

Intents and Purposes Of The CBD Zones

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

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

As recommended in the Sector Plan, this proposed Project Plan promotes mixed-use higher-density urban infill redevelopment. The project benefits from increased density and building height recommended by the Sector Plan and realized in the zoning. The proposed additional residential units and office space, combined with street-activating ground-floor retail and restaurants, will enliven and reinvigorate Fenton Village.

- (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 Project Plan proposes a variety of land uses, including residential, office, retail and restaurant, and potentially hotel. Residences will include market-rate units, MPDUs, and Workforce Housing. The central public use space and extensive pedestrian network will provide opportunity for a diversity of recreational activities, active and passive, for residents of both the project and the larger community as well as visitors.

- (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."*

This project will make a significant contribution to the rebuilding of Fenton Village, replacing one- and two-story commercial buildings with mixed-use residential and office buildings with ground-floor retail and restaurant uses. These buildings will line the street edge, creating vibrant, attractive streetscapes. The smaller retail and restaurant spaces envisioned for this project are intended to retain and reinforce the neighborhood-serving character of the larger Fenton Village. Further, the addition of through-block connections – a new north-south private street and an east-west pedestrian promenade – will expand upon the existing sidewalk network in the CBD and create more opportunities for small retailers. In terms of building height, the taller buildings on the project will be located closest to Georgia Avenue, with height decreasing approaching Fenton Street and the single-family neighborhoods to the east, in conformance with the Sector Plan and the Fenton Village Overlay Zone. As conditioned, the project will also provide a reasonable alternative accommodation to adjacent buildings whose current service operations will be impacted.

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

This project is located approximately one-quarter mile from the Silver Spring Transit Center, which includes local and regional rail service as well as numerous metropolitan bus lines. A commercial interstate bus depot is just one block south of the site. The proposed pedestrian-oriented improvements will augment and upgrade the existing sidewalk system and will provide residents and tenants of the project, as well as the larger community, greater access to transit.

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

The addition of two through-block pedestrian connections and streetscape upgrades will significantly improve already reasonably high-quality pedestrian circulation. Street-activating ground-floor retail and restaurant uses, as well as residential and office building entrances, will further improve circulation and increase pedestrian safety by placing more eyes on the street and encouraging foot traffic. The new mid-block private street will provide additional connectivity for vehicles within Fenton Village.

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

Though the final unit mix will be determined during Preliminary and Site Plan review, the project will contain a significant number of residential units that will include substantial proportions of MPDUs and Workforce Housing, providing housing opportunities for people with a range of different incomes.

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

This project assembles a large number of properties, with a gross tract area of about five acres, currently occupied by small-scale commercial buildings and surface parking lots, which do not take full advantage of proximity to metro and other benefits of a redeveloping CBD. In proposing development in accordance with the goals of the Sector Plan, this project will provide highly desirable land uses and public spaces and amenities for Fenton Village.

Further Intents of the CBD-1 Zone

Section 59-C-6.213(a) indicates other objectives of the CBD-1 Zone:

- (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"*

This development will provide an array of land uses – multi-family residential, office, retail, restaurant, and possibly hotel – that readily complements nearby uses. These include single- and multi-family housing, small office buildings, a supermarket, small-scale retail, and restaurants. The density and height of the development provides a transition between the Georgia Avenue corridor, the Silver Spring Transit Center, and Downtown Silver Spring, and the lower-density development of Fenton Street and East Silver Spring. During Site Plan review, staff will undertake to help ensure the small, diverse, neighborhood-scale of the retail enterprises. At that time, staff will also endeavor to increase the diversity of unit types, sizes, and bedroom counts to maximize the range of living accommodations.

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

Adjacent land uses located outside the CBD and Fenton Village consist primarily of single-family houses, with the buildings along both sides of Fenton Street defining the transition. In accordance with the Sector Plan and the Overlay Zone, the building heights within this project will step down to their lowest point along the west side of Fenton Street. This project will further reinforce Fenton Street as a neighborhood shopping street, providing small-scale retail and restaurant uses and building entrances, helping to activate this street.

Purpose of the Fenton Village Overlay Zone

Section 59-C-18.191 describes the purpose of the Fenton Village Overlay Zone:

- (1) *“facilitate the implementation of an organized and cohesive development pattern that is appropriate for an urban environment;”*

The scale of this Project Plan enables the organized and cohesive development of the large majority of a single block in this revitalizing urban environment. The buildings are located directly on sidewalks and public open spaces, delineating these public streets and open places as the public realm.

- (2) *“encourage attractive design and ensure compatibility with existing buildings and uses within and adjacent to the overlay zone;”*

This Project Plan features an attractive design that fits well between the higher densities along Georgia Avenue and Downtown Silver Spring and the lower-density development east of Fenton Village. The proposed buildings will achieve a minimum LEED-NC Certification and, if the standard is out of pilot phase, the development as a whole will achieve a minimum LEED-ND Certification. As conditioned, the proposed uses, as described above, are compatible with and complimentary to surrounding uses.

- (3) *“provide flexibility of development standards to encourage innovative design solutions;”*

This project benefits significantly from the flexible development standards, balancing private economic benefit with improved public benefit, consistent with the sector plan.

- (4) *“allow for the transfer of the public use space requirement to other properties within the Overlay District; and”*

The proposed development will transfer a total of 74,979 gross square feet of base density from three sending lots located across public rights-of-way, including Mayor Lane, Fenton Street, and Silver Spring Avenue, to the receiving portion of the site.

- (5) *“allow new uses.”*

The three new uses enumerated in the Overlay Zone – catering facilities, small bakeries, and computer component assembly firms – could each be well accommodated within the proposed development.

Requirements of the CBD-1 & 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 this data table, and other evidence and testimony of record, that the Application meets all of the applicable requirements of the CBD-1 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

Max. Building Height (feet)	
Building, if project min. 33 % residential; along the west side of Fenton Street	60
Building, if project min. 33 % residential – to accommodate Workforce Housing	90 110
Min. Setbacks (feet)	
East Property Line	0
North Property Line	0
West Property Line	0
South Property Line	0
Min. Site Area (square feet)	
Gross Tract Area	222,592
Prior Dedication	41,971
Proposed Dedication	8,283
Net Tract Area	172,338
Max. Base Density (exclusive of residential density bonuses)	
Gross Area	626,781
Floor Area Ratio	2.82
Public Use Space (percent of net lot)	
On-Site Public Use Space	23.2
Off-Site Amenity Space	22.6
Total Public Use & Amenity Space	45.9

(b) The proposed development conforms to the Silver Spring CBD Sector Plan approved under Chapter 56.

By providing a mixed-use urban-infill development, this project fulfills each of the goals identified in the Silver Spring CBD Sector Plan regarding downtown development: Transit-Oriented; Commercial; Residential; Civic; Green; Pedestrian-Friendly. The site is located approximately one-quarter mile from the Silver Spring Transit Center, including local and regional rail and numerous bus lines. The project proposes a vertical mix of uses, with office, multi-family residential, and possibly hotel uses, all above retail, restaurant, and potentially other street-activating ground floor uses. Central to the design is a large public civic green space, and each street, public or private, contained within or adjacent

to the site will have street trees, upgraded street lights, and other features of the Silver Spring streetscape standard. Highlighting the civic nature of the central green will be a significant public art project, to be integrated with the design and configuration of the surrounding buildings so as to boldly empower the space to reach out of the center of the block to the adjacent streets and the neighborhoods beyond. Finally, this urban infill project will expand and improve the street and pedestrian network and experience in Fenton Village, with through-block connections, attractive streets, and exciting recreation, retail, and entertainment opportunities.

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

As conditioned, the project's size, intensity of development, design, operational characteristics, and staging are compatible with the existing adjacent development as well as the planned redevelopment of Fenton Village. The Planning Board has carefully considered, and is sensitive to, the impact of the design of this project on the surrounding neighbors. Thus, the approval of this plan is conditioned upon the Applicant taking steps to ensure that the neighboring businesses' access needs are met. It is also conditioned to ensure that this project will not unduly deny light and air to the surrounding properties. As the planning of this project moves forward to site plan, the Planning Board will continue to look carefully at these issues, and ensure this project is compatible with surrounding development. The Planning Board notes that the types of compatibility concerns that have been raised about this project are likely to become more frequent as other CBD properties are redeveloped. While the close proximity of new and existing development in these areas may pose compatibility challenges, it also has the potential to create a distinctive sense of place, which is an important goal in creating transit-oriented, pedestrian-friendly environments. Creative design will be key to meeting these compatibility challenges, and it is what the Planning Board will expect as this project moves forward.

- (d) The proposed development does 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.*

Other public facilities exist on or near the site and no expansion or renovation of these services will be required by the County. Initial review of this project by Transportation Planning staff and County agencies did not reveal significant issues. The project design and operational details must be approved by the

respective agencies prior to preliminary plan approval. Further, the Applicant is replacing in kind the number of public surface parking spaces with public underground parking spaces, and will provide interim accommodations during construction. Final details of the ultimate design of the underground garage and interim parking arrangements will be determined at site plan.

- (e) *The proposed development is 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 2.0 FAR on this site. 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 at 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 proposed development includes moderately priced dwelling units in accordance with Chapter 25A of this Code.*

The proposed development will provide 15 percent MPDUs as required by Chapter 25A, based on the final number of dwelling units to be determined at Site Plan. 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 on 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 based on the following findings:*

- (1) *The project will preserve an historic site, building, structure or area as shown on the Locational Atlas and Index of Historic Sites or the Master Plan for Historic Preservation; and/or*
- (2) *The project will implement an urban renewal plan adopted pursuant to Chapter 56 of the Montgomery County Code; and/or*
- (3) *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 what could be achieved without the proposed transfer.*

The project will neither preserve a historic site nor implement an urban renewal plan. The proposed development will transfer to the receiving portion of the site

a total of 74,979 gross square feet of base density from three sending lots located across public rights of way: Mayor Lane; Fenton Street; and Silver Spring Avenue. The additional density will contribute towards the compact redevelopment of this site and produce a more viable project than would be allowed without the proposed transfer.

- (h) *The proposed development satisfies any applicable requirements for forest conservation under Chapter 22A.*

The site is subject to Chapter 22A Montgomery County Forest Conservation Law. A Preliminary Forest Conservation Plan was stamped as received by the Environmental Planning Division on March 13, 2009. There is no forest on-site. Two specimen trees on-site will be removed and one specimen tree off-site on an adjacent property will be preserved. The site's entire requirement will be met with a fee-in-lieu payment.

- (i) *The proposed development satisfies any applicable requirements for water quality resources protection under Chapter 19.*

The site's stormwater management concept plan was conditionally approved on January 21, 2009 by the Department of Permitting Services. The conditional approval notes that proposed stormwater management structures are shown differently on the project plan than on the concept plan. The proposed method includes two underground vaults and filters. A revised concept plan was recently submitted to DPS to reduce stormwater runoff quantities to be captured by a series of proposed green roof tops. Any outstanding issues will be resolved at Site Plan review.

BE IT FURTHER RESOLVED that all elements of the plans for Project Plan No. 920070010 stamped received by M-NCPPC on March 16, 2009, 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 neither the Board's deliberation nor this Resolution should be construed to constitute an opinion of the Board as to the existence or validity of any private easement that may or may not be attributable to the property underlying this Project Plan; and

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

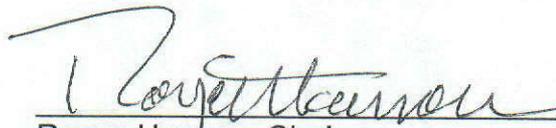
BE IT FURTHER RESOLVED that the date of this Resolution is SEP 15 2009
(which is the date that this Resolution is mailed to all parties of record); and

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 Wells-Harley, seconded by Commissioner Presley, with Commissioners Hanson, Alfandre, Presley, and Wells-Harley voting in favor of the motion, and with Commissioner Cryor absent, at its regular meeting held on Thursday, September 10, 2009, in Silver Spring, Maryland.



Royce Hanson, Chairman
Montgomery County Planning Board

November 1, 2010

C. Robert Dalrymple
301.961.5208
bdalrymple@linowes-law.com
Heather Dlhopsky
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VIA HAND DELIVERY

Francoise Carrier, Chair
Montgomery County Planning Board
M-NCPPC
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Project Plan No. 920070010, Studio Plaza, Silver Spring – Project Plan Validity Period Extension Request

Dear Ms. Carrier:

On behalf of Michael, LLC (the “Applicant”) and pursuant to Section 59-D-2.7(c) of the Montgomery County Zoning Ordinance (the “Zoning Ordinance”), we hereby submit this request for an extension of the validity period for Project Plan No. 920070010 (the “Project Plan”), approved by the Montgomery County Planning Board (the “Planning Board”) on May 28, 2009, for the Studio Plaza project located in Fenton Village in the Silver Spring Central Business District (the “Project”). (A copy of the approved Project Plan resolution (“Resolution”), mailed to all parties of record on September 15, 2009, is attached as Exhibit “A”.) The Resolution established the date of October 15, 2009 as the initiation date for purposes of calculating the time by which the Project Plan must be validated. As such, pursuant to Section 59-D-2.7 of the Zoning Ordinance, and without an extension, a complete site plan application would be required to be filed by April 15, 2011 and approved by October 15, 2011 in order to timely validate the Project Plan. Pursuant to Section 59-D-2.7(c), and for reasons set forth in detail below, we request that the validity period be extended for thirty (30) months to April 15, 2014.

The Project Plan is only one part of a number of approvals required from the Planning Board and the Montgomery County Council (the “County Council”) to proceed with this complex public/private partnership to redevelop Fenton Village, including existing Public Parking Lot #3 (“Parking Lot 3”) and surrounding properties, into an urban mixed-use neighborhood. Following selection as the developer of Parking Lot 3 as a result of a County-issued request for proposal (RFP), the Applicant and the County executed a General Development Agreement (the “GDA”) for the acquisition of Parking Lot 3 on October 24, 2008, allowing Parking Lot 3 to be redeveloped through a public/private partnership as a “Housing Resource” in accordance with the recommendations of the Silver Spring Central Business District Sector Plan, approved and adopted in February 2000 (the “Sector Plan”). In addition to negotiating and executing the GDA and submitting an application for Project Plan approval, the Applicant was required to file with

Ms. Francoise Carrier

November 1, 2010

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the County a petition to abandon surplus public alleys within Parking Lot 3 that will no longer be needed for a public purpose with the implementation of the Project (Abandonment Petition No. AB719 – the “Abandonment Petition”), and instead will be included as an integral part of the Project. At the same time that the Planning Board approved the Project Plan, the Planning Board also approved a Mandatory Referral application submitted by the County for the public components of the Project, namely the proposed public garage that will be replacing Parking Lot 3 (Mandatory Referral Application No. MR09-713 – the “Mandatory Referral”). As recommended by the Planning Board, the County Executive’s Hearing Officer and the County Council delayed consideration of the Abandonment Petition until after approval of the Project Plan and Mandatory Referral by the Planning Board.¹ Ultimately, the Council approved the Abandonment Petition on December 8, 2009 (after the County Executive’s Hearing Officer and the Planning Board both recommended approval of the Abandonment Petition), but the approval was appealed to the Montgomery County Circuit Court (the “Circuit Court”) by two property owners located adjacent to the Project. The Circuit Court affirmed the Council’s approval on July 1, 2010, but the appellants have now continued their appeal to the Maryland Court of Special Appeals where the appeal is currently awaiting scheduling orders (to be followed by written briefs and oral argument).

Because the approved abandonment is such an intrinsic part of the Project, the Project Plan, for all intents and purposes, is not a final decision until the approval of the Abandonment Petition is a final decision. It makes little sense to pursue in earnest the additional layers of approvals required to build the Project when an essential component of the Project is being judicially challenged. Nearly one year of the current twenty-four (24) month validity period for the Project Plan has gone by under the cloud of appeals of the Abandonment Petition, and projecting out the anticipated time for completion of the remaining appeals currently pending exhausts the entire validity period. In recognition of this, it is appropriate to extend the full validity period for the Project Plan to begin roughly at the same time that the Abandonment Petition becomes a final decision.

In reaction to the appeals of the Abandonment Petition and the resulting delays in prudently pursuing remaining entitlements for the Project, the County and the Applicant recently executed an amendment to the GDA on September 14, 2010 (a copy of which is attached as Exhibit “B”)

¹ The Applicant filed the Abandonment Petition on October 30, 2008, prior to filing the Project Plan application on December 24, 2008. At the February 12, 2009 Planning Board hearing on the Abandonment Petition (to make a recommendation to the County Executive’s Hearing Officer), the Planning Board deferred making a recommendation on the Abandonment Petition and instead specifically recommended that the Abandonment Petition be postponed until it could be considered in conjunction with the Project Plan application – illustrative of the Planning Board’s recognition that the Project’s Abandonment Petition and Project Plan are inextricably linked.

Ms. Francoise Carrier

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which extends by thirty (30) months the date by which the Applicant must close on Parking Lot 3. The requested extension of the Project Plan validity period by thirty (30) months is consistent with the GDA extension, with both extensions based upon the inextricable nature of the Project Plan and the Abandonment Petition. While we are confident that the Maryland courts will ultimately and finally dispose of the appeals favorably for the Applicant (and the County), pursuit of site plan approval in earnest will not begin until the cloud of the appeals is removed. For all of these reasons, a thirty (30) month extension of time to allow a complete site plan to be submitted for the Project by October 15, 2013 and approved by April 15, 2014 is appropriate.

Please contact us should you have any questions or require any additional information.

Sincerely,

LINOWES AND BLOCHER LLP

C. Robert Dalrymple, H.D.

C. Robert Dalrymple

Heather Dlhopsky

Heather Dlhopsky

Enclosures

cc: Mr. Elza Hisel-McCoy
Mr. Robert Hillerson



SEP 15 2009

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

MCPB No. 09-104
Project Plan No. 920070010
Project Name: Studio Plaza
Date of Hearing: May 28, 2009

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

WHEREAS, under 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 July 25, 2006, Michael, LLC, ("Applicant") filed, and on March 12, 2007, staff accepted, an application for approval of a project plan for a multi-building mixed-use development, including, but not limited to, residential, retail, office, and/or hotel uses, with a maximum density – exclusive of any density bonuses for MPDUs or workforce housing – of 626,781 gross square feet ("Project Plan"), on 5.11 acres of CBD-1 and Fenton Village Overlay-zoned land, located on the block bound by Thayer Avenue, Fenton Street, Silver Spring Avenue, and Mayor Lane in the Fenton Village area of the Silver Spring CBD ("Property" or "Subject Property"); and

WHEREAS, Applicant's project plan application was designated Project Plan No. 920070010, Studio Plaza, (the "Application"); and

WHEREAS, Planning Board Staff ("Staff") issued a memorandum to the Planning Board, dated May 15, 2009, setting forth its analysis of, and recommendation for approval of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, on May 28, 2009, following review and analysis of the Application by Staff and the staffs of other governmental agencies, the Planning Board held a public hearing on the Application concurrently with a *pro forma* Mandatory Referral (MR 09-713) and a Petition to Abandon Public Alleys (AB-719) (the "Hearing"); and

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

Approved as to
Legal Sufficiency:

M-NCPPC Legal Department

8787 Georgia Avenue, Silver Spring, Maryland 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

100% recycled paper

Exhibit "A"

WHEREAS, on May 28, 2009, the Planning Board voted to approve the Application subject to conditions, on motion of Commissioner Alfandre; seconded by Commissioner Robinson; with a vote of 4-0, Commissioners Alfandre, Cryor, Hanson, and Robinson voting in favor, and Commissioner Presley 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. 920070010 for a multi-building mixed-use development, including, but not limited to, residential, retail, office, and/or hotel uses, with a maximum optional method base density – exclusive of any density bonuses for MPDUs or workforce housing – of 626,781 gross square feet, on 5.11 gross acres in the CBD-1 and Fenton Village Overlay zones, subject to the following conditions:

1. Development Ceiling

- a. The maximum density of the proposed development, excluding any residential density bonuses for MPDUs or workforce housing, is limited to 626,781 square feet of gross floor area. The final total development ceiling, including all density bonuses, dwelling unit counts, and distribution of land uses will be determined at Site Plan.
- b. If, by time of Preliminary Plan review, the County Council approves a Zoning Text Amendment revising Section 59-C-6.2351 to allow the transfer of optional method density within CBD zones from lots smaller than 22,000 square feet, at Preliminary Plan the Applicant may propose to revise the maximum density established above without amending this Project Plan.

2. Accommodation of Adjacent Properties

- a. In general, at Preliminary Plan and Site Plan, the Applicant must show adequate access for customers and deliveries for adjacent properties currently enjoying such access;
- b. The final design of the buildings included in this Project Plan, including but not limited to setbacks, vertical stepping, and other design measures, must afford the existing, immediately-adjacent buildings sufficient access to light and air. The Planning Board will approve the final design at Site Plan;
- c. For the Kalivas Property, the Applicant shall:
 - i. relocate the loading entrance to the west side of the building to facilitate loading from the alley behind the GranDesign building;
 - ii. replace, in close proximity to the rear of their building, the parking spaces currently accessible from the 16-foot alley located at the southeast corner of the Kalivas property;
 - iii. provide a secondary entrance to the building that would be more directly accessible to Studio Plaza patrons; and

- iv. coordinate construction phasing to maintain the loading function of Kalivas tenants; or
 - v. if the owners of the Kalivas property are not amenable to the above conditions, construct the alley configuration referred to in the Project Plan staff report as "Revised Option 2".
- d. For the Gerecht Property, the Applicant shall:
- i. install a commercial elevator inside the building convenient to the Fenton Street entrance;
 - ii. enclose the alcove at the parking lot entry as conditioned space;
 - iii. make modifications to the building interior to accommodate the addition of the elevator
 - iv. remove the pedestrian bridge;
 - v. replace signage on the Fenton Street façade;
 - vi. set back the proposed building to the north to allow a reasonable measure of light and air for the existing windows on the north elevation of 8204 Fenton Street as determined by the Planning Board at site plan;
 - vii. if the owners of the Applicant and the owners of the Gerecht Property cannot agree to changes inside their building, the Applicant must provide one of two exterior options:
 - 1. an exterior elevator, as illustrated in the Project Plan staff report as "Exterior Elevator Option"; or
 - 2. an exterior stair connecting the pedestrian bridge to the Fenton Street right-of-way, referred to in the Project Plan staff report as "Exterior Stair Option."
- e. For 911 Silver Spring Avenue (the "Katz Property"), no Site Plan associated with this Project Plan may inhibit direct vehicular access to the 16-foot public alley behind 911 Silver Spring Avenue from the proposed adjacent private street.
- f. The Preliminary Plan must include a public access easement over the proposed private street connecting Thayer Avenue and Silver Spring Avenue.
- g. If the Applicant and adjacent property owners come to mutually agreeable accommodations other than those described in conditions 2.c., 2.d., and 2.e., the Planning Board will consider conformance with condition 2.a. above at Site Plan.

- h. The details of the accommodations required under this Condition No. 2 shall be in writing and determined at Site Plan.
- i. None of the development, permitting, and construction of the above items shall be at the expense of the owners of the Kalivas property, 8204 Fenton Street, or 911 Silver Spring Avenue.
- j. The final approved Project Plan shall illustrate each of the options described within this condition.

3. Public Use Space and Amenities

- a. The Applicant must provide a minimum of 23 percent of the net lot area for on-site public use space and a minimum of 22 percent of the net lot area for on and off-site public amenity space. The final design and details will be determined during Site Plan review.
- b. The proposed public use space must be easily and readily accessible to the general public and available for public enjoyment.
- c. The Applicant must provide a public art installation that announces the central public space and connects it in a meaningful, attractive, and enticing fashion to the surrounding streets and the larger community. This artwork should be integrated into the overall environmental design of the project, including the architecture, landscape, and hardscape features.
- d. The Applicant must present the public artwork to the art review panel for comment prior to approval of the Site Plan.
- e. The Applicant must provide a through-block pedestrian promenade from the intersection of Mayor Lane and Mayor's Promenade east to Fenton Street. The paving on the existing section of Mayor's Promenade must match that of the proposed promenade extension to Fenton Street.
- f. The Applicant must install the Silver Spring Streetscape standard, including paving, street lights, street trees, and undergrounding of utilities, along site frontage on public streets.
- g. The Applicant must underground all utilities along Mayor Lane between Silver Spring and Thayer Avenues.

4. Housing

- a. The proposed development must provide a minimum of 15 percent of the final number of all dwelling units as MPDUs, exclusive of Workforce Housing.
- b. Comply with the Workforce Housing provisions of the General Development Agreement (GDA) for Parking Lot #3, Silver Spring, MD, between Michael, LLC, and Montgomery County, MD, executed on October

24, 2008, by providing 15 percent of the residential density attributable to County Land, per the equation included in the GDA.

- c. The Applicant must provide a minimum of 10 percent workforce housing for residential density attributable to the all portions of the site not included in the original July 25, 2006, Project Plan application, which are grandfathered as exempt, or addressed in the GDA for Parking Lot 3.

5. Sustainability

- a. The development as a whole must achieve at a minimum a Certified rating in the LEED-ND (Neighborhood Development) standard established by the US Green Building Council, provided such Certification is available. The final certification level and timing will be determined at Site Plan.
- b. Each building included in this Project Plan and subsequent Site Plans must achieve at a minimum a Certified rating in LEED-NC (New Construction), or other building-specific LEED rating system, established by the US Green Building Council.

6. The final design of the underground parking garage to be constructed by the Applicant for eventual transfer to Montgomery County under the terms of the General Development Agreement must be approved as part of Site Plan review. The Mandatory Referral heard by the Board at the May 28, 2009, public hearing was *pro forma* only and does not limit or conclude the Board's review of any portion of the site included in the Project Plan.

7. Issues to be Addressed at Site Plan

Among the issues to be addressed at Site Plan are:

- a. The design of the central open space must demonstrate a significant relationship and connection to the adjacent public streets.
- b. Staged interim or alternative public parking accommodation for retailers on Fenton Street, possibly to include shorter-term parking meters on Fenton Street or shared parking arrangements within nearby private parking garages.
- c. Safety review of the project by a Montgomery County Police Department CPTED (Crime Prevention Through Environmental Design) Officer.
- d. A site phasing plan that minimizes negative impacts on the adjacent buildings and surrounding community.

BE IT FURTHER RESOLVED that, having given full consideration to the recommendations and findings of its Staff, which the Planning Board hereby adopts and incorporates by reference (except as modified by herein), and upon consideration of the entire record and all applicable elements of § 59-D-2.43, the Montgomery County Planning Board, with the conditions of approval, FINDS:(a)

As conditioned, the proposal complies with all of the intents and requirements of the zone.

Intents and Purposes Of The CBD Zones

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

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

As recommended in the Sector Plan, this proposed Project Plan promotes mixed-use higher-density urban infill redevelopment. The project benefits from increased density and building height recommended by the Sector Plan and realized in the zoning. The proposed additional residential units and office space, combined with street-activating ground-floor retail and restaurants, will enliven and reinvigorate Fenton Village.

- (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 Project Plan proposes a variety of land uses, including residential, office, retail and restaurant, and potentially hotel. Residences will include market-rate units, MPDUs, and Workforce Housing. The central public use space and extensive pedestrian network will provide opportunity for a diversity of recreational activities, active and passive, for residents of both the project and the larger community as well as visitors.

- (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."*

This project will make a significant contribution to the rebuilding of Fenton Village, replacing one- and two-story commercial buildings with mixed-use residential and office buildings with ground-floor retail and restaurant uses. These buildings will line the street edge, creating vibrant, attractive streetscapes. The smaller retail and restaurant spaces envisioned for this project are intended to retain and reinforce the neighborhood-serving character of the larger Fenton Village. Further, the addition of through-block connections – a new north-south private street and an east-west pedestrian promenade – will expand upon the existing sidewalk network in the CBD and create more opportunities for small retailers. In terms of building height, the taller buildings on the project will be located closest to Georgia Avenue, with height decreasing approaching Fenton Street and the single-family neighborhoods to the east, in conformance with the Sector Plan and the Fenton Village Overlay Zone. As conditioned, the project will also provide a reasonable alternative accommodation to adjacent buildings whose current service operations will be impacted.

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

This project is located approximately one-quarter mile from the Silver Spring Transit Center, which includes local and regional rail service as well as numerous metropolitan bus lines. A commercial interstate bus depot is just one block south of the site. The proposed pedestrian-oriented improvements will augment and upgrade the existing sidewalk system and will provide residents and tenants of the project, as well as the larger community, greater access to transit.

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

The addition of two through-block pedestrian connections and streetscape upgrades will significantly improve already reasonably high-quality pedestrian circulation. Street-activating ground-floor retail and restaurant uses, as well as residential and office building entrances, will further improve circulation and increase pedestrian safety by placing more eyes on the street and encouraging foot traffic. The new mid-block private street will provide additional connectivity for vehicles within Fenton Village.

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

Though the final unit mix will be determined during Preliminary and Site Plan review, the project will contain a significant number of residential units that will include substantial proportions of MPDUs and Workforce Housing, providing housing opportunities for people with a range of different incomes.

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

This project assembles a large number of properties, with a gross tract area of about five acres, currently occupied by small-scale commercial buildings and surface parking lots, which do not take full advantage of proximity to metro and other benefits of a redeveloping CBD. In proposing development in accordance with the goals of the Sector Plan, this project will provide highly desirable land uses and public spaces and amenities for Fenton Village.

Further Intents of the CBD-1 Zone

Section 59-C-6.213(a) indicates other objectives of the CBD-1 Zone:

- (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"*

This development will provide an array of land uses – multi-family residential, office, retail, restaurant, and possibly hotel – that readily complements nearby uses. These include single- and multi-family housing, small office buildings, a supermarket, small-scale retail, and restaurants. The density and height of the development provides a transition between the Georgia Avenue corridor, the Silver Spring Transit Center, and Downtown Silver Spring, and the lower-density development of Fenton Street and East Silver Spring. During Site Plan review, staff will undertake to help ensure the small, diverse, neighborhood-scale of the retail enterprises. At that time, staff will also endeavor to increase the diversity of unit types, sizes, and bedroom counts to maximize the range of living accommodations.

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

Adjacent land uses located outside the CBD and Fenton Village consist primarily of single-family houses, with the buildings along both sides of Fenton Street defining the transition. In accordance with the Sector Plan and the Overlay Zone, the building heights within this project will step down to their lowest point along the west side of Fenton Street. This project will further reinforce Fenton Street as a neighborhood shopping street, providing small-scale retail and restaurant uses and building entrances, helping to activate this street.

Purpose of the Fenton Village Overlay Zone

Section 59-C-18.191 describes the purpose of the Fenton Village Overlay Zone:

- (1) *"facilitate the implementation of an organized and cohesive development pattern that is appropriate for an urban environment;"*

The scale of this Project Plan enables the organized and cohesive development of the large majority of a single block in this revitalizing urban environment. The buildings are located directly on sidewalks and public open spaces, delineating these public streets and open places as the public realm.

- (2) *"encourage attractive design and ensure compatibility with existing buildings and uses within and adjacent to the overlay zone;"*

This Project Plan features an attractive design that fits well between the higher densities along Georgia Avenue and Downtown Silver Spring and the lower-density development east of Fenton Village. The proposed buildings will achieve a minimum LEED-NC Certification and, if the standard is out of pilot phase, the development as a whole will achieve a minimum LEED-ND Certification. As conditioned, the proposed uses, as described above, are compatible with and complimentary to surrounding uses.

- (3) *"provide flexibility of development standards to encourage innovative design solutions;"*

This project benefits significantly from the flexible development standards, balancing private economic benefit with improved public benefit, consistent with the sector plan.

- (4) *"allow for the transfer of the public use space requirement to other properties within the Overlay District; and"*

The proposed development will transfer a total of 74,979 gross square feet of base density from three sending lots located across public rights-of-way, including Mayor Lane, Fenton Street, and Silver Spring Avenue, to the receiving portion of the site.

- (5) *"allow new uses."*

The three new uses enumerated in the Overlay Zone – catering facilities, small bakeries, and computer component assembly firms – could each be well accommodated within the proposed development.

Requirements of the CBD-1 & 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 this data table, and other evidence and testimony of record, that the Application meets all of the applicable requirements of the CBD-1 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

Max. Building Height (feet)	
Building, if project min. 33 % residential; along the west side of Fenton Street	60
Building, if project min. 33 % residential	90
– to accommodate Workforce Housing	110
Min. Setbacks (feet)	
East Property Line	0
North Property Line	0
West Property Line	0
South Property Line	0
Min. Site Area (square feet)	
Gross Tract Area	222,592
Prior Dedication	41,971
Proposed Dedication	8,283
Net Tract Area	172,338
Max. Base Density (exclusive of residential density bonuses)	
Gross Area	626,781
Floor Area Ratio	2.82
Public Use Space (percent of net lot)	
On-Site Public Use Space	23.2
Off-Site Amenity Space	22.6
Total Public Use & Amenity Space	45.9

(b) The proposed development conforms to the Silver Spring CBD Sector Plan approved under Chapter 56.

By providing a mixed-use urban-infill development, this project fulfills each of the goals identified in the Silver Spring CBD Sector Plan regarding downtown development: Transit-Oriented; Commercial; Residential; Civic; Green; Pedestrian-Friendly. The site is located approximately one-quarter mile from the Silver Spring Transit Center, including local and regional rail and numerous bus lines. The project proposes a vertical mix of uses, with office, multi-family residential, and possibly hotel uses, all above retail, restaurant, and potentially other street-activating ground floor uses. Central to the design is a large public civic green space, and each street, public or private, contained within or adjacent

to the site will have street trees, upgraded street lights, and other features of the Silver Spring streetscape standard. Highlighting the civic nature of the central green will be a significant public art project, to be integrated with the design and configuration of the surrounding buildings so as to boldly empower the space to reach out of the center of the block to the adjacent streets and the neighborhoods beyond. Finally, this urban infill project will expand and improve the street and pedestrian network and experience in Fenton Village, with through-block connections, attractive streets, and exciting recreation, retail, and entertainment opportunities.

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

As conditioned, the project's size, intensity of development, design, operational characteristics, and staging are compatible with the existing adjacent development as well as the planned redevelopment of Fenton Village. The Planning Board has carefully considered, and is sensitive to, the impact of the design of this project on the surrounding neighbors. Thus, the approval of this plan is conditioned upon the Applicant taking steps to ensure that the neighboring businesses' access needs are met. It is also conditioned to ensure that this project will not unduly deny light and air to the surrounding properties. As the planning of this project moves forward to site plan, the Planning Board will continue to look carefully at these issues, and ensure this project is compatible with surrounding development. The Planning Board notes that the types of compatibility concerns that have been raised about this project are likely to become more frequent as other CBD properties are redeveloped. While the close proximity of new and existing development in these areas may pose compatibility challenges, it also has the potential to create a distinctive sense of place, which is an important goal in creating transit-oriented, pedestrian-friendly environments. Creative design will be key to meeting these compatibility challenges, and it is what the Planning Board will expect as this project moves forward.

- (d) The proposed development does 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.*

Other public facilities exist on or near the site and no expansion or renovation of these services will be required by the County. Initial review of this project by Transportation Planning staff and County agencies did not reveal significant issues. The project design and operational details must be approved by the

respective agencies prior to preliminary plan approval. Further, the Applicant is replacing in kind the number of public surface parking spaces with public underground parking spaces, and will provide interim accommodations during construction. Final details of the ultimate design of the underground garage and interim parking arrangements will be determined at site plan.

- (e) The proposed development is 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 2.0 FAR on this site. 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 at 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 proposed development includes moderately priced dwelling units in accordance with Chapter 25A of this Code.*

The proposed development will provide 15 percent MPDUs as required by Chapter 25A, based on the final number of dwelling units to be determined at Site Plan. 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 based on the following findings:*

- (1) The project will preserve an historic site, building, structure or area as shown on the Locational Atlas and Index of Historic Sites or the Master Plan for Historic Preservation; and/or*
- (2) The project will implement an urban renewal plan adopted pursuant to Chapter 56 of the Montgomery County Code; and/or*
- (3) 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 what could be achieved without the proposed transfer.*

The project will neither preserve a historic site nor implement an urban renewal plan. The proposed development will transfer to the receiving portion of the site

a total of 74,979 gross square feet of base density from three sending lots located across public rights of way: Mayor Lane; Fenton Street; and Silver Spring Avenue. The additional density will contribute towards the compact redevelopment of this site and produce a more viable project than would be allowed without the proposed transfer.

(h) The proposed development satisfies any applicable requirements for forest conservation under Chapter 22A.

The site is subject to Chapter 22A Montgomery County Forest Conservation Law. A Preliminary Forest Conservation Plan was stamped as received by the Environmental Planning Division on March 13, 2009. There is no forest on-site. Two specimen trees on-site will be removed and one specimen tree off-site on an adjacent property will be preserved. The site's entire requirement will be met with a fee-in-lieu payment.

(i) The proposed development satisfies any applicable requirements for water quality resources protection under Chapter 19.

The site's stormwater management concept plan was conditionally approved on January 21, 2009 by the Department of Permitting Services. The conditional approval notes that proposed stormwater management structures are shown differently on the project plan than on the concept plan. The proposed method includes two underground vaults and filters. A revised concept plan was recently submitted to DPS to reduce stormwater runoff quantities to be captured by a series of proposed green roof tops. Any outstanding issues will be resolved at Site Plan review.

BE IT FURTHER RESOLVED that all elements of the plans for Project Plan No. 920070010 stamped received by M-NCPPC on March 16, 2009, 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 neither the Board's deliberation nor this Resolution should be construed to constitute an opinion of the Board as to the existence or validity of any private easement that may or may not be attributable to the property underlying this Project Plan; 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 SEP 15 2009
(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 Wells-Harley, seconded by Commissioner Presley, with Commissioners Hanson, Alfandre, Presley, and Wells-Harley voting in favor of the motion, and with Commissioner Cryor absent, at its regular meeting held on Thursday, September 10, 2009, in Silver Spring, Maryland.


Royce Hanson, Chairman
Montgomery County Planning Board

**FIRST AMENDMENT TO
GENERAL DEVELOPMENT AGREEMENT**

THIS FIRST AMENDMENT TO GENERAL DEVELOPMENT AGREEMENT (the "First Amendment") is made and entered into as of the 14th day of September 2010, by and between **MONTGOMERY COUNTY, MARYLAND** (the "County") and **MICHAEL, L.L.C.** (the "Developer").

WHEREAS, the parties entered into that certain General Development Agreement dated the 6th day of October 2008 (the "Agreement"); and

WHEREAS, the parties desire to modify the Agreement in accordance with the terms set forth herein.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00), the mutual promises and covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree that the following terms shall be in addition to the terms set forth in said Agreement, except when inconsistent with same, and in such event, the terms of the First Amendment shall supersede the terms of said Agreement, as follows:

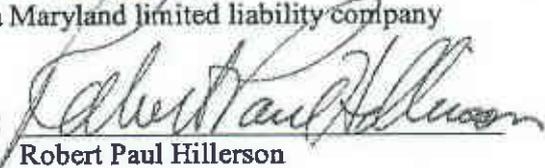
1. In Paragraph 3.(a)(i) "thirty-six (36)" is deleted and "sixty-six (66)" is substituted in lieu thereof.
2. Developer and County are not in default under the Agreement, and are in full compliance therewith.
3. Except as changed and modified by Paragraph 1 above, all of the other terms and provisions of the Agreement shall remain in full force and effect, and the Developer and County hereby ratify and confirm the Agreement as the same may respectively apply to them, as amended hereby.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed the foregoing First Amendment on the day and year first above written.

MICHAEL, L.L.C.

a Maryland limited liability company

By: 

Robert Paul Hillerson

Title: Managing Member

Date: 9/14/10

MONTGOMERY COUNTY, MARYLAND

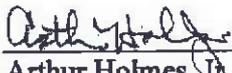
By: 

Diane Schwartz-Jones

Assistant Chief Administrative Officer

Date: 9/24/10

RECOMMENDED BY:

By: 

Arthur Holmes, II

Director, Department of Transportation

Date: 16 SEPT 10

**APPROVED AS TO FORM AND
LEGALITY:**

OFFICE OF THE COUNTY ATTORNEY

By: 

John J. Fisher

Associate County Attorney

Date: 9/16/10