

Falkland North (Locational Atlas Resource #36/12-b), Site Plan, 820120050, Action-Locational Atlas

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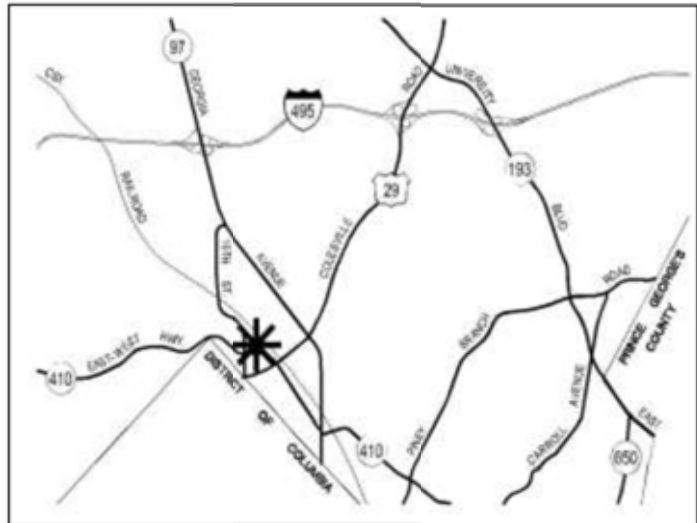
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Date of Report: 1/9/12

### Description

- Located in the northeast corner of the intersection of 16<sup>th</sup> Street and East-West Highway in the Silver Spring CBD.
- CBD-R1, 9.77 acres.
- Site Plan for a multi-building mixed-use development with a total of 1,276,329 sf., including 70,000 sf. of retail and 1,250 multi-family and townhouse dwelling units (including 12.5% MPDUs and 4.72% Workforce Housing Units)
- An expanded Forest Conservation Variance for 8 trees on the historic South Parcel
- Removal of the existing resource from Locational Atlas upon approval of Site Plan No. 820120050



### Summary

- The site plan fulfills the design and functional elements of the project and preliminary plan to develop an attractive, compatible mixed used development at the edge of the CBD.
- **Staff recommends approval of Site Plan No. 820120050, including the expanded Forest Conservation Variance, as conditioned.**
- Planning Board Resolution MCPB No. 08-151, dated December 29, 2008, required the Planning Board to remove from the Locational Atlas the North Parcel of the Falkland Chase apartments upon approval of a site plan or plans for the entirety of the North parcel.
- **Staff recommends that the Planning Board act to remove the North Parcel of the Falkland Chase apartments (LA #36/12-b) from the Locational Atlas and Index of Historic Sites in Montgomery County, Maryland upon approval of Site Plan Review No. 820120050, Falklands North.**

<b>TABLE OF CONTENTS</b>	
<b>SITE DESCRIPTION</b>	<b>3</b>
Vicinity	3
Site Analysis	3
<b>PROJECT DESCRIPTION</b>	<b>5</b>
Previous Approvals	5
Proposal	6
<b>PROJECT ANALYSIS</b>	<b>15</b>
Sector Plan	15
Transportation & Circulation	15
Environment	16
Development Standards	19
Community Outreach	21
<b>FINDINGS</b>	<b>21</b>
<b>RECOMMENDATION &amp; CONDITIONS</b>	<b>23</b>
<b>LOCATIONAL ATLAS ACTION</b>	<b>27</b>
<b>APPENDICES</b>	<b>27</b>
<b>ILLUSTRATIONS &amp; TABLES</b>	
<i>Vicinity Map</i>	3
<i>Parcel Map</i>	4
<i>Aerial Photograph</i>	4
<i>Aerial Site Perspective</i>	6
<i>Site Plan</i>	7
<i>Public Use &amp; Amenity Space</i>	8
<i>Open Space Concept</i>	9
<i>Public Plaza Plan &amp; Perspective</i>	10
<i>Public Garden Plan &amp; Perspective</i>	11
<i>South Parcel Stream Restoration Area Plan</i>	12
<i>Site Perspective from 16<sup>th</sup> Street</i>	13
<i>Perspective Views along Falkland Lane</i>	14-15
<i>Forest Conservation Variance Trees to be Retained</i>	17
<i>Project Data Table</i>	20

## SITE DESCRIPTION

### Vicinity

The subject property is located in the northeast quadrant of the intersection of 16<sup>th</sup> Street and East-West Highway (MD 410) at the edge of the Silver Spring CBD. The adjacent uses consist primarily of multi-family residential dwellings, including low-rise walk-up garden apartments and high-rise buildings, but also include an office building, single-story retail uses, and approval for a multi-family residential project on the current post office site, as well as the CSX, Metro, and future Purple Line tracks to the northeast. The site is within walking distance of the Silver Spring Metro and MARC commuter rail stations, as well as the future Transit Center and Capital Crescent Trail.



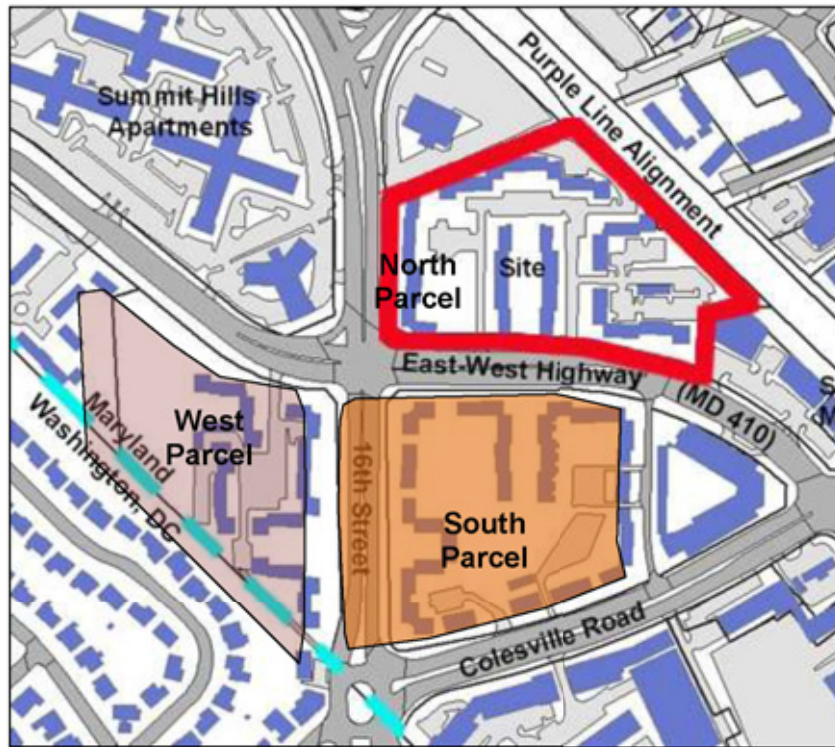
*Vicinity Map*

The larger Falklands residential community consists of three parcels distributed about the intersection of East-West Highway and 16<sup>th</sup> Street. The North Parcel, the subject site, is located in the northeast quadrant; the South Parcel in the southeast quadrant; and the West Parcel in the southwest quadrant.

### Site Analysis

The property is currently developed with multi-family housing and has no forest. However the site contains numerous trees, many of which are significant or specimen in size. There are no streams or wetlands onsite but there is an ephemeral channel which appears to have historically sustained a stream flow. The hydrology in the vicinity has been altered by development and extensive grading for the adjacent railroad corridor. The channel currently does not meet stream definition and is not buffered. The site is located within the Rock Creek watershed, a use I watershed<sup>1</sup>.

<sup>1</sup> Waters that are suitable for: water contact sports; play and leisure time activities where the human body may come in direct contact with the surface water; fishing; the growth and propagation of fish (other than trout); other aquatic life, and wildlife; agricultural water supply and industrial water supply.



*Parcel Map*



*Aerial Photo Looking North*

## PROJECT DESCRIPTION

### Previous Approvals

On November 3, 2006, the Applicant submitted Project Plan 920070080 for a 1,157,757 square-foot mixed-use development at this location that included 1,020 multi-family dwelling units and 62,000 sf. of retail uses in the CBD-R1 zone. Pursuant to section 24A-10 of the County Code (historic preservation ordinance: moratorium on alteration or demolition), when the property owner submitted a project plan application for the redevelopment of the site's north parcel, the Planning Board evaluated the historical and architectural significance of the Falkland Apartments. On December 6, 2007, after finding all three of the site's parcels eligible for designation in the Master Plan for Historic Preservation, the Board directed Planning staff to initiate an amendment to that Master Plan.

On September 4, 2008, the Planning Board approved the *Planning Board Draft Amendment to the Master Plan for Historic Preservation: Falkland Apartments, #36/12*. The amendment recommended that the Falkland Apartments' south and west parcels be added to the Master Plan. Faced with the challenge of weighing the benefits of historic preservation with those related to other planning objectives, the Board found that the north parcel did not merit designation because greater public benefit could be achieved through the redevelopment of the north parcel than by the parcel's designation. The Board did retain the north parcel on the *Locational Atlas* until such time as a site plan(s) for the entirety of the north parcel were approved (see page 27). The County Council approved the Falkland Apartments amendment on March 31, 2009, thereby adding the south and west parcels of the Falkland Apartments to the Master Plan for Historic Preservation.

Pursuant to this decision the Applicant entered into a Declaration of Restricted Covenant with M-NCPPC specifying certain proffers and expectations incumbent upon the submission of a revised proposal (Appendix A). These include, among other provisions:

- 4.72% of the final number of approved dwelling units will be subject to the County's Workforce housing law for a period of 20 years, and an equivalent number must be provided as Workforce housing off-site within the larger Falkland residential community for a period of 20 years.
- As an off-site public amenity, the Applicant must restore and beautify the stream area on the South Parcel.
- All new buildings shall at a minimum earn a LEED-Silver certification.
- Street frontage, use, and architectural review, to be applied at Site Plan.
- Requirements for the bedroom mix of residential units.

On November 18, 2010, the Planning Board approved a revised Project Plan 920070080, and a new Preliminary Plan 120070560, for a multi-building mixed-use development with a total of 1,276,329 square feet, including 70,000 sf. of retail and 1,250 multi-family and townhouse dwelling units (including 12.5% MPDUs and 4.72% Workforce Housing Units). The preliminary forest conservation plan and associated variance request was also approved by the Planning Board at that time.

A Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) #420110500 for the site was approved on October 20, 2011.

## Proposal



*Aerial Site Perspective*

### Land Use and Site Design

The proposed development remains unchanged from the approved Project Plan and would provide a multi-building mixed-use development with a total of 1,276,329 sf., including 70,000 sf. of retail and 1,250 multi-family and townhouse dwelling units (including 12.5% MPDUs and 4.72% Workforce Housing Units). Each of the four proposed buildings will be oriented to a street, either the perimeter public streets or a proposed private internal street, and will include residential units. Those buildings along East-West Highway will include ground-floor retail accessible from the sidewalk or open space. Parking will be provided along the internal private street and in underground garages.



*Site Plan*

Vehicular and Pedestrian Circulation

Vehicular access through the site consists of a private loop road along the eastern and northern perimeter of the site and a second, more central, private street. The loop road provides access for service and underground parking and connects from a new signalized intersection at the eastern-most corner of the site along East-West Highway to a right-in/right-out intersection on 16<sup>th</sup> Street. Each of these intersections is shared with the adjoining existing properties. Falkland Lane, the second internal private street, runs between East-West Highway, west of the loop road entrance, and the loop road near the 16<sup>th</sup> Street intersection. Falkland Lane provides access to the main on-site public spaces, as well as to on-street parking and residential loading and underground parking.

Pedestrian access to and within the site will be provided from the public sidewalks along the adjoining and intersecting public and private streets, as well as internal paths and walkways.

## Public Amenities and Open Space



*Public Use and Amenity Space*

The proposed development would provide a minimum of 65,091 sf. of on-site public use space (20% of the net lot area), including a public plaza, a public garden, and pedestrian areas, and 70,742 sf. of off-site public amenity space (21.7% of the net lot area), including streetscape improvements along East-West Highway and 16<sup>th</sup> Street, and a major stream restoration in an area on the adjacent South Parcel.

The design's open space concept links the North and South parcels of the Falklands through both this series of landscaped spaces and the placement of buildings on the North Parcel. The landscaped spaces begin at the northern end of the site in a series of private elevated courtyards and flow literally downhill through the public plaza and garden, and under East-West Highway to the restored stream area on the South Parcel.





*Open Space Concept*



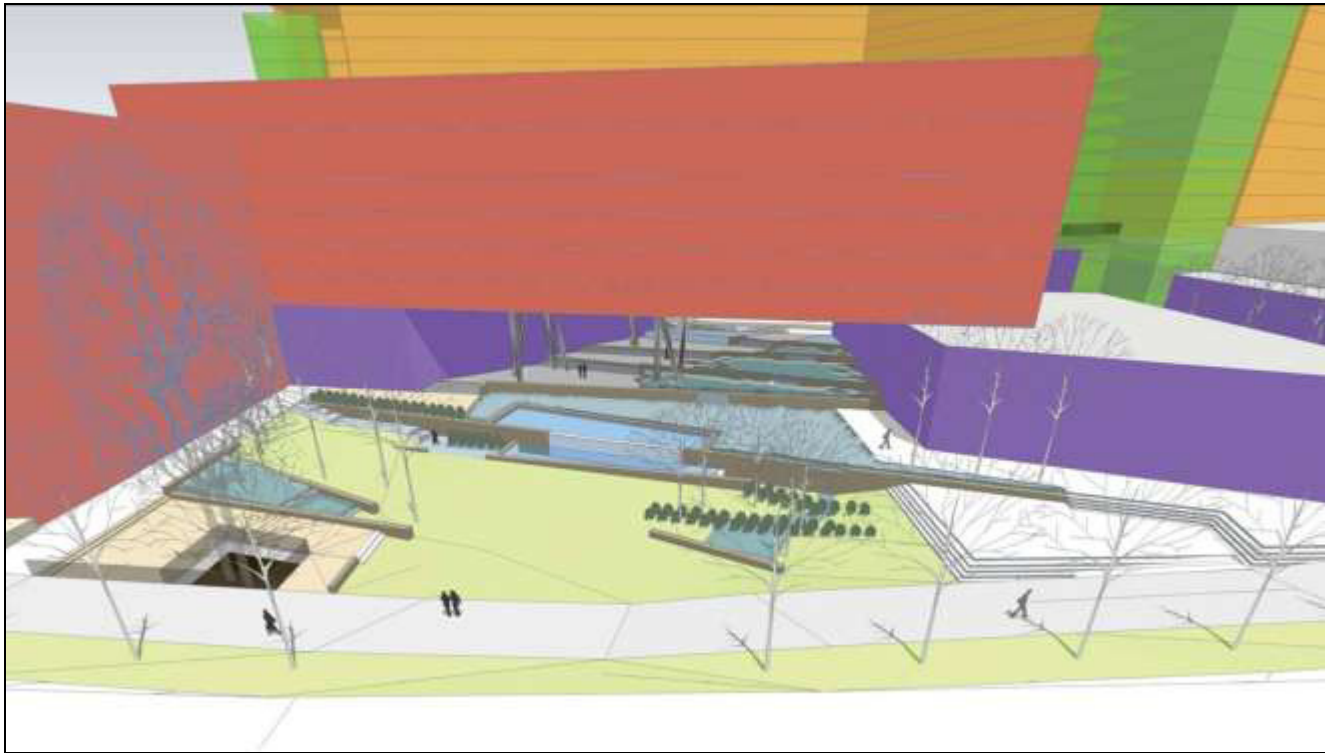
*Public Plaza, Plan View*



*Public Plaza, Perspective View*



*Public Garden, Plan View*



*Public Garden, Perspective View*



*South Parcel Stream Restoration Area, Plan View*

Architecture

The design is innovative and exemplary, with expressive use of both traditional and contemporary materials.



*Perspective View from 16<sup>th</sup> Street*



*Perspective up Falkland Lane*



*Perspective along Falkland Lane, with Public Plaza*



*Perspective along Falkland Lane, Rowhouse Entry Detail*

### Tree Variance

As discussed in greater detail in the analysis section to follow, the Applicant is also requesting an expanded Forest Conservation Variance for 8 trees located on the South Parcel that will be impacted by improvements to East-West Highway and 16<sup>th</sup> Street.

## **PROJECT ANALYSIS**

### **Sector Plan**

The Sector Plan provides for the development of Downtown Silver Spring under the following themes: Transit-Oriented, Commercial, Residential, Civic, Green and Pedestrian Friendly. The Falkland North project is in line with these themes as it provides for mixed-use development (commercial and residential) with significant public amenities in close proximity to the Silver Spring Transit Center. It furthers the Plan's goals of creating a mix of housing choices supported by parks, retail, civic uses and employment opportunities adjacent to transit and with convenient access to the greater region.

### **Transportation and Circulation**

A local area transportation review (LATR) and a policy area mobility review (PAMR) were completed as part of the Preliminary Plan review. The review found that the proposed new traffic would be below the applicable congestion standard for the Silver Spring CBD and, therefore, satisfied LATR. Similarly, the Preliminary Plan satisfied PAMR because the trip mitigation being provided by virtue of the CBD-area project site was more than the PAMR trip mitigation requirement for the Silver Spring CBD Policy Area.

The Applicant has been working closely with the State Highway Administration (SHA) regarding improvements to East-West Highway and 16<sup>th</sup> Street, both state roads.

## **Environment**

### Forest Conservation and Tree-Save

The County land use policy is to concentrate development near metro stations and other mass transit locations. The site is located less than 1,000 feet from a metro station/transit center. Therefore most of the trees on the site were anticipated for removal. However the potential to preserve five trees near the existing drainage channel was identified at the time of preliminary forest conservation plan approval. A variance to remove these five trees was granted, however it was noted that retention of the trees might be possible, dependent on design details to be determined at site plan.

Condition 2 of the Preliminary Plan approval required detailed and specific tree preservation measures. The present plans still do not have the required details for the preservation measures but states that every attempt will be made to protect two of the five trees identified for potential preservation. The currently recommended conditions of approval require that the necessary level of tree preservation details and specifications be provided by Certified Site Plan.

Additionally, due to the increased offsite limit of disturbance (LOD) for the pedestrian modifications along the state roads, the net tract area and the afforestation requirements have also increased. The current afforestation planting requirement of 1.38 acres will be met offsite by a fee-in-lieu payment or by purchasing the equivalent credits in an offsite forest conservation bank. Satisfying the requirements offsite is consistent with the preliminary forest conservation plan which specifies "Afforestation requirements will be met by offsite mitigation".

### Forest Conservation Variance

Section 22A-12(b) (3) of Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection. Any impact to these trees, including removal of the subject tree or disturbance within the tree's critical root zone (CRZ), requires a variance. Specifically, the law requires that, without a variance, no impact can occur to trees that:

- measure 30 inches DBH or greater;
- are part of a historic site or designated with a historic structure;
- are designated as national, state, or county champion trees;
- are at least 75 percent of the diameter of the current State champion tree of that species; or
- that are trees, shrubs, or plants designated as Federal or State rare, threatened, or endangered species.

The proposed project includes disturbance within the CRZ of several trees which are subject to the variance provisions due to their size measuring 30 inches DBH or greater, or because the affected trees are part of a historic site (some trees are under both categories).

On November 18, 2010 the Planning Board approved a preliminary forest conservation plan and associated variance request for removal of 25 trees on the North Parcel. This approval did not include 8 trees located on the historic South Parcel that would be impacted by improvements the Applicant would be undertaking on East-West Highway and 16<sup>th</sup> Street. The impact to any tree associated with a historic site is subject to a variance. Additionally, the pedestrian modifications impact a 38" DBH tree in the right of way (ROW) which is not technically associated with the historic property, but is still subject to a variance based on its size. Therefore the pedestrian modifications trigger variance



requirements beyond the scope of the previous request granted by the Planning Board at the time of Preliminary Plan. The Applicant therefore submitted an updated variance request on December 21, 2011, for impacts to, but not removal of, the subject trees (see Appendix B).

**Table 1: Subject Trees to be impacted but retained**

TREE NUMBER	EX TREE TAG NUMBER	DBH	TYPE	CONDITION	Percent of CRZ Impacted with LOD
1		31"	Red Oak	Fair	1%
3		38"	Elm	Fair	7%
4	115	18"	Linden	Good	5%
15	107	15"	Linden	Good	7%
17	106	28"	Cherry	Poor	15%
18	105	15"	Linden	Good	11%
19	104	16"	Linden	Good	17%
20	103	16"	Linden	Good	17%

An Applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. The Applicant has offered the following justifications of the current variance request:

- (1) *Describe the special conditions peculiar to the property which would cause the unwarranted hardship;*

**Applicants’ response:** “As evidenced in the Approvals, redevelopment of the Property, which is zoned CBD-R1, and is located within 800 feet of the entrance to the Silver Spring metro station and within the Silver Spring Central Business District and Silver Spring CBD Metro Policy Area, will achieve the objectives and intent of the Silver Spring CBD Sector Plan (the “Sector Plan”). See Sector Plan, pp. 16, 69, 111. Associated with this redevelopment, the Planning Board, the Montgomery County Department of Transportation, and Planning Staff have determined that certain off-site improvements within the East-West Highway and 16<sup>th</sup> Street rights-of-way are appropriate, and are recommending that completion of these improvements be made a condition of approval of the Application. The Applicant is therefore in the unique position of needing the Variance to comply with the Approvals and the proposed conditions of approval of the Application.”

Staff notes that right-of-way (ROW) modifications are necessary to satisfy the requirements of the State Highway Administration (SHA) and the previous Planning Board conditions of approval (December 14, 2010, Resolution, condition of approval item10). Furthermore, staff notes that these modifications and the associated LOD are generally confined within the established ROW to allow such modifications to occur. Therefore Staff agrees that there is an unwarranted hardship.

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

**Applicants’ response:** “The inability to impact the subject trees would deprive the Applicant of the right to comply with its conditions of approval requiring right-of-way improvements.”

During review of the plans, the engineering consultant redesigned the initially proposed right-of-way (ROW) modifications to reduce the LOD. The changes avoided the originally proposed removal of a subject tree and minimized the impacts to other subject trees. Based on the review of the application, consideration for the ROW, and further refinement of the plans which has occurred, staff agrees that enforcing the rules would deprive the landowner of rights enjoyed by others in similar areas.

- (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;*

***Applicant's Response:*** "The Subject Trees are not within a stream buffer, wetland, or special protection area, and impacts to these trees will not affect water quality. As part of the Application, the Applicant has prepared a Final Forest Conservation Plan ("FFCP") and has an approved Stormwater Management Concept Plan. The Property currently contains no stormwater management on-site and the provision of stormwater facilities as part of the redevelopment of the Property will significantly improve the stormwater quality on the Property and in the adjacent area. Additionally, the FFCP includes the provision of significant new landscaping and green areas, and will actually increase porosity on the Property, improving water quality both on site and in the adjacent area."

Staff concurs with the Applicant's response.

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

***Applicants' Response:*** "As noted above, impacts to the Subject Trees are proposed to be minimal and will not have any adverse impacts on the survivability of the Subject Trees."

Staff concurs with the Applicant's response.

In accordance with Montgomery County Code Section 22A-21(c), the Planning Department is required to refer a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a recommendation prior to acting on the request. The request was forwarded to the County Arborist on December 22, 2011. The County Arborist issued a response to the variance request on December 27, 2011, and recommended the variance be approved with the condition that mitigation is provided (Appendix B). Additionally, the County Arborist provided general recommendations which include reducing the magnitude of the permanent impacts to CRZs by implementing temporary protective matting.

The trees subject to this variance (to be impacted but retained) are excellent candidates for safe retention and will receive adequate tree protection measures. No mitigation is recommended by M-NCPPC staff for trees impacted but retained.

#### Noise Analysis

Preliminary Plan approval Condition 3 referenced a requirement for a noise analysis for the existing and 20 year projected noise levels, and methods needed to bring the exterior and interior noise to acceptable levels. The submitted noise analysis suggests that the mitigation for interior noise can be achieved by upgrades to window and walls of the proposed buildings.

However, no reference was made in the analysis for the mitigation of the exterior public use space. As there are potential conflicts between exterior noise mitigation strategies and the realities and priorities for open space in urban areas, staff will continue to work with the Applicant team to develop strategies to mitigate noise levels in the public use space areas.

Staff has included recommended conditions regarding mitigation of projected noise levels for the interior and exterior spaces.

#### Stormwater Management

The Stormwater Management Concept approved by DPS on September 13, 2010, during the Project Plan Review remains valid.

#### **Green Space**

The 2010 *Green Space Guidelines for the Silver Spring Central Business District* identifies the stream valley at the Falklands as a high-priority green space. The restoration, preservation, and beautification of the stream valley offer a unique opportunity to create a truly natural park within an urban environment.

#### **Development Standards**

The subject site is zoned CBD-R1. This zone is intended for use in Central Business Districts where predominantly residential development is appropriate and compatible with adjacent existing and planned uses. The zone allows the proposed use. The proposed development meets the purpose and requirements of the zone as detailed in the Findings section of this report.

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

*Project Data Table for the CBD-R1 Zone*

<b>Development Standard</b>	<b>Permitted/ Required</b>	<b>Approved per Project &amp; Preliminary Plan</b>	<b>Proposed for Site Plan Approval</b>
Gross Tract Area (sf.)	18,000	425,443	425,443
Previous Dedications (sf.)		96,597	96,597
Proposed Dedications (sf.)		3,037	3,392*
Net Lot Area (sf.)		325,809	325,454
Maximum Density (FAR)	3	3	3
Maximum Density, total (sf.)	1,276,329	1,276,329	1,276,329
Maximum Density, non-residential (FAR)	0.6	0.16	0.16
Maximum Density, non-residential (sf.)	255,266	70,000	70,000
Maximum Dwelling Units, total		1,250	1,250
Minimum MPDU (%)	12.5	12.5	12.5
Minimum MPDUs (du)		157**	157**
Minimum Workforce Housing (%)	N/A	4.72***	4.72***
Minimum Workforce Housing (du)		59**	59**
Building Height, Maximum (ft.)	143	143	143
Building Setback, Minimum	N/A	0	0
Parking Spaces, Maximum	1,672	1,672	1,672
On-Site Public Use Space, Minimum (% of NLA)	20	20	20
On-Site Public Use Space (sf.)	65,091*	65,545	65,091
Off-Site Public Amenity Space (% of NLA)		21.4	21.7
Off-Site Public Amenity Space (sf.)		70,159	70,742

\* per additional dedication for public sidewalk along East-West Highway

\*\* final number of MPDUs and WFHUs will depend on the final number of units

\*\*\* as required and limited by the Declaration of Restrictive Covenant

## COMMUNITY OUTREACH

The Applicant has met all proper signage, noticing, and submission meeting requirements. Staff has not received correspondence on this matter.

## 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 is consistent with the approved Project Plan 920070080 in every respect, including scope and design.

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 uses are allowed in the CBD-R1 Zone, and the site plan fulfills the purposes of the zone by providing predominantly residential development compatible with adjacent residential uses in the Silver Spring Central Business District.

As the project data table on page 20 indicates, the site plan meets all of the development standards of the zone. With respect to building height, setbacks, and density the proposed development is under all the standards allowed. With respect to public space and amenities, the proposed development provides a total of over 40 percent of the net lot area, allowing for a greater amount of permeable surface and landscaped open space.

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 are located on the site so as to frame the public spaces within and along the site, including streets, the public plaza, and the public garden. The locations of the buildings and structures are adequate and efficient, while meeting the aesthetic concerns of the area, and do not pose any safety concerns on the site.

The site plan provides a variety of open spaces, including private streets, private landscaped terraces, a public plaza, a public garden, and an off-site restored stream area. Street trees, streetscape paving, and lighting enhance the pedestrian environment. Interior lighting will create enough visibility to provide safety but not so much as to cause glare on the adjacent roads or properties. These spaces provide a diversity of recreational opportunities on site. The open spaces, landscaping, and site details adequately and efficiently address the needs of the proposed use and the recommendations of the Sector Plan, while providing a safe and comfortable environment.

Pedestrian access from adjacent sidewalks adequately and efficiently integrates this site into the surrounding area. Safety is enhanced by streetscape improvements and activating uses

located along the sidewalks. The vehicular circulation design efficiently directs traffic into and through 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 mixed-use development is compatible with the adjacent and confronting uses. The multi-family residential uses reflect the land use pattern along East-West Highway and 16<sup>th</sup> Street west of the train tracks, and the retail and commercial uses extend naturally from the existing shops and services adjacent to the metro station.

The structures themselves are in scale with the nearby buildings and are located such that they will not adversely impact existing or proposed adjacent uses. The taller buildings occupy the outer edges of the site, adjacent to the taller buildings across the rail tracks in the CBD core, as well as the taller multi-story buildings across 16<sup>th</sup> Street. Along East-West Highway, the building heights step down to be more in scale with the lower-rise garden apartments south of East-West Highway.

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 project is subject to the requirements of the forest conservation law. As conditioned, the proposal satisfies the requirements. With regard to the expanded Forest Conservation variance, Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made by the Planning Board or Planning Director, as appropriate, in order for a variance to be granted.

- a. *The requested variance will not confer on the Applicant a special privilege that would be denied to other Applicants.*

The currently proposed impacts are associated with required ROW modifications where such impacts are anticipated. The design within the ROW and the associated disturbance were minimized and the subject trees will be appropriately retained. Therefore, the variance request would be granted to any Applicant in a similar situation.

- b. *The requested variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

The requested variance is based on the ROW modification requested by SHA and conditioned by the Planning Board.

- c. *The requested variance is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*

The requested variance is a result of the current application on the subject property and is not related to land or building use on a neighboring property.

- d. *The requested variance will not violate State water quality standards or cause measurable degradation in water quality.*

The Department of Permitting Services (DPS) staff approved the storm water management (SWM) concept for the project on September 13, 2010. The DPS review and ultimate approval of the sediment and erosion control and storm water management plans will ensure that appropriate standards are met. The property currently contains no storm water management on site, and the construction of storm water facilities as part of the redevelopment should improve the water quality. Therefore, the project will not violate State water quality standards or cause measurable degradation in water quality.

As stated above, the proposed development is subject to the water quality resources protection requirements and has an approved stormwater management concept dated September 13, 2010.

## **RECOMMENDATION AND CONDITIONS**

Staff recommends approval of site plan 820120050, Falkland North, for a multi-building mixed-use development with a total of 1,276,329 sf., including 70,000 sf. of retail and 1,250 multi-family and townhouse dwelling units (including 12.5% MPDUs and 4.72% Workforce Housing Units) on 9.77 gross acres, as well as of the expanded Forest Conservation Variance. All site development elements shown on the site and landscape plans stamped “Received” by the M-NCPPC on January 9, 2012, are required except as modified by the following conditions.

### **Conformance with Previous Approvals**

1. Project Plan Conformance

The proposed development must comply with the conditions of approval for Project Plan 920070080 as listed in the Planning Board resolution dated December 13, 2010, unless amended.

2. Preliminary Plan Conformance

The proposed development must comply with the conditions of approval for preliminary plan 120070560 as listed in the Planning Board Resolution dated December 14, 2010, unless amended. This includes but is not limited to all references to density, rights-of-way, dedications, easements, transportation conditions, Department of Transportation conditions, and Department of Permitting Services stormwater conditions.

### **Environment**

3. Forest Conservation & Tree Save

The proposed development must comply with the conditions of the approved preliminary forest conservation plan or tree save plan. The Applicant must satisfy all conditions prior to the recording of a plat(s) or to the issuance of sediment and erosions control permits by the Montgomery County Department of Permitting Services.

- a. An approved Final Forest Conservation Plan which addresses the conditions of approval must be obtained prior to any clearing, grading or demolition within the project area.
- b. Revise the Final Forest Conservation Plan to include detailed and specific tree protection measures (to be prepared by a certified arborist) for all impacted trees to remain. The recommendations are especially needed for trees #3, C & D.
- c. The fee-in-lieu payment or certificate of compliance which satisfies the 1.38 acre afforestation requirements must be submitted by the Applicant and be approved by M-NCPPC staff prior to land disturbing activities occurring onsite.
- d. Remove the landscape and lighting sheets L-100, L-701, L-703, L-780, and L-781 from the current application or add bold notes to the sheets stating “future phase under separate application” or similar.
- e. Applicant to obtain services of a Maryland Licensed Tree Expert to perform the required tree preservation measures and appropriately protect the save trees.
- f. Inspections must occur consistent with Section 22A.00.01.10 of the Forest Conservation Regulations.

4. Noise Attenuation

The Applicant’s acoustical engineer must certify, after construction is complete and before final occupancy, that interior noise levels will not exceed 45 dBA Ldn. The builder commits to construct the units in accord with these design specifications, with any changes that may affect acoustical performance approved by the acoustical engineer in advance of installation.

5. LEED Certification

As stipulated in the *Declaration of Restrictive Covenant*, for each building the Applicant must achieve a LEED (Leadership in Energy and Environmental Design) Silver Rating Certification at a minimum. The Applicant must make good faith efforts to achieve a LEED Gold rating. Before the issuance of any use and occupancy certificate of each building, the Applicant must inform M-NCPPC staff of the LEED Certification Level for which they are applying. If this level is less than a Gold rating, before the issuance of the final use and occupancy certificate the Applicant must provide to staff a written report for public record purposes only from the Applicant’s LEED consultant analyzing the feasibility of achieving a LEED-Gold rating, to include an affidavit from a LEED-Accredited Professional identifying the minimum additional improvements required to achieve the LEED Gold rating, including their associated extra cost. Submission of this report constitutes compliance with this condition.

**Public Space and Amenities**

6. Public Use Space and Amenities

- a. The Applicant must provide a minimum of 20% of the net lot area for on-site public use space and a minimum of 21.7% of the net lot area for on and off-site public amenity space.
- b. The proposed public use space and amenities must be easily and readily accessible to the general public and available for public enjoyment.

7. Maintenance of Public Amenities

The Applicant is responsible for maintaining all publicly accessible amenities, except as assumed by another entity.



## **Transportation & Circulation**

8. Coordination with State Highway Administration  
Before issuance of the first building permit, the Applicant must satisfy all State Highway Administration design requirements related to pedestrian safety improvements at the East-West Hwy/16<sup>th</sup> St. intersection.
9. Bike Share  
The Applicant must identify an 8 feet x 40 feet area on the site (as a public access easement) to accommodate a future bike-share station on the site.

## **Density & Housing**

10. Affordable Housing
  - a. The proposed development must provide 12.5 percent MPDUs.
  - b. The MPDU agreement to build shall be executed prior to the release of any building permits.
  - c. The proposed development must provide Workforce Housing in accordance with the Declaration of Restrictive Covenant.

## **Site Plan**

11. Architecture  
The exterior architectural character, proportion, materials, and articulation for each building must be substantially similar to the schematic elevations shown in the Certified Site Plan set, as determined by M-NCPPC Area One Division staff.
12. Lighting
  - a. The lighting distribution and photometric plan with summary report and tabulations must conform to the Illuminating Engineering Society of North America (IESNA) standards for residential/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.
13. 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 Site Plan Surety & Maintenance 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.

#### 14. 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. Street lamps and sidewalks associated with each phase must be installed within six months after street construction within that phase is completed. Street tree planting may wait until the next growing season.
- b. On-site amenities associated with each phase including, but not limited to, sidewalks, benches, trash receptacles, and bicycle facilities must be installed prior to release of any building occupancy permit for that phase.
- c. Clearing and grading associated with each phase 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. Landscaping, lighting, pedestrian pathways, and seating areas associated with each phase must be completed as construction of the phase is completed.
- e. The development program must provide phasing of dedications, stormwater management, sediment and erosion control, afforestation, trip mitigation, and other features.
- f. The off-site stream area improvements located on the Falkland South Parcel must be completed before issuance of the building permit for the last building on Falkland North. The Development Program should also include timing of all required reviews and permits for this off-site improvement, including, but not limited to, Historic Area Work Permit, Forest Conservation Plan, and Stormwater Management Concept.

#### 15. 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.
- e. Final details for the south parcel stream valley renovation.
- f. For exterior public use space, provide for staff approval the details of noise mitigation techniques to attenuate projected noise levels in excess of 65 dBA Ldn.
- g. Provide architectural elevations for each building
- h. Include calculations for compliance with the Montgomery County Recreation Guidelines.
- i. Show final curb radii for all of the site driveways and other internal roads.

- j. Demonstrate compliance with the “Proposed Development Commitments” contained within the *Declaration of Restrictive Covenant*, including, but not limited to:
  - a. minimum bedroom distribution;
  - b. Workforce housing on the south and west parcels;
  - c. Woodleaf Apartments accommodations;
  - d. North parcel tenant relocation program

### LOCATIONAL ATLAS ACTION

The Planning Board created the *Locational Atlas* in 1976, and from time to time updates the *Atlas* by adding or removing resources. On September 4, 2008, the Planning Board approved the *Planning Board Draft Amendment to the Master Plan for Historic Preservation: Falkland Apartments, #36/12*. The amendment recommended that the Falkland Apartments’ south and west parcels be added to the Master Plan. Faced with the challenge of weighing the benefits of historic preservation with those related to other planning objectives, the Board found that greater public benefit would be achieved through the redevelopment of the north parcel than by the parcel’s designation in the Master Plan. The Board retained the north parcel on the *Locational Atlas* until such time as the Board approves a site plan or plans for the entirety of the north parcel. Planning Board Resolution No. 08-151, dated Dec 29, 2008, issued upon their action on the historic designation of the Falkland Apartments states in part:

...the Planning Board vote to remove the North Parcel from the Locational Atlas **automatically** [emphasis added] upon the approval of a site plan application or applications for the redevelopment of the entirety of the north parcel...

NOW, THEREFORE, BE IT RESOLVED that the North Parcel of the Falkland Chase apartments will be removed from the Locational Atlas **automatically** [emphasis added] upon approval of a site plan application...

The County Council approved adding the south and west parcels of the Falkland Apartments to the Master Plan for Historic Preservation on March 31, 2009. Consistent with the Board Resolution and the Council action, staff finds that the Planning Board should take action to remove the Falkland Apartments North Parcel (#36/12-B) from the *Locational Atlas* upon the approval of Site Plan Review No. 820120050.

### APPENDICES

- A. Declaration of Restrictive Covenant
- B. Forest Conservation Variance documents
- C. Project and Preliminary Plan Resolutions
- D. Agency Letters
- E. Planning Board Resolution No. 08-151, December 29, 2008
- F. Final Forest Conservation Plan

A. Declaration of Restrictive Covenant

## DECLARATION OF RESTRICTIVE COVENANT

THIS DECLARATION OF RESTRICTIVE COVENANT (this "**Declaration**") is made this 2<sup>nd</sup> day of August, ~~2008~~<sup>2009</sup>, by **HOME PROPERTIES FALKLAND CHASE, LLC**, a Delaware limited liability company, formerly known as Falkland Partners, LLC ("**Declarant**"), for the benefit of the **MARYLAND-NATIONAL CAPITAL PARKING AND PLANNING COMMISSION**, a body corporate and politic created and existing under the laws of the State of Maryland (the "**Planning Commission**").

### R E C I T A L S:

- A. Declarant is the fee simple owner of a parcel of land located in Montgomery County, Maryland described on Exhibit "A" to this Declaration (the "**North Parcel**"). The North Parcel is part of a larger tract of land owned by Declarant.
- B. The North Parcel is currently improved by several apartment buildings (the "**North Parcel Buildings**") and related facilities.
- C. The North Parcel and North Parcel Buildings are identified as an historic resource in the Locational Atlas and Index of Historical Sites in Montgomery County, Maryland (the "**Historical Atlas**") maintained by the Planning Commission in accordance with Chapter 24A of the Montgomery County Code. As such, the North Parcel and North Parcel Buildings are subject to being included as an historic site in the Master Plan for Historic Preservation adopted by Montgomery County (the "**Historical Master Plan**").
- D. Declarant has filed with the Montgomery County Planning Board of the Planning Commission (the "**Planning Board**") an application for approval of a project plan and preliminary subdivision plan providing for the redevelopment of the North Parcel. Declarant intends to amend such plans and file a site plan covering the entire North Parcel (collectively, the "**Revised Development Plans**") in connection with such redevelopment. The redevelopment of the North Parcel in accordance with the Revised Development Plans will necessarily require the removal of the North Parcel and North Parcel Buildings from the Historical Atlas, the elimination of the North Parcel and North Parcel Buildings from consideration for designation in the Historical Master Plan, and the actual demolition of the North Parcel Buildings. Declarant, in an effort to demonstrate that redevelopment of the North Parcel will provide substantial public benefits, shall proffer as part of its application for Planning Board approval of the Revised Development Plans the commitments by Declarant described in Exhibit "B" to this Declaration (the "**Proposed Developer Commitments**"). The Planning Board has adopted a resolution providing that if and when the Revised Development Plans are approved by the Planning Board, with or without condition, the North Parcel and North Parcel Buildings shall automatically be removed from the Historical Atlas, without the requirement of any further action by the Planning Board (except ministerial action to confirm and implement the removal).
- E. In furtherance of its contemplated redevelopment of the North Parcel and to maintain the current status of the North Parcel while the Revised Development Plans are being prepared and processed, Declarant is willing to make certain voluntary covenants for the benefit of the Planning Commission as set forth below in this Declaration.

NOW, THEREFORE, in consideration of the above Recitals and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Declarant declares and covenants as follows:

1. During the Forbearance Period (defined below), Declarant shall not demolish or substantially alter the exterior features of the North Parcel Buildings, including by neglect, without the prior approval of the Planning Board, except as may be reasonably necessary in the case of fire or other casualty, condemnation, or unsafe or hazardous condition or in connection with the construction or planned construction of public improvements on or about the North Parcel, including, without limitation, any public transit facilities. **“Forbearance Period”** means the period that (a) commences upon the date that the Revised Development Plans are finally approved (beyond appeal) by the Planning Board, and the North Parcel and North Parcel Buildings are removed from the Historical Atlas without having been included in the Historical Master Plan, and (b) terminates upon the earliest to occur of the following: (i) issuance of a building permit in connection with the redevelopment of the North Parcel pursuant to the approved Revised Development Plans (the **“Development Commencement Date”**), (ii) ninety (90) days after Declarant notifies the Planning Board in writing that Declarant is abandoning the Revised Development Plans or otherwise abandoning its plans to develop the North Parcel in accordance with the Revised Development Plans (the **“Application Abandonment Date”**), or (iii) June 30, 2018 (the **“Forbearance Period Outside Termination Date”**). Nothing in this Declaration shall be deemed to prevent Declarant from electing at any time not to pursue the Revised Development Plans or not to proceed with the development of the North Parcel in accordance with the Revised Development Plans.

2. Declarant shall have the right, in its sole discretion, to extend the Forbearance Period beyond the Forbearance Period Outside Termination Date from time to time as Declarant may deem appropriate. Such extension shall be effected by Declarant recording an amendment to this Declaration in the Land Records setting forth the extension. In the event of any such extension, Declarant shall promptly furnish a copy of the amendment to the Planning Commission.

3. Despite the foregoing, if (a) neither the Development Commencement Date nor Application Abandonment Date have occurred by the end of the Forbearance Period, (b) Declarant has determined not to extend the then applicable Forbearance Period Outside Termination Date, and (c) this Declaration would otherwise expire on such Forbearance Period Outside Termination Date in accordance with the terms of Paragraph 1 above, this Declaration and the demolition and alteration restrictions applicable during the Forbearance Period shall nonetheless remain in full force and effect and shall automatically be extended until ninety (90) days after Declarant gives written notice to the Planning Commission advising that the Forbearance Period Outside Termination Date has passed without the Development Commencement Date having occurred and that the term of this Declaration will expire ninety (90) days from the date of the notice. Upon any termination of the Forbearance Period in accordance with this Declaration, this Declaration shall be deemed terminated and of no further force or effect, except that Paragraph 15 shall survive termination.

4. Nothing in this Declaration shall be deemed to prohibit or impair, or require the Planning Board’s approval for, (a) any ordinary repairs or maintenance to the exterior of the

North Parcel or North Parcel Buildings, (b) any landscaping work on or about the North Parcel, or (c) any work or alterations to the interior of the North Parcel Buildings.

5. Declarant agrees that the Proposed Developer Commitments may be incorporated by the Planning Board as conditions to approval of the Revised Development Plans and that Declarant shall not object to such conditions, provided that such conditions are not greater in scope or more onerous to Declarant than the Proposed Developer Commitments as stated in **Exhibit "B"**.

6. This Declaration is made for the sole benefit of the Planning Commission and the Planning Commission shall have the sole right to enforce the terms of this Declaration. In the case of any breach or threatened breach of this Declaration, the Planning Commission may exercise any rights or remedies available at law or in equity for such breach, including, without limitation, a suit for specific performance or injunctive relief. No other person or entity may enforce this Declaration or shall have any right or remedy with respect to this Declaration. This Declaration is not intended to create, nor shall it be construed as creating, any rights in or for the benefit of the general public or any tenants of the North Parcel Buildings nor shall it affect or benefit any real property outside of the North Parcel or the owners or tenants of such real property.

7. Declarant acknowledges that the Revised Development Plans remain subject to review and approval by the Planning Commission according to its regulatory processes and that nothing in this Declaration obligates the Planning Commission to grant such approval. This Declaration shall not affect, in any manner whatsoever, any public action, review or approval process involving the Planning Commission or for which the Planning Commission is responsible, including, without limitation, any proceedings under the Subdivision Regulations. No representations or commitments have been made by the Planning Commission or anyone on behalf of the Planning Commission regarding the approval of the Revised Development Plans.

8. The covenants, agreements, rights, benefits, obligations and liabilities created in this Declaration shall be deemed to touch, concern, run with, and be binding upon the land with respect to the North Parcel. This Declaration shall bind Declarant and its successors and assigns and inure to the benefit of the Planning Commission and its successors and assigns (except that the Planning Commission shall not be entitled to assign its right to enforce this Declaration). This Declaration may be amended by an instrument in writing executed by Declarant, its successors or assigns, and recorded in the Land Records. All amendments shall require the written approval of the Planning Commission, except that amendments extending the Forbearance Period Outside Termination Date as provided in Paragraph 2 above shall not require such approval.

9. The liability and obligations of Declarant or any successor under this Declaration shall only apply to Declarant or such successor during the term in which it owns a fee simple interest in the North Parcel. When Declarant or any successor owner of the North Parcel ceases to own a fee simple interest in the North Parcel, the liability and obligations thereafter accruing under this Declaration (but not any accrued and unperformed liability or obligations) shall be the liability and obligations of its transferee in title to the North Parcel.

10. Declarant represents that it has all requisite power and authority to execute, deliver, and perform its obligations under this Declaration. This Declaration constitutes the legal, valid, and binding obligation of Declarant and is enforceable against it in accordance with its terms.

11. The Recitals set forth in this Declaration and all Exhibits attached to this Declaration are incorporated in and made a part of this Declaration.

12. No delay or omission by the Planning Commission in enforcing the provisions of this Declaration shall impair or be construed to be a waiver of any such right of enforcement.

13. This Declaration shall be governed by and construed in accordance with the laws of the State of Maryland, excluding choice of law principles.

14. Each provision of this Declaration is intended to be severable. If any term or provision of this Declaration shall be determined to be illegal or invalid for any reason whatsoever, such provision shall be severed from this Declaration and shall not affect the validity of the remainder of this Declaration.

15. Upon written request by Declarant from time to time, the Planning Commission shall execute, acknowledge, and deliver to Home Properties a written statement certifying to Declarant and/or its transferees or mortgagees that, to the best of its knowledge, information, and belief, there are no outstanding defaults by Declarant under this Declaration (or specifying the details of any default by Declarant outstanding at that time) and addressing such other matters as may be reasonably requested by Declarant, its transferees or mortgagees. In addition, upon any termination of this Declaration, the Planning Commission shall execute, acknowledge, and deliver to Declarant such written instrument, in recordable form, as Declarant may request to confirm the termination of this Declaration and Declarant shall be entitled to record such instrument in the Land Records. Any document submitted by Declarant to the Planning Commission in accordance with this Paragraph shall be executed, acknowledged and delivered by the Planning Commission to Declarant within ten (10) business days after receipt by the Planning Commission. Documents executed by the Planning Commission under this Paragraph may be relied upon by Declarant and any prospective transferee or mortgagee of Declarant.

16. All notices, requests, demands or other communications under this Declaration shall be in writing and deemed given (a) when delivered personally, with signed receipt of delivery, (b) on the day deposited in the U.S. Mail, by registered or certified mail, return receipt requested, postage prepaid, (c) on the day deposited with a recognized overnight courier service which requires signed receipt of delivery (such as Federal Express), or (d) on the day transmitted by fax, provided that notice is also sent the same day by one of the foregoing methods of delivery. In all events, such notices and communications shall be addressed as follows (or to such other address which a party may from time to time hereafter designate by notice given in accordance with this Paragraph):



If to Declarant: Home Properties  
Washington Regional Office  
8229 Boone Boulevard  
Suite 500  
Vienna, Virginia 22182  
Attn: Donald R. Hague, Senior Vice President/Development  
Telecopy No.: (703) 370-7368

with a copy to: Home Properties  
850 Clinton Square  
Rochester, New York 14604  
Attn: Kathleen K. Suher, Esq.  
Telecopy No.: (585) 340-5949

If to Planning Commission: The Maryland-National Capital Park and Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910  
Attention: Planning Director

with a copy to: The Maryland-National Capital Park and Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910  
Attention: Associate General Counsel

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Declarant and the Planning Commission have signed, sealed and delivered this Declaration as their own free act and deed as of the day and year first written above.

**Witness/Attest**

**Declarant:**

**HOME PROPERTIES FALKLAND CHASE, LLC.,**  
a Delaware limited liability company, formerly known as  
Falkland Partners, LLC

By: HOME PROPERTIES, L.P.,  
a New York limited partnership,  
its sole member

By: HOME PROPERTIES, INC.  
a Maryland corporation,  
its general partner

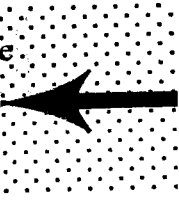
By: *[Signature]*  
Name: *Donald R. Hague*  
Title: *Senior Vice President/Development*

**Witness/Attest**

**Planning Commission:**

**MARYLAND-NATIONAL CAPITAL PARKING AND  
PLANNING COMMISSION,**  
a body corporate and politic created and existing under the  
laws of the State of Maryland

By: *[Signature]*  
*Patricia Colihan Barney*  
Executive Director



*Barbara Walsh*  
*Barbara Walsh*  
Secretary-Treasurer

*Acting*

*[Signature]*  
Approved for legal sufficiency  
M-NCPPC Office of General Counsel

\*\*\*

State of VIRGINIA

County of FAIRFAX

I HEREBY CERTIFY that on this 3<sup>RD</sup> day of JULY, 2008, before me, a Notary Public in and for the State and County aforesaid, personally appeared DONALD P. HAGUE, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, as SENIOR VICE PRESIDENT / <sup>SEVERAL</sup> of Home Properties, Inc., a Maryland corporation and general partner of Home Properties, L.P., a New York limited partnership and sole member of Home Properties Falkland Chase, LLC, a Delaware limited liability company, and acknowledged that he/she, being authorized to do so, executed the foregoing and annexed instrument as the act and deed of the said corporation for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

*Christian Villavicencio*

Notary Public

My Commission Expires: 11-30-2009

[NOTARIAL SEAL]

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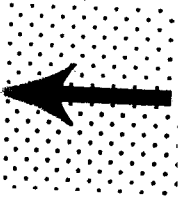
State of Maryland

County of Montgomery

I HEREBY CERTIFY that on this 2<sup>nd</sup> day of August, <sup>2010</sup>~~2008~~, before me, a Notary Public in and for the State and County aforesaid, personally appeared Patricia Colman Barney, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, as Executive Director of Maryland-National Capital Parking and Planning Commission, a body corporate and politic created and existing under the laws of the State of Maryland, and acknowledged that he/she, being authorized to do so, executed the foregoing and annexed instrument as the act and deed of the said body for the purposes therein contained.

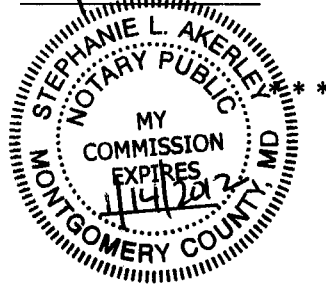
IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Stephanie L. Akerley  
Notary Public



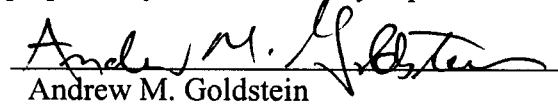
My Commission Expires: 1/14/2012

[NOTARIAL SEAL]



**ATTORNEY'S CERTIFICATION**

I hereby certify that I am an attorney duly licensed to practice before the Court of Appeals of Maryland, and that this Declaration was prepared by me or under my supervision.

  
Andrew M. Goldstein

**EXHIBIT "A"**  
**(Description of North Parcel)**

**(See attached)**

PART THREE:

Being a portion of Parcel #4 as shown on a Plat of Street Dedication recorded among said Land Records in Plat Book 13 as Plat No. 851 and being more particularly described as follows:

BEGINNING at an iron pipe found at the Southwesterly corner of Parcel #3, Rosemary Woods as shown on a Plat recorded among the Land Records in Plat Book 70 as Plat No. 6645 and being on the Easterly right of way line of 16<sup>th</sup> Street, 120 feet wide; thence departing said 16<sup>th</sup> Street and binding on said Parcel #3, Rosemary Woods

- 1) North 65 degrees 36' 39" East, 409.65 feet to an iron pipe set; thence
- 2) North 66 degrees 45' 39" East, 43.76 feet to an iron pipe set at the Northwesterly corner of a Declaration of Taking by The Washington Metropolitan Area Transit Authority and described in Part 1 of Parcel MB309 of a deed recorded among said Land Records in Liber 4433 at folio 386; thence departing said Parcel #3, Rosemary Woods and binding on said Declaration of Taking Parcel
- 3) South 45 degrees 40' 35" East, 305.04 feet to a point; thence
- 4) South 44 degrees 19' 24" West, 6.00 feet to a point; thence
- 5) South 45 degrees 40' 35" East, 16.45 feet to a point; thence
  
- 6) North 89 degrees 58' 55" East, 17.66 feet to a point; thence
- 7) South 00 degrees 01' 05" East, 17.25 feet to a point; thence
- 8) South 45 degrees 40' 35" East, 17.11 feet to a point; thence
- 9) North 44 degrees 19' 24" East, 5.00 feet to a point; thence
- 10) South 45 degrees 40' 35" East, 267.96 feet to an iron pipe set on a Northwesterly line of Parcel No. 6 as shown on a Plat entitled "Parcels Nos. 6 & 7, a Division of Parcel No. 5, Property of Blair Management Corporation" and recorded among said Land Records in Plat Book 14 as Plat 938; thence departing said Declaration of Taking Parcel and binding on said Parcel No. 6;
- 11) North 89 degrees 58' 02" West, 90.36 feet to an iron pipe set; thence
- 12) South 00 degrees 01' 58" West, 181.04 feet to an iron pipe set on the Northerly right of way line of East West Highway, variable width; thence departing said Parcel No. 6 and binding on said East West Highway
- 13) 147.44 feet along the arc of a non-tangent curve to the left, having a radius of 868.51 feet and a chord bearing and distance of North 71 degrees 19' 46" West, 147.26 feet to a point; thence
- 14) North 13 degrees 47' 45" East, 3.00 feet to a point; thence
- 15) North 78 degrees 50' 17" West, 183.95 feet to a point; thence
- 16) North 89 degrees 56' 21" West, 256.34 feet to a point; thence
- 17) South 00 degrees 03' 39" West, 9.05 feet to a point; thence
- 18) North 85 degrees 21' 01" West, 173.84 feet to a point; thence
- 19) North 44 degrees 36' 42" West, 35.68 feet to a point on the Easterly right of way line of said 16<sup>th</sup> Street; thence departing said East West Highway and binding on said 16<sup>th</sup> Street
- 20) North 00 degrees 01' 59" East, 319.95 feet to the point of beginning containing 328,846 square feet or 7.54927 acres of land, more or less.

TAX ID NO. 13-959802

TOGETHER WITH a non-exclusive easement and right of way for purposes of parking and Ingress and egress over the property, more particularly described as "Easement East Center Line" as set forth in Amendment to Declaration of Easements, Covenants and Related Agreements recorded in Liber 6956 at folio 126, re-recorded in Liber 6979 at folio 494.

## EXHIBIT "B"

### PROPOSED DEVELOPMENT COMMITMENTS

1. 12.5% of the final number of total units on the North Parcel shall be subject to the County's MPDU program.
2. 4.72% of the final number of total residential units on the North Parcel shall be subject to the County's workforce housing program for 20 years.
3. A number of units equal to 4.72% of the final number of total units on the North Parcel shall be subject to the County's workforce housing program for 20 years and located in existing buildings on the South and West Parcels.
4. The affordable units reserved for families with income less than 65% of the Annual Median Income ("AMI") at Woodleaf Apartments in Silver Spring will be extended through 2029 and the number of units subject to the Program adjusted such that it equals 4.63% of the final number of total units on the North Parcel.
5. A 1+-acre green area running through the South Parcel shall be designated as off-site public use space to be improved by Declarant by stream restoration, landscaping, pathways, entrances to East-West Highway, 16<sup>th</sup> Street and Colesville Road, and include signage, seating areas and an educational trail with interpretative panels. A public use easement shall be placed on this area once the improvements are complete.
6. The streetscape along the East-West Highway frontage of the North Parcel shall provide sufficient right of way for, and Declarant shall construct, a five-foot wide brick public sidewalk and a ten-foot wide bicycle path separated from the street by a five-foot brick area with tree pits.
7. A tenant relocation program for those tenants in the North Parcel who were tenants prior to August 1, 2006, to include the following:
  - Waiver of application fees and transfer security deposits from a North Parcel apartment to any other Declarant-owned apartment for residents in good standing. For residents in good standing who opt to move to an apartment not owned by the Declarant, Declarant will pay any reasonable application fee and security deposit offset by any security deposit refund due from Falkland.
  - Payment of \$500 of North Parcel residents' relocation expenses (moving, utility, hook-up, etc.). Once formal notice has been given that a resident must relocate, that resident would receive the assistance mentioned above, as well as being entitled to all rights under Montgomery County Code and Regulations including relocation assistance equal to two months' rent.



- Residents of the North Parcel who relocated to the South or West Parcels will continue to pay their current rent for the remainder of their lease term (e.g., a resident of the North Parcel who is paying \$1175 for a 1-bedroom unit with a lease that expires in May 2008 would continue to pay \$1175 for a South or West Parcel 1-bedroom unit through May 2008).

8. Architectural standards addressing the following:

- percent of glass to solid wall area on the exterior of the buildings
- acceptable exterior building materials for the buildings
- an acceptable range of widths of the floor plates for any building over four stories

Prior to filing its Revised Development Plans, Declarant shall consult and endeavor to reach agreement with the Planning Director on the above items. Declarant shall not contest the authority of the Planning Board to condition approval of the Revised Development Plans upon standards setting forth the percent of glass to solid wall area on the exterior of the building, acceptable exterior building materials, or the width of floor plates for any building over four stories. The foregoing will not be construed to prevent Declarant from advocating its position with respect to or contesting the specific details of the architectural standards.

9. Structured parking shall not be visible from street except for necessary egress and ingress areas, ventilation and similar equipment.
10. Surface parking shall be limited to curbside locations.
11. All commercial and/or residential buildings shall be certified LEED Silver or the equivalent and Declarant shall make commercially reasonable efforts to achieve LEED certified gold or its equivalent.
12. Each residential or mixed use residential building containing residential units shall contain the following minimum unit mix: 10% efficiency, 10% one bedroom, 10% two bedroom, and 7.5% three bedroom.
13. Commercial space shall be provided along the East-West Highway frontage.
14. 65% of the lot frontage along East-West Highway shall have buildings that front on East-West Highway and of this 65% a minimum of 50% of the ground-level space shall have retail uses.
15. Prior to filing the Project Plan component of the Revised Development Plans, Declarant shall make commercially reasonable efforts to secure a grocery store user so that a grocery store may be included in the Revised Development Plans.

B. Forest Conservation Variance documents

**LINOWES**  
**AND BLOCHER LLP**  
ATTORNEYS AT LAW

December 19, 2011

**Erin E. Girard**  
egirard@linowes-law.com  
301.961.5153

Mr. Marco Fuster  
Area 1 Planner  
The Maryland-National Capital Park and  
Planning Commission  
8787 Georgia Avenue  
Silver Spring, MD 20910

Re: Falkland North Forest Conservation Variance; Site Plan No. 820120050

Dear Mr. Fuster:

On behalf of our client, Home Properties Falkland Chase, LLC (the "Applicant"), the owner of the approximately 9.77-acre parcel of land located at the northeast quadrant of the intersection of 16<sup>th</sup> Street and East-West Highway in Silver Spring (the "Property"), and the applicant for the above-referenced Site Plan Application (the "Application"), and pursuant to Section 22A-21(b) of the Montgomery County Code (the "Code"), we hereby request a variance from the provisions of the Maryland Code, Natural Resources § 5-1607(c)(2)(ii) and § 5-1607(c)(2)(iii) to allow for impacts to the critical root zones ("CRZ") of six trees on the "South Parcel," the property designated on the Master Plan for Historic Preservation that is located at the southeast quadrant of the intersection of 16<sup>th</sup> Street and East-West Highway, one tree on the "West Parcel," the property designated on the Master Plan for Historic Preservation that is located at the southwest quadrant of the intersection of 16<sup>th</sup> Street and East-West Highway, and one tree having a diameter of 38 inches located within the eastern portion of the 16<sup>th</sup> Street right-of-way, south of its intersection with East-West Highway (the "Variance"). As explained more fully below, impacts to the trees identified on the plan attached hereto as Exhibit "A" (the "Subject Trees") would be minimal and are the direct result of off-site improvements required to be constructed by the Applicant as part of approval of the Application, as well as by the previous approvals of Preliminary Plan No. 120070560 and Project Plan No. 920070080 for the Property (collectively, the "Approvals"). Although it is fully expected that all of the Subject Trees will survive the proposed impacts, the Planning Board must grant the Variance to allow for the impacts to the Subject Trees pursuant to the Maryland Code, Natural Resources § 5-1607(c)(2).

In accordance with Section 22A-21(b) of the Code, impacts to the Subject Trees would satisfy the variance requirements as follows:

Mr. Marco Fuster  
December 19, 2011  
Page 2

- (1) *Describe the special conditions peculiar to the property which would cause the unwarranted hardship;*

As evidenced in the Approvals, redevelopment of the Property, which is zoned CBD-R1, and is located within 800 feet of the entrance to the Silver Spring metro station and within the Silver Spring Central Business District and Silver Spring CBD Metro Policy Area, will achieve the objectives and intent of the Silver Spring CBD Sector Plan (the "Sector Plan"). See Sector Plan, pp. 16, 69, 111. Associated with this redevelopment, the Planning Board, the Montgomery County Department of Transportation, and Planning Staff have determined that certain off-site improvements within the East-West Highway and 16<sup>th</sup> Street rights-of-way are appropriate, and are recommending that completion of these improvements be made a condition of approval of the Application. The Applicant is therefore in the unique position of needing the Variance to comply with the Approvals and the proposed conditions of approval of the Application.

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

The inability to impact the Subject Trees would deprive the Applicant of the right to comply with its conditions of approval requiring right-of-way improvements.

- (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;*

The Subject Trees are not within a stream buffer, wetland, or special protection area, and impacts to these trees will not affect water quality. As part of the Application, the Applicant has prepared a Final Forest Conservation Plan ("FFCP") and has an approved Stormwater Management Concept Plan. The Property currently contains no stormwater management on-site and the provision of stormwater facilities as part of the redevelopment of the Property will significantly improve the stormwater quality on the Property and in the adjacent area. Additionally, the FFCP includes the provision of significant new landscaping and green areas, and will actually increase porosity on the Property, improving water quality both on site and in the adjacent area.

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

As noted above, impacts to the Subject Trees are proposed to be minimal and will not have any adverse impacts on the survivability of the Subject Trees. As also shown on the attached exhibit, the affected trees and the anticipated impacts to their CRZs are shown on the table below:

Mr. Marco Fuster  
December 19, 2011  
Page 3

TREE NUMBER	EX TREE TAG NUMBER	DBH	TYPE	CONDITION	Percent of CRZ Impacted with LOD
1		31"	Red Oak	Fair	1%
3		38"	Elm	Fair	7%
4	115	18"	Linden	Good	5%
15	107	15"	Linden	Good	7%
17	106	28"	Cherry	Poor	15%
18	105	15"	Linden	Good	11%
19	104	16"	Linden	Good	17%
20	103	16"	Linden	Good	17%

Tree 1 is located on the West Parcel, and will be affected by required improvements to the crosswalk at the southwest corner of the 16<sup>th</sup> Street and East-West Highway intersection. As noted above, these improvements are expected to impact only 5% of the CRZ of this tree. As a general rule, CRZ impacts of up to 30% are seen as having no impact on the survivability of a given tree.

Tree 3 is located in the eastern portion of the 16<sup>th</sup> Street right-of-way, and will be impacted by required improvements to the 16<sup>th</sup> Street sidewalk. Again, these improvements are expected to impact only 11% of this tree's CRZ. The remaining trees, all on the South Parcel, each have diameters less than 30 inches. However, they require variances due to their location on a historic property. Impacts on these trees deriving from lane improvements within the East-West Highway right-of-way are expected to impact between 5-17% of the CRZs for these trees, as shown on the table, all of which are well below the 30% threshold. As a result of these minimal impacts, no mitigation is required or proposed for the impacts to the Subject Trees.

Finally, in conformance with Section 22A-21(d) of the Code, the Variance will not confer a special privilege on the Applicant that would be denied to others, but rather, as discussed above, will prevent the deprivation of Applicant's rights. The need for the Variance does not arise out

Mr. Marco Fuster  
December 19, 2011  
Page 4

of actions by the Applicant, but rather conditions imposed by governmental agencies, and does not arise from conditions on neighboring properties.

We believe the foregoing clearly demonstrates that the grant of the Variance pursuant to Section 22A-21(b) of the Code is appropriate in this case. If you have any questions or concerns, or require any additional information for your review of this request, please contact me.

Very truly yours,

**LINOWES AND BLOCHER LLP**

  
Erin E. Girard

cc: Robert Kronenberg  
Michael Eastwood  
Dan Pino  
Barbara A. Sears, Esq.

**Koch-Hoehn and Associates, Inc.**  
 1000 North Lincoln Street  
 Suite 100  
 Chicago, IL 60610  
 Tel: (773) 327-1000  
 Fax: (773) 327-1001  
 www.kochhoehn.com

**CONSULTANTS:**  
 ARCHITECT: [Faded]  
 STRUCTURAL: [Faded]  
 MECHANICAL/ELECTRICAL/PLUMBING: [Faded]  
 LANDSCAPE: [Faded]  
 LIGHTING: [Faded]

**FALKLAND NORTH**

**SILVER SPRING, MD**

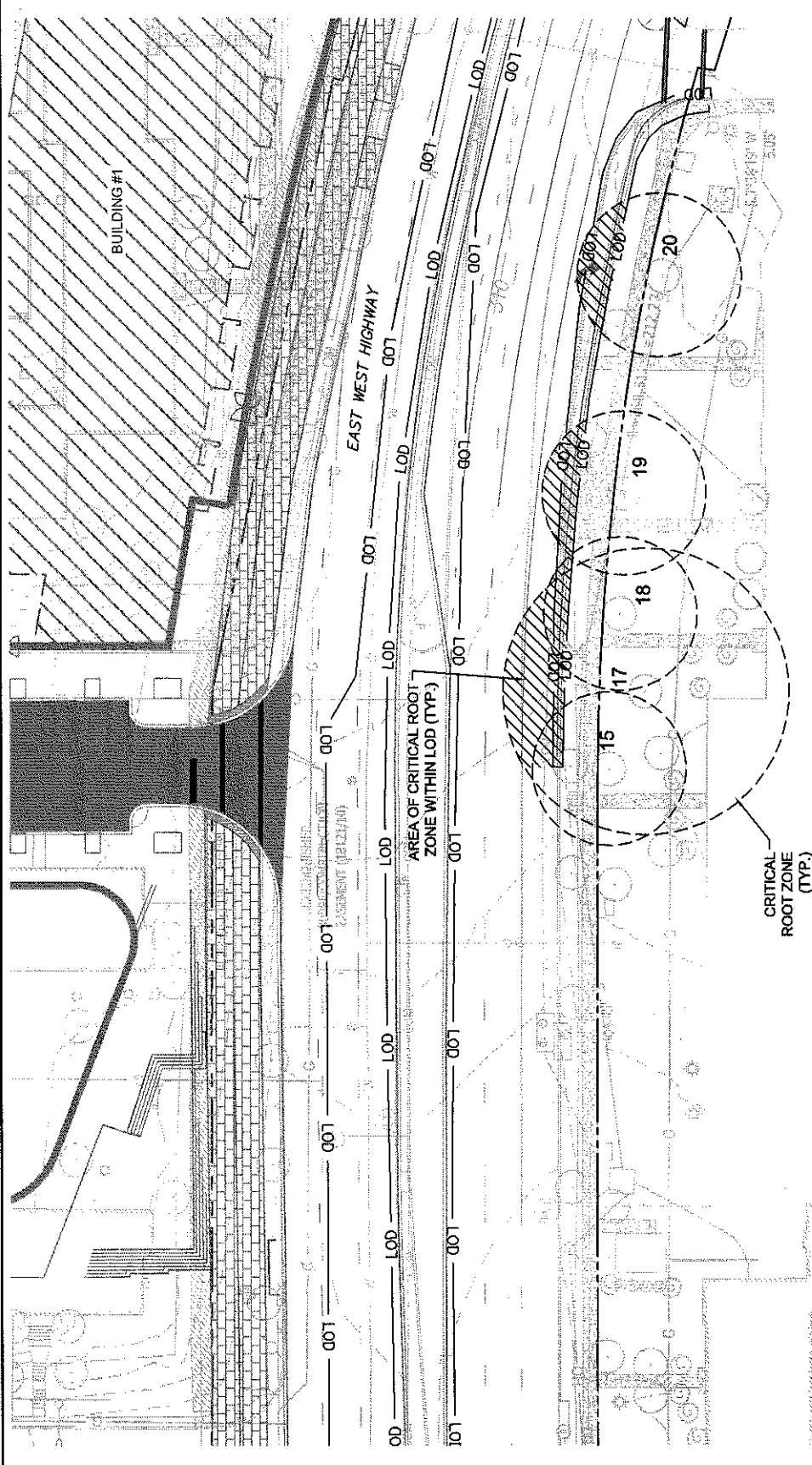
**FALKLAND SOUTH TREE VARIANCE "A" EXHIBIT "A"**

**SCALE: 1"=30'**

**DATE: 11/20/17**

**PROJECT: Falkland South Tree Variance "A"**

**SHEET 2 OF 2**



TREE NUMBER	EX TREE TAG NUMBER	DBH	TYPE	CONDITION	Percent of CRZ Impacted with LOD
1		31"	Red Oak	Fair	1%
3		38"	Elm	Fair	7%
4	115	18"	Linden	Good	5%
15	107	15"	Linden	Good	7%
17	106	28"	Cherry	Poor	15%
18	105	15"	Linden	Good	11%
19	104	16"	Linden	Good	17%
20	103	16"	Linden	Good	17%

Exhibit "A"



**CONSULTANTS**  
 K&S Engineering, Inc.  
 1000 North ...  
 ...

**ARCHITECT**  
 ...  
 ...

**STRUCTURAL**  
 ...  
 ...

**MECHANICAL**  
 ...  
 ...

**ELECTRICAL**  
 ...  
 ...

**PLUMBING**  
 ...  
 ...

**FALKLAND NORTH**

**SILVER SPRING, MD**

**OWNER**  
 ...  
 ...

**FALKLAND SOUTH TREE VARIANCE EXHIBIT "A"**

**COMPILED BY: TREATMENT**

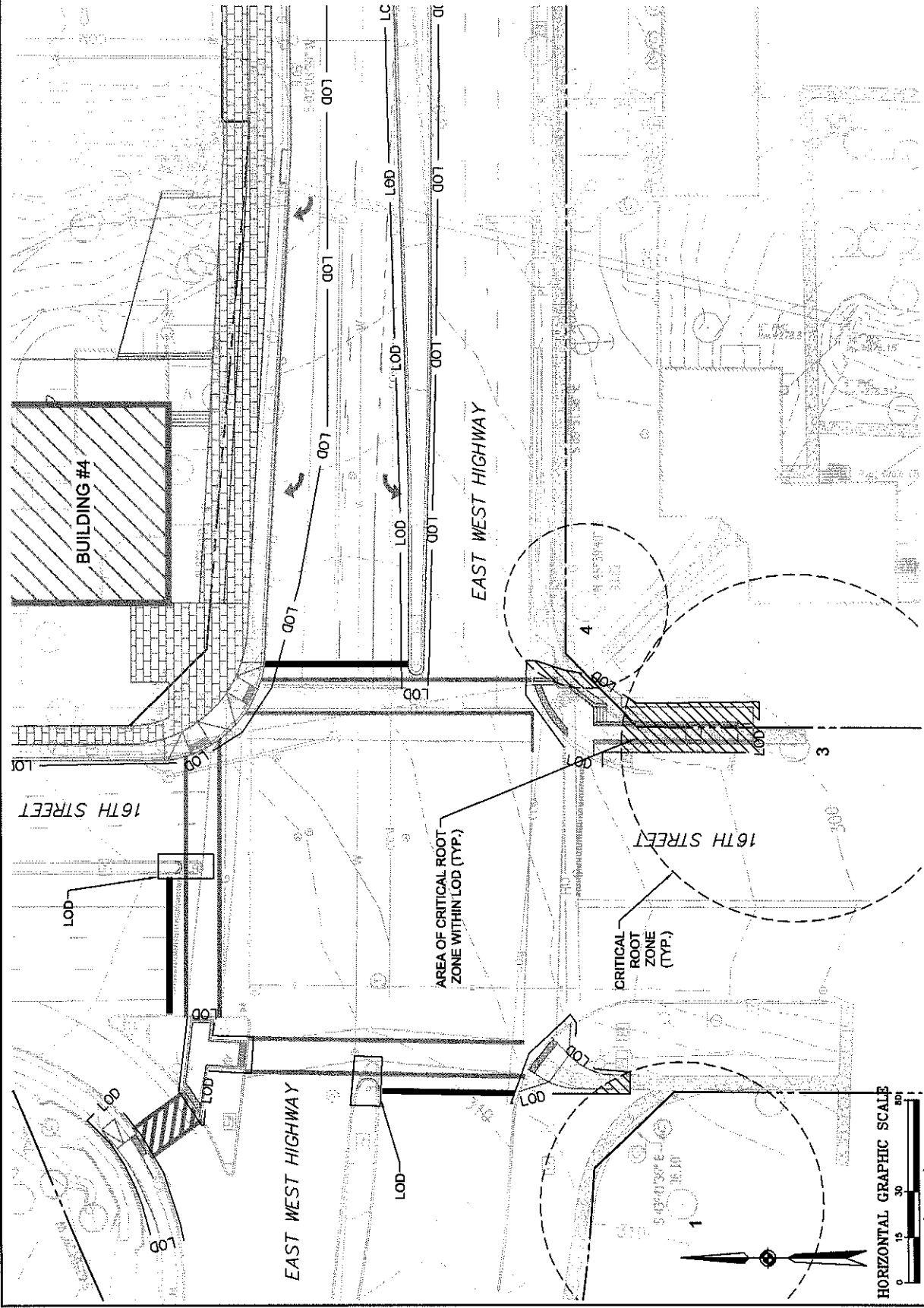
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**DATE: 08/20/08**

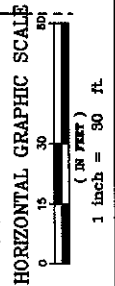
**PROJECT: ...**

**PROJECT NO.:**

**SHEET 1 OF 2**



SEE SHEET 2 FOR TREE INFORMATION







DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett  
County Executive

Robert G. Hoyt  
Director

December 27, 2011

Françoise Carrier, Chair  
Montgomery County Planning Board  
Maryland National Capital Park & Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

RE: Falkland North, DAIC 20120050, NRI/FSD recertification on 11/10/2009

Dear Ms. Carrier:

The County Attorney's Office has advised me that Section 5-1607 of the Natural Resources Article, Maryland Code, applies to any application required under Chapter 22A of the Montgomery County Code submitted after October 1, 2009. Since the application for the above referenced request is required to comply with Chapter 22A based on a review by the Maryland National Capital Park & Planning Commission (MNCPPC) and 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, I make the following findings as the result of my review:

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.

2. Based on a discussion on March 19, 2010 between representatives of the County and the Maryland Department of Natural Resources Forest Service and the MNCPPC, the disturbance of trees, or other vegetation, is not interpreted as a condition or circumstance that is the direct result of the actions by the applicant. Therefore, the variance can be granted under this condition, as long as appropriate mitigation is provided for the resources disturbed.
3. The disturbance of 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 disturbance of 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.

Therefore, I recommend that this applicant qualify for a variance conditioned upon mitigating for the loss of resources due to removal or disturbance to trees, and other vegetation, subject to the law. In the case of removal, the entire area of the critical root zone (CRZ) should be included in mitigation calculations regardless of the location of the CRZ (i.e., even that portion of the CRZ located on an adjacent property). When trees are disturbed, any area within the CRZ where the roots are severed, compacted, etc., such that the roots are not functioning as they were before the disturbance must be mitigated. Exceptions should not be allowed for trees in poor or hazardous condition because the loss of CRZ eliminates future potential of the area to support a tree or provide stormwater management. Tree protection techniques, such as trimming branches or installing temporary mulch mats to limit soil compaction during construction without permanently reducing the critical root zone, that are implemented according to industry standards are acceptable mitigation to limit disturbance. Techniques such as root pruning should be used to improve survival rates of impacted trees but they should not be considered mitigation for the permanent loss of critical root zone. Until other guidelines are developed, I recommend requiring mitigation based on the number of square feet 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.

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

## C. Project and Preliminary Plan Resolutions



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

MCPB No. 10-162  
 Project Plan No. 920070080  
 Project Name: Falkland North  
 Date of Hearing: November 18, 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 June 16, 2010, Home Properties Falkland Chase, LLC, ("Applicant") filed a revised application for approval of a project plan for a mixed-use multi-building development totaling 1,276,329 gross square feet, including 70,000 square feet of retail uses and 1,250 dwelling units (with 12.5 percent MPDUs and 4.72 percent workforce housing) ("Project Plan"), on 9.77 acres of CBD-R1-zoned land located in the northeast quadrant of the intersection of 16<sup>th</sup> Street and East-West Highway in the Silver Spring CBD ("Property" or "Subject Property"); and

WHEREAS, Applicant's project plan application was designated Project Plan No. 920070080, Falkland North (formerly Falkland Chase) (the "Application"); and

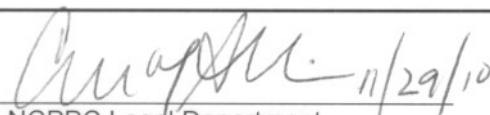
WHEREAS, Planning Board Staff ("Staff") issued a memorandum to the Planning Board, dated November 8, 2010, which was revised on November 10, 2010, setting forth its analysis of, and recommendation for approval of the Application subject to certain conditions (together, the "Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the staffs of other governmental agencies, on November 18, 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 November 18, 2010, the Planning Board approved the Application subject to conditions, on motion of Commissioner Presley; seconded by

Approved as to  
 Legal Sufficiency:

 11/29/10

Commissioner Wells-Harley; with a vote of 4-0, Commissioners Carrier, Dreyfuss, Presley, and Wells-Harley voting in favor and Commissioner Alfandre 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. 920070080 for a mixed-use multi-building development totaling 1,276,329 gross square feet, including 70,000 square feet of retail uses and 1,250 dwelling units (including 12.5 percent MPDUs and 4.72 percent Workforce Housing), on 9.77 gross acres in the CBD-R1 zone, subject to the following conditions:

1. Development Ceiling

The proposed development is limited to 1,276,329 total square feet of gross floor area.

2. Building Height and Mass

The proposed development is limited to the building footprints as delineated in the project plan drawings submitted to MNCPPC dated October 22, 2010, unless modified at site plan review, and to a maximum of 143 feet in height from the approved building height measuring point as determined by the Department of Permitting Services.

3. Historic Preservation

The Applicant must obtain a Historic Area Work Permit for work associated with the stream restoration on the south parcel.

4. Environment

- a. The proposed development shall comply with the preliminary forest conservation plan. The applicant shall satisfy all conditions prior to any clearing, grading or demolition on the site. Conditions include:
  - i. Applicant must provide 1.19 acre credits of afforestation to meet forest conservation requirements.
  - ii. Approval of a final forest conservation plan consistent with the approved preliminary forest conservation plan prior to any clearing, grading or demolition on the site.
- b. Final forest conservation plan must meet all requirements of Chapter 22A, Forest Conservation Law and COMCOR 18-01AM, Forest Conservation Regulations, and must include detailed and specific tree protection measure for impacted trees prepared by an ISA-certified arborist.
- c. A traffic noise analysis must be performed and submitted with the site plan application to determine the current and projected noise levels, so that the amount of architectural treatment needed can be determined.

5. Declaration of Restrictive Covenant

The Applicant must comply with the terms of the Declaration of Restrictive Covenant between Home Properties Falkland Chase, LLC, and M-NCPPC, executed August 2, 2010.

6. Public Use Space and Amenities

- a. The Applicant must provide a minimum of 20% of the net lot area for on-site public use space and a minimum of 21.4% 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 and amenities must be easily and readily accessible to the general public and available for public enjoyment.

7. Issues to be Addressed Prior to Site Plan Approval

- a. The Applicant must address the existing north-south axis that runs through both the subject parcel and the historic parcel to the south by terminating it on the subject property in a clear and unambiguous fashion.
- b. The architectural character of the proposed buildings must promote compatibility with the historic character of the other Falkland parcels.
- c. The Applicant must demonstrate how the proposed public use space will attract pedestrian activity from both residents and passers-by.

BE IT FURTHER RESOLVED that, having given full consideration to the recommendations and findings of its Staff as presented at the Hearing and as set forth in the Staff Report, 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) The proposed development complies with all of the intents and requirements of CBD-R1 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 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 Falkland North Project Plan (#900070080) is consistent with the February 2000, Approved and Adopted Silver Spring CBD Plan. The Master Plan provides for the development of Downtown Silver Spring under the following themes: Transit-Oriented, Commercial, Residential, Civic, Green and Pedestrian Friendly. The Falkland North project is in line with these themes as it provides for mixed-use development (commercial and residential) with significant public amenities in close proximity to the Silver Spring Transit Center. It furthers the Plan's goals of creating a mix of housing choices supported by parks, retail, civic uses and employment opportunities adjacent to transit and with convenient access to the greater region.

- (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 proposed mixed-use development includes residential and retail uses in very close proximity to the Silver Spring Metro Station. The diversity of retail bays, in conjunction with the diversity of unit types, will provide great flexibility to accommodate the various needs of residents, workers who pass by the site on foot to and from the Metro and by wheeled conveyance, as well as shoppers who work in nearby offices or live in the adjacent developments.

- (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 building heights transition from the maximum height immediately adjacent to the train tracks and the office buildings north of the site to a lower scale of the low-rise garden apartments south of East-West Highway. The proposed internal private street reintroduces a more urban street grid, improving access along and through the site and creating better public spaces.

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

The proposed development is located 300 feet from the Silver Spring Metro Station and immediately adjacent to Metro Bus lines. The significant foot traffic moving to and from the Metro from the residences west of the site will be greatly served by streetscape improvements and retail opportunities in this development.

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

Vehicular circulation around the site will take advantage of existing entrances from the adjacent public streets by sharing entrances for both the retail and residential parking and loading. Additional vehicular access to the internal private street will assist visitors to the site as well as residents.

Provision of a greater mix of land uses and public spaces along the public roads will greatly enhance the pedestrian experience along the edges of the site, while the private street, landscaped spaces, and plazas will attract pedestrians into and through the site.

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

The proposed development will provide a variety of housing types within the proposed 1,250 dwelling units, including townhouse and multi-family apartment configurations. In addition to the minimum 12.5% MPDU requirement, the Applicant is also providing workforce housing, as well as a minimum mix and distribution of unit types, in accordance with the terms of the Declaration of Restrictive Covenant, signed August 2, 2010.

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

The proposed development is located on a single existing parcel. In accord with the Sector Plan, the project promotes redevelopment of the site in a way that locates a diversity of housing and retail opportunities near transit and provides a variety of public green open space and pedestrian linkages along and through the site. Further, the proposed restoration of the stream on the south parcel will help to restore some of the civic grandeur of the adjacent historic site.

Further Intents of the CBD-R1 Zone

Section 59-C-6.213 of the Zoning Ordinance list further intents of the CBD-R1 zone:

*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*



*To provide a density and intensity of development which will be compatible with adjacent land uses outside the Central Business Districts"; and*

*...to foster and promote the orderly development of the Central Business Districts of the county so that these areas will enhance the economic status of the county as well as providing an expanding source of employment and living opportunities for its citizens in a desirable urban environment.*

The proposed development meets these intents by expanding the diversity of dwelling units and retail opportunities at the edge of the CBD in an area dominated by residential uses. Multi-family apartments and townhouse units will complement the garden and high-rise apartment buildings in the area, while the proposed ground floor retail, in addition to potentially including a supermarket to serve the surrounding neighborhood, includes smaller retail bays that could readily accommodate neighborhood-oriented retail and service needs.

#### Requirements of the CBD-R1 Zone

The table below demonstrates the conformance of the Project Plan with the development standards under the optional method of development. Among other standards, the proposed development meets the area, public use space, building height, and density requirements of the zone.

According to the Zoning Ordinance (59-C-6.215(b)) a further requirement of optional method projects is the provision of additional public amenities:

*Under the optional method greater densities may be permitted and there are fewer specific standards, but certain public facilities and amenities must be provided by the developer. The presence of these facilities and amenities is intended to make possible the creation of an environment capable of supporting the greater densities and intensities of development permitted.*

To this end, the proposed development is proffering a system of linked open spaces and pedestrian paths and associated improvements on both the North Parcel and South Parcel, including landscaped gardens and the restoration and beautification of the existing stream.

**Requirements of the CBD-R1 zone**

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 uncontested evidence and testimony of record, that the Application meets all of the applicable requirements of the CBD-R1 zone. 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
Gross Tract Area (sf.)	425,443
Previous Dedications (sf.)	96,597
Proposed Dedications (sf.)	3,037
Net Lot Area (sf.)	325,809
Maximum Density (FAR)	3
Maximum Density, total (sf.)	1,276,329
Maximum Density, non-residential (FAR)	0.16
Maximum Density, non-residential (sf.)	70,000
Maximum Dwelling Units, total	1,250
Minimum MPDU (%)	12.5
Minimum MPDUs (du)	157**
Minimum Workforce Housing (%)	4.72*
Minimum Workforce Housing (du)	59**
Building Height, Maximum (ft.)	143
Building Setback, Minimum	0
Parking Spaces, Maximum	1,672
On-Site Public Use Space, Minimum (% of NLA)	20
On-Site Public Use Space (sf.)	65,545
Off-Site Public Amenity Space (% of NLA)	21.4
Off-Site Public Amenity Space (sf.)	70,159

\* as required and limited by the Declaration of Restrictive Covenant

\*\* final number of MPDUs and WFHUs will depend on the final number of units

**(b) The proposed development conforms to the Silver Spring CBD Sector Plan.**

The Project Plan is consistent with the Sector Plan by providing for the redevelopment of this Property at the edge of the CBD consistent with the themes of Transit-Oriented, Commercial, Residential, Civic, Green and Pedestrian Friendly development. It provides for mixed-use development (commercial and residential) with significant public amenities in close proximity to the Silver Spring Transit Center and furthers the Sector Plan goals of creating a mix of housing choices supported by parks, retail, civic uses and employment opportunities adjacent to transit and with convenient access to the greater region.

**(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.**

The proposed development promotes compatibility with existing and potential development primarily by defining the public streets and sidewalks as attractive and activated public spaces that will encourage further pedestrian traffic along and through the site. The building heights step down from the taller buildings along the railroad tracks to the lower heights along East-West Highway and the low-rise garden apartments of the Falklands South Parcel, while the massing of the proposed buildings on the North Parcel correspond with the existing historic structures to the south.

**(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.**

A draft traffic management agreement has been reviewed and approved by State and County transportation agencies. Other public facilities exist on or near the site and no expansion or renovation of these services will be required of the County. The Applicant is providing all of the required 1,672 parking spaces on-site, and will not burden County parking facilities. Further, requirements for public safety and fire, which will only be minimally impacted given the nature of the land use, will have to be approved by the respective agencies prior to site plan approval.

**(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 1 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 are core values of smart growth and in light of the number and quality of public amenities being proffered, the project, to be developed, using 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 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. Additionally, as outlined in the Declaration of Restrictive Covenant, the Applicant must provide 4.72% of the total number of units as Workforce Housing Units on-site, and an identical number off-site within the other Falkland Parcels.

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

The project is subject to the requirements of the forest conservation law. As conditioned, the Project Plan satisfies the requirements.

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

The Project Plan satisfies the water quality resources protection requirements under Chapter 19. The stormwater management concept consists of channel protection and water quality control via the use of on-site Environmental Site Design and off-site Stream Restoration.

BE IT FURTHER RESOLVED that all elements of the plans for Project Plan No. 920070080, Falkland North, stamped received by M-NCPPC on October 22, 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 DEC 13 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 Alfandre, with Vice Chair Wells-Harley and Commissioners Alfandre and Presley voting in favor of the motion, and with Chair Carrier and Commissioner Dreyfuss absent, at its regular meeting held on Thursday, December 9, 2010, in Silver Spring, Maryland.

  
Marye Wells-Harley, Vice Chair  
Montgomery County Planning Board



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

**MCPB No. 10-163**  
**Preliminary Plan No. 120070560**  
**Falkland North**  
**Date of Hearing: November 18, 2010**

**DEC 14 2010**

**MONTGOMERY COUNTY PLANNING BOARD**

**RESOLUTION**

WHEREAS, pursuant to Montgomery County Code Chapter 50, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review preliminary plan applications; and

WHEREAS, on January 12, 2007, Home Properties Falkland Chase, LLC ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property and submitted a revised application on June 16, 2010, that would create one lot on 9.77 acres of land in the CBD-R1 zone, located in the northeast quadrant of the intersection of 16th Street and East-West Highway (MD 410) ("Property" or "Subject Property"), in the Silver Spring Sector Plan area ("Sector Plan"); and

WHEREAS, Applicant's preliminary plan application, together with the revised application was designated Preliminary Plan No. 120070560, Falkland North (formerly Falkland Chase) ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated November 8, 2010, which was revised on November 10, 2010, setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions (together, the "Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the staff of other governmental agencies, on November 18, 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

Approved as to  
 Legal Sufficiency:

*[Signature]* 11/29/10

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 November 18, 2010, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Presley; seconded by Commissioner Wells-Harley; with a vote of 4-0, Commissioners Carrier, Dreyfuss, Presley, and Wells-Harley voting in favor, Commissioner Alfandre absent.

NOW, THEREFORE, BE IT RESOLVED, that, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Preliminary Plan No. 120070560 to create one lot on 9.77 acres of land in the CBD-R1 zone, located in the northeast quadrant of the intersection of 16th Street and East-West Highway (MD 410), in the Silver Spring CBD Sector Plan area, subject to the following conditions:

1. Approval under this Preliminary Plan is limited to 1 lot for a maximum of 70,000 square-feet of retail uses and a maximum of 1,250 multi-family residential units. A minimum of 12.5% of the residential units must be Moderately Priced Dwelling Units (MPDUs). A minimum of 4.72% of the residential units must be Workforce Housing Units (WFHs).
2. The proposed development must comply with the conditions of the preliminary Forest Conservation Plan. The Applicant must satisfy all conditions prior to Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permits. Conditions include:
  - a. The final forest conservation plan must include detailed and specific tree protection measures, prepared by an certified arborist for all impacted trees.
3. Prior to approval of any site plan, the Applicant must prepare and submit a noise analysis that considers all transportation sources immediately adjacent to the subject site. The noise analysis must identify the existing 60, 65, and 70 dba Ldn noise contours, 20 year projected 60, 65, and 70 dba Ldn noise contours, and methods to treat the exterior and interior noise to acceptable levels.
4. The Applicant must comply with the conditions of approval for Project Plan 920070080.
5. The final number of dwelling units and MPDUs and WFHs will be determined at Site Plan.
6. The Applicant must dedicate and the record plat must show dedication for the following rights-of-way along the Property frontage consistent with the *Silver Spring CBD Sector Plan*:
  - a. East-West Highway – a minimum of 59 feet from the roadway right-of-way centerline for a distance of 300 feet east of 16<sup>th</sup> Street centerline and a minimum of 55 feet from the roadway right-of-way centerline for the remainder of site frontage.
  - b. 16<sup>th</sup> Street – a minimum of 60 feet from the roadway right-of-way centerline.

7. Prior to recordation of the plat, the Applicant must record a covenant stating that, at the Maryland Transit Administration's (MTA) request, the Applicant will dedicate to MTA for public use for the Purple Line Locally Preferred Alternative (LPA), at no cost, the area designated on the certified Preliminary Plan as "Future Dedication" or any such lesser area within the designated area as is determined by MTA to be necessary. The covenant may specify that such dedication shall be made when the County or State has incorporated the Purple Line improvements in an adopted County Capital Improvements Program ("CIP") or State Consolidated Transportation Program ("SCTP") which provides for appropriation of funds equal to the estimated costs of designing and constructing any portion of the Purple Line improvements. The covenant will remain in effect for 15 years from the date of the mailing of the Planning Board resolution. The record plat must include a reference to the recorded covenant.
8. The Applicant must grant and the record plat must show an access easement on the Property to the Maryland Transit Administration (MTA), as referenced in a letter dated November 3, 2010, from MTA, between 16<sup>th</sup> Street and the proposed Purple Line Locally Preferred Alternative alignment. The access easement must be shown on the certified Preliminary Plan.
9. The Applicant must submit an updated traffic study and an updated signal warrant analysis for the proposed development as part of any future site plan to support the final approval of the proposed configurations of the East-West Highway and 16<sup>th</sup> Street site access driveways, and the proposed traffic signal at the shared East-West Highway driveway. These documents must be provided to Maryland State Highway Administration (SHA) and Transportation Planning Division staff as part of the site plan review.
10. The Applicant must coordinate with SHA and provide necessary pedestrian safety improvements at the East-West Highway/16<sup>th</sup> Street intersection (specifically to the southeast corner of the intersection). The Applicant must satisfy all design requirements related to this pedestrian safety improvement at least 30 days prior to any Planning Board hearing on the site plan for the development.
11. The Applicant must submit to Transportation Planning Division staff an implementation schedule that is tied to the development construction schedule for all required site frontage, site access, and access control improvements at least 30 days prior to any Planning Board hearing on the site plan for the development. The required public roadway improvements must be open to traffic prior to the issuance of any building occupancy permit for the development.
12. The Applicant must enter into a Traffic Mitigation Agreement ("Agreement") with the Planning Board and the Montgomery County Department of Transportation (DOT) to participate in the Silver Spring Transportation Management District (TMD). The final Agreement must be executed prior to the release of any building permit for the proposed development.



13. The Applicant must comply with the conditions of the MCDPS stormwater management approval dated September 13, 2010. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
14. The Applicant must comply with the conditions of the Montgomery County Department of Transportation (MCDOT) letter dated July 30, 2010. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
15. The Applicant must comply with the conditions of the Maryland State Highway Administration (MDSHA) letter dated November 1, 2010. These conditions may be amended by MDSHA, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
16. The Applicant must satisfy provisions for access and improvements as required by MDSHA prior to issuance of access permits.
17. No clearing, grading or recording of plat prior to certified site plan approval.
18. The record plat must show all necessary easements.
19. The Adequate Public Facility (APF) review for the Preliminary Plan will remain valid according to the following schedule:
  - Phase I: issuance of building permits for at least 700 dwelling units, including MPDUs, and 70,000 square feet of retail uses – the APF review for this phase will remain valid 85 months from the date of mailing of the Planning Board Resolution.
  - Phase II: issuance of building permits for at least 300 additional dwelling units, including MPDUs – the APF review for this phase will remain valid for 109 months from the date of mailing of the Planning Board Resolution.
  - Phase III: issuance of building permits for the remaining 250 dwelling units, including MPDUs – the APF review for this phase will remain valid for 145 months from the date of mailing of the Planning Board Resolution.

BE IT FURTHER RESOLVED, that having given full consideration to the recommendations and findings of its Staff as presented at the Hearing and as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference, and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

1. *The Preliminary Plan substantially conforms to the Sector Plan.*

The Preliminary Plan is consistent with the Silver Spring CBD Sector Plan. The Sector Plan provides for the development of downtown Silver Spring under the following themes: transit-oriented, commercial, residential, civic, green and pedestrian friendly. The Falkland North project is in line with these themes as it provides for mixed-use development (commercial and residential) with significant public amenities in close proximity to the Silver Spring Transit Center. It furthers

the Plan's goals of creating a mix of housing choices supported by parks, retail, civic uses and employment opportunities adjacent to transit and with convenient access to the greater region.

2. *Public facilities will be adequate to support and service the area of the proposed subdivision.*

A traffic study dated July 27, 2010, was submitted for the subject Preliminary Plan for Adequate Public Facilities (APF) review purposes because the development proposed on the Property – 70,000 square-feet of retail and 1,250 high-rise residential units in place of existing 182 garden style apartment units – is expected to 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.

Using Silver Spring CBD trip generation rate for retail uses and discounted CBD trip rates for the residential uses, and after accounting for existing residential uses on the Property, the study estimated that the proposed Falkland North development will generate 299 net new peak-hour trips during the morning peak period and 446 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 467 net new peak-hour trips during the morning peak period and 753 net new peak-hour trips during the evening peak period. The development, therefore, generates a lower number of trips during the morning (467 vs. 299 peak-hour trips) and evening (753 vs. 446 peak-hour trips) peak periods as a result of being located within the Silver Spring CBD.

- Local Area Transportation Review (LATR)

As shown in the traffic study, 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 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 the traffic study demonstrates that the proposed development as a result of being located within the Silver Spring CBD will generate approximately 36 percent fewer peak-hour trips during the morning peak period and 41 percent fewer peak-hour trips during the evening peak period when compared to similar land uses outside the Silver Spring CBD. Since the trip mitigation being provided by virtue of the CBD-area project site is more than the PAMR trip mitigation requirement for the Silver Spring CBD Policy Area, the Preliminary Plan satisfies the PAMR requirements of the APF test.

Vehicular and pedestrian access will be safe and adequate with the proposed improvements. Vehicular improvements include using existing curb cuts to consolidate site entrances for adjacent sites off 16th Street and East-West Highway. The project will provide pedestrian improvements along the primary site frontages and through the project via a new internal private street.

The Subject Property is adjacent to the proposed Purple Line light rail route, and a portion of the Property will be needed for the proposed right-of-way. The Applicant is willing to convey the necessary area of the Property to the MTA at no cost. The approval includes a condition that reflects this through recordation of a covenant.

Public facilities and services are available and will be adequate to serve the proposed development. The Property will be served by public water and public sewer. The Application is currently under review by the Montgomery County Fire and Rescue Service who must determine as part of future site plan approval that the Property has appropriate access for fire and rescue vehicles. A final fire access approval has not been issued as part of this Preliminary Plan because more detail is needed about the design of buildings along the existing and proposed WMATA property to determine how the rear of the buildings will be adequately served. Providing adequate fire access and/or protection may include provision of interior fire suppression systems and/or changes to the location and configuration of buildings, which will be depicted on the site plan. Other public facilities and services, such as police stations, firehouses, schools, 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, telecommunications, and natural gas services are also available to serve the Subject Property.

Although the adequate public facilities (APF) review validity period for typical preliminary plans is seven years, Section 50-20 of the Subdivision Regulations authorizes a validity period of up to 12 years. The Planning Board

approves a phased 12-year APF validity period for this Preliminary Plan because the complex nature and size of this project creates the need for a lengthy construction period. The Applicant is proposing to construct in three phases, the last of which would begin within 12 years after approval of the Application. Therefore, a phased 12-year APF validity period is appropriate, and a condition reflecting that is included in the approval.

3. *The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision.*

The proposed lot size is appropriate, because it accommodates a mixed-use development with internal private access driveways. The width of the lot is suitable given the multiple points of access that are necessary to accommodate the commercial and residential parking garages. The shape is appropriate because a rectangular lot remains in its current configuration, which is appropriate for the corner orientation of the Property.

4. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A.*

A preliminary forest conservation plan was approved with the Preliminary Plan. There is a planting requirement of 1.19 acres of forest. This requirement will be met off-site, as there are no priority planting areas on-site. There are 21 specimen trees ( $\geq 30$ " DBH), 21 large trees ( $\geq 24$ " DBH), and one County champion tree on-site. Thirty-nine of these 43 trees are proposed for removal as part of this development. In addition, two off-site specimen trees are proposed for removal. Four of those trees are proposed for retention on the site. However, when detailed plans are developed, retaining these trees may not be possible given the extent of disturbance on-site.

#### Forest Conservation Variance

Section 1607(c) of the Natural Resources Article, Maryland Annotated Code, identifies certain individual trees as high priority for retention and protection. Any impact to these trees, including removal or any disturbance within a tree's critical root zone (CRZ), requires a variance. An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Code. The law requires no impact to and the retention and protection to the greatest extent possible of all trees that measure 30" diameter at DBH or greater; any tree designated as the county champion tree; trees with a DBH 75% or greater than the diameter of the current State 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 21 trees greater than 30 inches DBH onsite, 3 trees greater than 30 inches DBH offsite, and 1 County champion, a variance is required.

The Applicant has requested a variance to remove the following trees:

	Tree Removal Descriptions		
	DBH	TYPE	COND.
A	30	WHITE PINE	Fair
B	30	WHITE PINE	Fair
C	30	RED OAK	Fair
D	40	TULIP POPLAR	Good
E	42	TULIP POPLAR	Fair
F	32	RED OAK	Fair
H	38	TULIP POPLAR	Fair
J	31	TULIP POPLAR	Fair
K	33	BOX ELDER	Fair
L	35	BOX ELDER	Poor
M	32	TULIP POPLAR	Fair
N	40	TULIP POPLAR	Fair
O	30	BLACK LOCUST	Fair
P	38	PIN OAK	Fair
Q	34	PIN OAK	Fair
R	38	WHITE PINE	Fair
S	32	WHITE PINE	Poor
T	30	WHITE PINE	Fair
U	36	WHITE PINE	Poor
V	42	ELM	Poor
W	44	BLACK OAK	Poor
X	32	TULIP POPLAR	Fair
Y	33	TULIP POPLAR	Fair
CC	31	YELLOWWOOD	Poor
ZZ	11	HAWTHORNE	Poor

Offsite  
 Offsite  
 Offsite

While trees C, D, E, and F may be retained, the ability to do this will be dependent on final design details. Therefore, the Applicant is requesting a variance to remove these trees but will continue to work towards saving these trees with the submission of the site plan.

In accordance with Section 22A-21(e), the Applicant has met all of the following criteria required for the Board to grant the variance:

1. Will not 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 variance is necessary and unavoidable in order to develop Property according to the Sector Plan. Any redevelopment of this site would require similar levels of disturbance and tree loss. The same criteria have been applied to other projects where the impacts and removals are unavoidable.

2. Is not based on conditions or circumstances which are the result of the actions by the Applicant.

The 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 zoned CBD-R1. The distribution of trees throughout the site and next to existing buildings increases the difficulty of retaining the trees. In specific, the County champion 11" DBH hawthorn tree (tree ZZ) is essentially a foundation planting of one of the existing buildings.

3. Is not based on a condition relating to land or building use, either permitted or nonconforming, on a neighboring property.

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

4. Will not violate State water quality standards or cause measurable degradation in water quality.

The 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. Three environmental site design measures are proposed to be implemented to the maximum extent practicable within the development on the site. These measures are green roofs, rainwater harvesting, and micro bioretention. Approximately 40% of the proposed rooftops are planned to be green roofs. Two cisterns are proposed within the underground garage to collect approximately 2 inches of runoff from remaining rooftops and green space. Seven micro bioretention facilities are proposed throughout the site to address the water quality volume requirement for the development. These micro bioretention facilities more than provide treatment for the water quality volume required on-site. The micro bioretention facilities not located above structure are proposed to have a stone reservoir below to allow infiltration in order to meet the recharge volume requirements.

Although the County Arborist recommended mitigation for the impact to critical root zones of the specimen trees, the Planning Board does not find that 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 Sector Plan densities.
2. The Applicant is planting 217 new canopy trees either internal to the site or along 16th Street and East West Highway as part of the landscape plan.
3. The forest conservation plan generates a 1.19 acre forest planting requirement for a property that currently has no forest.

As a result of the above findings, the Planning Board approves the Applicant's request for a variance from individual tree retention requirements of the Forest Conservation Law to remove the 25 trees. The variance approval is assumed into the Planning Board's approval of the forest conservation plan.

5. *The Application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by the Montgomery County Department of Permitting Services ("MCDPS") that the Stormwater Management Concept Plan meets MCDPS' standards.*

The MCDPS Stormwater Management Section approved the stormwater management concept for the project on September 13, 2010. The stormwater management concept includes on-site channel protection and water quality control via the use of environmental site design techniques and off site stream restoration.

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 60 months from its Initiation Date (as defined in Montgomery County Code Section 50-35(h), as amended) and that prior to the expiration of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded among the Land Records of Montgomery County, Maryland or a request for an extension must be filed; and

BE IT FURTHER RESOLVED, that this Resolution constitutes <sup>the</sup> ~~the~~ written opinion of the Board in this matter, and the date of this Resolution is DEC 14 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 Alfandre, with Vice Chair Wells-Harley and Commissioners Alfandre and Presley voting in favor of the motion, and with Chair Carrier and Commissioner Dreyfuss absent, at its regular meeting held on Thursday, December 9, 2010, in Silver Spring, Maryland.

  
\_\_\_\_\_  
Marye Wells-Harley, Vice Chair  
Montgomery County Planning Board





Martin O'Malley, Governor  
Anthony G. Brown, Lt. Governor



Beverley K. Swaim-Staley, Secretary  
Darrell B. Mobley, Acting Administrator

**MARYLAND DEPARTMENT OF TRANSPORTATION**

July 20, 2011

Mr. Daniel E. Pino, P. E.  
Kimly-Horn and Associates, Inc.  
7201 Wisconsin Avenue  
Suite 500  
Bethesda, MD 20814-4848

Re: Montgomery County  
MD 410 (East West Hwy) and  
MD 390 (16<sup>th</sup> Street)  
Mile post: 3.480  
Falkland North  
SHA Tracking # 11-AP-MO-002-XX

Dear Mr. Pino:

Thank you for the opportunity to review the conceptual roadway improvement plans and supporting material for Falkland North, in Montgomery County. The Maryland State Highway Administration (SHA) has completed its review of the first plan submittal, received on 6/29/2011, and offers the following comments:

**Access Management Division Comments:**

1. Please show existing and proposed improvements in appropriate shades, show symbols in the legend box, Add sequence of construction and provide all standard details with Maryland Standard #s.
2. Provide cross sections of the entire roadway every 50 feet from right-of-line to right-of-way line.
3. Please explain why there is a change in baseline stationing numbers on MD 410.
4. Provide structural details of the proposed retaining walls within the SHA right-of-way; also note that any structure proposed within the SHA right-of-way will require approval from SHA's Office of Bridge Development prior to issuance of the access permit.
5. Plan sheet 4 of 4, It appears that the applicant is proposing to dedicate the additional right of-way along the property frontage on MD 410. Please note that truncations and right-of-way dedication/donations need to be in accordance with the Master Plan of the Highways. The SHA will require that the right-of-way dedications/donations be plated to SHA standards. These plats are required in hard copy format for review, checking and final issuance. If you have any questions regarding the plat review process, please contact Ms. Pattiann Smith, Assistant Division Chief, Plats and Surveys Division at 410-545-8860. You may also contact her via e-mail, [psmith11@sha.state.md.us](mailto:psmith11@sha.state.md.us). Additionally, please contact Mr. Paul Lednak, District 3 Right-of way Chief, at 301-513-7470 for information regarding the deed process.
6. Provide typical to show pavement details.
7. Please note that applicants are to reimburse SHA for inspection and materials testing costs incurred for their project. The reimbursement cost is calculated by taking 15% of the base construction cost. A construction cost estimate should be developed once the details for the access and associated roadway improvements have been finalized.
8. When submitting revised plans, please include itemized cost estimate for all work proposed within the SHA right-of-way. You can access the SHA price index from the following link <http://www.roads.maryland.gov/Index.aspx?PageId=34>
9. An application for Maryland State Highway Administration Access Permit would be required at the final stage of the plan approval. The application can be downloaded from the following link <http://www.roads.maryland.gov/ohd2/Final-Permit-Application.pdf>
10. Please note that proposed plans need to be signed and certified by the professional engineer.

My telephone number/toll-free number is \_\_\_\_\_

*Maryland Relay Service for Impaired Hearing or Speech 1.800.735.2258 Statewide Toll Free*

*Street Address: 707 North Calvert Street • Baltimore, Maryland 21202 • Phone 410.545.0300 • [www.roads.maryland.gov](http://www.roads.maryland.gov)*

11. Please note that Utility connection/relocation/adjustment within the SHA right-of-way will require a utility permit from the SHA District 3 office. Please contact, Mr. Victor Grafton, District Utility Engineer at (301) 513-7350 for permitting requirements.

**SHA- District 3 Traffic Comments:**

1. Please provide Traffic Control Plans for our review. Considerable amount of work will be completed directly on or adjacent to state roadways.
2. Please provide a sequence of construction.
3. Please provide Signing plans for our review.
4. Please provide complete callouts for all striping so we can determine that all standards have been met (width and color).
5. Please submit Design Requests for any necessary items. The proposed signal at MD 410 and the entrance to the development is one example. A design request would be necessary for this location.
6. Please provide a legend on all sheets and differentiate the different types of work areas on the plan. The light gray shading is currently over all roadways within the limits of work. Is full depth pavement being applied everywhere? If we are not modifying the existing pavement, please remove shading to avoid confusion.

For clarification of district 3 comments, please contact Maria Bhatti at 301-513-7465.

**SHA-Highway Hydraulics Division Comments:**

1. As the project design proceeds, please provide documentation of the local agency's review and approval of both the stormwater management and erosion/sediment control plans. [*We note that the design engineer is attempting to meet 'Environmental Site Design' (ESD) to the 'Maximum Extent Practicable' (MEP). The Culvert Analysis report makes reference to proposed on-site rainwater cisterns and rain gardens. See comment #2a, #11, and #12.*]
2. Although we defer to the Montgomery County Department of Permitting Services for stormwater management approval, we have the following comments:
  - a. As the project design proceeds, please provide a copy of the stormwater management report – summarizing all proposed on-site BMP's and clarifying how the issue of qualitative management will be addressed for the new impervious area within the SHA right-of-way. The report should include discussion of the existing downstream channel (on the opposite side of MD 410). See comments #2c, #11, and #12.
  - b. As the project design proceeds, please provide enlarged plan views, profiles, sections, and details for all proposed on-site BMP's. See comment #2c.
  - c. It appears that the design engineer is requesting that SHA review two (2) different alternatives regarding added features to the existing 36-inch cross culvert beneath MD 410. The first option calls for a perforated riser structure at the upstream end of the existing culvert, while a second proposes a 'bubbler' structure at the downstream end of pipe. [*Although not appearing on any submitted plan view, we conclude that the 'bubbler' structure would be located within the existing apartment complex on the opposite side of MD 410.*] Please be aware that both of these alternatives are not acceptable. If some level of quantitative management is required (in order to reduce the impact of the proposed development upon the existing MD 410 cross culvert and/or the existing downstream channel), an on-site pond or underground detention facility should be designed (upstream of the cross culvert) -- which allows a stretch of open channel to be

maintained between it and the headwall (at the upstream end of the culvert) – see comments #7 and #10. [*As MD 410 is functionally classified as an ‘Urban Other Principal Arterial’, the 100-year frequency event is the design storm (for the existing cross culvert).*] Please provide photographs of the existing downstream channel – verifying whether any erosion is occurring (see comment #2a). See attached topography mapping – showing the existing stream.

3. As the project design proceeds, please provide typical sections for both MD 410 and MD 390 – giving all required dimensions, cross-slopes, and side slopes for the proposed sidewalks, bike path, and raised median.
4. As the project design proceeds, please provide cross-sections at 50-foot station intervals along both MD 410 and MD 390 – showing/labeling proposed sidewalks, bike path, and raised median. Currently, several short retaining walls (within the SHA right-of-way) are labeled on the plan view (sheet 3 of 4). Please eliminate the need for any retaining walls along westbound MD 410 or northbound MD 390. Otherwise, review and approval would be required through SHA Office of Structures (OOS). See comment #7.
5. On the plan views, please provide flow arrows for all existing storm drains.
6. As we assume that the proposed 10-foot wide bike path will not be constructed of brick, please use a different symbol (from the proposed sidewalk) to represent it.
7. As the project design proceeds, please provide a profile of the entire length of the existing 36-inch cross culvert – showing proposed 10-foot wide bike path and 5-foot wide sidewalk (with associated proposed grading). Determine if culvert extension will be required – see comments #2c, #4, and #10. On the profile, please show/label both the pre- and post-development 100-year headwater elevations.
8. As the project design proceeds, please provide analysis (with supporting drainage area mapping) of all existing inlets along both MD 410 and MD 390. [*In accordance with SHA drainage design criteria, gutter spreads cannot exceed 8 feet and all inlets must intercept at least 85% of the flow – based upon the 2-year frequency storm. Additionally, the 2-year flow across entrances cannot exceed 1.0 cfs.*] Determine if additional inlets would be required.
9. As the project design proceeds, please provide the landscaping plans. Ensure that there will *not* be any conflicts between proposed street trees and existing underground utilities.
10. Once finalized, please provide a copy of the signed ‘recordable’ plat (in SHA format and on SHA border) with accompanying deed – for right-of-way dedication. The existing or proposed headwall for the upstream end of the existing 36-inch cross culvert (see comment #7) must be placed within dedicated SHA right-of-way. Also, please verify whether the existing downstream channel is located within either an SHA or Montgomery County easement.
11. If it will be the intent to provide water quality treatment of SHA impervious area within an adjacent private stormwater management facility or facilities (see comment #2a), a BMP tracking number or numbers must be obtained through Dana Havlik ([dhavlik@sha.state.md.us](mailto:dhavlik@sha.state.md.us)) – as per new SHA Highway Hydraulics Division policy. The design engineer will be responsible for contacting Dana (providing her with ‘pdf’ drawings of the BMP or BMP’s); and then **boldly** labeling the assigned tracking numbers on all appropriate drawings.
12. If it will be the intent to provide water quality treatment of SHA impervious area within an adjacent private stormwater management facility or facilities (see comment #2a), the design engineer must provide the following information (within the written response letter):
  - a. Type of BMP or BMP’s.
  - b. Amount (acres) of SHA impervious area to be treated by each BMP.

- c. Center location (coordinates) of each BMP.
- d. Owner and party responsible for maintenance of the BMP or BMP's.

For clarification of any hydraulic comments, please contact Rick Schmuff ([rschmuff@sha.state.md.us](mailto:rschmuff@sha.state.md.us)).

(410) 545 5594

**SHA- Environment Planning Division (Cultural Resource) Comments:**

1. The Project Planning Division has compiled a cultural resource inventory (standing structures and archeology sites) in the vicinity of the proposed MD 410 improvements, related to the Falkland North Project. Based on this assessment the proposed roadway improvements to MD 410 associated with the Falkland North project do have the potential to impact historic properties. A formal consultation with the Maryland Historic Trust is recommended.
2. The information regarding the cultural resource checklist and Maryland Department of Planning, Maryland Historic Trust (MHT) is enclosed for your review and coordination. An approval from the MHT will be required prior to issuance of the access permit.

For clarification of Environment Planning Division comments, please contact Ms. Nicole Mutchie, Archeologist, at 410-545-8870.

**SHA- Innovative Contracting Division, ADA team Comments:**

1. Plan sheet 2 of 4: median cut through:
  - a. Reference a MD Standard 655.21 for the proposed median cut through at STA. 3+65 RT. If the cut through cannot be constructed to a standard an ADA Compliant Detail must be provided and referenced.
2. Plan sheet 2 of 4: driveway entrance:
  - a. The driveway entrances at STA.3+40 RT and STA. 3+90 RT must have a minimum 5' wide pedestrian pathway with a maximum 2% cross slope across the entirety of the entrances, regardless of materials used in construction. Make this note on the plan sheet.
3. Plan sheet 3 of 4: southeast ramp and median cut through:
  - a. Please provide detail on the plan for review and approval.
  - b. Reference a MD Standard 655.21 for the proposed median cut through at STA. 19+50 LT. If the cut through cannot be constructed to a standard an ADA Compliant Detail must be provided and referenced.
4. Plan sheet 4 of 4: proposed ramps, median cut through and driveway entrance:
  - a. Reference a MD Standard for each ramp being upgraded. If any of the ramps cannot be constructed to a MD Standards, an ADA Compliant Detail must be provided and referenced.
  - b. Reference a MD Standard 655.21 for the proposed median cut through at STA. 7+35 LT and STA 8+40 LT. If the cut through cannot be constructed to a standard an ADA Compliant Detail must be provided and referenced.
  - c. The driveway entrances at STA.4+90 LT and STA. 7+80 LT must have a minimum 5' wide pedestrian pathway with a maximum 2% cross slope across the entirety of the entrances, regardless of materials used in construction. Make this note on the plan sheet.

For clarification of any ADA Team comments, please contact Mr. John Vranish at 410-545-8778.

**SHA-Regional and Intermodal Planning Division (RIPD) Comments:**

1. The proposed development is directly adjacent to the proposed alignment of the Purple Line light rail and may be significantly impacted by the necessary right-of-way requirements. The developers should anticipate the eventual construction of the Purple Line. The developers and the Maryland-National Capital Park and Planning Commission (M-NCPPC) have contacted and met with MTA and

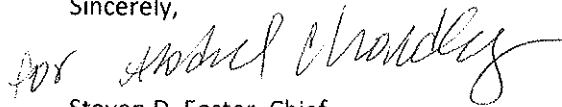
will need to coordinate, as necessary, with the MTA Project Manager, Michael Madden. He may be reached at the Maryland Transit Administration at (410) 767-3694 or via email [mmadden@mta.maryland.gov](mailto:mmadden@mta.maryland.gov).

2. At this time, SHA has no planning studies on MD 410 or MD 390; nor does the current Highway Needs Inventory (HNI) show any proposed improvements along these segments.

For clarification of the RIPD comments, please contact Mr. Roy Gothie, Assistant Regional Planner, at 410-545-5654.

Further review of the project will be withheld until the above comments have been addressed. Please reference the SHA tracking number on all future submissions, revise your plans to reflect the above comments, provide a written point-by-point response, and re-submit seven(7) set of roadway plans and two copies of Storm Water Management analysis report to this office attention of Mr. Abdul Choudhary. Should you have any questions, please do not hesitate to contact Mr. Abdul Choudhary at 410-545-2803 or our toll free number in Maryland only 1-800-876-4742 extension 2803. Thank you for your cooperation.

Sincerely,



Steven D. Foster, Chief  
Access Management Division

SDF/JWR/AC

- Enclosures:
- a. Cultural resource checklist - with original letter
  - b. Falkland North topographic map - with original letter

- Cc:
- Mr. Brian Young, District Engineer-District 3, SHA
  - Mr. Cedric Ward, ADE District 3 Traffic, SHA
  - Mr. Victor Grafton, District Utility Engineer, District 3, SHA
  - Mr. Scott Newill, AMD, SHA
  - Ms. Makeda Drake, H/H, SHA
  - Ms. Maria Bhatti, District 3 Traffic, SHA
  - Mr. John Grover, Innovative Contracting Division, SHA
  - Ms. Reena Mathew, SHA-RIPD

**ENVIRONMENTAL PLANNING DIVISION  
ACCESS PERMIT REVIEW: CULTURAL RESOURCES CHECKLIST**

EAPD Number: 2154

**DATE:** July 18, 2011  
**COUNTY:** Montgomery  
**ROUTE:** MD 410  
**PROJECT:** Falklands North  
**PROJECT PLANS** Kimley-Horn & Assoc., 06/22/2011  
**REVIEWER:** Nichole Mutchie, SHA Archeologist

<b>CULTURAL RESOURCES INVENTORY:</b>	<b>YES/NO</b>	<b>Percent</b>
PROJECT OUTSIDE SHA ROW: Based on Project Plans	No	U/K
STANDING STRUCTURES w/in APE: Based on SHA-GIS	Yes	
ARCHEOLOGICAL SITES w/in APE: Based on SHA-GIS	No	
INCLUDED IN PREVIOUS SURVEYS?: Based on SHA-GIS	Yes	
AREA PREVIOUSLY DISTURBED?: Based on SHA Visidata and GIS	Yes	U/K
<b>CULTURAL RESOURCES POTENTIAL:</b>	<b>HIGH/LOW</b>	
POTENTIAL FOR UNIDENTIFIED HISTORIC PROPERTIES:	High	
<b>CULTURAL RESOURCES CONSULTATION:</b>	<b>YES/NO</b>	
POTENTIAL IMPACTS TO IDENTIFIED HISTORIC PROPERTIES:	Yes	
MARYLAND HISTORICAL TRUST CONSULTATION:	Yes	

**General Comments:**

The project's Area of Potential Effects (APE) is defined as the limits of disturbance of the proposed development. The APE effects the Falklands Apartments (M: 36-12), which is listed in the Maryland Inventory of Historic Properties and is eligible for listing the National Register of Historic Places. This garden style apartment complex was built in 1937 as one of the first projects funded by the Federal Housing Administration. The Falklands Apartments is significant for its embodiment of FHS guidelines which includes following natural topography, providing substantial setbacks, and creating a natural landscape. The apartment buildings are also significant for their form, style, design and construction. It is unclear from the construction plans provided if any of the buildings will be demolished, or significantly altered. The proposed new access will change the character of the apartment's garden style. Therefore, coordination with the Maryland Historical Trust is recommended. Please consult with the MHT



*Maryland Department of Planning  
Maryland Historical Trust*

*Martin O'Malley  
Governor  
Anthony G. Brown  
Lt. Governor*

*Beverly Szumigalsky  
Secretary*

## **Federal and State Historic Preservation Review**

Under Section 106 of the National Historic Preservation Act and the Maryland Historical Trust Act of 1985, Federal and State agencies are required to examine the impact of their undertakings on significant historic properties and to take steps to avoid, reduce, or mitigate any adverse effects to these resources. As Maryland's State Historic Preservation Office, the Maryland Historical Trust (MHT) is charged with reviewing state and federally assisted projects to assess potential effects to significant prehistoric and historic resources and ensure compliance with historic preservation laws and regulations.

If your project is going to require any form of federal or state permitting, licensing, or funding (e.g., Corps of Engineers wetland permit, CDBG funding, SHA access permit, etc.), please provide our office with the following information:

- A detailed description of the proposed project, noting the nature of the state and/or federal involvement;
- A map (preferably a section of a USGS topographic quadrangle or an ADC map) or site plan, clearly showing the location of the project area and delineating the project area's boundaries;
- Labeled photographs (print or digital) of the project site including images of all buildings and structures that may be affected by the project;
- Drawings and/or a written scope of work illustrating the proposed project;
- A brief description of past and present land use in the project area (tilled field, wooded, mined, etc.).

These items should be submitted to:

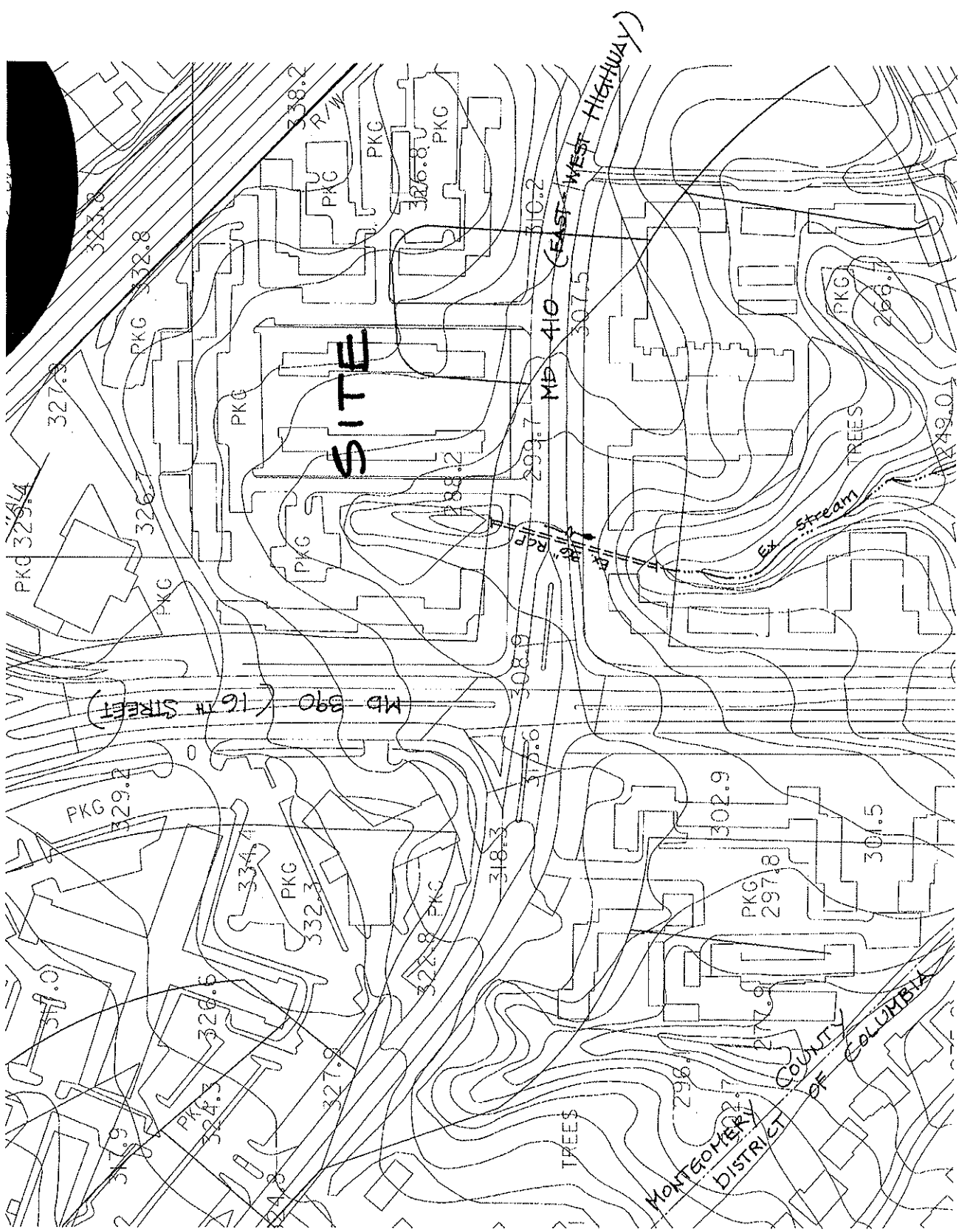
Ms. Elizabeth Cole, Administrator  
Project Review and Compliance  
Maryland Historical Trust  
100 Community Place  
Crownsville, MD 21032

Staff can normally provide a written response within 30 days from receipt of submittal. Upon receipt of the information, MHT staff archeologists and architectural historians will review our GIS system, the Maryland Inventory of Historic Properties, survey records, historic maps, aerial photographs, and other available documents to determine if known historic properties are located within the project area and to assess the potential of the project area to contain properties that have not yet been identified. Based on this review, we will inform the project applicant and the relevant federal and/or state agencies of our recommendations. MHT recommendations may include: a) no further studies are warranted, b) additional investigations are needed to locate and/or evaluate the significance of properties, or c) the development of treatment plans or changes to the scope of work will be needed to avoid, reduce, or mitigate adverse effects to significant historic properties. Staff will also provide recommendations and assistance on the appropriate treatment of historic properties for a given project, such as acceptable rehabilitation measures, stabilization, site avoidance, archeological investigations, etc.

If your project is going to require federal or state assistance, we encourage you to submit your project information and begin your consultation with MHT as early in the project planning process as possible in order to provide adequate time to address potential historic preservation concerns and to prevent avoidable delays. While it is preferable that your project information is submitted to our office prior to any cultural resources investigations such as Phase I or Phase II archeological studies, your information *must* be submitted to us prior to the commencement of any Phase III archeological investigations, building renovations, or demolitions that have been required or approved by local governments.

Please visit the MHT website for more information about our programs and services at [www.marylandhistoricaltrust.net](http://www.marylandhistoricaltrust.net).







DEC 29 2008



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

**MCPB No. 08-151**

**Falkland Chase**

**Date of Hearing and Worksession: July 10, 2008 and September 4, 2008**

**MONTGOMERY COUNTY PLANNING BOARD**

**RESOLUTION**

WHEREAS the Montgomery County Planning Board ("Planning Board") is vested with the authority to place properties on and remove properties from the Locational Atlas and Index of Historic Sites ("Locational Atlas"); and

WHEREAS, on December 6, 2007, following a public hearing, the Planning Board voted to find that the Falkland Apartments, located on three parcels at the southwest, southeast, and northeast quadrants of the intersection of East-West Highway and 16<sup>th</sup> Street in Silver Spring, Maryland (the "West Parcel," "South Parcel," and "North Parcel," respectively) were eligible to be considered for designation on the Master Plan for Historic Preservation, and voted to determine at a later date, after holding a further public hearing, whether to recommend that the County Council place the Falkland Apartments, or any parcel thereof, on the Master Plan for Historic Preservation ("Master Plan"); and

WHEREAS, on July 2, 2008, Planning Board staff ("Staff") issued a memorandum to the Planning Board, setting forth its analysis of the public benefits associated with designating all of the parcels on the Master Plan, as advocated by representatives of the Commission's historic preservation staff, the Historic Preservation Commission, and certain other parties, versus the public benefits associated with designating the South and West parcels only and allowing the North Parcel to redevelop, as advocated by the property owner and certain other parties, and urging that the Planning Board recommend that the South and West Parcels be included in the Master Plan, but not to include the North Parcel on the Master Plan ("Staff Report"), which is incorporated herein by reference; and

WHEREAS, the Staff Report further recommended that, in order to ensure that the potential public benefits associated with redevelopment of the North Parcel, including the location of a mix of unit types, low-income and workforce housing, and well designed mixed-use development in close proximity to an existing metro station, are realized, the Planning Board vote to remove the North Parcel from the Locational Atlas

Approved as to  
Legal Sufficiency:

*Dilc 11/21/08*

8387 Georgia Way, MNCPPC Legal Department 20910 Chairman's Office: 301.495.1605 Fax: 301.495.1320

[www.MCParkandPlanning.org](http://www.MCParkandPlanning.org) E-Mail: [mcp-chairman@mncppc.org](mailto:mcp-chairman@mncppc.org)

automatically upon approval of a site plan application or applications for the redevelopment of the entirety of the north parcel, and that, in the event that more than one site plan is filed for the North Parcel, it should only be removed from the Locational Atlas with the approval of the certified site plan covering the last portion of the North Parcel for which no certified site plan has been approved; and

WHEREAS, on July 10, 2008, the Planning Board heard testimony and received evidence submitted for the record on the proposal to recommend the Falkland Apartments on the Master Plan; and

WHEREAS, the Planning Board continued the July 10 hearing to a September 4, 2008 worksession in order to determine what action to take; and

WHEREAS, on August 27, 2008, the Staff prepared a memorandum for the Planning Board summarizing the testimony received at the July 10 hearing, and once again urging the Planning Board to recommend that the Council designate only the South and West parcels on the Master Plan, and further recommending that the Planning Board vote to remove the North Parcel from the Locational Atlas immediately upon approval of the certified site plan or site plans covering the entirety of the North Parcel, which is incorporated herein by reference; and

WHEREAS, on September 4, 2008, the Planning Board voted to adopt the staff recommendation, on the motion of Commissioner Robinson, seconded by Commissioner Cryor, with a vote of 4-0, Commissioners Hanson, Robinson, Cryor, and Alfandre voting in favor and Commissioner Presley absent.

NOW, THEREFORE, BE IT RESOLVED that the North Parcel of the Falkland Chase apartments will be removed from the Locational Atlas automatically upon approval of a site plan application or applications for the redevelopment of the entirety of the North Parcel, and that, in event more than one site plan is filed for the North Parcel, it will be removed from the Locational Atlas only with the approval of the certified site plan covering the last portion of the North Parcel for which no certified site plan has been approved.

BE IT FURTHER RESOLVED, that the date of this Resolution is DEC 29 2008 (which is the date that this Resolution is mailed to all parties of record); and

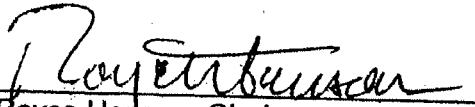
BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this

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 Alfandre, seconded by Commissioner Robinson, with Commissioners Hanson, Robinson, Alfandre, and Cryor voting in favor of the motion, and Commissioner Presley abstaining, at its regular meeting held on Thursday, December 4, 2008, in Silver Spring, Maryland.

  
Royce Hanson, Chairman  
Montgomery County Planning Board

