


## Continuation of 8001 Newell Street, Project Plan, 920130020

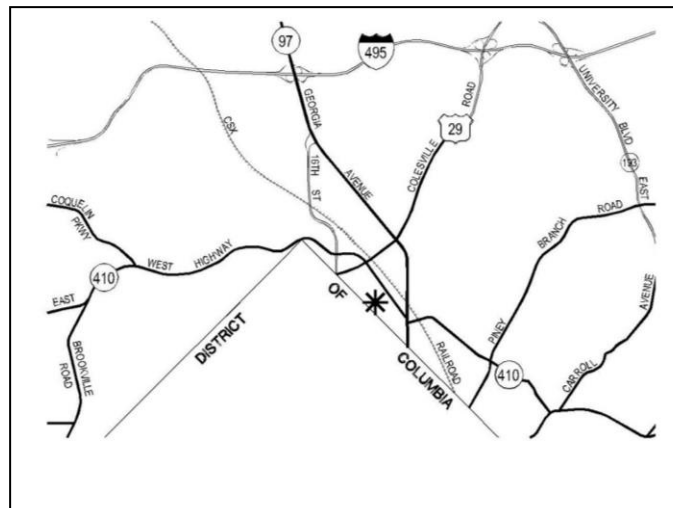
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Date of Staff Report: 5/03/13

### Description

- Demolition of an existing 1 story self-storage building located at 8001 Newell Street for 3,100 square feet of retail and 156,815 square feet of residential development up to 187 dwelling units, including 12.5% MPDU's
- Located at the corner of Eastern Avenue and Newell Street
- On 53,305 gross square feet (1.22 acres) zoned CDB-1 and the Ripley/South Silver Spring Overlay in the 2000 Silver Spring CBD Sector Plan area
- Net Lot area will be 41,245 square feet
- Applicant: Comstock Newell, LLC
- Submitted on September 25, 2012
- Deferred by Planning Board 12/20/2012



### Summary

- The application was deferred by the Planning Board at the project plan hearing on December 20, 2012, at the request of the Applicant. The Applicant has requested a new Board date to continue the discussion of the setback along Newell Street. At the hearing a discussion took place regarding the setbacks and building heights as defined in the Ripley South Silver Spring Overlay zone and Silver Spring CBD Sector Plan. At that hearing, the Planning Board discussed a finding of compatibility for 8045 Newell Street (SP 820030370) that took place in 2003. That finding involved application of the Sector Plan regarding the setback on Newell Street that is not consistent with current staff position. The finding in 8045 Newell Street indicated that the 45' height restriction for the first 60' beyond the property line on Newell Street was applicable. In 2003, there was no dispute about the setback, and, therefore, little analysis of it. By contrast, in this case staff has analyzed this issue in depth. Further, County Council staff has provided an analysis of setback issue that supports the conclusion that the setback was not intended to apply on Newell Street (see appendix D). The transition in the overlay zone is intended to buffer new developments in

CBD-1 zones that are adjacent to, or confronting low-density residential zones, not to buffer between one CBD-1 zoned property and another.

- Staff recommends approval of the Project Plan with conditions.
- The Application proposes 187 dwelling units or 156,815 square feet of residential use and 3,100 square feet of retail use under the optional method of development (total 159,915 square feet). Since the December 20, 2012 hearing the building footprint has been modified specifically to address compatibility and relationships to adjacent buildings. The project will meet all residential parking requirements on-site with underground parking. The required 14 parking spaces for 3,100 square feet of ground floor retail use will be met off-site through the Parking Lot District. The development will provide a public amenity package that includes a public plaza at the corner of Newell Street and Eastern Avenue consisting of a green lawn area for sitting or picnicking, Bio-retention areas and artwork.
- The proposed building has a layout and design that is compatible with the surrounding residential structures through massing, varied heights and setbacks, and creates a welcoming streetscape experience.
- The staff analysis of the setbacks and building heights along Eastern Avenue and Newell Street confirms that the Project Plan substantially conforms to the Sector Plan. The Sector Plan provides guidance for properties in the Overlay Zone that confront low density residential properties outside the Overlay Zone.
- The community submitted a request for a minor master plan amendment in order to amend the Sector Plan to include a recommendation for a public park on the subject site. The request is not currently being reviewed as part of our work program; however, the Parks Department is not considering this site for a future public park for reasons discussed later in this report.

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## **BACKGROUND**

During the December 20, 2012 hearing, the Board raised concerns over the application of a setback specifically along Newell Street. Counsel for 8045 Newell Condominiums, the adjacent building directly to the southeast of subject property, pointed out that a setback was applied to their site plan and should be consistently applied to the subject site, and that the 60 foot setback from Newell Street was intended to comply with the language in the Ripley/South Silver Spring Overlay Zone. The Board and staff discussed the discrepancies between the Sector Plan language and overlay zone language, specifically the intent to apply a sixty foot setback along Newell Street. Staff contended that the ordinance was written to protect the heights and neighborhood character only along Eastern Avenue where the properties are predominantly single-family detached homes. The building directly across Newell Street from the subject property is 3-4 story garden apartments in the R-10 zone, while the building directly across Newell Street from 8045 is approximately 143 feet tall in the CBD-1 zone. The July 11, 2003 staff report for 8045 Newell Street Condominiums references the setbacks as prescribed in the Sector Plan and further in the overlay zone. The report does not provide a discussion as to the reasoning for the setback other than what is represented in the Sector Plan and overlay zone. There is no particular discussion regarding application of the setback along Newell Street other than the corner of Newell and Kennett Streets would be occupied by the project's public use space and amenity area and not a building.

The letter of interpretation from Council Staff to Councilmember Valerie Ervin, forwarded to Planning Board on February 28, 2013, indicated that the Council's intent in writing the zoning text amendment implementing the Ripley/South Silver Spring Overlay Zone, regarding height setbacks on Newell Street, was to maintain compatibility with the single-family detached along Eastern Avenue in the District of Columbia. Council staff provided an analysis of the setback issue that supports the conclusions of Planning staff that the setback was not intended to apply to Newell Street (see appendix D).

## **SITE DESCRIPTION**

### **Vicinity**

The Subject Property is located in the Ripley/South Silver Spring Overlay Zone identified in the Silver Spring CBD Sector Plan area. The site is presently improved by a one story self-storage storage facility that occupies the entire site. The adjacent uses include high rise and garden apartments, a county parking garage, a church, offices and retail

establishments. Directly to the southeast is a six story (approximately 75' feet tall) condominium called 8045 Newell Street and the four story Eastern Village Co-housing Condominium building. The site is within walking distance of the Silver Spring Transit Center, which will accommodate the Silver Spring Metro Station, local and regional bus lines, a commuter train station and a future Purple Line station. The District of Columbia boundary is Eastern Avenue. The uses opposite Eastern Avenue consist of one-family homes, and churches further east.



*Aerial Photo Looking North*

## **Site Analysis**

The Subject Property is currently improved with a self-storage facility (Silver Spring Extra Space). The site is at the edge of the Ripley/South Silver Spring Overlay Zone and within the CBD-1 zone. There is a 1-2% slope across the frontage of the property. All utilities on Newell Street are underground while there are utility lines on telephone poles along the Eastern Avenue frontage. The rear of the self-storage building sits directly on the property line it shares with 8045 Newell Street.

## **PROJECT DESCRIPTION**

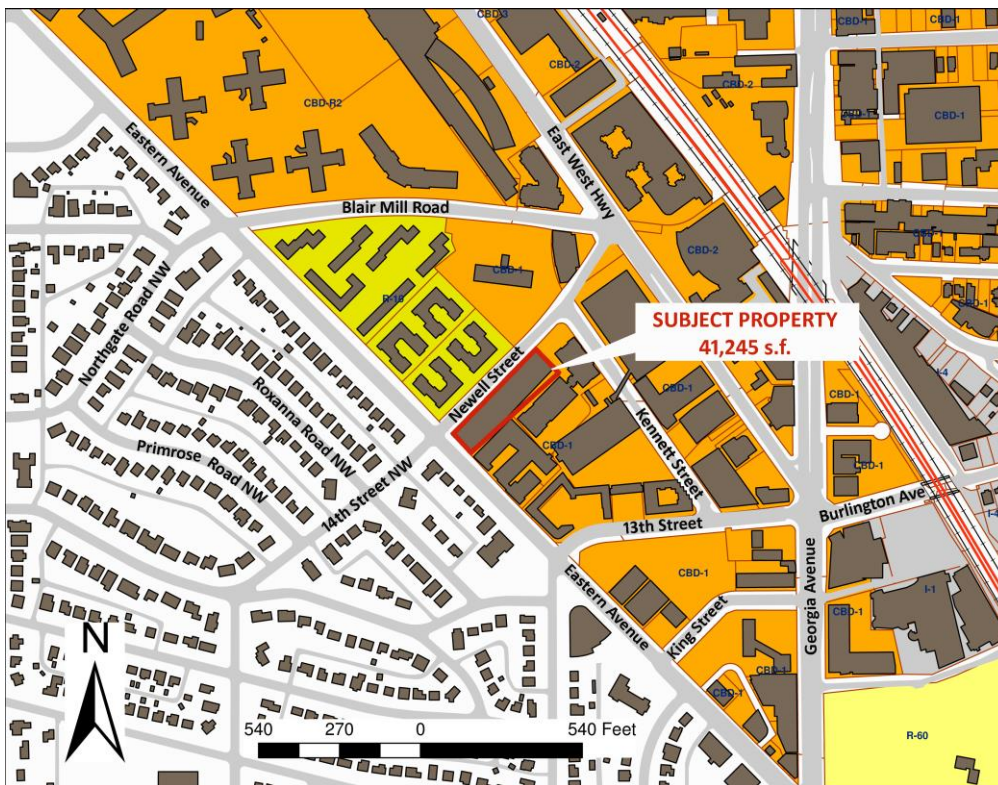
### **Proposal**

The applicant proposes a mixed-use redevelopment of the property that will incorporate 187 dwelling units and 3,100 square feet of ground floor retail use and underground parking. There will be 16 dwelling units on the ground floor as well as

fitness and social rooms that face Newell Street. The on-site public use space will be located at the corner of Newell Street and Eastern Avenue. It will be an 8,500 square foot pocket park that is predominantly green, incorporating, lawn, trees, shrubs, perennials, art work and storm water best management practices. It will provide a 60 foot wide buffer between the proposed building and Eastern Avenue, providing a green buffer between the Silver Spring CBD and the single family residential homes on the District side of Eastern Avenue. The applicant has modified the proposal to expand the setback between the rear of the proposed building and the existing 8045 Newell Street Building from 55 to 60 feet. They have increased the setback between the rear of the proposed building and the existing Eastern Village Cohousing building from 32 feet to 36 feet and they have decrease the width of the proposed building by 3 feet in order to further buffer the effect on the neighboring building located at 8045 Newell Street. The Sector Plan limits the building heights on Eastern Avenue to 45 feet for the first 60 behind the right -of -way where the building can then increase to 90 feet.

### Land Use

The proposed development would provide 159,915 square feet of gross floor area for residential and retail uses. The ground floor will have residential units with retail at the corner of Newell Street and Eastern Avenue. The main lobby, a fitness room and a



*Vicinity Map*

social room will face onto Newell Street. The site is on a platted lot and the Sector Plan right of way dedication is required to be taken from the north side of Newell Street

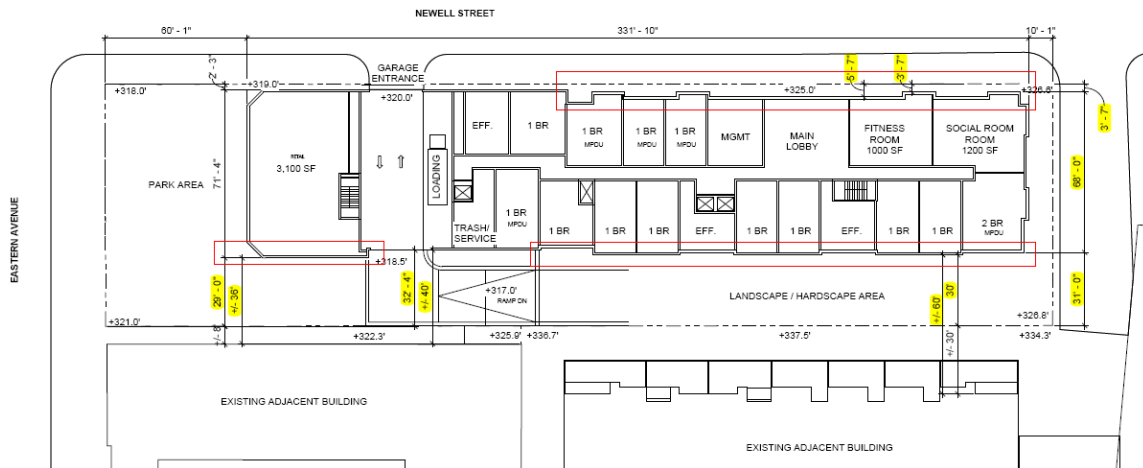
where the zone is R-10.

### Architecture

The proposed building will be a seven story (74 feet) mixed use retail and residential building with parking below. The first five floors of the building will be approximately 50 feet tall at the southwest end. The rear building façade has been modified to provide undulations in the footprint, adding interest while increasing the distance from the 8045 Newell Building. The last two stories will step back approximately 12 feet from Newell Street before rising to 74 feet. The building is to have the level of quality and style of the materials shown in the rendered elevation.

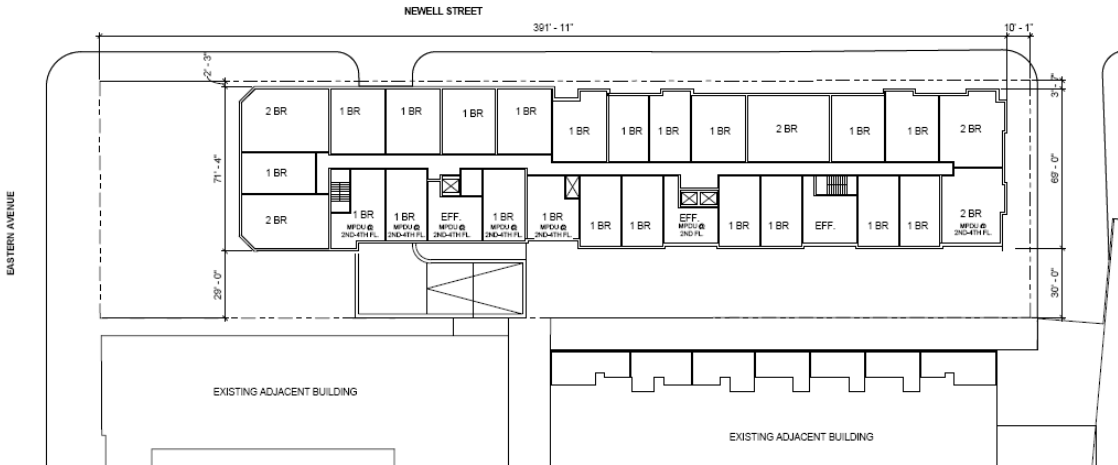


Rendered Elevation

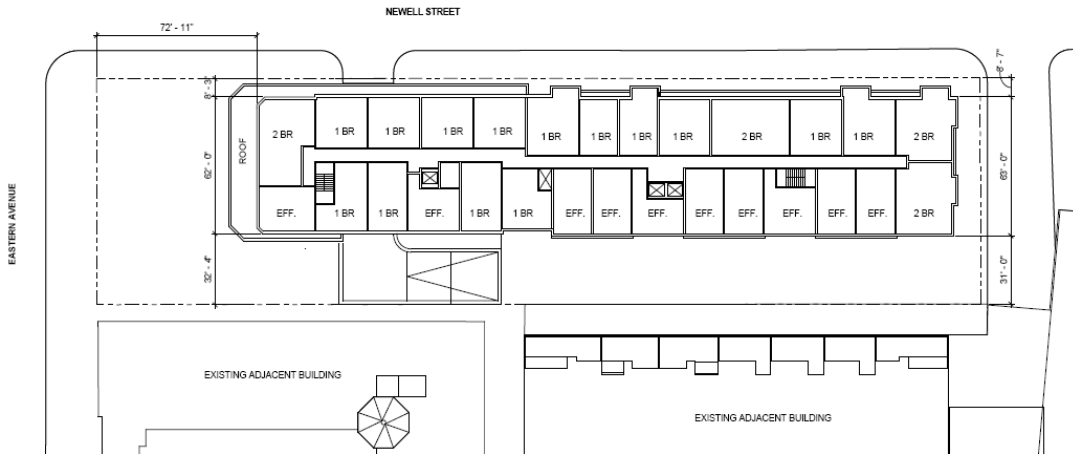


Ground Floor

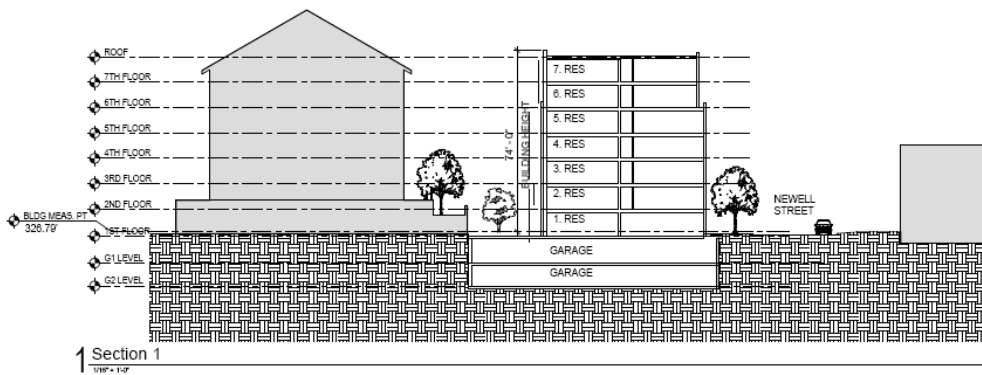




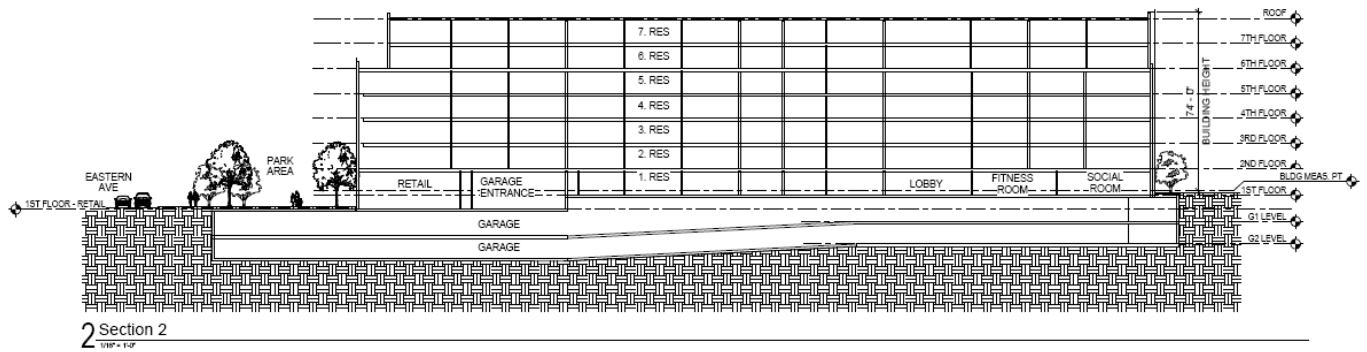
2<sup>nd</sup> Floor



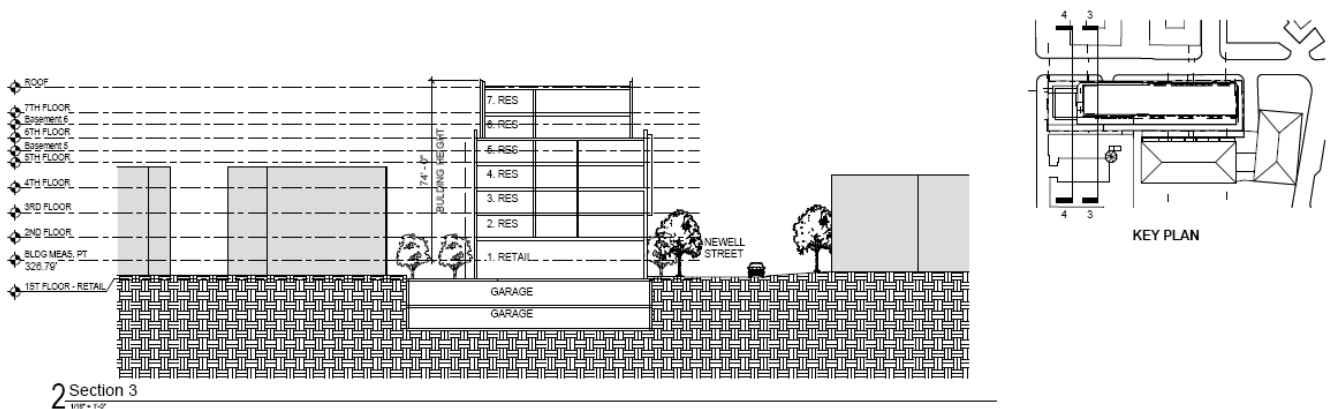
6<sup>th</sup> Floor



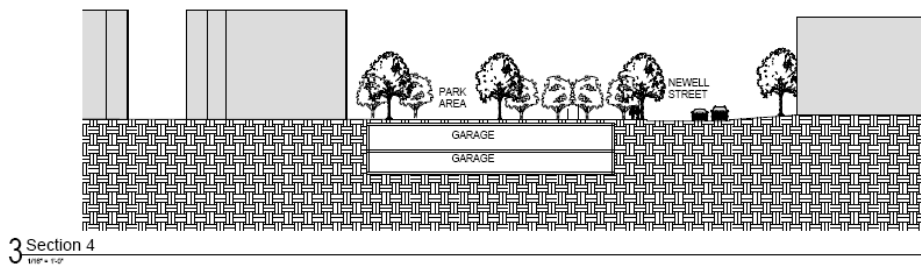
Section through proposed building at 8045 Newell looking west



Section through proposed building looking north



Section through proposed Building at Eastern Cohousing looking west



Section through proposed Park looking west

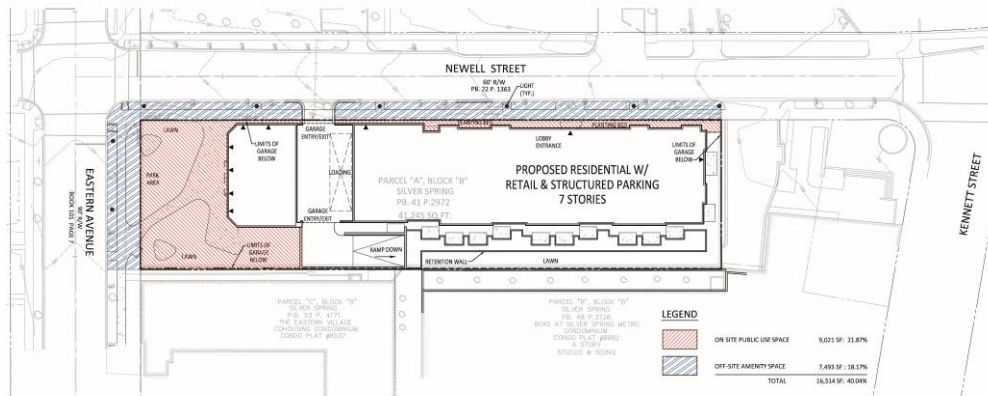
Public Use Space & Amenities

The proposed development provides 9,021 square feet of on-site public use space (21.87% of net lot area), satisfying the 20 percent requirement for Optional Method Development projects in the CBD. In addition, the project provides 7,493 square feet of off-site amenity space (18.17% of net lot area). The on-site space is composed of a

public open space that includes lawn, landscaping and paved areas for circulation and seating. The off-site amenity space requirements will be met by replacing existing concrete sidewalks with the Silver Spring Streetscape, including brick sidewalks, trees, lighting and street furniture. The applicant will fulfill the Green Street goal for Newell Street proposed by the Sector Plan (p. 55) by adapting the streetscape details in the Silver Spring Streetscape standards in the following ways:

1. Create green amended soil panels between the proposed street trees by removing the existing brick sidewalk between the existing street trees. Propose interesting native plant material in the green panels. The proposed panels will be installed according to the Silver Spring Streetscape Standards.
2. Incorporate pervious pavers and other best management practices to incorporate stormwater in the sidewalks.

Final details will be determined during the review of the site plan.



*Public Use/Amenity Space Diagram*



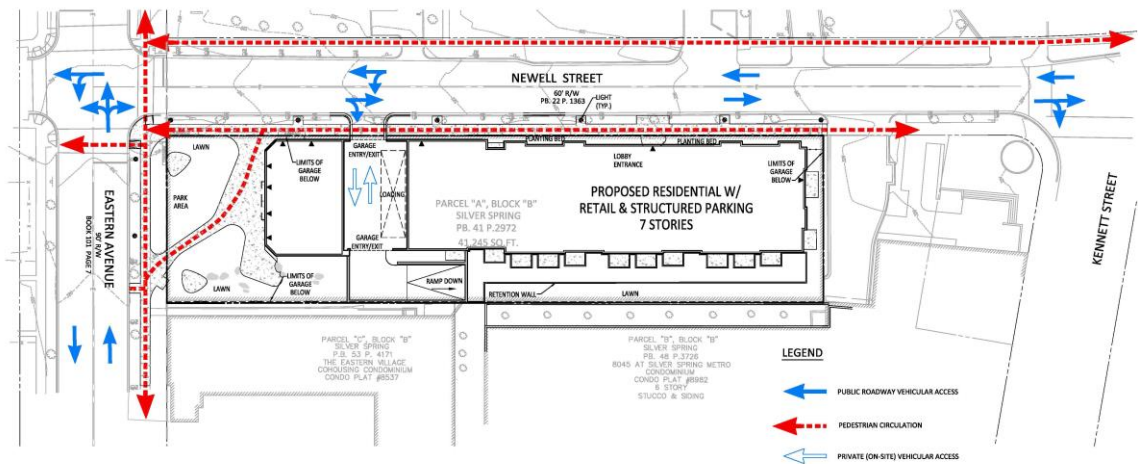
*Landscape Plan*

Vehicular and Pedestrian Circulation

Resident parking and loading will be accessed from Newell Street and existing on-street

parking will be preserved. Access to the site will be limited to one curb-cut, eliminating the two existing curb cuts for the storage building. This curb cut will serve both as the access point to the underground parking as well as the access point to the building loading area.

Pedestrians will access the site via improved sidewalks on Newell Street as well as a pedestrian path cutting diagonally across the public use space between Eastern Avenue and Newell Street. The primary pedestrian point of access to the residential units is from Newell Street. The primary point of access to the retail will be at the southwest end of the site at the corner of Newell and Eastern Avenue. Cyclists will be provided on-site racks to safely lock their bikes.



*Circulation Plan*

## PROJECT ANALYSIS

### Sector Plan

The site is located within the boundaries of the Approved and Adopted February 2000 Silver Spring Central Business District Sector Plan. The Sector Plan articulates six themes or goals for the CBD that serve to guide the evaluation of development proposals (page 14):

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

The Application is generally consistent with the Sector Plan vision, fulfilling five of the six

themes as described below:

1. Transit Oriented Downtown, Page 16 - The project is within walking distance of the future multi-modal Transit Station, thereby providing future residents with excellent access to a variety of mass transit options.
2. Commercial Downtown, Page 18 – The project will incorporate ground floor retail, enlivening the streetscape in South Silver Spring with active uses where none presently exist.
3. Residential Downtown, Page 19 - The project includes 187 residential units.
4. Green Downtown, Page 22 – The plan provides tree lined streets and a landscaped plaza, featuring bio-filtration planters.
5. Pedestrian-Friendly Downtown, Page 24 –Streetscape improvements will be installed in compliance with the Silver Spring Streetscape Standards, including street trees, brick paving, street lights and furnishings on the Newell Street and Eastern Avenue frontages.

The Sector Plan states several urban design goals (page 73) which the project satisfies:

- Conforms to the Sector Plan, CBD-wide planning goals such as transportation, environmental resources and the standards of a revised Silver Spring Streetscape.
- Creates an attractive pedestrian environment by defining the street with appropriately human scaled buildings (replaces an existing self-storage building with a residential building) with numerous doors, windows, and architectural details and public open spaces and streetscaping.
- Establishes streetscapes that emphasize the hierarchy of the circulation system.
- Creates formal and informal civic spaces - building and open spaces - that support property values, provide amenities, and improve the appearance of downtown.
- Incorporates the principles of crime prevention through environmental design (CPTED) by stressing visibility, pedestrian activity, and programming into the project.

There are three urban design guidelines that are not applicable to this project. The first is the recommendation that historic resources be incorporated in the new development. There are no historic resources that are impacted by this proposed development. The second is to provide safe and attractive pedestrian connections between new development on the Urban Renewal site of Downtown Silver Spring and surrounding CBD neighborhoods. This project is well removed from the Urban Renewal site to the

east. The third is regarding contributing to the establishment of the Silver Spring Green Trail on Wayne Avenue. This trail is not in the vicinity of the proposed development and a majority of the Green Trail has already been installed.

### **Sector Plan and Zoning Ordinance Conformance**

The summary of the Ripley/South Silver Spring overlay zone on page 60 of the Sector Plan describes a major provision of the overlay zone as follows: “Limit building height for new construction along Eastern Avenue, fronting one-family detached dwellings in the District of Columbia as follows: at the property line, building heights should be limited to 45 feet. Above 45 feet, the building may step back 60 feet and its height may increase to 90 feet.”

The language in the zoning ordinance for the Ripley/South Silver Spring Overlay Zone states: “Building height in the overlay zone along Newell Street and Eastern Avenue that confronts a residential zone in the District of Columbia must not exceed a height of 45 feet”, but may be increased if the setback is applied: “(A) a maximum of 90 feet for any building or portion of a building that is set back at least 60 feet from the street:...”

Language on page 86 of the Sector Plan, however, states that: “Building heights along *Newell Street* (emphasis added) and Eastern Avenue should ensure compatibility with the adjacent residential neighborhood”, and that “at the property line, building heights should be limited to 45 feet” and “above 45 feet, the building may step back 60 feet and its height may increase to 90 feet”.<sup>1</sup>

The above Sector Plan language and the provision in the Zoning Ordinance refer to compatibility with residential zones in the District of Columbia, not the R-10 multi-family housing on the north side of Newell Street in the Silver Spring CBD. If the height and setback restrictions found on page 86 of the Sector Plan and the Ripley/South Silver Spring Overlay Zone (Section 59-C-18.202(b)(1)(A) were applied to Newell Street and Eastern Avenue equally, the subject site, being approximately 100 feet deep along Newell Street is not deep enough to accommodate a 45 feet height limitation for the first 60 feet of the property. The remaining 40 feet in depth, even at a height of 90 feet would not accommodate a floor plate with efficient development of additional floors. Such a restriction would effectively eliminate the applicant’s ability to develop the property to the density allowed by the optional method of development. The Sector

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<sup>1</sup> It is important to note that figure 6 on page 87, illustrating the language on page 86 is labeled: *South Silver Spring-Eastern Avenue*. Newell Street is *not* included in the figure label.

Plan recommended that underutilized land in South Silver Spring be rezoned to *encourage redevelopment*. The above height restrictions applied to Newell Street would contradict this stated goal of the Sector Plan.

Furthermore, the abutting residential property across Newell Street, is zoned R-10, a high density residential zone with no height limitation and hence no need for a transition to CBD 1 zoned land. Therefore, staff applies the Sector Plan language regarding the subject property in the same way the zoning ordinance codifies it; as only applying to the single-family properties across Eastern Avenue in the District of Columbia and not to the high density residential zone, R-10, across Newell Street in the Silver Spring CBD.

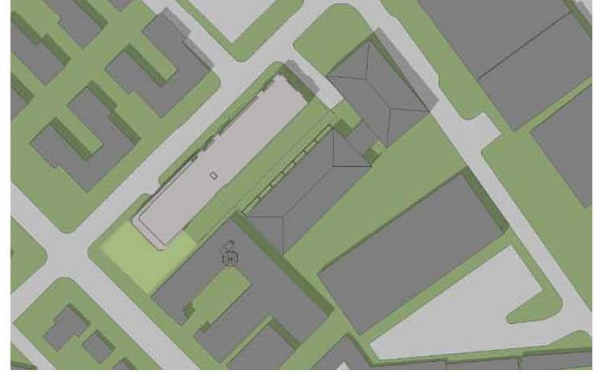
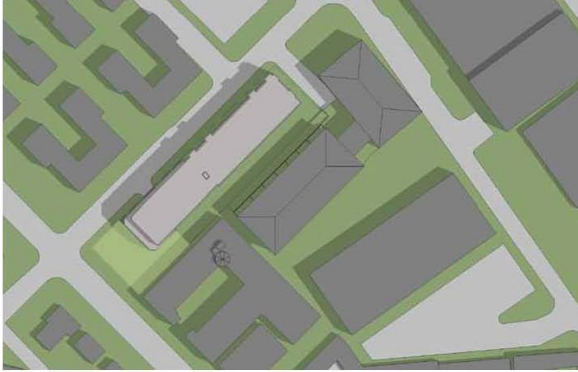
Regarding the application of the height and setback provision to 8045 Newell Street Condominiums in 2003, (SP#820030370), a setback from Newell Street was applied to the site without any in-depth discussion other than what is identified in the Sector Plan and Overlay Zone. In 2003 there was no dispute about the setback, and, therefore, little analysis of it. By contrast, in this case staff has analyzed the issue and come to the conclusion that the setback was not intended to apply to Newell Street. County Council staff provided an analysis of the setback issue that further supports Planning staff's conclusion.

The Project as proposed ensures compatibility with the context of the adjacent residential neighborhood. The Sector Plan and Zoning Ordinance unambiguously call for a transition between the CBD-1 zoned property of the subject site and the single-family residential properties in the District of Columbia on Eastern Avenue. This transition is a 45 foot height limitation for the first 60 feet of the property, then stepping up to 90'. The proposed project proposes a public use space at the corner of the Site at Newell Street and Eastern Avenue to transition to the higher density. The proposed public space at this corner, within the 60 foot building setback, acts more effectively as a buffer to the one-family homes on the other side of Eastern Avenue than a 45 foot tall building located at the right of way line. This proposed public use space also eliminates the blank wall of the self-storage unit facing many of the first floor units on the ground level of the adjacent Eastern Village Cohousing building and replaces it with a small green park.

#### Shadows and Massing Relationships

The shade and massing relationships associated with this proposal are shown in the illustration below. The shadows cast by the proposed building will have a similar impact

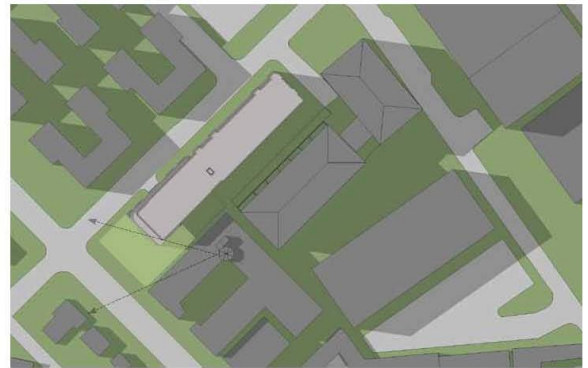
upon the 8045 Newell Street Condominium building as the 8045 Newell Street Condominium building has upon the land directly to its southeast. Existing and proposed trees in this space will have enough sunlight to continue to grow and prosper (see images page 25).



Shadow Study - June 21st 10 am



Shadow Study - June 21st 1 pm

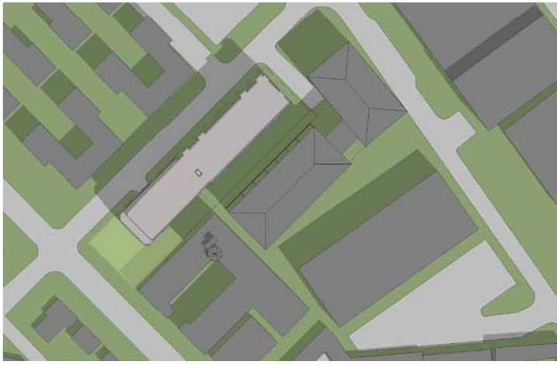


Shadow Study - June 21st 3 pm



Shadow Study - June 21st 5 pm





Shadow Study - September 22nd 10 am

Shadow Study - September 22nd 1 pm



Shadow Study - September 22nd 3 pm

Shadow Study - September 22nd 5 pm

### Employment, Housing, & Land Use

The applicable references in the Sector Plan refer to the need for small scale retail, small office space, new housing and pedestrian traffic in South Silver Spring. The specific objectives with regard to this site are met as indicated:

The application replaces an unsightly self-storage building surrounded by residential properties.

- The application provides small scale retail to meet market demand from

surrounding neighborhoods.

- The proposal creates housing opportunities through 187 planned housing units, 24 (12.5%) of which are MPDUs.
- The design promotes an environment that supports pedestrians and activities that enlivens the street by providing retail and residential uses.
- The infill development is more environmentally sustainable because it concentrates growth within walking distance to transit and the types of land uses necessary to support day-to-day needs. These uses reduce the need for vehicular travel.

### **Green Space Guidelines for the Silver Spring Central Business District**

In 2010 the Montgomery County Planning Board approved the Green Space Guidelines for the Silver Spring Central Business District. The guidelines were prepared in response to the community's demand for more green open space in the Silver Spring CBD. Although, the 2000 Silver Spring CBD Sector Plan called for a green downtown, it did not recommend large green open spaces. Furthermore the open spaces that were built tended to be small, hardscaped plazas.

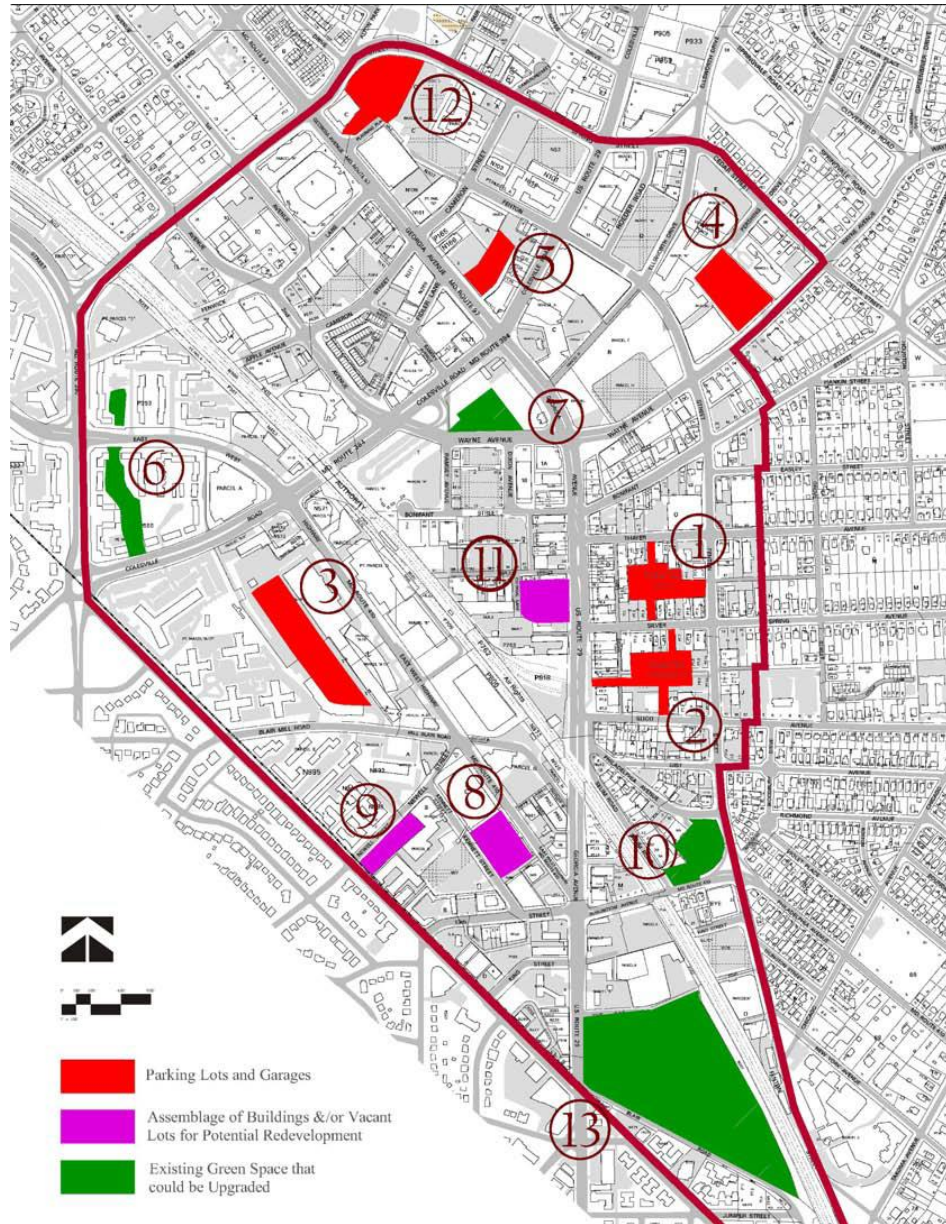
The goals of the Green Space Guidelines are to:

- Identify potential site for large green open spaces in accordance with the Sector Plan's Green Downtown theme
- Establish Design Guidelines for large green open spaces
- Enable the creation of large green spaces throughout the CBD

The Green Space Guidelines identified thirteen sites, including the subject property that could provide green spaces of at least ½ acre in size. It ranked those sites according to six criteria:

1. Number of residential units within 800 feet of the site or a three minute walk
2. Proximity to existing parks
3. Existing and potential connections
4. Ease of implementation
5. Proximity to transit
6. Whether the space serves the district where it is located.

The fourth criterion, “ease of implementation”, takes into account factors such as ownership, current uses, estimated costs and current market conditions. This is a major stumbling block to creating a large green space or park on the subject property. The Green Space Guidelines cannot mandate that the Parks Department or other Government Agency purchase the site for park development; implementation depends on the economic practicality of such a venture for both the public and private sector. Ease of implementation is as much a challenge today as it was in 2010.



*Potential Green Space Sites, Green Space Guidelines for the Silver Spring CBD, 2010*

Among the thirteen sites, the subject property ranked 9<sup>th</sup>, scoring lowest in the third and fourth criteria listed above. Of the thirteen sites considered, two have approved plans (Studio Plaza and The Falklands both have approved Site Plans) and one other is being considered for the Blairs property immediately north of the site. According to plans presented to the community in February, 2013, the Blairs property will have extensive green spaces that will fulfill the criteria of the Green Space Plan.

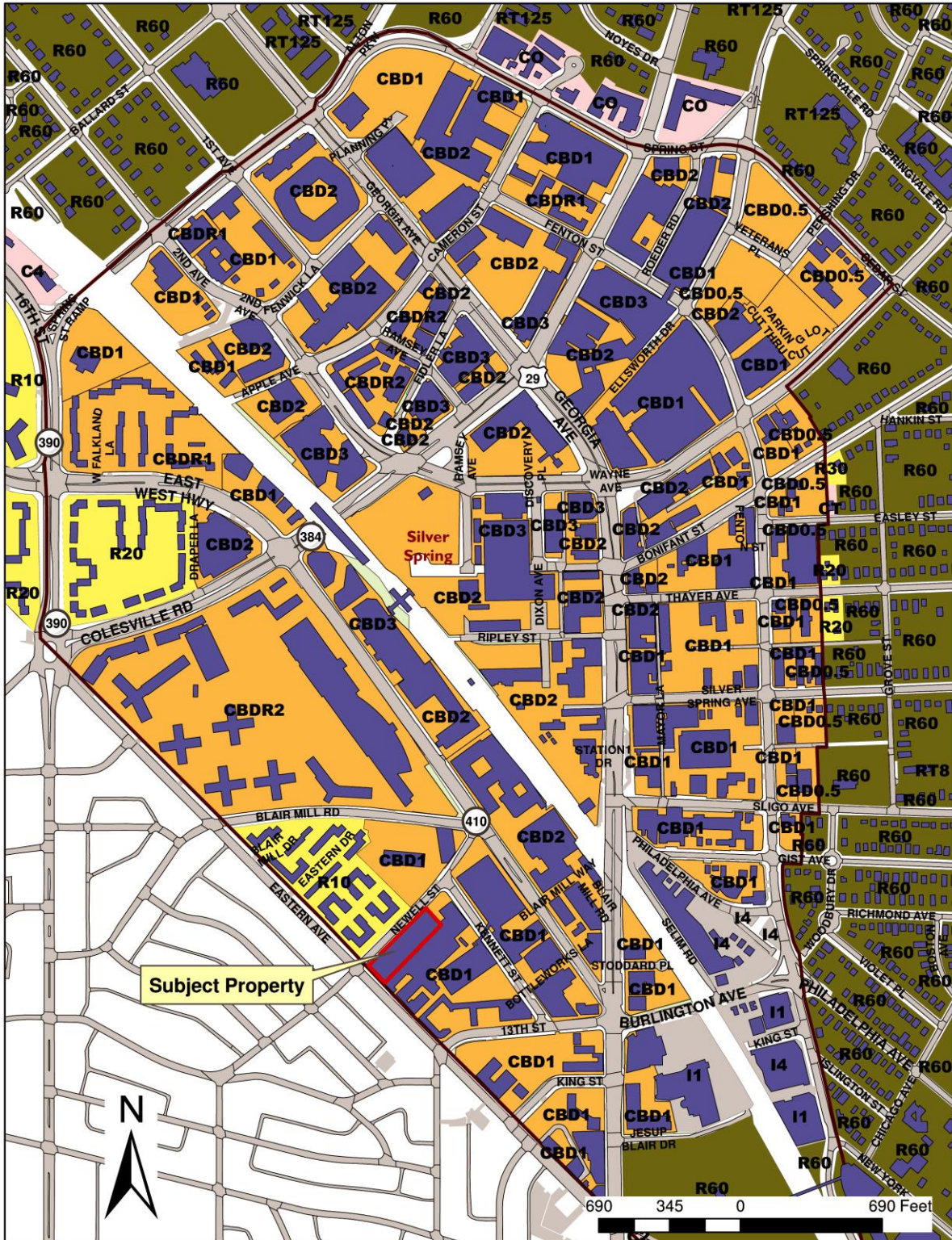
An application for a minor master plan amendment was submitted by the community specifically to designate the subject property as an ideal location for a public park. After consultation with Parks Department staff, they provided the following reasons, among others, for not supporting a proposal to acquire the Newell Street property for a public park:

1. Given the urban site location, existing zoning, and current improvements, acquisition would likely be quite costly.
2. Under the current master plan, there will be a public use requirement of the developer that would yield close to a quarter acre of public use space, which is the minimum size of what the PROS Plan (p.16) calls an Urban Buffer Park. In other words, a quarter acre is a reasonable size for a “green buffer at the edge of urban, high density development adjacent to lower density residential areas.”
3. There are other sites that are likely to develop within this quadrant of the Silver Spring CBD that will yield better public open spaces, in more central locations, immediately fronted by high density mixed use, and closer to transit. The best scenario for providing adequate public open space in this area of Silver Spring is to have the private sector contribute the various public use spaces anticipated in the Silver Spring Green Space Plan.

## **Development Standards**

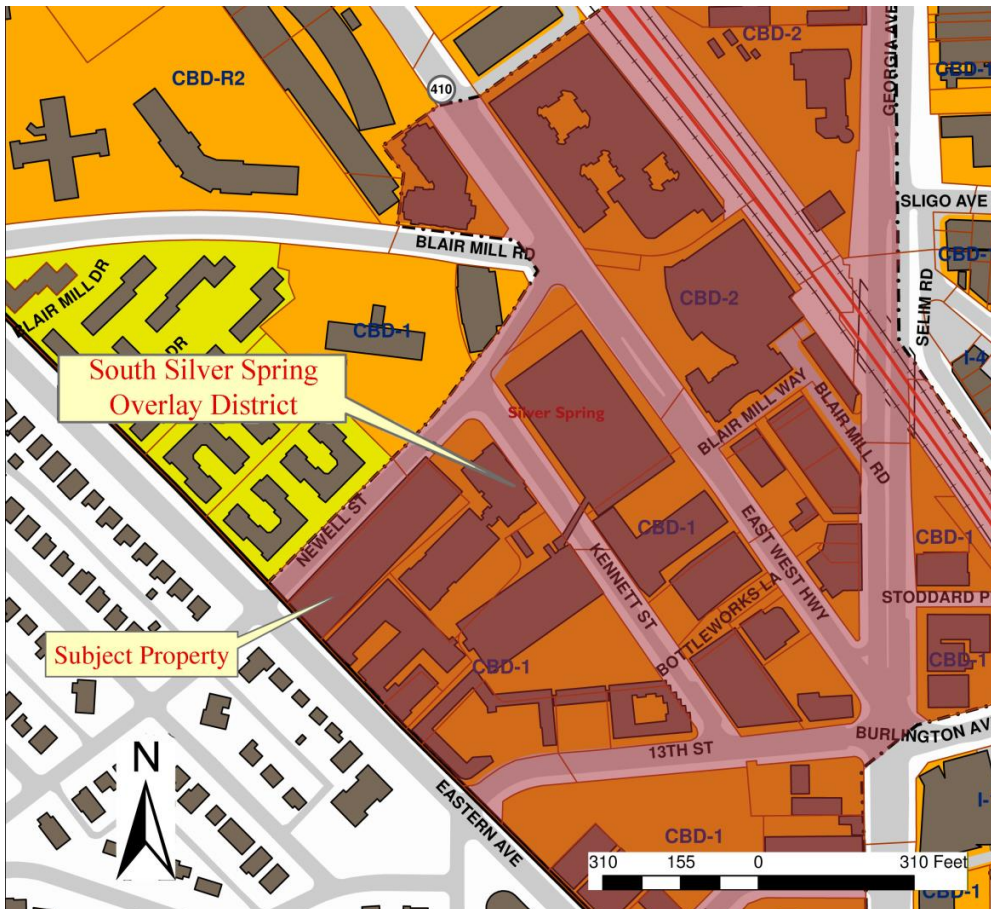
### Zones

The subject site has two zones, the Ripley/South Silver Spring Overlay Zone and the CBD-1 zone. The CBD-1 Zone has development standards in Section 59-C-6.23 of the Montgomery County Zoning Ordinance. The minimum lot size of 18,000 square feet for optional method projects is met. Under the optional method of development for mixed-use projects the CBD -1



Zoning Map of the Silver Spring CBD

zone allows an FAR up to 3.0. This project meets these zoning requirements. The site is within the Ripley/South Silver Spring Overlay Zone and is consistent with the standards in section 59-C-18.20. The goal of the Overlay Zone is to permit a range of uses, ensure that new development is compatible with nearby uses, incorporates attractive design and incorporates streetscaping and useful public open spaces (page 58 of the Sector Plan). The proposed project meets these goals by adding mixed-use (residential and retail) to South Silver Spring, incorporating attractive design through well-proportioned and detailed building facades and maintaining compatibility with existing buildings by holding the proposed building back 25 feet from the rear property line (the optional method of development for CBD-1 properties has no setback requirements). The building is also set back 60 feet from the Eastern Avenue right-of-way and holding the building height to a total of 74 feet (the overlay zone allows 90 feet). The design upgrades Newell Street by proposing environmentally friendly Streetscape Standards and adds a green, welcoming open space a quarter acre in size.



*Detailed Zoning Map of South Silver Spring*

Heights

The proposed building will have a setback on Newell Street that ranges from between 2 feet and 6 feet. It will be approximately 54 feet before a 2 foot setback, where the final two floors rise to a total of approximately 74 feet. On the corner of Newell Street and

**Table 1  
Project Data for the CBD-1 Zone**

<b>Development Standard</b>	<b>Permitted/ Required</b>	<b>Proposed for Approval</b>
<b>Building Height (feet)</b>		
<b>CBD-Zone-59-C-18.192(b)(1)(E)</b>	90'	54' on Eastern Avenue 74' on Newell Street
<b>CBD-Zone-RSSOZ</b>		
Within 60' of right of way:	45'	0'
Beyond 60' of right of way:	90'	74'
<b>Setbacks (feet)</b>		
<b>CBD-1</b>		
Front Newell Street)	n/a	0
Front (Eastern Avenue)	60/90 <sup>1</sup>	60'
<b>Site Area (square feet)</b>		
Net Tract Area	n/a	41,245
Dedications	n/a	12,060
Gross Tract Area	18,000	53,305
<b>Density</b>		
CBD-1: Floor Area Ratio	3.0	3.0
Allowable S.F.	159,915	159,915
-Residential		156,815 (187 units)
-Non-residential		3,100
<b>Public Use Space (% of net lot)</b>		
On-Site Public Use Space	20	21.87
Off-Site Amenity Space	n/a	18.17
Total Public Use & Amenity Space	20	40.04
<b>Parking</b>		
Residential Parking	196	206
Retail Parking	14	14
<b>Total Vehicle Spaces</b>	<b>210</b>	<b>220<sup>2</sup></b>

<sup>1</sup> Section 59\_C-18.202(b) (1) requires a 60 foot setback for buildings that exceed 60 feet up to a maximum of 90 as permitted in the CBD-1 zone. The proposed building is set back 60 feet from Eastern

<sup>2</sup> No Parking is required for this site as it is located in the Silver Spring parking lot district. Total number of spaces will be determined at site plan.

Eastern Avenue the building will setback 60 from the right of way. It will rise to approximately 54 feet where it will set back approximately 12 feet before rising to 74 feet. This height arrangement limits the height of the building that faces the one-family residences on Eastern while allowing the taller heights to face the multi-family, four story apartments across Newell Street. Given the urban context and the goals of the 2000 Silver Spring SBD Sector Plan, the proposal does not adversely affect the surrounding properties.

The proposal is consistent with the recommendations of the Ripley/South Silver Spring Overlay Zone. The goal of the Overlay Zone is to permit a range of uses, ensure that new development is compatible with nearby uses, incorporate attractive design and incorporate streetscaping and useful public open spaces (page 58). The proposed project meets these goals by allowing mixed-use (residential and retail) in South Silver Spring, incorporating attractive design through well-proportioned and detailed building facades and maintains compatibility with existing buildings by holding the proposed building back 30 feet from the rear property line and 60 feet from the adjacent building, 8045 Newell Street. The optional method of development for CBD-1 properties has no setback requirements. It also sets the building back 60 feet from the eastern Avenue right-of-way to comply with the setbacks in the overlay zone. The building height is maintained at 74 feet which is less than the 90 feet permitted in the zone. It upgrades Newell Street by proposing environmentally friendly streetscape standards and adds a green space approximately on quarter acre in size.

#### Density and uses

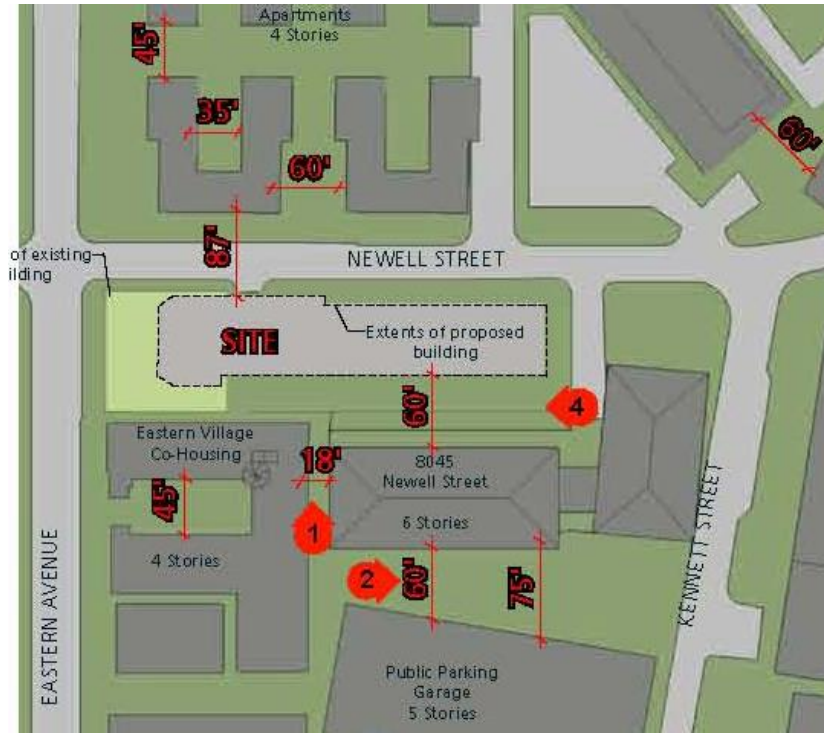
The project is proposing a mixed-use total density of 159,915 square feet, meeting the density requirements of the zones. 156,815 gross square feet are proposed for residential uses and 3,100 gross square feet are proposed for retail uses.

#### Setback and Coverage

There is no building setback requirement or coverage limitation for optional method developments in the CBD zone; the application is proposing to set the building back from the property line on Newell Street a minimum of 3.7 feet; 30 feet from the rear property line shared with the building located at 8045 Newell Street and 60 feet from the property line of Eastern Avenue. In providing the 30 foot rear setback, the applicant has sought to be consistent with existing building setbacks typical in the South Silver Spring area (see plan view of setbacks and typical courtyards, page 25). All of the



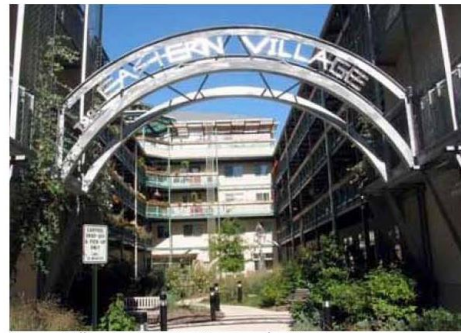
requirements of each zone are met by the subject project plan (see Table 1).



*Plan view of typical setbacks in South Silver Spring*



Courtyard at Spring Garden Apartments - 35'



Eastern Village Co-Housing Courtyard - 45'



Setback between Spring Garden Apartments - 45'



Courtyard Between Canada Dry and Viridian - 70'

*Images of Courtyards in South Silver Spring with similar dimensions as proposed*

### Adequate Public Facilities Review

The applicant has requested an Adequate Public Facilities (“APF”) review be conducted with the project plan. Most APF reviews are performed during preliminary plan review; however, this site is a recorded lot and will not go through subdivision. For sites that don’t require a preliminary plan, APF is evaluated at the time of site plan. Staff did not evaluate or test for APF, nor was a validity period established as part of the project plan review, however, the public facilities including schools, traffic and utilities were preliminarily evaluated and considered adequate. A more detailed and thorough review will be considered during the site plan review.

A traffic study (dated November 1, 2012) was submitted by the consultant for the Applicant for the subject application per the LATR/PAMR Guidelines since the proposed development was estimated to generate 30 or more 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. The traffic study was submitted for a higher density than that proposed with the application. The traffic study determined traffic-related impacts of the proposed development on nearby roadway intersections during weekday morning and evening peak periods.

### Other Public Facilities and Services

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

### **Transportation**

The traffic study submitted proposes more square footage (5,000 sf vs. 3,100 sf.) and more residential units (200 vs. 187) than that requested in the project plan application. The final determination for APF and validity during the site plan review should only account for maximum number units and square footage approved with the project plan.

- **Trip Generation**

The peak-hour trip generation estimate for the proposed 8001 Newell Street development based on trip generation rates included in the LATR/PAMR Guidelines and in the Institute of Transportation Engineers (ITE) Trip *Generation* is provided in Table 2.

As shown in Table 2, the proposed development is estimated to generate 63 peak-hour trips during weekday morning peak period and 70 peak-hour trips during the weekday evening peak period. In comparison, the existing self-storage facility on the site is estimated to generate 6 peak-hour trips during weekday morning peak period and 10 peak-hour trips during the weekday evening peak period. The proposed 8001 Newell Street development thus will represent a net increase of 57 peak-hour trips during weekday morning peak period and 60 peak-hour trips during the weekday evening peak period compared to existing development.

**TABLE 2**  
**SUMMARY OF SITE TRIP GENERATION**  
**PROPOSED 8001 NEWELL STREET DEVELOPMENT**

Trip Generation	Morning Peak-Hour			Evening Peak-Hour		
	In	Out	Total	In	Out	Total
Retail – 5,000 SF	2	1	3	5	5	10
Multi-family dwelling units – 200 units	12	48	60	42	18	60
<b>Total Trips</b>	<b>14</b>	<b>49</b>	<b>63</b>	<b>47</b>	<b>23</b>	<b>70</b>
<i>Existing Trips – 40,000 SF Self Storage or Mini Warehouse</i>	4	2	6	5	5	10
<b>Net “new” peak-hour trips</b>	<b>10</b>	<b>47</b>	<b>57</b>	<b>42</b>	<b>18</b>	<b>60</b>

Source: Wells and Associates, Inc. LATR/PAMR Traffic Study. November 1, 2012.

- **Local Area Transportation Review**

A summary of the capacity analysis/Critical Lane Volume (CLV) analysis results for the study intersections for the weekday morning and evening peak-hours within the respective peak periods from the traffic study are presented in Table 3.

As shown in Table 3, under Total (Build) traffic conditions, CLV values for intersections included in the study were estimated to be below the respective Silver Spring CBD Policy

**TABLE 3  
SUMMARY OF CAPACITY CALCULATIONS  
PROPOSED 8001 NEWELL STREET DEVELOPMENT**

Intersection	Traffic Conditions					
	Existing		<i>Background</i>		Total	
	AM	PM	AM	PM	AM	PM
Eastern Ave NW/Colesville Rd/16 <sup>th</sup> St NW/Portal Drive NW	1,345	1,243	1,390	1,296	1,391	1,297
Eastern Ave NW/14 <sup>th</sup> St NW/Newell St	363	420	363	422	391	452
Eastern Ave NW/13 <sup>th</sup> St NW	405	474	403	480	425	499
Georgia Ave/Eastern Ave NW/Blair Rd	706	724	777	797	786	805
Georgia Ave/Burlington Ave/13 <sup>th</sup> St/East-West Hwy	1,240	1,155	1,412	1,271	1,418	1,277
East-West Hwy/Newell St/Blair Mill Rd	405	597	449	641	467	662

Source: Wells and Associates, Inc. LATR/PAMR Traffic Study. November 1, 2012.

Note: Silver Spring CBD Policy Area Congestion Standard: 1,800 CLV

Area standard of 1,800 CLV. Based on this analysis, the subject application can satisfy the LATR requirements of the APF test.

- **Policy Area Mobility Review**

A summary of the PAMR trip mitigation requirements for the proposed development is presented in Table 4.

The proposed development, as a result of being located within the Silver Spring CBD is required to mitigate 5% of the net “new” trips generated by a similar development using County wide trip generation rates. In addition, by virtue of being located within the Silver Spring CBD, the Applicant is eligible to receive a CBD trip credit equivalent to the

**TABLE 4  
PAMR MITIGATION REQUIREMENT CALCULATION  
PROPOSED 8001 NEWELL STREET DEVELOPMENT**

	Morning Peak-Hour	Evening Peak-Hour
<b>Proposed Density – (Countywide Rates)</b>		
<b>A. Residential – 200 HRDU’s</b>	69	80
Retail – 5,000 SF	9	35
Pass-by trips (25% of retail)	--	9
Primary trips (75% of retail)	9	26
<b>Total “New” Trips (A1)</b>	<b>78</b>	<b>106</b>
<b>Existing Density – (Countywide Rates)</b>		
<b>B. Self-Storage Units – 40,000 SF<sup>1</sup></b>	6	10
<b>Total “New” Trips (B1)</b>	<b>6</b>	<b>10</b>
<b>Net “New” Trips (C1 = A1 – B1)</b>	<b>72</b>	<b>96</b>
<b>C. PAMR Mitigation Requirement (D1 = C1 x 0.05)</b>	<b>4</b>	<b>5</b>
<b>D. Proposed Density – (CBD Rates)</b>		
<b>E. Residential – 200 HRDU’s</b>	60	60
Retail – 5,000 SF	3	10
<b>Total “New” Trips (E1)</b>	<b>63</b>	<b>70</b>
<b>Existing Density – (CBD Rates)</b>		
<b>F. Self-Storage Units – 40,000 SF<sup>1</sup></b>	6	10
<b>Total “New” Trips (F1)</b>	<b>6</b>	<b>10</b>
<b>Net “New” Trips (G1 = E1 – F1)</b>	<b>57</b>	<b>60</b>
<b>G. Trip Credit for CBD Location</b>		
<b>H. Trip Credit (H1 = C1 – G1)</b>	<b>15</b>	<b>36</b>
<b>Adjusted PAMR Mitigation Requirement</b>		
<b>I. (I1 = H1 – D1)</b>	<b>+11</b>	<b>+31</b>
[PAMR: Excess/Pass = +ve; Deficit/Fail = -ve]	(Pass PAMR)	(Pass PAMR)

Source: Wells and Associates, Inc. LATR/PAMR Traffic Study. November 1, 2012 <sup>1</sup> Based on ITE Trip Generation rates for Mini-Warehouse (LUC 151)

difference in net “new” trips between similar developments located outside the CBD (determined using Countywide trip generation rates) and located within the CBD (determined using CBD trip generation rates).

Thus, as summarized in Table 4, a development similar to that proposed on the site would generate 72 net “new” peak-hour trips during the morning peak-period and 96 net “new” peak-hour trips during the evening peak-period using Countywide trip generation rates (Line C1). This results in a mitigation requirement of 4 peak-hour trips during the morning peak period and 5 peak-hour trips during the evening peak period (Line D1) for the application to satisfy the PAMR requirements of the APF test. The proposed development, as a result of being located within the Silver Spring CBD, will generate 57 net “new” peak-hour trips during the morning peak period (i.e., 15 fewer peak-hour trips compared to Countywide peak-hour trips noted above) and 60 net “new” peak-hour trips during the evening peak period (i.e., 36 fewer peak-hour trips compared to Countywide peak-hour trips noted above) towards its PAMR mitigation requirement (Lines G1 and H1). With the above credit, the proposed development will fully offset its PAMR trip mitigation requirements (Line I1).

Based on the above analysis, the subject application can satisfy the PAMR requirements of the APF test.

### **Environment**

The property was granted an exemption from submitting a forest conservation plan on May 14<sup>th</sup>, 2012 because it qualified as a small property under chapter 22A-5(s)(1) of the County code. The exemption (42012169E) met the conditions as it is less than 1.5 acres with no existing forest, or existing specimen or champion trees, and the afforestation requirements would not exceed 10,000 square feet.

As outlined in the exemption, an on-site preconstruction meeting is required after the limits of disturbance have been staked and flagged but before any clearing or grading begins.

### **Community Concerns**

Since May 30, 2012 the applicant has met on several occasions with nearby residents and members of local community groups, including the South Silver Spring Neighborhood Association (SSSNA), Eastern Village Co-Housing (EVC), 8045 Newell Street Condominiums, Shepard Park Civic Association and the ANC4 community. They also presented the project to The Silver Spring Citizens Advisory Board’s Commercial and Economic Development Committee, the Greater Silver Spring Chamber of Commerce’s Economic Development Committee and the Silver Spring Urban District Committee.

A pre-application meeting was held on August 20, 2012. The meeting was well attended. The applicant's consulting team described the process involved in the plan review and the proposed architecture and landscape architecture to date. There were some questions about specific items such as slope along Newell Street and location and number of curb cuts. There was a statement of concern by a community member that the open space would not be green enough.

Most questions and comments revolved around the following:

- The project does not represent good planning because it is too dense
- Retail on the ground floor level may not be needed and may be difficult to lease
- Silver Spring does not need another apartment building
- A 5-7 story building is too tall and does not fit into the context of the area
- The project will bring in more cars and create more demand for limited parking spaces
- Strategies for lowering the height of the building to four stories
- The proposed building will create un-wanted shadows
- There will be more dogs and not enough dog parks
- The relations of the proposed building to existing single-family houses on Eastern Avenue

One citizen expressed the opinion that as the site is an 8 minute walk from the Metro it is reasonable to expect mixed use development of this density.

The applicant revised the plans numerous times to try and address the concerns with respect to setbacks, design of the public use space and building heights. Pursuant to the December 20, 2012 hearing, the applicant met with residents of the neighboring Eastern Village Co-Housing building on Thursday, April 25th 2013.

In addition, the applicant sent copies of their correspondence with the Planning Board Chairman (including request for continued hearing) to attorney representing 8045 Newell Street and copies of their April 19<sup>th</sup>, 2013 letter to staff (see Appendix C) to attorney representing 8045 Newell Street and the President of 8045. The applicant has also sent plans to Eastern Village Co-Housing residents.

## **FINDINGS**

All of the considerations of Section 59-D-2.43, of the Montgomery County Zoning Ordinance have been addressed by staff in reaching its conclusions and

recommendations. A copy of Section 59-D-2.43 may found in the appendix. As the following Findings demonstrate, the subject project plan adequately addresses each of these considerations, as conditioned by the Staff Recommendation.

Section 59-D-2.42 of the Zoning Ordinance establishes the findings that must be made by the Planning Board and in concert with the considerations enumerated above form the basis for the Board's consideration of approval. In accordance herewith, the Staff makes the following findings:

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

Intents and Purposes of the CBD Zones and Overlay Zone

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

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

With respect to density, the Sector Plan recommends redevelopment of vacant or under-used buildings in South Silver Spring while protecting surrounding residential neighborhoods. This redevelopment replaces a one story self-storage facility with a five to seven story mixed use development that is compatible in with the surrounding residential neighborhood.

The design guidelines in the Silver Spring Central Business District Sector Plan recommend height setbacks adjacent to residential neighborhoods in order to ensure compatibility with adjacent residential neighborhoods. The proposed project imposes generous setbacks on Eastern Avenue to maximize compatibility with the one-family home located across the street in the District of Columbia. On Newell Street the proposed project utilizes a smaller setback to maintain compatibility with the four story multi-family building across the street. This reinforces the intent of the Sector Plan and zone to maintain a setback along Eastern Avenue to preserve compatibility with single-family uses in the District of Columbia. Compatibility is achieved



through increased setbacks from the adjoining properties, increased activating uses are proposed fronting Newell Street to address safety, public use space is proposed as an appealing feature along Eastern Avenue and the height of the building varies from approximately 54 feet to a maximum of 74 feet, which is considerably less than the 90 feet permitted in the zone.

Council Staff has indicated that the Council's intent in writing the zoning text amendment implementing the Ripley/South Silver Spring Overlay Zone, regarding height setbacks on Newell Street, was to maintain compatibility with the single-family detached along Eastern Avenue in the District of Columbia. Planning staff asserts that this should not have been interpreted to limit the heights along Newell Street significantly less than allowed on adjacent properties in the Silver Spring CBD, but only at the Corner of Newell Street and Eastern Avenue to maintain compatibility with the single-family residences in the District of Columbia (see Appendix D). This supports Planning staff's conclusion that the application is in accordance with an adopted and approved sector plan.

- (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 site is currently improved by a self-storage facility. This is not the variety of land uses and activities called for in central business districts that meet the needs of workers, shoppers and residents. The Sector Plan recommends a variety of re-use options including start-up business space, retail and housing. The application will provide a mixed-use project that includes residential and retail uses.

- (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 height of the proposed building is comparable to the adjacent 8045 Newell, substantially separated by green space and a 2<sup>nd</sup> story terrace on the building. The zone permits heights up to 90 feet; however, the applicant is

proposing a height of 74 feet specifically to address the relationship with existing buildings. The building materials will be compatible with surrounding buildings and will fit with the urban context. As indicated in the shadow studies, the impacts to the adjacent buildings from the proposed heights will be greatest in late June; however will offer welcome shade during this hot time of year.

The relationship of the proposed buildings to existing buildings is appropriate for a central business district. In the CBD, adjacent buildings with windows are required to be setback at least 15 feet from each other or 30 feet if both buildings have windows. This proposal exceeds that standard in order to minimize the impacts on available sunlight and existing views by setting the building 30 feet back from the rear property line, and 60 feet from the adjacent 8045 Newell Street building. This area has been expanded from 25 to 30 feet. The increased setback will provide for increased green space between the adjacent 8045 Newell Street building, adding to a desirable relationship between existing and proposed buildings.

The proposed development will enhance pedestrian, cyclist, and vehicular circulation by limiting auto access to one point on site and providing all required residential parking on-site, thereby limiting future demand for on street parking and spaces in the public parking garage. It will enhance the circulation system between the central business district and adjacent areas by fulfilling the Sector Plan goal of creating a green street on Newell Street.

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

The proposed development is approximately 1/2 mile from the Silver Spring Metro and 180 feet from the nearest bus stop. It is a vital local and regional goal that infill development is encouraged on sites as an alternative to suburban sprawl. As conditioned, the location and accessibility of the proposed development to the local transit system is an effective implementation of the Sector Plan transit and sustainability goals.

(5) *“To improve pedestrian and vehicular circulation.”*

Vehicular circulation is limited to one ingress and egress point for daily

circulation. A loading space utilizes the access point as well.

The pedestrian environment provides numerous enhancements to increase the walkability of the South Silver Spring Overlay District, including an upgraded streetscape on Newell Street and an open space at the corner of Newell Street and Eastern Avenue that will accommodate diagonal pedestrian “cut-through”.

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

The proposed development provides 187 residential units, 12.5% of which are Moderately Priced Dwelling Units, providing a range of different incomes for the tenants.

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

The proposed development will be built on an existing recorded lot.

#### Further Intentions of the CBD-1 & CBD-0.5 Zone

Section 59-C-6.213 of the Zoning Ordinance states:

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

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

This proposed project will provide land uses at a density and intensity that encourages diverse housing (through inclusion of moderately priced dwelling units), small business enterprises (through 3,100 square feet of retail space) and complements the uses of the interior of the CBD and is compatible with adjacent land uses outside the Central Business District through the use of

restricted heights and generous setbacks.

#### Requirements of the CBD-1 Zone

The table on page 24 of the staff report demonstrates the project's conformance of the project plan finding and 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.

The project maintains compatibility with existing buildings by holding the proposed building back 30 feet from the rear property line, even though the optional method of development for CBD-1 properties has no setback requirements. The building on the rear property line, 8045 Newell Street, is approximately the same height as the proposed building. The project also sets the building back 60 feet from the Eastern Avenue right-of-way holding the building height to a total of 74 feet (the overlay zone allows 90 feet).

According to the Zoning Ordinance (59-C-6.215(b)) another 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.”

The proposed development is proffering the following package of amenities and public facilities:

#### Public Use Space and Public Amenities and Facilities Summary

##### *On-Site Public Use Space*

- A public green open space at the corner of Eastern Avenue and Newell Street approximately ¼ acre in size.
- Public Art
- Landscaping, including bio-filtration areas
- Seating

- Specialty paving

*Off-Site Public Amenities and Facilities*

- Brick sidewalks
- Street Trees
- Pedestrian scale street lights
- Street furnishings
- Green panels for street trees and native plantings between the curb and sidewalk on Newell Street

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

Zoning and Land Use

The Subject Property, zoned CBD-1, remains consistent with the recommendations in the Silver Spring CBD Sector Plan. The uses proposed are allowed in this zone, and the proposed development is in keeping with the general guidelines to provide employment uses in the Sector Plan area. The site is also in the Ripley/South Silver Spring Overlay Zone. The Ripley/South Silver Spring Overlay Zone recommends residential and other uses, including retail. The proposed uses are appropriate for the subject site and conform to the Sector Plan.

Sector Plan Conformance

The Approved and Adopted Silver Spring CBD Sector Plan is organized around several goals, the majority of which are satisfactorily met by this application. The Approved and Adopted Silver Spring CBD Sector Plan recommends the Ripley/South Silver Spring Overlay Zone which calls for a mix of housing and commercial uses. The application meets this goal by proposing rental housing and ground floor retail space.

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

The location is appropriate for the proposed intensity of use and density at the edge of the Central Business District. The building massing, step-backs and heights proposed are compatible with adjacent and surrounding uses, especially with the one-family detached neighborhood across Eastern Avenue to the west. The project

massing has been designed so as not to adversely affect adjacent buildings and uses.

The CBD-1 Optional Method of Development has no setback requirement. However, the applicant has set the building back 30 feet from the rear property line it shares with the multi-family building at 8045 Newell Street in order to minimize the impact. The Ripley/South Silver Spring Overlay Zone limits building heights fronting onto Eastern Avenue to 45 feet for the first 60 feet from the street where proposed development confronts a residential zone in the District of Columbia, at which point the building height may increase to 90 feet. The applicant has chosen to locate their public use space within the 60 foot setback, therefore negating the height limitations along Eastern Avenue. Furthermore, the building is proposed for 54 feet at this setback line when it steps back and additional 12 feet to reach a total height of 74 feet. The applicant has exceeded the requirements of the Ripley/South Silver Spring Overlay zone to reduce the detrimental impact the proposed building could have on the neighbors in South Silver Spring and in the District of Columbia. The shadows cast by the proposed building will have a similar impact upon the 8045 Newell Street Condominium building as the 8045 Newell Street Condominium building has upon the land directly to its southeast. Existing trees in this space will have enough sunlight to continue to grow and prosper. (see pages 16-17).

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

A draft traffic management agreement has been submitted by the applicant and will be finalized during the site plan review process. Other public facilities exist on or near the site, and no expansion or renovation of these services will be required to be completed by the County. The application will not overburden public facilities, including the public parking garage on Kennett Street. The application is satisfying their residential parking requirement on site; the retail parking requirement will be satisfied by the PLD tax. Requirements for public safety and fire will be minimally impacted due to the nature of the land use and must be approved by the respective agencies prior to site plan approval.

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

A standard method project would only allow a density of 2.0 FAR or 43 dwelling units per acre on this site within the CBD-1 Zone. The number of MPDUs being provided would be significantly reduced through the standard method of development. The requirement for public amenities would be removed, and the public use space requirement would be reduced by one-half. The total height of the building would be reduced to 60 feet. Infill development and density near transit hubs (the Silver Spring Transit Center is within a 10 minute walk) is a core value of smart growth. Given the number and quality of public amenities being proffered, the optional method of development is more desirable and more efficient for this particular site.

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

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

*(g) When a Project Plan includes more than one lot under common ownership, or is a single lot containing two or more CBD zones, and is shown to transfer public open space or development density from one lot to another or transfer densities, within a lot with two or more CBD zones, pursuant to the special standards of either section 59-C 6.2351 or 59-C 6.2352 (whichever is applicable), the Project Plan may be approved by the Planning Board based on the following findings:*

The proposed development is presently composed of one lot and does not transfer public open space or density.

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

The property was granted an exemption from submitting a forest conservation plan on May 14<sup>th</sup>, 2012 because it qualified as a small property under chapter 22A-5(s)(1) of the County code. The exemption (42012169E) met the conditions as it is less than 1.5 acres with no existing forest, or existing specimen or champion trees, and the afforestation requirements would not exceed 10,000 square feet.

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

The proposed development is not subject to the water quality resources protection requirements. The applicant has submitted a Stormwater Concept Plan to the Montgomery County Department of Permitting Services for their review and approval. The applicant is proposing green roofs and bio-filtration planters.

- (j) *When the Planning Board allows any public use space, or public facilities and amenities to be provided off-site, the Planning Board must find that the space or improvement:*

*(1) is consistent with the goals of the applicable master or sector plan; and*

*(2) serves the public interest better than providing the public use space or public facilities and amenities on-site.*

The applicant is providing all public use space and amenities and facilities on-site.

## **RECOMMENDATION AND CONDITIONS**

Approval of project plan 920130020 subject to the following conditions:

1. Development Ceiling

The proposed development is limited to 159,915 square feet of gross floor area

- a. Residential 156,815 S.F. for a maximum of 187 multi-family dwellings.
- b. Non-Residential 3,100 S.F

2. Building Height and Mass

The development is limited to the building footprints as delineated in the project plan drawings submitted to MNCPPC dated April 19, 2013 unless modified at site plan review. Building height is limited and to a height of 74 feet on Newell Street and to 54 feet in height facing Eastern Avenue as determined by the Department of Permitting Services approved building height measurement point(s).

3. Building Materials

The building is to have the level of quality and style of the materials, including but not limited to, that shown in the rendering on page 6 of this staff report.



4. Housing

The proposed development will provide a minimum of 12.5% moderately priced dwelling units (MPDUs) based upon the total number of units, in accordance with Chapter 25A.

5. Transportation

- a. The Applicant must limit future development on the site to 3,100 square-feet of retail and 187 multi-family residential units.
- b. The Applicant, as part of a future site plan, must show on the plan the Newell Street rights-of-way of 35 feet from the roadway right-of-way centerline along property frontage consistent with the 2000 Approved and Adopted Silver Spring CBD Sector Plan
- c. The Applicant must coordinate with the District of Columbia Department of Transportation (DDOT) on any proposed improvements along Eastern Avenue.
- d. The Applicant must enter into a Traffic Mitigation Agreement (“Agreement”) with the Planning Board and the Montgomery County Department of Transportation (MCDOT) to participate in the Silver Spring Transportation Management District (TMD). The Applicant must coordinate details of the Agreement with MCDOT as well as Planning Department staff and must execute the Agreement prior to the release of any residential building permit for the proposed development.

6. Public Use Space & Public Amenities and Facilities

- a. The Applicant must provide a minimum of 21.87% of the net lot area for on-site public use space and a minimum of 18.17% of the net lot area for on and off-site public amenity and facility space. The final design and details will be determined during site plan review.
- b. The proposed public use space must be easily and readily accessible to the general public and available for public enjoyment.
- c. The Applicant must provide bio-retention areas and other features in general conformance with the illustrative landscape plan depicted in the staff report.
- d. The Applicant must present the plaza designs and public artwork to the art review panel prior to submittal of the site plan.

7. Staging of Amenity Features

- a. The development will be completed in one phase. A detailed development program will be required prior to approval of the certified site plan.

- b. The Applicant must complete the on-site public use space improvements in accordance with a development program to be developed at site plan.
- c. The applicant must install the landscaping no later than the next growing season after completion of the building and site work.

8. Maintenance and Event Management Organization

Prior to issuance of use-and-occupancy permits, the Applicant will create and implement a maintenance plan for all on-site public use space unless an alternative arrangement is made with another public entity.

9. Coordination for Additional Approvals Required Prior to Site Plan Approval

The applicant must obtain written approval from the Montgomery County Department of Transportation (DOT) for the final design and extent of any and all streetscape improvements within the rights-of-way prior to approval of the site plan.

**APPENDICES**

Appendix A: Section 59-D-2.43

Appendix B: Letters from Community

Appendix C: Letters from Attorneys

Appendix D: Letter from Marlene Michaelson, Legislative Aid to County Councilmember Valerie Ervin

Appendix E: Letter from DHCA

|

## Appendix A

According to Section 59-D-2.43 of the Montgomery County Ordinance, in reaching its determination on a project plan the Planning Board must consider the following:

- (a) The nature of the proposed site and development, including its size and shape, and the proposed size, shape, height, arrangement and design of structures, and its consistency with an urban renewal plan approved under chapter 56.*
- (b) Whether the open spaces, including developed open space, would serve as convenient areas for recreation, relaxation and social activities for the residents and patrons of the development and are planned, designed and situated to function as necessary physical and aesthetic open areas among and between individuals structures and groups of structures, and whether the setbacks, yards and related walkways are located and of sufficient dimensions to provide for adequate light, air, pedestrian circulation and necessary vehicular access.*
- (c) Whether the vehicular circulation system, including access and off-street parking and loading, is designed to provide an efficient, safe and convenient transportation system.*
- (d) Whether the pedestrian circulation system is located, designed and of sufficient size to conveniently handle pedestrian traffic efficiently and without congestion; the extent to which the pedestrian circulation system is separated from vehicular roadways so as to be safe, pleasing and efficient for movement of pedestrians; and whether the pedestrian circulation system provides efficient, convenient and adequate linkages among residential areas, open spaces, recreational areas, commercial and employment areas and public facilities.*
- (e) The adequacy of landscaping, screening, parking and loading areas, service areas, lighting and signs, in relation to the type of use and neighborhood.*
- (f) The adequacy of provisions for construction of moderately priced dwelling units in accordance with chapter 25a if that chapter applies.*
- (g) The staging program and schedule of development.*
- (h) The adequacy of forest conservation measures proposed to meet any requirements under chapter 22a.*

- (i) The adequacy of water resource protection measures proposed to meet any requirements under chapter 19.*
  
- (j) Payment of a fee acceptable to the Planning Board may satisfy all or some of the requirements for any public use space, or public facilities and amenities under the requirements established elsewhere in this Section.*

APPENDIX B: LETTERS FROM COMMUNITY

March 31, 2013

Ms. Francoise Carrier, Chair  
Montgomery County Planning Board  
8787 Georgia Avenue  
Silver Spring MD 20910  
[MCP-Chair@mncppc-mc.org](mailto:MCP-Chair@mncppc-mc.org)

Dear Ms. Carrier:

We are writing in support of the proposed seven-story, 180+ unit, residential building project on the corner of Newell and Eastern Avenue in Silver Spring (8001 Newell).

We are residents of Eastern Village Cohousing at 7981 Eastern Avenue, which is next door to the project. Further, our condominium is a first floor unit that directly faces the site. We believe that the project represents the best option put forward to date to meeting the interests of the property owner, residents of adjoining buildings, and the neighborhood as a whole.

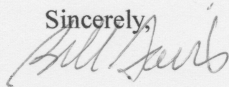
The current building on the property is a self-storage facility, which does not fit within the residential character of the neighborhood and, at best, is unlikely to improve property values in the immediate area. By contrast, the 8001 project incorporates a luxury rental building, incorporating active neighborhood retail space and a public park designed with input from residents of our building, to include more green and less hardscape than the other pocket parks near us.

The developers have been very responsive to the concerns raised by the residents of our building, including noise abatement, pest control, preservation of a highly valued roof sight line, an architectural design that will add visual interest to the neighborhood, an appealing exterior facade facing toward our building, and integrated plantings and landscaping in the area between our two buildings. We have been favorably impressed by the quality and the professionalism of all their representations to us, the quality of their design team, as well as by their willingness to address our concerns in a timely, constructive manner.

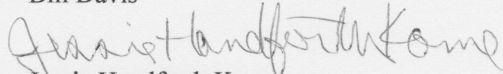
We find this proposal far more appealing and beneficial to all concerned than any other ideas put forward to date. We very much oppose the idea of making the entire site a public park, due to the personal security concerns that such facilities are proven to pose for adjoining residences. Additionally, placing a park on the site would be redundant given the larger planned park incorporated in the Blair Towers redevelopment.

We request that the Planning Board approve the project with the design features requested by the neighborhood and noted above. We expect to continue to work with the applicant on the details of the public space and buffer elements.

Sincerely,



Bill Davis



Jessie Handforth Kome  
7981 Eastern Ave Apt 108  
Silver Spring, MD 20910

cc: [john.marcolin@mncppc-mc.org](mailto:john.marcolin@mncppc-mc.org)



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[Making 8001 Newell Street a Park: An Update by Renee Tatusko](#)

## **Development in the Best Long-Term Interests by Patrick Thornton**

On September 22, 2012, in [Development](#), by Brian Savoie

The following post was written by Patrick Thornton of 8045 Newell Street and the second in a two part series of posts on points of view concerning development of 8001 Newell Street. – BCS

I believe this project is in the best long-term interests of South Silver Spring and Silver Spring as a whole.

This proposed building will bring more people to our community, helping us support more businesses within walking distance, while also helping to keep more eyes on the street to better ensure the safety of the community.

It is true that this project alone can't bring more walkability and amenities to South Silver Spring, but it is just one piece in ongoing development efforts in the area. Two new buildings have come online on 13th Street this year, and another building right across Georgia from 13th is well under way. The motels on 13th Street will most likely be redeveloped within the next 10 years, and the rest of East-West past The Veridian and past Discovery's second building will likely be redeveloped as well.

South Silver Spring is in its infancy as a community. We can't stop revitalizing it now after coming so far. We need additional investment, and this new project on Newell brings that.

Much of the retail on East-West sits vacant because we don't have enough people living in the area to support retail there, especially with competition from Georgia Ave. and Ellsworth. Each new building allows us to support more retail, making our streets and community more lively.

I'm extremely excited to see a major, anchor tenant moving into East-West later this year. It's no coincidence that after several new buildings were completed that more tenants started to show up. Many of us would like to see South Silver Spring better served by more amenities, and new projects that bring in new residents help support these businesses that benefit all of us and our property values.

Communities in the DC area that are more walkable and have more amenities have higher property values. As South Silver Spring has become denser from increased investment, the value of the land around here has gone up. South Silver Spring suffered from disinvestment for decades; I don't want to see us go back to those times.

The plot of land for this proposed building also sits about a half mile from a red line metro stop. Land that close to the metro stop should be developed. Otherwise, land farther out will be developed, increasing sprawl, putting more cars on the road, lengthening people's commutes, damaging the environment and making it harder to support walkable communities. Montgomery County deserves better.

Many of us moved to South Silver Spring for a walkable neighborhood close to a metro stop. We want to see South Silver Spring become an even better, more walkable community. One only has to look at the property values (and how strong they have remained after the housing bust) in denser and better served communities in The District and Arlington to see what South Silver Spring could be like.

People want walkability. People want amenities.

But you can't build a great community overnight. South Silver Spring has come a long way from where it was 10 years ago and progress is ongoing. We're not done yet, but we're getting there. More people in our community will help keep our neighborhood healthy and to allow us to support more amenities within walking distance.

I know some people feel this new development will harm them. I disagree that it will, but it's possible that for some, the increased vitality that comes with development will not outweigh the drawbacks they perceive. For South Silver Spring as a whole, however, this development and the other developments under way are most welcome.

It's a good sign that during this economic slowdown that developers want to continue to invest in our community, that they want to help make it stronger. Let's work with the developer and the architect to make sure that we get a building worthy of South Silver Spring.

Let's build a better community.

## Marcolin, John

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**From:** Patrick Thornton <patrickwthornton@gmail.com>  
**Sent:** Thursday, November 29, 2012 12:06 PM  
**To:** Marcolin, John  
**Subject:** I support development at 8001 Newell St.

Dear John,

As a resident and homeowner of 8045 Newell St., I support the proposed development at 8001 Newell. I'm especially thankful that the developer has chosen to work with the community to solicit our feedback and keep us updated before and during the formal review process. The current storage facility does not fit in well with our community, and many of us are very eager to see it go.

The sidewalk on Newell is frequently blocked by people loading and unloading cars, forcing people to walk in the street. The sidewalk is very narrow and the doesn't flow with the rest of the sidewalks in area. The storage facility is also very poorly lit at night, causing people to avoid it and the areas around it.

A new building with public amenities can help make our community more walkable, safer and more desirable. The current storage facility really needs to go, and this plot of land isn't great for an entire stand alone park. But a building with a strong urban design with public amenities can really help our community.

Given the current public spaces near Newell St., my preference would be for something that is greener and has trees. We have a lot of hardscaping in the area, which serves a purpose in an urban area, but a greener, software park would be a nice fit next to this new building. Trees also help filter the air and adding more trees to that property will benefit all of us in the area.

My main concern moving forward is to make sure that Comstock follows through on their proposals and builds public space that actually appeals to the public. I am pleased with their current plans, and hope that citizens and the planning department can hold them to them. I also hope the planning department can make sure that Comstock delivers the building they have proposed. We've seen several buildings in the area have nice proposals, but cheaper and less desirable products were deliver instead.

Thank you for all of your hard work.

Cheers,  
Patrick Thornton

[www.patthorntonfiles.com](http://www.patthorntonfiles.com)  
[www.interchangeproject.org](http://www.interchangeproject.org)

Twitter: pwthornton

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**MCP-CTRACK**

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**From:** Jane Redicker <jredicker@gsscc.org>  
**Sent:** Tuesday, November 20, 2012 1:48 PM  
**To:** MCP-Chair  
**Cc:** Marcolin, John; Mead, Anne M. - AMM; dslear@comstockpartnerslc.com  
**Subject:** GSSCC Letter of Support -- 8001 Newel Street Development  
**Attachments:** Carrier -- 8001 Newel Street Development.pdf

OFFICE OF THE CHAIRMAN  
THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Attached please find a letter of support from the Greater Silver Spring Chamber of Commerce for proposed residential development at 8001 Newel Street in South Silver Spring.  
Should you have any questions, do not hesitate to contact me.

***Jane Redicker***

*President & CEO*

**Greater Silver Spring Chamber of Commerce**

8601 Georgia Avenue, Suite 203

Silver Spring, MD 20910

Phone: (301) 565-3777

[jredicker@gsscc.org](mailto:jredicker@gsscc.org)





November 20, 2012

The Honorable Françoise M. Carrier, Chair  
Montgomery County Planning Board  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

Re: 8001 Newell Street – Project Plan No. 920130020

Dear Chairman Carrier and Members of the Planning Board:

I am writing to express the support of the Greater Silver Spring Chamber of Commerce for the 8001 Newell Street optional method project proposed by Comstock Newell, L.C. in the South Silver Spring District. Representatives of the developer recently briefed the Chamber's Economic Development Committee on the design for the project. They explained the plans to redevelop the existing storage building with a 7-story multi-family residential building with ground floor retail in detail, including: the neighborhood context of the project in South Silver Spring, the public park area at the corner of Eastern Avenue and Newell Street, the private passive courtyard area that forms a generous courtyard with the adjacent buildings, the improvements to the streetscape, and the neighborhood serving retail intended for the ground floor of the building adjacent to the new park space. We support this proposed redevelopment of this property, and agree that it will improve and finish the character of Newell Street and benefit the development in the neighborhood.

Although the Chamber utilizes the existing storage facility on the site, we recognize that the current industrial building and use on the property have become dated, do not fulfill the revitalization vision for this area of Silver Spring, and no longer fit in with the context of this growing and vibrant residential community. Further, this project will provide more housing opportunities and new patrons for the restaurants, retail establishments, and entertainment venues throughout Silver Spring, and address the desire for additional green urban park areas in this area of Silver Spring.

For the above stated reasons, the Chamber supports the Project Plan for 8001 Newell Street and urges the Planning Board's approval of the redevelopment as proposed.

Thank you for your consideration.

Sincerely,

Jane Redicker  
President

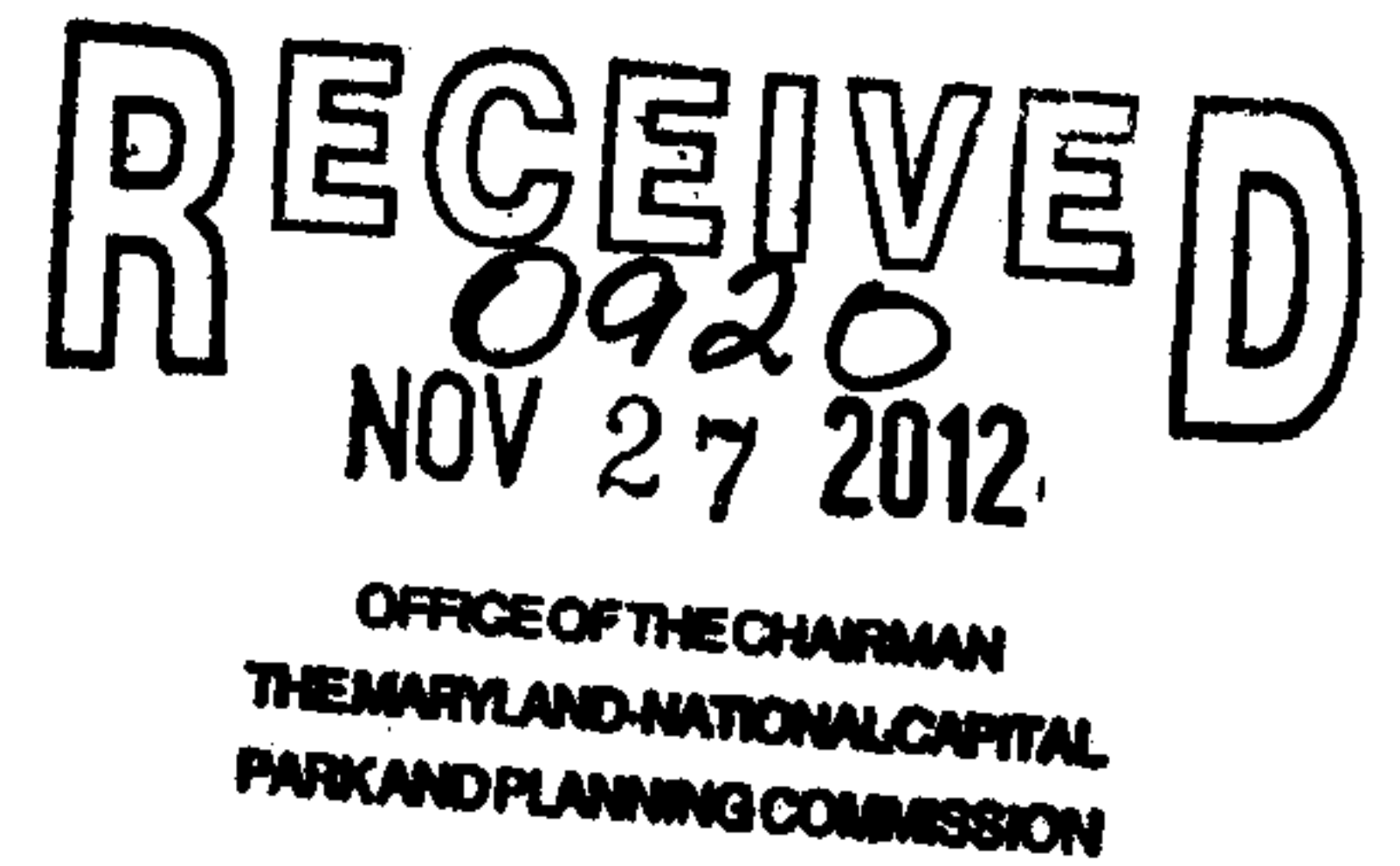
cc: John Marcolin



## SILVER SPRING URBAN DISTRICT ADVISORY COMMITTEE

November 21, 2012

Honorable Valerie Ervin  
Montgomery County Council  
Executive Office Building  
100 Maryland Avenue  
Rockville, MD 20850



Subject: Review of Site Plan - Newell Street Project-South Silver Spring

Dear Councilmember Ervin:

As you are aware, many developers of major projects in downtown Silver Spring have traditionally presented their proposed projects to the Silver Spring Urban District Advisory Committee. This venue offers an efficient opportunity for community comments from the cross-section of interests as represented by the SSUDAC. As such, the Silver Spring Urban District Advisory Committee voted unanimously in support of the Newell Street Project Site Plan presented to the committee during the October 18, 2012 meeting. The site plan was presented to the committee for comments prior to submittal to the Planning Board.

A summary of the committee comments follows:

**Development Envelope:**

- The development project foot print and height appears to be sensitive to neighboring buildings and fits well within its urban context,
- The offset at the rear of the units appears favorable for both existing and proposed developments,
- The project was set back along Eastern Avenue to respond to the scale of single family dwellings along Eastern Avenue.

**Community Serving Uses:**

- The project provides for a public park along Eastern Avenue with seating, plaza and landscaping,
- The project, as presented, includes street facing retail space for community services.

**Responsive to Community Concerns:**

- The developer met with the community and adjacent property occupants,
- The developer modified the proposed development to respond to community concerns.

As a result of the review of the project and in keeping with the aforementioned comments, the SSUDAC wishes to express support for the referenced project.

Sincerely,

Ernest Bland, RA, Chair  
Silver Spring Urban District Advisory Committee

cc: County Executive, Ike Leggett  
Francoise Carrier, Chair, Montgomery County Planning Board

Silver Spring Urban District Office  
8110 Georgia Avenue, 3<sup>rd</sup> Floor, Silver Spring, MD 20910



May 6, 2013

The Honorable Françoise M. Carrier, Chair  
Montgomery County Planning Board  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

Re: 8001 Newell Street – Project Plan No. 920130020

Dear Chairman Carrier and Members of the Planning Board:

On behalf of the Greater Silver Spring Chamber of Commerce, I am writing to express our continued support for the 8001 Newell Street optional method project proposed by Comstock Newell, L.C. in the South Silver Spring District. Representatives of the developer briefed the Chamber on the plans to redevelop the existing storage building with the 7-story multi-family residential building with ground floor retail in detail, including: the neighborhood context of the layout of the project in South Silver Spring, the public park area at the corner of Eastern Avenue and Newell Street, the private green area that forms a generous courtyard with the adjacent buildings, the improvements to the streetscape, and the neighborhood serving retail intended for the ground floor of the building adjacent to the new park space. We understand the developer has recently further increased the setbacks from the adjacent residential buildings. We continue to support this proposed redevelopment of this property, and agree that it will improve and finish the character of Newell Street and benefit the development in the neighborhood.

Although the Chamber utilizes the existing storage facility on the site, we recognize that the current industrial building and use on the property have become dated, do not fulfill the revitalization vision for this area of Silver Spring, and no longer fit in with the context of this growing and vibrant residential community. Further, we believe this Project will provide more housing opportunities and new patrons for the restaurants, retail establishments and entertainment venues throughout the Silver Spring central business district, and address the desire for additional green urban park areas in this area of Silver Spring.

For the above stated reasons, the Chamber continues to support the Project Plan for 8001 Newell Street and urges the Planning Board's approval of the redevelopment as proposed.

Thank you for your consideration.

Sincerely,

Jane Redicker  
President

cc: John Marcolin

April 10, 2013

Françoise M. Carrier, Chair  
Montgomery County Planning Board  
8787 Georgia Avenue  
Silver Spring, MD 20910

Re: Letter from Anne M. Mead dated February 28, 2013 addressing 8001 Newell Street (Project Plan 920130020)

Dear Ms. Carrier and Members of the Planning Board:

The 8045 at Silver Spring Metro Condominium Association (the “Association”), wishes to respond to the February 28, 2013 letter from counsel for Comstock, Newell, L.L.C., the applicant in the above-referenced Project Plan application.<sup>1</sup> The Association is not opposed to the applicant’s request to complete the deferred hearing on this matter. For the reasons explained below, the application should be rescheduled for disposition and disapproved without further public hearing. Alternatively, if there is another public hearing, the application should be disapproved for the reasons detailed below.

Action on the application was deferred in December at the request of the applicant when it became apparent on a straw vote that the Plan would be turned down on the basis of building height/setback requirements in the Sector Plan and in § 59-C-18.202 of the Zoning Ordinance. The applicant explicitly based the deferral request on a representation that the project would be revised to comply with the height/setback requirement along Newell Street. The letter from applicant’s counsel reveals, but does not acknowledge, that the applicant has not used the deferral for the stated reason—to revise the Project Plan to eliminate the setback/height violation. Instead, the applicant’s letter is a re-argument of its claim that there is no such violation in the Plan, along with re-argument of its claim of compatibility of the Project with the surrounding community. When this matter is rescheduled for final action, the Board should not reward this misuse of the deferral requested and granted in order to consider the substance of the additional information and argument proffered by applicant’s counsel. It is clear from the tenor of the December 20<sup>th</sup>

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<sup>1</sup> While this letter is being sent directly by the Association, it has been reviewed and approved by our counsel at the Board hearing on the matter, David W. Brown of Knopf & Brown.

hearing that if the deferral had been requested merely to reargue what was about to be imminently decided, it would have been denied. Thus, in light of the applicant's response, no further public hearing should be necessary for the Board to vote on the application now.

This is not just a matter of procedural fairness, although that is important. The stated reason for the re-argument is that "the Board had inquiries that were not fully addressed in the limited time available." Letter, page 2. This is an attempt to rewrite history. The height/setback issue was fully vetted at the December 20, 2012 hearing, leading to the straw vote, not unanswered questions. The Board will recall that, in aid of resolution of the issue, the Board asked Glenn Kreger, then the Team Leader of the 2000 Silver Spring CBD Sector Plan, to testify about the context and meaning of both the Sector Plan as well as the disputed language that was included the South Silver Spring Overlay Zone, in relation to the question of whether the height/setback requirement was limited to properties along Eastern Avenue or also included properties along Newell Street. Mr. Kreger testified that "we made a conscious effort to try and protect the edges." He made clear that Eastern Avenue was such an edge, and that it was also necessary "to treat Newell as an edge." He further explained that this was the intent of the Sector Plan in this area, even though the overarching goal of the Sector Plan was to stimulate redevelopment.

The applicant also rehashes the argument that the Newell Street Lofts approval is no precedent, because when it was reviewed and approved in February 2003, there was no review and interpretation of the height/setback requirement on Newell Street. Applicant Letter, pages 5-6. But Mr. Kreger testified in December that when it came time to apply the development standards to that project, he was well aware that the project had complied with the goal of protecting Newell Street as an edge where the height/setback rule was applicable. Put another way, it was not an issue for Board discussion at that hearing, because there was no issue of noncompliance in the first place.

If, despite the foregoing, the Board is inclined to give the applicant a "second bite at the apple" on these issues, the Association offers the following substantive response to the arguments in the letter from applicant's counsel.

**Interpretation of § 59-C-18.202(b)(1)**

It was pointed out in our counsel's Memorandum to the Board of December 13, 2012, and in his testimony on December 20<sup>th</sup>, that § 59-C-18.202 (b) (1) of the Overlay zoning ordinance is to be read section-ally as follows:

*"Building height in the Overlay Zone along Newell Street [stop]*

*and Eastern Avenue that confronts a residential zone in the District of Columbia [stop]*

**[i.e.; in either case]**

*must not exceed a height of 45 feet.”*

This straightforward reading of the language is reinforced by the self-evident geographical fact that the modifying clause “that confronts a residential zone in the District of Columbia” applies “along . . . Eastern Avenue” and does not apply “along Newell Street.” By contrast, the applicant’s interpretation effectively (and inappropriately) reads “Newell Street” right out of the statute. Perhaps this provision could have been written more clearly, but its meaning and intent is not in doubt. Further, it is consistent with the plain language of what the Sector Plan states on page 86. This language was specifically added to the Plan via Council resolution # 14-416 and, thus, must take precedence over the applicant’s overly narrow interpretation of what is found on page 60—a description of the “Major Provisions” of the South Silver Spring Overlay Zone.<sup>2</sup> It is not inconsistent to harmonize the two by concluding that the setback requirement along Eastern was a “major provision” and the setback requirement along Newell, while very much operative, was not a “major provision.”

### **Protecting Surrounding Neighborhoods**

The applicant’s emphasis on Sector Plan encouragement of development does not do justice to the co-ordinate emphasis on compatibility with residences in the Sector Plan. The Sector Plan states on page 28 that for South Silver Spring, the “Objective” is to “Rezone . . . , while preserving the integrity of surrounding residential neighborhoods.” Even more forcefully, the Sector Plan states on page 53 (& page 11 of Resolution # 14-416) under “Recommendations” that “South Silver Spring should be rezoned to encourage redevelopment while protecting surrounding residential neighborhoods.” The “residential neighborhoods” (meaning more than one) that surround South Silver Spring can only be Shepherd Park in DC on Eastern Ave and the Blair District on Newell Street.

### **Spring Garden Apartments**

The Spring Garden Apartments across Newell Street are in the R-10 zone and the applicant has argued that there is no height limitation in that zone. But as explained in our counsel’s Memorandum (page 5 fn 4), the allowed density in the R-10 zone is much less than is proposed in this project. In any future redevelopment of that site, density constraints will effectively limit building height. Moreover, redevelopment of the Spring Garden Apartments at greater height is hardly foreseeable. These apartments are listed as “Individual Locational Atlas Resource #35/19, Spring Garden Apartments [Tax ID# 13-02688618].” Consistent with Chapter 24A-10, “Any applicant for a permit to demolish or substantially alter the exterior features of any

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<sup>2</sup> This same terminology—“Major Provisions” appears in the Board and staff descriptions of the ZTA that enacted the Silver Spring Overlay Zone. Applicant’s Letter, Exhibits C & D.

historic resource which is listed in the "Locational Atlas and Index of Historic Sites," must be submitted to the Historic Preservation Supervisor [acting as "the Director"] for determination on whether or not the proposal constitutes a substantial alteration." This additional level of approval could hamper any replacement of the structures in the near future; the apartments could also receive a higher-level historic site designation incurring even more protection.

**Setback from 8045 Newell Street**

As reflected in Exhibit F to the letter from applicant's counsel, the main concerns of the community are the height and proximity of the proposed new building. We would want to remind the Planning Board that the position of 8045 Newell is that the height of the entire building should resemble the Spring Garden Apartments across the street, which should comply with the sector plan limit of 45 feet. Community members asked that the building be lowered and pushed away from 8045 Newell to respect their air, light, privacy, private terraces, enjoyment and property value due to their window/balcony/terrace-laden façade, which is more than any other building in the neighborhood. Some units, for example, have six door-size windows across their exterior with full balconies. The proximity comparisons presented at the hearing are inappropriate, as no other residential building in the area has an exterior comparable to the balconies and 1<sup>st</sup> floor private terraces of 8045 Newell. Comparative pictures of these windowed balconies are attached.

In conclusion, whether the Board gets beyond Master Plan/Zoning Ordinance noncompliance to reach the compatibility issue or not, the Project Plan should be disapproved.

Thank you for your consideration.

Sincerely,



Paula E. Tucker, President  
The 8045 at Silver Spring Metro Condominium Association  
8045 Newell Street  
Silver Spring, MD 20910

Cc: Montgomery County Planning Board  
Mr. Robert Kronenberg  
Mr. John Marcolin  
David W. Brown, Esquire

*South Silver Spring Exterior Comparison*

8045 Newell Street – private 1<sup>st</sup> floor terraces and 6 door balconies



Argent – 2 door no balconies

1200 EW Highway – 3 door balconies



MICA – 1 door balconies

Silverton – 2 window no balconies





Veridian – 1 door balconies



Blairs East – 4 door balconies



Galaxy – 2 door balconies



Orion – 2 door balconies



Auroras– 4 door no balconies



Heritage – large windows no balcony



8045 Newell Street, #112  
Silver Spring, MD 20910

November 7, 2012

Mr. John Marcolin  
Planner Coordinator/Urban Designer  
Urban Design/Preservation Division  
Montgomery County Planning Department  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

RE: Application #920130020, Comstock Homes project at 8001 Newell Street

Dear Mr. Marcolin:

My name is Renée Tatusko, and I live AND work in the South Silver Spring neighborhood. I appreciated the opportunity to attend the Development Review Committee (DRC) meeting yesterday morning, which enabled county/city agencies to provide comments on the above-referenced application. I look forward to receiving a copy of the Minutes with all the comments. If you would kindly send this to me via email, I would be most appreciative. My email address is [Renee.Tatusko@gmail.com](mailto:Renee.Tatusko@gmail.com). I will be sure to share with others in the neighborhood who have an interest in this development project.

I would like to take this opportunity to provide my perspective on this proposed project. I have lived in the South Silver Spring neighborhood off and on since 1993. I have lived in Summit Hills Apartments and at Rock Creek Springs Apartments before I purchased my condo at 8045@Silver Spring Metro in 2005. I work right down the street at the National Oceanic & Atmospheric Administration (NOAA), and I wanted to purchase a home that would be a fairly easy commute to and from my job. I could have easily chosen to live out in northern Montgomery County or even West Virginia and purchased a much larger home for the amount I paid for the one-bedroom, 875 sq. foot condo I am living in now. Not only did I want the convenience of living close to my job but I also wanted to be close to the metro that would take me into D.C. And I liked what was happening in the downtown Silver Spring area, too.

When I purchased my home, I knew that, at some point, the existing storage facility would likely be sold. I wish I had been aware of the efforts by my neighbors in Eastern Village Cohousing (EVC) requesting the county to consider the 8001 Newell Street property as a park, but, alas, we did not know that these discussions were taking place. I do have copies of those letters to Glenn Kreger and Tom Perez dated January, September, and November 2005.

I know that some of my neighbors have already expressed their concern with you about the impact this proposed project may have on the receipt of sunlight to those of us living on the west side of 8045 Newell Street, the proposed 60-foot open space that Comstock has included in the project plan, the closeness of the proposed new building and potential infringement on our privacy, possible ventilation obstruction, an increase in noise AND air pollution from air conditioning units located within 60 feet of our windows, and other issues.

As a member of the Washington Ethical Society and its Earth Ethics Committee, I am VERY concerned about the potential environmental impacts that this new building may bring. First, as we heard yesterday from the Washington Sanitary Suburban Commission (WSSC), they wanted more information about the proposed tree boxes over sewer lines as well as the potential impact the parking garage would have on these lines. My understanding is that the sewer lines have NOT been upgraded since about 1980. Since then, we have seen a population growth of +62% since 2005 and +30% since 2010. Over the last two years alone, there have been six new buildings completed, approved, or under construction. In my opinion, I don't believe that the existing sewage lines have kept pace with the continued growth in the South Silver Spring neighborhood. And, in fact, I have witnessed sewage back up in my toilet!!! I cannot help but think that the sewage lines are currently at, if not beyond, their capacity to handle any more growth. For the health of those of us living in this neighborhood, I would urge you to please further evaluate the capacity of the sewage lines to absorb another building that proposes to add another 187 units to the existing infrastructure.

Second, on a much larger scale, I am very concerned about the impact of continued development in our area on the health of the Chesapeake Bay. Each year, I join many other volunteers to help clean up many of the tributaries feeding into the Chesapeake Bay. The South Silver Spring area is part of the Potomac River watershed (via Rock Creek). As you may know, the Chesapeake Bay received a D+ in overall health in 2011 (<http://ian.umces.edu/ecocheck/report-cards/chesapeake-bay/2011/>). Of the six health indicators evaluated for the Potomac River, only one – dissolved oxygen – was rated good. The others were rated as poor or very poor. Water clarity and chlorophyll a scores declined in 2011 – the lowest levels ever recorded. The phytoplankton community condition continued to decline, from 9% in 2010 to 2% in 2011. The benthic community condition scores dropped for the second year in a row to 16%, a very poor score. The poor health of the Chesapeake Bay is the direct result of excess nutrients, which come from agriculture, urban/suburban runoff, vehicle emissions, and many other sources. With continued development in South Silver Spring and its associated increase in vehicle emissions and urban runoff to Rock Creek, we will exacerbate the damage to an already fragile ecosystem.

If you have not had the opportunity to walk around the South Silver Spring neighborhood, I implore you to do so. Agreeing to the development of another building without further assessing the total impacts this will have on the neighborhood is just wrong, in my humble opinion. I would urge you to support a call for a moratorium on any development on 8001 Newell Street until you and your staff have had the opportunity to further evaluate all the facts surrounding this small parcel of available land in South Silver Spring, including the original request back in 2005 by EVC for the county to consider a park.

-3-

I hope that the information I and many of my neighbors have shared with you is enough to convince you that South Silver Spring does NOT need more development.

I look forward to discussing this matter with you further. You are welcome, however, to contact me with any questions you may have. Thank you.

Sincerely,

Renée Tatusko  
(301)713-1790 x140 (work)  
(301)587-1582 (home)

## Marcolin, John

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**From:** Steve Fine <sfine0@gmail.com>  
**Sent:** Sunday, November 04, 2012 9:58 PM  
**To:** Marcolin, John  
**Subject:** Comments on project plan 920130020 (8001 Newell St.)

Mr. Marcolin:

Our understanding is that comments on the plan proposed for 8001 Newell Street, Silver Spring were to be sent to you by Friday morning. Given the disruption caused by Sandy, we hope that you will accept this late comment and give it full consideration.

We own a condominium at 8045 Newell Street (along Kennett Street). We recognize that we live in a built-up area and that redevelopment of the 8001 site is likely. While the proposed building is within development guidelines, the combination of close proximity to 8045 and Eastern Village Cohousing (EVC) for a very long distance and the height of the proposed structure will have a significant and unreasonable impact on existing owners at 8045 and EVC. As proposed, the new building will significantly affect privacy, views, sunlight, noise and property values. The impact on 8045 will be especially severe as the proposed building will be very close to 60 of the 120 condominiums at 8045.

To address these concerns, we request that that Planning Commission and Planning Board mandate the following changes to the proposal:

- Reduce the maximum height of the building to 5 stories.
- Place the park and retail at the northeast end of the building (towards Kennett Street). This would benefit the community in multiple ways:
  - The open space would be closer to some of the public amenities at 8045, creating a more engaging public space and the appearance of a larger open area.
  - For many of the 60 affected units at 8045, the impact of the development would be somewhat mitigated by having open space adjacent to 8045. While impacts to a few units at EVC would increase, they would be partially mitigated by the requirement that the portion of the new building adjacent to Eastern Avenue be no higher than four stories.
  - Retail would be more visible and convenient to employees at the Discovery Channel Technical Center, the VanGo, and to the large number of pedestrians who walk on Kennett street, while still being convenient for people who walk from the District into Silver Spring on Newell Street.
- If removing the retail from the project would help offset these other changes, then encourage that. There are already several vacant retail sites within a block of the proposed building.
- Construction times and methods should be restricted based on consultations with 8045 and EVC to mitigate, noise, dust, and vibration.

While the developer will complain that development is not economically viable with such changes, those changes would likely simply set a new price point for the land at 8001 at a level that would enable economically viable development that is more consistent with the surrounding buildings.

We understand that there is no way to completely satisfy the current landowner, the developer, and existing owners at 8045, EVC, and Shepherd Park. Given that 60 condominiums at 8045 would be significantly harmed by this development and the number of impacted dwellings at EVC and Shepherd Park is significantly less, we ask that the Planning Commission and Planning Board mandate the changes we recommend to prevent significant harm to so many Montgomery County property owners.

Thank you in advance for your consideration.

Steve and Margaret Fine  
8045 Newell St., Unit 302

8045 Newell Street, Apt. 108  
Silver Spring, MD 20910  
November 2, 2012

Mr. John Marcolin, Planning Area 1  
Maryland-National Capital Park & Planning Commission (M-NCPCC)  
8787 Georgia Avenue  
Silver Spring, MD 20910

Dear Mr. Marcolin:

I am writing to express concerns about the proposed apartment building project at 8001 Newell Street in Silver Spring, application 920130020 by Comstock Homes, and about the lack of sufficient park space in the densely populated South Silver Spring neighborhood. Unfortunately, the “pocket parks” that developers have been required to create as part of new developments have been underutilized and do not meet the needs of the community. I think this is due to a combination of their lack of green space and designs that in some cases make them little more than widened sidewalks.

As you know, there is a proposal to create a park at 8001 Newell Street, and I urge you to seriously consider it. The lot is large enough to have green space and amenities such as a dog park. Furthermore, the parcel has one owner who is looking to sell. Hopefully this would make the acquisition process easier than it would be for other proposed park sites in South Silver Spring.

Should Comstock’s proposal be approved, I encourage the M-NCPCC to be involved in the implementation of the on-site pocket park. If a new park is not going to be built in the near future in the South Silver Spring neighborhood, perhaps the M-NCPCC could work with Comstock and the owners of other existing pocket parks in order to improve them, including providing funds.

In addition to the pocket park, I am also concerned about the height of Comstock’s proposed building at 8001 Newell Street. At an August 2012 presentation to the 8045 Newell community, a Comstock representative stated that the building is to be seven stories and 70 to 74 feet tall. Half of the units in my building would directly face the new building and would have sunlight blocked. The other new buildings in our neighborhood have been built in ways that do not interfere with their neighbors in such a direct way. I feel that the proposed building at 8001

Newell is too tall for the site due to the existing neighboring buildings, which also includes Eastern Village Cohousing (7981 Eastern Avenue).

While I appreciate Comstock's goal to build an attractive building that will better the neighborhood, I think that a park would be more beneficial for the neighborhood. Furthermore, even if the 8001 Newell Street site is not chosen for a park, I urge the M-NCPPC to consider the sufficiency the neighborhood pocket parks and height of the proposed building.

Sincerely,

Scott Shoreman

cc:

Delegate Sheila Hixson, Maryland House of Delegates

Councilmember Valerie Ervin, Montgomery County Council

Councilmember George Leventhal, Montgomery County Council

Councilmember Marc Elrich, Montgomery County Council

Valdis Lazdins, Planning Chief, M-NCPPC

Rose Krasnow, Interim Planning Director, M-NCPPC

David Dise, Director, Montgomery County Department of General Services

Brooke Farquhar, Supervisor, Montgomery County Parks Department



## Marcolin, John

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**From:** Marcolin, John  
**Sent:** Tuesday, December 04, 2012 2:23 PM  
**To:** Marcolin, John  
**Subject:** FW: Undeliverable: Proposed Newell St Condos: Who Owns the Sunshine?

Date: Thu, 1 Nov 2012 20:42:22 -0400

Subject: Proposed Newell St Condos: Who Owns the Sunshine?

Dear Mr. Marcolin,

As a resident of South Silver Spring for 11 years, I strongly object to plans for replacing the unsightly storage facility at Eastern and Newell with another unnecessary condo project. When I moved to this area, there was a row of small, locally-owned, Mom 'n Pop businesses along 13th St. Today, all are gone, replaced by yet another unoccupied apartment building. I wish the Planning Commission would take an evening walking tour of the 4 blocks around my home and note the number of unlighted apartments. The Commission should also note the disproportionate heights of the new buildings which tower over the older, 4-story edifices in the area. THERE IS NO NEED for another 200 overpriced condo units! As usual, there was no community discussion before the Commission announced its plans. Anyone who can read the history knows Central Planning seldom works. By what authority does the Commission decide that the "rights" of some non-resident to make money supercede the rights of those living here to look out their windows at the sky, the clouds and the sun? Where will the developer find young yuppies willing and able to pay \$300,000 plus for a condo or rent the same for \$2,000/month? In 2003, I joined with 34 other urban pioneers to form an intentional, intergenerational community. We moved in to 7981 Eastern Ave, the former office building of a national NPO, abandoned years ago, in November 2004. Eastern Village Cohousing was the FIRST new housing in the area in many years. The County provided no help in parking at the Kennet Street garage, nor were we informed than hundreds of those parking spaces had already been leased to Discovery.

Nor did the County require the developer to develop a method to remove garbage. In short, our "reward" for pioneering new housing in South Silver Spring has been overdevelopment, costly parking, expensive trash removal, at least five new housing complexes which reduce the resale value of units in our older building and the loss of half a dozen small businesses. Our opinion has not been solicited BEFORE the Commission has issued the "okay" and our Council "representative" has lost her strident voice (at least on this issue). In conclusion, I have three questions which I hope you can answer: where's the money? (i.e. developer contributions to politicians; total real estate tax income in 2011 and in 2012, after we moved in) Who benefits? (not the community, not the residents, not the car owner) Who owns the sunshine and the "rights" to block it from the windows of residents? I look forward to your thoughtful reply. Sincerely, Dennis F. Shaw

December 17, 2012

Mr. John Marcolin, Planning Area 1  
Maryland-National Capital Park & Planning Commission (M-NCPPC)  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

Re: Against Comstock's plans for 8001 Newell; for a park at this location.

Dear Mr. Marcolin,

I am an owner at 8045 Newell Street in Silver Spring. The proposed apartment building project at 8001 Newell Street (Application #: 920130020 by Comstock Homes) is not compatible with existing surrounding buildings, nor is it compatible with the neighborhood and community interests.

The proposed 7-story residential building is unlike any other in South Silver Spring because it completely occludes the west side of two neighbors, Eastern Village and 8045, blocking light eliminating space, and will probably cause the loss of existing trees between the two properties. The proposed building will increase the already significant parking burden in the area, as the parking plan proposed by the developer, Comstock's public statements notwithstanding, is inadequate for the number of occupants proposed. In short, the proposed building is too tall and too large. In this context, the developer has consistently misled the public and officials to try to make an argument for compatibility by representing the buildings immediately on the other side of Newell as being 4 to 5 stories high, when in fact they are 3 to 4 stories high. Other misleading statements by the developer along these lines include representation of the existing building at 8001 as warehouse, when it is not, and stating at a public meeting that the parking lot at the nearby Giant "will" be made into a park, when that is far from known or clear. Moreover, Comstock's plans to have green space and retail on the south side of this proposed development are ill-conceived and will not serve Silver Spring in any way, as they are, as proposed, on the DC line facing DC and not facing or reasonably accessible to the very community they are supposed to serve.

There is clear need for a green park in South Silver Spring, and this would be much better use of the 8001 Newell Street than the oversized building that has been proposed. This park at 8001 was first requested in writing in 2005; seven years later, the fate of 8001 should not befall a "failure to plan" scenario like certain parts of NoMa, DC or Clarksburg, MD. In 2012 a group of South Silver Spring residents began a petition to gain community support for a park at 8001 Newell Street after finding out that the current owner of the location's commercial storage business was willing to sell. Within just two months, the petition had garnered over 530 online or paper signatures and 85 comments, many of which stated that a building should not be placed at this location.

Sincerely,

Salvatore V. Romano  
Roderick A. Corriveau  
8045 Newell Street #317  
Silver Spring, MD 20910  
Salvatore Romano <salvatore\_rom56@hotmail.com>;  
roderick.corriveau@yahoo.com

**Daniel Meijer**  
**929 Gist Avenue**  
**Silver Spring Maryland 20910**

December 10, 2012

Dear Councilmembers Valerie Erwin and Marc Elrich,

A recent M-NCPPC staff report has brought to my attention that an aspect of the current Silver Spring Sector Plan was incorrectly codified into the zoning ordinance.

Specifically, page 86 of the Silver Spring Sector Plan (the Plan) states: “building heights along Newell Street and Eastern Avenue should insure compatibility with the adjacent residential neighborhood” and that “at the property line, building heights should be limited to 45 feet” and “above 45 feet the building may step back 60 feet and its height may increase to 90 feet.”

However, Section 59-C-18.202(b)(1)(A) of the zoning ordinance, written to implement the Plan, provides: “Building height in the overlay zone along Newell Street and Eastern Avenue that confronts a residential zone in the District of Columbia must not exceed a height of 45 feet” followed by the same setback requirements (emphasis added).

If the Plan’s intent was only to reduce building heights that “confronts a residential zone in the District of Columbia,” the Plan would have needed to include only Eastern Avenue. Since the Plan also expressly refers to “building heights along Newell Street,” a street that primarily “confronts” a residential neighborhood in Montgomery County, it is abundantly evident that the Plan’s intent was to provide the same protective setback restrictions to an “adjacent residential neighborhood” in Montgomery County as well.

In summary, the additional language inserted in the codification (limiting setback requirements only to properties in DC), which implemented this portion of the Plan appears to constitute a significant change in the Plan. I believe this has become a legislative act without any due process by the codification ministerial or administrative authors, acts that have consistently been condemned by the Court of Appeals.

Why is this significant at this time? Because a developer has proposed constructing a 74 foot (seven story) building at this location. The M-NCPPC staff report asserts that because this additional language (“in the District of Columbia”) was inserted in the codification process, the adjacent R-10 residential neighborhood across Newell Street in Montgomery County is excluded from the same building height compatibility concerns that the Plan expressly addressed.

On behalf of the affected community, I ask you to correct this codification error so that the zoning code properly implements the actual intent of the Plan.

Sincerely,

Daniel Meijer

## Marcolin, John

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**From:** Daniel Meijer <dmeijer@hotmail.com>  
**Sent:** Thursday, November 15, 2012 12:59 PM  
**To:** Marcolin, John; robert.kronengerg@mncppc-mc.org  
**Cc:** david.dise@montgomerycountymd.gov; councilmember.ervin@montgomerycountymd.gov; marc.elrich@montgomerycountymd.gov  
**Subject:** Newell St. 45 ft building height limitations stated in sector plan  
**Attachments:** County Council Resolution 14-416.PDF; 8001 Newell tax record.PDF

Dear John and Robert,

Please find attached a pdf copy of portions of Montgomery County Council Resolution #14-416.

In particular page 22, which states: “Building heights along Newell Street and Eastern Avenue should ensure compatibility with the adjacent residential neighborhood – at the property line, building heights should be limited to 45 feet”

I believe the intent of this County Council Resolution (“Adopted February 1, 2000”) limits the development of any proposed building “along Newell Street” to 45 feet. The “adjacent residential neighborhood” that applies to restricting building height “along Newell Street” is the R-10 zoned residential neighborhood across this street.

The current proposed development at 8001 Newell Street does not appear to comply with this sector plan requirement as there are portions of it along Newell Street where the building is to have a height of “74” feet. Please also be aware that tax records indicate that the current property owner purchased this property in 2002, two years after the current sector plan was adopted. Thus, this property was purchased (presumably knowingly?) with these restrictions in place.

A copy of this Resolution may be found in the back of the “Approved & Adopted Silver Spring Central Business District Sector Plan”. This requirement is also stated on page 86 of this plan. I believe the Planning Board and the Montgomery County Council added this language to the sector plan via Resolution #14-416 because they recognized, acknowledged and wanted to prevent the very compatibility issues that current residential neighbors of this proposed development have brought to your attention.

If you believe I have interpreted these statements found in the Resolution and in the approved and adopted sector plan incorrectly, please let me know.

However, section 59-D-2.41 “Findings required for approval” states under (b) that the Board must find that the project must “conform to the approved and adopted sector plan”.

Thus, in order to avoid another Clarksburg type incident (where townhouses were found to have been built higher than the plan allowed?), I would urge you to enforce these building height limitation requirements for this location as set forth in the current sector plan. Failing that, I believe you have a duty to report to the Planning Board, the existence of these clear building height limitations that appear to apply to this case.

Thank you for consideration on this important sector plan precedent setting matter,

Daniel Meijer

8045 Newell St, apt #308  
Silver Spring, MD 20910  
October 30, 2012

Mr. John Marcolin,  
Planning Area 1 (M-NCPCC)  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

Mr. John Marcolin:

I am writing this letter concerning the construction of the new **proposed Comstock 7-story building 8001 Newell** in front of our 5-story 8045 Newell condominium. I would like to pay your attention that there are no new constructions in our area built in front of any buildings and none of them is higher, than existing ones. The new proposed building is planning **to be higher** than our building and will be placed in front of our 2 wings (north and south) of the building at the same time.

On these 2 pictures - 2 new buildings on 13 Street stay in one line and no higher than existing buildings.



Another reason that this proposed construction is **incompatible** with 8045 Newell – it will **reduce the sunlight** of our south and north parts of the building. The value of the property depends of the sunlight coming thru the window. We have 50% of the light right now and with this new construction we will have only 10%. Reducing the light will completely reduce the value of our property. Why we have to lose our money while somebody will earn money on our loses? We are the same tax payer as all other people.

This is a view from my window, 50% of the sunlight covered by north part of the building (left), no sunlight at all will be after the construction.

No sunlight, no fresh air will be between 2 buildings, plus 203 additional cars by the windows.

Besides the sunlight we will not have a fresh air, because there will be garage entrance between our buildings for 203 parking spaces. This means that 203 cars will be back and forward all the day and night under our windows plus garage for 65 cars – altogether 268 cars under our windows –can you imagine what a fresh air and noise will be!

Edward and Joan King  
7981 Eastern Avenue #407  
Silver Spring MD 20910

November 2, 2012

Mr. John Marcolin  
Planning Area 1  
Maryland-National Capital Park and  
Planning Commission (M-NCPCC)  
8787 Georgia Ave.  
Silver Spring MD 2019

Re: Proposed Development at 8001 Newell Street

Dear Mr. Marcolin,

We understand that you have major responsibility for reviewing the proposed development at 8001 Newell. We write to you in the hope that you will take into consideration both the lack of parks and green space in the area, and the incompatibility of this proposed seven-story building with the area of which it would be a part.

If located at the far end of South Silver Spring, as is proposed, this seven-story building would be across Eastern Avenue from single family residential homes, and across Newell from garden departments, about half its size.

We understand, appreciate and applaud the fact that our community is part of an urban smart-growth area. The fact remains, however, that this would be an out-of-scale building even for our community. Our community is directly across the street from Shepherd Park, a single family residential area. It is presumably at least in part because of this that the buildings along Eastern Avenue in the area are four stories or less with no more than about 50 units. The lone exception is the Aurora, which, like our own Eastern Village Cohousing building, results from rehabilitation of a building constructed before the current planning for this community was done.

The undesirability of the current proposal is exacerbated by the fact that the building will be placed directly in front or adjacent to two existing buildings, closing them off from the rest of the community in the direction of that proposed outsized building. An important positive reality in our area is that even with larger buildings, a sense of spaciousness remains. This is so because the other larger buildings in this densely populated South Silver Spring area have been built at angles rather than squarely blocking the existing sight lines of many of the people in the building nearest to it, as this proposed building would do.

Ideally, the particular area where the developer proposes to put the new building would be made into a park. In fact, a letter signed by 55 residents, including us, was sent to Planning officials on September 12, 2005, asking for such a park in this same location. Then County Council President Tom Perez indicated that he had "asked the Parks and Planning staff to assess the need for additional parks in south Silver Spring" and to "identify strategies to acquire additional parkland, should they determine

that a need exists."

The proposed building plan would represent a ratcheting up in size, and a change of direction in location of buildings relative to adjacent areas. Even worse, granting this proposal would eliminate one of the last potential park areas in our community. We urge you to give full consideration to these important issues as you review the proposal and the needs of community in this growing area.

Sincerely,  
Ed and Joan King

## Marcolin, John

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**From:** JoAnne <japoet@msn.com>  
**Sent:** Thursday, November 01, 2012 6:17 PM  
**To:** Marcolin, John  
**Subject:** Objections to Comstock project @ Eastern and Newell Streets

Dear John Marcolin, --

I am a resident of South Silver Spring writing to you (and the Maryland-National Capital Park & Planning Commission) to protest a proposed Comstock building, now in the planning stages for construction at the intersection of Eastern Avenue and Newell Streets in Silver Spring and next-door to the condo building, Eastern Village, in which I live.

The high density rentals of this proposed property seem incompatible with our neighborhood of long-term and friendly, interactive homeowners now living in Eastern Village's condos (and other nearby condos) and across the street in DC in private dwellings. This new project seems to offer nothing but increased stress for this quiet neighborhood.

For me, a resident on the west side of Eastern Village, the project offers many concerns. I will lose my view of trees and distant buildings; I will lose sunlight in my own rooms and some of my favorite views from our green roof; I will lose privacy as new windows appear opposite my own. And, my greatest concern is the potential for noise and air pollution from vehicles that pass beneath my windows on their way to underground parking.

Let me close by emphasizing what I said in my second paragraph: The high density rentals of this proposed property seem incompatible with the current neighborhood of long-term and friendly, interactive homeowners.

Thank you for hearing my views.

Yours truly,  
JoAnne Growney ( [japoet@msn.com](mailto:japoet@msn.com) )  
7981 Eastern Ave, #207 Silver Spring, MD 20910  
1 November 2012

\* \* \* \* \*

JoAnne Growney Silver Spring, MD: more information at <http://joanegrowney.com> .



*Adele D. Jackson  
8045 Newell St, Apt 101  
Silver Spring, MD 20910*

November 7, 2012

Mr. John Marcolin  
M-NCPPC, Planning Area #1  
Development Review Committee  
8787 Georgia Avenue  
Silver Spring, MD 20910

Re: Application #920130020  
Comstock Homes Project Plan  
for 8001 Newell Street

Dear Mr. Marcolin:

I am writing to object to the approval of the above mentioned proposal. I am an original owner at 8045 Newell St., a condominium building next to the proposed building at 8001 Newell Street, and I have lived or worked in Silver Spring for over 30 years. When I retired, I bought my apartment in Silver Spring because of my love for the neighborhood.

My major objection to the approval of the Comstock Homes project is the negative affect that it will have on the livability of the entire South Silver Spring neighborhood. And, I emphasize the word "neighborhood." This neighborhood has significantly grown in population over the last seven (7) years beginning with the renovation of three commercial buildings into residential ownership homes on Eastern Avenue. On the south side of Eastern are homes owned by District of Columbia residents who are sick at the prospect of more traffic, parking problems and noise, air and other forms of pollution in their neighborhood. Residents of my building are directly affected by the loss of space and light, and, the reduction of the value of our properties.

Several new large rental buildings also were built in the neighborhood during the 7 years, primarily facing East-West Highway, a busy commuter street that creates traffic, noise and air pollution. These developments create enough density for those among us who are long standing lovers of the character of South Silver Spring – green, quiet, buildings of low height and low traffic. I know the Master Plan for South Silver Spring contemplates urban parks near the 8001 Newell site, so I urge the planners to alter the current plan to develop an urban park at this location. After all, one of the goals of urban planning should be to improve the livability of the people who live there, and all plans can be changed. Those among us who have invested our life savings in this neighborhood expect our government to listen to our needs and wants. We need more green space now, not in 10 to 20 years in the future. I do not to want to live in areas like downtown D.C. or downtown Bethesda for that matter.

Thank you for your consideration of my views and to present them to the full Committee and to the members of the Board.

Sincerely,

Adele D. Jackson

October 31, 2012

Mr. John Marcolin, Planning Area 1  
Maryland-National Capital Park &  
Planning Commission (M-NCPCC)  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

Dear Mr. Marcolin:

I am writing to express my concerns about the incompatibility of proposed building project by Comstock Holmes at 8001 Newell St.

I am a condo owner at 8045 Newell. I moved to this area from New York City in 2010. I chose my apartment because it had a balcony where I could grow plants, enjoy a clear view, sit on the balcony and relax in the sun. My intent was to live in a less crowded area. I understood that the area was in transition and had expected that there would be additions of green space as I saw that Montgomery County is a suburban area and that there was much green space in the county. I noticed that In Takoma Park and Bethesda, for instance, there surely are apartments but also they are pleasant green spaces for inhabitants to relax, meet their neighbors and enjoy the sunshine. I had expected this type of smart growth for my new community.

Much to my shock and dismay, in the last two years, I have seen building after building added to this already highly developed area without additions of amenities for the human beings who already live here. It now seems to be a concrete jungle cold, treeless and greenless. Even in 2010 our area was the most densely populated census tract in all of Montgomery County. And now it's gotten much, much worse. At one point there was an opportunity to make this area charming, and pleasant like Tahoma, Bethesda, Chevy Chase. I wonder what happened. We seem to be a forgotten area of lovely Montgomery County.

#### Building Closeness/Privacy

In June, we learned of yet another plan for an oversized building, the Comstock Holmes proposal. It would be squeezed into a small, oddly shaped particle, parallel to my building. The plan is to have it 60 feet from our windows. Even in New York City I did not have a building so close as this one. 60 feet from my window will allow me to watch my neighbors as they eat, watch my neighbors as they are in their living room watching TV. And of course, they will have the opportunity to snoop on me as well. It does not seem to be compatible with the area. Surround buildings in our area are not parallel to each other. The distance is further and buildings are at angles so that they residents do not feel like their privacy is being invaded as would happen with the proposed Comstock building.

#### Ventilation Obstruction

8045 Newell is designed with windows on one side. That is the only opportunity we have to have a breeze and get fresh air. The proposed Seven-Story Comstock building will block air passage to our apartments. We will be forced to use our air conditioners constantly spring, summer and fall. This will decrease our quality of live. This will increase our monthly expenses significantly. This will result in more energy consumption contrary to good environmental policies. I understand that the initial plans for this area were for town houses which would not cause this problem for the inhabitants of 8045 Newell.

#### Obstruction of Sunlight

My current view contains a tree, which is another reason why I chose this complex. The height of the Comstock proposed building will greatly limit sunlight to the trees along side our building and threaten the trees existence. I strongly doubt that plants, (parsley, basil, etc which I currently have on my balcony) would survive with the limited Sunlight if the Seven Story Comstock project

### Lack of Dog Park/Lack of Green Space

Our area also critically needs a dog park and green space. In the meeting with Comstock their solution is a small 60 foot space called a "pocket park" which is less than our neighbors on Eastern Avenue's front lawns. Not only is this tiny "green space" terribly insufficient, but the 60 feet will also be reduced by a walk way and entrance to the retail establishment that the developer plans on locating. In addition, the "pocket park"/front lawn will face Eastern Ave, not South Silver Spring community where the green is desperately needed. It seems they have put the tiny little green space on Eastern Avenue's side not to solve our severe green problems but to try to meet the zoning setback requirements.

### Noise/Vague Responses

In talks with the Comstock developers we ask questions about our concerns and continue to get vague "no answers." With a parallel building will the air conditioning units be placed on our side, 60 feet from our windows so that we hear the loud noises as an additional reduction to our quality of living that surrounding buildings do not have to endure because they are not stacked on top of each other like this proposal would do. What we received and continue to receive from the numbers questions that we ask this developer: "don't know...haven't gotten that far in the plans." Ultimately, it seems they can do whatever the heck they want to do that will minimize their costs and the neighbors will just have to suffer the consequences. A parallel building poses issues for the neighbors that are squeezed next to their building. This type of construction is not compatible with current community structures.

John, I could go on and on about the problems this proposal poses for our building and the neighborhood. We really, really need green space to make this area a place for living beings to enjoy. Another oversized building should not be allowed in this area.

Let them build some place else. Montgomery is a large county. There are other sections of the county that won't be so detrimentally effected by the addition of more concrete.

This building is not compatible with our neighborhood.

Kind regards,

Eileen La Fleur  
301 588 1945

October 31, 2012

Mr. John Marcolin, Planning Area 1  
Maryland-National Capital Park & Planning Commission (M-NCPPC)  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

Dear Mr. Marcolin:

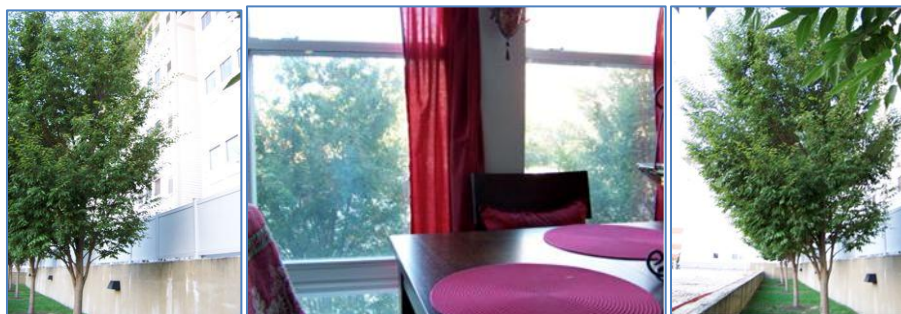
I am an owner at 8045 Newell Street in Silver Spring. I would like to express my concerns over the incompatibility of the proposed apartment building project at 8001 Newell Street in Silver Spring (Application #: 920130020 by Comstock Homes) with existing surrounding buildings and the community interest.

**NOT COMPATIBLE: Height of proposed 7-story residential building, which creates a severe sunlight reduction for 8045 Newell Street condominiums and existing trees**

The 8045 Newell Street Condominiums were not built for city density. They were built as sunny units with about 80% of the exposed wall (which would face the new building) as window. The first floor units of 8045 have substantial 10x22ft or larger private terraces with sliding doors, while other units have full-size balconies with sliding doors. My unit has what was called a "sun room" when I purchased my condo that has 4 large windows to the floor.

In the summer, my side of the building (left side, western exposure) currently receives direct sunlight from 4pm-7:30pm, not before 4pm. It appears to me that the attached sun study provided by Comstock Homes shows that the left face of our building will receive only about 30 minutes to an hour of direct sunlight depending on floor after the new building is installed. This is not an acceptable reduction of sunlight (-71% to -86%). This can only negatively impact our quality of life, enjoyment and property value. It directly conflicts with how 8045 Newell was designed and why owners chose to purchase here.

There is a line of large trees that are now beginning to reach our 3<sup>rd</sup> floor (see pictures below) that would inhabit the space between 8045 Newell and the new building. Not only are the trees part of 8045's permanent site plan, they were county-mandated and the reason I purchased on the second floor. I can see two trees from my unit (see pictures below). In the summer these trees currently enjoy direct sunlight from about 2pm to 7:30pm. I would fully expect your office would have an independent expert assess the sunlight needs of these trees and guarantee their survival with this severe reduction in sunlight. They should not wither, die or be stunted.



**NOT COMPATIBLE: Size and purpose of 60ft open space of proposed 7-story residential building**

The small 60ft open space proposed by Comstock Homes does not fulfill the community need for at least an acre of continuous green space with a dog park. The area as described would be bisected by a cement walkway and consumed partially by the front of a retail establishment. In addition, this open space on Eastern Avenue across from private homes with lawns is not the ideal location for Silver Spring residents to access the location. It is obvious it is being placed on Eastern Avenue side rather than the Kennett Street side to achieve zoning setback requirements and not serve the East -West Highway community.

The few other ideas for parks in area like Blair Plaza or the Lots between Kennett and East-West would be disruptive to local businesses, parking and create a scenario where shoppers might have to pay to park their cars at the shops or a park. Therefore, they are unlikely to happen due to community resistance. Logically, a dog park should not be located adjacent to grocery stores, food outlets or high speed streets like East-West highway, but in a pleasant residential area that would benefit owners who have personally financially invested in the neighborhood. In addition, a green park and dog park at 8001 Newell Street would alleviate Silver Spring residents from using the adjacent Shepherd Park neighborhood for these purposes.

A green park at 8001 Newell Street was first requested in writing in 2005. South Silver Spring has the opportunity to plan parkland at this time and should not befall a “failure to plan” scenario like NoMa, DC or Clarksburg, MD. In early August 2012, a group of South Silver Spring residents began a petition to gain community support for a park at 8001 Newell Street after finding out that the current owner of the location’s commercial storage business was willing to sell. Within just two months, the petition had garnered over 530 online or paper signatures and 85 supportive comments. Signers not only signed in support of a park, but voiced that a building should not be placed at this location. See full petition text enclosed.

Sincerely,

Dawn M. Brosnan  
8045 Newell Street #212  
Silver Spring, MD 20910  
dawn.brosnan@yahoo.com

View online petition and comments at: [www.ipetitions.com/petition/silverspringpark](http://www.ipetitions.com/petition/silverspringpark)

Cc:

Valerie Ervin, Councilmember, Montgomery County Council  
Marc Elrich, Councilmember, Montgomery County Council  
Valdis Lazdins, Planning Chief, M-NCPPC  
Rose Krasnow, Interim Planning Director, M-NCPPC  
Brooke Farquhar, Supervisor, Montgomery County Parks Department  
David Dise, Director, Department of General Services

Text of Petition:

## The Petition

***We request that a shared community park with green space be developed on Newell Street (between Kennett St and Eastern Ave) near downtown Silver Spring.*** Currently, there is a proposal by Comstock Homes to tear down the existing self-storage facility to build a 7-story apartment building, beginning in early 2014. While this site is currently zoned for residential development and Comstock is trying to secure the rights to develop it, this petition seeks to deny the right of any developer (whether Comstock or any future party) to build any residential development on this site.

The quality of life for many local residents and employees, including individuals, couples, families with children, and dog owners, will be greatly affected by what is developed. ***We request that our interests be prioritized over those of real estate developers.***

**A community park** would provide much-needed open green space in the middle of what is already a very dense concrete jungle with several large new buildings going up right now (see map below with the site outlined in red). A new building would also further reduce street parking and space in nearby garages. Currently, our neighborhood with over 10,000 people has the greatest population density of any census tract within Montgomery County and no open space available!

**A community park** on Newell Street between Kennett and Eastern would greatly serve all residents at 8045 Newell, Eastern Village, Mica, the Blairs, the Veridian, Argent, Spring Garden, Rock Creek Springs, the Silverton, the Bennington, 1200 East-West, Aurora, Gramax, and the Galaxy, and also many single family homes along Eastern Ave. It would also serve about 300 employees of nearby Discovery Communications (on Kennett St) and the many businesses located around the Giant shopping center and East-West Highway.

**A community park** will be a place to build a vibrant local community among our area's diverse residents and employees. It will be a place for parents to play with their children, dog owners to walk their pets, individuals to exercise, employees to have lunch, and friends and neighbors to meet and relax during the day and after work. The park will also increase the daily walkability of our neighborhood. It will create an "emerald necklace" of the open (but not green) space outside Veridian apartments and be linked with historic Acorn Park. It will be an ideal location to hold local festivals such as our annual South Silver Spring Festival each September. A park would not just be a feel-good addition to our community - research has shown green spaces in urban areas to have important positive psychological effects for residents as well.

And of course, **a community park** is just the right thing to do for the environment. While common areas are required of new buildings, we have seen that local developers create these areas using only concrete and asphalt, not green space.

## Marcolin, John

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**From:** Suzana Cooper <suzanacooper@yahoo.com>  
**Sent:** Friday, November 02, 2012 4:30 PM  
**To:** Marcolin, John  
**Subject:** 8001 Newell Street in Silver Spring

Mr John Marcolin, Planning Area 1  
Maryland-National Capital Park & Planning Commission (M-NCPCC)  
8787 Georgia Ave.  
Silver Spring, MD 20910

I am writing as a concerned citizen about the proposed apartment building project by Comstock Homes at 8001 Newell Street in Silver Spring.. It is to be a seven-story building.

I have lived at the Aurora Condominiums on 7915 Eastern Ave. for eighteen months, and during this time I have witnessed the building of one more condominium (The Orion) and a large apartment complex (The Galaxy) within one block of where I live.

I believe there are future plans to replace the motel across the street from the Galaxy with yet another apartment building.

All these buildings are one block away from where Comstock intends to build its apartment complex, in an area wich is also surrrounded by a number of other apartment buildings.

This area of Silver Spring is very densely populated, There is a glut of condominiums and apartment buildings in the neighborhood, with no allowance made for green space for residents, their children and pets. Wherever there is new construction the builders circumvent the law requiring a certain amount of green space by covering it with concrete, placing a few benches on it and calling it a community space,

What we really need is a park for our citizens to breathe pure oxygen,for our children to play, and for our pets to run. We need a park for neighbors to congregate and get to know each other. This is the ecologically-friendly thing to do, and this is what at least 500 citizens asked for when they signed a petition a few months ago.

Please listen to the concerns of citizens, not just that of the builders!

Thank you,

Sincerely,

Suzana Cooper



## Marcolin, John

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**From:** Harris Cohen <harrismcohen@gmail.com>  
**Sent:** Thursday, November 01, 2012 2:09 PM  
**To:** Marcolin, John  
**Subject:** Proposed Comstock Building Comments (8001 Newell Street)

Mr. John Marcolin, Planning Area 1  
Maryland-National Capital Park & Planning Commission (M-NCPCC)  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

Mr. Marcolin:

As a resident of 8045 Newell who purchased a unit in March, 2007, I have some very serious concerns about the proposed Comstock building being proposed at 8001 Newell Street. Specifically, I am very concerned about the impact that construction and the final building will have on my quality of life and the quality of life of my neighbors, as well as a continued lack of focus on open spaces for residents living in the area. One of the main reasons I purchased my unit at 8045 Newell Street was because I valued the quiet atmosphere offered by the property. Erecting a new residential building as proposed by Comstock will be detrimental to the quiet and enjoyment that I value and associate with the building and with South Silver Spring, and further exasperate crowded conditions and lack of green space in the area.

I fully support the proposed amendment of the Silver Spring Central Business District Sector Plan to transform the self-storage property at 8001 Newell Street to a public park, largely to address the deficit of green space in the South Silver Spring district. While I recognize that there would still be disruption in terms of noise and construction, the benefits of having green space (both in terms of increased property values/tax revenue and quality of life) are significant and will make the South Silver Spring area an even more enjoyable and better place to live. This is especially important if the area wants to remain attractive as more young families look to move to the area. An open park layout, with park benches, trees, paths, and small area for dogs would benefit not just me and my neighbors, but all residents of South Silver Spring, as well as the County through increased revenues.

Thank you for your time and consideration.

Sincerely,

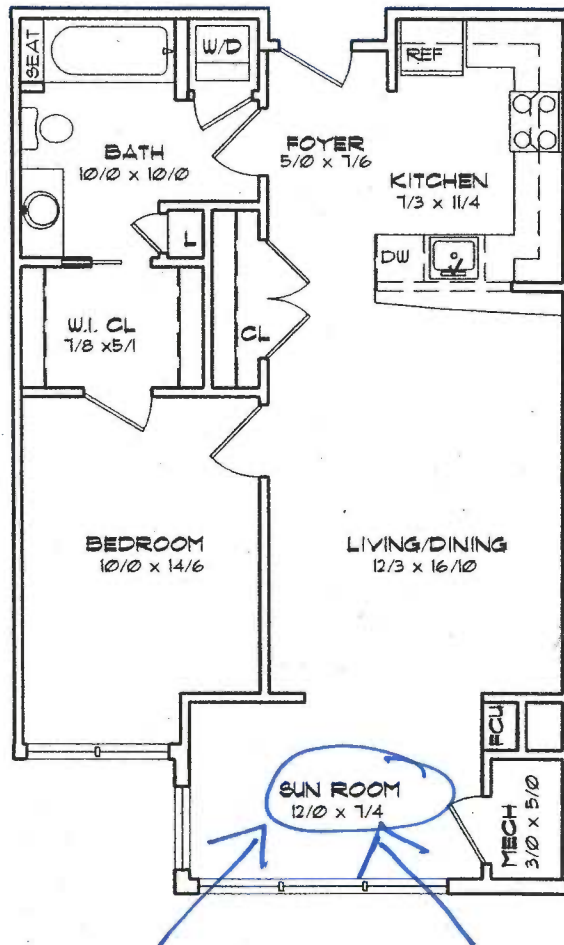
Harris Cohen

8045 Newell Street, Apt. 214

Silver Spring, MD 20910

301.541.7245

8045 Newell Street  
Developer's Selling Layout



1 BR - One Bedroom Unit  
SELLABLE AREA - 817 SF

Submitted by:  
Dawn Brosnan  
8045 Newell Street

## Marcolin, John

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**From:** Frank Bondurant <[fbondurant@msn.com](mailto:fbondurant@msn.com)>  
**Sent:** Saturday, November 03, 2012 8:43 PM  
**To:** Marcolin, John  
**Subject:** Comstock proposal

To Whom It May Concern:

We have lived in the 7900 block of 14th Street NW for 47 years and have watched our lovely neighborhood (Shepherd Park) slowly deteriorate from a quiet, green quartier to become a major thoroughfare (via traffic and people) to South Silver Spring. We have attempted to adjust to the changes that the METRO created, and it has been difficult. With the recent development to the east of Eastern Ave, we watch (in horror) as Maryland residents who live in the apartments and condos turn our streets into a public park as they daily walk their dogs (too many to mention), push their baby strollers, jog, ride bikes and engage in loud talking on cell phones. They even sit on our lawns to rest!!! The traffic is impossible and the Marylanders sneak into the neighborhood after dark when parking restrictions are lifted and park their autos directly in front of our homes.

Now we hear that there is to be a NEW apartment complex at Eastern and Newell!!!! We can't take any more and wonder what options will we have when our street (14th) becomes a direct route to their underground garage. We have enough pollution now. Our health is as stake. Why are we accommodating MD residents in this manner when they pay no DC taxes.

Build a park for these people and not another residential building. We also believe that the main reason that there are so many animals in South Silver Spring is because the owners of those complexes were and are unable to rent all the units, so they decided to ATTRACT renters by allowing PETS!!!! Shame, shame, shame!!!!!!

We need your help! Don't continue to destroy our neighborhood! The development MUST END!!!!!!!!!!

Frank & Dolores Bondurant

FB/DB (202) 829-4989 [fbondurant@msn.com](mailto:fbondurant@msn.com)

# **SOUTH SILVER SPRING COMMUNITY NEEDS A GREEN PARK FACT SHEET**

## **SOUTH SILVER SPRING IS NOW OVER DEVELOPED**

- #1 most densely populated area in Montgomery County per 2009 US Census (tracts 7025 & 7026.1)
- Population/units growth up +62% since 2005 + 30% since 2010 (track 7025 alone)
- Population/units have grown +33% since 2005 +18% since 2010
- Current residents in area now total over 10,000 (with over 6 new buildings completed, approved or under construction in the last two years)
- At least an acre of continuous green space is needed to support the community; plots disappearing rapidly

## **LEAST ACCESS TO GREEN SPACE IN COUNTY**

- South Central geographic area of Montgomery County has less access to parkland than any other area
- South Silver Spring is a stark contrast aesthetically to its neighboring Takoma Park, MD and Shepherd Park, DC neighborhoods
- Germantown Town Center Urban Park was allotted \$7.2 Million by the county thru 2014 while South Silver Spring is more urban
- South Silver Spring is a geographically constrained neighborhood due to railroad tracks and DC border; a green park is needed directly in the residential community
- Jesup Blair Park and the Falklands are out of the walkable radius

## **NO COMMUNITY AMENITIES**

- Public amenities are not increasing in South Silver Spring to keep pace with dense development
- While developers are mandated to provide 20% "public use" space, what has been installed are odd/uninviting "open cement-laid" spaces and not "green" space; over and over the community has seen that developers cannot be relied upon to design "green" parks
- No gathering green place for the community
- No green place for children to play
- No dog park – many dog owners in this area end up walking their dogs in DC's Shepherd Park where there is grass (One Shepherd Park resident counted 30 dogs passing her house in a single day)

## **MORE TAX REVENUE WITH PARK**

- Surrounding property values and tax revenue may increase by up to +20%

## **THE COMMUNITY WANTS A PARK**

- Over 500 community residents have signed a petition to have a park and not another building
- Almost 200 letters have been signed by community residents to have a park
- South Silver Spring does not want to end up in another "failure to plan" parkland situation like NoMa\* or Clarksburg.\* (\* see 10/12/12 City Paper, page 10-11 ; see 9/30/12 Washington Post, page C4)

**Stop the development – bring community amenities to this area!!!  
Develop this area for people to live in.**

park\_now\_for\_southsilverspring@yahoo.com

# Can NoMa freshen its glass landscape with public parks? Not if there's no room.

By Aaron Wiener

**Walking through the streets of NoMa** these days, you get the sense you've stepped into a well-played game of SimCity. Crisp and glassy, it's a commercial zone, to be sure, and a strategically placed one: It's served by three major thoroughfares, two Metro stations, all the regional and Amtrak train lines passing through Union Station, and one of the city's best bike trails.

Yes, the Sims of NoMa are doing quite well for themselves. Everywhere you look, cranes add new layers to the shiny new office buildings that are filling in the neighborhood, loosely bounded by Union Station to the south, Q and R streets NE to the north, and North Capitol Street and Third Street NE to the west and east, respectively. There are about 1,800 residential units in NoMa, with about 1,800 more under construction. The Metro station by the intersection of New York and Florida Avenues, renamed this summer to include the NoMa moniker and help cement the neighborhood's previously shaky identity, has the fastest-growing ridership of any in the system. Only 20 percent of the area's development by square footage was complete before 2005; another 20 percent has been built since 2005, and the remaining 60 percent is under construction or planned.

But for humans, a well-oiled commercial zone isn't enough to ensure a high quality of life. So the people of NoMa got a boost last month in the form of a \$490,000 earmark by Mayor **Vince Gray** for a network of public parks in the neighborhood. Ward 6 Councilmember **Tommy Wells** praised the mayor for bringing "vision" to NoMa, saying, "Where little in the way of public space and parks existed just a few years ago, the partnership between the city, the BID and the neighborhood is turning vision into reality." Gray wrote in a letter to NoMa Business Improvement District President **Robin-Eve Jasper**, "Developing

parks and open space in NoMa, a neighborhood whose growing population of residents, employees and neighbors currently lack dedicated recreational amenities, is an important step in achieving that vision."

There's just one problem: NoMa hardly has any space left for parks.

It didn't have to be this way. Back when the development of NoMa was planned in the 1990s, it was a wasteland, an opportunity to build a downtown district essentially from scratch.

"At that time, our offices were at 51 N Street NE," he says. "And it was unbelievable, because you had this one little office building, and across the street was a low-rise building. And then everything else was vacant all around."

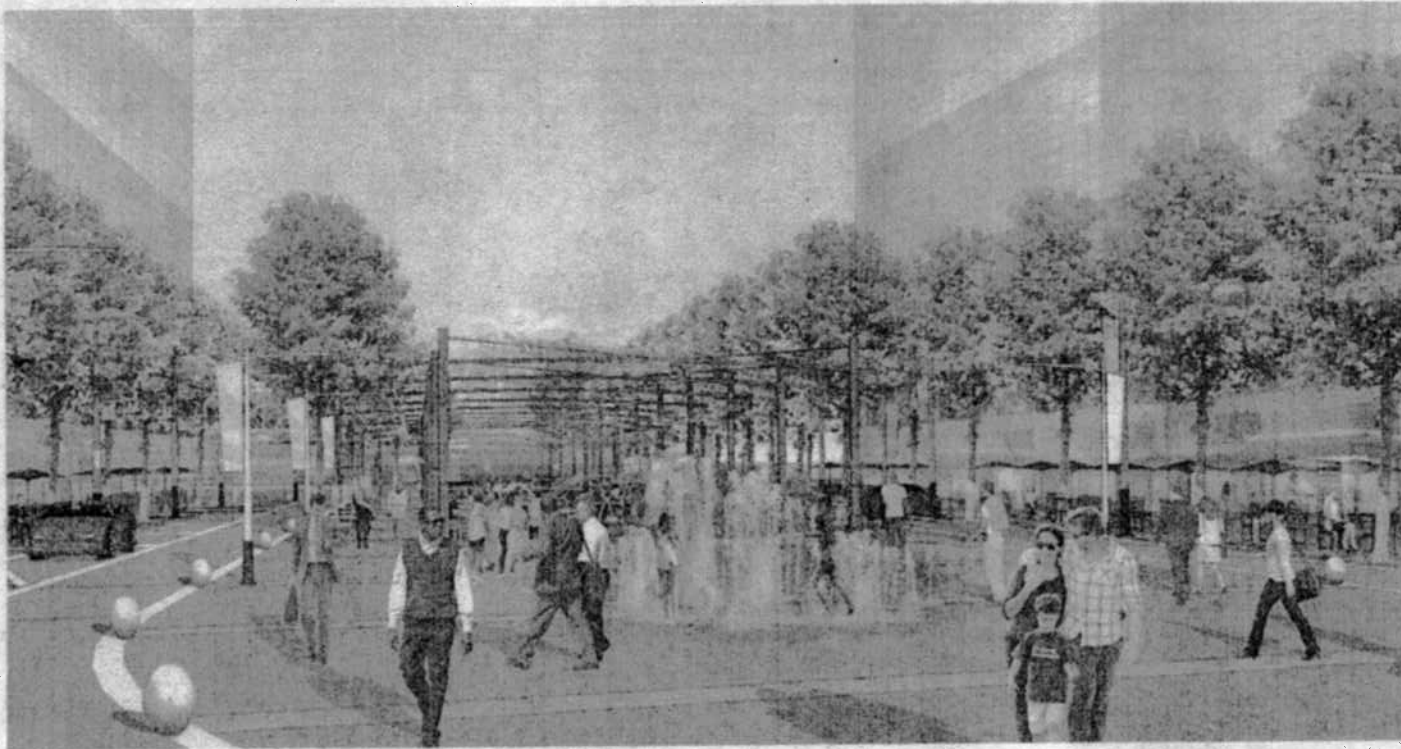
Weiss corrects himself as he remembers another building in the area: "There was a methadone clinic where sometimes people would get shot."

Weiss takes great pride in the role he played in building NoMa, particularly his efforts to bring together developers to fund what be-

tion: Their aspirations didn't go much further than a cluster of office buildings.

"Originally people thought the neighborhood would be an office park," says Jasper. "Nobody reserved any land for parks."

One early mistake came with a major rezoning of the area in the 1990s. "I remember at the time looking at it and thinking, 'Well this is short-sighted,'" recalls **Ellen McCarthy**, who began working at the D.C. Office of Planning in 2000 and served as its director from 2004 to 2007. "They zoned it all as C-



Look, NoMa, No Parks: A rendering of "The Poodle" pedestrian plaza on L Street NE

**Marc Weiss**, who coined the name NoMa as the author of the city's 1998 strategic economic development plan, remembers how desolate the area was when he started working for the city in the fall of 1997, following several years as a housing and urban policy adviser in the Clinton administration.

came the NoMa Metro station. (It paid off. "Now," he says, "every one of them would say it was the best deal ever, because they all made a ton of money off of it.")

But when it came to fostering a sense of community in NoMa, the neighborhood's developers experienced a failure of imagina-

tion. They had no requirement for retail. They had no requirement for residential."

Although developers were initially resistant to including housing in their plans for NoMa, McCarthy says, they came around when they realized there wasn't enough commercial

+  
demand for the area. The result was a mix of residential and office buildings, but without much in the way of public spaces, despite the efforts of the Office of Planning.

"We tried with several developers," McCarthy says. "Each of the developers individually was talking about some bits of open space for their buildings. So we said, 'Can we at least plan this so you put a park on the west side of the property and you, neighboring property owner, put it on the east side? And in the end, nobody was willing to do that or to give up anything. And so we kind of punted.'"

Weiss faults city leaders for not pushing the developers harder. "Because there were these large parcels of land owned by the developers, they went ahead and did their own planning for their own parcels," he says. "And the city wasn't involved in broader planning. And that led to what they're facing today: There's kind of an imbalance."

Jasper envisions NoMa as the downtown for nearby residential neighborhoods like Eckington and Bloomingdale. NoMa could be the place those who live nearby come for food, drink, entertainment, and transit via the Red Line or Union Station. And in the past two years, the area has become much more livable, with new apartment buildings and the opening of a Harris Teeter supermarket in December 2010.

"So now," says Jasper, "we have to go back and put the parks in."

**According to Peter Harnik, director of the Center for City Park Excellence at the Trust for Public Land, NoMa's "development first, parks later" approach runs counter to the national trend.**

"It is a little surprising that NoMa didn't put in the parks first," he says. "Most people are thinking of parks these days before they put in the commercial and retail and living space. They put the parks down first and use them as seeds to build around."

The model has worked well in other cities. Harnik cites St. Louis' Citygarden, opened in 2009 to help reinvigorate the city's bleak downtown, and St. Paul's Wacouta Commons, opened in 2006 in a former industrial district, as examples of parks building neighborhoods, rather than the other way around.

Nor do parks have to come at the expense of profits for developers. Bryant Park, in Midtown Manhattan, was a hotspot of drugs and prostitution, with nearby office space available at a steep discount, until its late-1980s shutdown and restoration. Since its makeover as a safe and clean public park, swanky new office buildings have sprung up around it, and a study last week found that the office vacancy rate in the area was a third of the Midtown average, while office rents were 25 percent higher.

"By rebuilding Bryant Park, it has given a tremendous jolt to the rents that all the surrounding buildings can charge there, and do charge there," says Harnik. "So it's actually a

win-win."

Perhaps the best success story is Chicago's Millennium Park, opened in 2004. Just as the NoMa BID expects to develop the land atop the soon-to-be-covered train tracks north of Union Station, Millennium Park was built partly on former rail yards. It quickly became Chicago's second-biggest tourist draw.

The NoMa BID is struggling to incorporate these lessons into its own approach weighing parkland and development. "It's a balance that we're still envisioning how to strike," says Jasper.

In the absence of a large central park, the NoMa BID is exploring creative uses of the slivers of space that are available. One proposal calls for a glittery pedestrian plaza called The Poodle (after the neighborhood's way-back-when name, Swampoodle) on L Street NE between First and 2nd streets. Others would overhaul the L Street underpass below the train tracks to create a pseudo-gritty hang-out space alongside the road, or set up a small train-watching strip that builds on the area's rusty infrastructure.

"There's this great **Louis Kahn** quotation: 'A street is a room by agreement,'" says McCarthy. "And I think NoMa could really benefit from that. If you can't have parks, make your streets rooms by agreement. Do really good retail. Do good streetscapes."

And learn your lesson. D.C. may not have any more downtown areas to build from the

ground up, but it does have several major farther-flung developments in the pipeline that advocates hope to see informed by the NoMa experience. Plans for the development of the McMillan Sand Filtration site along North Capitol Street include a sizable green area that ought to make NoMa's denizens envious, even if it's not as much park space as some neighbors would like. The redevelopment of the Walter Reed Army Medical Center on upper Georgia Avenue and the St. Elizabeths Hospital site in Ward 8 also offer good opportunities for park-anchored neighborhoods.

But can NoMa be salvaged? Harnik praises the efforts to build public spaces around the rail infrastructure, though he thinks NoMa's developers have "boxed themselves in by building so much concrete and glass and steel." McCarthy holds out a bit more hope for a proper park.

"If the city were able to get some money and find a developer who was willing to sell them at least a pocket-size park where you could make it the town center or heart of NoMa, at least it would give NoMa some personality," says McCarthy.

Jasper, for her part, blanches at insinuations that NoMa lacks character. "It's not searching for its identity," she says. "It is what it is."

And what it is is an immaculately planned commercial zone for androids that's falling just a bit short of what it might have been for humans.

CP

ROYCE HANSON MONTGOMERY VILLAGE

# Another development disaster on the horizon in Clarksburg

The pattern of feckless inattention that, in 2005, resulted in more than 400 development violations in Clarksburg is about to be repeated. This time it imperils one of the last unspoiled creeks in Montgomery County — Ten Mile Creek — with serious consequences for the whole region.

Ten Mile Creek runs steady, clean and cold. It harbors a greater abundance and diversity of life — from salamanders to stoneflies — than other streams in the region. It empties into Little Seneca Lake, the emergency water supply reservoir for metropolitan Washington via the Washington Suburban Sanitary Commission's intake on the Potomac River.

But its high water quality is threatened by two major development projects that have gathered

momentum in the absence of action by the Montgomery County Council to protect the creek, now pending for more than two years.

When the council approved the Clarksburg master plan in 1994, it waffled on protection of Ten Mile Creek. Proclaiming the stream critical, it placed the western side of the watershed in the county's Agricultural Reserve, safeguarding the farms and forests that had occupied it for generations. The eastern side was designated for possible development, but recognizing that splitting a sensitive watershed up the middle would be hydrologically challenging, the council postponed decisions on extending sewer service up the stream valley and rezoning for higher densities until studies determined whether the best stormwater management practices

required for development in the Little Seneca watershed could adequately protect the stream. Those studies, completed in 2009, concluded they could not.

The Montgomery County Planning Board (I was chairman at the

*Ten Mile Creek is threatened by development projects that have gathered momentum in the absence of action by the county council.*

time) and the County Department of Environmental Protection recommended that a master plan amendment be prepared to designate more appropriate land uses and resource protection measures for the eastern watershed. Instead, the council appointed an Ad Hoc Water Quality

Working Group to propose a course of action. That group reported in 2010. The majority recommended a master plan amendment to reduce densities on land between the stream and Interstate 270 and require a science-

based cap on impervious surfaces for the entire watershed, which includes land in the headwaters east of I-270.

In the meantime, however, two development proposals for land in the headwaters are being dangled before the Clarksburg community. They would bring more

than a thousand housing units and a half-million square feet of commercial space into the headwaters of Ten Mile Creek. The scale and footprint of these projects, along with the sewer lines to serve them, will destroy this sensitive watershed. Proponents of development in the Ten Mile Creek watershed apparently hope that local eagerness for a commercial district will overcome any sense of responsibility for protecting the stream and that decay of official memory will allow town center developers off the hook on which they have placed themselves. This insult to the environment should not be added to Clarksburg's manifold injuries.

The council should authorize the Planning Board to prepare a master plan amendment that rec-

ognizes the findings of the watershed studies, proposes policies to protect the Ten Mile Creek watershed and establishes science-based caps on impervious surface in the watershed — especially in headwaters. The board should take measures to achieve development of the approved Clarksburg Town Center's community market center. Combining land and stream protection with effective density levels and activities in its town center would make Clarksburg the smart-growth model the master plan intended it to be. The council needs to act now. Votes are due in October, and clock is ticking.

The writer was chairman of the Montgomery County Planning Board from 1972 to 1981 and 2006 to 20



September 12, 2005

Tom Perez  
Council President,  
100 Maryland Ave, 6th Floor  
Rockville, MD 20850

Dear Mr. Perez,

We are writing to ask for your help in leading us through an extraordinary opportunity for South Silver Spring.

We are homeowners of the Eastern Village Cohousing Community (EVC) and are among the early investors of this revitalized neighborhood. You may be familiar with EVC: Our 56-unit condominium on Eastern Avenue is a newly-renovated and award-winning green building developed from a long-abandoned office block. Our community is committed to ecological responsibility, sustainable design, and responsible engagement with our neighborhood and the wider world.

As you know, our neighborhood is in the process of exceptional transformation. We welcome this change and look forward to contributing toward making this a desirable place to live, work, shop, and play. We are also mindful that, in our four-block radius, 2,000 new households will join us in the next two years. We believe that this may make our home one of Montgomery County's highest-density residential neighborhoods, considerably void of parks and playgrounds.

In this, we see an opportunity.

We have a vision for a community-supported, multi-purpose natural park at the corner of Eastern Avenue and 14th Street, greatly contributing to the overall well-being of the area's residents. Parks and playgrounds affect the quality of life we enjoy, and yet parks in many communities have been pushed to the back-burner. Fewer children have the opportunity to spend time at parks or playgrounds because parks and playgrounds are missing from neighborhood development plans. With your help, Mr. Perez, we can ensure that South Silver Spring stands out as a leader apart from this troubling trend.

Currently this site is occupied by a storage facility, and we would like the County's help in proposing a land swap with the owner, Harvey Maisel. In exchange for a piece of land of equivalent value, the County could secure public park space for this neighborhood.

We believe this would make the land use more consistent with the philosophy of the County's Master Plan - as opposed to a storage facility (a grandfathered non-conforming use). We also believe there is precedent for a local land swap. For example: the Juniper



Blair "Tot Lot". Its existence is based on compensation for land taken along the edge of adjacent Jesup Blair Park by WMATA to construct the Metro Red Line.

To realize our vision, we are interested in pursuing a community-build model to bring together business and community interests, and we sincerely hope that the County can take advantage of this possibility before other development precludes the opportunity. We stand ready to partner with you in this effort.

Thank you in advance for your consideration of our vision for a more vibrant South Silver Spring.

Sincerely,

Javi Arroyo  
Megan Benson  
Tom Benson  
Rebecca Bond  
Glenn Chinery  
Mike Conklin  
Abi Davis  
Louisa Davis  
Stu Dalheim  
Carolyn Dimitri  
Carole Douglass  
Cathy Edstrom  
Matt Eisenberg  
Rachel Fineberg Sylvan  
Stephan Fineberg Sylvan  
David Fogel  
Naomi Friedman  
Dagne Gizaw  
Mary Gross  
JoAnne Growney  
Jessie Kome  
Katie Henry  
Sharon Hertz  
Carole Jennings  
Tom Jennings  
Jay KapLon  
Nancy KapLon  
John Kennedy

Devora Kimelman-Block  
Jason Kimelman-Block  
Ed King  
Joan King  
Suzy Lane  
Beth Leamond  
Sara Lovinger  
Paul Mathew  
David Moskovitz  
Josh Nan  
Randi Nordeen  
DeDe Ordin  
Arohi Pathak  
Kris Prendergast  
Andreina Rangel  
Brian Savoie  
Lindsey Savoie  
Denny Shaw  
Mui Shokouhi  
Kara Strong  
Ann Taylor  
Adrienne Torrey  
Maria Triantis  
Ray Van Houtte  
Erin Uritus  
Priscilla Vazquez  
Mary Wolfolk

Cc:

Derick P. Berlage, Chairman of Maryland-National Capital Park and Planning Commission and Chairman of the Montgomery County Planning Board  
Glenn Kreger and Robert Kronenberg, Montgomery County Parks and Planning  
Marc Loud, Executive Director of Gateway-Georgia Avenue Community Development Corporation  
Harvey Maisel, Maisel - Hollins Development Company



November 18, 2005

Tom Perez  
Council President,  
100 Maryland Ave, 6th Floor  
Rockville, MD 20850

Dear Mr. Perez,

We greatly appreciate your support of our Eastern Village Cohousing Community over the last few years.

Carole Douglass just informed me that you have not received the attached letter we sent to your office many weeks ago. Carole Douglass and I are members of the Community Liaison Team of the Eastern Village Cohousing Community.

We would like to meet with you at your earliest convenience to discuss the proposal contained in the attached letter.

As you will see from the attached letter, 55 homeowners from Eastern Village have signed onto this letter. Even more homeowners in our neighborhood have since expressed support for the proposal in the letter. Several new homeowners from the "8045" project have also expressed support.

We hope you will give the proposal contained in this letter your thoughtful consideration. If you should have any questions, I can be reached at (301) 585-5905 or by cell at (202) 669-8222.

Thank you.

Sincerely,

Stephan Fineberg Sylvan  
7981 Eastern Avenue  
#401  
Silver Spring, MD 20910

To: Dan  
From: Stephan  
Subject: Copy...

Sylvan  
FYI



MONTGOMERY COUNTY COUNCIL  
ROCKVILLE, MARYLAND

OFFICE OF THE COUNCIL PRESIDENT

December 5, 2005

Eastern Village Cohousing Community  
7981 Eastern Avenue  
Silver Spring, MD 20910

Dear Residents of Eastern Village Cohousing Community:

Thank you for your letter regarding your desire to see a park built near the Eastern Village Cohousing Community. Your letter was distributed to all Council Members at the time it was received.

I understand your desire to have a nearby park; however, assessments of park needs are made on an area-wide basis rather than to serve the needs of an individual housing project. Therefore I have asked Park and Planning Department staff to assess the need for additional parks in South Silver Spring. I have also asked them to identify strategies to acquire additional parkland, should they determine that a need exists. They will forward a copy of their response to you. While in some cases land exchanges have worked, there must not only be a need for the new public facility, but available undeveloped land that can be exchanged. There are a very limited number of vacant County properties and most have specific planned uses. If there is a need for additional park land, we will do all we can to identify potential opportunities.

I appreciate your taking the time to write and share your views on this issue. Please do not hesitate to contact me about other issues of concern to you in the future.

Sincerely,

Thomas E. Perez  
Council President

TEP:MLM:cge  
017400  
f:\michaelson\reddots\eastern cohousing community.doc  
c: Derick Berlage, Chairman, MCPB

STELLA B. WERNER COUNCIL OFFICE BUILDING • 100 MARYLAND AVENUE • ROCKVILLE, MARYLAND 20850  
240/777-7900 • TTY 240/777-7914 • FAX 240/777-7989  
WWW.MONTGOMERYCOUNTYMD.GOV



January 22, 2005

Glenn Kreger  
Silver Spring/Takoma Park Team  
Community-Based Planning  
The Maryland-National Capital Park and Planning Commission (MNCPPC)  
8787 Georgia Ave.  
Silver Spring, MD 20910

Dear Mr. Kreger,

We recently received a letter from County Council President Tom Perez saying that he

“... asked the Parks and Planning staff to assess the need for additional parks in South Silver Spring” and “to identify strategies to acquire additional parkland, should they determine that a need exists.”

We greatly appreciate Councilmember Perez’s efforts to bring some park/open space to the rapidly developing South Silver Spring. And we appreciate any efforts that you or others on Parks & Planning staff may put in to respond to Mr. Perez and make open space a reality in our neighborhood.

As our community said in a September 12, 2005 letter to Mr. Perez (with copies to you and others at Parks & Planning), we are mindful that, in our four-block radius, 2,000 new households will join us in the next two years. We believe that this may make our home one of Montgomery County’s highest-density residential neighborhoods, considerably void of parks, playgrounds, or other open space. A recent map produced using MNCPPC’s ArcView Geographic Information System (GIS) showed the tiny 0.12 acre Acorn Urban Park to be about the only green space in our rapidly developing neighborhood.

We were told that you were going to base your response to Mr. Perez on the number of children expected in our neighborhood. And we heard that this figure would come from the Montgomery County Public School (MCPS).

Many of us in the Eastern Village Cohousing Community are confused and troubled by this idea. It appears to imply adult, taxpaying homeowners (or renters) in Montgomery County do not need or deserve open space if they live in condominiums in an urban neighborhood. Is this indeed MNCPPC policy regarding playgrounds, parks and other open space?

It also appears to presume our neighborhood does not have many children or will not have many children once the planned development is completed. We currently have 15 children living our 56-unit condominium community. Assuming the ratio holds for the new condominiums being built in our neighborhood, there will be over 500 children without access to playgrounds, parks, or other open space in their neighborhood (except the 0.12 acre Acorn Urban Park). Do MCPS figures reflect this possibility?

Most importantly, can you please tell us what plans MNCPPC has to address the absence of open space in our rapidly developing neighborhood? Can you also tell us how we and other neighborhood stakeholders can partner with you in answering this question?

Thank you.

Sincerely,

Stephan Fineberg Sylvan  
7981 Eastern Avenue  
Apt 401  
Silver Spring, MD 20910

CCL The homeowners who signed the original September 12, 2005 letter to Councilmember Perez asking for a park in South Silver Spring (see list on subsequent page).

Javi Arroyo  
Megan Benson  
Tom Benson  
Rebecca Bond  
Glenn Chinery  
Mike Conklin  
Abi Davis  
Louisa Davis  
Stu Dalheim  
Carolyn Dimitri  
Carole Dougliis  
Cathy Edstrom  
Matt Eisenberg  
Rachel Fineberg Sylvan  
Stephan Fineberg Sylvan  
David Fogel  
Naomi Friedman  
Dagne Gizaw  
Mary Gross  
JoAnne Growney  
Jessie Kome  
Katie Henry  
Sharon Hertz  
Carole Jennings  
Tom Jennings  
Jay KapLon  
Nancy KapLon  
John Kennedy

Devora Kimelman-Block  
Jason Kimelman-Block  
Ed King  
Joan King  
Suzy Lane  
Beth Leamond  
Sara Lovinger  
Paul Mathew  
David Moskovitz  
Josh Nan  
Randi Nordeen  
DeDe Ordin  
Arohi Pathak  
Kris Prendergast  
Andreina Rangel  
Brian Savoie  
Lindsey Savoie  
Denny Shaw  
Mui Shokouhi  
Kara Strong  
Ann Taylor  
Adrienne Torrey  
Maria Triantis  
Ray Van Houtte  
Erin Uritus  
Priscilla Vazquez  
Mary Wolfolk

Cc:

Derick P. Berlage, Chairman of Maryland-National Capital Park and Planning Commission and Chairman of the Montgomery County Planning Board

Robert Kronenberg, Montgomery County Parks and Planning

Marc Loud, Executive Director of Gateway-Georgia Avenue Community Development Corporation

Jourdinia Brown, Shepherd Park Advisory Neighborhood Commission

South Silver Spring Neighborhood Association

APPENDIX C; LETTERS FOR ATTORNEYS

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NORMAN G. KNOPF

December 13, 2012

Via Email

[MCP-Chairman@mncppc-mc.org](mailto:MCP-Chairman@mncppc-mc.org)

Françoise M. Carrier, Chair  
and Members of the Board  
Montgomery County Planning Board  
Maryland National Capital Park  
& Planning Commission  
8787 Georgia Avenue  
Silver Spring, MD 20910

**Re: Project Plan Review Number 920130020  
8001 Newell Street Project Plan  
(Item No. 3 – December 20, 2012)**

Dear Chair Carrier and Members of the Board:

This firm was retained by the 8405 Newell Street Condominium to provide legal assistance in the above-referenced project plan ("Plan") just in the past two days, and in the wake of the posting of the Staff Report. Before release of the Staff Report, my client was extensively involved in expressing its concerns about the Plan to both Staff and the Applicant, Comstock Newell I.C., without legal representation.

These circumstances require that I must now detail the Plan's legal deficiencies to the Board instead of Staff, and to point out the numerous ways in which the Staff Report fails to deal with them. The attached Memorandum sets out these points in detail and, for convenience, attaches relevant supporting material not included in the Staff Report.

By way of executive summary here, first and foremost, the Plan proposes a seven-story apartment building with frontage on both Eastern Avenue and Newell Street. Both the Zoning Ordinance (§59-C-18.202 of the Ripley/South Silver Spring Overlay Zone) and the Silver Spring CBD Sector Plan limit such a building to a height of 45 feet within 60 feet of those streets. This setback requirement is observed on Eastern Avenue, but

disregarded on Newell Street, to the considerable consternation of unit owners of the 8045 Condominium and other South Silver Spring Residents. The Staff Report's failings in dealing with this requirement are simply too numerous and inexplicable to summarize here; they are discussed in the Memorandum.

Second, the Applicant's claim of compliance with the requirement to devote 20% of the net lot area to public use space is questionable at best. Staff does not assess the Applicant's dubious claim that narrow "planting beds" along Newell Street constitute space "easily and readily accessible to the public," as the Ordinance's definition of such space requires. Instead, Staff erroneously conflates on-site public use space with adjacent off-site amenity space to confirm compliance.

Third, the Applicant seeks 100% of the increased density associated with optional mixed-use development in the CBD-1 zone for an apartment building where the "mix" in use is over 98% residential and under 2% commercial (in terms of gross floor area devoted to each). This may be technically legal but it is inconsistent with the intent of the Sector Plan in rezoning this and other CBD-0.5 properties in South Silver Spring to CBD-1.0, which was to promote "low-rise, high density" housing. The Sector Plan makes clear that what was intended was a four-story streetscape, not seven stories. Under §59-D-2.42, the Board is not obliged to approve a maximum density, 98/2 "mixed use" project, even if such density is lawful. Condominium unit owners and other nearby residents will reiterate at the public hearing their myriad sound reasons for objecting to the introduction of this massive building on this relatively narrow strip of property.

Two concluding points of clarification are necessary. First, many 8045 Condominium unit owners and other nearby residents would strongly prefer that the subject property -- less than an acre of net lot area -- become a much-needed park in South Silver Spring. Nevertheless, that preference plays no role in my evaluation of the Plan.

Second, both the Applicant and Staff go into considerable detail in support of the view that the Plan is in furtherance of various goals and purposes in the Sector Plan and in permitting optional CBD-1 development of the Property. Please do not regard the absence of explicit objection to much of this discussion as concession that it is correct. These criteria are for careful application to a Plan that complies with basic development standards from the outset. If the Board requires the Plan to be amended to the point it is in compliance with the quantitative development standards, 8045 Condominium would expect to continue its engagement with staff and the Applicant to minimize adverse consequences to the community from development of the Property, if its use as a park continues to be an infeasible option.



Françoise M. Carrier, Chair  
and Members of the Board  
Montgomery County Planning Board  
December 13, 2012  
Page 3

Accordingly, the Board should deny Plan approval for any or all of the reasons set forth in the attached Memorandum and summarized above. At present, it is anticipated that I will be available at the public hearing to reiterate these points and respond to any questions the Board may have. In addition, to promote full and complete discussion of the issues raised, a copy of this letter is being sent to counsel for the Applicant.

Sincerely yours,



David W. Brown

/enclosures

cc: Marye Wells-Harley, Planning Board Vice Chair and Commissioner  
([Marye.Wells-Harley@mncppc-mc.org](mailto:Marye.Wells-Harley@mncppc-mc.org))  
Amy Presley, Planning Board Member and Commissioner  
([Amy.Presley@mncppc-mc.org](mailto:Amy.Presley@mncppc-mc.org))  
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WRITER'S DIRECT DIAL

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DAVID W. BROWN

**MEMORANDUM**

TO: Françoise M. Carrier, Chair  
and Members of the Board  
Montgomery County Planning Board

VIA: Email: [MCP-Chairman@mnepcc-mc.org](mailto:MCP-Chairman@mnepcc-mc.org)

FROM: David W. Brown, Esq.  
Attorney for 8045 Newell Street Condominium Association

DATE: December 13, 2012

RE: **Project Plan Review Number 920130020**  
**8001 Newell Street Project Plan**  
**(Item No. 3 – December 20, 2012)**  
***Memorandum supporting letter dated December 13, 2012***

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This Memorandum discusses the legal defects in the Project Plan No. 920130020, 8001 Newell Street ("the Plan") and the deficiencies in the December 7, 2012 Staff Report on the Plan ("Staff Report").

**1. The Plan Violates The Building Height Setback Restrictions for Newell Street, As Set Forth in §59-C-18.202(b)(1) and in the Sector Plan**

Along Newell Street the building will be set back anywhere from 2-6 feet. At that setback, the building height is 54 feet. An additional 20 feet of height (two stories) is set back an additional 2 feet. Staff Report 18-19. In other words, confronting properties across Newell Street will face a 74-foot tall building, 331 feet, 10 inches in length, that is set back from the property line somewhere between 2-8 feet.

This configuration is in violation of the building height/setback development standard in the Ripley/South Silver Spring Overlay Zone, which reads as follows:

- (b) Development standards. The development standards are the same as those in the underlying zones, except:

- (1) Building height in the overlay zone along Newell Street and Eastern Avenue that confronts a residential zone in the District of Columbia must not exceed a height of 45 feet. However, this building height may be increased to:
  - (A) a maximum of 90 feet for any building or portion of a building that is set back at least 60 feet from the street; or
  - (B) a maximum of 125 feet for residential development that is set back at least 100 feet from Eastern Avenue and Newell Street and includes a public parking garage constructed under a General Development Agreement with the County.

§59-C-18.202(b).<sup>1</sup> This section limits the height of buildings in the overlay zone that are built along Newell Street or Eastern Avenue if the building confronts a residential zone in the District of Columbia. The height limit is 45 feet, unless one of two exceptions apply. First, that part of the building set back at least 60 feet from Newell Street or Eastern Avenue (or, in this case, both streets), can rise to 90 feet. Second, if there is a public parking garage in the project, the upper level setback must be 100 feet, instead of 90 feet, in which case the building height in this additional setback area can rise to 125 feet.

The second exception does not apply here; there is no public parking garage in the project. The first exception does apply. It is directly traceable to language in the Sector Plan that was added by the District Council to the Planning Board Draft of the Sector Plan, as follows:

- Building heights along Newell Street and Eastern Avenue should ensure compatibility with the adjacent residential neighborhood.
  - at the property line, building heights should be limited to 45 feet
  - above 45 feet, the building may step back 60 feet and its height may increase to 90 feet.

Council Resolution 14-416 at 22 (Feb. 1, 2000).<sup>2</sup>

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<sup>1</sup> A copy of those parts of the Zoning Ordinance cited in this Memorandum are attached.

<sup>2</sup> The Resolution is included in the Approved and Adopted Silver Spring CBD Sector Plan. The Council's amending language is found on page 86 of the Sector Plan. These and other Sector Plan pages cited in this Memorandum are attached.

The Staff Report's discussion of compliance with this requirement is inexplicable. At first, the Report appears to express complete agreement with the foregoing:

### Heights

The Sector Plan for the Silver Spring CBD recommends a height of 45 feet on Newell and Eastern Avenue, stepping up to 90 foot heights at a 60 foot setback. The zoning ordinance recommends per Section 59-C-18.202(b)(1)(A), that along Newell Street and Eastern Avenue buildings confronting residential in the District of Columbia must not exceed 45 feet in height. However, building heights may be increased to a maximum of 90 feet for any building or portion of a building that is set back at least 60 feet from the street.

Staff Report 18. Since the portion of the building along Newell Street above 45 feet is not set back 60 feet from the street, one would expect Staff to conclude that the height/setback restriction in the Overlay Zone and in the Sector Plan is violated by the Plan. Instead, the Report found no problem along Newell Street, explaining that

[t]he Sector Plan clearly states height limitations for building facing Eastern Avenue and Newell Street, however the zoning ordinance **clarifies** the height requirements.

Id. (emphasis added).

The Staff Report, notwithstanding its acknowledgement that the Sector Plan imposes the building height/setback restriction on the building along Newell Street, concludes that the Overlay Zone "clarifies" that it applies only along Eastern Avenue.<sup>3</sup> In other words, the Staff Report extracts from the Zoning Ordinance a "clarifying" interpretation of the Sector Plan that is squarely at odds with the Sector Plan itself. This makes no sense; the very purpose of this Overlay Zone is the opposite: "to address the special development issues in the Ripley/South Silver Spring area as identified in the...Sector Plan." §59-C-18.201.

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<sup>3</sup> This is confirmed by the ensuing statement in the Staff Report. "[The proposed project] sets the building back 60 feet from the eastern [sic] Avenue right-of-way to comply with the setbacks in the overlay zone." Staff Report 19. The project data table staff has approved also shows no setback requirement along Newell Street. Id. at 17, 19. Earlier, the Staff Report underscored the phrase "that confronts a residential zone in the District of Columbia" found in §59-C-18.202(b)(1), Staff Report 11, noting that this "modified slightly" the Sector Plan version of this restriction.

The Staff Report's "clarification" creates inappropriate disharmony between the Overlay Zone and the Sector Plan; it also creates disharmony between the two exceptions to the 45-foot height limit in the Overlay Zone itself. As noted above, the second exception also imposes a building height/setback restriction along Newell Street for properties confronting Eastern Avenue. §59-C-18.202(b)(1)(B). It makes no sense to conclude that the restriction would apply to the part of the building confronting Newell Street in the second exception situation, but not the first.

The Staff Report's interpretation of §59-C-18.202(b)(1) is also textually incoherent. It is not possible for "building height" to confront "a residential zone in the District of Columbia." "Building height" is a measurement; it is the bricks and mortar of a "building" that confronts property across the street. In this case, the building meets the criteria of confronting "a residential zone in the District of Columbia." Moreover, if only "building height" along Eastern Avenue mattered, how would one explain the statute's inclusion in the restriction of "[b]uilding height in the overlay zone along Newell Street"? As a matter of simply geometry, with Newell Street at a right angle to Eastern Avenue, whatever building face confronts Newell Street cannot possibly "confront a residential zone in the District of Columbia." While §59-C-18.202(b)(1) is not a model of clarity, the only coherent interpretation, when applied to a building that, as here, is along both Newell Street and Eastern Avenue, is to conclude that the building height/setback restriction in subparagraph (A) applies to both the part of the building along Eastern Avenue and the part along Newell Street. This is the same result as is obtained from applying the restriction as expressed in the Sector Plan.

The Staff Report's legal error is repeated in its assessment of the compatibility finding the Board must make under §59-D-2.43(c) of the Ordinance:

The applicant has **exceeded** the requirements of the Ripley/South Silver Spring Overlay zone to reduce the detrimental impact the proposed building could have on the neighbors in South Silver Spring and in the District of Columbia.

Staff Report 31 (emphasis added). In fact, the Applicant has fallen seriously and gravely short of meeting those requirements.

The Staff Report also attempts to justify creation of a Sector Plan/Overlay Zone discrepancy by offering several reasons why the Sector Plan recommendation would be "less feasible" if applied here. Staff Report 11. But this is an illegitimate exercise even if it were proper to read the statute as creating an Overlay Zone/Sector Plan discrepancy as the Staff Report does. This is because §59-D-2.42 provides that "[t]he Planning Board may approve an application...only if it finds that:

(b) The application would be consistent with the applicable sector plan....

The effect of this finding requirement for Plan approval is clear. When master plans are linked statutorily to zoning requirements that require the zoning decision to “be consistent with a plan’s recommendations regarding land use and density or intensity,” such statutes “elevate [master] plans to the level of true regulatory device.” Mayor and Council of Rockville v. Rylyns Enterprises, Inc., 372 Md. 514, 530-31, 814 A.2d 469, 478-79 (2002). Thus, Sector Plan consistency is necessary, even if interpreted differently than the Overlay Zone.

In any case, the Staff Report’s justifications for avoiding the legal requirement do not withstand scrutiny on their own terms. First, the Report characterizes the R-10 zoned property across Newell as “high density” with “no height limitations,” thus obviating any need for a setback to achieve compatibility. Staff Report 11. In fact, what exists there is the 3-4 story multi-family Spring Garden Apartments, which were not recommended in the Sector Plan for increased zoning density and are not part of the Ripley/South Silver Spring Overlay Zone. Sector Plan 56-57. Plainly, a 45-foot height limit across from the Spring Garden Apartments will achieve greater compatibility than a 74-foot height that is not substantially set back from Newell Street.<sup>4</sup>

Second, the Staff Report says the Property is not wide enough for efficient development of floors above 45 feet. Floors above that height would have to be set back 60 feet, thereby effectively eliminating the Applicant’s “ability to develop the property to the density allowed by the optional method of development.” Staff Report 11. This truly astonishing statement elevates maximum allowed density to the status of preordained right, regardless of what might be necessitated by an even-handed application of **all** the limitations on development that apply to a particular project.<sup>5</sup> Put another way, **the Board does not modify the law to fit the project; the project must be modified to fit the law.**

Third, the Staff Report asserts that the Plan “ensures compatibility with the context of the adjacent residential neighborhood.” *Id.* The meaning of this obscure comment is not self-evident, but the Report appears to be comparing the current Plan with a hypothetical plan that did not have the required public use space along Eastern Avenue, since the Sector Plan would allow that. This is nonsensical. If the location of the public use space is purely discretionary with the Applicant, as the Report appears to suggest, why would that location change if the Applicant had to comply with the Newell Street setback? After all, the public use space requirement and the building footprint

---

<sup>4</sup> This less intense development across Newell Street is exactly what one would expect in the R-10 zone. Depending on MPDU inclusion, density of development ranges from 43.5 to 57.07 dwelling units per acre with a green area of 35-50%. §§59-C-2.417, 2.418, 2.421, 2.422. By contrast, the Applicant is seeking a 3.0 FAR with a density in excess of 155 units per acre and 20% public use space.

<sup>5</sup> Not only is there no such right, the Board is free to disapprove project plans even when they fully comply “with all of the specific requirements and intent of the applicable zone....” §59-D-2.42.

would be unchanged. In any event, hypothesizing about a worse outcome if the Sector Plan setback requirements are followed is inappropriate and inordinately speculative.

## **2. The Plan's Compliance With the Public Use Space Requirement Is Questionable At Best**

The Applicant claims compliance with the public use space requirement in §59-C-6.233 (20% of the net lot area) by providing 9,021 sq. ft. of such space on a net lot area of 41,245 sq. ft., or 21.87%.<sup>6</sup> The 20% minimum would be 8249 sq. ft. The Staff Report does not closely scrutinize this claim. Instead, the Report finds that the Applicant has met the requirement by providing “[a] public green open space at the corner of Eastern Avenue and Newell Street approximately ¼ acre in size.” Staff Report 30 (a quarter acre is 10,890 sq. ft.). The Applicant reported that this area “is approximately 11,733 square feet,” and consists of “public use space on-site in this area plus the adjacent off-site streetscape areas.” Applicant’s Justification Statement at 7 (attached). This off-site areas is shown in blue in the Applicant’s drawing, reproduced in the Staff Report at 8. But this off-site area is **not** public use space and the Applicant does not claim that it is.<sup>7</sup>

The Applicant’s Public Use and Amenity Plan shows two distinct areas claimed to be public use areas. One is the approximately 7250 sq. ft. of open area at the west end of the Property.<sup>8</sup> The rest is in the form of a “Planting Bed” that lies between the sidewalk and the building on the Newell Street side. Public use space must be “easily and readily accessible to the public...” §59-A-2.1 (definition of public use space). In addition, the Board must find that such space is “sized and located to provide convenient areas for recreation, relaxation and social activities for the residents and patrons of the development.” §59-D-2.43(b). Plainly, the area at the west end of the Property meets these criteria, but it alone is less than 20% of the net lot area. Adding the “Planting Beds” along Newell Street may tip the 20% scale, but neither the Applicant nor Staff has provided a measurement of this area. Including it is questionable at best, in that the only “accessibility” the public is likely to perceive is the opportunity to glance at the planting beds from the sidewalk as they pass by. Even if the Board were to conclude that this narrow planting area qualifies to complete the Applicant’s public use space requirement, it only serves to underscore how aggressively this Plan “pushes the envelope” to achieve

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<sup>6</sup> This data is from the latest (November 9, 2012) version of the Applicant’s Public Use Space and Amenity Plan. It reflects a downward revision in the space claimed (in the September 24, 2012 version) of 185 sq. ft. No explanation for the changing numbers is contained in the scaled drawing.

<sup>7</sup> Nor has the Applicant sought to comply with the public use space requirement with off-site improvements under the procedure set forth in §59-D-2.31.

<sup>8</sup> The Public Use and Amenity Plan is a scaled drawing permitting calculation of the approximate area of this space. It consists of two rectangles, one approximately 60 X 100 feet (6000 sq. ft.) and the other approximately 25 X 50 feet (1250 sq. ft.).

the absolute maximum amount of density that could conceivably be allowed by law – i.e., 3.0 FAR, or 159,915 sq. ft.<sup>9</sup>

It must also be noted that the off-site amenity area directly west of the Property, entirely in the Eastern Avenue right-of-way, is property within the jurisdiction of the District of Columbia, not Montgomery County or this Board. See Plat 1793 (attached). The Application discloses no approval of the Applicant's intended modifications to this right-of-way by the District of Columbia. Hence, the Board can have no assurance that if it were to approve the Plan, the District of Columbia would allow it to be implemented in this area as envisioned, if at all. This uncertainty also clouds the Applicant's assertion (in its Justification Statement at 7) that this area will have the quarter-acre size area the PROS Plan recommends as a minimum for an urban buffer park.

### **3. Characterization of the Plan as "Mixed Use" Development Is Also Highly Questionable**

Residents of the 8045 Condominium and other community residents have engaged in considerable discussion with the Applicant regarding the presence of retail space in the Plan. It has been the consistent position of the community that neighborhood retail space at this site is neither wanted nor needed. The Applicant has proved quite willing to shrink the amount of such space down and down as a result of these discussions, to the point where it is now a mere 3100 square feet out of 159,915, or less than 2% of the 3.0 FAR being sought. The Applicant, however, is unwilling to eliminate retail space entirely.

The Staff Report does not assess whether such a paltry amount of neighborhood and resident-serving retail space could qualify as a permitted accessory use to an otherwise 100% residential apartment building in the CBD-1 zone, whether under standard or optional development. §59-C-6.22(g). For its part, the Applicant does not want to demote or eliminate the retail space, for one obvious reason: the density limitation in optional development for a 100% residential building is 125 dwelling units per acre (gross tract area), or in this case, 152 or 153 units. §59-C-6.234(b)(i). By contrast, density for a "mixed-use" Plan is 3.0 FAR (where the commercial portion may not exceed 2.0 FAR). §59-C-6.234(b)(iii). Using this mode of density measurement, the Applicant has sought approval of 187 dwelling units – or 22% more than would result from treating the 3,100 sq. ft. of retail space as a permitted accessory use.

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<sup>9</sup> As noted above, the Staff Report appears to regard achieving maximum density as borderline matter of right. At no point does the Staff Report explicitly characterize the project as the **most** that could be done on this site. This leaves the impression that it apparently has not occurred to Staff that the reason that "[t]he building height is maintained at 74 feet which is less than the 90 feet permitted in the zone," Staff Report 19, not a concession to the sensibilities of existing neighbors; it is that the Applicant already "maxed out" on FAR at the 74-foot height.



But whichever way the Plan is characterized, it is not the sort of genuine “mixed-use” project that prompted the District Council to be more generous with density in the CBD-1 zone for mixed-use than for apartment buildings that are entirely residential. And as noted above, this Board, pursuant to §59-D-2.42, can reject a Plan that manipulates compliance with development standards in this fashion even if the Board is satisfied that what is proposed is technically “legal.” In considering this issue, the Board should note that the Sector Plan effectuated the rezoning of large parts of south Silver Spring upward from CBD-0.5 to CBD-1 (including the Property)

to create additional densities that might be used for desired housing types – townhouses and **low rise**, high-density housing in Fenton Village and South Silver Spring.

Sector Plan 112 (emphasis added). That same page provides an illustration of exactly what was meant by “low rise, high density housing:” a **four-story** prototype building. This, of course, is exactly what would result, at least on a streetscape level, if the Applicant were told by the Board it is obliged to adhere to the 45-foot building height/setback restriction, as detailed in point 1 above.



David W. Brown

**From:** Ilgenfritz, Pat A. - PAI <PIlgenfritz@linowes-law.com>  
**Sent:** Tuesday, December 18, 2012 10:12 AM  
**To:** MCP-Chair  
**Cc:** Krasnow, Rose; Kronenberg, Robert; Marcolin, John; Mead, Anne M. - AMM; Dalrymple, C Robert - CRD  
**Subject:** 8001 Newell Street - Thursday Agenda Item - Please see attached letter  
**Attachments:** 20121218100709737.pdf

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Please see the attached letter. This matter is Item 3 on Thursday's Planning Board Agenda. Thank you.

Pat Ilgenfritz  
Secretary to Anne M. Mead & C. Robert Dalrymple  
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#3

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

December 18, 2012

Anne M. Mead  
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**Via Email**

Françoise M. Carrier, Chair  
Montgomery County Planning Board  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

Re: 8001 Newell Street – Project Plan No. 920130020 (the “Project Plan”)  
December 20, 2012 Hearing Agenda- Item No. 3

Dear Ms. Carrier and Members of the Planning Board:

On behalf of Comstock Newell, L.C., the applicant for the above-referenced Project Plan application (the “Applicant”), we submit the following response to the December 13<sup>th</sup> correspondence submitted by David Brown of the Law Offices of Knopf & Brown on behalf of an individual residing in the 8045 Newell Condominium in opposition to the Project Plan (the “Brown Letter”). As explained in detail in the Staff Report recommending approval of the Project Plan, dated December 7, 2012 (the “Staff Report”), the Project Plan application proposes an optional method development project (“Project”) located at 8001 Newell Street in the South Silver Spring District of the Silver Spring CBD (the “Property”), which Project consists of a maximum of 187 multi-family units (including 24 MPDUs), 3,100 square feet of neighborhood ground-floor retail, an underground parking garage, an urban buffer park located at the intersection of Newell Street and Eastern Avenue, streetscape improvements, and significant private courtyard areas that serve to create a buffer with adjacent residential buildings. The Property is currently improved with a low scale industrial self-storage building, and thus the Project implements the objectives of the Silver Spring CBD Sector Plan, adopted and approved in February 2000 (the “Sector Plan”), to redevelop underutilized industrial properties in South Silver Spring with desired housing and mixed-uses and to make Newell Street a “Green Street.” Further, this Project will serve as a major contributor to the continued redevelopment and revitalization of the Silver Spring CBD.

The Staff Report articulately describes in detail the substantial conformance of the Project Plan with the recommendations of the Sector Plan, and it further summarizes how the Project satisfies the purposes and development standards of Chapter 59 of the Montgomery County Code (the “Zoning Ordinance”). While the Applicant had been preparing to simply agree with the Staff Report at the public hearing on this matter on December 20, this response and a further presentation at the public hearing is now necessitated to clarify for the Board the misstatements and errors of law in the Brown Letter, and to help fend off the unfortunate and

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misguided attack of the Staff Report and the Project Plan, particularly the flawed lack of distinction in the Brown Letter between the legal application of the development standards of the Zoning Ordinance and the application of the objectives of the Design Guidelines of the Sector Plan. We hope that by submitting this response it will allow the Board to easily dismiss the Brown Letter for what it is, a transparent, last minute fabrication on behalf of a neighbor in opposition to create issues where none exist, and with this to allow the time budgeted for this hearing to be spent on summarizing the proper and thorough Staff analysis relating to the adherence of the Project Plan to the required standards and findings and to address any specific inquiries of the Planning Board.

For the convenience of the Planning Board in being able to summarily reject the Brown Letter, we will respond to the matters raised in the Brown Letter in the order presented therein:

**1. The Project Plan Satisfies the Development Standards of Section 59-C-18.202 of the Zoning Ordinance and Substantially Conforms with the Sector Plan, including the Design Guidelines.**

As explained in the Staff Report, the Property is in both the CBD-1 zone and the Ripley/South Silver Spring Overlay zone (the "Overlay Zone"). As recited in the Brown Letter, Section 59-C-18.202 of the Zoning Ordinance specifically states that:

(1) Building height in the overlay zone along Newell Street and Eastern Avenue that confronts a residential zone in the District of Columbia must not exceed a height of 45 feet. However, this height may be increased to

(a) a maximum of 90 feet for any building or portion of a building that is set back at least 60 feet from the street... (emphasis added)

As described in detail in the Staff Report presented to the Planning Board, this Project adheres to this development standard of the Overlay Zone and does not include a building height that exceeds 45 feet within 60 feet of the Eastern Avenue property line "that confronts a residential zone in the District of Columbia." In fact, the Project provides public use space for an urban buffer park instead of a building along the entirety of the Eastern Avenue frontage of the Property. This park extends a minimum of 60 feet (up to 110 feet in the "L" section of the park) in depth away from the Eastern Avenue right-of-way (82 feet from the curb including streetscape) in accordance with the specific language of the Overlay Zone. Since the park area is at the corner of Eastern Avenue and Newell Street, it similarly provides open space for the first 60 feet along Newell Street, which, as described in the Staff Report and shown on the

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Project Plan, is a corner location that provides both in a desirable open space location to bookend Newell Street and a compatible transition to the single-family homes opposite Eastern Avenue. The Project proposes a maximum height of 74 feet, not the 90 feet permitted pursuant to the Overlay Zone.<sup>1</sup>

In addition to the recommendations of the Sector Plan to reclassify the Property and its surrounding area from the CBD 0.5 zone to the CBD-1 zone and the Overlay Zone in order to encourage the redevelopment of underutilized industrial properties with residential and mixed-uses, the Sector Plan also included Design Guidelines for various districts of the Silver Spring CBD, including South Silver Spring. As explained in the Staff Report, one Design Guideline objective for South Silver Spring (on Page 86) included general language (not as specific as that which is provided in the Overlay Zone language that the Council subsequently adopted) that: “Building heights along Newell Street and Eastern Avenue should ensure compatibility with the adjacent residential neighborhood” (emphasis added). The Design Guideline further suggests that at the property line, building heights should be limited to 45 feet and after a 60 foot setback, its height could increase to 90 feet.

Although the more specific language provided in the Overlay Zone relating to building height restrictions on buildings facing Eastern Avenue came subsequent to the Design Guideline, the Brown Letter both ignores the compatibility objective of the Design Guideline and mistakenly asserts that the general Design Guideline in the Sector Plan supersedes the specific statutory development standard language in the Zoning Ordinance as to height permitted along Newell Street. This is not only inconsistent with the legal application of statutory language, but it is also inconsistent with the Planning Board’s longstanding application of design guidelines within master plans and sector plans. As explained in detail in the Staff Report (Pages 9-13, 19, 26 and 30), the Project is in substantial conformance with the numerous objectives and recommendations of the Sector Plan, including the Design Guideline objective ignored in the Brown Letter to “ensure compatibility with the adjacent residential neighborhood.”

The Project, by proposing four-sided architecture for the building, exceeds the objectives of the Sector Plan by addressing neighborhood context and compatibility for all neighboring buildings. As explained in the Staff Report and shown in the exhibits of the Project therein, the building is set back 25 feet (minimum) from the property line facing the

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<sup>1</sup> As explained in the Staff Report, the proposed 74 foot building height of the Project is consistent with the building height of the adjacent residential building identified as 8045 Newell Street.

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neighboring buildings to the southeast at 8045 Newell and Eastern Village Co-Housing ("EVC"), which forms a total setback of 33 to 59 feet from building to building (where none exist today with the storage building on the property line)<sup>2</sup> that is consistent with the relationships of the existing residential buildings within the neighborhood. The other building setbacks include a 10 foot setback from the northern property line adjacent to the 35 foot driveway and loading area of 8045 Newell, a setback of 2-8 feet from the Newell Street property line across from an existing residential building in the CBD-1 zone (over 140 feet in building height) and apartments in the high-density multi-family R-10 zone (which has no height limit)<sup>3</sup> that are located a minimum of 87 feet in distance from the proposed building; and the aforementioned setback of 60 feet from the Eastern Avenue property line that is across from single-family homes (with another 22 feet to the face of the curb). In addition to these significant infill setbacks, the Staff Report also explains the building articulation and steps in height to further provide compatibility with neighboring buildings.

The Brown Letter erroneously and in purposeful misleading fashion attempts to use the general language of the Design Guideline as a development standard for the Project, arguing that the building cannot exceed 45 feet in height along Newell Street. However, the Overlay Zone language is clear that such setback is only applicable to properties that confront a residential zone in the District of Columbia, and not applicable as a development standard where the neighboring properties across Newell Street are classified in the high-density R-10 zone (no height limit) and CBD-1 zone (over 140 feet in building height). Further, the 12-year old Design Guidelines of the Sector Plan are clear that the objective of the guidelines are to "ensure residential compatibility," which the Project clearly exceeds in this instance. The specious and repetitive position in the Brown Letter made in response to an individual client's attempt to thwart development of the Property (with the not so hidden agenda infeasibly being to have Montgomery County purchase the Property as a public park) simply does not alter the substantial conformance of the Project with the Sector Plan, its adherence to the specific

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<sup>2</sup> Although the 11<sup>th</sup> hour Brown Letter disingenuously reports a desire of "residents" for a setback of the Project from Newell Street, the generous setback of the Project from 8045 Newell and EVC was provided in response to requests from Staff and the South Silver Spring community to provide a larger buffer on the southeastern side of the building and move the density and height *closer* to Newell Street.

<sup>3</sup> Pursuant to the development standards for the R-10 zone in Section 59-C-2.414 of the Zoning Ordinance, a 74 foot building would be required to be set back 72 feet from an adjacent multi-family building. The Project is located approximately 87 feet from the existing buildings across Newell Street in the R-10 zone and thus meets the compatibility standards of the R-10 zone inherent in its development standards.

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development standards of the Overlay Zone, and its compatibility with the adjacent residential neighborhood.

**2. The Project Satisfies and Exceeds the Public Use Space Requirement of the Optional Method of Development.**

The Project is providing 21.87% of the net lot area as on-site public use space, plus off-site streetscape improvements of 18.17% of the net lot area of the Property (calculated pursuant to Section 59-C6.233 of the Zoning Ordinance). In addition to the urban buffer park space, the Project includes some on-site public use space of 2-8 feet along the Newell Street frontage for planting beds, with which the Brown Letter takes issue. Although the definition of public use space in Section 59-A-2.1 of the Zoning Ordinance lists "green areas" and "gardens" as the first two examples of public use space, the Brown Letter intentionally omits this in its discussion of public use space of the Project. Further, the Brown Letter omits the specific recommendations in the Sector Plan (Pages 55 and 72) for Newell Street to form a "Green Street," which as noted in the Staff Report and shown in the Project exhibits is accomplished through the provision of proposed plantings beds and the improved streetscape within the "Green Street" right-of-way. The statements in the Brown Letter ignore the Zoning Ordinance development standards and longstanding applications of the Planning Board for public use space in optional method projects and ignore the substance of the Sector Plan recommendations and objectives for South Silver Spring in the transparent attempt to haphazardly attack the Project and Staff Report without any legal basis or relevancy.

**3. The Project Qualifies as a Mixed-Use Development.**

Furthermore, the Brown Letter erroneously and without any legal basis whatsoever, concluded that the Project does not qualify as a mixed-use development despite the ground-floor retail space provided in the Project adjacent to the park area. In reaching this conclusion, the Brown Letter invents a non-existent requirement for a minimum amount of retail or commercial space for a building to be considered a mixed-use building. In fact and law, the Zoning Ordinance only provides limitations on the maximum amount of nonresidential uses in a mixed use project, and it is totally silent as to minimum amounts. As the Planning Board is well aware, ground floor neighborhood serving retail in residential developments, such as proposed in the Project, is desired to enliven streets and public spaces, but it is not required to encompass a specific percentage of the development to qualify as mixed-use in the CBD zones. The amount of nonresidential use for any mixed use project is a function of what is thought to be responsive to the market, as vacant retail space certainly does not serve to further the goal on activating a street or area. The amount of retail/commercial space proposed for the Project is

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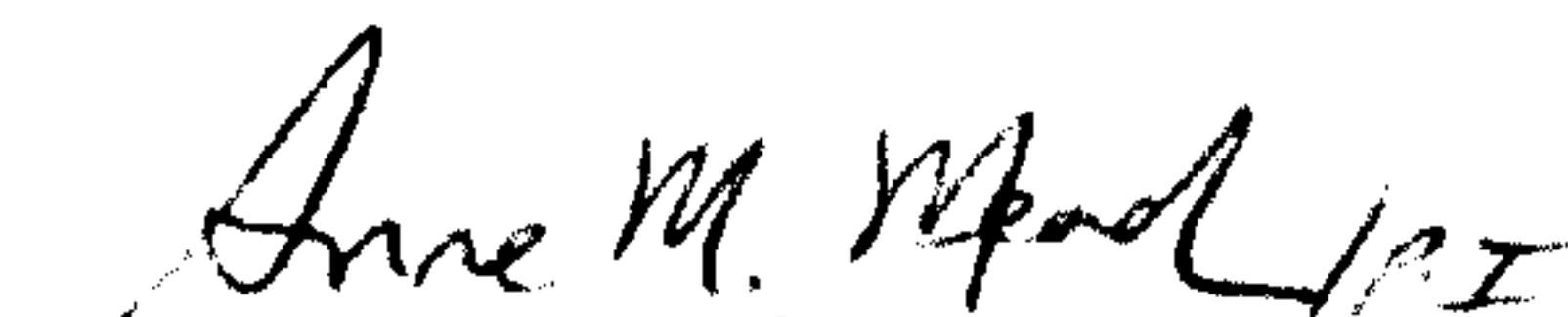
the maximum thought to be successful given the location of the Property and all other circumstances unique to the Property and this area, and the percentage of the retail in the Project is consistent with, or exceeds, the ground floor retail provided in numerous other approved mixed-use developments in the County's CBD zones. Again, the Brown Letter fabricates Zoning Ordinance development standards and ignores longstanding applications of the Planning Board for the review of optional method projects in the attempt to arbitrarily and carelessly attack the Project and the Staff Report.

In conclusion, the Planning Board should disregard the contrived arguments in the Brown Letter that ignore the clear language of the Overlay Zone development standards and the objectives of the Sector Plan and that instead fabricate optional method of development requirements. The Staff Report describes in detail the adherence of the project to the Zoning Ordinance development standards, the substantial conformance with the Sector Plan and the thoughtful and meaningful manner in which the Applicant has exceeded the goals for the desired redevelopment of the Property with a compatible project that will improve the character of the neighborhood and complete Newell Street. We appreciate the Planning Board's consideration of our response to the Brown Letter, and we hope that it will serve to allow the public hearing to be conducted in a manner free of the distractions intended by the Brown Letter.

Thank you for your consideration of our comments.

Very truly yours,

**LINOWES AND BLOCHER LLP**

  
Anne M. Mead

cc: Montgomery County Planning Board  
Ms. Rose Krasnow  
Mr. Robert Kronenberg  
Mr. John Marcolin  
David W. Brown, Esquire  
Mr. Steven W. Schmitz  
C. Robert Dalrymple, Esquire



**LINOWES**  
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ATTORNEYS AT LAW

February 28, 2013

Anne M. Mead  
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Françoise M. Carrier, Chair  
Montgomery County Planning Board  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

Hand Delivered

Re: 8001 Newell Street – Project Plan No. 920130020 (the “Project Plan”)

Dear Ms. Carrier and Members of the Planning Board:

On behalf of Comstock Newell, L.C., the applicant for the above-referenced Project Plan application (the “Applicant”), we respectfully submit this request to reschedule the Project Plan before the Planning Board (the “Board”) to complete the hearing from the deferral requested on December 20, 2012. In anticipation of the Board’s inquiries on the application of Section 59-C-18.202 of the Montgomery County Code (the “Zoning Ordinance”) and the Silver Spring CBD Sector Plan, adopted and approved in February 2000 (the “Sector Plan”) and in order to provide ample opportunity for the Board to review the pertinent information, we have provided herein: 1) additional background information on the Zoning Ordinance provisions and Sector Plan recommendations, 2) exhibits and summary of the applications of the subject Zoning Ordinance and Sector Plan provisions to the Project, and 3) the information the Board requested regarding whether the subject provisions had been interpreted in past Board decisions. The Applicant has further reviewed the Project subsequent to the Board comments at the hearing, and conferred with some neighborhood members that participated in the numerous constructive discussions on the Project, and confirmed that the Project design remains consistent with the community priorities on compatibility.

The Project Plan application proposes an optional method development project (“Project”) on a lot identified as 8001 Newell street located at the northeastern corner of Eastern Avenue and Newell Street in the Silver Spring CBD (the “Property”), which Project consists of a maximum of 187 multi-family units (including 24 Moderately Priced Dwelling Units (“MPDUs”)), 3,100 square feet of neighborhood ground-floor retail, an underground parking garage, an urban buffer park located at the intersection of Newell Street and Eastern Avenue, streetscape improvements, and significant private courtyard areas that serve to create a buffer with adjacent residential buildings. The Property is in the CBD-1 zone and the Ripley/South Silver Spring Overlay Zone (the “Overlay Zone”) pursuant to the recommendations of the Sector Plan to rezone certain properties previously in the CBD-0.5

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zone to “encourage revitalization of South Silver Spring.” As depicted in the Project Plan Exhibit and the Neighborhood Context Exhibit attached as Exhibit “A” and Exhibit “B”, the Property is adjacent to residential buildings known as 8045 Newell Street (“8045 Newell”) and Eastern Village Co-Housing (“EVC”) on the same side of Newell Street that are similarly in the CBD-1 and Overlay Zone, is located across Eastern Avenue from single-family homes in the District of Columbia, and is across Newell Street from the Spring Gardens garden apartments in the R-10 (multi-family, high density) zone and the Mica high-rise condominium building in the CBD-1 zone (formerly the Springwood Apartments). The Property is currently improved with a low scale industrial self-storage building that covers the entirety of the Property with no setbacks, and thus the Project implements the objectives of the Sector Plan to redevelop underutilized industrial properties in South Silver Spring with desired housing and compatible mixed-uses and to make Newell Street a “Green Street.”

The Technical Staff, in their Staff Report for the Project dated December 7, 2012 (the “Staff Report”) and at the hearing, described the substantial conformance of the Project Plan with the recommendations of the Sector Plan and summarized how the Project satisfies the purposes and development standards of the Zoning Ordinance, including standards for building heights. However, the Board was presented with conflicting interpretations of the application of the Zoning Ordinance and the Sector Plan recommendations regarding building heights along Newell Street by a few individuals in opposition to the Project at the initial hearing, and thus the Board had inquiries that were not fully addressed in the limited time available.

### **1) Additional Background on Overlay Zone and Sector Plan Recommendation**

For background on the development standard for building height on the Property, the applicable **Overlay Zone** language in Section 59-C-18.202 of the Zoning Ordinance, which was adopted by the County Council, sitting as the District Council for that portion of the Maryland-Washington Regional District within Montgomery County, Maryland (the “Council”) by Ordinance No. 14-16 on February 1, 2000, specifically states that:

**(1) Building height in the overlay zone along Newell Street and Eastern Avenue that confronts a residential zone in the District of Columbia must not exceed a height of 45 feet. However, this height may be increased to**

**(a) a maximum of 90 feet for any building or portion of a building that is set back at least 60 feet from the street... (emphasis added).**

This Overlay Zone language that the Council adopted was consistent with the language initially proposed and recommended by the Technical Staff, the Board, the Council Staff, and the Council’s Planning Housing and Economic Development (“PHED”) Committee for the

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Zoning Text Amendment for the Overlay Zone (the “ZTA”). More significant to the discussion for this Project, the intent of the proposed and adopted Overlay Zone language above was stated to be to “limit building height for new construction along Eastern Avenue, fronting one-family detached buildings in the District of Columbia” (Planning Staff Report dated November 1, 1999, page 2, attached hereto as Exhibit “C”; Planning Board Recommendation dated November 10, 1999, page 1, attached hereto as Exhibit “D”), or to “limit building height for new construction fronting along Eastern Avenue” (Council Staff Hearing Memorandum dated November 5, 1999, page 1, attached hereto as Exhibit “E”). Thus, even though the proposed language of the Overlay Zone included Newell Street, the intent of height restrictions was stated in the public hearing documents and understood to apply to Eastern Avenue to address the single-family homes in the District of Columbia across Eastern Avenue, not Newell Street.

This legislative intent for the height restriction in the Overlay Zone to only to apply to building heights on Eastern Avenue across from single-family residential homes is consistent with the adopted and approved language on Page 60 of the Sector Plan that includes the recommendations for the Overlay Zone. This **Overlay Zone recommendation in the Sector Plan** was proposed by the Planning Board and adopted by the Council in Resolution No. 14-416 on February 1, 2000, and states:

**Limit building height for new construction along Eastern Avenue, fronting one-family detached dwellings in the District of Columbia as follows: At the property line, building heights should be 45 feet. Above 45 feet, the building may step back 60 feet and its height may increase to 90 feet (emphasis added).**

The Planning Staff found that the Overlay Zone language proposed in the ZTA, which included Newell Street and slightly different wording than the Sector Plan recommendation, implemented this Sector Plan recommendation for limited building height restrictions only for buildings along Eastern Avenue across from single-family residential homes. In the introduction of the Overlay Zone ZTA, the Planning Staff stated they included “modifications” – described as “minor editorial changes” - in the Overlay Zone language intended to “clarify the provisions of the zone,” which may explain the modified language and the inclusion of Newell Street in the Overlay Zone language itself (see, Planning Staff Report, page 3, dated November 1, 1999, attached hereto as Exhibit “C”). However, as the memoranda in the legislative history indicates, there was never any intent for this “minor editorial change” to extend any height restriction to buildings in this upzoned area of South Silver Spring that were located on Newell Street across from high density multi-family R-10 zoned properties with no height restriction or from CBD-1 zoned properties with an existing 14-story residential building and 143 foot building heights permitted. (See Exhibit “B” for context of properties along Newell Street).

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As clarified in the legislative history, the intent of the Overlay Zone is contained in its qualifying phrase that the restriction on height for the first 60 feet of a building pertains to building height that “confronts a residential zone in the District of Columbia.” The building for the Project confronts a residential zone in District of Columbia directly across Eastern Avenue, but is across from high density multi-family and CBD-1 zones along Newell Street (and only catty-corner across Newell Street at the intersection of Eastern Avenue from single-family homes). The Project complies with the Overlay Zone standards by providing public use space for an urban buffer park that extends 60 feet from the right-of-way (instead of a building) along the entirety its Eastern Avenue frontage, which consequently allows the park to encompass the full corner of the Property at Eastern Avenue and Newell Street. This corner location, as described in the Staff Report and shown on the Project Plan, provides both a desirable open space location to bookend Newell Street and a compatible transition to the single-family homes opposite Eastern Avenue.

As noted in the Staff Report, and as given misplaced weight by those opposed to the Project at the hearing, the Sector Plan also included Urban Design Guidelines for various districts of the Silver Spring CBD, including South Silver Spring. The pertinent **Design Guideline** objective for South Silver Spring (on Page 86) states that:

**Building heights along Newell Street and Eastern Avenue should ensure compatibility with the adjacent residential neighborhood (emphasis added).**

**\* At the property line, building heights should be limited to 45 feet.**

**\* Above 45 feet, the building may step back 60 feet and its height may increase to 90 feet.**

Those individuals opposed to the Project mistakenly assert that the inclusion of Newell Street in the Design Guideline regarding compatibility supersedes the more specific Overlay Zone language that qualifies the height limitation to building height confronting a residential zone in the District of Columbia, and assert that the inclusion of Newell Street in the Sector Plan’s Urban Design guidelines without the specific qualifying language somehow nullifies the more specific statutory Overlay Zone language. However, these assertions are inconsistent with the legal application of statutory language and inconsistent with the Planning Board’s longstanding application of design guidelines within master plans and sector plans. As explained in detail in the Staff Report and by Staff, the Project is in substantial conformance with the numerous objectives and recommendations of the Sector Plan, including the Design Guideline objective to “ensure compatibility with the adjacent residential neighborhood.”

Françoise M. Carrier, Chair  
February 28, 2013  
Page 5

## **2) Exhibits and Summary of Application of Overlay Zone and Sector Plan**

In fact, the application of an unnecessary height restriction on Newell Street as suggested by the opposition is inconsistent with the objective for compatibility with adjacent residential buildings. For reference and as shown on Exhibit "A", the Project proposes a 7-story residential building (with steps and articulation) that is set back 25 feet (minimum) from the property line facing the neighboring buildings of 8045 Newell and EVC to the southeast. This proposed setback of the Project forms a total setback of 33 to 59 feet from building to building (where **no setback exists today** with the storage building on the property line) that is consistent with the relationships of the existing residential buildings within the neighborhood. This 25 foot minimum setback represents an increase to the Applicant's original proposal of 15 feet pursuant to the request of a neighborhood group, which was formed by the South Silver Spring Neighborhood Association ("SSSNA") consisting primarily of residents of the adjacent buildings, to specifically shift the building "towards Newell Street." (SSSNA Memorandum for June 25, 2012 Meeting with Applicant, attached hereto as Exhibit "F".) This compatible massing and setback provided by the Project is reflected in the Project Massing Views shown on the attached Exhibit "G".

In contrast, the theoretical application of a height restriction on Newell Street would require the massing to shift away from Newell and thus result in a 45 foot tall building along the entirety of Eastern Avenue and Newell Street, and a 90 foot building wall adjacent to these residential buildings to the east, as shown in the Newell Street Setback Massing Views and Comparison Massing Views shown in the attached Exhibit "H". This is a direct conflict with the requests from the community throughout the design process of the Project, and the application of such a setback is inconsistent with the comments of the 8045 Newell residents at the hearing that referenced potential impacts to their "light and air." Such requests are certainly not addressed by moving the building mass and height away from Newell Street closer to these buildings and making building higher on the east side of the Property (up to 90 feet from the 74 maximum proposed). The Applicant's subsequent review of the Project, and coordination with some neighbors that had participated in discussions on the Project design with respect to compatibility confirmed that the Project's design and layout approach as proposed remain consistent with the priorities of the community, not a building that has its height set back from Newell Street.

## **3) Confirmation that the Overlay Zone Provision has not been Reviewed and Interpreted by Board in Past Decision**

Lastly, at the hearing on the Project on December 20<sup>th</sup>, the Board was given the mistaken impression that the Board had previously reviewed and interpreted the subject Overlay Zone provision regarding height restrictions to apply to Newell Street with its

Françoise M. Carrier, Chair

February 28, 2013

Page 6

approvals of the 8045 Newell building, then known as “Newell Lofts” (the “Newell Lofts Project”). However, the Staff Reports for the Newell Lofts (the Project Plan and the subsequent Site Plan) confirm that although the Staff and applicant in that case mistakenly listed a height setback from Newell Street, the height setback was not an issue with the Newell Lofts Project’s design, not vetted in discussion at the hearing, and not a subject of community correspondence. As noted in the February 27, 2003 Staff Report for the Newell Lofts, the development issues and community concerns expressed in advance of the hearing were regarding the public spaces, the traffic and the preservation of the then existing former Blair Post Office (see Newell Lofts Staff Report excerpts, attached hereto as Exhibit “I”).

In addition, the hearing transcript for the February 27, 2003 hearing on the project plan for the Newell Lofts Project confirms that the issues of discussion before the Board were the historic preservation, the fee-in-lieu of on-site MPDUs, the arts path adjacent to the public parking garage next door and the adequacy of parking provided. The Overlay Zone was again mistakenly referenced once as a standard, but the Overlay Zone application and Newell Street compatibility were not raised nor discussed as issues. In fact, relevant to the discussion above on the intent of the Sector Plan and Overlay Zone language, one community member at the Newell Lofts Project hearing discussed the concerns of the adjacent single-family neighborhood in the District of Columbia (Shepherd Park) across Eastern Avenue regarding the shortage of parking in the Newell Lofts Project (and support for the MPDUs to be provided via payment in lieu), quoting the objectives of the Sector Plan to make “new development as compatible with existing low density single-family communities surrounding the CBD,” and to “mitigate the impact of urban development on adjacent neighborhoods.” See, Newell Lofts Project transcript dated February 27, 2003, page 32, attached hereto as Exhibit “J”. The building height on Newell Street and the compatibility with the existing multi-family buildings in the R-10 and CBD-1 zone across Newell Street within the CBD were not discussed with the Newell Lofts Project, and thus the Overlay Zone was not interpreted nor was a precedent made for the application of the Overlay Zone.

In conclusion, we hope the discussion above and attached exhibits address the anticipated Board inquiries on the application of the Overlay Zone and the Sector Plan to the Project, and more importantly clarify that the Council did not intend to restrict development across from the high density and high rise residential properties on the opposite side of Newell Street from the Property. Such interpretations would be contrary to the Council’s upzoning of the Property and stated revitalization goals Sector Plan, and are only disingenuous statements of those attempting to thwart improvement of the Property. We appreciate the Planning Board’s consideration of these materials in advance of the continued hearing, as well as the continued recognition of the Planning Staff recommendations and findings of the adherence of the Project to the Zoning Ordinance development standards, the substantial conformance with the Sector Plan and the thoughtful and meaningful manner in which the Applicant has exceeded

Françoise M. Carrier, Chair  
February 28, 2013  
Page 7

the goals for the desired redevelopment of the Property with a compatible project that will improve the character of the neighborhood and complete Newell Street.

Thank you for your consideration of our comments.

Very truly yours,

**LINOWES AND BLOCHER LLP**

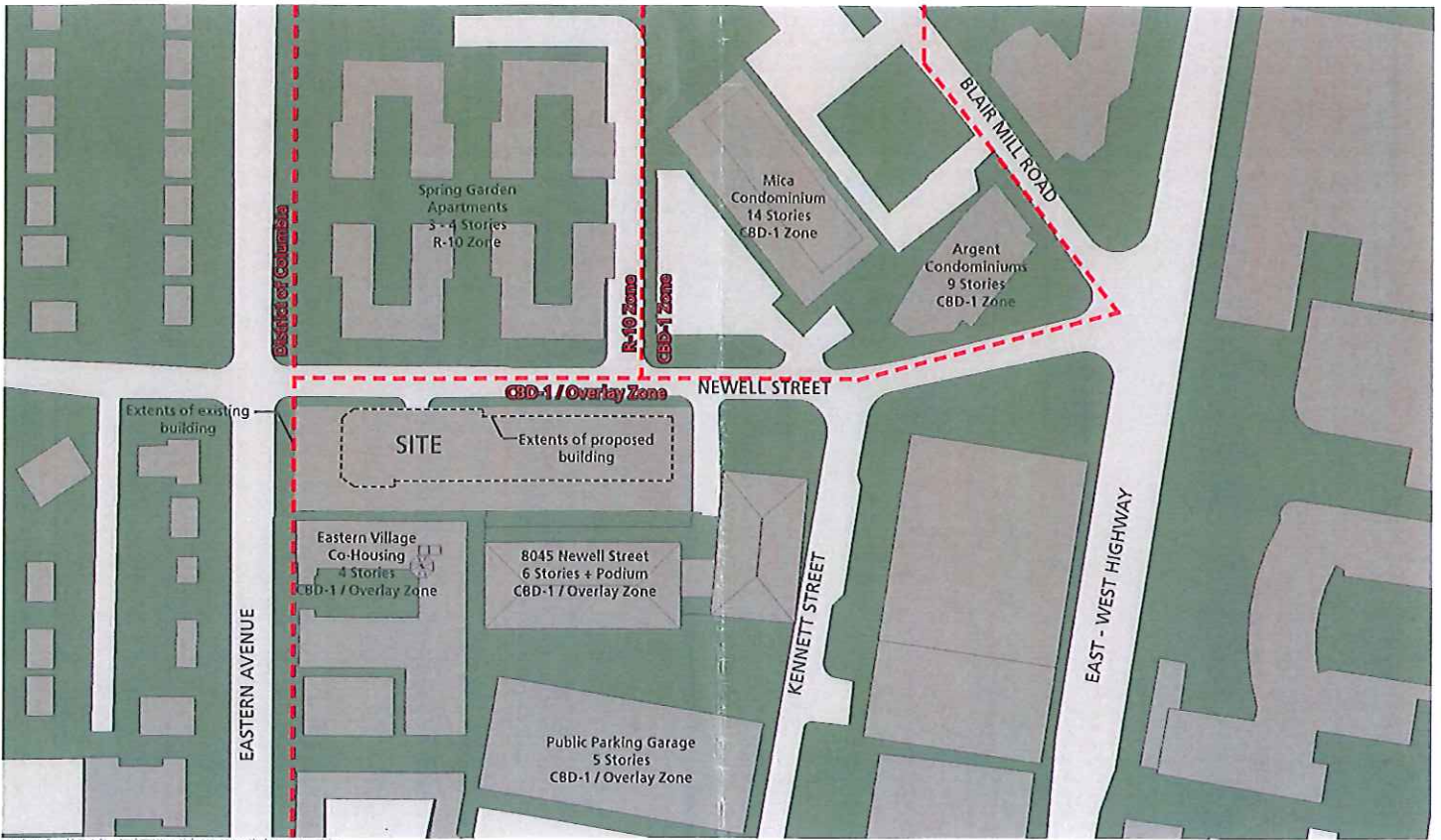
  
Anne M. Mead

Enclosures

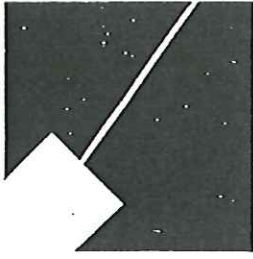
cc: Montgomery County Planning Board  
Ms. Rose Krasnow  
Carol Rubin, Esquire  
Mr. Robert Kronenberg  
Mr. John Marcolin  
David W. Brown, Esquire  
Mr. Steven W. Schmitz







M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760

MCPB  
Item #2  
11/4/99

**MEMORANDUM**

**DATE:** November 1, 1999  
**TO:** Montgomery County Planning Board *JRO*  
**VIA:** Joe Davis, Acting Chief, Development Review Division  
**FROM:** Denis D. Canavan, Development Review Division *De*

**REVIEW TYPE:** Zoning Text Amendment  
**PURPOSE:** Creating the Ripley/South Silver Spring Overlay Zone  
**TEXT AMENDMENT:** No. 99012  
**REVIEW BASIS:** Advisory to the County Council, Chapter 59, Zoning Ordinance  
**INTRODUCED BY:** District Council at the Request of the Planning Board  
**INTRODUCED DATE:** October 12, 1999

**PLANNING BOARD REVIEW:** November 4, 1999  
**PUBLIC HEARING:** November 16, 1999; 1:30 p.m.

---

**STAFF RECOMMENDATION:** APPROVAL with modifications

**BACKGROUND**

This text amendment was prepared to implement the land use recommendations contained in the amendment to the Silver Spring CBD Sector Plan. The Planning Board recommended Sector Plan amendment is now pending before the County Council. The land use recommendations stated in the plan read in part:

An overlay zone would encourage redevelopment in the Ripley District and in South Silver Spring by providing more flexibility in the development standards and the range of permitted uses. At the same time, the overlay zone would be structured to ensure that new development is compatible with nearby uses and that it incorporates critical design elements, such as streetscaping and useful public open spaces.

**Exhibit "C"**

(8)

Apply the Ripley/ South Silver Spring Overlay Zone to portions of the Ripley and South Silver Spring Revitalization areas to:

- allow the needs of a specific area to be addressed without affecting all of the CBD zones
- provide for a mix of housing and commercial uses
- allow small parcels to become usable development sites
- allow the transfer of density and open space within the overlay area  
( page 39 of Planning Board Draft)

The major provisions of the Overlay Zone are to include:

- allow new uses
- limit building height for new construction along Eastern Avenue, fronting one-family detached dwellings in the District of Columbia as follows: building heights should be limited to 45 feet. Above 45 feet, the building may step back 60 feet and its height may increase to 90 feet.
- continue to allow the transfer of development credit from razed buildings. Transfer may be to other sites within South Silver Spring or the Ripley District only
- allow the transfer of public use space requirement to other sites in the same district, or contribute to a fund.
- prohibit front yard parking along Georgia Avenue

## ANALYSIS

The proposed Ripley/South Silver Spring Overlay Zone has been prepared to implement the Silver Spring CBD Sector Plan because the land use recommendations contained in the plan cannot be implemented through the application of an existing zone or combination of zones. Application of existing CBD zones with amendments or other zones with amendments would apply uniformly across the County, and while they may achieve the purposes for this Sector Plan they would no longer satisfy the goals of other Sector or Master Plans. With the application of the Overlay Zone, the properties within the affected area have both an underlying zone, as well as the Overlay Zone. The Overlay Zone concept was first applied in Wheaton CBD and has now been applied in several areas of the County to achieve specific goals found in the applicable Master or Sector Plans and cannot be implemented by application of traditional zones. The value of an Overlay Zone concept is that it may prohibit or permit development as first regulated in the underlying zone and particular land use regulatory measures can be applied to specific areas of the County without having broad land use implications.

The introduced zoning text amendment would be analyzed along with the pending Sector Plan and would be modified accordingly to implement the Sector Plan. The Overlay zone would be adopted by the County Council and would be a zone that would be applied by a Sectional Map Amendment as part of the comprehensive zoning process

Upon review of the introduced text amendment, the staff finds that the text amendment implements the current recommendations contained in the Sector Plan, however the staff has suggested modifications which are necessary to clarify the provisions of the zone. In addition to minor editorial changes, the modifications clarify that the public use space requirement for development under the standard method or optional method may be transferred to other properties within this overlay zone by approval of a project plan or site plan in accordance with Section 59-D-2 and 59-D-3 of the Zoning Ordinance. Secondly, since a portion of the Overlay zone is on the east side of Georgia Avenue, the prohibition of parking in the front yard should apply to both sides of Georgia Avenue. With these modifications, staff recommends approval of the text amendment.



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

(301) 495-4605

Montgomery County Planning Board  
Office of the Chairman

**MONTGOMERY COUNTY PLANNING BOARD**

The Maryland-National Capital Park and Planning Commission

November 10, 1999

TO: The County Council for Montgomery County, Maryland, sitting as the District Council for the Maryland-Washington Regional District in Montgomery County, Maryland

FROM: Montgomery County Planning Board

SUBJECT: Planning Board Opinion on Zoning Ordinance Text Amendment No. 99012

**BOARD RECOMMENDATION**

The Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission reviewed Zoning Ordinance Text Amendment No. 99012 at their regular meeting on November 4, 1999. By a vote of 4-0, with one absent, the Board recommends that this text amendment be APPROVED with modifications for the reasons set forth in the technical staff report, which is hereby approved and incorporated by reference in this recommendation.

This zoning text amendment would create the Ripley/South Silver Spring Overlay Zone as recommended in the Silver Spring CBD Sector Plan amendment now pending before the County Council. This Overlay Zone implements the land use recommendations contained in the pending Sector Plan Amendment which cannot be implemented by existing zoning provisions. The Overlay Zone would provide more flexibility in the development standards, while ensuring that new development is compatible with nearby uses.

Some of the major provisions of this Overlay Zone are: allowing new uses; limiting the building height for new construction along Eastern Avenue confronting one-family detached dwellings in the District of Columbia; allowing the continue transfer of development credit for razed buildings to other sites within this Overlay Zone; allowing the transfer of public use space; and prohibiting front yard parking along Georgia Avenue within this Overlay Zone.

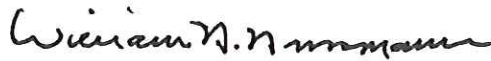
The Overlay Zone would be adopted by the County Council and applied by Sectional Map Amendment as part of the comprehensive zoning process.

**Exhibit "D"**

11

CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, on motion of Commissioner Perdue, seconded by Commissioner Wellington, with Commissioners Perdue, Wellington, Bryant, and Chairman Hussmann voting in favor of the motion and with Vice Chairman Holmes absent at its regular meeting held in Silver Spring, Maryland, on Thursday, November 4, 1999.



William H. Hussmann  
Chairman

HH:DC

AGENDA ITEMS #9&10  
November 16, 1999

Public Hearing

MEMORANDUM

November 5, 1999

TO: County Council

FROM: *MLM*  
Marlene L. Michaelson, Senior Legislative Analyst

SUBJECT: Public Hearing: Ripley/South Silver Spring and Fenton Village and Overlay Zones (Zoning Text Amendments 99012 and 99013)

The Planning Board is proposing two new overlay zones to implement the recommendations in the Silver Spring CBD Sector Plan: the Ripley/South Silver Spring Overlay Zone (ZTA 99012 © 1-8) and the Fenton Village and Overlay Zone (ZTA 99013 © 9-15). A Planning, Housing, and Economic Development (PHED) Committee worksession on the Sector Plan and the text amendments is currently scheduled for November 22, 1999.

Both zoning text amendments would:

- allow new uses not otherwise allowed in the CBD zones;
- prohibit parking in the front yard along Georgia Avenue; and
- allow the transfer of public use space requirements to other sites in the Overlay District or a contribution to a fund.

The Ripley/South Silver Spring Zone would also limit building height for new construction fronting along Eastern Avenue and continue to allow the transfer of development credit from razed buildings to other sites within the District. Although other master and sector plans have limited the height or density allowed in a CBD zone under the optional method of development without the need for an overlay zone, the Silver Spring CBD Sector Plan limits development to less than allowed by the standard method of development.<sup>1</sup> Planning Staff believe that an overlay zone is necessary to limit development to less than would be allowed by the standard method of development.

---

<sup>1</sup> The Standard Method of Development in the CBD zones allows a certain amount of development by right. The Optional Method of Development allows for additional development, but only after meeting certain requirements including provision of public use space, facilities and amenities. Additional height allowed under the optional method must be in conformance with the applicable sector plan.

In addition to the bulleted items above, the Fenton Village Overlay Zone would limit the height on buildings within the zone (particularly along Fenton Street) and would allow an FAR of 2 in the CBD-1 Zone under the standard method of development with site plan review.

f:\michaelson\lplan\lmstrpln\silver spring cbd\phzta99012&99013.doc



## 8001 Newell Street, June 25 2012 Meeting Items

### Project Clarification Items:

- How many units are proposed? Is a breakdown by # of bedrooms available? Any MPDUs?
- How many parking spaces are proposed? Are they all below grade?
- Will metered parking on Newell remain? What assumptions will be made about parking for the proposed retail?
- What impact studies (environmental, traffic, etc) will be performed, and when?
- Can you give us a sense of the project's schedule? When is the earliest construction could begin, and how long is it anticipated to take?
- Would 'construction start' include demo of the existing structure?

### Design Concerns:

- Height/proximity in relation to adjacent buildings. Proposed discussion regarding shifting 8001 towards Newell Street (up to BRL?), how 'deep' will assumed terraces at rear of 8001 extend towards existing structures? Please be aware that effective proximity for some residents is from the edge of their patio to outside limits of proposed terraces, and that there is concern over privacy once the structure is occupied. Would decreasing building height as required to limit impacts on adjacent buildings still provide sufficient return on investment for a 'go' decision?
  - Shadow study: update as building height/proximity changes, request to incorporate additional 'snapshot' times, up to 7:30pm.
  - Confirmation that trees lining 8045 1<sup>st</sup> floor patios will remain; concern over adequate sunlight.
- Driveway location:
  - Safety concern regarding curb cut location on Eastern Ave. Children and handicapped individuals crossing at proposed location.
  - Negative impact on EVC unit with egress to existing 'alley' between buildings.
  - Discussion is requested regarding locating the driveway off Newell Street. Can the existing curb cuts on Newell for the storage facility/loading be explored as parking entrance options? Please be aware that priority should be given to a solution that has little to no impact on either EVC or 8045 and special permissions pursued if needed.
  - Can the developer reach an agreement with 8045 Newell for a shared driveway connection?
- Location of park/retail end. Can you please discuss the park/retail location in relation to the overall County park plan, as well as consideration as to whether retail would better thrive if visible from East-West? How would the type of retail selected impact the discussion to possibly mirror the building (perhaps a food option if easily accessible for discovery employees)? Would the proposed retail use seek an alcohol permit? Should the park be sited further away from DC homes that have front yards? Discussion regarding a potential dog park; pros/cons, how big would it be?

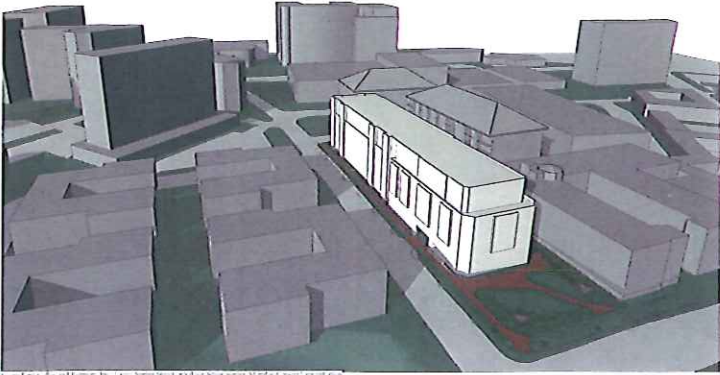
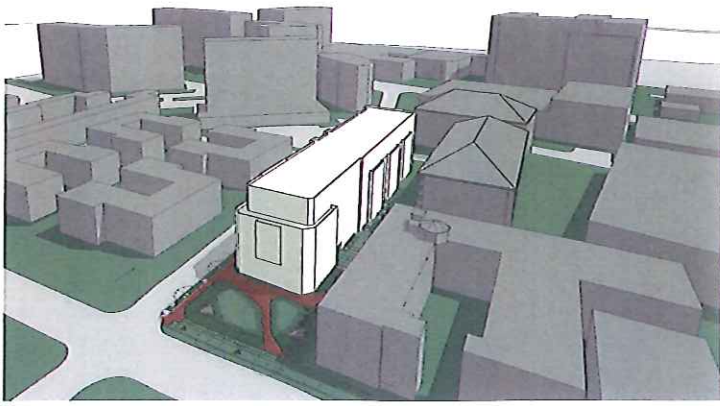
- Green space between proposed/existing buildings. Discussion requested regarding pros/cons of sharing this space.
- Site drainage. Please be aware of drainage impacts, particularly related to EVC unit accessing existing 'alley' (English basement; flooding concerns).
- Site security. Please be aware of design issues that may affect security at existing apartments, particularly related to EVC unit accessing existing 'alley' and exposing 8045 1<sup>st</sup> floor patios.
- View from the EVC roof: Can this be analyzed to identify and potentially mitigate impacts on western view from the top of EVC?

**Construction Concerns:**

- Time lapse between demo of existing structure and construction of new building.
- Concern over structural integrity of existing retaining walls of 8045 and at rear EVC unit.
- Concern over potential blasting; timing, notice and assurance that existing features will not be damaged.
- Construction timing, noise, dust and runoff.
- Concern over potential rodent migration during construction process.
- Off-site tree protection.

**Desired Community Items:**

- Green Building/LEED Certification
- Screen & locate dumpsters/non-desirable features away from existing apartments
- Identification of off-site impacted trees; extended warranty by developer for these trees beyond construction completion.
- Lighting to be appropriate for residential component/safety; consideration provided for possible bleeding into adjacent apartments. Perhaps use of small, decorative lights?
- Possible stamped concrete instead of brick paver sidewalk for frontage, helps negates concerns over handicapped individuals. Maintenance issues?
- Is there potential for any shared amenities between 8001 and existing EVC/8045?
- Potential off-site frontage improvements along Eastern Avenue (EVC).



View from north and south for 8001 Newell Street and surrounding area.

**Massing Views**

COMSTOCK HOMES  
TORTI GALLAS AND PARTNERS

8001 NEWELL STREET

Exhibit "G"



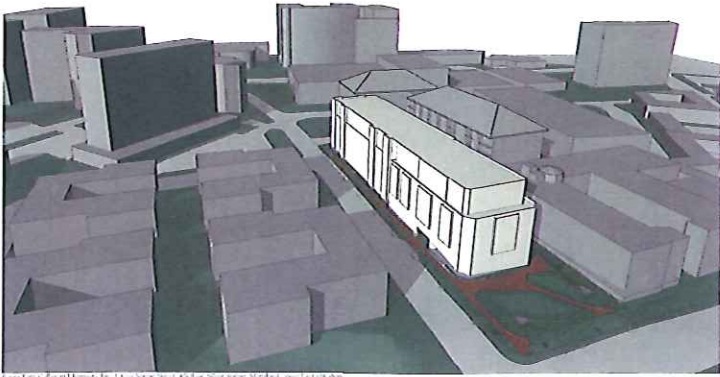
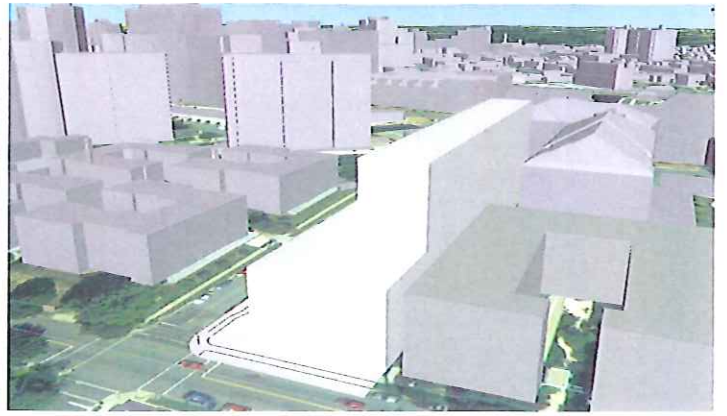
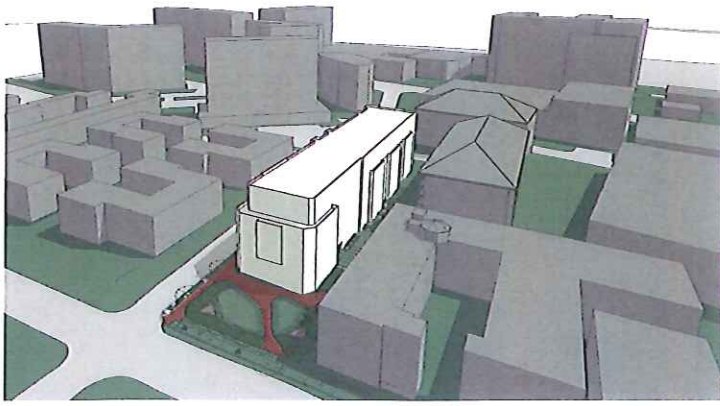
City of Portland, Oregon  
**Newell Street - Height Setback Massing Views**

COMSTOCK HOMES  
TORTI GALLAS AND PARTNERS

February 26, 2013

**8001 NEWELL STREET**

**Exhibit "H-1"**



Comparison Massing Views

February 26, 2013

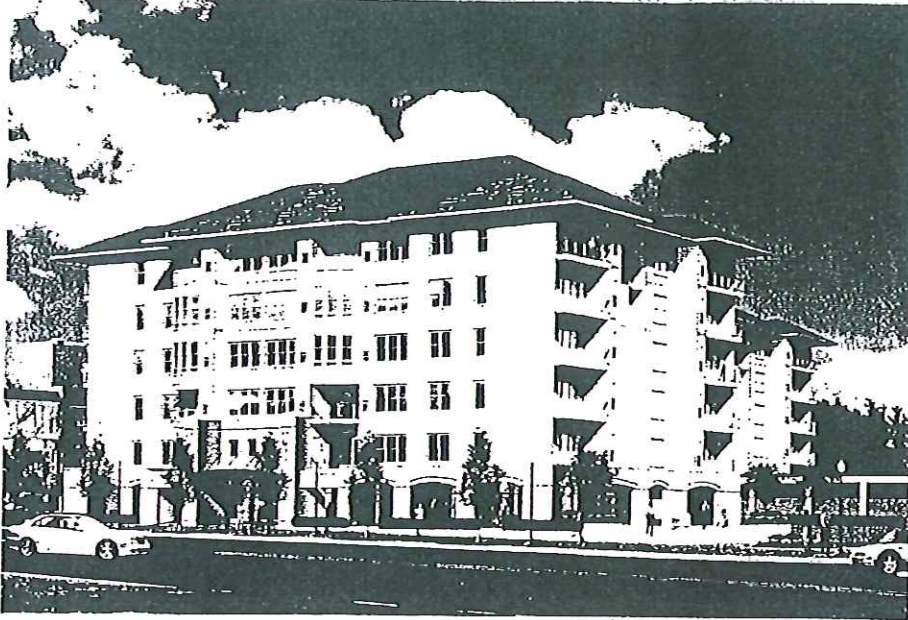
COMSTOCK HOMES  
TORTI GALLAS AND PARTNERS

# 8001 NEWELL STREET

Exhibit "H-2"

# Newell Street Lofts

Silver Spring, Maryland



**Staff Report**  
for the Review of

**Project Plan 9-03000**  
Utilizing the Optional Method of Development

8045 Newell Street, LLC  
c/o Patriot Group, LLC, Applicant

Landmark Engineering, Engineer  
A.R. Meyers & Associates, Inc., AIA, Architect  
Trace, Inc., Landscape Architect  
Linowes & Blocher, LLP, Attorney

Prepared for  
**The Montgomery County Planning Board**  
February 27, 2003

**Exhibit "I"**

## Development Issues

### 1. Historic Preservation

The Silver Spring Historic Society ("Historic Society") has expressed concern over the removal and demolition of the Blair Station Post Office ("Post Office"), which they feel has historic standing [See Appendix B]. The Historic Society would like the applicant to preserve the building and incorporate it into the proposed design as a public amenity. The Historic Society would also like the footprint of the Blair homestead to be preserved and investigate the site for historic artifacts associated with the homestead.

The Post Office is not designated as a historic structure on the national registry, although it has recently been nominated [See Appendix B-Letter dated 12-27-02] for addition to the *Locational Atlas and Index of Historic Sites* and the *Master Plan for Historic Preservation*. The Historic Society expressed concerns over the preservation of the building, primarily due to innovative machinery that was integral to the Post Office during the Post World War II Era.

On January 22, 2003 the Historic Preservation Commission ("HPC") held a public hearing and work session with regard to the nomination. After presentation by staff and hearing testimony from the public, the HPC supported the staff recommendation [See Appendix C] and declined to recommend to the Planning Board that the former Blair Station Post Office be added to the *Locational Atlas and Index of Historic Sites* and the *Master Plan for Historic Preservation*. On January 30, 2003, the Planning Board supported HPC and M-NCPPC staff recommendations that the Blair Station Post Office to the *Locational Atlas and Index of Historic Sites*.

Staff requested that the applicant meet with the Historic Society to address issues with the nomination of the postal facility to the *Locational Atlas of Historic Sites*. Consistent to their meeting, the applicant said they would consider preserving the building, but only if staff provided relief of the required 20% minimum on-site public use space. The applicant did not present a proposal to incorporate the building into the design and no specific use of the building was reviewed. Given the circumstances and elements of the proposal by the applicant, staff could not permit a reduction of the base requirement, directly affecting any proposal for the building as a public use or amenity.

The applicant has agreed to let the County perform an archeological investigation on the Blair House to search for historic artifacts after the demolition of the buildings. The applicant proposes to commemorate the historical nature of the Post Office by incorporating artifacts and replicas from the building into the public art proposed for the plaza. A portion of the paving will take the form of a canceled stamp in order to create a reference to the former postal facility. Staff has requested that a history of the Blair Post Office and homestead be incorporated into the plaza in the form of a marker or plaque describing the significance of the site to the public.

## 2. Community Outreach

The applicant has presented the proposed development to various civic groups including the Shepherd Park Citizen's Association (DC), the Gateway Coalition, Gateway Georgia, the Silver Spring Chamber of Commerce, the Silver Spring Urban District and the Silver Spring Historic Society, as requested by staff. The associations and civic groups are generally supportive of the proposed development, especially with respect to market-rate units, however; they did express concerns about the public spaces, traffic and the preservation of the existing former Blair Post Office [See Appendix D].

As noted in the Historic Preservation summary above, HPC and the Planning Board recommended against the preservation of the Blair Station Post Office. The Silver Spring Historic Society expressed concerns over the preservation of the building, primarily due to the development of innovative machinery that was integral to the Post Office during the post World War II Era. Although the building will be removed, the applicant proposes to incorporate the theme of the post office into the design of the apartments and public use and amenity space associated with the development.

The Silver Spring Urban District and the Chamber of Commerce expressed support for market-rate units for South Silver Spring and excitement that this will be the first condominium project among an area with numerous rental properties. Additional housing and the associated activity will help to promote urban activity and enliven the South Silver Spring revitalization area.

## 3. Moderately Priced Dwelling Units

This proposal requires fifteen Moderately Priced Dwelling Units (MPDU's) or 12.5% of the proposed residential dwelling units within the development. The applicant is proposing to provide ten MPDU units on-site, and pay a fee-in-lieu for the remaining five MPDU units off-site. A letter requesting the fee-in-lieu for the units has been provided to the Department of Housing and Community Development, although no response has been forwarded to this office. Staff does not recommend a fee-in-lieu of the units off-site, rather, the entire 12.5% of the proposed residential units should be located within the development.



1  
2 MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION  
3 MONTGOMERY COUNTY PLANNING BOARD  
4

5 ----- x  
6 Project Plan No. 9-03000 - :  
7 Newell Street Lofts; and :  
8 Preliminary Plan Review No. :  
9 1-03021 - Newell Street :  
10 Lofts (Resubdivision) :  
11 ----- x

12 A meeting in the above entitled matter was convened  
13 on Thursday, February 27, 2003, commencing at 4:35 p.m.,  
14 at 8787 Georgia Avenue, Silver Spring, Maryland 20910,  
15 before:

- 16 DERICK BERLAGE  
17 Board Chairman  
18 WENDY C. PURDUE  
19 Vice Chair  
20 ALLISON BRYANT  
21 JOHN M. ROBINSON  
22 MEREDITH WELLINGTON  
23  
24  
25  
26

 COPY

6245 Executive Boulevard  
Rockville, MD 20852  
(301) 881-3344

Deposition Services, Inc.

2300 M Street, N.W.  
Suite 800  
Washington, D.C. 20037  
(202) 785-1239

Exhibit "J"

1 in a high density residential area even assuming that  
2 they may only have one car, which is very unlikely.

3 In summary, the residents in my neighborhood have an  
4 expectation that the county in the process of  
5 revitalizing south Silver Spring will take the necessary  
6 steps to preserve the integrity of our residential  
7 neighborhood, Shepherd Park. In other words, we trust  
8 that the county will act in accordance and implement goal  
9 4 in its comprehensive amendment to the Silver Spring  
10 Central Business District Sector Plan. It states, among  
11 other things, that, and I quote, "The residential  
12 neighborhoods within and surrounding the central business  
13 district are the backbone of Silver Spring. The  
14 development of downtown Silver Spring -- without regards  
15 to the needs of the existing neighborhoods. That the  
16 challenge is to make the new development as compatible as  
17 possible with existing low density single family  
18 communities surrounding the CBD." In addition, it  
19 states, and I quote again, "Silver Spring has an  
20 obligation to mitigate the impact of urban development on  
21 adjacent neighborhoods. This plan mandates the county  
22 policy of protecting these neighborhoods from large  
23 volumes of traffic and we hope parking, which can be  
24 disruptive to residential areas."

25 I want to thank you again for the opportunity to

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

April 19, 2013

**Anne M. Mead**  
[amead@linowes-law.com](mailto:amead@linowes-law.com)  
301.961.5127

John Marcolin RLA, CNU, LEED AP  
Area 1 Planner/Coordinator, Urban Designer  
Montgomery Planning Department  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

Hand Delivered

Re: 8001 Newell Street – Project Plan No. 920130020 (the “Project Plan”)

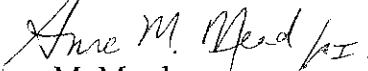
Dear Mr. Marcolin:

Pursuant to our recent discussion, please find enclosed updated plans for the above-referenced Project Plan (the “Revised Plans”). Although our initial review of the Project Plan after the deferred December hearing included consideration of setting the massing of the building back from Newell Street to accommodate other interpretations of the Overlay Zone, the community and planning feedback has consistently been to create a street edge along Newell Street and preserve the generous courtyard and public space we had proposed along the southeastern property line adjacent to existing multi-family buildings. Therefore, the Revised Plans reflect an increase in the minimum setbacks from the southeastern property line by four (4) feet at the southernmost section in the public use area next to the retail, from 25 feet to 29 feet, and an increase of five (5) feet along that property line at the private courtyard section, from 25 feet to 30 feet at the edge of the reduced bays kept for articulation (31 foot setback to building edge). Portions of the building were moved slightly closer to Newell Street (one foot), but the area for a supplemental green streetscape edge is maintained. Other than the minimum setback from the southern property line increasing from 25 to 29 feet, the development standards on the Revised Plans remain the same (although slightly reduced, the retail area is rounded up to maintain the same 3,100 square feet maximum for Project Plan). Most important, the public use space has remained the same with the proposal (and the private courtyard area has increased).

Please let me know if you have any questions or need any additional information. Thank you for your continuing assistance in this matter.

Very truly yours,

**LINOWES AND BLOCHER LLP**

  
Anne M. Mead

Enclosures

\*\*L&B 2353883v1/12148.0001

Appendix D: Letter from Marlene Michaelson, Legislative Aid to  
County Councilmember ValerieErvin

**MCP-CTRACK**

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**From:** Romer, Richard <Richard.Romer@montgomerycountymd.gov>  
**Sent:** Friday, February 22, 2013 3:29 PM  
**To:** MCP-Chair  
**Cc:** Garcia, Joyce  
**Subject:** Newell Street Height Limits  
**Attachments:** Newell Height Limits.pdf; Meijer Letter Jan 2013.pdf

**RECEIVED**  
0153  
FEB 25 2013

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Good afternoon,  
Please find the attached memorandum from County Council staff to Councilmember Valerie Ervin regarding the Silver Spring CBD Sector Plan and Newell Street height limits.  
Thanks,  
Rich

**Richard Romer** | Policy Analyst  
**Councilmember Valerie Ervin** | District 5  
100 Maryland Avenue, 6th Floor, Rockville, MD 20850  
(240) 777-7957 (phone) | (240) 777-7989 (fax)  
Twitter: [@ValerieErvin](#) | [Website](#)  
*"Working together we can achieve great things"*

## MEMORANDUM

February 21, 2013

TO: Councilmember Valerie Ervin

FROM: Marlene Michaelson, Senior Legislative Analyst

SUBJECT: Silver Spring CBD Sector Plan and Newell Street Height Limits

You asked me to comment on a letter you received from Daniel Meijer, asserting that the intent of the Silver Spring CBD Sector Plan (February 2000) was to limit heights along Newell Street to 45 feet and that the zoning text amendment creating the Ripley/South Silver Spring Overlay Zone incorrectly added the words indicating that the height limit only applied to land confronting a residential zone in the "District of Columbia".

I staffed the Council review of the Silver Spring Sector Plan and the zoning text amendment and recently reviewed both the Sector Plan language and the Council minutes to help me recall the Council discussion. Unfortunately, the Sector Plan has conflicting language. On page 60 in the summary of the overlay zone, there is a bullet that describes one of the major provisions of the overlay zone as follows:

- Limit building height for new construction **along Eastern Avenue**, fronting **one-family detached** dwellings in the **District of Columbia** as follows: at the property line, building heights should be limited to 45 feet. Above 45 feet, the building may step back 60 feet and its height may increase to 90 feet. (bolding added by Staff for this memo)

Then on page 86 in the Urban Design section of the Sector Plan, it has a somewhat different recommendation:

- Building heights along **Newell Street and Eastern Avenue** should ensure compatibility with the **adjacent residential neighborhood**.
  - At the property line, building heights should be limited to 45 feet.
  - Above 45 feet, the building may step back 60 feet and its height may increase to 90 feet.

The current Zoning Ordinance includes the following language<sup>1</sup>:

- (1) Building height in the overlay zone along **Newell Street and Eastern Avenue** that confronts a **residential zone in the District of Columbia** must not exceed a height of 45 feet. However, this building height may be increased to:
  - (A) a maximum of 90 feet for any building or portion of a building that is set back at least 60 feet from the street; or
  - (B) a maximum of 125 feet for residential development that is set back at least 100 feet from Eastern Avenue and Newell Street and includes a public parking garage constructed under a General Development Agreement with the County.

The language on page 60 does not include Newell and clearly references **one-family detached** dwellings in the **District of Columbia**. The language on page 86 includes both Eastern and Newell and more broadly refers to “adjacent residential neighborhood”. My recollection is that the Council was primarily concerned with compatibility with the **single-family detached** homes along Eastern. I do not recall, nor is there anything in the Council minutes to indicate that the language on page 86 was added to intentionally broaden the scope of the height limit.<sup>2</sup> By contrast, the Council minutes indicate that the Planning, Housing, and Economic Development (PHED) Committee and Council voted on the specific language in the text amendment quoted above.<sup>3</sup> Council minutes also indicate that, in discussions regarding height on other properties in the Sector Plan, the Council’s goal was to encourage redevelopment while also trying to ensure compatibility. Based on this review, I have no reason to believe the Council inadvertently included the wrong language in the zoning text amendment.

Moreover, from a substantive point of view, I do not believe the Council’s intent for the property on the southeastern side of Newell Street was to limit height to significantly less than allowed by zoning for the adjacent properties. The Council frequently limits the height on properties adjoining single-family detached residential homes (which exist on Eastern Avenue in the District of Columbia). To my knowledge, it has never limited the height to 45 feet on a property **between** other properties zoned CBD-1 and R-10 (high density multi-family). Other than the single-family detached residential across Eastern Avenue, the property is surrounded by properties zoned R-10 and CBD-1, and the existing development includes garden apartments, multi-family buildings, and non-residential buildings. While current heights range from 40 feet to 110 feet, zoning would allow the CBD property to be as high as 143 feet, and **there is no height limit** in the R-10 zone. When the Council makes a determination on a specific property to create limits inconsistent with typical practices, it generally includes an explanation for this deviation. There is no indication that the Council’s intent was to limit heights to significantly less than allowed on the adjacent properties and no rationale included in the Sector Plan language on page 86.

Where the height limit does apply, it can exceed 45 feet if it is set back 60 feet. However, the property being considered for redevelopment is only 100 feet wide. If this language were to apply to this property, Planning Staff concluded that such a restriction “would effectively eliminate the applicant’s ability to develop the property to the density allowed by the optional method of development”, making redevelopment unlikely. The Council upzoned this property along with others in South Silver Spring

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<sup>1</sup> §59-C-18.202(b)(1).

<sup>2</sup> The language on page 60 was in the Planning Board Draft submitted to the Council. The language on page 86 was added as part of an entirely new chapter on Urban Design.

<sup>3</sup> The Council held a public hearing on the text amendment, conducted worksessions open to the public, and specifically voted on the language in question, so I do not agree with Mr. Meijer’s assertion that the language related to the District of Columbia was “a legislative act without any due process by the codification ministerial or administrative authors”.

from CBD-0.5 to CBD-1 for the specific purpose of encouraging revitalization and the redevelopment of vacant or underutilized land. Given the strong emphasis placed on the importance of redevelopment throughout the Sector Plan, the heights allowed by the zoning on surrounding properties, and the record of the Council discussion, Staff does not believe it was the Council's intent that the Sector Plan require the 45 foot height limit and related setback requirement along the full length of Newell, but only at the corner where it confronts a residential zone in the District of Columbia. It is important to note that the Planning Board considers a number of factors when they review development plans and could determine that it needs to limit height for a variety of different reasons other than conformance with the Sector Plan. I am unable to comment on whether there are other factors that could lead to such a decision in this particular case.

f:\michaelson\1plan\newell height limits.doc

Daniel Meijer  
929 Gist Avenue  
Silver Spring Maryland 20910

December 10, 2012

Dear Councilmembers Valerie Erwin and Marc Elrich,

A recent M-NCPPC staff report has brought to my attention that an aspect of the current Silver Spring Sector Plan was incorrectly codified into the zoning ordinance.

Specifically, page 86 of the Silver Spring Sector Plan (the Plan) states: "building heights along Newell Street and Eastern Avenue should insure compatibility with the adjacent residential neighborhood" and that "at the property line, building heights should be limited to 45 feet" and "above 45 feet the building may step back 60 feet and its height may increase to 90 feet."

However, Section 59-C-18.202(b)(1)(A) of the zoning ordinance, written to implement the Plan, provides: "Building height in the overlay zone along Newell Street and Eastern Avenue that confronts a residential zone in the District of Columbia must not exceed a height of 45 feet" followed by the same setback requirements (emphasis added).

If the Plan's intent was only to reduce building heights that "confronts a residential zone in the District of Columbia," the Plan would have needed to include only Eastern Avenue. Since the Plan also expressly refers to "building heights along Newell Street," a street that primarily "confronts" a residential neighborhood in Montgomery County, it is abundantly evident that the Plan's intent was to provide the same protective setback restrictions to an "adjacent residential neighborhood" in Montgomery County as well.

In summary, the additional language inserted in the codification (limiting setback requirements only to properties in DC), which implemented this portion of the Plan appears to constitute a significant change in the Plan. I believe this has become a legislative act without any due process by the codification ministerial or administrative authors, acts that have consistently been condemned by the Court of Appeals.

Why is this significant at this time? Because a developer has proposed constructing a 74 foot (seven story) building at this location. The M-NCPPC staff report asserts that because this additional language ("in the District of Columbia") was inserted in the codification process, the adjacent R-10 residential neighborhood across Newell Street in Montgomery County is excluded from the same building height compatibility concerns that the Plan expressly addressed.

On behalf of the affected community, I ask you to correct this codification error so that the zoning code properly implements the actual intent of the Plan.

Sincerely,

Daniel Meijer



**To: DC Council Member Muriel Bowser  
Montgomery Council Member Valerie Ervin**

January 22, 2013

Dear Council Members,

Thank you for organizing and hosting last Monday's (1/14/13) cross-jurisdictional meeting to address the issues described in the 1/14/13 Washington Post Metro article (attachment 1). We would like to propose a realistic solution to the lack of sufficient green space in South Silver Spring, MD, that is having an adverse impact in adjacent Shepherd Park, DC.

Based on a recent Planning Board hearing, it appears that the development height restrictions which the overlay zone applies to a non-conforming single story self-storage facility for sale at 8001 Newell Street will limit its potential redevelopment. However, the property's availability, shape, one acre size, and location present an ideal location for a buffer park (which would also extend/enlarge the mini Acorn Park on the corner of East-West Highway and Newell Street). We believe this could help resolve the dog park problem at the DC/MD line, described in an 8/17/12 memorandum to PHED Chair Nancy Floreen\* (attachment 2), as well as in a letter from an affected resident in Shepherd park (attachment 3)

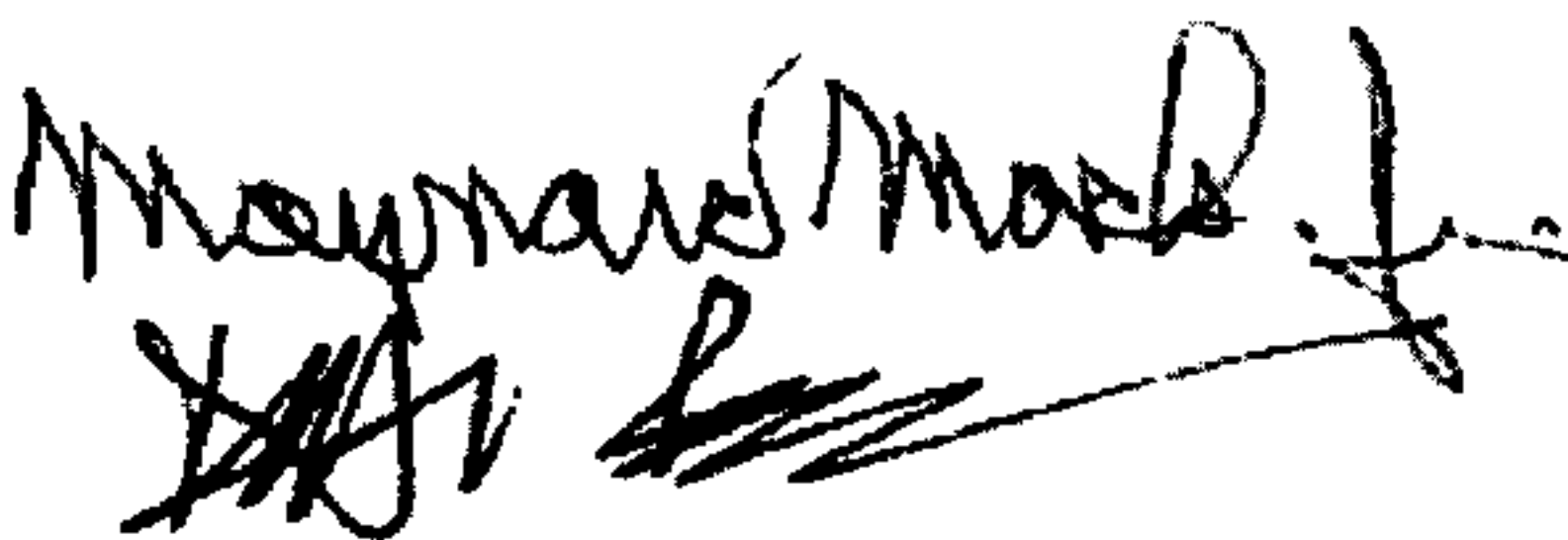

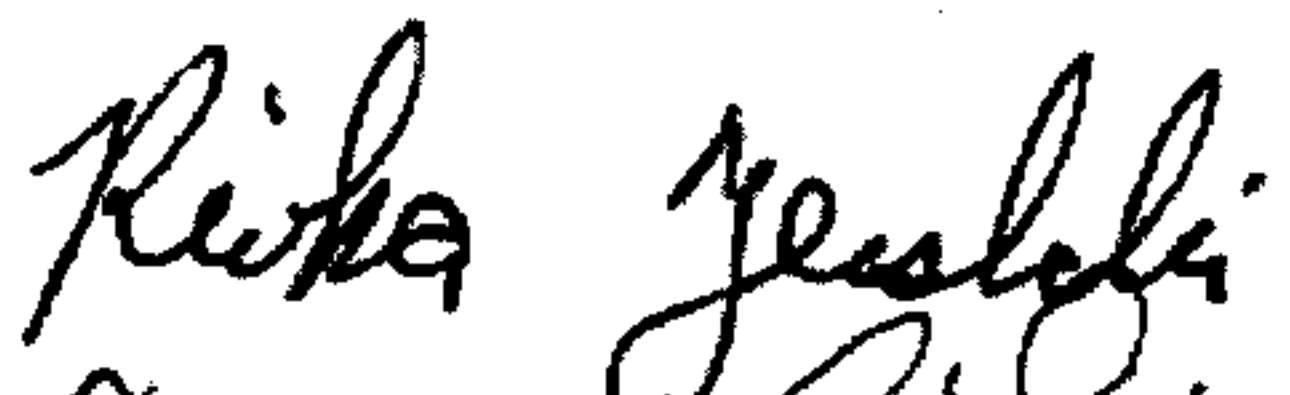

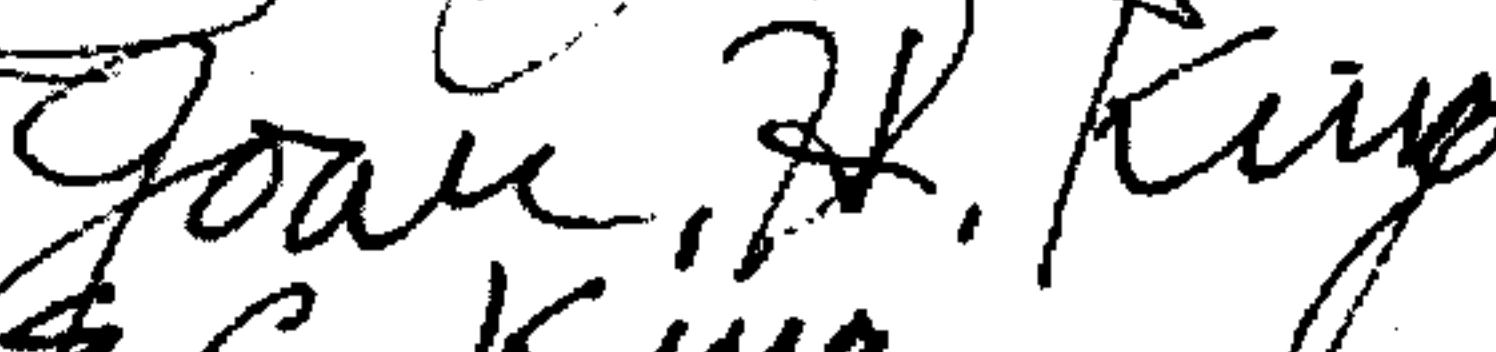


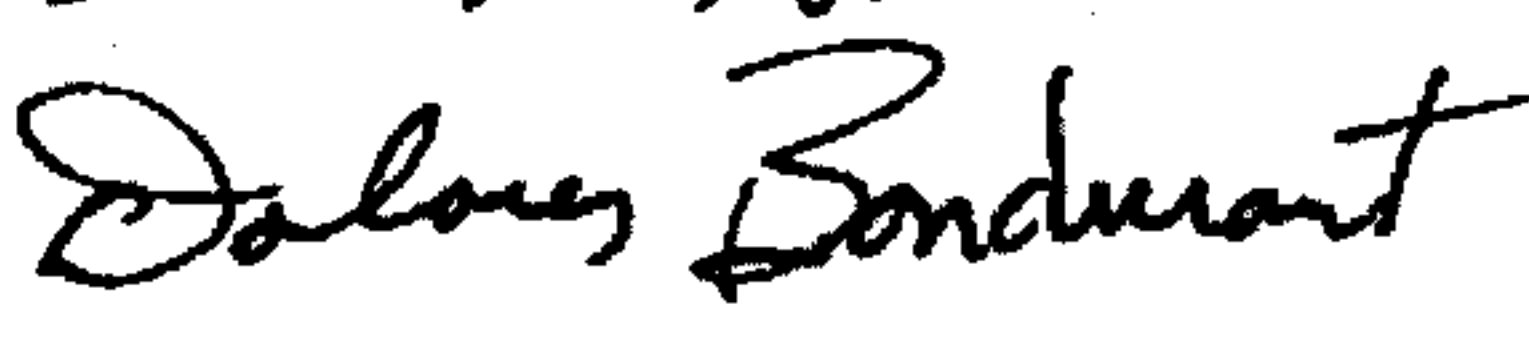
Such a "Buffer Park" exists between a CBD and a residential zoned community on the MD side of the border on the west side of Rock Creek Park (attachment 4). We hope therefore, that Montgomery County will also install a similar buffer park on the east side of Rock Creek Park.

Members of the "Park Now for South Silver Spring" have collected nearly 550 signatures in support of this buffer park at 8001 Newell Street. From 2000-2010, it appears that Montgomery County spent about \$143 million on "Park Land Acquisition." Surely some of that historically impressive budget can for once be diverted to address the needs of South Silver Spring condominium owners as well as renters – mostly young urban professionals who pay considerable taxes with very little demand for County resources (such as schools).

Continued on page 2

Since 2010, the area has experienced an 18% population growth, rendering some of the 2010 "Silver Spring [CBD] Green Space Guidelines" data and recommendations obsolete and in need of a serious re-evaluation and prioritization. A new park in Wheaton exemplifies such re-evaluations (attachment 5). **For all these reasons, we feel the Newell Street Buffer Park land acquisition opportunity needs to be the current number one prioritization towards resolving some of the adverse impacts that excessive development is having on the affected communities in both South Silver Spring and Shepherd Park DC.**

Thank you for your consideration of our concerns and efforts to date.

<u>Print Name</u>	<u>SIGNATURE</u>	<u>Address</u>
MAYNARD MACK		8045 Newell St #424
DAWN BROSAN		8045 Newell St. #212
Rivka Yerushalmi		8045 Newell St #702
Eileen La Fleur		8045 Newell St. #216
Joan H. King		7981 Eastern Ave. #401
Edward C. King		7981 Eastern Ave. #401
Elaine Mack		8045 Newell, #424
Dolores Bondurant		7923-14th St. NW - Wash DC 20016
Judith S. Brown		(7820-14th St. NW - Wash DC)

\*Montgomery County Council Member Nancy Floreen should be quite sensitive to excessive development at the edge of the CBD based on her outstanding legal assistance to a residential community on the North side of the Silver Spring CBD to reduce the height of a building at 801 Cedar Street (attachment 6). So we hope she will be equally as helpful in addressing the adverse impacts of excessive development to a DC single family home community on the South side of the Silver Spring CBD.

NEE TATUSKO Genevieve X. Tatusko  
Roderrick Corriveau Moderic A. Corri-

Abigail Daken

Salvatore ROMANO

Richard Rosen

MICHELE ROSEN

Theresa Escoffery

Clayton Cohen

Salvatore Romano

Richard L. Rosen

Michelle Rosen

8045 Newell St #112, SS, MD

8045 Newell, # 317, SS, MD

20910  
7981 Eastern Ave. #308, SS, MD

8045 Newell St #317, SS, MD

8045 Newell St. #207, SS, MD

8045 Newell St. #207 SS, MD

8045 Newell St #207 SS, MD



DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Isiah Leggett  
County Executive

Richard Y. Nelson, Jr.  
Director

December 13, 2012

Mr. John Marcolin  
Area I Division  
Maryland-National Capital Park and Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

Re: 8001 Newell Street  
Project Plan No. 920130020

Dear Mr. Marcolin:

The Department of Housing and Community Affairs (DHCA) has reviewed the responses of the applicant for the above Project Plan to DHCA's Development Review Committee (DRC) comments. As requested by DHCA, the applicant has confirmed and acknowledged receipt of DHCA's comments, which are advisory at this stage. DHCA does not have any further comments on the Project Plan. We will provide further comments at the Preliminary Plan and Site Plan stages.

Sincerely,

Lisa S. Schwartz  
Senior Planning Specialist

cc: William R. Landfair, VIKA Maryland, LLC  
Anne Mead, Linowes and Blocher LLP

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**Division of Housing**

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Housing Development  
& Loan Programs  
FAX 240-777-3691

Landlord-Tenant Affairs  
FAX 240-777-3691

Licensing & Registration Unit  
240-777-3666  
FAX 240-777-3699

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