

**900 Thayer Avenue (Formerly "The Adele"),  
Project Plan Amendment 92005003A, Preliminary Plan Amendment 12005077A, Site Plan Amendment 82006020A**

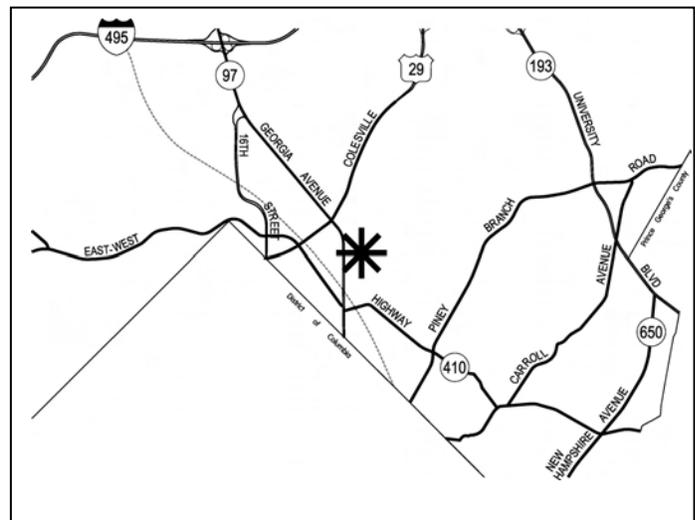
 Elza Hisel-McCoy, Assoc. AIA, LEED-AP, Planner Coordinator, elza.hisel-mccoy@montgomeryplanning.org, 301.495.2115

 Robert Kronenberg, RLA, Acting Chief, Area 1 Division, robert.kronenberg@montgomeryplanning.org, 301.495.2187

**Completed: 5.20.13**

### Description

- Located in the southwest quadrant of the intersection of Fenton Street and Thayer Avenue, in the Fenton Village section of the Silver Spring CBD
- CBD-1/Fenton Village Overlay Zone, Silver Spring CBD Sector Plan, 0.96 acres
- Redesign the original project to 119,691 sf of mixed uses, including 124 du (incl. 12.5% MPDUs) and up to 5,300 sf. retail uses
- Redbrick Partners
- Submitted 3.4.13



### Summary

- Staff recommends APPROVAL WITH CONDITIONS of the Project Plan Amendment, Preliminary Plan Amendment, and Site Plan Amendment
- The public use space and public amenity package raises concerns about conformance with the CBD-1 optional method requirements, portions of the Sector Plan, and compatibility with planned development in Fenton Village. Staff recommends conditions to address these concerns. The Applicant does not agree with all of the conditions.

---

**TABLE OF CONTENTS**

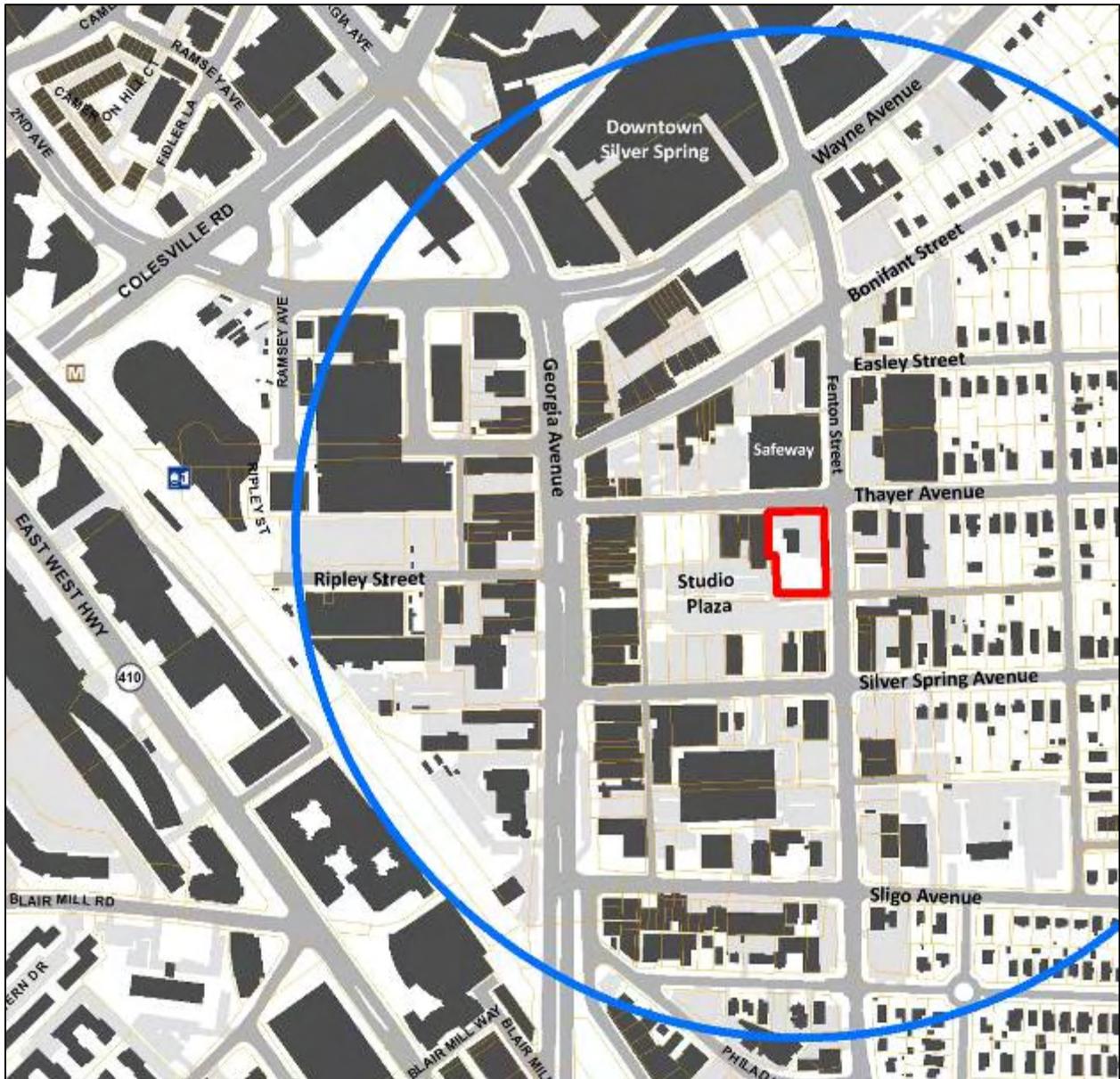
<b>SITE DESCRIPTION</b>	<b>3</b>
Vicinity	3
Site Analysis	4
Previous and Related Approvals	7
<b>PROJECT DESCRIPTION</b>	<b>9</b>
<b>Proposal</b>	<b>9</b>
Design	9
Public Use Space and Amenities	12
Vehicular & Pedestrian Circulation	17
<b>Issues &amp; Analysis</b>	<b>17</b>
Service Access	17
Public Use Space and Amenities	17
Sector Plan Conformance	26
Compatibility	27
<b>CORRESPONDENCE</b>	<b>28</b>
<b>FINDINGS, RECOMMENDATIONS, &amp; CONDITIONS</b>	<b>30</b>
Project Plan Amendment	30
Preliminary Plan Amendment	32
Site Plan Amendment	34
<b>APPENDICES</b>	<b>39</b>

---

**ILLUSTRATIONS & TABLES**

<i>Vicinity map</i>	3
<i>Street view of site</i>	4
<i>Aerial photograph</i>	5
<i>Aerial photo looking west</i>	6
<i>Site Plan 820060200</i>	7
<i>Original schematic elevation</i>	8
<i>Abandoned alleys, Parking Lot 3</i>	8
<i>Street view of public alley</i>	9
<i>Illustrative Site Plan</i>	10
<i>Architectural perspectives</i>	11-12
<i>Proposed public use space</i>	13
<i>Table 1: Amenity fund calculation, Applicant proposal</i>	14
<i>Public art locations perspective views</i>	15-16
<i>Proposed public use space detail</i>	18-19
<i>Table 2: Amenity fund calculation, staff proposal</i>	20
<i>Public use space design changes, comparison</i>	21
<i>Optional method projects, Fenton Village</i>	23
<i>Studio Plaza illustrative site plan</i>	24
<i>Promenade precedent images</i>	25
<i>Table 3: Project Data Table</i>	35

---



*Vicinity Map*

## **SITE DESCRIPTION**

### **Vicinity**

The subject site is located in the Fenton Village area of the Silver Spring Central Business District, at the intersection of Fenton Street and Thayer Avenue, and is about a quarter-mile from the Silver Spring Metro station. Fenton Village is developed with low- to mid-rise commercial and residential buildings and a few high-rise residential or commercial buildings. To the east of Fenton Village is the predominantly single-family East Silver Spring neighborhood; to the west are higher-density residential and commercial uses along Georgia Avenue and the CSX/Metro train tracks. Downtown Silver Spring and the new Silver Spring Public Library and Purple Line Station are within a five-minute walk. A Safeway supermarket is located directly across Thayer Avenue.

Development approved in the vicinity includes mid-rise hotel and residential uses east of Fenton Street (i.e., 814 Thayer and Silver Spring Park) and high-rise residential and commercial uses west of Fenton Street towards Georgia Avenue (i.e., Studio Plaza). Public Parking Lot 3, located at the center of the block including the site, is included as part of the larger Studio Plaza project, and is accessed from Fenton Street by a driveway running along the south side of the subject site.

**Site Analysis**

The approximately one-acre site is located on a recorded lot in the southwest corner of the intersection of Fenton Street and Thayer Avenue. The site is zoned CBD-1 and is in the Fenton Village Overlay Zone.

The subject property is partially improved with a one-story automotive service building and associated surface parking lot. The remainder of the lot, which once featured a three-story commercial building that was damaged by fire and demolished, is vacant.

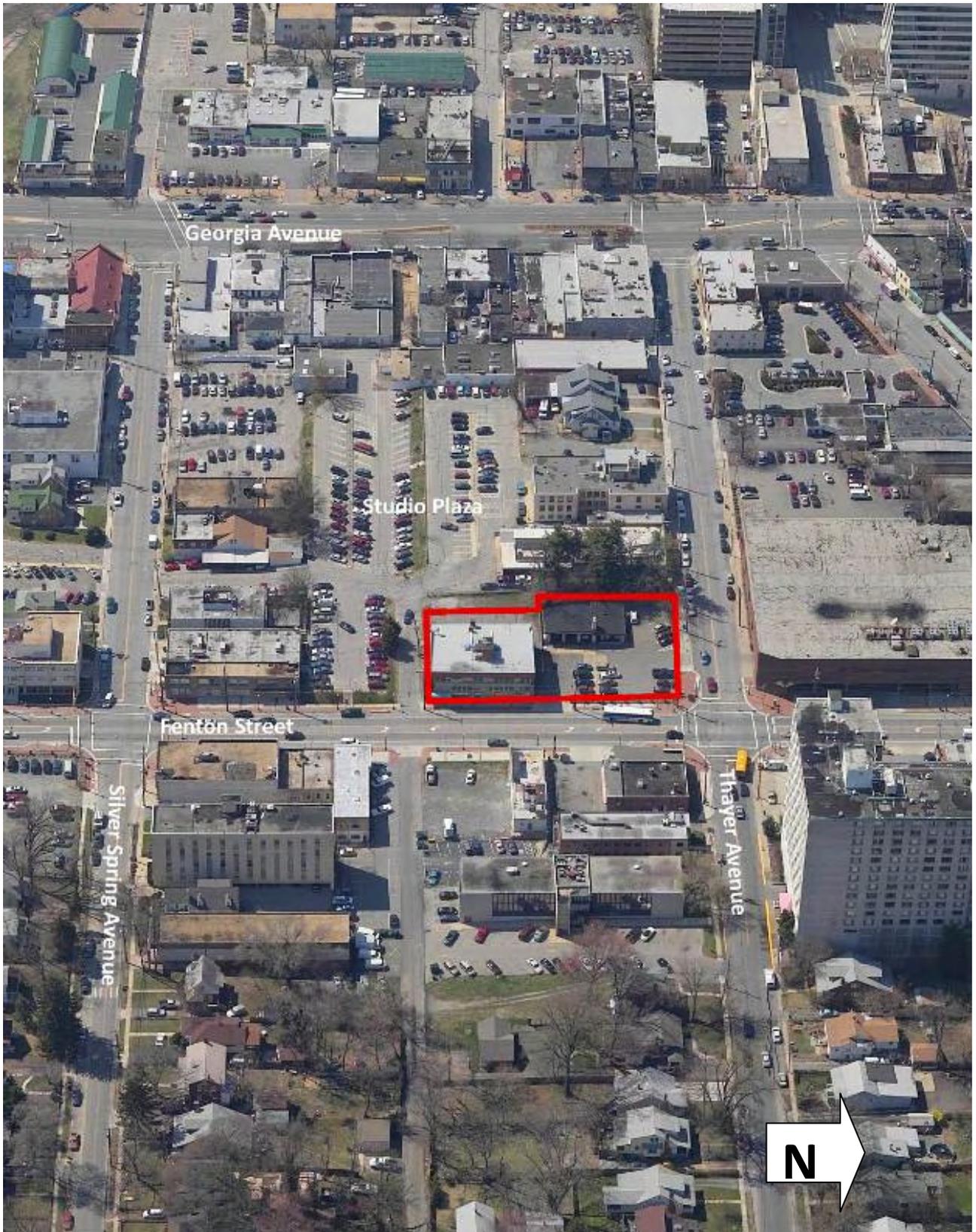
Along Fenton Street, the site is relatively flat, sloping down about three feet from Thayer Avenue. Moving into the site, however, the grade is much steeper, rising about nine feet up Thayer Avenue and the parking lot access drive.



Street view at Fenton Street (left) and Thayer Avenue (right)



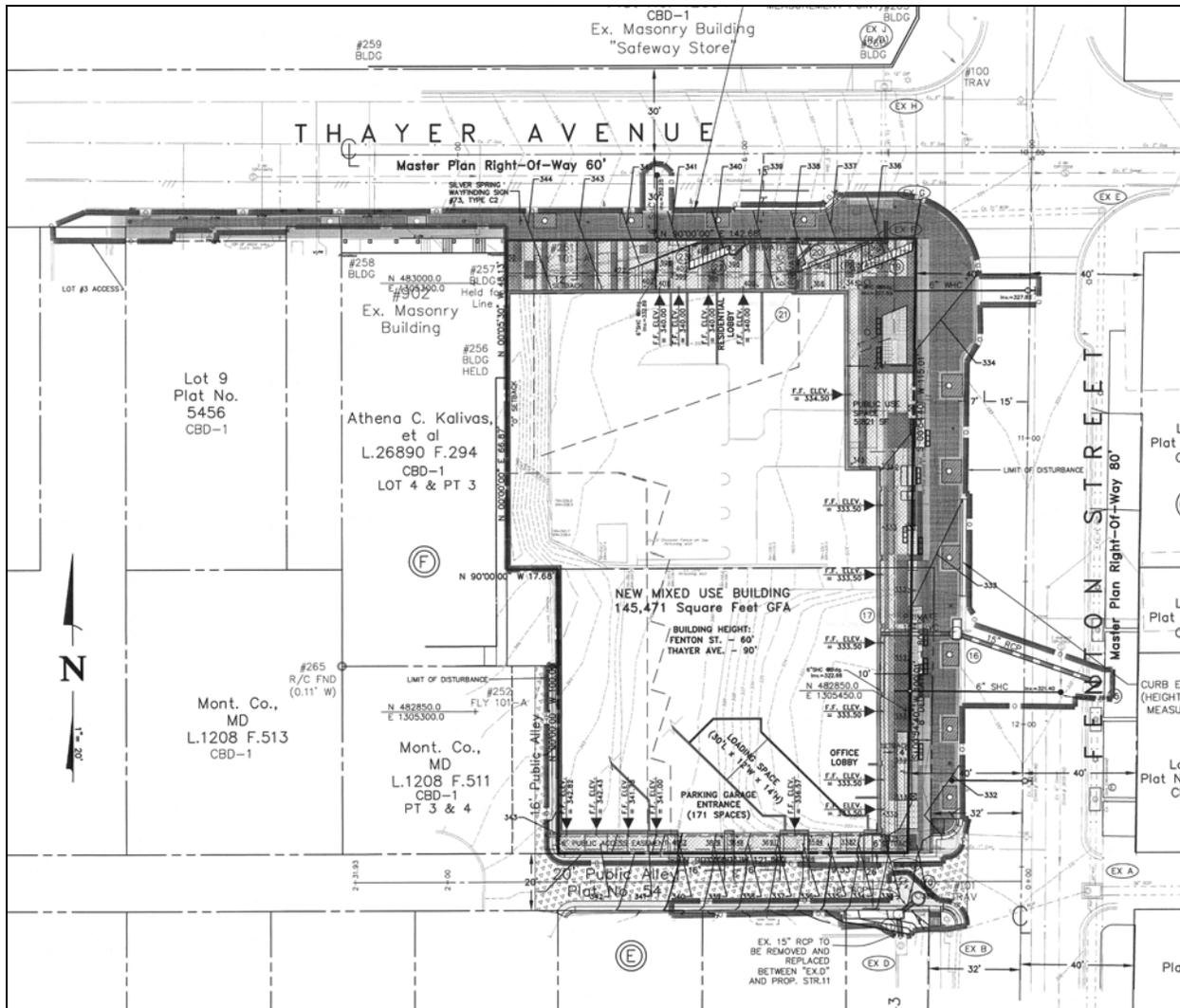
*Aerial Site Photo*



*Aerial Photo Looking West*

## PREVIOUS AND RELATED APPROVALS

On June 23, 2005, the Planning Board approved Project Plan 920050030 and Preliminary Plan 120050770, Easley Subdivision (The Adele), for 145,471 sf. of development, with 96 multi-family units (incl. 15% MPDUs) and 33,220 sf. of office and retail uses on one lot of 0.96 gross acres (resolutions mailed January 10, 2006). On April 6, 2006, the Planning Board approved Site Plan 820060200, Easley Subdivision (The Adele), for 145,471 sf. of development, including 96 multi-family units (including 15% MPDUs), 15,020 sf. of retail, and 18,200 sf. of office uses (MCPB. 06-08, dated July 14, 2006).



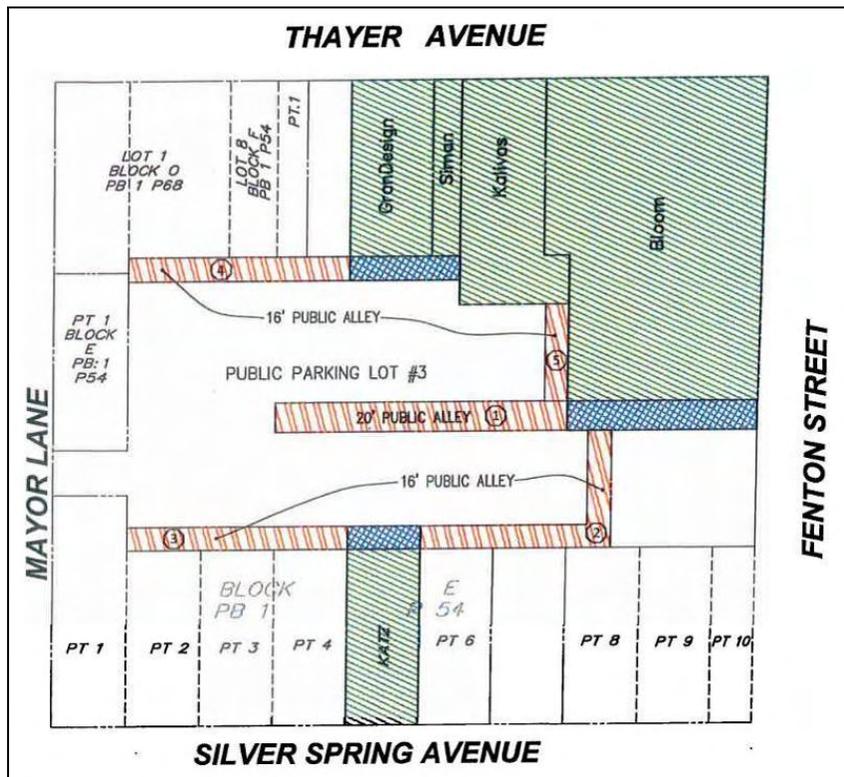
Site Plan 820060200

The approved building was 60' high along Fenton Street and after a modest step back rose to 90'. The Site Plan included 5,705 sf. of public use space (20% of the net lot area) and 6,763 sf. of public amenity streetscape improvements along and beyond the site frontage (23.7%), as well as additional amenities including a contribution of \$70,000 to M-NCPPC for acquisition of or improvements to parkland in the CBD, public art integrated into seating areas, streetscape paving, and railings, and a public access easement on the north side of the adjacent drive.

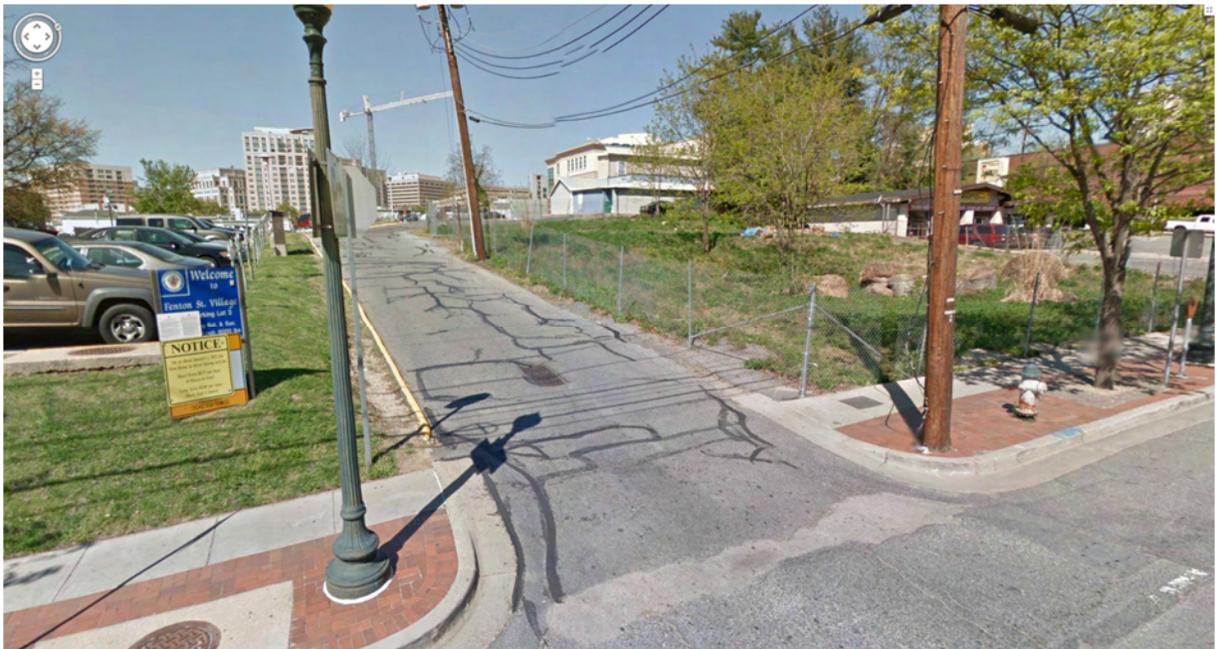


Original approved schematic elevations

As part of the subsequent Studio Plaza Project Plan review on the adjacent property, the County Council approved the abandonment of most of the public drives and alleys contained within and adjacent to existing County Parking Lot 3, to be incorporated into Studio Plaza. The public alleys not included in the abandonment were those providing service access to other properties on the block, including 900 Thayer Avenue (shown as “Bloom” in the diagram below). The property on the south side of that public alley is part of the Studio Plaza project.



Abandoned alleys in Parking Lot 3, in orange (alleys retained in blue)



*Street view of public alley, with site at right*

## **PROJECT DESCRIPTION**

### **Proposal**

The proposed amendments reimagine the entire project from a 9-story, 145,471 sf. building with 96 dwelling units (with 15% MPDUs) and over 33,000 sf. of office and retail uses to a 6-story, 119,691 sf. building with 124 units (with 12.5% MPDUs) and 5,300 sf. of retail. This represents about a 20% reduction in the overall density on the site. The amendment does not propose to alter the size of the lot, at 41,743 gross sf. (0.96 acres).

### Design

The proposed building has five stories of apartments over street-level retail and two levels of structured parking built into the hill. On Fenton Street, the building façade reaches about 60' (about 55' when measured from the building height measuring point on Thayer Avenue), then steps back 14' for an additional story and a total building height of about 70' (about 65' at the building height measuring point).



*Illustrative Site Plan*

The building is designed around a central courtyard that serves as both the main public use space and the private residential entrance. The stormwater management concept for the site includes microbioretention planters integrated into the courtyard with seating elements, as well as raised planters along Fenton Street and a portion of Thayer Avenue.



*Perspective view across Fenton Street from Thayer Avenue*



*Perspective view of entry court/public use space on Fenton Street*



*Perspective view, corner of Fenton Street and Thayer Avenue*



*Perspective view, corner of Fenton Street (right) and public alley*

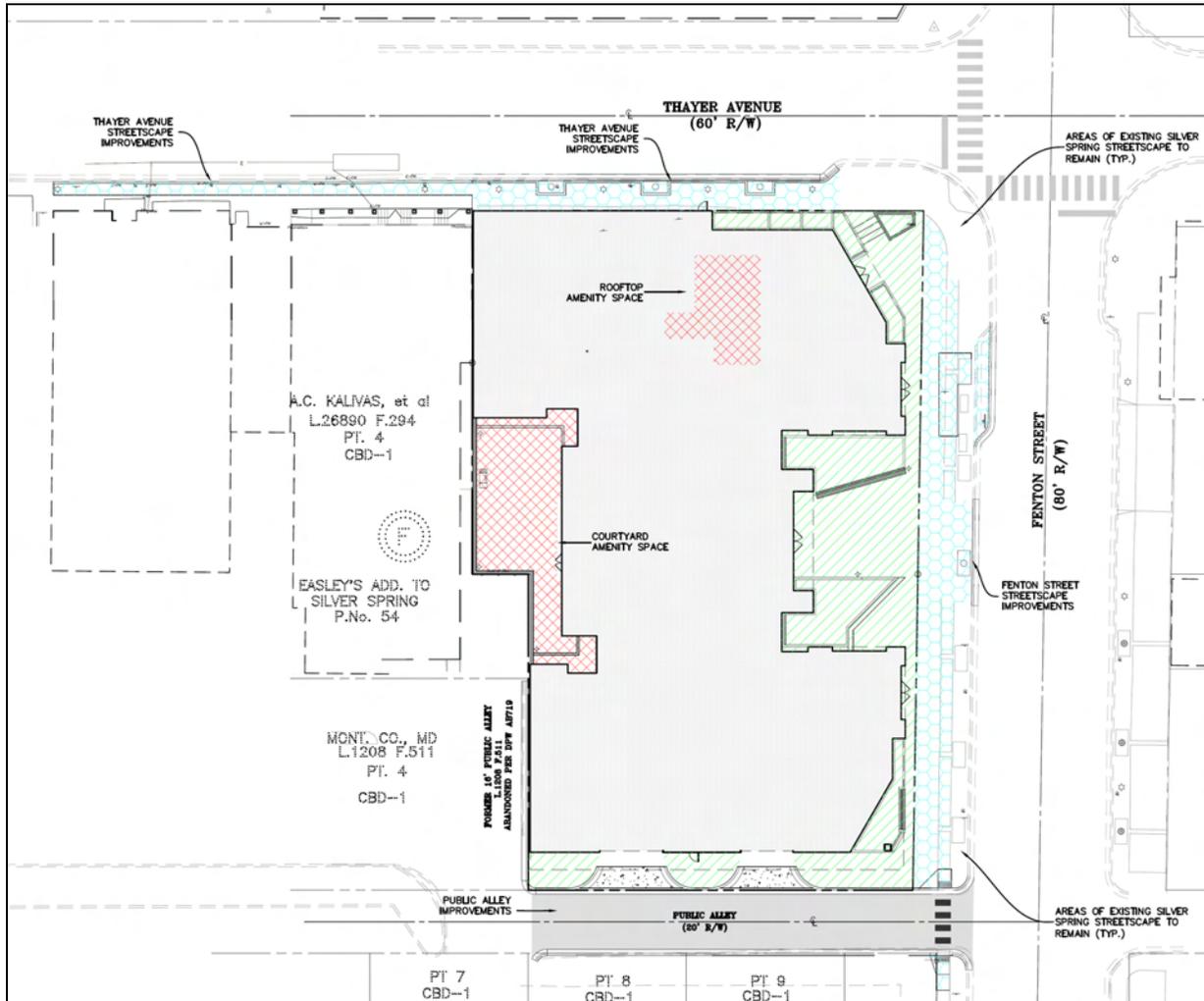
### Public Use Space and Amenities

The revised design proposes 5,320 square feet (sf.) of on-site public use space. This is 385 sf. short of the 5,705 sf. that constitutes the minimum 20% of the net lot area (about 1.3%). As shown below, the public use space includes area along adjoining public rights-of-way between the property line and the building, as well as a central courtyard located off Fenton Street.

This courtyard covers approximately 2,167 sf. and includes large raised planters that cover about 40% of the space and serve as part of the stormwater management system for the

project. The remaining roughly 60% is physically occupiable and includes a central area running from the Fenton Street sidewalk to the private residential entrance vestibule and a secondary seating area oriented to the adjacent retail bay along Fenton Street.

Staff has concerns about the quality of the proposed public use space, and has included conditions for their redress. See the discussion in the Analysis section below, as well as the Site Plan conditions.



*Proposed public use space (green) and streetscape improvements (blue)*

To address the shortfall in the amount of on-site public use space, the Applicant will be making an Amenity Fund contribution towards Gene Lynch Urban Park – scheduled for construction upon completion of the Silver Spring Transit Center – or other future amenity as determined by the Planning Board, per the requirements of 59-D-2.31. This amount is calculated using the two-part formulation comprised of a property value component and a cost-of-streetscape component.

Table 1: Amenity Fund Calculation, based on Applicant’s proposal

Property value (1.3% of assessed land value, \$1,711,500)	\$22,250
Cost of streetscape (385 sf. @ \$35/sf.)	\$13,475
<b>Total</b>	<b>\$35,725</b>

As a public amenity, the Applicant will provide and install 4,446 sf. (15.6% of the net lot area) of off-site streetscape improvements along the site frontage, and also on the south side of Thayer Avenue between the site and the existing entrance driveway to Parking Lot 3, approximately 130 feet.

The Applicant is also providing a series of illuminated colored glass panels, designed and constructed by the Washington Glass Studio, along the building façade and culminating in a decorative column on the southwest corner of the building, to highlight the future pedestrian entrance to the Studio Plaza retail promenade and public green.



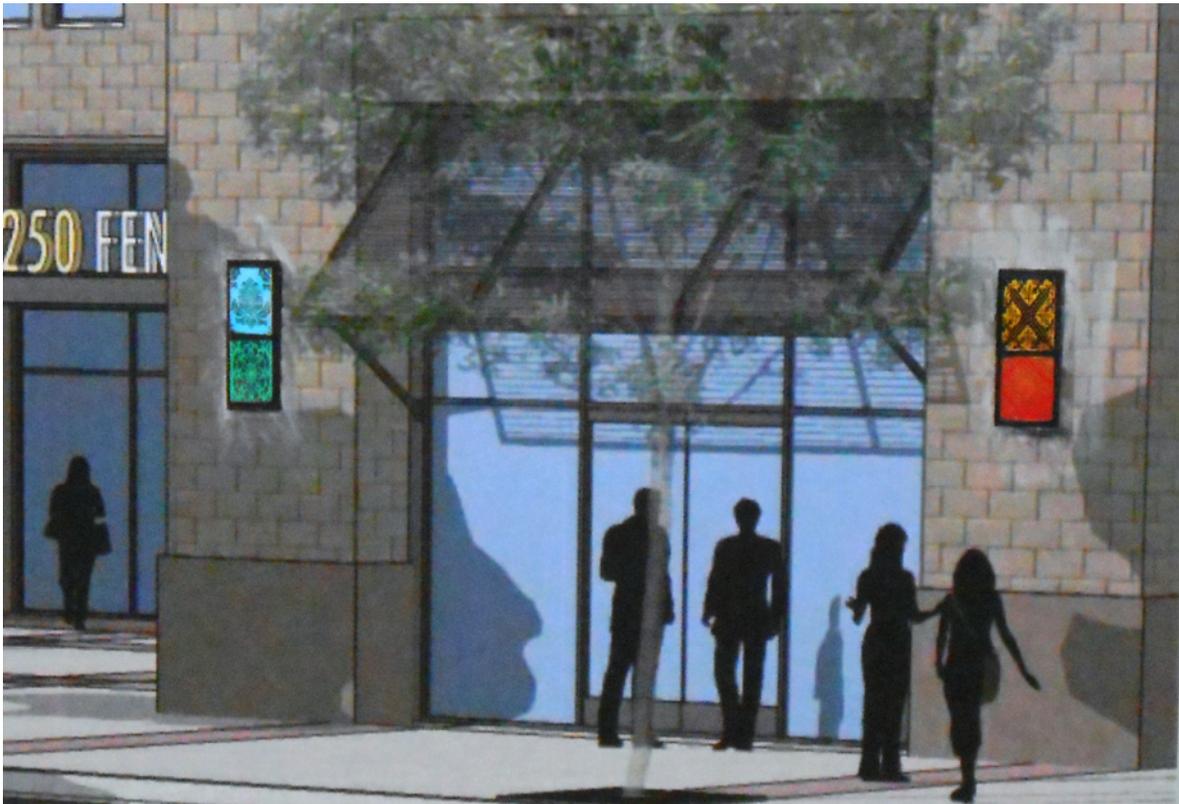
*Public art distribution along Fenton Street façade*



*Detail of corner column at future pedestrian gateway*



*Public art detail at private residential entrance*



*Public art typical detail at retail pavilion*

### Pedestrian and Vehicular Circulation and Parking

Pedestrian access to both the residential lobby and the street level retail is provided from the Fenton Street sidewalk. Secondary egress access is provided on the Thayer Avenue sidewalk. Vehicular access to the site for both parking and service is provided from the public alley connecting Fenton Street to County Parking Lot 3.

The on-site structured parking will provide 66 of the 146 spaces required by the zoning code. As the site is located within the Silver Spring CBD Parking Lot District, the Applicant will pay the appropriate parking tax for the balance of the required parking.

### **Issues & Analysis**

#### Service Access

In the context of the original approvals in 2005 and 2006, before the approval of the additional optional method projects in Fenton Village described below, loading and parking access from the public alley was a good solution. Furthermore, it was a solution arrived at after much collaboration between MCDOT, Planning staff, and the Applicant.

As new owner of the property the Applicant initially came in to discuss the new design, staff strongly encouraged them to investigate relocating service access away from the alley. In conversation with MCDOT and the Applicant, staff recommended providing loading access off Thayer Avenue and parking access off of Fenton Street. If the Applicant were able to remove vehicular access from the alley, that dead-end section of alley could be abandoned and incorporated into design of the pedestrian promenade included in the adjoining Studio Plaza development, described in greater detail below.

Citing primarily grading issues, the Applicant retained service access off the alley, which worked well with their building design. Staff did not continue to pursue the issue, instead focusing on alternative ways to improve the alley, as described below.

#### Public Use Space and Amenities

The CBD zones “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.” (59-C-6.212(c)). One of the ways the zones encourage this relationship is by requiring public use space and amenities to accompany each project in exchange for higher density than would be allowed “by right” (i.e., the “standard method” of development). Under this optional method:

greater densities may be permitted and there are fewer specific standards, but the developer must provide certain public facilities and amenities. 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. (59-C-6.215)

The original approval for this site achieved significantly greater density than would be allowed under both the standard method and the optional method by providing 15% MPDUs on-site.

This yielded 145,471 sf., over 60,000 sf. more than the standard method and 20,000 sf. more than the optional method with the minimum number of MPDUs (at 96 total units, the difference was 2 more MPDUs).

For these greater densities, the original approval included a public use and amenity package with 20% public on-site public use space, 24% public amenity space (streetscape), public art, a \$70,000 contribution to M-NCPPC for the acquisition of Park space, and a public access easement next to the public alley.

The redesigned project includes 119,691 sf. (with only 12.5% MPDUs), about 82% of the original approval, but still 36,000 sf. more than standard method. To justify this additional density, the Applicant has proposed a public use and amenity package that includes attractive public art, but provides less public use and amenity space and eliminates the \$70,000 payment.

*Public use space*

The proposed courtyard on-site public use space is deficient in quality of design for an optional method project, and staff recommends that the Board approve it only with conditions. Optional method CBD projects typically do not enclose public use space in a courtyard because this design creates a strong tension between what should be an inviting public area and the private building enclosing the space on three sides, making the space feel like a private entry court. More typically, the public use space is enclosed on only one or two sides, with a clear connection to the public sidewalk.



*Proposed courtyard public use space*

Staff recognizes, however, that this relatively small site poses challenges in integrating the building with public use space. The proposed design cleverly integrates the necessity of on-site stormwater management into the public use space in a way not commonly seen in optional method CBD projects. Adding seating to these stormwater planters also provides opportunities not only for people to meet and socialize, but also to interact with an essential, but often hidden, element in the servicing of the built environment. Thus staff recommends that the Planning Board accept the proposed public use space, on two conditions.

First, the portion of the courtyard that forms the entry vestibule, under the address signage for the building, will never be perceived as public use space and would be at odds with the building management's desire to control activity immediately outside the front door. While staff has recommended as public use space areas in front of building entrances on other projects, those projects typically have a more direct and open relationship to the public sidewalk. The entry vestibule on this project is unmistakably private space.



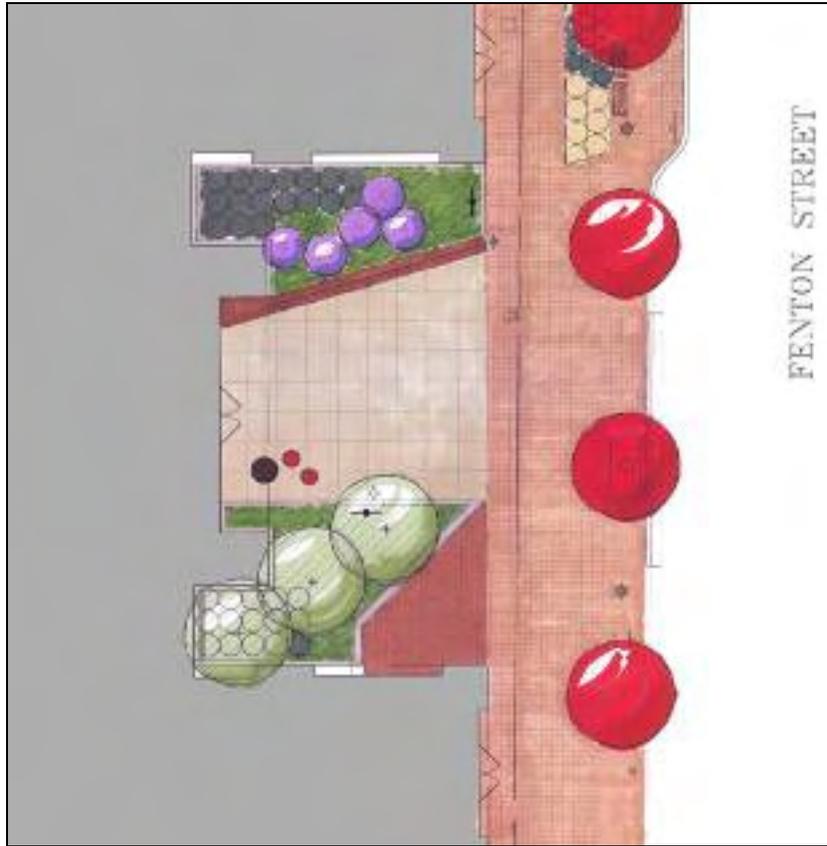
*Rendering of public use space showing private entry vestibule*

Staff recommends a condition that removes the 186 sf. from the calculation of on-site public use space. This condition would increase the deficit of public use space from 385 sf. to 571 sf. (from 1.3% to 2%), and increase the amenity fund payment for the project by about \$18,500.

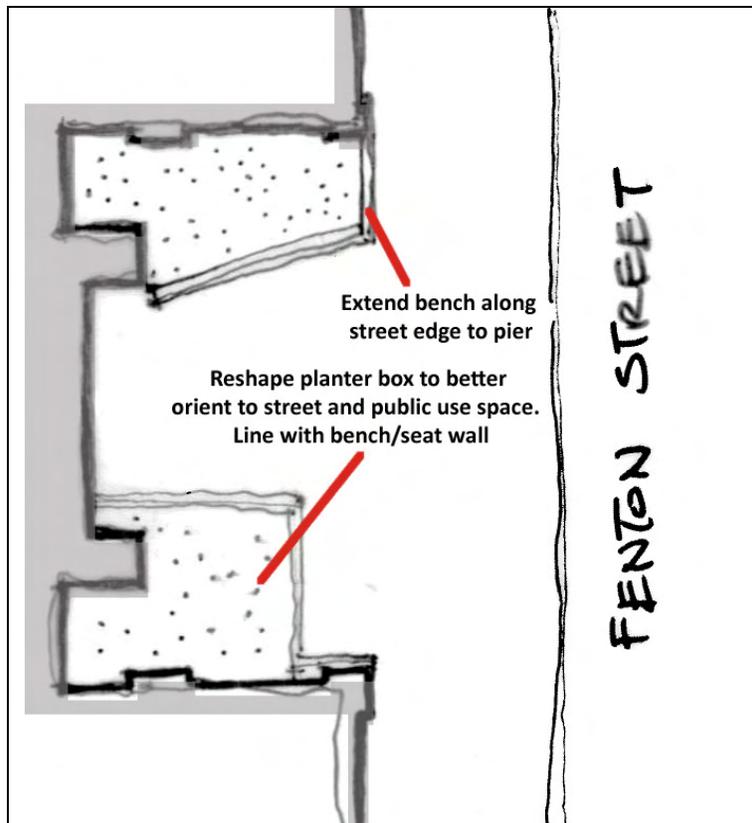
Table 2: Amenity Fund Calculation, based on Staff’s recommendation

Property value (2% of assessed land value, \$1,711,500)	\$34,230
Cost of streetscape (571 sf. @ \$35/sf.)	\$19,985
<b>Total</b>	<b>\$54,215</b>

Second, the orientation of the seating in the proposed design does not maximize its focus on the public space. Of primary concern is the smaller seating area in the southeast corner of the courtyard. The use of a different surface material in such a small space and a seating wall that turns its back on the main space is related more to the adjoining retail entrance than the public space. In order to make sure that the courtyard public use space is as inviting as possible, staff recommends a condition that refocuses these areas on public use. First, on the southern portion of the courtyard the Applicant must reconfigure the stormwater planter and the related seating to orient more directly to the public use space and sidewalk (see illustration below). Second the Applicant must extend the bench on the northern side of the courtyard planter to face directly onto Fenton Street. These changes will provide immediate and welcoming access to the space from Fenton Street. Staff will continue to work with the Applicant to finalize the design details at Certified Site Plan.



*Proposed courtyard public use space*



*Staff-recommended changes to the public use space design*

### *Public amenity space*

The original Site Plan included 6,763 sf. of streetscape improvements – including undergrounding of utilities – along Fenton Street and Thayer Avenue (23.7% of the net lot area). Since the 2006 approval, the County Department of Housing and Community Affairs (DHCA) has installed the Silver Spring streetscape (not including the undergrounding of utilities) in the right-of-way along a portion of the site frontages. As a result, the Applicant will provide only 4,446 sf. of streetscape improvements, along the same area that was included in the original approval frontage (about 15.6% of the net lot area). Although this results in a 35% reduction in the proposed amenity, the reduced commitment yields the same end result as the original approval. To help encourage the Applicant to focus these previously committed funds elsewhere, staff supports the reduced commitment, and recommends some flexibility regarding the installation of streetscape on adjacent private properties on Thayer Avenue.

### *Parkland contribution*

The original Site Plan approval included “a contribution to the M-NCPPC toward parkland acquisitions or improvements in the Silver Spring CBD in the amount of \$70,000” (Condition 2.d.). Before the codification of the Amenity Fund in 59-D-2, this condition was intended to supplement the minimal amount of public use space (20%) provided on-site by this optional method project. As discussed above, the revised design provides less than the minimum required public use space on-site, and will be paying into the Amenity Fund for the balance. Yet the Applicant also proposes to eliminate the approved condition to provide this \$70,000 contribution, further and significantly reducing the amenities accompanying this project.

The definition of public amenities (59-A-2.1) lists potential amenities, the first of which is “green space or open space which exceeds the minimum required, with appropriate landscaping and pedestrian circulation.” The original Planning Board approval affirmed this contribution as integral to its original finding that the “Project Plan will be more efficient and desirable than could be accomplished by the use of the standard method of development” (Project Plan 920050030 Finding(e)). Staff recommends that the Board reaffirm this finding and not eliminate the payment. Instead, staff recommends redirecting the payment, reduced in proportion to the proposed density from \$70,000 to \$57,730 (an 18% reduction), towards the future improvement of the public alley on the south side of the property, described below.

### *Connecting Public Space in Fenton Village*

Since 2006, the Board has approved a number of optional method projects in Fenton Village:

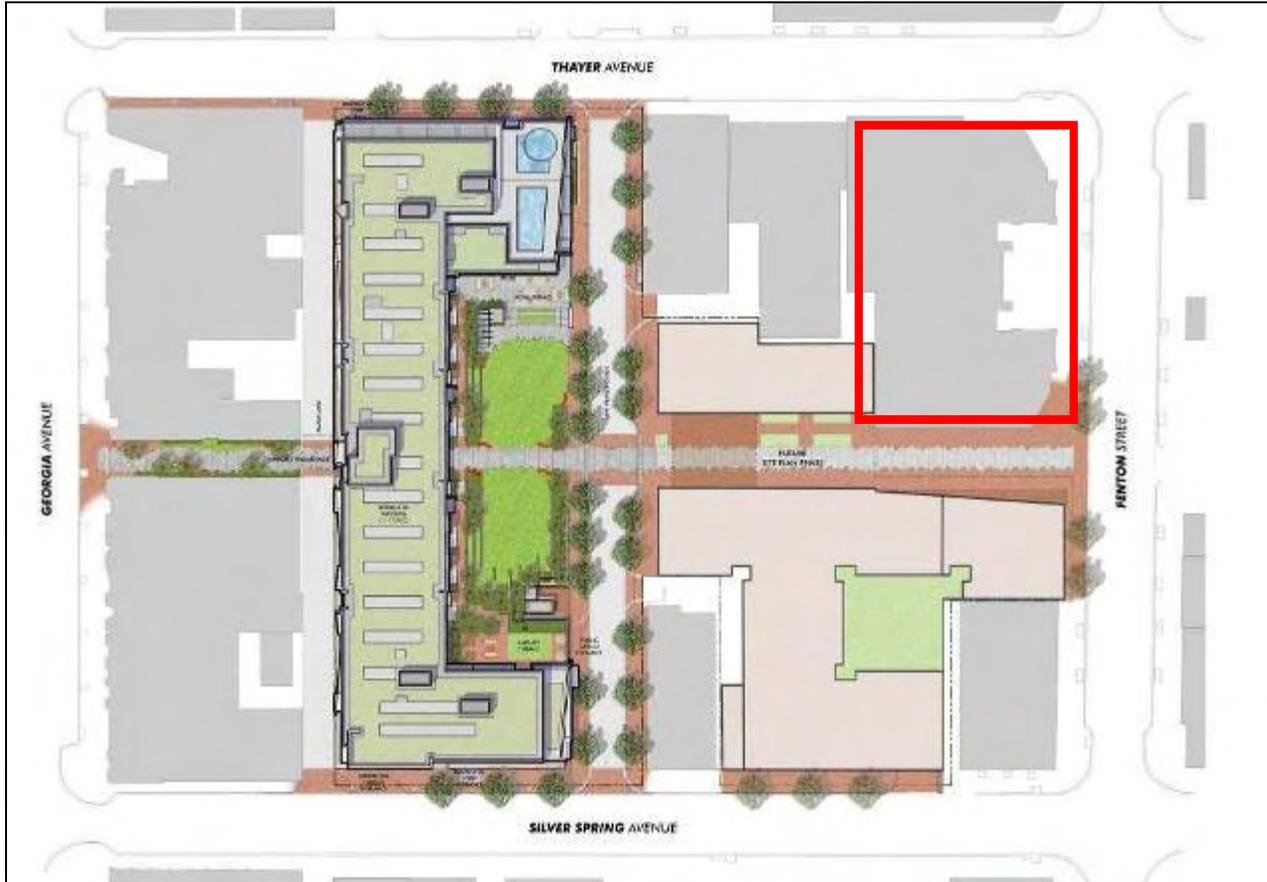
- Fenton Street (Wayne Avenue Baptist Church)
- Silver Spring Library
- Silver Spring Library Residential
- Bonifant Plaza
- 814 Thayer Avenue
- Studio Plaza
- Silver Spring Park.

Except for the library and the new church included in the Fenton Street project, these are mixed-use projects, with residential, office, and hotel uses combined with ground floor retail.



*Optional method projects approved in Fenton Village since 2006*

Of these, the project with the greatest impact on Fenton Village is Studio Plaza, a 5-acre development abutting the 900 Thayer Avenue property on two sides, and occupying most of the block on which it is located. The Planning Board in 2009 approved a Project Plan, and in 2013 a Preliminary Plan and Phase 1 Site Plan, for a multi-building mixed-use development with 749 dwelling units, over 35,000 sf. of retail, and 78,000 sf. of office.



*Studio Plaza illustrative Site Plan (900 Thayer site highlighted)*

This multi-phase development will provide almost 40,000 sf. of on-site public use space, including a 12,000-sf. central landscaped green that will be the primary public open space in Fenton Village. This green – identified by the Planning Board in the 2010 *Green Space Guidelines for the Silver Spring Central Business District* as the highest priority Green Space in the CBD – will be connected to Fenton Street and Georgia Avenue by a pedestrian promenade, lined by buildings with ground-floor retail.

Staff strongly endorses this vision. As seen in local examples like Bethesda Lane and Georgetown’s Cady’s Alley, this can be an attractive and welcoming retail-activated pedestrian-oriented space, designed with special paving, landscaping, and lighting treatments. These spaces also accommodate limited vehicle traffic, for service and parking access. This is accomplished without the standard curb and gutter driveway model by using bollards, planter boxes, and changes in pavers.



*Bethesda Lane*



*Cady's Alley, Georgetown, Washington, DC*

With thoughtful design and planning, and the cooperation and participation of both property owners, this model can be readily implemented along the public drive that serves both 900 Thayer Avenue, Studio Plaza, and by extension Fenton Village. Such a design would be subject to Planning Board Review likely as part of the Studio Plaza Phase 2 Site Plan, as well as MCDOT Design Exception review and maintenance and liability agreements. This is the direction staff is recommending for the Applicant's modified amenity payment discussed above. A well-designed pedestrian connection will not only provide a publicly accessible entry to a prominent civic green, but will also fulfill the vision in Fenton Village for a pedestrian-friendly street and help to activate the proposed ground-floor retail on both the 900 Thayer Avenue and Studio Plaza projects. The site will be a prominent gateway to the civic green.

Staff recognizes that 900 Thayer Avenue is likely to be constructed before Studio Plaza is prepared to move forward with the pedestrian promenade. Further, in the interim the public driveway will continue to provide access not only to 900 Thayer Avenue but also to Parking Lot 3. This time lag makes it inefficient for the Applicant to construct any of these longer-term improvements with the construction of their building. Until Studio Plaza is built out, the improvements would service only the surface parking lot and would likely need to be reconstructed with Studio Plaza.

Staff therefore recommends a condition of approval that requires the applicant to contribute to the future improvement of the public alley. Without such a condition, the burden would fall solely on the Studio Plaza development to implement what would at best be a partial solution and a missed opportunity.

Staff has strongly encouraged the Applicant to cooperate and coordinate directly with the developers of Studio Plaza, but despite interest from Studio Plaza the Applicant has not been willing to enter such an agreement (see the "Correspondence" section below).

#### Sector Plan Conformance

To approve a Project Plan, the Planning Board must find that "the application would be consistent with the applicable Sector Plan" (59-D-2.42). The revised proposal remains consistent with many of the themes of the *Silver Spring CBD Sector Plan*, including "residential downtown," "commercial downtown," and "green downtown." But the Applicant's redesigned plan, as proposed, is no longer fully consistent with the fourth theme cited by the original Project Plan findings, "pedestrian-friendly downtown."

The Sector Plan (p. 24) "encourages the development of active streets and sidewalks, busy with people walking to shop, commute, or for pleasure. They will become downtown's defining feature, and will support activity, creating the setting for community." It emphasizes that "the design of the pedestrian-scaled environment combines buildings and streets, active sidewalks, and open spaces detail with street furniture and landscaping to provide a safe, pleasant, and interesting environment."

To this end, the Plan's general Urban Design guidelines (p. 73) recommend that development "create formal and informal civic spaces – buildings and open spaces – that add to property

values, provide amenity, and improve downtown’s aesthetic appearance.” For Fenton Village, the plan’s Design Guidelines (p.90-91) specifically further recommend that development:

- upgrade the physical appearance of Fenton Street through streetscaping, landscaped parking lots, infill development that helps define the street, ...to improve the pedestrian environment by:
  - examining potential reuse and redesign of public parking lots with infill residential or commercial development, or improved landscaping;
  - improving links and road alignments within Fenton Village and between Fenton Village and the Core, the Ripley District, the Police Station on Sligo Avenue, the Transit Station, and Montgomery College;
  - landscaping the public parking lot between Silver Spring Avenue and Thayer Avenue to include landscaping at Fenton Street, shade trees distributed throughout the lot, seating, special paving, and well-defined pedestrian paths. The lot should be designed to accommodate community events.
- provide efficient, safe, and attractive at-grade pedestrian links within Fenton Village and to the surrounding CBD.

While the project successfully meets these goals on Fenton Street and Thayer Avenue, the proposed design does not meet them along the public alley shared with Studio Plaza. The promenade improvements described above fully meet the letter and spirit of the Sector Plan theme and design guidelines:

- provide an efficient, safe and attractive at-grade link to encourage active pedestrian activity between Fenton Street and Georgia Avenue via the primary public space of Fenton Village;
- will add to property values, provide amenity, and improve the appearance of the Fenton Street entrance to the green space;
- support the redevelopment of the public parking lot as a mixed-use development with significant landscaped green space.

To fully meet these requirements, staff recommends that the Applicant participate in the future improvement of the public alley. Such an improvement will transform what would otherwise become a public driveway that serves only a single private user into a welcoming pedestrian gateway into the primary public space of Fenton Village, ensuring that the green is inviting and accessible to the larger community.

### Compatibility

To approve a Site Plan, the Planning Board must find that “each structure and use is compatible with other uses and other Site Plans and with existing and proposed adjacent development” (59-D-3.4(c)(4)).

In many ways, the redesigned building is more compatible than its predecessor with development along Fenton Street. The new building has a lower building height than the original design, 66 feet compared with 90 feet, and at 55 feet steps the massing back decisively from Fenton Street before an additional floor of housing. These measures significantly improve compatibility with the Fenton Village transition to the single-family homes of East Silver Spring, and are compatible with other approved development along Fenton Street.

As proposed by the Applicant, however, the relationship of the building design to the approved pedestrian promenade linking Fenton Street to the Studio Plaza green space is not compatible: the north side of the alley will have a standard alleyway treatment with black asphalt, curb, and gutter, and the south side of the alley will have special paving, landscaping, lighting and other improvements. Staff endeavors to resolve this conflict and recommends a finding of compatibility with “other uses and other Site Plans and ... proposed adjacent development” only through the condition of participation in the future improvement of the public alley.

### **CORRESPONDENCE**

Staff received comments from the East Silver Spring Citizens Association (ESSCA) Committee on Land, Zoning, and Public Works, dated December 10, 2012, and revised on May 9, 2013 (see Appendix B). The comments support the overall massing of the building and the general location of the public use space on the site, while stating a number of concerns with the quality of the architectural resolution of the building. The commenter recommends that the amenity fund contribution required of the project be allowed to be reinvested in superior design and materials, citing quality architecture as a public amenity. While staff has shared with the Applicant similar concerns about the architectural design, staff is not recommending any conditions to modify the façade design.

Staff also received a memorandum from the Applicant, dated May 10, 2013, which strongly rejects the staff recommendation to participate in the future improvement of the public alley. The memorandum (Appendix B) responds to draft conditions sent to the Applicant for their review that included a participation condition that included a contribution amount different than staff is recommending today: \$93,940 v. \$57,730. Whereas the \$57,730 is a pro-rated share of the Applicant’s existing commitment to contribute \$70,000 for public space (based on the new design including only 82% of the original approved density), the initial \$93,940 amount was calculated using the department’s standard streetscape rate of \$35/sf. for an area including half of the public alley (Studio Plaza would address the other half) and the area between the public alley and the proposed building.

The Applicant cites the definition of “public facilities and amenities,” correctly states that the Zoning Ordinance does not require any fixed percentage for off-site public amenity space as it does for on-site public use space, and lists their proposed off-site public facility/amenity improvements and their estimated cost:

1. Streetscape improvements, including undergrounding of utilities: Estimated cost: \$620,000-\$720,000;
2. Improvements to the bus stop on Fenton Street: Estimated cost \$10,000;
3. Paving the full width of the public alley to DOT standards, including upgrading of the storm drain: Estimated cost: \$35,000.00.

The Applicant argues that their participation in the future improvement of the public alley is not a public amenity by definition, because:

an upgrade to the alley...will benefit future development to the west of the Property (e.g. Studio Plaza) and to the public at large. As such, this contemplated future improvement to the alley should be deemed future "public use space" for which any optional method project needing credits for "off-site" public use space credits could contribute.

If the improvements to the public alley are for "public enjoyment" in the future, the associated cost should be borne by the "public". The cost should not be borne in large part by the adjacent owner of a small project that is amending existing approvals to reduce the size of a proposed development, completing its development well in advance of any "future work" in the public alley, and reaping no benefit from the proposed future improvements to the alley.

The zoning code defines "public facilities and amenities" (59-A-2.1 ) as:

those facilities and amenities of a type and scale necessary to provide an appropriate environment or to satisfy public needs resulting from, or related to, the development of a particular project, or to support County or State government programs or services.

As cited above, the optional method of development grants higher densities in exchange for these public amenities, "to make possible the creation of an environment capable of supporting the greater densities and intensities of development permitted (59-C-6.215)."

The Applicant says that the proposed future upgrade to the alley does not satisfy a need created by this development or necessary for "the environment" of this Project. Staff disagrees. Public amenities are intended to provide "an appropriate environment or to satisfy public needs resulting from, or related to" optional method development. The environment is not limited to the boundaries of the subject site, but to the larger urban context of Fenton Village. There is a clear nexus between the development of the proposed 900 Thayer Avenue project and the planned redevelopment of the public alley immediately adjacent to the project. Future residents of 900 Thayer will use the promenade to access the civic green, to patronize the shops and restaurants along the promenade, and to get to the shops and restaurants along Georgia Avenue. Future retail tenants of 900 Thayer will enjoy increased foot traffic in front of the building, particularly at the promenade corner because of the location of the gateway immediately next to the building. The Applicant's public art scheme highlights the significance of this gateway. These will all be amenities to attract potential residents, businesses, and customers to this site. The Sector Plan and the Green Space guidelines further highlight the importance of the public green located on this block and the indispensable nature of attractive and inviting pedestrian connections throughout Fenton Village.

As an optional method project, this proposal must include public amenities. Of the Applicant's list of amenities, the latter two (the bus stop and alley paving) are required by MCDOT and are not part of the amenities provided per the optional method of development. As described above, the Planning Board in 2005 approved the original proposal with a complete public amenity package that included a minimum of public use space but was enhanced with

streetscape, public art, and a contribution toward realization of additional public space. The redesigned proposal reduces the overall density by only 18%, but has diminished the public amenity package in greater proportion. Staff's proposed conditions seek to restore a fair balance.

## **FINDINGS, RECOMMENDATIONS, AND CONDITIONS**

### **Project Plan Amendment**

The Planning Board found the original Project Plan, 920050030, to meet the intents and requirements of the zone, the Sector Plan, and as conditioned to be compatible with the community. The Board found the optional method plan, with its public use space and amenities that included streetscape, public art, and a \$70,000 contribution towards additional public space, to be a more efficient and desirable development than standard method development. The Board also found the plan to meet the requirements of public facilities review, MPDUs, forest conservation, and water quality protection.

The amendment to the Project Plan as proposed by the Applicant, particularly the public use space and the public amenities, is not consistent with the purposes, intents, and requirements of the optional method of development under the CBD-2 or Fenton Village Overlay zones, recommendations and guidelines central to the Silver Spring CBD Sector Plan, nor are they fully compatible with potential development in the general neighborhood. The Applicant's participation in the future improvement of an adjacent public alley for the purposes of a promenade connecting Fenton Street to Georgia Avenue via a public green would rectify these shortcomings.

Only as conditioned below are the proposed amendments to the Project Plan consistent with the purposes, intents, and requirements of the optional method of development under the zones, and the Silver Spring CBD Sector Plan, and sufficiently compatible with potential development in the general neighborhood. As conditioned, the proposal continues to provide development of a quality greater than that of the standard method, and will contribute significantly to the redevelopment of Fenton Village. Furthermore the amendments continue to satisfy the Adequate Public Facilities requirements, as well as those of MPDU, Forest Conservation, and water quality.

The conditions of approval for the original Project Plan 920050030 are superseded in their entirety by the conditions of approval for Project Plan amendment 92005003A. The original conditions regarding the development ceiling, public use space, and public amenities have been updated to reflect the redesigned project. Standard or redundant conditions are being addressed either by the Preliminary Plan amendment or Site Plan amendment conditions being review concurrently with the Project Plan amendment. Conditions that are no longer applicable have been removed.

Staff recommends Approval of Project Plan amendment 92005003A, subject to the following conditions:

1. Development Ceiling

The proposed development is limited to 119,691 sf. of gross floor area, comprised of up to 5,300 sf. of non-residential uses and up to 124 total dwelling units, including 16 MPDUs (12.5%).

2. Public Use Space

- a. The Applicant must provide a minimum of 5,134 sf. of on-site public use space (18% of the net lot area), as illustrated on the Certified Site Plan.
- b. The area located immediately outside the private residential building entrance (approximately 186 sf.) must not be included in the calculation of on-site public use space.
- c. The Applicant must revise the design of the public use space as follows:
  - i. extend the angled bench on the northern micro-bioretenion planter box around the eastern edge of the planter box, along Fenton Street;
  - ii. reconfigure the southern micro-bioretenion planter box to provide a seating wall, bench, or similar seating that directly faces both into the public use space and onto the Fenton Street sidewalk;
  - iii. the final design must be approved by staff prior to Certified Site Plan.
- d. In lieu of providing the remaining 571 sf. (2 %) of on-site public use space required to meet the minimum requirement of 20% of the net lot area, the Applicant must contribute to M-NCPPC no less than \$54,215 for development of Gene Lynch Urban Park in the Silver Spring CBD, or other amenity designated by the Planning Board at the time of Project Plan review. The payment must be submitted to M-NCPPC prior to release of the first building permit.

3. Streetscape Improvements

- a. The Applicant must provide and install the Silver Spring streetscape standard improvements along the site frontage on Thayer Avenue and Fenton Street.
- b. The Applicant must provide and install the Silver Spring streetscape standard within the right-of-way on the south side of Thayer Avenue between the western site boundary and the existing driveway into Parking Lot 3, as illustrated on the Certified Site Plan.
- c. For the private properties on the south side of Thayer Avenue between the western site boundary and the existing driveway into Parking Lot 3, the Applicant must make good faith efforts, in writing, to obtain consent from each of the property owners to provide and install the Silver Spring streetscape on the private property between the right-of-way and the existing building face. If the Applicant is unable to obtain the consent of a property owner, the Applicant shall be relieved of the obligation to provide and install the streetscape on that private property without the need for an amendment to the Site Plan.
- d. All streetscape improvements must conform to the Silver Spring Streetscape guidelines, as illustrated on the Certified Site Plan, and must include street trees, street lights, paving, and the undergrounding of utilities.

4. Public Art

- a. Provide for and install the public art concept designed and produced by artist Washington Glass Studio, as presented to the Planning Department's Art Review Panel on April 24, 2013, and illustrated in the Certified Site Plan.
- b. Any significant changes to the concept presented on April 24, 2013, must be presented to the Art Review Panel and approved by staff before Certified Site Plan. Significant changes to the concept, as determined by staff, proposed after Certified Site Plan, will require a Site Plan Amendment.
- c. For inclusion in the Certified Site Plan, the Applicant must provide artwork details describing parameters including, but not limited to, materials, mounting, and illumination.

5. Participation in Future Improvement of Adjacent Public Alley

- a. In addition to the Amenity Fund contribution listed in Condition 2.d. above, the Applicant must post a bond or similar credit instrument in an amount not less than \$57,730 for participation in the future improvement of the public alley on the southern boundary of the subject site – presently functioning as an existing driveway from Fenton Street to Parking Lot 3, and proposed as parking and service access for the subject site – and the on-site area between the building and this right-of-way.
- b. The future improvement of this right-of-way is intended to enhance the function of this driveway as an essential component of the mid-block promenade connecting Fenton Street to Georgia Avenue, via the public green space included in the adjacent "Studio Plaza" development located on the same block and illustrated in the Studio Plaza Project Plan 920070010 and Site Plan 820130010. The final design of the future improvements will be determined by the Planning Board at a future Site Plan for Studio Plaza.
- c. Not later than the issuance of the final use and occupancy permit for any Studio Plaza building included on an approved Site Plan for the portion of the Studio Plaza development (Project Plan 920070010, and Preliminary Plan 120130020) that includes the improvements of the public right-of-way described in paragraph 11.a. above, the Applicant or their successors must pay the amount specified above to the owners of Studio Plaza, or their designees or successors, for the purpose of implementing – or reimbursement for implementation of – the improvements to this public right-of-way.
- d. If Condition 11.c. has not been satisfied within ten years of the mailing date of this resolution, the Applicant is not required to comply with the provisions of Condition 5.

**Preliminary Plan Amendment**

The Planning Board found the original Preliminary Plan, 120050770, to meet the requirements of Chapter 50, as well as conform to the Silver Spring CBD Sector Plan, and those of Forest Conservation and water quality. It found that public facilities will be adequate to support and service the area of the proposed subdivision.

The proposed amendments to the Preliminary Plan remain consistent with the purposes, intents, and requirements of Montgomery County Code Chapter 50, and, as conditioned by Project Plan 92005003A with the Silver Spring CBD Master Plan, as well as those of Forest Conservation and water quality. This project previously received Adequate Public Facilities (APF) approval for a higher density mixed-use development, through Preliminary Plan 120050770, than what is sought in this amendment. Since the proposed amendment will generate less traffic than the previously approved Preliminary Plan, it remains within its original APF approval.

Because the proposed amendments rely on the APF finding of the original Preliminary Plan, and since that Preliminary Plan has been validated by recordation of a plat, the original conditions of approval remain in effect, except as noted below.

Staff recommends Approval of Preliminary Plan amendment 12005077A pursuant to Chapter 50 of the Montgomery County Subdivision Regulations and subject to the following conditions:

1. Approval under this Preliminary Plan is limited to 1 lot for 96 multi-family dwelling units and up to 5,300 sf. of retail. This condition supersedes Preliminary Plan 120050770 Condition 1 in its entirety.
2. The Planning Board has accepted the recommendations of the Montgomery County Department of Transportation (“MCDOT”) in its letter dated \_\_\_\_\_, and does hereby incorporate them as conditions of the Preliminary Plan approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
3. The Planning Board has accepted the recommendations of the Montgomery County Department of Permitting Service (“MCDPS”) – Water Resources Section in its stormwater management concept letter dated January 29, 2013, and does hereby incorporate them as conditions of the Preliminary Plan approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval. This condition supersedes Preliminary Plan 120050770 Condition 9 in its entirety.
4. The Subject Property is within the Montgomery Blair School cluster area. The Applicant must make a School Facilities Payment to MCDPS at the middle school level at the low-rise w/structured parking unit rates for all units for which a building permit is issued and a School Facilities Payment is applicable. The timing and amount of the payment will be in accordance with Chapter 52 of the Montgomery County Code.

**Site Plan Amendment**

The Planning Board found the original Site Plan, 820060020, to be consistent with Project Plan 920050030, to meet the requirements of the CBD-1 and Fenton Village Overlay zones, Forest Conservation, water quality, and other applicable regulatory requirements, and to be compatible with other uses and other site plans and with existing and proposed adjacent development. The Board found the elements of the site design, including all buildings and structures, open spaces, landscaping, recreation facilities, and pedestrian and vehicular circulation systems, to be adequate, safe, and efficient.

As conditioned, the proposed amendments to Site Plan are consistent with Project Plan 92005003A, meet the requirements of the CBD-1 and Fenton Village Overlay zones, Forest Conservation, water quality, and other applicable regulatory requirements, and are compatible with other uses and other site plans and with existing and proposed adjacent development. The elements of the site design, including all buildings and structures, open spaces, landscaping, recreation facilities, and pedestrian and vehicular circulation systems, remain adequate, safe, and efficient.

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

The conditions of approval for the original Site Plan 820060200 have been updated for this amendment and are superseded in their entirety by the conditions of approval for Site Plan amendment 82006020A. Redundant conditions that are addressed either by the Project Plan amendment or Preliminary Plan amendment conditions being review concurrently with the Site Plan amendment have been removed.

Table 3: Project Data Table for the CBD-1 & Fenton Village Overlay Zones

Development Standard	Permitted/ Required	Approved per Site Plan 820060200	Proposed for Site Plan Amendment 82006020A
Site Area (sf.)			
Gross Tract Area	18,000	41,743	41,743
Previous Dedications		13,217	13,217
Proposed Dedications		0	0
Net Lot Area		28,526	28,526
Density			
Floor Area Ratio, max. total	3	3.48*	2.87
Floor Area, max. total (sf.)	125,229	145,471	119,691
Floor Area Ratio, max. non-residential	2	0.8	0.13
Floor Area, max. non-residential (sf.)	83,486	33,220	5,300
Floor Area, max. residential (sf.)		112,251	114,409
Dwelling units, max. total			
MPDUs, min.		96	124
MPDUs, min. (%%)	12.5	15	12.5
Building height, max. along Fenton Street (ft.)**			
Building height, max. along Thayer Avenue (ft.)**	60	60	55
	90	90	66
Building setbacks, min. (ft.)			
Western property line	n/a	0	0
Thayer Avenue		12	
Public alley		0	
Fenton Street		4	
Public Use & Amenity Space, min.			
On-site Public Use Space, min. (% of net lot area)	20	20	18
On-site Public Use Space, min. (sf.)	5,705	5,705	5,134
Off-site Public Amenity space, min. (% of net lot area)		23.7	15.6
Off-site Public Amenity space, min. (sf.)		6,763	4,446
Public Use and Amenity Space, min. total (% of net lot area)		43.7	33.6
Public Use and Amenity Space, min. total (sf.)		12,468	9,580
Parking, min.			
	146	n/a	66

\* includes 22% residential density bonus for providing 15% MPDUs

\*\* measured from the building height measuring point shown on the Certified Site Plan

Staff recommends approval of Site Plan amendment 82006020A, subject to the following conditions. All site development elements shown on the site and landscape plans stamped "Received" by the M-NCPPC on May 3, 2013, are required except as modified by the following conditions.

1. Project Plan Conformance

The proposed development must comply with the conditions of approval for Project Plan 92005003A.

2. Preliminary Plan Conformance

The proposed development must comply with the conditions of approval for Preliminary Plan 12005077A. This includes but is not limited to all references to density, rights-of-way, dedications, easements, transportation conditions, Montgomery County Department of Transportation (MCDOT) conditions, and Montgomery County Department of Permitting Services (MCDPS) stormwater conditions.

3. Density

This Site Plan is limited to a maximum gross floor area of 119,691 sf., including up to 5,300 sf. of retail and up to 124 dwelling units. The total number of dwelling units includes 16 MPDUs (12.5 %), in addition to 108 market rate units.

4. Moderately Priced Dwelling Units (MPDUs)

- a. The proposed development must provide a minimum of 12.5 % of the total number of dwelling units as MPDUs on-site in accordance with Chapter 25A. The Applicant is providing only the minimum %age and is not receiving bonus residential density for providing additional MPDUs on-site.
- b. The MPDU agreement to build shall be executed prior to the release of any building permits, except sheeting and shoring permits.

5. LEED Certification

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

6. Maintenance of Public Amenities

The Applicant is responsible for maintaining all on-site publicly accessible amenities including, but not limited to, the public use space, public art, and associated landscaping and site furnishings, unless provided by contract with another party.

7. Architecture

The exterior architectural character, proportion, materials, and articulation must be substantially similar to the schematic elevations shown on Sheets A201, A202, A203, and A204 of the submitted architectural drawings, as determined by 1 staff.

8. Landscaping

The Applicant must ensure that plant species specified for publicly accessible on-site spaces are shade-tolerant.

9. Private Lighting

- a. The lighting distribution and photometric plan with summary report and tabulations must conform to IESNA standards for residential development.
- b. All onsite down- light fixtures must be full cut-off fixtures.
- c. Deflectors shall be installed on all fixtures causing potential glare or excess illumination, specifically on the perimeter fixtures abutting the adjacent residential properties.

10. Noise

- a. Provide certification from an acoustical engineer that the building shell for residential dwelling units to be constructed within the projected 65 dBA Ldn noise contour is designed to attenuate projected exterior noise levels to an interior level not to exceed 45 dBA Ldn. The certification must be provided to M-NCPPC staff for concurrence prior to issuance of building permits.
- b. The builder must provide a signed commitment to construct the impacted units in accord with the acoustical design specifications. Any changes to the building shell construction that may affect acoustical performance after issuance of building permit must be approved by an acoustical engineer and M-NCPPC staff prior to their implementation.
- c. The builder must construct the impacted units in accord with the acoustical design specifications. Any changes to the building shell construction that may affect acoustical performance after issuance of building permit must be approved by an acoustical engineer and M-NCPPC staff prior to their implementation.

11. Surety

Prior to issuance of first building permit (exclusive of sheeting and shoring) within each relevant phase of development, Applicant must provide a performance bond(s) or other form of surety in accordance with Section 59-D-3.5(d) of the Montgomery County Zoning Ordinance with the following provisions:

- a. Applicant must provide a cost estimate of the materials and facilities, which, upon staff approval, will establish the initial surety amount.
- b. The amount of the bond or surety shall include plant material, on-site lighting, recreational facilities, and site furniture within the development.
- c. Prior to issuance of the first building permit, Applicant must enter into a Site Plan Surety & Maintenance Agreement with the Planning Board in a form approved by the Office of General Counsel that outlines the responsibilities of the Applicant and incorporates the cost estimate.
- d. Surety shall be tied to the development program, and completion of plantings and installation of particular materials and facilities covered by the surety will be followed by inspection and reduction of the surety.

## 12. Development Program

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

- a. All off-site streetscape improvements, including undergrounding of utility lines, street lamps, and sidewalks must be installed prior to the issuance of any use and occupancy permit. Street tree planting may wait until the next growing season.
- b. On-site amenities including, but not limited to, the public use space, public art, landscaped stormwater facilities, sidewalks, benches, trash receptacles, and bicycle facilities must be installed prior to release of any final residential building occupancy permit.
- c. Clearing and grading must correspond to the construction phasing to minimize soil erosion and must not occur prior to approval of the Certified Site Plan and Sediment Control Plan.
- d. The development program must provide phasing for installation of on-site landscaping and lighting.
- e. The development program must provide phasing of dedications, stormwater management, sediment and erosion control, trip mitigation, and other features.

## 13. Certified Site Plan

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

- a. Include the forest conservation exemption, stormwater management concept approval, development program, inspection schedule, and Site Plan resolution on the approval or cover sheet.
- b. Modify data table to reflect development standards enumerated in the Planning Board Opinion.
- c. Ensure consistency off all details and layout between Site Plan and landscape plan.
- d. Provide updated recreation calculations for this development.

**APPENDICES**

Appendix A: Agency & review letters

Appendix B: Correspondence

Appendix C: Previous approvals





DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett  
County Executive

January 29, 2013

Diane R. Schwartz Jones  
Director

Steven L. Wilde  
Macris, Hendricks, and Glascock, P.A.  
9220 Wightman Road, Suite 120  
Montgomery Village, MD 20886-1279

Re: Stormwater Management **CONCEPT** Request  
for R. Holt Easley's Addition to Silver Spring  
Preliminary Plan #: 12005077A  
SM File #: 247711  
Tract Size/Zone: 0.65 Ac./CBD-1  
Total Concept Area: 0.82 Ac.  
Lots/Block: 11/F  
Watershed: Sligo Creek

Dear Mr. Wilde:

Based on a review by the Department of Permitting Services Review Staff, the stormwater management concept for the above mentioned site is **acceptable**. The stormwater management concept proposes to meet required stormwater management goals via ESD to the MEP with the use of micro – bioretention planter boxes. The remainder will be met with a structural volume based proprietary filter.

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

1. Prior to permanent vegetative stabilization, all disturbed areas must be topsoiled per the latest Montgomery County Standards and Specifications for Topsoiling.
2. A detailed review of the stormwater management computations will occur at the time of detailed plan review.
3. An engineered sediment control plan must be submitted for this development.
4. All filtration media for manufactured best management practices, whether for new development or redevelopment, must consist of MDE approved material.
5. Landscaping shown on the approved Landscape Plan as part of the approved Site Plan are for illustrative purpose only and may be changed at the time of detailed plan review of the Sediment Control/Storm Water Management plans by the Mont. Co. Department of Permitting Services, Water Resources Section.
6. Use the MCDPS latest design criteria for design of the stormwater management structures.
7. Provide adequate access for maintenance of the structures.
8. All covered parking is to drain to WSSC.
9. Provide mechanical drawings to show that all garage areas drain to WSSC and that the roof and surface areas drain to the stormwater management structures.

---

255 Rockville Pike, 2nd Floor • Rockville, Maryland 20850 • 240-777-6300 • 240-777-6256 TTY  
[www.montgomerycountymd.gov](http://www.montgomerycountymd.gov)

10. Provide easements and covenants for the stormwater structures.

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

Payment of a stormwater management contribution in accordance with Section 2 of the Stormwater Management Regulation 4-90 **is not required**.

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

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

Sincerely,



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

RRB: jpb CN247711 R Holt Easley's Addition to Silver Spring.DWK

cc: C. Conlon  
SM File # 247711

ESD Acres:	0.82
STRUCTURAL Acres:	0.82
WAIVED Acres:	0.0



---

---

## FIRE MARSHAL COMMENTS

---

---

**DATE:** 07-May-13  
**TO:** Patrick La Vay - plavay@mhgpa.com  
Macris, Hendricks & Glascock  
**FROM:** Marie LaBaw  
**RE:** 900 Thayer Avenue (The Adele)  
92005003A 12005077A 82006020A

---

### PLAN APPROVED

1. Review based only upon information contained on the plan submitted **07-May-13**. Review and approval does not cover unsatisfactory installation resulting from errors, omissions, or failure to clearly indicate conditions on this plan.
2. Correction of unsatisfactory installation will be required upon inspection and service of notice of violation to a party responsible for the property.

**\*\*\* Approved with a second "primary" side hinge door \*\*\***



DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Isiah Leggett  
County Executive

Richard Y. Nelson, Jr.  
Director

April 11, 2013

Mr. Elza Hisel-McCoy  
Area 1 Division  
Maryland-National Capital Park and Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

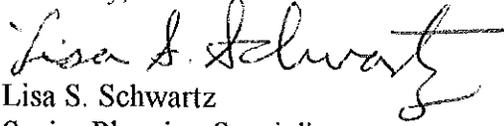
Re: 900 Thayer Avenue  
Project Plan Amendment No. 92005003A  
Preliminary Plan Amendment No. 12005077A  
Site Plan Amendment No. 82006020A

Dear Mr. Hisel-McCoy:

The Department of Housing and Community Affairs (DHCA) has reviewed the above-referenced Plan Amendments. DHCA recommends Approval of the Plan Amendments with the following condition:

- At certified site plan, DHCA will need to review and approve MPDU bedroom compositions, locations, sizes and unit layouts.

Sincerely,

  
Lisa S. Schwartz  
Senior Planning Specialist

cc: Stuart H. Cain, Redbrick Development Group, LLC  
Patrick La Vay, Macris, Hendricks & Glascock, P.A.

S:\Files\FY2013\Housing\MPDU\Lisa Schwartz\900 Thayer DHCA Letter 4-11-2013.doc

Division of Housing

Moderately Priced  
Dwelling Unit  
FAX 240-777-3709

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

100 Maryland Avenue, 4th Floor • Rockville, Maryland 20850 • 240-777-3600 • [www.montgomerycountymd.gov/dhca](http://www.montgomerycountymd.gov/dhca)





**ESSCA Committee on Land, Zoning & Public Works  
Comments to the Developers  
900 Thayer Avenue Project (formerly The Adele)  
10 December 2012**

**Disposition of uses and building mass on the site**

- A. We are generally pleased with the location of loading and parking access, residential entry and retail space.
- B. We applaud the current massing and reduced height of the building, especially along Fenton Street, and appreciate the substantial setback to the uppermost floor.
- C. We need to know more about the retail fenestration along Thayer Ave. and in particular want to see as much retail activation as possible on this street (shop windows, etc.)
- D. We are concerned about the column on the corner of the Fenton/Alley retail entrance and world prefer that the corner be column free and as open as possible.

**Facades**

- A. We like the current approach to the building's fenestration (i.e., the use of punched windows for the apartments and large expanses of glass for the retail areas).
- B. We need to see the other building elevations to better understand the feel of the building and how it relates to Thayer Avenue and the corner of Fenton and Thayer.
- C. We are concerned about the current placement and variety of wall materials; the current approach is confused and clumsily handled: it neither reads as a single, unified architectural expression nor does it read as a collection of distinctly different architectural facades.
- D. More specifically, the use of masonry block for the lower halves of the wings flanking the entry court, the use of brick at the base of the retail, the use of what appears to be a different brick at the apartment entrance façade and cementitious board material elsewhere appears random, arbitrary and does not support the massing of the building; see also comments in the section below regarding treatment at corner of Fenton & Thayer.
- E. We encourage the architect to revisit and adjust the current façade material treatment in a way that is more uniform and supportive of the unique elements of the building's massing; we believe using masonry materials for the 5 story facades fronting Fenton and Thayer and limiting the use of cementitious board to the alley façade and the uppermost setback elevations to be one appropriate response.
- F. We do not believe a more unified architectural approach means a less interesting building; please see attached collection of images of buildings we like and whose architectural styles and approaches we believe would contribute positively to the character of Fenton Village.
- G. We need to see and learn more about the building's color palette and ask that care and thought be given to make this lively and interesting.
- H. The current exterior rendering gives little to no indication of detail at the building's base, top, windows and doors (i.e., cornices and copings, storefronts, frieze band and/or belt course above the retail level and sills and lintels at windows) and we need to see and learn more about these important details that can enrich the building's appearance to pedestrians and the community. Please, also refer to the attached pictures for an indication of the kind of warmth and detail that we would like to see.

### **The corner of Thayer & Fenton**

- A. We are concerned the current exterior design does not respond appropriately to the prominent Fenton/Thayer street corner; in fact, the required clipped corner, if it is a requirement for the full height of the building, calls all the more attention to this corner and the architecture of the facade needs to reflect this: please consider using more noble materials for the full height of this corner (i.e., masonry) and adding a tower or bay element to this building face to develop the appropriate treatment to this most important portion of the building and highly visible face to the community.
- B. If at all possible, we would like to see the DOT-required corner clip be limited to the ground retail level only.

### **Apartment entry court**

- A. While we like the public art and landscape design approach for the entrance court.
- B. We are concerned about the sunken garden element in the entry court, as it might be an unsafe attraction to those waiting at the adjacent bus stop.
- C. Please give careful attention to the materials and details of this area, with an eye toward plant and material selection and a maintenance program that will stand up to traffic and use by the public and those waiting at the adjacent bus stop who will surely be attracted to it.

**EAST SILVER SPRING CITIZEN'S ASSOCIATION (ESSCA)**  
**COMMENTS**  
**900 THAYER AVE SITE PLAN**  
**05/09/13**

As you know we wrote a thorough list of comments plus images of sample projects we thought appropriate for consideration/inspiration after the Applicant's initial presentation to the community in December of last year. We understand these have been reviewed by the Applicant and Planning Staff and are now part of the record for this project.

We see the Applicant has responded to only two of the items with the addition of a multi story bay element at the chamfered corner facing the intersection of Thayer and Fenton. It also appears the sunken landscape feature at the residential entry has been omitted.

Beyond these two items, there appears to be little or no change or further refinement and development to exterior facades of the project. We are very disappointed in the lack of resolution to the architecture of this project.

**Specifically:**

1. The louvered screens, while popular in the arid southwest regions of the country, are inappropriate in a mid-Atlantic east coast urban context, especially on the south and north sides of the building. ***Recommendation: The louvered screens should be omitted and other more regionally appropriate detailing should be incorporated, as shown in our façade photo examples shared previously.***
  
2. The planters in front of the storefront at the northeast corner are troubling. They create too much of a buffer between sidewalk pedestrian activity and the storefronts. They furthermore strike us as suburban and/or office-park-like in character, neither of which contributes to the emerging small scale urban character of Fenton Village. ***Recommendation: The planters should be omitted.***
  
3. The chamfered first floor of the southeast corner is not at all successful: The column is too thin for the four story mass above it is intended to support (and if its girth were increased in an attempt to fix this, it would only exacerbate the visual impediment to the storefront behind.) This move furthermore creates an odd pocket of space made all the more worse with planters. ***Recommendation: omit the clipped first story corner at the southeast corner of the building.***
  
4. We continue to be concerned about the lack of resolution to the cornice elements as we noted previously. ***Recommendation: There simply needs to be more careful consideration of the dimensions, alignments and proportions of the various cornice elements.***

5. We continue to be concerned about the disparate and overly active amalgamation of façade materials. With (at least) one brick selection, split face concrete block, at least two or three colors of cementitious panel that we can identify. There is too much going on here. We are concerned the team is using too many materials to create a requisite level of visual interest, instead of doing so with more carefully considered architectural detailing, which is more appropriate to the aforementioned character of the neighborhood. We are furthermore concerned the cementitious board will not age well, especially given the lack of detail and articulation represented. **Recommendation: Reduced the quantity of materials in the exterior palette, limit the use of cementitious board materials to the uppermost floor of the Fenton and Thayer facades, replace the balance of the cementitious board and split face block with brick and incorporate cast stone trim elements as suggested by our façade photo examples shared previously.**
  
6. Clipped corner at the Thayer/Fenton Street intersection: We are concerned this move has been done for little or no good reason and it looks even worse in this iteration of drawings. It is neither small nor succinct enough to “celebrate the corner”, as traditionally is the case with such moves, nor is it large enough to stand on its own as a separate wall. It simply looks clunky and is inappropriate for the most prominent corner of the site. **Recommendation: Omit the clipped corner at the northeast corner of the building.**
  
7. While the added bay element on the chamfered façade facing the Thayer/Fenton street corner is welcomed, we find its execution to be handled poorly. It is frankly difficult to offer a clear recommendation to correct it. As shown, it competes visually with the split face block wings flanking the entrance court. Its hanging precariously two stories above the ground also strikes us as odd. **Recommendation: The previous comments need to be considered first, especially the materials palette and clipped corner, before revisiting the corner bay/tower element.**
  
8. Lastly, we understand that the odd clipped corner moves criticized above may have been proposed by the applicant in an attempt to increase the amount of open public space put towards the county’s requirement. This strikes us as particularly meaningless, given the site’s urban nature and proximity to the open space of adjacent pedestrian alley and Studio Plaza.

Incorporating such awkward massing moves to accommodate this requirement, or worse yet, requiring the Applicant to contribute funds to the County-managed public space amenity fund to offset a lack of open space (that is simply not needed) or to a small pocket park a half a mile away, does nothing to enhance the community’s experience of this project.

We would like to challenge the County to rethink how such funds are allocated and used on this project. Architecture is public art, and as such, these funds should be put to more focused and appropriate use with delivering a better building for the neighborhood. ***Recommendation: We ask that funds otherwise allocated to the public space amenity fund be allocated back to this project for better façade materials: more masonry, better quality windows than what we see in the rendered elevations. Better architecture is a public amenity from which our neighborhood and indeed 900 Thayer Avenue can benefit.***

Karen Roper

Chair, ESSCA Zoning, Land Use and DPWT Committee



*Attorneys at Law*

3 Bethesda Metro Center, Suite 460  
Bethesda, MD 20814  
www.lerchearly.com

Tel. (301) 986-1300  
Fax (301) 986-0332  
info@lerchearly.com

## MEMORANDUM

### VIA E-MAIL

**To:** Elza Hisel-McCoy, Planning Coordinator, Area One

**Cc:** Robert Kronenberg, Acting Chief, Area One  
Rose Krasnow, Acting Planning Director

**From:** Susan M. Reutershan, Esq.

**Subject:** 900 Thayer Avenue

**Date:** May 10, 2013

---

Thank you for meeting with us over the last several weeks to discuss the 900 Thayer Avenue project (the "Project") and for sending us a copy of the "proposed conditions" to review.

We will be preparing some general comments to the proposed conditions; however, we wanted to reiterate the reasons why we cannot agree to pay for "future improvements" to the public alley, as proposed in Condition No. 11.

As you know, the requested amendments are to the project plan, preliminary plan, and site plan approvals for the Adele. That project had an FAR of 3.48, a maximum height of 90 feet, 96 condominium units, 18,200 square feet of office, and 15,020 square feet of retail. Access to the parking garage for the Adele was from the 20 foot public alley off Fenton Street. The plat was recorded in 2009.

The proposed amendments request approval for a less dense development with an FAR of 2.87, no office space, a reduction in the amount of retail space to approximately 5,282 square feet, and an increase in the number of residential units to 124 rental units. The maximum height of the proposed building is 66 feet. The access to the parking for the Project remains from the 20 foot public alley off Fenton Street.

The reduced height results in a somewhat larger footprint for the building that reduces the area available for on-site public use space. The Applicant proposes a contribution to the Amenity Fund (Gene Lynch Park) for the deficit in the amount of on-site public use space.

Condition No. 11 requires: (1) that the Applicant "post a bond or similar credit instrument in an amount not less than \$93,940 for the participation" in the future improvement of the public right of way" (i.e. the alley adjacent to the Property); and (2) that the Applicant remain obligated to

pay that amount for “10 years”. This condition imposes an undue economic burden on the Project, a small project in an urban area. For the reasons we discussed during our meetings and as set forth below, this condition is not acceptable to the Applicant.

“Off-site public facilities and amenities” are defined in the Zoning Ordinance as “those facilities and amenities of a type and scale necessary to provide an appropriate environment or to satisfy public needs resulting from, or related to, the development of a particular project...” (Emphasis added). The Zoning Ordinance does not require any fixed percentage for off-site public amenity space as it does for on-site public use space.

In connection with the Project, the Applicant has proposed the following off-site public facility/amenity improvements:

1. Streetscape improvements, including street trees, streetlights, and paving along the property frontage on Fenton Street (where the streetscaping does not now exist) and along the Property frontage on Fenton Street and continuing west to the existing driveway into Parking Lot 3: Estimated cost: \$120,000;
2. Undergrounding of utilities along the area described above: Estimated cost: \$500,000 to \$600,000;
3. Improvements to the bus stop on Fenton Street, including adding curb and gutter to shift the bus stop further south on Fenton Street, widening the brick paver sidewalk to meet the expanded curb line, and adding a new backdrop to enhance the furnishings associated with the bus stop : Estimated cost \$10,000;
4. Paving the full width of the public alley to DOT standards (not just ½ the width as would typically be required), including asphalt paving, curb and gutter, sidewalk ramps, crosswalk striping, and installing new storm drain structures in the alley that will service the Project as well as additional properties in the vicinity by bringing the Fenton Street storm drain system back into an acceptable level of capacity: Estimated cost: \$35,000.00.

The Applicant’s improvements to the alley, as noted in no. 4 above, will support its access to the Project’s garage. The proposed future upgrade to the alley is not to satisfy a need created by this development or necessary for “the environment” of this Project. As Staff noted at one of our meetings, any future improvements to the public alley adjacent to the Project from the Studio Plaza project are at least 5 years away.

The requested contribution represents Staff’s desire to extend the special treatment proposed for the portions of the alley to the west of the Property (that will become part of the Studio Plaza development) to the remaining portion of the public alley. The proposed contribution is for an

upgrade to the alley that will benefit future development to the west of the Property (e.g. Studio Plaza) and to the public at large. As such, this contemplated future improvement to the alley should be deemed future “public use space” for which any optional method project needing credits for “off-site” public use space credits could contribute.

If the improvements to the public alley are for “public enjoyment” in the future, the associated cost should be borne by the “public”. The cost should not be borne in large part by the adjacent owner of a small project that is amending existing approvals to reduce the size of a proposed development, completing its development well in advance of any “future work” in the public alley, and reaping no benefit from the proposed future improvements to the alley.

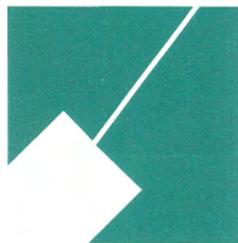
\$93,940 is a significant amount of money for a small development. Further, the proposed requirement that a bond be posted for 10 years is onerous as it restricts cash assets for an extended period of time.

As we discussed during our many meetings, we are amenable to requesting that the amount due for the deficit in “on-site public use space” for the Project be earmarked specifically for future work in the public alley as an alternative to our proposed contribution to the Gene Lynch Park. A separate contribution of \$93,940 is not supportable and not acceptable.

Thank you for your consideration of these comments.



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  
301-495-4500, www.mncppc.org

Date of Mailing: JAN 10 2006

**MONTGOMERY COUNTY PLANNING BOARD  
OPINION**

Project Plan No.: 9-05003  
Project: Easley Subdivision (The Adele)  
Date of Hearing: June 23, 2005

---

Action: **APPROVAL SUBJECT TO CONDITIONS.** (Motion to approve was made by Commissioner Bryant; duly seconded by Commissioner Robinson; with a vote of 4-0, Commissioners Berlage, Bryant, Perdue and Robinson voting in favor. Commissioner Wellington was necessarily absent.)

---

The date of this written opinion is JAN 10 2006 (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this written opinion, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules of Court – State).

**INTRODUCTION**

On March 9, 2005, Fenton Street Development, LLC (“Applicant”) submitted an application for the approval of a project plan for a proposed 145,471 square feet of mixed-use development on 1 lot consisting of 0.96 acres of CBD-1-zoned land in the Silver Spring Central Business District (“Project Plan”). The application was designated Project Plan #9-05003. Concurrently, the Applicant filed Preliminary Plan application #1-05077 (“Preliminary Plan”) with the Montgomery County Planning Board. On June 23, 2005, Project Plan Review #9-05003 and the Preliminary Plan were brought before the Planning Board for a public hearing. At the public hearing, the Planning Board heard testimony and received evidence submitted in the record on the application.

## **THE SUBJECT PROPERTY**

The 0.96-acre (gross tract area) site is located at 8222-8224 Fenton Street, in the southwest quadrant of the intersection of Fenton Street and Thayer Avenue in the Silver Spring Central Business District ("CBD") ("Subject Property" or "Property"). The Property is comprised of parts-of-lots 5,6, and 7 of the original Silver Spring Park subdivision (Plat Book B, Page 47), as depicted on the plat entitled "Map of Building Sites for Sale at Silver Spring", which was recorded in 1904, and Lot 10 of the Easley's Silver Spring subdivision (Plat Book 191, Page 93) recorded in May 1912. The Property is zoned CBD-1 and is currently improved with a one-story building and ancillary parking that is being used as an automobile service facility, which will be removed. The topography slopes approximately 5 feet from west to east. The southern perimeter of the Property is an open lawn area and is lower in elevation by approximately 5 feet. This portion of the site is fenced. The western boundary contains a mix of mature white pines and locust with understory plant material. The eastern perimeter of the site, along Fenton Street, contains five-foot-tall brick piers with ornamental wrought-iron, along with street trees, pavers, lighting and benches consistent with the Silver Spring Streetscape standards. Overhead utilities exist along the Fenton Street and Thayer Avenue frontages and along the 20-foot-wide public alley that borders the site on the south.

The adjacent and surrounding properties contain a mix of uses, building heights and massing consistent with an urban downtown area. The Subject Property and the surrounding properties are zoned CBD-1 and are located within the Fenton Village Overlay Zone. The zoning transitions to CBD-0.5 east of Fenton Street and to R-60 beyond, within the existing neighborhood of Silver Spring Park. The buildings along Fenton Street vary in height from 1 to 4 stories and contain a mix of uses, including salons, tailors, professional offices, small restaurants, and residential uses. The 3-story Safeway store is located to the north directly across Thayer Avenue. A 24-unit condominium development is under construction on the north side of the Safeway. Weller's dry cleaning building, parking and an Ethiopian restaurant are located directly across Fenton Street to the east. A gas station is located in the northeast quadrant of the intersection of Fenton Street and Thayer Avenue. Silver Spring Towers, a 13-story apartment complex, is located just east of the gas station. Further east, outside the CBD boundary line, the area is characterized by 1- to 2-story houses. The Property is bordered on the south by a 20-foot wide public alley. The 2-story Thai Market and nail salon and the recently renovated 3-story Grand Design office and retail building are located to the west along Thayer Avenue. Montgomery County Parking Lot No. 3 is located directly west of the site in the center of the block framed by Fenton Street, Thayer Avenue, Silver Spring Avenue and Mayor Lane. The public parking lot can be accessed from all of the surrounding streets via public alleys.

The Subject Property is located within the area covered by the Silver Spring Central Business District and Vicinity Sector Plan, approved February 2000 ("Sector Plan"). The Sector Plan recommended CBD-1 zoning for the Subject Property, which was applied through the Sectional Map Amendment adopted July 18, 2000, per County Council Resolution 14-600. Although the Sector Plan does not specifically identify the Subject Property as a potential housing site, the Sector Plan does encourage housing as an important component of the Silver Spring CBD revitalization efforts and recommends height incentives for the construction of new housing in Fenton Village. The Sector Plan also outlines six themes, which articulate the shared goals and vision for a revitalized Silver Spring. Four of the themes directly apply to the proposed development, including a residential downtown, a green downtown, a commercial downtown, and a pedestrian-friendly downtown. The Property is also located within the Fenton Village Overlay Zone ("Overlay Zone"), which encourages redevelopment by providing flexibility in development standards and uses, while addressing compatibility with nearby uses and incorporating design elements, streetscape and public use spaces. To ensure compatibility, the Overlay Zone limits building height of new construction to a maximum of 60 feet for properties fronting on the west side of Fenton Street. However, within the area between Georgia Avenue and Fenton Street, building height may be increased up to 90 feet for projects that are at least 33% residential and where the increased height is placed toward Georgia Avenue.

### **PROPOSED DEVELOPMENT**

The concurrently reviewed Preliminary Plan seeks to consolidate the above-mentioned lot and parts-of-lots into one buildable lot, which is proposed to accommodate 145,471 gross square feet of development, including 96 residential condominium units, of which 15 will be moderately priced dwelling units ("MPDUs"), and 33,220 square feet of retail and office, on approximately 0.67 acres (net lot area). The Applicant is receiving a 22% density bonus for providing additional MPDUs on the site.

### **Building Program**

The building design architecturally accentuates the prominent corner of the building, at the intersection, through building articulation and varied massing. The retail and office components are located on the first two floors, with the residential loft-style units located above. The residential entrance lobby is accessed directly from Thayer Avenue, approximately 40 feet from the building corner. The office/retail entrance is located mid-block along the Fenton Street frontage. Each storefront has a separate entrance along Fenton Street. The residential portion of the building facing Fenton Street is cantilevered 2 stories above the public use space, extending five feet from the storefronts, to provide a

partially covered shopping arcade and define the retail frontage for pedestrians. The building height transitions from 60 feet along Fenton Street to 90 feet along Thayer Avenue. Along the Fenton Street frontage, the proposed building is 60 feet in height. An 80-foot portion of the building steps back an additional 12 feet from the Fenton Street frontage. At the prominent intersection, the building height transitions from 60 to 90 feet and continues at 90 feet along the Thayer Avenue frontage. The major portion of the building frontage along Fenton Street is set back 8 feet from the right-of-way, approximately 24 feet from the actual pavement edge. The taller portions of the building are set back 20 feet from the Fenton Street right-of-way or approximately 36 feet from the actual pavement edge.

### **Public Use Space**

The Project Plan proposes 5,705 square feet of on-site public use space, which equals 20% of the net lot area, the minimum required amount of public use space for optional method projects in the CBD. The majority of the on-site public use space consists of a plaza located at the intersection of Fenton Street and Thayer Avenue. The plaza will contain public art, benches, amenity landscaping, and specialty lighting and ornamental paving to accentuate the building and amenities. The remainder of the on-site public use space is located directly in front of the building, expanding the sidewalks and streetscape along Fenton Street and Thayer Avenue and incorporating public art as an element of design. The plaza will create a focal point at the corner that directly ties into the architecture of the building and serves as an outdoor seating area. A public art program will be developed to include opportunities within the public plaza area to reinforce the architecture of the building, invite pedestrians and shoppers to congregate, and provide for seasonal color in front of the building. The Applicant has identified three areas or elements that could be incorporated into the public art component, including seating areas, paving within the streetscape, and railings that could incorporate glass or acrylic elements in the overall design. The public plaza will be interactive for pedestrians, storefront patrons, and residents of the building and will serve as a vital urban open space link for the community. The public plaza and sidewalks will be part of an interconnected pedestrian system within Fenton Village that leads to the core area of development in downtown Silver Spring. The Applicant will also relocate the existing overhead utilities underground.

The proposal also includes 6,763 square feet (23.7% of the net lot area) of off-site streetscape improvements directly in front of the Property and extending along the south side of Thayer Avenue for approximately 125 feet to the alley entrance to the County Parking Lot No. 3, and a \$70,000 contribution toward the general park fund for park projects in the CBD. The streetscape improvements along the south side of Thayer Avenue will include a 20-foot wide brick sidewalk,

street trees and specialty lighting. Along the west side of Fenton Street, the improvements will include replacing the existing concrete paving and ornamental fencing with brick and expanding the sidewalk to 26 feet wide. All streetscape improvements will be provided in accordance with the *Silver Spring Streetscape Plan* (April 1992) Technical Manual, or as amended. In addition, the Applicant will relocate the existing overhead utilities underground.

In total, the Project Plan includes 12,468 square feet of public use space, amenities and improvements or 43.7% of the net lot area, which greatly exceeds the requirement for public use space equal to 20% of the net lot area for Optional Method developments in the CBD and complements the combined totals for other projects in the CBD with similar requirements.

In addition to the public use space, amenities and off-site improvements, the Applicant is providing a private courtyard and amenity landscaping for the residents along the western perimeter of the building and the implementation of green roof technology on a portion of the building rooftop.

### **Parking and Access**

The Project Plan includes a 2-level below-grade parking structure that will contain 171 parking spaces, of which 122 spaces will serve the future residents. The remaining spaces will be dedicated to the retail and office components. The site is located within the Silver Spring Parking Lot District, which allows the Applicant to provide less on-site parking than would usually be required (230 spaces for the subject application) and encourages the use of local public parking facilities. The parking structure will be accessed from Fenton Street via the existing public alley at the southern end of the site. The loading dock will also be accessed via the existing public alley. A new sidewalk will be installed along the north side of the alley using the same brick pavers and granite sets that will be used along the Fenton Street frontage to provide connectivity and facilitate pedestrian travel to the parking garage and County Parking Lot No. 3.

### **SUMMARY OF TESTIMONY AND EVIDENCE IN RECORD**

In its Memorandum to the Planning Board, dated June 8, 2005, ("Staff Report"), and through testimony at the public hearing, Development Review Staff ("Staff") recommended approval of the Project Plan. At the public hearing, Staff used a powerpoint presentation to describe the site, the proposed building, the public use space and the public art amenity. Staff also addressed the conformance of the building height to the provisions of the Overlay Zone and the Sector Plan. In addition, Staff advised the Planning Board that although the Applicant's contribution to the park improvement fund has been identified as part of the

amenity package at the project plan phase of review, the details, including the timing and allocation of the contribution will be part of the site plan submittal.

The Applicant appeared at the hearing represented by its legal counsel and land planner/urban designer and indicated its concurrence with the Staff recommendation. The Applicant's legal counsel noted that the Montgomery County Department of Public Works & Transportation ("DPW&T") had raised an issue concerning the location of the access to the parking garage within the past couple of days. He suggested that the parking access issue could be worked out during site plan review. He also testified that the extension of the streetscape improvements along Thayer Avenue and the new sidewalk along the southern border of the site would facilitate pedestrian access to County Parking Lot No. 3. In addition, he stated that the Applicant would support using the \$70,000 contribution to provide an attractive entrance/gateway park for Fenton Village. The Applicant's land planner/urban designer testified that the project is designed to spur redevelopment and add activity and vitality to downtown Silver Spring. She described the public use space, the streetscape improvements and the public art concept.

No other speakers testified at the public hearing. Several community organizations, residents and business owners submitted correspondence in support of the Project Plan, noting that the plan includes much-needed mixed-income housing, street-level retail space, commercial space, streetscape improvements, setbacks, on-site parking and public use space. Several of the letters requested that the monetary contribution to the park fund be specifically designated for the South Fenton Gateway Park. Two letters supported mixed-use development on the site but expressed reservations about the subject proposal. In one of those letters, the Silver Spring Citizens Advisory Board contended that the height of the proposed building is inconsistent with the intent of the Sector Plan because the 90-foot portion of the building is too close to Fenton Street. They further contended that the building setback along Fenton Street is inconsistent with the adjacent buildings, which are built to the property line, and that the sidewalk does not provide sufficient space to be usable by the public. In addition, they commented that the proposed sidewalk upgrades are already funded for DHCA improvement. They suggested that as an alternative public amenity the Applicant could make a contribution toward the construction of the Silver Spring Town Square pavilion and skating rink. In another letter, the East Silver Spring Citizens Association, Inc. expressed concern that the proposed building does not conform to the Master Plan goals for Fenton Street Village, would overwhelm most of the adjoining properties, and could lead to a progression of tall buildings along Fenton Street. They also noted concern about the effect of the development on the future of Fenton Street Village as a haven for small-scale, neighborhood-oriented businesses.

## **FINDINGS**

Section 59-D-2.42 of the Zoning Ordinance sets forth the findings that the Planning Board must make in its review of a project plan application. Having given full consideration to the recommendations and findings of its Staff (including those contained in the Staff Report dated June 8, 2005), which the Board hereby adopts and incorporates by reference, the testimony and evidence presented and contained in the record of the application, the Montgomery County Planning Board makes the following findings:

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

Section 59-C-6.212 (Intent of the CBD Zones).

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

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

The Planning Board finds that the Project Plan is in accordance with the Silver Spring Central Business District and Vicinity Sector Plan. The Project Plan proposes to use the optional method of development. The proposed development consists of a mid- to high-rise mixed-use building. High-density residential, office and commercial retail uses are permitted in the CBD-1 Zone.

The building will vary in height from 6 to 9 stories, which is in conformance with Section 59-C-6.235 of the Montgomery County Zoning Ordinance, which permits a maximum height of 90 feet under the Optional Method. The site is also located within the Fenton Village Overlay Zone, which places limitations on the height as it relates to Fenton Street. The building design incorporates setbacks and sections of varying heights to comply with the Overlay Zone provisions, which limit height to a maximum of 60 feet for new buildings fronting the west side of Fenton Street, but allow building height to increase up

to 90 feet for projects that are at least 33% residential and where the increased height is placed toward Georgia Avenue.

The Project Plan also conforms to the zoning provisions for density. The application proposes 96 dwelling units, including 15 MPDUs provided on-site. The proposal reflects a floor area ratio (FAR) of 3.0, plus a bonus density of 22% for providing 15% MPDUs. This density is the maximum allowed under the zone for mixed-use projects. All of the MPDUs are proposed to be located within the building.

The Project Plan will accomplish important Sector Plan objectives by providing a residential component within Fenton Village, including Moderately Priced Dwelling Units, promoting redevelopment within Fenton Village, protecting nearby residential development, upgrading the physical environment and providing a pedestrian environment with local retail opportunities. The proposal improves the area by replacing an existing automotive facility and surface parking lot with a modern mixed-use commercial and residential building. The proposed development provides an appropriate transition between surrounding residential and commercial uses along Fenton Street and Thayer Avenue.

- (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 Planning Board finds that the Project Plan responds to the need for housing in Fenton Village and addresses the need for smart growth policies where infrastructure, community facilities and elements of an urban district already exist. The Project Plan is consistent with the Sector Plan, which encourages housing and retail as important components in the revitalization efforts for Fenton Village. The Project Plan includes street-front retail, which will support the local retail neighborhood and serve residents and CBD employees.

The Planning Board finds that, under the optional method, this project encourages the development of active urban streets by providing public spaces along street edges and improves the quality of the pedestrian environment within the improved streetscapes. The improved streetscape, along with the amenities addressing the need for public interaction, enhances the downtown Silver Spring area. The project supports the economic base in the downtown by making it easier for workers in Silver Spring to live near their jobs. This project will also

increase the vitality of downtown Silver Spring and add an economic infrastructure for commercial and retail businesses in Fenton Village and the core area.

- (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 Planning Board finds that the proposed Project Plan will strengthen the Fenton Village area by complementing the scale and mix of existing design elements and uses along Fenton Street and Thayer Avenue while respecting the Fenton Village Overlay Zone height limitations. The plan will provide a compatible and desirable relationship with adjacent and surrounding uses. The proposed development will provide a retail component along Fenton Street that will blend in with the existing retail and office uses, along with the proposed streetscape improvements, to promote the pedestrian friendly environment envisioned in the Sector Plan. The 60-90 foot building provides the an appropriate transition from the adjacent residential neighborhood east of Fenton Street to the higher density uses and buildings closer to Georgia Avenue. The project will improve connectivity and facilitate safe and efficient pedestrian activity within Fenton Village.

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

The Planning Board finds that the Project Plan promotes the effective use of transit facilities and facilitates pedestrian access to the central business district. The proposed development is located approximately 1600 feet from the Silver Spring Metro Station. The proximity to transit facilities, as well as the downtown employment core, will reduce the dependency on the automobile for the residents and for the employees and patrons of the commercial components of the development. The widened sidewalks and streetscape improvements along Fenton Street and Thayer Avenue, together with the expansion of the Thayer Avenue streetscape approximately 125 feet west of the property boundary, will promote pedestrian connectivity to the metro station and to core areas of development within the Silver Spring CBD.

The Applicant will enter into a traffic mitigation agreement ("TMA") with the Planning Board to help the Project achieve the non-driver commuting goal for development in the Silver Spring CBD. The TMA

will outline possible transit alternatives, monitoring of the program and commuter display information.

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

The Planning Board finds that the Project Plan will improve pedestrian circulation, encourage the development of active urban streets, improve the quality of the pedestrian environment, and facilitate pedestrian connectivity to the bus and metro stations by widening the sidewalks and enhancing the streetscape along Fenton Street and Thayer Avenue as prescribed in the *Silver Spring Streetscape Plan* (April 1992) Technical Manual, as amended. The streetscape improvements are being expanded along Fenton Street to complement that portion of the streetscape constructed by the Department of Housing and Community Affairs (DHCA). The full streetscape improvements along the property frontage and extending 125 feet along the south side of Thayer Avenue will complete a portion of the block and complement the existing streetscape on the north side of Thayer Avenue opposite the Subject Property. The Project Plan also includes the installation of a new sidewalk along the existing public alley that borders the southern boundary of the site. The new sidewalk will incorporate the same brick pavers and granite sets that will be used along the Fenton Street frontage to provide connectivity and facilitate pedestrian travel to the parking garage and County parking lot.

The Board finds that the Project Plan will improve vehicular circulation through the dedication, via the Preliminary Plan, of an additional 8 feet of right-of-way along the west side of Fenton Street to expand the total right-of-way dedication to 40 feet from the centerline. Approval of the Preliminary Plan is also conditioned upon dedication of right-of-way (to full-width) along the Property's Thayer Avenue frontage. The dedication of the full-width rights-of-way will ensure complete accommodation of the optional method streetscape treatment on the Applicant's side of each street.

The parking garage and loading area will be accessed from the 20-foot-wide public alley bounding the southern end of the site. The public alley is one of four access points to County Parking Lot No. 3. The parking garage is a 2-level below grade structure planned to accommodate 171 parking spaces, 122 of which will be dedicated for use by the residents. Signs indicating traffic circulation in and out of the garage will promote safety for pedestrian activity in the public use space.

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

The Planning Board finds that the Project Plan assists in developing adequate residential areas for people with a range of different incomes. One of Montgomery County's objectives for moderately priced housing is to provide MPDUs in the CBD where public facilities, services and transit options are readily available. Consistent with this objective, the Project Plan proposes 96 residential condominiums, including 15 MPDUs within the proposed building, which represents 15% of the total number of dwelling units (12.5% is required).

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

The Planning Board finds that the Project Plan responds to the need for housing in downtown Silver Spring and addresses the need for smart growth policies where infrastructure, community facilities and elements of an urban district already exist. The project assembles one recorded lot and three parts-of-lots to allow for the unified redevelopment of the currently underutilized site. Although the Sector Plan does not specifically identify the Subject Property as a potential housing site, the Sector Plan does encourage housing as an important component of the revitalization efforts for downtown Silver Spring. The Project Plan will introduce new market-rate condominium units, MPDUs, retail and office space into an existing framework of mixed-use development in downtown Silver Spring, further encouraging revitalization in the downtown corridor.

### **Requirements of the CBD-1 Zone**

The following table demonstrates the conformance of the Project Plan with the development standards under the Optional Method of Development:

**PROJECT DATA TABLE**

	Zoning Ordinance Development Standard	Development Standard Approved by Planning Board and Binding on Applicant
Gross Tract Area (sf.):	22,000 min. (0.51acre)	41,743* (0.96 acres)
Net Site Area (after dedication)(sf.):	N/A	28,526
Permitted Density Calculations (du/ac.):		
Mixed Non-Residential Density (FAR/SF): [Sect. 59-C-6.234(b)(3)]	2.0 (83,486)	0.80 (33,220) 15,020 Retail/ 18,200 Office
Residential Density (FAR/SF):	3.0 (112,251)	2.2+bonus density(2.68) (112,251)
Total Density (FAR/SF):	<u>3.0+ bonus density</u> (145,471)	<u>3.0+bonus density(3.48)</u> (145,471)
MPDUs (%):	15 15 MPDUs	15 15 MPDUs
Max. Building Height (ft.):		
For properties fronting Fenton St.	60	60**
For properties fronting Thayer Ave.	90	90**
Parking:		
Residential Uses (Mkt. Rate)		
1 BR @ 1.25 sp./unit (48 x 1.25)	60 spaces	
2 BR @ 1.50 sp./unit (29 x 1.50)	44 spaces	
3 BR @ 2.00 sp./unit (4 x 2.00)	8 spaces	
Residential Uses (MPDUs)		
1 BR @ 0.625 sp./unit (11 x 0.625)	7 spaces	
2 BR @ 0.75 sp./unit (4 x 0.75)	3 spaces	
(10% credit for residential in CBD 122 x .10 = 12)		
Residential subtotal:	110 spaces	122 spaces

	Zoning Ordinance Development Standard	Development Standard Approved by Planning Board and Binding on Applicant
Office Uses (18,000 gsf @ 2.4 sp./1000)	44 spaces	
Retail Uses (15,020 gsf @ 5 sp./1000)	<u>76 spaces</u>	<u>49 spaces</u>
Total Parking Spaces:	230 spaces***	171 spaces
Public Use Space (% of net lot area):		
On-site (sf):	5,705 (20%)	5,705 (20%)
Off-site (sf):		6,763 (23.7%)
Total On and Off-Site Public Use Space (sf):		12,468 (43.7%****)
Total Amenity Space (Private) (sf):		14,603 (51.2%)

\* Includes previous street dedication (12,417 sf and 800 sf for the proposed Fenton Street right-of-way dedication).

\*\* Section 59-C-18.192(b)(1)<sup>1</sup>

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

\*\*\*\* The Applicant is making a monetary contribution of \$70,000 toward the general park fund for park projects in the Silver Spring CBD as part of the off-site public use space.

1 (1) Building Height in the Overlay Zone:

- (A) along the east side of Georgia Avenue must not exceed 90 feet; along the west side of Fenton Street must not exceed 60 feet; within the area between Georgia Avenue and Fenton Street must not exceed 60 feet but may increase up to 90 feet for projects that are at least 33% residential and where the additional height is placed closest to Georgia Avenue and decreases as you move east to Fenton Street; and
- (B) along the east side of Fenton Street must not exceed 45 feet for all uses except housing, which must not exceed 60 feet.

**(b) As conditioned, the Project Plan conforms to the approved and adopted Master or Sector Plan or an Urban Renewal Plan approved under Chapter 56.**

The Planning Board finds that the Project Plan implements the major principles and recommendations of the Silver Spring Central Business District and Vicinity Sector Plan, approved February 2000.

The Sector Plan recommended CBD-1 zoning for the Subject Property, which was applied through the Sectional Map Amendment adopted July 18, 2000, pursuant to County Council Resolution 14-600. The Board finds that mid- to high-rise multi-family residential, retail and office are permitted uses in the CBD-1 zone. The proposed mixed-use development is comprised of 96 residential units, 15,020 square feet of retail and 18,200 square feet of office space, and 171 parking spaces in a below-grade parking structure. The proposal will be implemented under the optional method of development and will have a density of 3.0 FAR plus the bonus density allowed for the additional MPDUs, resulting in 145,471 square feet of development, the maximum density allowed on the site. The Project Plan proposes 5,705 square feet of public use space on site, which equals 20% of the net lot area, the minimum required amount. However, the plan also proposes 6,763 square feet of off-site streetscape improvements, 23.7% of the net lot area, for a total of 12,468 square feet of public use space or 43.7% of the net lot area.

The Sector Plan outlines six themes, which articulate the shared goals and vision for a revitalized Silver Spring. Four of the themes directly apply to the proposed development, including a residential downtown, a green downtown, a commercial downtown, and a pedestrian-friendly downtown. The Project Plan includes housing, landscaping, street trees, the implementation of green roof technology, street-level retail and sidewalk and streetscape improvements and other amenities to enhance the pedestrian experience. Although the Sector Plan does not specifically identify the Subject Property as a potential housing site, the Sector Plan does encourage housing as an important component of the revitalization efforts and recommends height incentives for the construction of new housing in Fenton Village.

The Property is also located within the Fenton Village Overlay Zone ("Overlay Zone"), which encourages redevelopment by providing flexibility in development standards and uses, while addressing compatibility with nearby uses and incorporating design elements, streetscape and public use spaces. To ensure compatibility, the Overlay Zone limits building height of new construction to a maximum of 60 feet for properties fronting

on the west side of Fenton Street. However, building height may be increased up to 90 feet for projects that are at least 33% residential and where the increased height is placed toward Georgia Avenue.

The Project Plan includes new public open space, public art, and streetscape improvements. The proposed project will encourage the development of active urban streets by providing street-facing building entrances and easily accessible and highly visible public spaces as activity generators. This proposal will improve the quality of the pedestrian environment by providing the optional method streetscape treatment and other public amenities along Fenton Street and Thayer Avenue.

Overall, the development of the subject project will significantly further the objective of stabilizing the downtown core's residential component, while providing an appropriate transition between the mix of commercial uses north, west and south of the project site to the predominately residential neighborhoods to the east of the site.

- A. **Compatibility:** While the proposed project is larger than most existing buildings on Fenton Street, the Board finds that the proposed development, as conditioned, meets the intent of the Sector Plan in terms of building height, intensity and use, and will not adversely affect surrounding properties. The Board further finds that the proposed building height and uses satisfactorily meet the compatibility requirements of the Fenton Village Overlay Zone. The height of the Fenton Street frontage of the building will be 60 feet. The 80-foot portion of the building is placed further west on the site, toward Georgia Avenue, and set back at least 20 feet from Fenton Street. The 90-foot portion of the building fronts on Thayer Avenue and is adequately set back from Fenton Street.
- B. **Silver Spring Wayfinding System:** The Silver Spring Wayfinding Master Plan, prepared by the Silver Spring Regional Center, indicates that there is a Type C2 wayfinding sign (sign #73) programmed for Thayer Avenue. The Applicant will coordinate with the Silver Spring Regional Center for the placement of the proposed sign on the site.
- C. **Sector Plan Street Rights-of-Way:** The existing Fenton Street right-of-way varies from 72 to 80 feet. The Applicant will dedicate an additional 8 feet of right-of-way along a portion of Fenton Street so that the right-of-way will equal 40 feet measured from the centerline along the entire Fenton Street frontage of the Property in accordance with the Sector Plan recommendation for an 80 foot

right-of-way. The existing right-of-way for Thayer Avenue is 60 feet, which is the recommended width in the Sector Plan.

- D. **Streetscape:** As conditioned, the Project Plan will comply with streetscaping recommendations in the Sector Plan. The Applicant will improve the west side of Fenton Street and the south side of Thayer Avenue and extend the streetscape improvements by approximately 125 feet to the entrance to the County parking lot, using the Type B treatment recommended in the *Silver Spring Streetscape* (April 1992) technical manual. The Fenton Street frontage will be improved by replacing the existing concrete paving and ornamental fencing with brick and expanding the sidewalk to 26 feet wide. The Applicant also will implement some non-standard paving elements within the street rights-of-way located in proximity to the main public space.

The Board further finds that, with the Applicant's provision of the following amenities and facilities, the Project Plan Conforms to the Sector Plan:

### **On-Site Improvements**

#### Fenton Street and Thayer Avenue Public Plaza

- Brick paved public plaza along majority of site frontage to complement streetscape improvements.
- Expand the existing streetscape improvements along Fenton Street to include specialty pavers.
- Provide a public walkway on the north side of the 20-foot-wide public alley from Fenton Street to the southwestern corner of the property. Walkway to include the same pavers proposed for Fenton Street.
- Public Art to highlight public's interest in the revitalization efforts of downtown Silver Spring. A public art program shall be developed to include opportunities for the incorporation of glass or acrylic elements in the design of the benches and railings.
- Specialty lighting in the plaza and up lighting of the art elements to softly accentuate and visually activate the plaza at night.
- The paving in the plaza will be designed to include patterns that complement the artwork, including the benches and railings.
- Landscape beds and planters with irrigation and plant material for seasonal accent and color. Plaza trees to be complementary to the existing Fenton Street and Thayer Avenue streetscape as well as providing a canopy for shade within the seating areas.
- Existing overhead utilities to be installed underground consistent with the Silver Spring Master Plan.

- Make available a space for public outdoor interaction and activities.
- Make available a space for entertainment, as needed in conjunction with the Silver Spring Urban District (SSUD), and accommodations for outdoor entertainment.

### **Off-Site Improvements**

#### Fenton Street Right-of-Way

- Streetscape (Type B) on the west side of Fenton Street along the entire property frontage to be expanded to include Brick Pavers consistent with Silver Spring Streetscape Plan Technical Manual.
- Brick driveway apron consistent with patterns approved along Fenton Street, entrance to parking garage from 20-foot-wide public alley.
- Existing overhead utilities and street level meters to be installed underground consistent with the Silver Spring Master Plan.

#### Thayer Avenue Right-of-Way

- Streetscape (Type B) on the south side of Thayer Avenue, along the entire property frontage, to include Street trees (Honey Locust), Brick Pavers and Street Lights (Washington Globe) consistent with Silver Spring Streetscape Plan Technical Manual.
- Granite sets within the tree pits as specified in the Silver Spring Streetscape Plan Technical Manual.
- Existing overhead utilities to be installed underground consistent with the Silver Spring Master Plan.

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

The Planning Board finds that the Project Plan is compatible with the existing and potential development occurring in downtown Silver Spring and will encourage the revitalization of the Fenton Village area. The adjacent and surrounding properties contain a mix of uses, building heights and massing that is integral to the vitality of an urban downtown area. Although the proposed building is larger than most of the existing buildings along Fenton Street, the building will provide an appropriate transition from the residential neighborhood east of Fenton Street to the higher density buildings and uses closer to Georgia Avenue. Moreover, the Sector Plan and the Overlay Zone encourage the redevelopment of many of the underutilized properties in Fenton Village. In addition, the

taller portions of the building are set back from Fenton Street, placed toward Georgia Avenue and front on Thayer Avenue in compliance with the provisions of the Sector Plan and Overlay Zone. The design of the building incorporates varied massing, articulation and a variety of architectural features to mitigate the visual impact of the building. The street-front retail and scale of the proposed building, pedestrian and vehicular circulation, public spaces, and improvements to the streetscape will enhance an interactive relationship with downtown Silver Spring and Fenton Village.

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

The Planning Board finds that the Project Plan will not overburden public services or facilities. The project proposes residential units, retail and office uses amid a number of housing projects and commercial businesses within the downtown Silver Spring area. On-site parking will be located in a below-grade 2-level parking garage that will contain 171 parking spaces. The remainder of the parking spaces needed to satisfy the County parking requirements for the proposed uses will take advantage of nearby County parking facilities, which include the adjacent surface parking lot and the recently completed Wayne Avenue Parking Garage. The County Code provides developments, such as the proposed development, that are located within the Parking Lot Districts with the ability to reduce the number of spaces provided on site. In addition, the proposed sidewalk and streetscape improvements will facilitate and encourage pedestrian accessibility to buses and Metro.

There is adequate water and sewer capacity within the Silver Spring CBD Policy Area to accommodate the proposed increase in residential units.

The Applicant will enter into a Traffic Mitigation Agreement ("TMA") with the Planning Board to help the Project achieve the non-driver commuting goal for development in the Silver Spring CBD. The TMA will outline possible transit alternatives, monitoring of the program and commuter display information.

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

The Planning Board finds that the Project Plan would be more efficient and desirable than development that could be accomplished on the Subject Property under the standard method of development. The Project Plan proposes to use the Optional Method of Development and is in conformance with the goals and objectives of the Sector Plan. The plan maximizes the site potential by providing 145,471 square feet of development and 15 MPDUs on site.

In addition to the provision of additional market-rate residential units and MPDUs, office and retail space in downtown Silver Spring, the project will include a significant new public open space and art amenity on the site. The project is providing over 43% of new on and off-site public use space, which would not have been possible through the standard method of development. Additionally, the Applicant is making a monetary contribution of \$70,000 toward the general park fund for park projects in the Silver Spring CBD. The Applicant is maximizing the density for residential and office/retail development and providing public amenities on the site that would not have been possible through a standard method project.

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

The Planning Board finds that the Project Plan meets the requirements of Chapter 25A of the Code. The Applicant will provide 15 MPDUs or 15 percent of the proposed residential dwelling units within the development, which exceeds the 12.5% requirement.

- (g) The Project Plan will result in an overall land use configuration that is significantly superior to that which could otherwise be achieved.**

The Planning Board finds that the Project Plan, which involves the assemblage of one lot and three parts-of-lots, provides for a unified redevelopment of the currently underutilized site, resulting in an overall land use configuration that is significantly superior to that which could otherwise be achieved.

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

The Subject Property is exempt from the forest conservation requirements.

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

By letter dated March 10, 2005, the Montgomery County Department of Permitting Services (DPS) granted conditional approval of the Applicant's stormwater management concept plan. The Project Plan is proposing to implement green roof technology on a portion of the building rooftop. Approval of a Stormwater Management concept is required prior to submittal of the Site Plan application.

In approving the Application, and in making the above findings, the Planning Board considered, among other things:

- (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.
- (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 individual 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.
- (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.

### **PLANNING BOARD ACTION AND CONDITIONS**

The Montgomery County Planning Board **APPROVES** Project Plan Review #9-05003 for approximately 145,471 gross square feet of development, including 96 residential condominium units, of which 15 will be MPDUs, 15,020 square feet of retail and 18,200 square feet of office on 0.96 gross acres in the CBD-1 Zone with the following conditions:

#### **1. Development Ceiling**

The proposed development shall be limited to 145,471 gross square feet of development, including 96 residential condominium units, of which 15 will be MPDUs, and 33,220 square feet of retail and office space, on approximately 0.96 acres.

#### **2. Building Height/Mass**

The height of the proposed building shall not exceed 90 feet. Any portion of the building that exceeds 60 feet in height shall be set back at least 20 feet from the Fenton Street right-of-way.

#### **3. Transportation Improvements**

- a. The proposed development shall dedicate an additional 8 feet of right-of-way (40 feet from the centerline) to provide for a total of 80 feet right-of-way for Fenton Street, as recommended in the Silver Spring CBD Sector Plan.
- b. Provide standard Silver Spring streetscape along the property boundary on Thayer Avenue and Fenton Street, and extend the streetscape off-site, as shown on the approved Project Plan.

**4. Moderately Priced Dwelling Units (MPDUs)**

The Applicant shall provide 15% or 15 MPDUs on-site, consistent with the requirements of Chapter 25A. The development is receiving a 22% density bonus for providing additional MPDUs on the site.

**5. Public Use Space**

- a. The proposed development shall provide at least 20 percent of on-site public use space and 23.7 percent of off-site public use space.
- b. The proposed public use space shall be easily and readily accessible to the general public and used for public enjoyment.
- c. The Applicant shall make a contribution to the M-NCPPC toward park land acquisitions or improvements in the Silver Spring CBD in the amount of \$70,000.

**6. Streetscape**

- a. The Applicant shall provide the full streetscape improvements along the Fenton Street and Thayer Avenue frontage using the *Silver Spring Streetscape Plan* (April 1992) Technical Manual. The following elements are proposed: stone, precast concrete, brick pavers, street trees, lighting, and any other details that are necessary, including the undergrounding of utilities along the frontage of the property, to fulfill the Silver Spring streetscape standards.
- b. Off-site improvements shall be provided along the property frontage of Fenton Street and Thayer Avenue, and extended along the south side of Thayer Avenue to the entrance to the County parking lot.

**7. Public Art**

A public art program shall be developed to include opportunities within the public plaza area to reinforce the architecture of the building, provide for pedestrians and shoppers to congregate and provide for seasonal color in front of the buildings. The Applicant has identified three areas or elements that could be incorporated into the public art component: seating areas, paving within the streetscape, and the railings, which could incorporate glass or acrylic elements as part of the overall design.

**8. Staging of Amenity Features**

- a. The proposed project shall be developed in one phase.
- b. Landscaping to be installed no later than the next growing season after completion of building and public plaza.
- c. Streetscape improvements and public art to be installed prior to occupancy of the building.

**9. Maintenance and Management Organization**

Initially the Applicant, and, subsequently, within ninety days of formation, the Condominium Association, shall become a member of and enter into an agreement with the Silver Spring Urban District for the purpose of maintaining public open spaces and participating in community events.

**10. Coordination for Additional Approvals Required Prior to Site Plan Approvals**

The Applicant shall secure the following additional approvals prior to Site Plan Review:

- a. Coordinate with the Silver Spring Regional Service Center on the placement of the proposed Type C2 way finding sign (Sign #73) located on Thayer Avenue;
- b. Present the public art components to the Art Review Panel for review and comment to be available to the Planning Board;
- c. Coordinate with the M-NCPPC staff and the Montgomery County Department of Public Works and Transportation (MCDPWT) staff regarding the final design and extent of the non-standard elements as part of the proposed streetscape improvements;
- d. The Applicant shall request a waiver for all non-standard elements and non-standard streetscape improvements as well as a maintenance and liability agreement with the MCDPWT;
- e. Enter into a maintenance agreement with the Silver Spring Urban District for maintenance of all or some of the streetscape improvements.

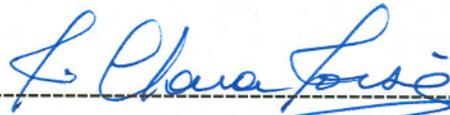
Consistent with Montgomery County Code § 59-D-2.7, Project Plan No. 9-04007 will remain valid for 24 months from the Initiation Date (30 days after the mailing of the written opinion or at the conclusion of an administrative appeal, including the running of any further applicable appeal periods) provided that a complete site plan application is filed within 18 months of the Initiation Date.

[CERTIFICATION OF BOARD VOTE ADOPTING OPINION ON FOLLOWING PAGE]

FOLLOWED AS TO LEGAL SUFFICIENCY  
APPROVING PAGE] **TAB**  
M-NCPPC LEGAL DEPARTMENT  
DATE **12/30/05**

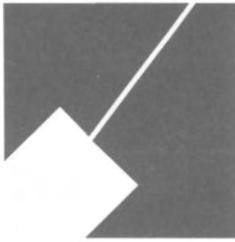
**CERTIFICATION OF BOARD VOTE ADOPTING OPINION**

At its regular meeting, held on **Thursday, January 5, 2006**, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission by unanimous consent, with Commissioner Wellington absent, **ADOPTED** the above Opinion which constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law for **Project Plan No. 9-05003, Easley Subdivision (The Adele)**.



-----  
Certification As To Vote of Adoption  
M. Clara Moise, Technical Writer

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  
301-495-4500, [www.mncppc.org](http://www.mncppc.org)

**Public Hearing Date:** June 23, 2005

**Date Mailed:** JAN 10 2006

**Action:** Approved

Staff Recommendation

**Motion** of Commissioner Bryant,  
seconded by Commissioner Robinson,  
with a vote of 4-0.

Chairman Berlage and Commissioners  
Perdue, Bryant, and Robinson voting in  
favor. Commissioner Wellington  
necessarily absent.

**MONTGOMERY COUNTY PLANNING BOARD**

**OPINION**

Preliminary Plan 1-05077

NAME OF PLAN: Easley Subdivision (The Adele)

The date of this written opinion is JAN 10 2006 (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this written opinion, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules of Court – State).

**INTRODUCTION**

On March 9, 2005, Fenton Street Development, LLC (“Applicant”) submitted an application for the approval of a preliminary plan of subdivision of property in the CBD-1 Zone. The application proposed to create one lot on 0.67 acres (net lot area) of land located at the southwest quadrant of the intersection of Thayer Avenue and Fenton Street in the Silver Spring Central Business District (“Subject Property” or “Property”). The application was designated Preliminary Plan 1-05077. Concurrently, the Applicant filed Project Plan application #9-05003 (“Project Plan”) with the Montgomery County Planning Board. On June 23, 2005, Preliminary Plan 1-05077 and the Project Plan were brought before the Planning Board for a public hearing. At the public hearing, the Planning Board heard testimony and received evidence submitted in the record on the applications.

The record for Preliminary Plan 1-05077 ("Record") closed at the conclusion of the public hearing, upon the taking of an action by the Planning Board. The Record includes: the information on the Preliminary Plan Application Form; the Planning Board staff-generated minutes of the Subdivision Review Committee meeting(s) on the application; all correspondence and any other written or graphic information concerning the application received by the Planning Board or its staff following submission of the application and prior to the Board's action at the conclusion of the public hearing, from the applicant, public agencies, and private individuals or entities; all correspondence and any other written or graphic information issued by Planning Board staff concerning the application, prior to the Board's action following the public hearing; all evidence, including written and oral testimony and any graphic exhibits, presented to the Planning Board at the public hearing.

### **STATUTORY REVIEW CRITERIA**

An application for subdivision requires the Planning Board to undertake its legislatively delegated authority under the Regional District Act<sup>1</sup> and the Subdivision Regulations<sup>2</sup>. The application should also meet the requirements of the Zoning Ordinance<sup>3</sup> applicable to the subject preliminary plan.

The general provisions for lot design for a subdivision are set forth in Section 50-29 of the Subdivision Regulations. In order to be approved by the Planning Board, lot size, width, shape, and orientation must be appropriate for the location of the subdivision and for the type of use contemplated. Lots must also abut a dedicated street or public road. In addition, the depth and width of nonresidential lots must be adequate for the off-street service and parking needed for the proposed use.

Section 50-35 of the Subdivision Regulations sets forth the approval procedure for preliminary plans of subdivision. After presentation of the plan to the Planning Board, the Board must act to approve or disapprove the plan, or to approve the plan subject to conditions and/or modifications necessary to bring the plan into accordance with the Montgomery County Code and all other applicable regulations. The Planning Board's approval procedure for preliminary plans includes review pursuant to: Section 50-35(k) ("Adequate Public Facilities Ordinance"), which directs the Planning Board to approve preliminary plans of subdivision only after finding that public facilities, including the transportation system, will be adequate to serve the proposed subdivision; Section 50-35(l), which requires a finding that the preliminary plan substantially conforms to the Master Plan, unless events have occurred to render the relevant master plan recommendation no longer appropriate; and Section 50-35(o), which mandates that the

---

<sup>1</sup> MD.CODE ANN., ART. 28.

<sup>2</sup> MONTGOMERY COUNTY CODE, CH. 50.

<sup>3</sup> MONTGOMERY COUNTY CODE, CH. 59.

Board ensure that all requirements of the Forest Conservation Law<sup>4</sup> are satisfied before approving a preliminary plan.

**SITE DESCRIPTION**

The Subject Property is located in the southwest quadrant of the intersection of Thayer Avenue and Fenton Street in the Silver Spring Central Business District (“CBD”). The site is identified as parts-of-lots 5, 6, and 7 of the original Silver Spring Park subdivision (Plat Book B, page 47), as depicted on the plat entitled “Map of Building Sites for Sale at Silver Spring”, which was recorded in 1904, and Lot 10 of Easley’s Silver Spring subdivision (Plat Book 191, page 93) recorded in May 1912. The Subject Property contains a net area of 0.67 acres (the gross tract area is 0.96 acres) and is zoned CBD-1. The site is currently improved with a one-story building and ancillary parking that is being used as an automobile service facility, which will be removed. The topography slopes approximately 5 feet from west to east.

**PROJECT DESCRIPTION**

The application, which was reviewed concurrently with the associated Project Plan #9-05005, proposed the creation of one lot for a development that will contain 96-multi-family dwelling units (including 15 MPDUs), 15,020 square feet of retail and 18,200 square feet of office. The plan also proposes a public plaza at the northeast corner of the site with streetscape improvements along Fenton Street and Thayer Avenue.

The preliminary plan proposes a 2-level below-grade parking structure, which will contain 171 parking spaces, of which 122 spaces will serve the future residents. The parking structure will be accessed from Fenton Street via the existing public alley at the southern end of the site. The loading dock will also be accessed via the existing public alley. A new sidewalk will be installed along the north side of the alley using the same brick pavers and granite sets that will be used along the Fenton Street frontage to provide connectivity and facilitate pedestrian travel to the parking garage and County Parking Lot No. 3

The proposed development will generate more than 30 peak hour weekday vehicle trips; and, therefore, the Application was subject to a Local Area Transportation Review (“LATR”).

**EVIDENCE OF RECORD AND TESTIMONY**

The record on the subject application includes uncontested information about the lot size, width, shape and orientation of the proposed one-lot subdivision, the relationship of the proposed lot to public roads, and the off-street service and parking provided.

---

<sup>4</sup> MONTGOMERY COUNTY CODE, ch. 22A.

By memorandum dated June 3, 2005, Transportation Planning Staff provided the Planning Board with its adequate public facilities review of the application. Transportation Staff's memorandum evaluated the effect of the proposed development on the area transportation system, based on the information provided in the traffic study submitted by the Applicant, and described the vehicular and pedestrian access to the site. Transportation Staff concluded that all of the intersections that were included in the study will operate within the congestion standard for the Silver Spring CBD. Staff further concluded that the Preliminary Plan provides for safe and efficient vehicular circulation and adequate pedestrian walkways. In addition, in response to the Applicant's request, Staff and the Montgomery County Department of Public Works & Transportation ("DPW&T") have agreed that a truncation is not needed at the intersection of Fenton Street and Thayer Avenue so long as the areas that would have been delineated for truncation are kept free of any obstructions from street level to a height of at least 12 feet to ensure adequate sight distance at the intersection. Finally, Staff noted that the Maryland Transit Administration has no objection to the Preliminary Plan and that the conceptual alignments for the Bi-County Transitway could be accommodated without encroaching on the site.

Development Review Staff ("Staff") recommended approval of the Application in its memorandum dated June 17, 2005 ("Staff Report"). Staff presented its findings consistent with the Staff Report at the hearing. At the public hearing, Staff used a powerpoint presentation to describe the site, and the proposed development.

The Applicant appeared at the hearing represented by its legal counsel and land planner/urban designer and indicated its concurrence with the Staff recommendation. The Applicant's legal counsel noted that the Montgomery County Department of Public Works & Transportation ("DPW&T") had raised an issue concerning the location of the access to the parking garage within the past couple of days. He suggested that the parking access issue could be worked out during site plan review. He also testified that the extension of the streetscape improvements along Thayer Avenue and the new sidewalk along the southern border of the site would facilitate pedestrian access to County Parking Lot No. 3.

No other speakers testified at the public hearing. Several community organizations, residents and business owners submitted correspondence in support of the Preliminary Plan, noting that the plan includes much-needed mixed-income housing, street-level retail space, commercial space, streetscape improvements, setbacks, on-site parking and public use space. Certain organizations submitted correspondence expressing reservations with aspects of the subject proposal; however, the issues of concern—primarily height and massing of the building proposed in the Project Plan—do not implicate preliminary plan issues but, instead, relate to project and site plan review.

## **FINDINGS**

Having given full consideration to the findings and recommendations of its Staff, which the Board hereby adopts; the recommendations of the applicable public agencies<sup>5</sup>; the Applicant's position; and other evidence contained in the Record, which is hereby incorporated in its entirety into this Opinion, the Montgomery County Planning Board finds, based on uncontested evidence of record, that:

- a) Preliminary Plan No. 1-05077 substantially conforms to the Silver Spring Central Business District and Vicinity Sector Plan, with respect to those elements of the Sector Plan that are germane to preliminary plan review.
- b) Public facilities will be adequate to support and service the area of the proposed subdivision.
- c) The size, width, shape, and orientation of the proposed lot is appropriate for the location of the subdivision.
- d) The application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A. This finding is subject to the applicable condition(s) of approval.
- e) The application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the Montgomery County Department of Permitting Services ("MCDPS") letter, dated March 10, 2005, granting the Stormwater Management Concept Plan conditional approval.
- f) The Record of this application does not contain any contested issues that are relevant to preliminary plan review; and, therefore, the Planning Board finds that any future objection, which may be raised concerning a substantive issue in this application, is waived.

## **CONDITIONS OF APPROVAL**

Finding Preliminary Plan No. 1-05077 in accordance with the purposes and all applicable regulations of Montgomery County Code Chapter 50, the Planning Board approves Preliminary Plan No. 1-05077, subject to the following conditions:

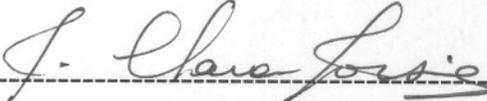
---

<sup>5</sup> The application was referred to outside agencies for comment and review, including the Washington Suburban Sanitary Commission, the Department of Public Works and Transportation, the Department of Permitting Services and the various public utilities. All of these agencies recommended approval of the application.



**CERTIFICATION OF BOARD VOTE ADOPTING OPINION**

At its regular meeting, held on **Thursday, January 5, 2006**, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission by unanimous consent, with Commissioner Wellington absent, **ADOPTED** the above Opinion which constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law for **Preliminary Plan No. 1-05077, Easley Subdivision (The Adele)**.



-----

Certification As To Vote of Adoption  
M. Clara Moise, Technical Writer

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  
 301-495-4500, www.mncppc.org

MCPB No. 06-08  
 Site Plan No. 820060200  
 Easley Subdivision (The Adele)

**RESOLUTION**

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

WHEREAS, pursuant to Montgomery County Code § 59-D-3.4(b), following a public hearing on the application, the Planning Board must, by resolution, approve, approve with conditions or disapprove a proposed site plan; and

WHEREAS, on November 27, 2005, Fenton Street Development, LLC ("Applicant"), filed an application for approval of a Site Plan for 145,471 gross square feet of development, including 96 multi-family dwelling units, 15,020 square feet of retail and 18,200 square feet of office on 0.96 gross acres of CBD-1-zoned land within the Fenton Village Overlay Zone in the southwest quadrant of the intersection of Fenton Street and Thayer Avenue in Downtown Silver Spring, consisting of Lots 5-7 of the original Silver Spring Park subdivision and Lot 10 of the Easley's Silver Spring subdivision. ("Property" or "Subject Property"); and

WHEREAS, on June 10, 2005, the Planning Board approved Project Plan No. 920050030 and Preliminary Plan No. 120050770 for the proposed development; and

WHEREAS, Applicant's site plan application was designated Site Plan No. 820060200, Easley Subdivision (The Adele) (the "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and the staffs of other governmental agencies, on April 6, 2006, Staff presented the Application to the Planning Board at a public hearing for its review and action (the "Hearing"); and

WHEREAS, prior to the Hearing, on March 24, 2006, Staff had issued a memorandum to the Board setting forth its analysis of, and recommendation for approval of the Application subject to certain conditions ("Staff Report"); and

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

WHEREAS, on April 6, 2006, following the Hearing, the Planning Board approved the Application subject to certain conditions on motion of Commissioner Robinson; duly seconded by Commissioner Wellington; with a vote of 5-0, Commissioners Berlage, Perdue, Bryant, Wellington, and Robinson voting in favor).

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Montgomery County Planning Board approved Site Plan No. 820060200 for a maximum of 145,471 gross square feet of development, including 96 residential condominium units, of which 15 will be MPDUs, 15,020 square feet of retail and 18,200 square feet of office, on 0.96 gross acres in the CBD-1 Zone. All site development elements, as shown on Easley Subdivision (The Adele) plans stamped by the MNCPPC on January 20, 2006, shall be required, except as modified by the following conditions:

1. Preliminary Plan Conformance

The proposed development shall comply with the conditions of approval for Preliminary Plan 120050770 as listed in the Planning Board opinion dated January 10, 2006.

2. Project Plan Conformance

The proposed development shall comply with the conditions of approval for Project Plan 920050030 as listed in the Planning Board opinion dated January 10, 2006.

a. Public Use Space

The proposed public use space must be easily and readily accessible to the general public and used for public enjoyment. All streetscape improvements shall be in accordance with the *Silver Spring Streetscape Plan (April 1992)* Technical Manual or as amended. The Applicant shall provide 20 percent (5,705 sf.) of on-site public use space and 23.7 percent (6,763 sf.) of off-site public use space within the rights-of-way for Thayer Avenue and Fenton Street.

b. Streetscape Improvements

1) The applicant shall provide the full streetscape improvements along the Fenton Street and Thayer Avenue frontage using the *Silver Spring Streetscape Plan (April 1992)* Technical Manual. The following elements are proposed: stone, precast concrete, brick pavers, street trees, lighting, and any other details that are necessary, including the undergrounding of utilities along the frontage of the property, to fulfill the Silver Spring streetscape standards.

2) Off-site improvements shall be provided along the property frontage of Fenton Street and Thayer Avenue, and extended along

the south side of Thayer Avenue to the entrance to the county parking lot number 3 from Thayer Avenue.

c. Contribution

The Applicant shall make a contribution to the M-NCPPC toward parkland acquisitions or improvements in the Silver Spring CBD in the amount of \$70,000.

d. Public Art

A public art program shall be developed to include opportunities within the public plaza area to reinforce the architecture of the building, provide for pedestrians and shoppers to congregate and provide for seasonal color in front of the buildings. The Applicant has identified three areas or elements that could be incorporated into the public art component: seating areas, paving within the streetscape, and the railings, which could incorporate glass or acrylic elements as part of the overall design.

3. Site Design

The height of the proposed building shall not exceed 90 feet. Any portion of the building that exceeds 60 feet in height shall be set back at least 20 feet from the Fenton Street right-of-way.

4. Lighting

- a. Provide a lighting distribution and photometric plan with summary report and tabulations to conform to IESNA standards for mixed-use development.
- b. All light fixtures shall be full cut-off fixtures or able to be equipped with deflectors, refractors or reflectors.

5. Pedestrian Circulation

Provide a six-foot-wide public access easement on the north side of the 20-foot-wide public alley that provides service to the subject building from Fenton Street. The paver material shall be consistent with the material provided in the public use space along the retail frontage on Fenton Street.

6. Recreation Facilities

- a. The Applicant shall provide two (2) picnic/sitting areas, an indoor fitness facility, an interactive pedestrian system, and an indoor community space.
- b. The Applicant shall meet the square footage requirements for all of the applicable proposed recreational elements and demonstrate that each element is in conformance with the approved M-NCPPC Recreation Guidelines.

7. Transportation

The applicant shall comply with the following conditions of approval from M-NCPPC- Transportation Planning in the memorandum dated June 3, 2005:

- a. The applicant shall provide full width streetscape improvements on Fenton Street and Thayer Avenue in conformance with the Silver Spring Streetscape standards.

- b. Provide a modified Silver Spring streetscape on the south side of the Thayer Avenue right-of-way from the subject property and extended off-site westward toward Georgia Avenue to the entrance to the 20-foot-wide alley that provides access into parking lot number 3

8. Stormwater Management

The proposed development is subject to Stormwater Management Concept approval conditions dated March 10, 2005.

9. Common Open Space Covenant

Record plat of subdivision shall reference the Common Open Space Covenant recorded at Liber 28045 Folio 578 ("Covenant"). Prior to issuance of the final use and occupancy permit, Applicant shall provide verification to M-NCPPC staff that Applicant's recorded Condominium Association Documents incorporate by reference the Covenant. Applicant shall provide a copy of the final use and occupancy permit to the M-NCPPC Staff.

10. Moderately Priced Dwelling Units

- a. The applicant shall provide 15% or 15 MPDUs on-site, consistent with the requirements of Chapter 25A. The development is receiving a 22% density bonus for providing additional MPDUs on the site.
- b. The MPDU agreement shall be executed prior to the release of the first building permit.

11. Maintenance Responsibility

Initially, the applicant, and subsequently, within ninety days of formation, the Condominium Association shall become a member and enter into an agreement with the Silver Spring Urban District for the purpose of maintaining the on-site public open spaces, including the public art, seating areas, landscaping and lighting and participating in community events.

12. Development Program

Applicant shall construct the proposed development in accordance with the Development Program. The Development Program shall be reviewed and approved by M-NCPPC staff prior to approval of signature set of site plan. The Development Program shall include a phasing schedule as follows:

- a. All site features associated with each building as defined by the site plan dated January 20, 2006 shall be installed prior to occupancy of the units, but no later than twelve (12) months after the occupancy of the first residential unit, whichever comes first. Applicant shall provide the use and occupancy permits to M-NCPPC staff in order to inspect the site for streetscape within the respective street rights-of-way, including the street trees, street lights and pavers, as well as construction of the public plaza and art, on-site landscaping, lighting, recreation and paver materials.
- b. Street tree planting shall progress as street construction is completed, but no later than six months after completion of the building.

- c. Community-wide pedestrian pathways, including the 6-foot-wide paver walkway on the north side of the 20-foot-wide public alley, shall be completed no later than six months after completion of the building.
- d. Landscaping associated with the private amenity space shall be completed no later than six months after completion of the building.
- e. Pedestrian pathways, including the streetscape improvements along Fenton Street and Thayer Avenue and seating areas associated with the streetscape, shall be completed no later than six months after completion of the building.
- f. The recreation facilities located within the building shall be installed prior to occupancy of the first residential unit in the building.
- g. The extension of the streetscape along the south side of Thayer Avenue from the subject property, west to the entrance to the alley, shall be completed no later than six months after completion of the building.
- h. The \$70,000 contribution shall be received by the M-NCPPC prior to the release of the first building permit.
- i. Clearing and grading shall correspond to the construction phasing, to minimize soil erosion.
- j. Phasing of dedications, stormwater management, sediment/erosion control, public art, recreation, community paths, trip mitigation or other features.

#### 13. Clearing and Grading

No clearing or grading prior to M-NCPPC approval of certified site plans.

#### 14. Certified Site Plan

Prior to approval of the certified site plans the following revisions shall be included and/or information provided, subject to staff review and approval:

- a. Development program, inspection schedule, and Site Plan Opinion.
- b. Limits of disturbance.
- c. Methods and locations of tree protection for existing streetscape.
- d. Note stating the M-NCPPC staff must inspect tree-save areas and protection devices prior to clearing and grading.
- e. Provide additional details of the art component designed by The Washington Glass Studio. The design shall be presented to the Art Review Panel for final review and comment.
- f. All of the items specified in the site design, landscape, lighting and recreation conditions of approval.

BE IT FURTHER RESOLVED, that all site development elements shown on Easley Subdivision (The Adele) plans stamped by the M-NCPPC on January 20, 2006, shall be required except as modified by the above conditions of approval; and

BE IT FURTHER RESOLVED, that this Resolution incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

BE IT FURTHER RESOLVED, that, having given full consideration to the recommendations and findings of its Staff, which the Board hereby adopts and incorporates by reference, and other evidence contained in the Record, which is hereby incorporated in its entirety into this Opinion, the Montgomery County Planning Board FINDS, based on uncontested evidence of record, that:

1. *The Site Plan is consistent with an approved project plan for the optional method of development.*

As approved, the proposed development is consistent with the approved Project Plan (920050030) in land use, density, location, and building height and development guidelines.

2. *The Site Plan meets all of the requirements of the zone in which it is located.*

The Site Plan meets all of the requirements of the CBD-1 Zone and Fenton Village Overlay Zone as demonstrated in the project Data Table below. The project is supporting the major provisions of the Fenton Village Overlay Zone by providing more than the 33 percent residential use called for by the Master Plan to allow increased height from Fenton Street to Georgia Avenue. The proposed development is compatible with the existing development occurring in downtown Silver Spring and should encourage redevelopment of adjacent properties in the CBD and specifically Fenton Village.

DATA TABLE (CBD-1)

	Development Standard Approved by the Board and Binding on The Applicant
Gross Tract Area (sf.):	41,743
Prior Street Dedication (sf.):	13,217
Net Site Area (after dedication)	28,526
Max. Permitted Density Calculations (du/ac):	
Mixed Non-Residential Density (FAR/SF):	0.80
[Sect. 59-C-6.234(b)(3)]	(33,220) 15,020 Retail/ 18,200 Office

	Development Standard Approved by the Board and Binding on The Applicant
Residential Density (FAR/SF):	2.2 +bonus (2.68) (112,251)
Total Density (FAR/SF):	3.0 +bonus(3.48) (145,471)
MPDUs (%):	15 (15 MPDUs)
Max. Building Height (ft.): Section 59-C-18.192 (b) (1) <sup>1</sup> Fenton Street	60 (as measured from Fenton Street***)
Thayer Avenue	90(as measured from Thayer Ave. ***)
Setbacks (ft.):	
Western property line	0
Northern property line (Thayer Avenue)	12
Southern property line (Alley)	0
Eastern property line (Fenton Street)	4
Parking:	
Residential Uses (Mkt. Rate)	
1 BR @ 1.25 sp./unit (48 x 1.25) = 60 spaces	
2 BR @ 1.50 sp./unit (29 x 1.50) = 44 spaces	
3 BR @ 2.00 sp./unit (4 x 2.00) = 8 spaces	

<sup>1</sup> (1) Building Height in the Overlay Zone:

- (A) along the east side of Georgia Avenue must not exceed 90 feet; along the west side of Fenton Street must not exceed 60 feet; within the area between Georgia Avenue and Fenton Street must not exceed 60 feet but may increase up to 90 feet for projects that are at least 33% residential and where the additional height is placed closest to Georgia Avenue and decreases as you move east to Fenton Street; and
- (B) along the east side of Fenton Street must not exceed 45 feet for all uses except housing, which must not exceed 60 feet.

Development  
 Standard  
 Approved by  
 the Board and  
 Binding on  
 The Applicant

Residential Uses (MPDUs)

1 BR @ 0.625 sp./unit (11 x 0.625) = 7 spaces

2 BR @ 0.75 sp./unit (4 x 0.75) = 3 spaces

(10% credit for residential in CBD

122 x .10 = 12)

Residential subtotal: 110 spaces

122 spaces

Office Uses:

(18,000 gsf @ 2.4 sp./1000) = 44 spaces

Retail Uses:

(15,020 gsf @ 5 sp./1000) = 76 spaces

49 spaces

Total Parking Spaces Required = 230 spaces\*

171 spaces\*

Public Use Space (% of net lot area):

On-Site

20% or 5,705 sf

Off-Site

23.7% or 6,763

sf

Total On and Off-Site Public Use Space

43.7% or

12,468 sf\*\*

Total Amenity Space (Private)

51.2% or

14,603 sf

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

\*\* The applicant is making a monetary contribution of \$70,000 toward the general park fund for park projects in the Silver Spring CBD as part of the off-site public use space.

\*\*\* Locations from which building height is measured are as delineated on the Easley Subdivision (The Adele) plans stamped by the M-NCPPC on January 20, 2006.

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

a. Buildings

The Applicant is proposing to construct a building that is 60 feet in height along the frontage of Fenton Street, a portion of which is approximately 24 feet from the actual pavement edge. The building massing along Fenton Street steps back by 12 feet toward Georgia Avenue to a height of 80 feet. The intersection of Thayer and Fenton addresses the height limitations by holding the building corner approximately 12 feet back from the major portion of the building frontage along Fenton Street and transitioning to a 90-foot roofline for the frontage along Thayer.

The residential portion of the building facing Fenton Street is elevated above the ground and cantilevers five feet above the public use space with a 2-story clear area for pedestrians. The units portray a loft-like quality, designed to establish a connection with the surrounding neighborhood. The front portion of the building steps from 60 feet to 90 feet to architecturally accentuate the prominent corner of the site through building articulation and varied massing.

b. Open Spaces

The proposed public use space must be easily and readily accessible to the general public and used for public enjoyment. All streetscape improvements shall be in accordance with the *Silver Spring Streetscape Plan (April 1992)* Technical Manual or as amended.

The Applicant shall provide 20 percent (5,705 sf.) of on-site public use space and 23.7 percent (6,763 sf.) of off-site public use space. Additional off-site improvements are being provided along the south side of Thayer Avenue from the subject site to the existing alley toward Georgia Avenue.

The Applicant has been granted conditional approval from the Montgomery County Department of Permitting Services (DPS) for Stormwater Management by letter dated March 10, 2005. The project plan is proposing to implement green roof technology on a portion of the building rooftop. Approval of a Stormwater Management concept is required prior to submittal of the Site Plan application.

c. Landscaping and Lighting

The proposed landscaping on the site consists of the standard Silver Spring streetscape for of shade trees spaced 30 feet on center for both Thayer Avenue and Fenton Street. Willow Oaks are proposed for Fenton

Street and London Plane trees are proposed for Thayer Avenue in the standard 5 x 8 foot tree pits. The trees are set in amended soil panels with granite setts.

The landscaping associated with the private amenity area in the southwest quadrant of the building consists of ornamental shrubs, groundcover and grasses. The retail frontage along Fenton Street includes shrub planter areas with benches to help separate the public and private realm and provide seating areas for pedestrians and retail patrons.

The plaza will be interactive for pedestrians, storefront patrons and residents of the building, specifically those walking from the metro through the site to the restaurants and downtown area. The proposed plaza will consist of specialty paving and lighting, landscaping and other design elements such as the glass art elements integrated into the railing retail frontage to invite the public into the space and blend architectural features relating to the building design.

The lighting plan consists of the standard Washington Globe fixture spaced at 60 feet on-center between the street trees on Thayer Avenue and Fenton Street.

d. Recreation

Recreation demand is satisfied as shown in the recreation calculations table on page 15 of the Staff Report. The recreation facilities provided for the residential component consist of an indoor fitness facility, indoor community space, two seating areas and a pedestrian system.

The Applicant is taking credit for off-site recreational facilities as permitted in the M-NCPPC Recreation Guidelines and, as a condition of this approval, will make a contribution of \$70,000 toward park improvements in the Silver Spring CBD. (The Applicant is taking credit for off-site recreation facilities located in Bullis Local Park, including a tot lot, open play area I and bike system.)

e. Vehicular and Pedestrian Circulation

Vehicular and pedestrian circulation is safe, adequate and efficient.

The 20-foot alley is also one of the access points that serves the Lot 3 County Parking lot, as well as the primary entrance into the parking garage for the subject development. The apron to the garage will contain

the brick pavers and granite sets for a continuous treatment from the improved Fenton Street right-of-way to extend pedestrian connectivity to the existing facility. The site is located within the Silver Spring Parking Lot District, allowing the applicant to provide less parking in the CBD and encouraging the use of the local public parking facilities.

The Fenton Street frontage will be improved by replacing the existing concrete paving and ornamental fencing with brick and expanding the sidewalk to 26 feet wide. The existing Fenton Street right-of-way varies from 72-80 feet. The existing right-of-way for Thayer Avenue is 60 feet. The Preliminary Plan required an additional 8 feet of dedication for a portion of Fenton Street. Thayer did not require additional dedication during the preliminary plan of subdivision.

The Applicant proposes to improve the west side of Fenton Street and the south side of Thayer Avenue and extending by approximately 125 feet to the entrance of the county parking lot.

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

The project is complementary to the range of commercial and residential characteristics of the surrounding neighborhood. The design and scale of the project, pedestrian and vehicular circulation and improvements to the streetscape provide an enhancing and interactive relationship with the downtown Silver Spring and Fenton Village. The proposed development is compatible with the existing development occurring in downtown Silver Spring and encourages redevelopment of adjacent properties in the CBD.

The surrounding and adjacent properties are a mix of different uses, building heights and massing that is integral to the vitality of an urban downtown area. The Applicant presented a building massing study showing the varying building heights along Fenton Street and Thayer Avenue up to Georgia Avenue. The adjacent 2-story Thai market building to the north and recently renovated 3-story Grand Design mixed-use office and retail building as well as the 3-story Safeway store directly opposite the property on Thayer Avenue add to the diversity of height and massing in the Fenton Village. The buildings along the west side of Fenton Street also vary in height from 1-4 stories and consist of mixed-use office, retail and residential uses. The east side of Fenton Street is comprised of lower scale 1-4 story office and retail uses, in proximity to the project, with the exception of the Silver Spring Towers, a 13-story apartment complex near the northeastern intersection of Fenton Street and Thayer Avenue. Most of the buildings transition from 3 and 4-stories to the 1-2 story residential homes east of

the CBD boundary line, which is representative of the scaled zoning transition from CBD-1 to CBD-0.5 from west to east.

The Board finds the transitional step in height from 60 to 80 feet on Fenton Street and 60 to 90 feet on Thayer Avenue meets the objectives of the Overlay Zone and is compatible with the existing and proposed surrounding development in Fenton Village. The majority of the building is set back 8 feet from the Fenton Street right-of-way, expanding the sidewalk to 26 feet from the edge of curb on Fenton Street to the face of the proposed building. The 60-foot portion of the building steps back an additional 12 feet and transitions to a height of 80 feet. The prominent intersection transitions from 60-90 feet, with the 90 feet closer toward Georgia Avenue.

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

The property is exempt from the forest conservation requirements.

BE IT FURTHER RESOLVED, that this site plan shall remain valid as provided in Montgomery County Code § 59-D-3.8; and

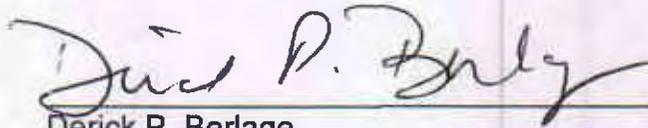
BE IT FURTHER RESOLVED, that the date of this written opinion is JUL 14 2006 (which is the date that this opinion is mailed to all parties of record); and

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

\* \* \* \* \*

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner Bryant, seconded by Commissioner Robinson, with Commissioners Berlage, Bryant, Robinson and Perdue voting in favor of the motion, with Commissioner Wellington absent, at its regular meeting held on Thursday, June 29, 2006, in Silver Spring, Maryland.

Adopted by the Montgomery County Planning Board this 29th day of June,  
2006.



Derick P. Berlage  
Chair, Montgomery County Planning Board



Trudye M. Johnson  
Executive Director

DPB:TMJ:mm:rak:df