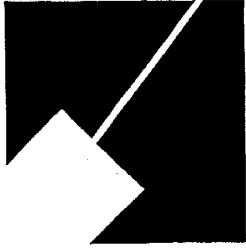


M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

Date Mailed: MAY 11 2005

Action: Approved Staff
Recommendation

Motion of Commissioner Bryant,
seconded by Commissioner Robinson,
with a vote of 5-0.

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

MONTGOMERY COUNTY PLANNING BOARD
OPINION

Preliminary Plan 1-04039A

NAME OF PLAN: Silver Spring Gateway (Amendment)

The date of this written opinion is MAY 11 2005 (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).

On 11/10/03, JBG/Silver Spring Gateway Residential, L.L.C. ("Applicant") submitted an application for the approval of a preliminary plan of subdivision of property in the CBD-2 zone. The application proposed to create 2 parcels and 2 outlots on 3.03 acres of land located at the east side of the East West Highway (MD410), at the east terminus of Blair Mill Road, in the Silver Spring CBD sector plan area. The 2 parcels include the legal parcel for the Gateway project and the legal parcel upon which the Silver Spring Innovation Center ("SSIC") has been constructed; the 2 outlots are remenant parcels resulting from the abandonment of Blair Mill Road. The application was designated Preliminary Plan 1-04039A. On 3/17/05, Preliminary Plan 1-04039A was brought before the Montgomery County Planning Board for a public hearing.¹ At

¹The Planning Board also heard, concurrent with its hearing on the preliminary plan, a public hearing on Project Plan 9-04002A and Site Plan No. 8-05001 on this same project.

property, testified in general support of the project). The record contains no contested preliminary plan issues.

FINDINGS

Having given full consideration to the recommendations of its Staff; the recommendations of the applicable public agencies²; 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 that:

- a) The Preliminary Plan No. 1-04039A substantially conforms to the Silver Spring CBD sector plan.
- 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 lots are 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 of the Forest Conservation Plan.
- 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 determination by the Montgomery County Department of Permitting Services ("MCDPS") that the Stormwater Management Concept Plan meets MCDPS' standards.
- f) The Record of this application does not contain any contested issues; and, therefore, the Planning Board finds that any future objection, which may be raised concerning a substantive issue in this application, is waived.

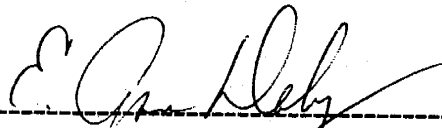
CONDITIONS OF APPROVAL

Based on the uncontested evidence of record, the Planning Board finds Preliminary Plan No. 1-04039A in accordance with the purposes and all applicable regulations of Montgomery County Code Chapter 50, and Planning Board approves Preliminary Plan No. 1-04039A, subject to the following conditions:

² 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 May 5, 2005**, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, on the motion of **Commissioner Bryant, seconded by Commissioner Wellington, with Acting Chair Perdue and Commissioners Bryant, Robinson, and Wellington** voting in favor of the motion, and with Chairman Berlage 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. 1-04039A, Silver Spring Gateway (Amendment)**.



Certification as to Adoption of Opinion
E. Ann Daly, 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

Date Mailed: ~~APR~~ **12 2005**

Action: Approved Staff Recommendation
Motion of Commissioner Bryant, seconded
by Commissioner Robinson, with a vote of
5-0.
Chairman Berlage and Commissioners
Perdue, Bryant, Wellington and Robinson
voting in favor.

**MONTGOMERY COUNTY PLANNING BOARD
OPINION**

Site Plan No.: 8-05001
Project: Silver Spring Gateway
Date of Hearing: March 17, 2005

The date of this written opinion is **MAY 12 2005** (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, as provided in the Maryland Rules of Procedure, thirty days from the date of this written opinion. This site plan shall remain valid as provided in Section 59-D-3.8.

INTRODUCTION

On March 17, 2005, Site Plan Review #8-05001 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application.

THE SUBJECT PROPERTY

The property is generally bordered by: the existing Blair Mill Road, East-West Highway, Georgia Avenue and the CSX/WMATA rail lines. The property is comprised of ten individual properties, a portion of the Silver Spring Innovation Center (SSIC) site, and the portions of Blair Mill Road to be abandoned. Blair Mill Road, as it traverses the property, has been conditionally approved for abandonment by the Montgomery County Council and will revert to private ownership in conjunction with the development process.

As part of the abandonment of Blair Mill Road, the owner of the Silver Spring Square site plan will accept the ownership reversion from centerline of the adjoining Blair Mill Road right-of-way. The portion of the abandoned Blair Mill Road adjacent to the County-owned land being developed with the SSIC will be assigned to the Applicant and is included as part of the property, see attached authorizing letter.

The property is adjoined to the north by the Silver Spring Square multifamily site plan. Further to the north by Foulger Pratt's residential high-rise, Metro Center Phase V; to the south by existing commercial uses, a proposed Arts Alley (discussed in more detail below) and Georgia Avenue; to the east by the WMATA/CSX rail lines; and to the west, across East-West Highway, by Discovery Communications and the M-NCPPC Acorn Park.

East-West Highway has been improved with the Silver Spring Streetscape adjacent to new development to the north. The portion of abandoned Blair Mill Road will be improved as an internal street adjacent to the southernmost retail properties and Silver Spring Innovation Center (SSIC) at Georgia Avenue. The East West Highway right-of-way south of and adjacent to the project, is unimproved and not dedicated to the full width of the right-of-way.

BACKGROUND

This site plan was presented to the Planning Board during the March 17, 2005 public hearing concurrently with amended Project Plan No. 9-04002A and Preliminary Plan No. 1-04039A.

PROPOSED DEVELOPMENT

The property will be developed with a mixed-use commercial and residential project, comprised of a total of 544,692 sf (4.66 FAR) residential and retail space. It will also include public use space and other on and off site amenities, streetscape and landscape, and parking on and off site sufficient to accommodate these uses, the SSIC and adjacent commercial uses. The project proposes 22.0 % on-site public use area, 4.7% on site

amenity area and 14.1% off site amenity area for a total of 40.9% of the net lot for on and off site improvements. The buildings, open spaces and streets and amenities will be laid out as detailed in Project Plan No. 9-04002A and in the Site Plan staff report dated March 10, 2005, incorporated herein by reference.

SUMMARY OF TESTIMONY AND EVIDENCE IN RECORD

JBG/Silver Spring Gateway Residential, L.L.C. ("Applicant"), represented by legal counsel, appeared and testified before the Board. The Applicant agreed with all of staff's conditions of approval except for three, *i.e.*, (1) staff's recommendations that the Applicant relocate the proposed above-ground transformers (located along the New Mixed Street) ("Street"); (2) that Applicant provide landscaping in the vicinity of the transformers; and (3) that Applicant cover, or in the alternative landscape, the surface of the above-ground parking garage.

Staff recommended that transformers (6 feet tall, 15 feet in depth and 35 feet in length) proposed to be located within the Street be located below ground, or relocated elsewhere on the site. Staff based this recommendation on its view that the transformers reduce the amenity value of the streetscape environment, the transformer reduces the pedestrian function and safety of the Street, and preclude tree plantings within that area. The Applicant testified that to underground the transformer would be a significant financial burden. The Applicant further testified that in fact it was providing a significant aesthetic benefit, by using the walls surrounding the transformer as a possible location for artwork that would benefit the public. The Applicant also testified that leaving the transformers above-ground would not in any way compromise pedestrian or vehicular safety, in that it has provided enhanced pedestrian crosswalks, and that pedestrians should not be in the area of the transformer, because the Street on that side becomes a dead-end.

The Boardmembers engaged in extensive discussion over the location of the transformers, and how it related to pedestrian safety and the aesthetics of the project. Boardmembers commented that the artwork was attractive, mitigated the impact of the transformer, and created a community benefit. At the outset, Commissioner Wellington supported staff's concerns about the proposed location of the transformer, expressing her conclusion that the transformer, located adjacent to the parking garage entrance which serves more than 500 parking spaces, would impair pedestrian safety because of its proximity to the entrance of the underground parking lot located at the end of the Street. In response to questioning, the Applicant testified that pedestrians have no need to walk down the Street, because it only leads to the loading dock and the the parking garage. Commissioner Bryant concluded that terminating the sidewalk on the transformer side of the street, and enhancing the pedestrian crosswalk to the sidewalk on the opposite side of the street, and enhanced landscaping within the sidewalk area, would eliminate these pedestrian safety concerns by precluding pedestrian traffic in that area. Commissioner

Perdue asked what impact would moving the transformer closer to the intersection do with respect to safety, *i.e.*, would it provide greater sight distance for vehicles exiting the parking garage and loading dock and less incentive for pedestrians to walk in that area.

Staff also recommended that the top of the parking garage be buffered with a covered structure, to screen the adjoining Silver Spring Square condominiums from the parking garage. Staff recommended this screening based on staff's opinion that the location of the surface parking lot was incompatible with the adjoining condominium units. Staff testified that the noise, fumes and lights from the parking garage would be incompatible and that screening of the top of the parking garage would make the adjacent units more liveable. The Applicant testified that covering the parking garage is economically unfeasible and aesthetically not necessary in an urban setting. The Applicant agreed to provide a minimum of 5% landscaping on the surface, in accordance with the landscaping requirements of the Zoning Ordinance for parking lots.

In response to Boardmember questioning, staff reiterated its concerns about compatibility between the parking lot and the adjoining residential units. Staff testified that it would not require landscaping on any parking lot cover; Boardmember comments indicated that a parking lot with landscaping would be more compatible than an asphalt roof cover with no landscaping. The Board also noted that garden apartments and townhouses are commonly located next to surface parking lots, and that having these units adjacent to the top level of a structured parking lot is no different.

A representative of Montgomery Preservation, Inc., which owns adjoining property, testified in support of the project.

FINDINGS

Based on all of the testimony and evidence presented and on the staff report, which is made a part hereof, the Montgomery County Planning Board finds:

1. The uncontested evidence of record demonstrates that the Site Plan is consistent with the approved Project Plan 9-04002A for the optional method of development, reviewed in a public hearing concurrently with this site plan on March 17, 2005.
2. The Site Plan meets all of the requirements of the CBD-2 zone, as reflected in the uncontested evidence of record summarized in the site plan data table included in the staff report dated March 10, 2005.
3. The locations of the buildings and structures, the open spaces, the landscaping, the recreation facilities, and the pedestrian and vehicular circulation systems are adequate, safe, and efficient based on the specific findings below:

a. Buildings

The record contains uncontested evidence that the locations of the buildings are adequate, safe and efficient. The arrangement of the interconnected buildings creates a large open space adjacent to a major street, which enhances the definition of the open spaces and their place within the improved East-West Highway streetscape. The open spaces, located opposite M-NCPPC's Acorn Park, and the building placement (aligned with the Discovery Channel.com building) further accentuate the open space created along East West Highway. Finally, the building placement also enhances the preserved façade of the Canada Dry bottling plant - the building materials and design are reminiscent of the adjacent historic façade.

The "hidden" parking garage, both under the useable space and integrated into the upper levels of the building creates a high level of efficiency for the building and convenience for commercial and residential users.

The building creates a simple separation of commercial and residential uses at the front plaza, by stepping back the residential floors immediately above the entry to the retail space (proposed as a grocery store). Massing the parking garage along the railroad tracks to the east places a "noise insensitive use" adjacent to a "noise generator" and reduces the noise impacts to project residents. Placing the building over the Internal Street still allows an efficient circulation system and a creates a compelling pedestrian "bridge." The location of the building, the resultant alignment of the Internal Street and the walks in the amenity areas enhance the presence of the Arts Walk in a significant way.

b. Open Spaces

The uncontested evidence of record shows that the open spaces of the project create quiet places for retreat, open lawn areas, outdoor dining rooms, and revealing views of historic architecture. The open spaces are enhanced with sculptural pieces that accentuate their welcoming ambiance—living room furniture. The sculpture is designed with motifs and forms that are evocative of the preserved Canada Dry façade and its era.

The opens spaces are well sized for pedestrian movement and congregation. They provide a variety of paths for multiple trips within the plaza areas. The grocery store entry needs to be fully integrated into the pedestrian and open space systems. The entry (at both levels) and the lighting into the store needs to be further detailed to show their connection, legibility and function with the adjacent open spaces. The

fully developed lighting plan, to be reviewed further, will create safe and inviting spaces for day and evening use with light levels that conform to IESNA guidelines.

Storm water management is provided with on-site channel protection measures via underground storage and on-site water quality control using green roof technology and /or "Storm Filters." The developer is providing an option to possibly utilize "Green Roofs" for their storm water management.

Significant noise impact affecting residents adjacent to the railroad tracks will be mitigated to acceptable levels by acoustical treatment of the windows and building façade. A preliminary noise study has been submitted to staff and the final proposal will be ready with signature set review. After construction the Applicant will present a noise study to staff verifying compliance with the requirements.

c. Landscaping and Lighting

The landscaping on site will provide a variety of treatments for the open space areas - shade, accent, enclosure of open spaces and screening. The final plant design for each area is under review, the intent is well articulated in the plans to date. The lawn panels and the high quality paving materials and design will accentuate the ground plane of the outdoor amenity areas - highlighting the spatial definition of each outdoor "room." The proposal needs to identify the depth of soil in the outdoor areas to assure there is adequate root space over the subsurface parking garage. The above ground transformers within the Silver Spring Square site will be screened with shrubs to minimize views of the transformers. The Board also finds that providing a minimum of 5% landscaping on the top surface of the parking structure will meet Code requirements.

d. Recreation

The uncontested evidence of record includes a table in staff's March 10, 2005 staff report, demonstrating that the Site Plan meets the standards of the Board's recreation guidelines.

e. Vehicular and Pedestrian Circulation

The Board finds that the internal street pattern and the three intersections with adjacent streets, are in accordance with the approved Preliminary Plan. The layout provides for an efficient interconnected on-site system that moves traffic only where it needs to go - residential parking is accessed from one street and retail (proposed as a grocery store) parking is from another street. The New Mixed Street with its highly detailed paving, street trees, street lights and raised intersection at the

connection to the Arts Walk and the Internal Street provide an attractive inter-block connection and welcoming entry to SSIC as well. The Board further finds that vehicular and pedestrian safety will be adequate, safe and efficient with respect to the location of the transformer with Applicant's proffer (i) to remove the sidewalk on the side of the Street with the transformer; (ii) to provide landscaping within the area formerly proposed as sidewalk; and (iii) to move the transformer further away from the parking garage entrance to enhance visibility if moving the transformer is determined by the Applicant and Staff to be necessary in the interest of providing improved safety.

The Board further finds that the pedestrian system is continuous within the project and has highly desirable linkages to adjacent properties. The streetscape along East-West Highway will link to adjacent streetscapes to create a continuous and safe pedestrian path.

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

The design, massing and density of the building are compatible with similar adjacent CBD development. The placement of the parking garage adjacent to train tracks is compatible with the adjacent development as described above. The façade treatment must be developed to create a more finished façade as viewed from many adjacent properties.

The proposed west side façade of the parking garage adjacent the Silver Spring Square project and the landscaping on the top of the parking deck are required to buffer lighting and garage operations from residents and create compatibility for on and off site residents. The building materials and the light fixtures will need to be selected to create that buffer. The treatment of the loading dock area needs a similar treatment to be compatible with area businesses and their entry. Finally the location of the above grade transformer, with the artistic treatment that will be provided, will be compatible with the remainder of the project and further, with the pedestrian crosswalks provided, will allow for safe vehicular and pedestrian passage and to allow for street trees to provide the appropriate scale of the building.

As conditioned, the activity associated with the proposed retail, residential use and amenity will not cause any negative effect on adjacent retail, residential and amenity uses.

5. The Board finds, based on the uncontested evidence of record, that the Site Plan meets the requirements of the Forest Conservation Law through the Forest

Conservation Plan approved on September 2, 2004; all afforestation requirements are met on site through the use of tree canopy - 1.14 acres.

PLANNING BOARD ACTION AND CONDITIONS

The Montgomery County Planning Board APPROVES Site Plan Review #8-05001 for 53,027 sq. ft. of Retail (47,839 sq. ft. of grocery, 5,188 s.f. of other retail) and 468 multifamily units, inclusive of 59 MPDUs on 2.68 acres in the CBD-2 Zone with the following conditions:

1. Abandonment of Blair Mill Road

Concurrent with the approval of Preliminary Plan #1-04039A and Site Plan #8-05001 and with the subsequent recordation of a plat for the above, Blair Mill Road shall be abandoned in accordance the County Council Resolution 15-115 introduced and adopted April 8, 2003. The right- of way shall be distributed to adjacent property owners with the exception of the parcel adjacent to the SSIC, which shall be combined with the Silver Spring Gateway parcels.

2. Use of Mixed Use Parking Calculations

The Planning Board authorizes the utilization of the mixed use parking table within Section 59-E-3.1 Mixed Uses. The Plan conforms to the requirements that the applicant owns the mixed use property and parking facility; the reserved spaces will not be shared, the shared spaces will be located in the most convenient location and available for short term use. Prior to signature set all spaces will be labeled to assure compliance with this condition.

3. Cover for Above Ground Parking Garage

The applicant shall provide a minimum of 5% landscaping on the top level of the above-ground parking garage.

4. Parking Plan

The Applicant shall prepare a parking plan that supplies commercially available parking spaces during and after construction as follows:

- a. During construction, the Applicant shall provide guaranteed parking for 50 spaces immediately adjacent/available to the local merchants that are available during all hours of business use that provides for safe and adequate pedestrian connections (i.e. well lit, open to views; stable walking surface); and

- b. Provides for adequate parking for construction workers that do not negatively affect parking spaces defined above for local merchants.
- c. The final site plan shall include commercially available parking spaces for local merchants within parking garage and;
- d. The final parking facility within the site plan shall include sufficient spaces to satisfy required parking inclusive of an additional 40 spaces available to local merchants. A site plan amendment shall be required for any further parking facility changes.

The parking plan shall be developed with consultation from local merchants and approved by staff prior to building permit release. Issues to include, but not be limited to, the number of spaces commercially available to local merchants, threshold for transition to valet parking during construction, etc. The Site Plan data table shall reflect internal parking spaces available to the public prior to signature set approval. The allocation of the number of parking spaces may change but will still meet required minimums.

5. Façade Treatment of the Parking Garage

The above-grade parking garage shall include buffering or screening of the light and views of cars visible to the units within the Silver Spring Square site plan. The western façade of the garage shall be treated with architectural materials and design that creates a view of the entire building that integrates the parking levels with the remainder of the building.

6. Site and Building Design

The Site Plan shall be revised to include the following:

- a. Determine status of retaining wall adjacent to west side of train station;
- b. For the grocery store: provide detail of pedestrian entry from plaza level to ground floor of store and from lower parking lot into the store main floor; a pedestrian system plan for the lower level parking garages for access to the grocery store, adjust turning radius as needed;
- c. Treatment of west facing façade of parking garage along the Pocket Park to screen lighting and cars from the immediately adjacent residential units within the Silver Spring Square site plan. The façade shall also include sufficient

architectural detail to indicate color and surface treatment of the concrete parapet to insure a finish that blends the parking garage with the design for the building façade;

- d. Treatment of the north facing façade of the parking deck (towards the train tracks) with sufficient architectural detail to indicate color and surface treatment of the concrete parapet to insure a finish that blends the parking garage with the design for the building façade;
- e. Vehicular circulation patterns utilizing typical dimensions for vehicles typical to service the building; i.e. moving vans and grocery delivery trucks. The circulation patterns shall also include control provisions for the crossing vehicular traffic from the upper garage. Loading dock area building materials and design to be detailed so to provide a compatible view from Georgia Avenue and the adjacent SSIC and retail stores;
- f. The building materials and headroom elevation for the Internal Street "bridge." The materials shall create a sense of lightness and invitation to the pedestrian trip from the Arts Walk to the Terraced Lawn and grocery store entry area.

7. Wayfinding Signs

Coordinate with the Silver Spring Regional Center and verify the location and type of proposed wayfinding signs (#209-Type D; #208-Type D and #36Type C2) per the Silver Spring Wayfinding Master Plan. Locate these signs within the public right-of-way.

8. Landscaping

- a. Landscape plan to include all site grades, depth of soil for street tree planting on top of each plaza.
- b. Final planting plan to be subject to staff review for adequacy and compatibility.

9. Lighting

- a. Provide a computer generated lighting distribution plan with foot-candles in a photometric computer plotted grid with a summary report and tabulations to conform to IESNA standards for outdoor plaza and parking garage development.

- b. All external light fixtures shall be full cut-off fixtures.
- c. Deflectors shall be installed on all fixtures causing potential glare or excess illumination, specifically on the perimeter fixtures abutting the adjacent residential properties.
- d. Compatibility of light from retail frontage to first several levels of units to be specifically addressed in lighting design.
- e. Illumination levels shall not exceed 0.5 foot-candles (fc) at any property line abutting county roads.

10. Pedestrian and Vehicular Circulation

- a. The applicant shall improve the streetscape on the west side of East West Highway with rebuilt handicapped ramps adjacent to the Acorn Park and relocation of sidewalks and street tree adjacent to the lane widening.
- b. The applicant shall continue to coordinate with Montgomery County Department of Housing and Community Affairs regarding the construction of streetscape improvements on the New Mixed Street.
- c. The site plan shall include the signs required in the Silver Spring Wayfinding Master Plan per the Silver Spring Regional Center and to be located within the public right-of-way.
- d. Streetscape paving to extend from driveway crosswalk to gutter line in street. Crosswalks to maintain even grade over driveways.

11. Recreation Facilities

The Applicant shall provide an amended table to accurately account for off site recreation facilities and a detailed plan of the interior fitness facility and tot lot (with equipment layout and equipment list that achieves the similar play functions as an outdoor tot lot).

12. Maintenance Responsibility

The applicant shall be responsible for maintaining the public amenity features on and off site. The development program shall reference the artist statements about

maintenance. The Silver Spring Urban District shall maintain the streetscape within the public right-of-way.

13. Moderately Priced Dwelling Units (MPDUs)

The proposed development shall provide 12.5% of 468 units - 59 MPDUs on site with a range of unit types. The Applicant shall provide a letter from DHCA to staff confirming all MPDUs to be provided on site.

14. Transportation

- a. The applicant shall enter into a Traffic Mitigation Agreement with the Planning Board and the MCDPWT to participate in the Silver Spring Transportation Management Organization.
- b. The site plan shall include 25 bike racks or lockers for residential units, eight for office areas and eight for retail areas.

15. Environment

The proposed development shall comply with the conditions of the final forest conservation plan. The applicant shall satisfy all conditions prior to recording of plat(s) or Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permits.

16. Noise Attenuation

- a. Certification from an acoustical engineer that the building shell for residential dwelling units are designed to attenuate projected exterior noise levels to an interior level not to exceed 45 dBA Ldn. Any subsequent changes in building shell materials or coverage that may affect acoustical performance shall be approved by an acoustical engineer prior to implementation.
- b. The builder shall commit to construct the residential structure to the acoustical specifications identified by the acoustical engineer.
- c. For all residential dwelling units to be constructed within the 65 dBA Ldn unmitigated noise contour, the applicant/developer/builder shall disclose in writing to all prospective purchasers that those homes will be impacted by highway noise, and shall identify all measures designed to mitigate such impacts. Such notification will be accomplished by inclusion of this information in all sales contracts, brochures and promotional documents,

including the Illustrative Site Plan(s) on display within any sales related office(s), as well as in Homeowner Association Documents, and by inclusion on all subdivision and site plans, and with all Deeds of Conveyance. Notification language shall be provided to M-NCPPC staff prior to issuance of any building permit.

17. Stormwater Management

The proposed development is subject to Stormwater Management Concept approval conditions dated June 14, 2004.

18. Historic Preservation

- a. A financial donation to Montgomery Preservation, Inc. for the long-term maintenance of the historic Silver Spring Train Station shall be made by the applicant prior to record plat.
- b. A trompe l'oeil painting that is representative of and commemorates the East Bound Waiting Room Building (to be removed) shall be provided by this applicant and the design concept as reviewed by Montgomery Preservation, Inc.
- c. The applicant shall provide an open iron gate at both ends of the existing pedestrian tunnel, so as to maintain a secure closure of the tunnel. Details to be provided with the landscape plan.

19. Project Plan Conformance

The proposed development shall be consistent with the final conditions of approval for Project Plan 9-04002A.

20. Common Open Space Covenant

Record plat of subdivision shall reference the Common Open Space Covenant recorded at Liber 28045 Folio 578 ("Covenant"). Applicant shall provide verification to M-NCPPC staff immediately after the occupancy of 25% of the units or by the 117th occupied unit that the Applicant's recorded Homeowners Association Documents, if applicable, incorporate by reference the Covenant.

22. Development Program

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

- a. Streets tree planting shall progress as street construction is completed but no later than six months after completion of the building adjacent to those streets.
- b. Community-wide pedestrian pathways and internal recreation facilities shall be completed prior to occupancy of the building.
- c. Landscaping associated with each parking lot and building shall be completed as construction of the building is completed.
- d. All amenity areas associated with this approval shall be completed as construction of each facility is complete
- e. A Site Plan Phasing Chart of dedications, stormwater management, sediment/erosion control, recreation, forestation, community paths, trip mitigation or other features.

23. Clearing and Grading

The Applicant may begin clearing and grading prior to M-NCPPC staff approval of signature set of plans only after the final Forest Conservation Plan by MNCPPC staff and Sediment Control Plans by MCDPS have been approved and documented. Signature set of plans shall be approved by M-NCPPC staff prior to issuance of any building permit or recording of plats.

24. Signature Set Documentation

Prior to signature set approval of site and landscape/lighting plans, the Development Program, Inspection Schedule, and Site Plan Opinion shall be provided to staff for review and sign-off. The staff level approval for an amendment to Silver Spring Square Site Plan to provide for combined amenity plaza areas shall be completed prior to release of signature set.

* * * * *

[CERTIFICATION OF BOARD VOTE ADOPTING OPINION ON FOLLOWING PAGE]

MF 5/21/05
Approved for legal sufficiency
M-NCPPC Office of General Counsel

CERTIFICATION OF BOARD VOTE ADOPTING OPINION

At its regular meeting, held on **Thursday May 5, 2005**, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, on the motion of **Commissioner Bryant, seconded by Commissioner Robinson, with Acting Chair Perdue and Commissioners Bryant, Robinson, and Wellington** voting in favor of the motion, and with Chairman Berlage 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 **Site Plan No. 8-05001, Silver Spring Gateway.**



Certification as to Adoption of Opinion
E. Ann Daly, Technical Writer