

## APPENDIX A

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: July 28, 2005**

**Date Mailed: OCT 21 2005**

**Action: Approved Staff  
Recommendation**

**Motion of Commissioner Bryant,  
seconded by Commissioner Wellington,  
with a vote of 4-0;  
Chairman Berlage and Commissioners  
Perdue, Bryant and Wellington voting in  
favor; Commissioner Robinson was  
necessarily absent**

**MONTGOMERY COUNTY PLANNING BOARD**

**OPINION**

Preliminary Plan No.: 1-05089  
NAME OF PLAN: The Galaxy

The date of this written opinion is OCT 21 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 April 19, 2005, RST Development ("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 1 lot on 2.62 acres of land located at the southeast quadrant of the intersection of Eastern Avenue and 13<sup>th</sup> Street, in the Silver Spring CBD Master Plan Area ("Property"). The application was designated Preliminary Plan #1-05089 ("Application"). The Applicant filed a concurrent Project Plan application #9-05005 ("Project Plan") with the Planning Board; and, additionally, associated with the review of the Application, Applicant filed with the Montgomery County Department of Public Works and Transportation, a Petition for the abandonment of a public alley located within the Property.<sup>1</sup> On July 28, 2005, Preliminary Plan #1-05089 was brought before the Montgomery County Planning Board for a public hearing. At the public

<sup>1</sup> The Petition for Abandonment was captioned AB667.

hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application.

The record for this application ("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.

### **THE SUBJECT PROPERTY**

The Property, identified as Parcels N156, N157, N159, P169, Lot 1, Lot 5A, Lot 3 and Lot 4, is located at the southeast quadrant of the intersection of Eastern Avenue and 13<sup>th</sup> Street. The Property contains a total tract area of 2.62 acres and is zoned CBD-1. Several structures currently exist on the Property and will be removed.

### **PROJECT DESCRIPTION**

The Application proposed the creation of one lot for the construction of 328 multi-family dwelling units, including 41 MPDUs, with private and public parking facilities. The proposed development requires the abandonment of an alley currently located within the Property.<sup>2</sup> The Preliminary Plan was reviewed concurrently with Project Plan #9-05005. The Applicant proposed to complete development of the site in three phases, as discussed below. Access to the site will be directly from 13<sup>th</sup> Street and King Street. 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").

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<sup>2</sup> Transportation Planning Staff submitted a packet of materials, including a staff recommendation, to the Planning Board concerning the proposed abandonment. At the public hearing, Transportation Planning Staff presented the abandonment request to the Board and, consistent with the recommendation in its staff report, recommended that the Board support approval of the alley abandonment. Following the public hearing on the Application, the Board voted unanimously to support the abandonment of the subject alley.

## **BACKGROUND**

### **1. Master Plan Compliance**

The Silver Spring Central Business District ("CBD") Sector Plan ("Sector Plan") identifies a portion of the Property as a potential site for housing, which is an important component of the revitalization efforts. High-density residential land use is recommended in the Sector Plan for the CBD. The Application complies with the recommendations adopted in the Sector Plan in that it is a request for multi-family residential development. The 328-unit multi-family development also proposes opportunities for landscaped public open spaces, public art and streetscapes.

### **2. Adequate Public Facilities Validity Period**

The Applicant has requested an 8-year adequate public facilities (APF) validity period, pursuant to Montgomery County Code § 50-20 (c)(3)(iii). A determination of adequate public facilities made under this section of the Code is timely and remains valid "[f]or no less than 5 and no more than 12 years, as determined by the Planning Board at the time of subdivision . . . ."

The Application proposes 328 multi-family dwelling units, with a private parking facility and a 200-car public parking facility. The parking facilities will accommodate the proposed Galaxy and the adjacent, existing, Aurora Condominiums. In accordance with a general development agreement entered into between Applicant and Montgomery County (the "General Development Agreement"), the County agreed to convey a portion of the Subject Property currently owned by the County and used for surface parking (Lot No. 16) to the Applicant; and, in exchange, Applicant agreed to construct a 200-car below-grade parking facility for the County. The Applicant requested that the Board approve an extended validity period of eight years for its determination of adequate public facilities, citing the scope of the proposed development, unpredictable market factors, and the complexity of the project. The Applicant proposed specific adequate public facilities validity periods for each phase of development: Phase I – three years; Phase II – three years; and Phase III – two years.

### **3. Transportation**

#### **a. Alley Abandonment**

As is noted above, the Applicant filed with the DPWT a petition to abandon an existing alley, which is located within the Property. Staff advised the Board that the proposed abandonment will allow for the design of an integrated site plan, including provision of pedestrian access through and across the Property by means of passageways, sidewalks and a dedicated Arts Walk connecting 13<sup>th</sup> and King Streets.

b. Parking

All parking for the development will be provided through the use of structured public and private parking garages. The public garage will replace a county-owned surface parking lot on King Street.

c. Local Area Transportation Review (LATR)

The proposed development is estimated to generate approximately 98 peak-hour vehicle trips. Staff advised the Board that the threshold for the LATR analysis is 30 vehicle trips during the weekday peak period; and, consequently, in accordance with (LATR) guidelines, a traffic impact study was required because the number of projected vehicle trips exceeded the threshold.

Staff informed the Board that, in conducting the LATR, three intersections were analyzed: Georgia Avenue (US 29) at Eastern Avenue/Blair Road, Georgia Avenue (US 29) at East-West Highway (MD 410)/Burlington Avenue/13<sup>th</sup> Street, and 13<sup>th</sup> Street at Eastern Avenue.

A table presented in the Staff Report demonstrated that, with the exception of the intersection of Georgia Avenue (US 29) and East-West Highway (MD 410), all the aforementioned intersections are projected to operate at or below the threshold of 1,800 CLV during the morning peak period. Staff informed the Board that the 29/410 intersection will approach 1,800 CLV after construction of the developments included in the background traffic calculations and, therefore, mitigation would be required at that location.

As a mitigation measure, the Applicant proposed to construct three "super bus shelters,"<sup>3</sup> two of which will be equipped with real-time transit information signs.<sup>4</sup> Staff advised the Board that the locations for the super bus shelters must be reviewed and agreed upon by the staff from Transportation Planning and DPWT. The trip credit total for the above measures, per the LATR guidelines, is 20 trip credits per super bus shelter and 20 trip credits per real-time information sign, resulting in a total of 100 trip credits, which will offset the estimated 98 trips generated by the proposed development. Staff advised the Board that Transportation Planning staff accepted Applicant's mitigation proposal and determined that such mitigation measures would place the Applicant in compliance with LATR guidelines.

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<sup>3</sup> A "super bus shelter" is larger in capacity than standard shelters, with four walls, heating and lighting elements, and an overall higher level of design.

<sup>4</sup> "Real-time transit information signs" provide updated information regarding bus arrival times, delays, changes to route and schedules and other necessary information for transit riders.

d. Right-of-Way Dedication

King Street is classified as a Business Street with a 60-foot right-of-way. No additional dedication is required. The Sector Plan also classifies 13<sup>th</sup> Street as a Business Street with a recommended right-of-way of 80 feet. The Applicant proposed a dedication of only 41 feet from the centerline of 13<sup>th</sup> Street and the placement of a public improvement easement ("PIE") over an additional 9 feet along the Property's 13<sup>th</sup> Street frontage, in order to comply with the Sector Plan requirement of 80 feet. Because the Applicant proposed less than full dedication, Staff recommended that the Planning Board approve a waiver of Section 50-26 (a)(4)—which section requires a minimum right-of-way width of 80 feet for, among others, business streets—under its general waiver authority in Code § 50-38 (Waivers from requirements of this chapter), in order to permit a reduced right-of-way width for 13<sup>th</sup> Street.

**SUMMARY OF TESTIMONY AND EVIDENCE IN RECORD**

Development Review Staff ("Staff") recommended approval of the Application in its memorandum dated July 22, 2005 ("Staff Report"). Staff presented its findings consistent with the Staff Report at the hearing.

Staff discussed several Preliminary Plan issues associated with the project. First, Staff presented the Applicant's request for an 8-year adequate public facilities (APF) validity period to accommodate the three-phase staging of site development, including development of the public parking structure. Second, Staff discussed the requested waiver of the requirement for a minimum 80 foot right-of-way for 13<sup>th</sup> Street, allowing instead for a 71-foot right-of-way and a PIE over a 9-foot coterminous portion of the Property's 13<sup>th</sup> Street frontage. Staff advised the Board that the Application substantially conformed to the Sector Plan and recommended approval of the Preliminary Plan with revised conditions.

Staff also recommended approval of the proposed alley abandonment. Staff presented its findings that the alley abandonment would meet the need for pedestrian access and would not result in any landlocked parcels.

Applicant appeared at the hearing represented by legal counsel. The Applicant testified that it accepted Staff's recommendations and conditions regarding the Preliminary Plan. Applicant noted that minor changes in metes and bounds from the original alley abandonment plan were made to reflect dedication of 13<sup>th</sup> Street right-of-way. Applicant commented on the extent of its community outreach and the support expressed by various organizations and property owners.

The Planning Board heard testimony during the hearing in support of the proposal with respect to additional public parking, public use space and improvements to a neglected

area of South Silver Spring. Mr. Rick Siebert, Chief of Parking Operations, DPWT, testifying on behalf of the Silver Spring Parking Lot District, commented that the result of a year-long negotiation with Applicant was a proposed development that would allow the County to provide approximately 140 additional public parking spaces in an underground public parking facility on the site, which presently houses a public surface parking lot.

The Advisory Neighborhood Commissioner for Shepherd Park in the District of Columbia, testified in support of the additional parking, streetscape improvements and public use/open space the Applicant is providing with the application. She commended the Applicant for the outreach made to her community during the Project Plan process. She also commended the Applicant for its redevelopment of existing dilapidated buildings along Eastern Avenue. She voiced concern that there was insufficient proposed parking for the size of the proposed development; about the height of the proposed buildings; and about the impact of the traffic in the area for this project and others in the pipeline. The Commissioner also questioned the accuracy of the traffic impact analysis for number of trips generated by this development and expressed preferences concerning the locations of the super bus shelters proposed as mitigation by the traffic analysis.

Representatives of Eastern Village CoHousing testified at the hearing in support of a livable and walkable community in south Silver Spring. These speakers testified to their desire that the project be developed as a mixed-use project, incorporating a street-level retail component. The speakers also requested that the design of the proposed development adhere to Crime Prevention Through Environmental Design principles ("CP-TED") in order to reduce the potential for crime.

The Board discussed with the speakers, Applicant, and Staff the potential for viability of additional retail and commercial use in the area in terms of marketing and other projects in the pipeline that have been approved or submitted that contained retail and commercial. The Applicant responded that it had considered retail and commercial space in this location but had concluded that there did not exist viable opportunities for retail development on the subject site. The Applicant testified that live-work units along the Art Walk are being considered to activate the edge of the building. Staff testified that a number of projects currently under construction and in the approval process at the intersection with East-West Highway, Blair Mill Road and Newell Street include commercial, retail and a grocery store. The Applicant responded to Board questions regarding crime prevention and street-friendly design, testifying as to the positioning of entrances to the project and design features in the project and public use areas intended to create activity on the site.

## **FINDINGS**

Having given full consideration to the recommendations and findings of its Staff, which the Board hereby adopts and incorporates by reference; 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:

- a) Based on uncontested evidence of record, the Preliminary Plan No. 1-05089 substantially conforms to the Silver Spring CBD Sector Plan. As discussed above, among other things, the proposed high-density multi-family residential development in the Preliminary Plan complies with the recommendations adopted in the Sector Plan.
- b) Public facilities will be adequate to support and service the area of the proposed subdivision. Based on evidence of record, including staff memoranda, the Board finds that its Staff utilized the appropriate guidelines in analyzing the proposed development with respect to trip generation. As discussed above, the results of the LATR demonstrate that, as a consequence of the proposed development, one intersection will exceed the maximum permissible CLV. However, the Board finds that the mitigation measures proposed by the Applicant, and discussed above, consistent with LATR guidelines, will provide the necessary mitigation to support a finding that adequate public facilities exist to support the proposed development. Based on the provisions of the AGP as it pertains to the number of residential units, and the required coordination between the County and Applicant pertaining to the public parking facility, the Board approves Applicant's request for an 8-year adequate public facilities (APF) validity period, pursuant to Section 50-20 (c)(3)(iii) of the Subdivision Regulations.
- c) Based on uncontested evidence of record, the size, width, shape, and orientation of the proposed lot are appropriate for the location of the subdivision.
- d) Based on uncontested evidence of record, 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.

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<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.



- e) Based on uncontested evidence of record, 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) Any objection concerning a substantive issue that was not raised prior to the closing of the Record is waived.

### CONDITIONS OF APPROVAL

Finding Preliminary Plan No. 1-05089 in accordance with the purposes and all applicable regulations of Montgomery County Code Chapter 50, the Planning Board approves Preliminary Plan No. 1-05089, including a waiver of Section 50-26 (a)(4) pursuant to Section 50-38 of the Subdivision Regulations to permit a reduced right-of-way width for 13<sup>th</sup> Street and subject to the following conditions:

- 1) Approval under this preliminary plan is limited to 328 multiple-family dwelling units including 41 MPDUs.
- 2) Compliance with conditions of approval for Project Plan #9-05005.
- 3) Dedicate, and show on the final record plat, additional right-of-way of 41 feet from the 13<sup>th</sup> Street centerline across the property frontage, as shown on the plan. An additional 9 feet of the Subject Property is to be dedicated as a public improvement easement (P.I.E.) for a total of 80 feet.
- 4) Applicant to reach an agreement with Montgomery County Department of Public Works and Transportation (DPWT) on use and location of three super bus shelters and two real-time transit information signs and present agreement to Development Review and Transportation Planning Staff before record plat.
- 5) Construct three super bus shelters and two real-time transit information signs and upon completion of the construction, transfer ownership to DPWT prior to issuance of a building permit for Building B with written notification to Development Review and Transportation Planning Staff.
- 6) Approval of this preliminary plan is conditioned upon Montgomery County Council abandonment of the alleyway located within Block D of Silver Spring, with connection to 13<sup>th</sup> Street, in accordance with DPWT Docket No. AB 667.
- 7) Record plat should reflect the abandonment of the existing alley.
- 8) Provide and maintain, in perpetuity, a north-south pedestrian connection along the eastern edge of the property between 13<sup>th</sup> Street and King Street in accordance with Silver Spring Central Business District (CBD) Sector Plan.

- 9) Construct structured 200-space public parking garage per negotiated agreement with DPWT. Agreement to use land beneath the public right-of-way must be obtained from DPWT in writing before record plat, or some other parking garage design submitted for review.
- 10) The applicant is to resolve any other outstanding issues and conditions raised by DPWT, with written notification provided to Development Review and Transportation Planning Staff, before approval of the site plan.
- 11) Provide a Class III Bikeway (on-road, signed shared roadway) along 13<sup>th</sup> Street.
- 12) Revise label on the preliminary plan from King "Avenue" to King "Street".
- 13) Final approval of the number and location of buildings, dwelling units, on-site parking, site circulation, sidewalks, and bikepaths will be determined at site plan.
- 14) A landscape and lighting plan must be submitted as part of the site plan application for review and approval by technical staff.
- 15) Final numbers of MPDU's as per condition #1 above to be determined at the time of site plan.
- 16) Compliance with conditions of MCDPWT letter dated, July 14, 2005 unless otherwise amended.
- 17) Access and improvements as required by MDSA approval letter dated July 18, 2005.
- 18) Compliance with the conditions of approval of the MCDPS stormwater management approval dated July 19, 2005.
- 19) The Adequate Public Facility (APF) review for the preliminary plan will remain valid for ninety-six (96) months from the date of mailing of the Planning Board opinion.
- 20) Other necessary easements.

This Preliminary Plan will remain valid for 36 months from its Initiation Date (as defined in Montgomery County Code Section 50-35(h), as amended). Prior to the expiration of this validity period, a final record plat for all property delineated on the approved preliminary plan must be recorded among the Montgomery County Land Records or a request for an extension must be filed.

APPROVED AS TO LEGAL SUFFICIENCY  
TAD  
M-NCPPC LEGAL DEPARTMENT  
DATE 10/13/05

[CERTIFICATION OF BOARD VOTE ADOPTING OPINION ON FOLLOWING PAGE]

**CERTIFICATION OF BOARD VOTE ADOPTING OPINION**

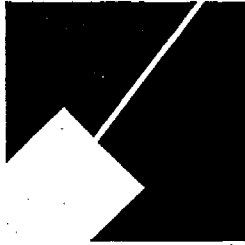
At its regular meeting, held on Thursday October 20, 2005, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, on the motion of Commissioner Bryant, seconded by Commissioner Wellington, with Chairman Bertage and Commissioners Bryant and Wellington voting in favor of the motion, 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 The Galaxy Preliminary Plan No. 1-05089. Commissioner Robinson abstained and Commissioner Perdue was absent.



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Certification As To Vote of Adoption  
Technical Writer

## APPENDIX B

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)

Date of Mailing: OCT 21 2005

**MONTGOMERY COUNTY PLANNING BOARD  
OPINION**

Project Plan No.: 9-05005  
Project: The Galaxy  
Date of Hearing: July 28, 2005

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

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The date of this written opinion is OCT 21 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).

**INTRODUCTION**

On April 19, 2005, RST Development ("Applicant") submitted an application for the approval of a project plan for a proposed 497,257 square feet of residential development (consisting of a maximum of 328 multi-family dwelling units), of which 41 (or 12.5% of the total number of units) will be MPDUs, on 1 lot consisting of 2.62 acres of CBD-1-zoned land in the Silver Spring Central Business District ("Project Plan"). The Applicant filed a concurrent Preliminary Plan application #1-05089 ("Preliminary Plan") with the Planning Board; and, additionally, associated with the review of the Application, Applicant filed with the Montgomery County Department of Public Works and Transportation, a Petition for the abandonment of a public alley located within the Property.<sup>1</sup> On July 28, 2005, Project Plan Review #9-05005 was brought before the Montgomery County Planning Board for a public hearing, along with the Preliminary Plan. At

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<sup>1</sup> The Petition for Abandonment was captioned AB667.

the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application.

### **THE SUBJECT PROPERTY**

The 2.62-acre site ("Subject Property" or "Property") is comprised of 8 lots and parcels and a public alley within the Ripley/South Silver Spring Overlay Zone. The Subject Property is bounded by 13<sup>th</sup> Street to the north, Eastern Avenue to the west and King Street to the south. The right-of-way for Eastern Avenue is within the District of Columbia. The properties bounded by the public alley and King Street are controlled by Montgomery County (King Street Parking Lot) and include a surface parking facility containing 57 parking spaces. The properties within the site are currently improved with individual two-story commercial buildings that consist of a variety of uses, including a dog grooming business, plumbing business, and a carry-out restaurant. Elevations on the site vary 10-15 feet from the highest point on King Street to lower elevation on Eastern Avenue. The King Street Parking Lot is approximately five feet above the uses that are bounded by the public alley. Overhead utilities exist along the property frontage on 13<sup>th</sup> Street, Eastern Avenue and King Street. Additional above and below-ground utilities serve the existing buildings.

The surrounding vicinity consists of a Travelodge hotel and a Days Inn hotel directly across 13<sup>th</sup> Street and a Ramada Inn hotel directly east of the site on King Street. The newly renovated 129-foot Gramax Tower apartment building is located across 13<sup>th</sup> Street at the intersection with Kennett Street. The Williams and Willste building (Site Plan #8-04028), a 90-110-foot condominium building, abuts the southeastern boundary of the property and fronts onto Eastern Avenue. The Kennett Street public parking garage is located approximately 100 feet north of the subject site along Kennett Street. A mix of commercial and retail uses, including a car wash, bank and auto-related service buildings are situated between Georgia Avenue and the Subject Property. The properties across Eastern Avenue, located within the District of Columbia, are comprised of three churches and one-family detached dwellings within the Shephed Park Community.

The proposed development is zoned CBD-1 (Central Business District-1). The Property consists of four parcels (Parcels N156, N157, N159 and P169), Lots 1, 3 and 4 of the Silver Spring subdivision (Plat Book 158, Page 14), and Lot 5A of Silver Spring subdivision (Plat Book 154, Page 46) recorded in November 1955 and October 1956, respectively.

## **BACKGROUND**

### **Master Plan**

The Project Plan is in conformance with the Silver Spring Central Business District and Vicinity Sector Plan, adopted February 2000 ("Sector Plan"), including the provisions in the Ripley/South Silver Spring Overlay Zone. A description of the themes and goals for Silver Spring are outlined within the Sector Plan Conformance standards.

## **PROPOSED DEVELOPMENT**

The concurrently reviewed preliminary plan seeks to consolidate the above-mentioned lots and parcels into one buildable lot, which is proposed to accommodate 328 multi-family dwelling units, including 41 MPDUs and public use space on 2.62 acres in south Silver Spring.

### **Building Program**

The proposal envisions three separate buildings situated atop a 3-level below-grade parking structure that spans the majority of the proposed lot. The proposed building design is a modern architectural approach, blending curvilinear forms with the surrounding buildings to accent prominent features and activate the public use spaces. The building program is intended to provide the massing of the proposed structures closer to the northeastern portion of the site to complement the massing of the existing Gramax building and future development near the Georgia Avenue corridor. The proposal transitions in height and mass from the northeast to the southwest near the frontage along Eastern Avenue in order to emphasize a move from the urban context to the pedestrian and residential character associated with the confronting Shepherd Park community in the District of Columbia.

Building 'A' creates a distinct urban edge along the northern and eastern property boundary, adjacent to 13<sup>th</sup> Street and the "Art Alley", which connects King Street to the south. Two-story maisonette units (possible live-work units) are envisioned along the "Art Alley" promenade to frame the environment, create an intimate atmosphere and provide a forum for local artists. Building 'B' has a two-story masonry base with floor lines expressed in exposed concrete, mixed with glass and steel. Building 'C' will be constructed of masonry and glass to complement the surrounding buildings under construction and the existing architecture in the neighboring communities.

The building mass steps down from the northeast boundary of the site at 125 feet to 45 feet along Eastern Avenue. Building 'B' will step down in height from the

125 feet to approximately 80 feet before transitioning to the 45-foot height in Building 'C'. The 125-foot height corresponds to the existing Gramax building (129 feet) across 13<sup>th</sup> Street and the Aurora building (90-110 feet) along Eastern Avenue.

### **Public Use Space**

The on-site public use space consist of three separate and distinct outdoor areas on the site, designed to promote the type of recreational activities needed to enhance the vitality of the south Silver Spring urban community. The most prominent outdoor public space is the "Public Park", followed by the "Art Walk" and the covered glass walkway connecting 13<sup>th</sup> Street and the public parking garage. The Art Walk is located between Buildings 'A' and 'B' and is intended to provide artistic enjoyment through selected features while protecting pedestrians from the elements.

The Project Plan proposed 26,920 square feet of public use space and amenities provided on-site, which equals 31.0% of the net lot. The minimum required public use space for this project is 17,367 square feet (20% of the net lot). The Applicant also proposed an additional 11,470 square feet of off-site streetscape improvements. In total, the Applicant proposed 38,390 square feet of on-site public use space, amenities and off-site improvements or 44.2% of the net lot area. In addition to the public use space, amenities and off-site improvements, the Applicant proposed 3,910 square feet of streetscape improvements outside the Montgomery County jurisdictional boundaries along the Eastern Avenue frontage. If improvements on Eastern Avenue are credited toward this development, the overall public use space and amenity package will equal 48 percent of the net lot area.

In addition to the public use space, amenities and off-site improvements, the Applicant is providing approximately 147 additional public parking spaces within a below-grade structure for residents, employees and the local community.

Designed as a series of elliptical lawn terraces encircling a sculptural water element, the art element will be one of the commissioned pieces. Light will be an important component defining the theme of the spaces, accent the planting areas, and provide security and safety for patrons of the space. Access is provided for passive recreational activities, gathering and seating for residents, employees and the local community

Sensitive to the recommendations of the Silver Spring Pathways Plan, a conceptual pedestrian pathways plan prepared by the Department of Housing and Community Affairs ("DHCA"), the proposal provides mid-block connector alleys between King Street and 13<sup>th</sup> Street. This outdoor space will feature other



commissioned artwork by local artists. The entry to the walk will consist of an outdoor plaza, also serving as the entry to Building 'A' from 13<sup>th</sup> Street and a trellis and seating area marking the entry from King Street. The ground plane will consist of specialty pavers, ornamental landscaping in terraced planters and lighting to reinforce the theme in the public park.

### **Parking and Access**

Parking will consist of 200 spaces within a new public parking garage, which will be accessed from Building 'A', via 13<sup>th</sup> Street, at the northern end of the Property. The public garage replaces the existing 57 surface parking spaces in the King Street Lot. The private parking garage will accommodate parking for the residents of the Aurora (Site Plan #8-04028) and the Galaxy (subject site). Three separate access points are provided to the private garage from 13<sup>th</sup> Street and King Street. Additional dedication is required along 13<sup>th</sup> Street. King Street already contains the full-width dedication and Eastern Avenue is within the boundaries and jurisdiction of the District of Columbia. Streetscape improvements will be made on all public streets to provide for pedestrian circulation.

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

Development Review Staff ("Staff") recommended approval of the Project Plan in its memorandum dated July 13, 2005 ("Staff Report"). Staff presented its findings consistent with the Staff Report at the Hearing.

The Applicant appeared at the hearing represented by legal counsel. The Applicant testified that it accepted the Staff conditions in the Preliminary Plan and Project Plan report, including plans for the alley abandonment. The Applicant noted Plan features for providing parking and public use spaces. The Applicant further commented on the extent of its community outreach and the support of various organizations and property owners.

The Planning Board heard testimony during the hearing in support of the proposal with respect to additional public parking, public use space and improvements to a neglected area of South Silver Spring. Mr. Rick Siebert, Chief of Parking Operations, DPWT, testifying on behalf of the Silver Spring Parking Lot District, commented that the result of a year-long negotiation with Applicant was a proposed development that would allow the County to provide approximately 140 additional public parking spaces in an underground public parking facility on the site, which presently houses a public surface parking lot.

The Advisory Neighborhood Commissioner for Shepherd Park in the District of Columbia, Ms. Jordinia Brown, testified in support of the additional parking,

streetscape improvements and public use/open space the Applicant is providing with the application. Ms. Brown commended the Applicant for the outreach made to her community during the Project Plan process. She also commended the Applicant for its redevelopment of existing dilapidated buildings along Eastern Avenue. Ms. Brown voiced concern that there was insufficient proposed parking for the size of the proposed development; about the height of the proposed buildings; and about the impact of the traffic in the area for this project and others in the pipeline. Ms. Brown also questioned the accuracy of the traffic impact analysis for number of trips generated by this development and expressed preferences concerning the locations of the super bus shelters proposed as mitigation by the traffic analysis.

Representatives of Eastern Village CoHousing testified at the hearing in support of a livable and walkable community in south Silver Spring. These speakers testified to their desire that the project be developed as a mixed-use project, incorporating a street-level retail component. The speakers also requested that the design of the proposed development adhere to Crime Prevention Through Environmental Design principles ("CP-TED") in order to reduce the potential for crime.

The Board discussed with the speakers, Applicant, and Staff the potential for viability of additional retail and commercial use in the area in terms of marketing and other projects in the pipeline that have been approved or submitted that contained retail and commercial. The Applicant responded that it had considered retail and commercial space in this location but had concluded that there did not exist viable opportunities for retail development on the subject site. The Applicant testified that live-work units along the Art Walk are being considered to activate the edge of the building. Staff testified that a number of projects currently under construction and in the approval process at the intersection with East-West Highway, Blair Mill Road and Newell Street include commercial, retail and a grocery store. The Applicant responded to Board questions regarding crime prevention and street-friendly design, testifying as to the positioning of entrances to the project and design features in the project and public use areas intended to create activity on the site.

The Board requested, in addition to the provided number of units, that the square footage of the proposed buildings be included in the Project Data Table and that the heading should be revised to state "Proposed for Approval".

## **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 July 13, 2005), which the Board hereby adopts and incorporates by reference; all of 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 following purposes:

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

The Board finds that the Application is in accordance with the Sector Plan. The Project Plan proposes to use the optional method of development. The proposed development consists of three separate mid-to-high-rise condominium buildings. High-density residential is permitted in the CBD-1 Zone.

The buildings will vary in height from 45 to 125 feet, thereby conforming to the Montgomery County Zoning Ordinance requirement that permits a maximum height of 45 feet for buildings fronting Eastern Avenue and a maximum of 125 feet for buildings set back at least 100 feet from Eastern Avenue. The site is located within the boundaries of the Ripley/South Silver Spring Overlay Zone, which places limitations on the height as it relates to Eastern Avenue. The application proposed 328 dwelling units, including 41 (or 12.5%) Moderately Priced Dwelling Units (MPDUs) provided on-site. The proposal reflects a maximum yield of 125 dwelling units per acre. This density is the maximum allowed under the zone for optional method projects.

The Project Plan will accomplish important Sector Plan objectives by providing a residential component within Ripley/South Silver Spring, including Moderately Priced Dwelling Units, promoting redevelopment, protecting nearby residential development, upgrading the physical environment and enhancing the pedestrian environment. The proposal

improves the area by replacing a series of dilapidated buildings, an auto-related facility and surface parking lot with a modern residential building. The proposed development provides an appropriate transition between surrounding adjacent residential and institutional uses on Eastern Avenue and commercial and retail uses in the Georgia Avenue corridor.

(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 Board finds that the Project Plan responds to the need for housing in south Silver Spring 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 as an important component to the revitalization efforts and specifically identifies a portion of the site for residential development.

The Board finds that, under the optional method, this project encourages the development of active urban streets by providing public spaces near 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 south Silver Spring and add an economic infrastructure for commercial and retail businesses in the Ripley district. The inclusion of the "Art Walk" and possible live-work units facing the arcade will further meet the demand of workers, shoppers and residents in this expanding mixed-use market.

The Board considered the request of the representatives of the Eastern Village CoHousing, which was presented in writing and in verbal testimony at the public hearing, that the Property be developed as a mixed-use project rather than the proposed single-use residential development. The Board finds, based on the testimony of the Applicant that the incorporation of commercial uses into the development had been considered by the Applicant and that it had determined that retail uses would not be viable on the site, that the proposed development for solely residential uses is a reflection of market conditions. Additionally, based on Staff testimony that approved and proposed projects in the pipeline in the vicinity of the site include retail components (among others a project next to Acorn Park, a

core area of retail on a segment of East-West Highway, Newell Street, and Blair Mill, and a grocery store) the Board finds that the retail needs of workers, shoppers, and residents in the project and in the vicinity of the Project will be adequately served by existing, approved, and proposed development.

- (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 Board finds that the proposed Project Plan strengthens the Ripley/South Silver Spring area by complementing the scale and mix of existing design elements along the Eastern Avenue and Georgia Avenue corridors while respecting the Ripley/South Silver Spring Overlay Zone height limitations and providing a compatible and desirable relationship with adjacent and surrounding uses. The proposed development will provide the pedestrian friendly environment envisioned in the Sector Plan. The varying heights of the proposed buildings provide the necessary and applicable transition from the adjacent residential neighborhood of Shepherd Park in the District of Columbia to the higher density uses and buildings closer to Georgia Avenue.

The design creates an effective relationship with adjacent uses and amenities and allows for an interactive pedestrian and vehicular pattern. The proximity of the Silver Spring Metro provides a pedestrian destination and enhances and activates the streets that contain commercial and retail establishments leading to the transit center.

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

The Board finds that the Project Plan promotes effective use of the transit facilities and maximizes pedestrian access to the central business district. The proposed development is located approximately 3000 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 of the development. The streetscape improvements along 13<sup>th</sup> Street and King Street facilitate the desire for pedestrian connectivity to the metro station core areas of development within Silver Spring and will promote pedestrian circulation to Georgia Avenue. These improvements, including expanded streetscape improvements in front of the Gramax building,

will direct pedestrian circulation to other businesses in the downtown corridor. The expansion of public parking spaces in the central business district will also facilitate parking needs for the expanding residential base.

As Staff informed the Board, 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 Board finds that the Project Plan encourages the development of active urban streets and improves the quality of the pedestrian environment by providing the enhancement to the streetscape as prescribed in the Silver Spring Streetscape Plan (April 1992) Technical Manual, as amended.

The Board finds that the Project Plan will improve vehicular circulation, which is enhanced through improved right-of-way along the south side of 13<sup>th</sup> Street and north side of King Street. Additional area is being dedicated on the south side of 13<sup>th</sup> Street, which equates to 41 feet from the centerline for a total of 71 feet of right-of-way. The full width 60-foot right-of-way has already been dedicated on King Street. The dedication will ensure complete accommodation of the optional method streetscape treatment on the applicant's side 13<sup>th</sup> Street and King Street. Portions of 13<sup>th</sup> Street and King Street were recently improved and will need to be reconstructed by the Applicant with the subject proposal. Eastern Avenue is within the District of Columbia right-of-way and will require the District's approval for streetscape improvements along the frontage the property. The Applicant is committed to coordinating with the District to implement the Silver Spring streetscape standards along Eastern Avenue. Additional off-site streetscape improvements are proposed with this application directly in front of the Gramax building on 13<sup>th</sup> Street and Kennett Street. 13<sup>th</sup> Street contains an improved streetscape on the north side.

The spaces included within the public parking garage will be accessible from the northern end of the property, on 13<sup>th</sup> Street, under Building 'A'. The private parking garage will accommodate parking for the residents of the Aurora (Site Plan #8-04028) and the subject proposed development. Three access points are provided to the private garage under Building 'B' from 13<sup>th</sup> Street and under Building

'A' from the service drive off of King Street. The public and private garages are separated by a wall. The parking garage is a 2-3-level below grade structure, planned to accommodate 200 public parking spaces and approximately 449 spaces 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. An existing public alley that originally provided access to the businesses on 13<sup>th</sup> Street will be abandoned concurrently with the Preliminary Plan (#1-05089) and Project Plan applications.

The full streetscape improvements along the south side of King Street will complete a portion of the block that stretches from Eastern Avenue to Georgia Avenue. The additional partial streetscape improvements by the Applicant in front of the Gramax building will promote pedestrian circulation toward Georgia Avenue. The "Art Walk", a mid-block connection from 13<sup>th</sup> Street to King Street will facilitate the Arts and Entertainment theme for Silver Spring and further activate pedestrian circulation through the site.

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

The Board finds that the Project Plan assists in developing adequate residential areas for people with a range of different incomes. The objective of Montgomery County for moderately priced housing is to provide Moderately Priced Dwelling Units (MPDUs) in the Central Business District (CBD) zones, where public facilities, services and transit options are readily available. The Applicant will provide 41 MPDUs within the proposed buildings, which represents 12.5% of the total number of dwelling units (12.5% is required). The Applicant is proposing a mix of 1 and 2-bedroom MPDUs. The final breakdown and location of the MPDUs will be decided by the Department of Housing and Community Affairs "(DHCA)" in the building permit application.

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

The 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 four recorded lots, four unrecorded parcels, and the County parking lot to allow for the unified redevelopment of the currently underutilized site. The Sector

Plan specifically identifies a portion of the property as a potential housing site, and encourages housing as an important component to the revitalization efforts for downtown Silver Spring. The Project Plan introduces market-rate condo units, retail and office into an existing framework of commercial and retail use 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)	114,310* (2.6242 acres)
Net Lot Area (sf.):		86,834
Residential Density (dwelling units/acre):	125 max.	125
Total Number of Units:		
Building 'A'		174
Building 'B'		130
<u>Building 'C'</u>		<u>24</u>
Total:	328	328
MPDUs (%):	12.5 41 MPDUs	12.5 41 MPDUs
Gross Floor Area of Buildings:	no stated sq.ft. limitation	274,241
Building 'A'	(limitation for residential development expressed in terms of no. of dwelling units per acre)	186,340
Building 'B'		<u>36,676</u>
<u>Building 'C'</u>		<u>497,257</u>
Total:		



Lot Coverage of Buildings:	No restriction	
Building 'A'		21,672
Building 'B'		11,647
<u>Building 'C'</u>		<u>9,169</u>
Total:		42,488
On-site Public Use Space (sf):	17,367 (20%)	26,920 (31.0%)
Off-site Public Use Space (sf):		11,470 (13.2%)
Additional Off-Site Improvements (sf):		<u>3,910 (4.5%)**</u>
Total On and Off-Site Public Use Space And Improvements (sf):	17,367 (20%)	42,300 (48.7 %) **
Max. Building Height (ft.):		
For properties fronting on Eastern Ave	45	45***
For properties fronting 13 <sup>th</sup> St. and King St.	125	125***
Parking****:		
(Parking for Galaxy Project)		
Residential Uses (Mkt. Rate)		
1 BR @ 1.25 sp./unit (118 x 1.25)	148 spaces	
2 BR @ 1.50 sp./unit (166 x 1.50)	249 spaces	
3 BR @ 2.00 sp./unit (3 x 2.00)	6 spaces	
Residential Uses (MPDUs)		
1 BR @ 0.625 sp./unit (27 x 0.625)	17 spaces	
2 BR @ 0.75 sp./unit (14 x 0.75)	11 spaces	
(10% credit for residential in CBD 431 x .10 = 43)		
Residential subtotal for Galaxy Project:	388 spaces	334 spaces
(Parking for Aurora Building #8-04028)		
Residential Uses (Mkt. Rate)		
1 BR @ 1.25 sp./unit (23 x 1.25)	29 spaces	
2 BR @ 1.50 sp./unit (103 x 1.50)	155 spaces	
Residential Uses (MPDUs)		
1 BR @ 0.625 sp./unit (19 x 0.625)	12 spaces	
(10% credit for residential in CBD 196 x .10 = 20)		
Residential subtotal for the Aurora Project:	176 spaces	145 spaces
Residential totals for combined projects:	561 spaces	479 spaces
Parking for County Parking Garage for Parking Lot District	<u>200 spaces</u>	<u>200 spaces</u>
Total Parking Spaces	<u>761 spaces</u>	<u>679 spaces****</u>

\* Includes previous street dedication (approximately 22,301 sf on King Street and 13<sup>th</sup> Street) and approximately 5,176 sf for the proposed 13th Street right-of-way dedication.

\*\* Applicant proposes off-site improvements within the Eastern Avenue public right-of-way, which is in the District of Columbia boundary. Applicant will coordinate with the DC Department of Public Works to improve the streetscape on Eastern Avenue right-of-way

but will not be given credit toward off-site public use space due to lack of Planning Board regulatory control within a public right-of-way in another jurisdiction.

\*\*\* The 45-foot building height for Building 'C' will be measured from Eastern Avenue. Consistent with the provisions of the Ripley/South Silver Spring Overlay Zone, Buildings 'A' and 'B' may be constructed to a height of 125 feet.<sup>2</sup> However, because the subject lot is a through lot, Applicant has agreed to the measurement of the height of each building as follows: The 125-foot building height for Building 'B' shall be measured from 13<sup>th</sup> Street. The building height for that portion of Building 'A' fronting on King Street shall be measured from King Street using the applicable measurement method provided in the Zoning Ordinance. However, because 13<sup>th</sup> Street is approximately 7 feet lower than King Street, the Applicant has agreed to be subject to a condition that limits the height of that portion of Building 'A' fronting on 13<sup>th</sup> Street to 125 feet, as measured from 13<sup>th</sup> Street, using the applicable measurement method provided in the Zoning Ordinance.

\*\*\*\* 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 final number of required parking spaces will be determined at Site Plan based on the unit mix. The Applicant has an agreement to provide 200 spaces to the Parking Lot District as part of the project proposal and approximately 145 spaces (1 space per unit) for the Aurora Project (Site Plan #8-04028).

**(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 Board finds that the Project Plan implements the major principles and recommendations of the Sector Plan.

The approved CBD Sector Plan recommends the CBD-1 zoning for this site, which was applied through the Sectional Map Amendment ("SMA") adopted July 18, 2000, pursuant to County Council Resolution 14-600. The Property is within the Ripley/South Silver Spring Overlay Zone, which

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<sup>2</sup> See Code § 59-C-18.202(b) Development Standards. The development standards are the same as those in the underlying zones, except:

- (1) Building height in the Overlay Zone along Newell Street and Eastern Avenue that confronts a residential zone in the District of Columbia must not exceed a height of 45 feet. However, this building height may be increased to:
  - (i) a maximum of 90 feet for any building or portion of a building that is set back at least 60 feet from the street, or as allowed in 59-C-18.204(b), Transfer of Development Credits; or
  - (ii) a maximum of 125 feet for residential development that is set back at least 100 feet from Eastern Avenue and Newell Street, and that includes a public parking garage constructed under a General Development Agreement with Montgomery County, Maryland.

provides for flexibility of development standards to encourage innovative design solutions.

The proposed mixed-use development is comprised of 328 residential units with private structured parking and a public parking structure. High-rise multi-family units are permitted uses under the CBD-1 Zone. The proposal will be implemented under the optional method of development. The maximum density allowed on this site is 125 dwelling units per acre or 328 units.

The minimum required public use space for this project is 17,367 square feet (20% of the net lot). The Applicant proposed 26,920 square feet of public use space and amenities provided on-site which equals 31.0% of the net lot. The Applicant also proposed an additional 11,470 square feet of off-site streetscape improvements. In total, the Applicant proposed 38,390 square feet of on-site public use space, amenities and off-site improvements or 44.2% of the net lot area. In addition to the public use space, amenities and off-site improvements, the Applicant proposed 3,910 square feet of streetscape improvements outside the Montgomery County jurisdictional boundaries along the Eastern Avenue frontage.

#### **Sector Plan Conformance:**

The Silver Spring Central Business District and Vicinity Sector Plan, approved by the County Council on February 1, 2000, outlines six themes, which articulate the shared goals and vision for a revitalized Silver Spring. Three of these themes--a residential downtown; a green downtown; and a pedestrian-friendly downtown--apply to this proposed project. The Sector Plan specifically identifies a portion of the proposed project site as a potential housing site. The Sector Plan encourages housing as an important component of the revitalization efforts. This project will be developed under the optional method of development and proposes new opportunities for landscaped public open spaces, public art and streetscapes. This project encourages the development of active urban streets by providing building entrances along the public streets and easily accessible public spaces with public art components as activity generators. This proposal improves the quality of the pedestrian environment by providing the optional method streetscape treatment and other amenities along 13th Street and King Street.

- A. **Compatibility:** The proposed mixed-use development is adjacent to the Aurora (Williams & Willste, Site Plan No. 8-04028) condominium buildings (9 and 11 stories) and a bank to the west and the Ramada Inn (6 stories) and a car wash to the east. A Days

Inn hotel (2 stories) and the Gramax Tower apartment building (14 stories) are located across 13th Street from the proposed development. A Seven-Eleven convenience store and a vacant lot are located across King Street to the south.

Building height in the Ripley/South Silver Spring Overlay Zone along Eastern Avenue that confronts a residential zone in the District of Columbia must not exceed a height of 45 feet. However, this building height may be increased to a maximum of 125 feet for residential development that is set back at least 100 feet from Eastern Avenue and includes a public parking garage constructed under a General Development Agreement with Montgomery County, Maryland.

Both Buildings 'A' and 'B' shall be setback a minimum of 100 feet from Eastern Avenue. 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.

- B. **Sector Plan Street Rights-of-Way:** The existing street right-of-way for 13th Street is approximately 60 feet. The applicant proposes to dedicate additional right-of-way equal to 41 feet measured from the centerline of the street. The existing public alley connecting to 13th Street at two points is proposed for abandonment. The alley currently provides vehicular service to the commercial buildings that are part of this proposal.
- C. **Sector Plan Bikeways:** The Sector Plan recommends a Class II or III bikeway (on-road, bike lanes or signed shared roadway) along the south side of 13th Street. The Board finds that the proposed Class III bikeway (on-road, signed shared roadway) along 13th Street will enhance transportation consistent with the Sector Plan recommendation.
- D. **Streetscape:** As conditioned, the Project Plan will comply with streetscaping recommendations in the Sector Plan. Applicant will improve the 13th Street and King Street frontages with the Type "B" streetscape treatment. The streetscape and public amenities for the proposed project shall be in accordance with the standards of the *Silver Spring Streetscape* technical manual or as modified to include the bikeway. The Eastern Avenue frontage will be improved using elements from the Type "B" streetscape treatment subject to approval by the District of Columbia.

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

### **On-Site Improvements**

#### **13<sup>th</sup> Street and King Street**

- Expand the existing streetscape improvements along 13<sup>th</sup> Street and King Street to include specialty pavers.
- Provide landscape planters and ornamental landscaping between the walk and buildings.

#### **Eastern Avenue**

- Expand the existing streetscape improvements along Eastern Avenue to include specialty pavers and accent planting.

#### **Public Park**

- Brick paved public plaza along majority of site frontage to complement streetscape improvements.
- Provide public access from all three public streets. Materials in the walkways need to complement the pavers proposed for 13<sup>th</sup> and King Street.
- Public Art to highlight public's interest of the revitalization efforts of downtown Silver Spring. A public art program shall be developed to include opportunities for the incorporation of an elliptical element and water feature. Local artist to be commissioned for art element.
- Specialty lighting in the plaza to emphasize the art elements, accentuate and visually activate the park at night, and provide security for patrons of the space.
- The paving in the plaza will be designed to include patterns that complement the artwork.
- Landscape beds and planters with irrigation and plant material to correspond to overall theme.

#### **Covered Arcade and Walkway to the Public Parking**

- Provide overhead glass canopy attached to building
- Provide ornamental planting to soften narrow space
- Provide artwork within canopy area

#### **Art Walk**

- Brick paved promenade to complement streetscape improvements and selected artwork.

- Public Art to highlight public's interest of the revitalization efforts of downtown Silver Spring. A public art program shall be designed to incorporate selected pieces by local artists.
- Provide overhead trellis or pergola to direct pedestrians and create a focal feature.
- Provide accent and security lighting to complement overall theme and reinforce lighting element in the Park.

#### Other Improvements

- Existing overhead utilities shall be installed underground consistent with the Silver Spring Master Plan.
- Make available a space for public outdoor interaction and activities in all public use areas.
- Make available a space for entertainment, as needed in conjunction with the Silver Spring Urban District (SSUD), and accommodations for outdoor entertainment in all public use areas.

#### **Off-Site Improvements**

##### 13<sup>th</sup> Street Right-of-Way

- Replace the existing streetscape and install streetscape (Type B) on the south side of 13<sup>th</sup> Street along the entire property frontage to be expanded to include Street trees, Brick Pavers and Street Lights (Washington Globe) Brick Pavers, consistent with Silver Spring Streetscape Plan Technical Manual.
- Granite sets within the tree pits as specified in the Silver Spring Streetscape Plan Technical Manual.
- Brick driveway aprons to be flush with pedestrian circulation.
- Existing overhead utilities and street level meters to be installed underground consistent with the Silver Spring Master Plan.

##### King Street Right-of-Way

- Replace the existing streetscape and install streetscape (Type B) on the north side of King Street, along the entire property frontage, to include Street trees, 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.

Eastern Avenue Right-of-Way

- Install streetscape (Type B) on the east side of Eastern Avenue, along the entire property frontage, to include Street trees, Brick Pavers and Street Lights (Washington Globe) consistent with Silver Spring Streetscape Plan Technical Manual, if approved by the District of Columbia Department of Public Works.

- (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 Board finds that the Project's proposed residential use is compatible with the surrounding neighborhood and potential development within the Georgia Avenue and Eastern Avenue corridors. The proposed buildings are in scale with the adjacent Aurora building and are sensitive to the surrounding community. The height and mass of the building fronting on Eastern Avenue are less intense to emphasize the residential and community characteristics within the Eastern Avenue corridor. The proposed residential uses will be less intensive than the remaining non-residential uses in the Block and within the surrounding area.

The buildings have been sensitively designed to ensure compatibility with the surrounding development and the general neighborhood. The building fronting on Eastern Avenue will be 45 feet in height, significantly less than the 90-110-foot Aurora building. The buildings transition in height from the 45 feet along Eastern Avenue to 125 feet, as permitted by the zone. The project includes three separate buildings, which softens the impact of a fairly large site upon the surrounding community. The base of the buildings emphasizes a traditional masonry base, typically associated with residential uses.

- (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 Board finds that the Project Plan use will not overburden existing public services or facilities. The project proposes residential units within an emerging mixed-use area of south Silver Spring. Parking is proposed at

approximately a 1 space per unit ratio for the 328 units in the subject site and the 145 units in the adjacent Aurora building. In addition to the private parking provided for the residents, 200 additional spaces are provided in the public parking garage that gains access from 13<sup>th</sup> Street. The remainder of the parking spaces needed to satisfy the County Parking Ordinance for the proposed use will take advantage of the parking in the public garage that is part of this proposal, and in the nearby Kennett Street garage, approximately 100 feet north of the site. The site is located within the Silver Spring Parking Lot District. Sites within the Parking Lot District are permitted to minimize the number of spaces provided on-site to take advantage of the County's facilities.

There is adequate water and sewer capacity within the Silver Spring CBD Policy Area to accommodate the proposed increase in residential units. The Annual Growth Policy (AGP) Schools Test for FY2005 indicates that there is adequate capacity within the Montgomery Blair cluster to accommodate the student generation attributable to the proposed development.

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.

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

The Board finds that the Project Plan would be more efficient and desirable than could be accomplished 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 Silver Spring Sector Plan. The proposed development intends to maximize its potential by providing the 125 dwelling units per acre and maximize the number of Moderately Priced Dwelling Units to 12.5% provided on-site.

In addition to the provision of additional market-rate and MPDU units in south Silver Spring, the project will include a significant new public open space and art amenity package on the site. The project is providing over 44% of new on and off-site public use space, which would not have been possible through the standard method of development. An additional 4.5% of off-site improvements may be possible on Eastern Avenue if the District of Columbia permits streetscape improvements within their right-of-way. Additionally, the Applicant is enlisting the talents of local artists to enhance the Art Walk and public use spaces throughout the site. The



Applicant is maximizing density for residential 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 Board finds that the Project Plan meets the requirements of Chapter 25A of the Code. This application requires forty-one (41) Moderately Priced Dwelling Units (MPDUs) or 12.5 percent of the proposed residential dwelling units within the development.

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

The project assembles four recorded lots, four unrecorded parcels and the Montgomery County surface parking lot. Thus, the Project Plan includes more than one lot under common ownership, or is a single lot containing two or more CBD zones, and is shown to transfer public open space or development density from one lot to another or transfer densities within a lot with two or more CBD zones, pursuant to the special standards of either section 59-C-6.2351 or 59-C-6.2352 (whichever is applicable). The Board finds that the Project Plan 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, and thus the Project Plan satisfies the requirement of section 59-D-42(g).

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

A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD #4-05144) was approved on March 21, 2005. The Applicant will need to address final Forest Conservation Plan requirements with the site plan but is permitted to pay a fee-in-lieu or claim credit for street trees planted within the property boundaries. The Board finds that the plan meets the requirements of Chapter 22A.

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

A stormwater management concept plan has been submitted to the Montgomery County Department of Permitting Services (DPS) for

conditional approval. The Project Plan is proposing quality and quantity control within the green areas on the site as well as green roof technology on Buildings 'A' and 'B'. Approval of the 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 individuals structures and groups of structures, and whether the setbacks, yards and related walkways are located and of sufficient dimensions to provide for adequate light, air, pedestrian circulation and necessary vehicular access.
- (c) Whether the vehicular circulation system, including access and off-street and loading, is designed to provide an efficient, safe and convenient transportation system.
- (d) Whether the pedestrian circulation system is located, designed and of sufficient size to conveniently handle pedestrian traffic efficiently and without congestion; the extent to which the pedestrian circulation system is separated from vehicular roadways so as to be safe, pleasing and efficient for movement of pedestrians; and whether the pedestrian circulation system provides efficient, convenient and adequate linkages among residential areas, open spaces, recreational areas, commercial and employment areas and public facilities.
- (e) The adequacy of landscaping, screening, parking and loading areas, service areas, lighting and signs, in relation to the type of use and neighborhood.
- (f) The adequacy of provisions for construction of moderately priced dwelling units in accordance with Chapter 25A if that Chapter applies.
- (g) The staging program and schedule of development.
- (h) The adequacy of forest conservation measures proposed to meet any requirements under Chapter 22A.
- (i) The adequacy of water resource protection measures proposed to meet any requirements under Chapter 19.

## **PLANNING BOARD ACTION AND CONDITIONS**

The Montgomery County Planning Board **APPROVES** Project Plan Review #9-05005 for 328 multi-family dwelling units, including 41 MPDUs (or 12.5% of the total number of units), on 2.62 gross acres in the CBD-1 Zone with the following conditions:

### **1. Development Ceiling**

The proposed development shall be limited to a maximum of 328 multi-family dwelling units or 125 dwelling units per acre.

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

- a. The height of proposed Building 'C' (fronting on Eastern Avenue) shall not exceed 45 feet as measured from Eastern Avenue, using the applicable measurement method provided in the Zoning Ordinance.
- b. The height of proposed Building 'B' shall not exceed 125 feet, as measured from 13<sup>th</sup> Street, using the applicable measurement method provided in the Zoning Ordinance.
- c. The height of proposed Building 'A' shall not exceed 125 feet, and shall be measured as follows: (1) for that portion of Building 'A' fronting on King Street, the height shall be measured from King Street using the applicable measurement method provided in the Zoning Ordinance; (2) for that portion of Building 'A' fronting on 13<sup>th</sup> Street, the height shall be measured from 13<sup>th</sup> Street, using the applicable measurement method provided in the Zoning Ordinance.

### **3. Transportation Improvements**

- a. The proposed development shall dedicate right-of-way, 41 feet from the centerline, to provide for a total of 71 feet right-of-way for 13<sup>th</sup> Street, as recommended in the Silver Spring CBD Sector Plan.
- b. Provide standard Silver Spring streetscape along the property boundary on 13<sup>th</sup> Street and King Street, and extend the streetscape off-site, as shown on the approved Project Plan.
- c. Provide a Class III bikeway (on-road, signed shared roadway) on the south side of 13<sup>th</sup> Street.
- d. Abandon the existing public alley connecting to 13<sup>th</sup> Street.

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

The Applicant shall provide 41 MPDUs (or 12.5% of the total number of units) on-site, consistent with the requirements of Chapter 25A.

**5. Public Use Space**

- a. The proposed development shall provide at least 31.0 percent (26,920 square feet) of on-site public use space and 13.2 percent (11,470 square feet) of off-site public use space for a combined total of 44.2 percent or 38,390 square feet. In addition to the proposed on and off-site public use space and amenities, the Applicant shall provide 3,910 square feet of streetscape improvements along Eastern Avenue, consistent to approvals from the District of Columbia Department of Public Works.
- b. The proposed public use space shall be easily and readily accessible to the general public and used for public enjoyment.

**6. Streetscape**

- a. The Applicant shall provide the full-width streetscape improvements along the 13th Street (Type 'B') and King Street (Type 'B') 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. The Applicant shall provide the full-width streetscape improvements along the Eastern Avenue frontage (District of Columbia right-of-way) using the *Silver Spring Streetscape Plan (April 1992) Technical Manual*, consistent to approvals from District of Columbia Department of Public Works.
- c. Off-site improvements shall be provided along the property frontage of 13<sup>th</sup> Street and Kennett Street, in front of the entrance to the Gramax Building.

**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 pedestrian interaction and involve local artists to display artwork. The Applicant has identified three areas or elements that could be incorporated into the public art component:

a public plaza between Buildings 'B' and 'C', a covered walkway to the public parking garage between Buildings 'A' and 'B', and the "Art Alley" that connects 13<sup>th</sup> Street and King Street on the east side of Building 'A'.

The Applicant shall enlist the services of at least three local artists to provide public art in the three spaces within the public use space on the site.

**8. Staging of Amenity Features**

- a. The proposed project shall be developed in two or three phases.
- 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 associated with each building to be installed prior to occupancy of each building, in accordance with the phasing for the site.

**9. Maintenance and Management Organization**

Prior to signature set of site plans, 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 signature set of Site Plan Review:

- a. Enter into a maintenance agreement with the Silver Spring Urban District for maintenance of all or some of the streetscape improvements.
- b. Present the public art components to the Art Review Panel for review and comment to be available to the Planning Board.
- c. The Applicant shall meet with the M-NCPPC staff and the Montgomery 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.

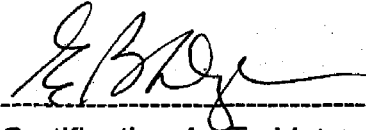
- e. The Applicant shall meet with the M-NCPPC staff and the District of Columbia Department of Public Works to discuss the streetscape improvements along Eastern Avenue.

APPROVED AS TO LEGAL SUFFICIENCY  
TAB  
M-NCPPC LEGAL DEPARTMENT  
DATE 10/13/05

[CERTIFICATION OF BOARD VOTE ADOPTING OPINION ON FOLLOWING PAGE]

**CERTIFICATION OF BOARD VOTE ADOPTING OPINION**

At its regular meeting, held on Thursday October 20, 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 Chairman Berlage and Commissioners Bryant and Wellington voting in favor of the motion, 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 The Galaxy Project Plan No. 9-05005. Commissioner Robinson abstained and Commissioner Perdue was absent.



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Certification As To Vote of Adoption  
Technical Writer