

THE SUBJECT PROPERTY

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

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

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

PROPOSED DEVELOPMENT

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

Building Program

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

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

Public Use Space

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

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

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

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

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

Parking and Access

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

SUMMARY OF TESTIMONY AND EVIDENCE IN RECORD

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

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

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

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

FINDINGS

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

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

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

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

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

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

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

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

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

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

- (2) *"To permit a flexible response of development to the market as well as to provide incentives for the development of a variety of land uses and activities in central business districts to meet the needs and requirements of workers, shoppers and residents."*

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

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

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

- (3) *"To encourage designs which produce a desirable relationship between the individual buildings in the central business district, between the buildings and the circulation system and between the central business district and adjacent areas."*

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

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

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

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

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

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

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

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

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

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

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

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

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

Requirements of the CBD-1 Zone

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