

MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

MONTGOMERY COUNTY PLANNING BOARD

OPINION

DATE MAILED: September 1, 1999
SITE PLAN REVIEW: #8-99002A
PROJECT NAME: Downtown Silver Spring

Action: Approval subject to conditions. Motion was made by Commissioner Bryant, seconded by Commissioner Perdue, with a vote of 5 to 0; Commissioners Wellington, Holmes, Hussmann, Bryant and Perdue voting in favor of the Motion.

The date of this written opinion is September 1, 1999 (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal, as provided in the Maryland Rules of Procedure, on or before October 1, 1999 (which is thirty days from the date of this written opinion). If no administrative appeal is timely filed, this site plan shall remain valid for as long as Preliminary Plan #1-98107R is valid, as provided in Section 59-D-3.8. Once the property is recorded, this site plan shall remain valid until the expiration of the project's APFO approval, as provided in Section 59-D-3.8.

On July 22, 1999, the Montgomery County Planning Board ("Board") held a public hearing to consider an amendment to a Combined Urban Renewal Project Plan, Site Plan Review #8-99002A ("Application"), filed by Montgomery County, Maryland and PFA Silver Spring LC pursuant to Division 59-D-5 of the Montgomery County Zoning Ordinance ("Zoning Ordinance"). At the public hearing, the Board heard testimony and received evidence submitted in the record on the Application.

The property which is the subject of the Application encompasses approximately 22.5 acres in the CBD 0.5, CBD-1, CBD-2 and CBD R-2 zones. The proposed development (collectively the "Project") includes 1,240,198 gross square feet of mixed retail, entertainment, office, civic, a 242 room hotel, and 160 multi-family dwelling units, as well as 379,731 gross square feet of public use space, off-site amenities and facilities. The public hearing on the Application (including Site Plan Review #8-99002A and Project Plan Review #9-98005A) was consolidated with a public

hearing on an application for preliminary subdivision plan for the Property designated Preliminary Plan #1-98107R. This opinion covers the Site Plan component of the Application. The Board has issued separate opinions approving Preliminary Plan #1-98107R and the project plan review component of the Application designated Project Plan Review #9-98005A.

Based on the testimony and evidence presented and on the Staff Report dated July 7, 1999 which is made a part hereof, the Montgomery County Planning Board makes the following findings:

FINDINGS for Site Plan Review:

1. *The site plan is consistent with an approved development plan or a project plan for the optional method of development, if required.*
The amended Project Plan has been submitted and reviewed concurrently with the Site Plan.

2. *The site plan meets all of the requirements of the zone in which it is located.*
The Board finds the Application in compliance with all the requirements of the Zone pursuant to Chapter 59-C-6.2352 of the Code entitled, "Combined Development in an Urban Renewal Project Area" as outlined in the following Project Data Table:

<u>Development Standard</u>	<u>Permitted/ Required</u>	<u>1998 Approval</u>	<u>AMENDED PROPOSAL</u>	<u>CHANGE</u>
LOT AREA (minimum sq. ft.):	20,000	980,100	980,100	
NET LOT AREA		932,591	932,659	+68
GROSS FLOOR AREA (sq. ft.):				
Office		210,800	297,408	+86,608
Retail-Mixed Use (Retail, Restaurants, Theaters)		578,635	507,340	-71,295
Hotel (242 Rooms)		123,135	151,130	+27,995
Civic Building		32,000	48,000	+16,000
<u>Residential</u>		<u>234,000</u>	<u>236,320</u>	<u>+2,320</u>
GFA Total		1,178,570	1,240,198	+61,628
FLOOR AREA RATIO (FAR):	2.29	1.20	1.27	+0.07
AMENITIES & FACILITIES:				
Public Use Space (1998 Approval)				
Net Lot Area (sq. ft.)	932,591			
Public Use Space Required/Provided	186,518	261,235		
Percent	20%	28%		
Public Use Space (Amended Proposal)				
Net Lot Area (sq. ft.)	932,659			
Public Use Space Required/Provided	186,532		273,558*	+12,323
Percent	20%		29.3%	
On-Site Outdoor Seating Facilities			10,000	+10,000
Off-Site Improvement Required/Provided (sq. ft.)		92,788	96,173	+3,385
Replacement of Armory	10,890			

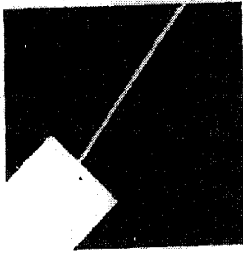
10. Final street lighting specifications for the site are subject to possible future amendment for the purpose of coordinating this project with any contemplated change to the standard street lighting plan for the CBD as a whole, such amendment to be approved by the Planning Board.

Other:

11. Standard Conditions dated 10-10-95:
- A. Submit a Site Plan Enforcement Agreement and Development Program for review and approval prior to approval of the signature set as follows:
- a. Development Program to include a phasing schedule as follows:
- 1) Street tree planting must progress as street construction is completed, but no later than six months after completion of the units adjacent to those streets.
 - 2) Community-wide pedestrian pathways and recreation facilities must be completed prior to seventy percent occupancy of each phase of the development.
 - 3) Landscaping associated with each parking lot and building shall be completed as construction of each facility is completed.
 - 4) Pedestrian pathways and seating areas associated with each facility shall be completed as construction of each facility is completed.
 - 5) Clearing and grading to correspond to the construction phasing, to minimize soil erosion;
 - 6) Coordination of each section of the development and roads;
 - 7) Sequencing of dedications, stormwater management, sediment/erosion control, recreation, forestation, community paths, trip mitigation or other features.
- b. Site Plan Enforcement Agreement to delineate transportation management program, park maintenance agreement or other requirement of a condition of approval
- B. Signature set of site, landscape/lighting, forest conservation and sediment and erosion control plans to include for staff review prior to approval by Montgomery County Department of Permitting Services (DPS):
- a. Methods and location of tree protection;
 - b. Conditions of DPS Stormwater Management Concept approval (waiver) letter
 - c. Note stating the M-NCPPC staff must inspect tree-save areas and protection devices prior to clearing and grading;
 - d. The development program inspection schedule.

N:\divdr\998005ao.wpd

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
MONTGOMERY COUNTY PLANNING BOARD

OPINION

DATE MAILED: September 1, 1999
PROJECT PLAN REVIEW: #9-98005A
PROJECT NAME: Downtown Silver Spring

Action: Approval subject to conditions. Motion was made by Commissioner Bryant, seconded by Commissioner Perdue, with a vote of 5 to 0; Commissioners Wellington, Holmes, Hussmann, Bryant and Perdue voting in favor of the Motion.

The date of this written opinion is September 1, 1999 (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal, as provided in the Maryland Rules of Procedure, on or before October 1, 1999 (which is thirty days from the date of this written opinion). If no administrative appeal is timely filed, then this Project Plan shall remain valid as provided in Section 59-D-2.7.

On July 22, 1999, the Montgomery County Planning Board ("Board") held a public hearing to consider an amendment to a Combined Urban Renewal Project Plan, Project Plan Review #9-98005A ("Application"), filed by Montgomery County, Maryland and PFA Silver Spring LC pursuant to Division 59-D-5 of the Montgomery County Zoning Ordinance ("Zoning Ordinance"). At the public hearing, the Board heard testimony and received evidence submitted in the record on the Application.

The property which is the subject of the Application encompasses approximately 22.5 acres in the CBD 0.5, CBD-1, CBD-2 and CBD R-2 zones. The proposed development (collectively the "Project") includes 1,240,198 gross square feet of mixed retail, entertainment, office, civic, a 242 room hotel, and 160 multi-family dwelling units, as well as 379,731 gross square feet of public use space, off-site amenities and facilities. The public hearing on the Application (including Project Plan Review #9-98005A and Site Plan Review #8-99002A) was consolidated with a public hearing on an application for preliminary subdivision plan for the Property designated Preliminary Plan #1-98107R. This opinion covers the Project Plan component of the Application. The Board has issued separate opinions approving Preliminary Plan #1-98107R and

the site plan review component of the Application designated Site Plan Review #8-99002A.

Based on the testimony and evidence presented and on the Staff Report dated July 7, 1999 which is made a part hereof, the Montgomery County Planning Board makes the following findings:

FINDINGS for Project Plan Review:

(a) *It would comply, with all of the intents and requirements of the zone.*

The Board finds the Application in compliance with all the requirements of the Zone pursuant to Chapter 59-C-6.2352 of the Code entitled, "Combined Development in an Urban Renewal Project Area" as outlined in the following Project Data Table:

<u>Development Standard</u>	<u>Permitted/ Required</u>	<u>1998 Approval</u>	<u>AMENDED PROPOSAL</u>	<u>CHANGE</u>
LOT AREA (minimum sq. ft.):	20,000	980,100	980,100	
NET LOT AREA		932,591	932,659	+68
GROSS FLOOR AREA (sq. ft.):				
Office		210,800	297,408	+86,608
Retail-Mixed Use (Retail, Restaurants, Theaters)		578,635	507,340	-71,295
Hotel (242 Rooms)		123,135	151,130	+27,995
Civic Building		32,000	48,000	+16,000
Residential		<u>234,000</u>	<u>236,320</u>	<u>+2,320</u>
GFA Total		1,178,570	1,240,198	+61,628
FLOOR AREA RATIO (FAR):	2.29	1.20	1.27	+0.07
AMENITIES & FACILITIES:				
Public Use Space (1998 Approval)				
Net Lot Area (sq. ft.)	932,591			
Public Use Space Required/Provided	186,518	261,235		
Percent	20%	28%		
Public Use Space (Amended Proposal)				
Net Lot Area (sq. ft.)	932,659			
Public Use Space Required/Provided	186,532		273,558*	+12,323
Percent	20%		29.3%	
On-Site Outdoor Seating Facilities			10,000	+10,000
Off-Site Improvement Required/Provided (sq. ft.)		92,788	96,173	+3,385
Replacement of Armory	10,890			
Replacement of Kughn Park	<u>69,696</u>			
Total Off-Site Improvements	80,586	92,788	96,173	
Total Amenities & Facilities	267,118	354,023	379,731	+25,708

*Note: This total includes the AFI/Roundhouse/Silver Theater square footage as Public Use Space. Technically, these facilities do not meet the zoning definition of public use space, even though they are acknowledged to be public use space. In any event, this square footage is above the minimum requirements.

RESIDENTIAL- MULTI-FAMILY (DU):

One-bedroom	87	87
Two-bedroom	73	73
<u>MPDU's (Exempted by MCDHCA)</u>	<u>N/A</u>	<u>N/A</u>
Total	160	160

MAXIMUM BUILDING HEIGHT (ft.):				
CBD-2 Zone (Section C)	200	200	200	
CBD-1 Zone	143 (If Compatible)	143	143	
CBD-0.5 Zone	90	90	90	
CBD-0.5 Zone	60 (If Compatible)	60	60	
SETBACKS (ft.):	0	0	0	
OFF-STREET PARKING:				
Parking Required (Office, Retail, Civic) 3,600		3,600		
<u>Parking Required (Residential)</u>		175		
Total Required		3,775		
Parking Provided:				
Garages [Blocks B(2) & D(1)]			3,153	
Structured [Office Block B(1) & Residential]			436	
<u>Surface Lots (Block A & C)</u>			<u>314</u>	
Total Provided			3,903	+128

- (b) *It would conform to the approved and adopted sector plan or an urban renewal plan approved under Chapter 56.*

For the reasons set forth in the Staff Report, the Board finds the Application is consistent with the Urban Renewal Plan.

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

The Board further finds that the Application will be compatible with and not detrimental to existing or potential development in the general neighborhood.

- (d) *It 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 further finds that the Project will not overburden existing public services nor those programmed for availability concurrently with each stage of development and that the Project is subject to a traffic mitigation agreement meeting the requirements of Chapter 42A of the Code.

- (e) *It would be more efficient and desirable than could be accomplished by the use of the standard method of development.*

The Board finds the development will be more efficient and desirable than could otherwise be accomplished by use of the standard method of development.

- (f) *It would 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 Montgomery County Department of Housing and Community Affairs, which administers the Moderately Priced Dwelling Unit Program pursuant to Chapter 25A of the

Code, has determined the Project may be exempt from its requirement to provide on-site MPDUs. In the event the Project is so exempt, the Applicant shall be required to pay a fee in lieu of actual construction that will be directly applied to the renovation of existing housing within the Silver Spring Planning Area. The Board finds the required payment in lieu satisfies the applicable requirements of the Code.

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

(1) *The project will preserve an historic site, building, structure or area as shown on the Locational Atlas and Index of Historic Sites or the Master Plan for Historic Preservation; and/or*

The Board further finds the project will preserve the historic Silver Theater and the Silver Spring Shopping Center facade as integral project components.

(2) *The project will implement an urban renewal plan adopted pursuant to Chapter 56 of the Montgomery County Code; and/or*

The Board further finds the Project will effectively implement the Urban Renewal Plan for the reasons stated in the Staff Report.

(3) *The project will result in an overall land use configuration that is significantly superior to that which could otherwise be achieved.*

The Board further finds the Project will result in an overall land use configuration that is superior to the configuration that would result if each underlying zone within the Property was developed in accordance with the limitations and development standards for such zone as set forth in the Zoning Ordinance.

(h) *Conformance with any applicable requirements for forest conservation under Chapter 22A.*

The Board further finds the Project complies with applicable requirements for forest conservation under Chapter 22A of the Code by providing street trees.

(i) *Conformance with any applicable requirements for water quality resource protection under Chapter 19.*

Lastly, the Board further finds the Project complies with the applicable requirements for water quality resource protection under Chapter 19 of the Code.

The Montgomery County Planning Board APPROVES Project Plan Review #9-98005A which consists of 1,240,198 gross square feet of retail, office, entertainment, restaurant, hotel and housing uses and 379,731 square feet of public amenities, subject to the following conditions:

General

1. Conditions of prior approvals remain in full force and effect except as specifically superseded by this approval.

Staging of Amenities

2. Detailed design of the Silver Circle to be subject to a future Site Plan Amendment for Block C, Parcel A.

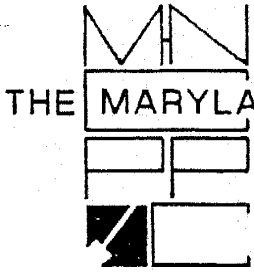
Streetscape

3. Final design of Georgia Avenue between Colesville Road and Wayne Avenue, including streetscape, crosswalk at Ellsworth Drive and median, is subject to coordination with the future Discovery Communications site plan confronting on the west side of Georgia Avenue.

Georgia Avenue

4. Construct a signalized, pedestrian crossing at Ellsworth Drive operable twenty-four hours a day, prior to the occupancy of the Discovery Communications site.

N:\divdr\998005ao.wpd



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

**MONTGOMERY COUNTY PLANNING BOARD
OPINION**

Combined Urban Renewal Project Plan: Site Plan Review No. 8-99002

Project: Downtown Silver Spring

Date of Hearing: September 17, 1998

*Action: **APPROVAL, SUBJECT TO CONDITIONS.** (Motion by Commissioner Holmes; seconded by Commissioner Perdue; with a vote of 4 to 0; Commissioners Holmes, Richardson, Perdue and Hussmann voting in favor of the Motion.*

INTRODUCTION:

On September 17, 1998, the Montgomery County Planning Board ("Board") held a public hearing to consider a Combined Urban Renewal Project Plan application ("Application") filed by Montgomery County, Maryland and PFA Silver Spring LC pursuant to Division 59-D-5 of the Montgomery County Zoning Ordinance. In accordance with Section 59-D-5.1.11 of the Zoning Ordinance, the Application included all the requirements for preliminary plan of subdivision under Chapter 50 of the Montgomery County Code 1994 (as amended) ("Code"). The Application also included all the same information required in Section 59-D-2.12 and 59-D-3.2 of the Zoning Ordinance.

The property which is the subject of the Application ("Property") encompasses approximately 22.5 acres in the CBD 0.5, CBD-1, CBD-2 and CBD R-2 Zones. The proposed development includes retail, movie theaters (including the Silver Theatre), entertainment and recreation space, office space, civic center space, a 200 room hotel, 160 residential dwelling units, amenity and public use space and the preservation of historic resources (collectively, the "Project"). The public hearing on the Application (including both Site Plan Review No. 8-99002 and Project Plan No. 9-98005) was consolidated with a public hearing on an application for preliminary subdivision plan approval for the Property designated Preliminary Plan No. 1-98107. This Opinion covers the Site Plan component of the Application. The Board has issued separate opinions approving Preliminary Plan No. 1-98107 and the Project Plan component of the Application designated Project Plan No. 9-98005. The findings and conclusions of the Board set forth in such opinions are adopted by the Board and are incorporated herein in full by reference.

At the hearing, the Board heard testimony and received evidence submitted in the record, both supporting and opposing the Application. The testimony and evidence presented included, without limitation, the Application materials; copies of resolutions and actions taken by civic groups and organizations supporting the Application; the Amended Silver Spring Urban Renewal Plan dated March 11, 1997; Montgomery County Council Resolution No. 13-1281 adopted May 28, 1998, approving the FY1999-2004 Montgomery County Capital Improvements Program, FY99 Capital Budget and individual Project Description Forms (PDF's) for the public infrastructure requirements of the development; the M-NCPPC Transportation Planning Division Memorandum dated September 2, 1998, Revised September 11, 1998; the M-NCPPC Development Review Division Memorandum dated September 2, 1998; Errata Sheet dated September 17, 1998; the General Development Agreement for the Redevelopment of Silver Spring dated April 20, 1998, between PFA Silver Spring LC and Montgomery County; and the recommendations of the Montgomery County Department of Public Works and Transportation and the Montgomery County Department of Permitting Services. Based on the testimony and evidence, including the September 2, 1998 M-NCPPC Staff Memorandum and Errata Sheet (collectively, "Staff Report"), made a part hereof.

Having considered all the evidence presented and testimony taken, and for the reasons detailed below, the Montgomery County Planning Board **APPROVES** the Combined Urban Renewal Project Plan for Downtown Silver Spring: Site Plan #8-99002 which consists of 1,175,935 gross square feet of retail, office, entertainment, restaurant, hotel and housing uses and 354,023 square feet of public amenities, subject to the following conditions:

1. Standard conditions dated 10-10-95, Appendix A (attached hereto and incorporated herein).

Compatibility

1. Provide additional plantings atop retaining wall along Cedar Avenue elevation.

Housing Site

1. Submit Site Plan Amendment for housing, addressing lack of resolution of Cedar elevation compatibility, interior court design at 1/8"=1'-0", landscape/lighting details, Ellsworth entry details, tot lot details, corner public use space site plan/landscape plan, Executive Regulations for pool, parking,

unit mix, retaining wall details.

Applicant to consider compatibility enhancements such as, but not limited to, visually dividing the Cedar elevation into two "parts" and lowering the cornice/eave line one floor using dormers.

2. Provide documentation of MCDHCA's release of MPDU obligation.
3. Provide revised Recreation Calculations to address shortfall of supply points.

Streets

1. Conditions of approval in DPS letter of August 10, 1998 as may be modified.
2. Conditions of approval stated in MCDPW&T letter of July 17, 1998 to Applicant's engineer.
3. Access and improvements as required by MCDPWT and MD SHA.
4. For quality control Stormwater Management structures in pedestrian surfaces, provide detailed description of pedestrian walking surface of structure for staff approval prior to signature set.
5. All crosswalks shown on plans to be special paving, subject to MCDPWT approval.
6. Provide written documentation of MCDPWT approval of typical crosswalk details to staff, including special paving specs and mid-block crossing operational parameters, prior to signature set for the final confronting development at each crosswalk.
7. Provide written permission from St. Michael's Church for realignment of their turnaround/drop-off, prior to signature set for Section A.

Streetscape

1. Provide streetscape paving across all curb cuts, changing color of pavers.
2. Provide details of special safety bollard design at Wayne Avenue parking

garage and alley curb cuts, on signature set for staff review.

3. Finalize crosswalk location for school, subject to staff and MCDPWT approval, on signature set.

New Street:

1. Replace Gingkos with shade trees placed 30-35 feet off center.
2. Provide a "neck down" at Pershing end of the new street.

Roeder:

1. Provide standard Streetscape Plan treatment with a 30-35 foot tree spacing for full length of new garage, with landscaped panel behind, along garage.

Colesville:

1. Provide planted strips and 30-35 foot tree spacing using Honey Locusts, except that trees may be left out to expose the theater marquee, leaving two trees to either side of the main marquee.

Georgia:

1. Provide planted strips and 30-35 foot tree spacing using Willow Oaks wherever possible in both blocks.

Ellsworth:

1. Use 30-35 foot tree spacing, using American Elms in both blocks between Fenton and Cedar.

Fenton:

1. Tree spacing of 35 feet between Wayne and Ellsworth, per Silver Spring Streetscape Plan.

Cedar:

1. Provide 30-35 foot tree spacing.

Pershing:

1. Provide 30-35 foot tree spacing.

Gateway Plaza:

1. Proposed new parking surface paving subject to HPC approval and M-NCPPC staff approval.
2. Detailed design of planting/wall/fountain/sign area subject to HPC approval, per Project Plan Condition Number 6.

Town Square:

1. Reposition crosswalks at Fenton and Ellsworth to align with sidewalk alignment, adjust circle diameter/location.
2. Replace river birch with a more urban tree.
3. Consider more trees for shade, for non-pavilion alternative.

Parking/Loading

1. Remove short-term off-street parking from site of Civic Building, redesign this area as landscaped bike stop/parking for Town Square.
2. Conform Site Plan loading areas to those shown on Truck Access Plan.
3. If final location of Green Trail continues east from the site on Wayne Avenue rather than Ellsworth, applicant may remove bikeway route on-site from Pershing to Ellsworth.
4. Applicant to secure reprieve of the mid-block crosswalk at Georgia and Ellsworth which was part of the now-lapsed approved Silver Triangle Project Plan.
5. Applicant to submit to staff at Signature Set a plan for special protection of

- street trees on the north side of Wayne Avenue and east of Fenton and along the east side of the surface parking lot.
6. Submit detailed designs for Green Trail crossings of parking garage access/egress and alleys to staff at signature set.
 7. Provide 30 foot tree spacing in front of Wayne Avenue parking garage, in lieu of second row of trees.
 8. Development consistent with the Preliminary Plan for Lots 1, 2, 3, 4, 5, 15 and 16, Roeder's First Addition, is subject to the acquisition of these lots by the County for construction of the Town Square Garage (Garage 61). Nothing herein shall preclude the owner of these lots from seeking its own alternative approval for development of the properties, or applying for permits to develop the property under existing plans until such time as the County has acquired them, nor impair the consideration by the Planning Board of any such alternative development.

DISCUSSION:

The Project is being developed pursuant to (a) the General Development Agreement for the Redevelopment of Downtown Silver Spring dated April 20, 1998 between PFA Silver Spring LC and Montgomery County, Maryland; and (b) the Amended Silver Spring Urban Renewal Plan approved by the Montgomery County Council in Resolution 13-186 on March 11, 1997 ("Urban Renewal Plan"). The Property consists of approximately 22.5 acres and is located within the Silver Spring Central Business District. The Property is generally bounded by Georgia Avenue, Colesville Road, Wayne Avenue, Roeder Road and Cedar Street. The Property is located within the Silver Spring Urban Renewal Area established in the Urban Renewal Plan. The Application proposes to redevelop the area to accommodate an optional method, mixed use development project.

The Property is located at the corner of Colesville Road (a State Highway) and Georgia Avenue (a Montgomery County road). Both roads carry through commuter traffic on its way to and from downtown Washington, D.C. and the commuter parking garages adjacent to the Silver Spring Metro Station. On the east, Cedar Street is a transitional street to an adjacent residential area. Wayne Avenue, located to the south, carries traffic between the Silver Spring Metro and east Silver Spring. Ellsworth Drive and Fenton Street intersect within the Property boundary. Ellsworth Drive serves as an internal distributor of local traffic, and Fenton Street acts as a link between the northern end of the Silver Spring Central Business District and the proposed Fenton Street Village south of the Property.

The Property is bounded by Georgia Avenue, Colesville Road, Wayne Avenue and Cedar Street. To the north across Colesville Road are retail and office uses in one and two-story buildings, except for the Lee Building, a high-rise office building at the intersection of Georgia Avenue with Colesville Road. To the west of the Property across Georgia Avenue is a gas station and the site of an approved site plan for a 650,000 square foot office building project which has not yet been built. To the south of the Property across Wayne Avenue are various commercial, office and institutional uses including the First Baptist Church and the St. Michael's School. East of the Property across Cedar Street are single-family dwellings, some of which have been converted to special exception commercial uses. The Property is also bounded on the east by the St. Michael's Church on Wayne Avenue and a high-rise apartment building located between Roeder Road and Ellsworth Drive, and on the north along Roeder Road by small commercial uses.

The Property contains several buildings preserved by the Master Plan for Historic Preservation. The Art Deco facade of the shopping center at the corner of Georgia Avenue and Colesville Road will be restored as a part of this development. The Art Deco-style Silver Theatre located on Colesville Road will also be restored and will be adaptively reused as the new home of the American Film Institute. The parking lot of the existing shopping center will be renovated. The Silver Spring Armory, located on Wayne Avenue at Pershing Drive, will be demolished pursuant to the approval of an historic area work permit application approved by the Montgomery County Historic Preservation Commission on June 23, 1998.

The Applicants propose to construct 1,175,935 gross square feet of office, retail, entertainment, restaurant, hotel and housing uses and 354,023 square feet of public amenities. Two large parking garages will also be constructed as a part of the Project, in addition to surface parking facilities.

The Project contemplates the creation of a new, pedestrian-oriented core for Silver Spring, containing traditional retail development patterns, significant cultural amenities, and a civic building with a Town Square at the central crossroads of the two internal streets. The Town Square will be flanked by local/family/neighborhood uses and by a new Civic Building which will include meeting space to replace that now found in the Silver Spring Armory and Montgomery County outreach facilities. A veterans' memorial will be incorporated into the Town Square.

A second place, Silver Circle, will round out the downtown concept. Silver Circle, centered on Ellsworth Drive, will create a vibrant night life area featuring restaurants and

outdoor cafes, along with bookstore, hotel and retail uses. A third place, Gateway Plaza, at the historic art deco shopping center at Georgia Avenue and Colesville Road, will function to tie the Ellsworth Drive area uses to the proposed theater uses along Colesville Road, housing the American Film Institute and Roundhouse Theater complex. These uses will be served by a new parking garage on Wayne Avenue with civic service office uses facing the street.

Significant demolition of existing facilities and parking is proposed. The garages now serving City Place (Garages 1 and 1A) will be razed and reconstructed in a configuration more supportive of the Project objectives for pedestrian amenity, parking efficiency, retail exposure and urban design. An historic area work permit authorizing the Armory demolition was approved by the Historic Preservation Commission on June 23, 1998. A number of retail and office businesses on the site will be, or have been, relocated. Most of Pershing Drive will be abandoned, along with all of Fenton Place. Kughn Park, which was the City Place retail facility's public open space amenity, and Armory Place, will be abandoned and demolished.

Except for the abandonment of Pershing Drive, Fenton Place, Baltimore Road (a paper street not in use) and two alleys (as described in the Preliminary Plan opinion), most of the streets will remain unchanged. Wayne Avenue will be widened from four to five lanes and Ellsworth Drive between Georgia Avenue and Fenton Street will become private. Significant improvements will be made in streetscape on all streets. In addition, the Green Trail, a major link in the regional bikeway network, will be installed along Wayne Avenue to ultimately connect the Capital Crescent Trail to the Sligo/Northwest Branch trails and Prince George's County.

FINDINGS for Site Plan Review pursuant to Sections 59-D-3.1 and 59-D-3.4 of the Zoning Ordinance:

The Planning Board finds the Application is consistent with approved Project Plan No. 9-98005 approved by the Board by its opinion dated March 2, 1999. The Application proposes development of the Property with a mix of uses at densities and locations which are consistent with the mix of uses and densities approved by the Planning Board as a part of Project Plan No. 9-98005.

* Based on the project data table that appears on Page 26 of the September 2, 1998 M-NCPPC Memorandum, as modified by the Errata Sheet dated September 17, 1998 (all incorporated herein by reference), and the Board's review of the Site Plan application materials, the Board finds that the Site Plan meets all development standards for combined

development in an urban renewal area pursuant to Section 59-C-6.2352 of the Zoning Ordinance. The Planning Board also finds that parking requirements of the Project based on the mixed-use nature of the development and the parking analysis provided by the Applicant meets the requirements of the Project set forth in Division 59-E of the Zoning Ordinance.

The Planning Board further finds the locations of the buildings and structures, the open spaces, the landscaping, recreational facilities, and the pedestrian and vehicular circulation systems are adequate, safe and efficient.

Location of Buildings

The Board finds the buildings are arranged to provide for the traditional downtown configuration typical of older suburban Central Business Districts. The buildings front on the streets and help to define the public pedestrian realm. The buildings also define public space in the streets and several significant public use spaces and plazas. The buildings conform to the height limits set by the zones which step down from more intense areas to less intense peripheral housing areas.

Open Spaces

The Board finds the open space system consists of streets and public spaces typical of the kind found in urban settings. Based on the Board's review of the Application materials and the Staff Report, the Board finds these spaces to be adequate, safe and sufficient. The Application provides at least 20% of its net lot area as public amenity space, including Gateway Plaza, Silver Circle and the Town Center, a major civic building and a town square, in addition to public streets. Further, a green trail bikeway will traverse the south edge of the Property to connect parts of the regional bikeway system. Two existing open spaces on the site which are to be demolished will be replaced on-site in new configurations. The Board further finds that the demolition and use of the land currently occupied by Kughn Park is necessary for the Project and redevelopment of the Urban Renewal Area to proceed and that the provision of the new Town Square will replace, expand and substantially improve upon the uses currently being served by Kughn Park. The Board's approval in this respect supersedes all existing development approvals and agreements with the Planning Board and/or M-NCPPC affecting the use and development of Kughn Park. Finally, extra off-site streetscape improvements will be made to perimeter and interior streets. The stormwater management concept for the Project was approved with conditions by the Montgomery County Department of Permitting Services. The concept consists of on-site water quality control by surface and underground filters, oil/grit

separators bioretention and a waiver of on-site quantity control requirements. The Applicants will be required to pay a stormwater management contribution waiver fee in accordance with Section 2 of the Stormwater Management Regulation 4-90.

Landscaping and Lighting

The Board finds the landscaping on the Property consists of existing trees being preserved, new street trees and a wide variety of landscape/streetscape features. The landscape and lighting features proposed in the Application, as conditioned by this Opinion, are consistent with the Silver Spring Streetscape Plan. Within the Property's interior streets, the Board finds the requested departure from strict conformance with the Streetscape Plan will establish a unique and desirable identity for the Project. Landscape, streetscape and lighting elements are provided around the perimeter of the Project and within its interior spaces. The Board finds the landscaping materials to be attractive and appropriate for this urban setting. The Board also finds the extensive streetscaping will help create an attractive, comfortable environment for pedestrians as envisioned in the Urban Renewal Plan.

Recreation

The Application proposes on-site recreational facilities for the residential component, including a swimming pool, wading pool, seating areas, indoor fitness facility and a community garden. Off-site facilities include an extensive pedestrian and bike system and tot lot. The total recreational facilities fall short of the demand created by the residential component. The Board therefore shall condition its approval of the Application on the Applicants submitting a Site Plan Amendment for the housing component.

Vehicular and Pedestrian Circulation

The Board finds the street connections to the Property are in accordance with approved Preliminary Plan No. 1-98107. The Board further finds the proposed abandonment of segments of streets within and adjacent to the Property will facilitate safe and efficient pedestrian and vehicular circulation by eliminating conflicting vehicular and pedestrian movements. With the required modifications to pavement width, right-of-way width and public improvement easements where the required width exceeds the Sector Plan right-of-way, the Board finds the circulation system will function adequately as further discussed in the Board's Opinion Approving Preliminary Plan No. 1-98107 and the September 2, 1998, Revised September 11, 1998 M-NCPPC Transportation Planning Division Memorandum.

The Board further finds the level of design and materials proposed as a part of the Application will create desirable and attractive spaces that are adequate, safe and efficient. The provision of a public improvement easement for the Green Trail connecting downtown Silver Spring to the Sligo Creek/Northwest Branch bikeway system will further promote the effective use of the circulation system proposed in the Application. The Applicants will also be required to enter into a traffic mitigation agreement which will help reduce single-occupant vehicle trips by employees to and from the Project, thereby promoting the safe and efficient use of the circulation system.

The Board further finds each structure and use proposed as a part of the Application is compatible with other uses and other site plans and with existing and proposed adjacent development. The Board finds that by conforming with the building height limitations set forth in the underlying zones, the Project ensures compatibility with the adjacent properties. Nearly all of the Project is surrounded by existing commercial development or vacant land. The Board finds that none of the commercial uses are incompatible with any adjacent commercial use, and the proposed uses are not incompatible with one another. The Planning Board will review refinements to the Cedar Street elevation of the residential component when a site plan amendment for the residential component is filed prior to development of the residential units.

The Board also finds that the Application meets all applicable requirements of Chapter 22A of the Code regarding forest conservation and Chapter 19 of the Code regarding water resource protection. Forest conservation requirements will be met by, among other things, the proposed new street trees throughout the Project and by conserving the existing mature trees along Wayne Avenue and next to St. Michael's Church. The protection of water resources is accomplished through the provision of on-site water quality controls via various Best Management Practices, including bioretention, CSF Stormwater Treatment System, surface and structural filters and enhanced street sweeping. The Project also provides erosion and sediment control measures to contain all excavated material on-site and to prevent runoff into the public rights-of-way and storm drain system during construction in accordance with the requirements of Chapter 19 of the Code.

The Board further expressly finds:

1. The Site Plan is consistent with approved Project Plan No. 9-98005 for the optional method of development.
2. The Site Plan meets all of the requirements of the zone in which it is located.

3. The locations of the buildings and structures, the open spaces, the landscaping, recreation facilities, and the pedestrian and vehicular circulation systems are adequate, safe and efficient.
4. Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development.
5. The Site Plan meets all applicable requirements of Chapter 22A of the Code regarding forest conservation.
6. The Site Plan conforms with applicable requirements for water quality resource protection under Chapter 19 of the Code.

APPENDIX A

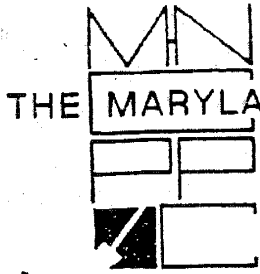
STANDARD CONDITIONS DATED 10-10-95 (as applicable):

1. Submit a Site Plan Enforcement Agreement, Development Program, and Homeowners Association Documents for review and approval prior to approval of the signature set as follows:
 - a. Development Program to include a phasing schedule as follows:
 - 1) Street tree planting must progress as street construction is completed, but no later than six months after completion of the units adjacent to those streets.
 - 2) Community-wide pedestrian pathways and recreation facilities must be completed prior to seventy percent occupancy of each phase of the development.
 - 3) Landscaping associated with each parking lot and building shall be completed as construction of each facility is completed.
 - 4) Pedestrian pathways and seating areas associated with each facility shall be completed as construction of each facility is completed.
 - 5) Clearing and grading to correspond to the construction phasing, to minimize soil erosion;
 - 6) Coordination of each section of the development and roads;
 - 7) Sequencing of dedications, stormwater management, sediment/erosion control, recreation, forestation, community paths, trip mitigation or other features.
 - b. Site Plan Enforcement Agreement to delineate transportation management program, park maintenance agreement or other requirement of a condition of approval.

2. Signature set of site, landscape/lighting, forest conservation and sediment and erosion control plans to include for staff review prior to approval by Montgomery County Department of Permitting Services (DPS):
 - a. Methods and location of tree protection;
 - b. Conditions of DPS Stormwater Management Concept approval (waiver) letter
 - c. Note stating the M-NCPPC staff must inspect tree-save areas and protection devices prior to clearing and grading;
 - d. The development program inspection schedule.

g:\opinions\8-99002

SS_CURRENT: 97949 v.02 5500.067
Cre. 10/14/98 Orig. Typ. Wkb Ed. 12/07/98



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

**MONTGOMERY COUNTY PLANNING BOARD
OPINION**

Preliminary Plan No.: 1-98107
Project: Downtown Silver Spring
Date of Hearing: September 17, 1998

Action: APPROVAL, SUBJECT TO CONDITIONS. (Motion by Commissioner Richardson; seconded by Commissioner Perdue; with a vote of 4 to 0; Commissioners Holmes, Richardson, Perdue and Hussmann voting in favor of the Motion.

INTRODUCTION

On September 17, 1998, the Montgomery County Planning Board ("Board") held a public hearing to consider Preliminary Plan No. 1-98107, an application for subdivision approval encompassing approximately 22.5 acres in the CBD 0.5, CBD-1, CBD-2 and CBD R-2 Zones. The proposed development includes 417,440 square feet of retail; 148,765 square feet of movie theaters (including the Silver Theater); 64,930 square feet of entertainment and recreation space; 210,000 square feet of office space; 32,000 square feet of civic center space; a 200 room hotel; 160 residential dwelling units; amenity and public use space and the preservation of historic resources (collectively, the "Project"). The public hearing on Preliminary Plan No. 1-98107 formed a part of and was consolidated with the public hearing on an application for Combined Urban Renewal Project Plan approval, including Project Plan No. 9-98005 and Site Plan Review No. 8-99002.

At the hearing, the Board heard testimony and received evidence submitted in the record, both supporting and opposing the application. The testimony and evidence presented included, without limitation, the Preliminary Plan Application materials; copies of resolutions and actions taken by civic groups and organizations supporting the Preliminary Plan Application; the Amended Silver Spring Urban Renewal Plan dated March 11, 1997; Montgomery County Council Resolution No. 13-1281 adopted May 28, 1998, approving the FY1999-2004 Montgomery County Capital Improvements Program and

FY99 Capital Budget and individual Project Description Forms (PDF's) for the public infrastructure requirements of the development; the M-NCPPC Transportation Planning Division Memorandum dated September 2, 1998, Revised September 11, 1998; the M-NCPPC Development Review Division Memorandum dated September 11, 1998; and the recommendations of the Montgomery County Department of Public Works and Transportation, the Montgomery County Department of Permitting Services, and the Maryland State Highway Administration. Based on the testimony and evidence, the Board finds Preliminary Plan No. 1-98107 to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) and approves Preliminary Plan No. 1-98107, subject to the conditions listed at the end of this opinion.

DISCUSSION and FINDINGS

The Property consists of approximately 22.5 acres and is located within the Silver Spring Central Business District. The Property is generally bounded by Georgia Avenue, Colesville Road, Wayne Avenue, Roeder Road and Cedar Street. The Property is also located predominantly within the Silver Spring Urban Renewal Area established in the Amended Silver Spring Urban Renewal Plan approved by the Montgomery County Council in Resolution No. 13-186 adopted March 11, 1997. The Preliminary Plan Application proposes to resubdivide the area to accommodate an Optional Method, mixed use development project.

The Property is located at the corner of Colesville Road (a State Highway) and Georgia Avenue (a Montgomery County road). Both roads carry through commuter traffic on its way to and from downtown Washington, D.C. and the commuter parking garages adjacent to the Silver Spring Metro Station. On the east, Cedar Street is a transitional street to an adjacent residential area. Wayne Avenue, located to the south, carries traffic between the Silver Spring Metro Station and east Silver Spring. Ellsworth Drive and Fenton Street intersect within the Property boundary. Ellsworth Drive serves as an internal distributor of local traffic, and Fenton Street acts as a link between the northern end of the Silver Spring Central Business District and the proposed Fenton Street Village south of the Property.

The Property also contains several buildings preserved by the Master Plan for Historic Preservation. The Art Deco facade of the shopping center at the corner of Georgia Avenue and Colesville Road will be restored as a part of the Project. The Art Deco-style Silver Theatre located on Colesville Road will also be restored and will be adaptively reused as the new home of the American Film Institute. The parking lot of the existing shopping center will be renovated. The Silver Spring Armory, located on Wayne Avenue at Pershing Drive, will be demolished pursuant to the approval of an historic area work

permit application approved by the Montgomery County Historic Preservation Commission on June 23, 1998.

The Applicants propose to construct over 1,175,935 gross square feet of office, retail, theater, restaurant, hotel and public building space. The Project also includes a 160 unit, multi-family residential building proposed to front on Cedar Street, between Ellsworth Drive and Pershing Drive. The specific uses proposed include the following:

1. 417,440 square feet of retail;
2. 148,765 square feet of movie theaters (including the Silver Theatre);
3. 64,930 square feet of entertainment and recreation space;
4. 210,000 square feet of office space;
5. 32,000 square feet of civic center space;
6. 200 room hotel;
7. 160 residential dwelling units.

Two large parking garages will be constructed as a part of the Project, in addition to several surface parking facilities.

County Code Section 50-35(k) (the "Adequate Public Facilities Ordinance" or "APFO") directs the Planning Board to approve preliminary plans of subdivision only after finding that public facilities will be adequate to serve the subdivision. This involves predicting future demand from private development and comparing it to the capacity of existing and programmed public facilities. The Montgomery County Council delegated to the Planning Board and its staff all necessary administrative decisions not covered by the guidelines established by the Council for the APFO in the County's Annual Growth Policy. In its administration of the APFO, the Planning Board must consider the recommendations of the County Executive and other agencies in determining the adequacy of public facilities.

Subdivision applications may be subject to two different types of tests. One is called the Policy Area Transportation Review. The other is called the Local Area Transportation Review. The Policy Area Transportation Review divides the County into policy areas. These are geographic areas for which the adequacy of public facilities is addressed on an area-wide basis. With regard to transportation, a staging ceiling may be established for each policy area. The staging ceiling for a policy area is the maximum number of new

peak period vehicular trips that can be accommodated by the existing and programmed public facilities serving the area, at an assigned level of service standard. Except for special circumstances, if a proposed subdivision is in a geographic policy area for which previously approved development exceeds the staging ceiling, then the Planning Board must find the public facilities to be inadequate.

Pursuant to the FY98 Annual Growth Policy adopted by the Montgomery County Council as Resolution No. 13-977 on July 8, 1997, the Property is located within the Silver Spring CBD Policy Area. This policy area has remaining staging ceiling capacity for 3,202 jobs and 1,509 dwelling units. Based on the mix of uses provided as a part of the Project and the analysis contained in M-NCPPC Transportation Planning Staff Memorandum dated September 2, 1998, Revised September 11, 1998 ("TPD Memorandum"), the Board determined the Project would result in 2,700 new jobs and 160 dwelling units. The Board concludes the Application therefore passes the Policy Area Transportation Review test.

Regarding the Local Area Transportation Review test, the Applicants submitted a detailed traffic impact study dated June 10, 1998, Revised August 12, 1998, which was reviewed by the M-NCPPC Transportation Planning Division. Based on the Applicants' traffic study and the analysis provided by staff in the TPD Memorandum, and for the reasons stated therein which the Planning Board hereby adopts as its own, the Planning Board concludes the Project passes the Local Area Transportation Review test, if the transportation improvements identified in the TPD Memorandum are provided. The Board's approval in this respect supersedes all existing development approvals and agreements with the Planning Board and/or M-NCPPC affecting the use and development of Kughn Park.

Section 50-24(b) of the Subdivision Regulations provides that the subdividers shall also provide, in addition to any required dedication for widening existing frontage roads, such reasonable improvement to the road necessary to meet the needs of the subdivision for access and traffic. In the TPD Memorandum, the Planning Department staff recommended the Applicants provide certain right-of-way dedications and additional roadway improvements required to maintain safe travel conditions, including pavement widening, restriping of travel lanes and modification of and/or additional review of accesses to specified Project components.

The Planning Board, after considering all the evidence and testimony of record, finds the improvements and access modifications recommended by Staff are necessary and adequate to serve the needs of the Project for access and traffic. The improvements will facilitate the safe and efficient traffic movements on the public roads abutting the Property. The improvements will also assure the vehicles entering and leaving the Property will be able to do so in a safe and efficient manner.

As a part of the Project, the Applicants also proposed the abandonment of several rights-of-way: portions of Ellsworth Drive, Pershing Drive, Fenton Place, Baltimore Road (a paper street not in use), and two unnamed alleys within or adjacent to the Project boundary. The abandonment of public roadways is governed by the provisions of Chapter 49 of the Code. Authority to approve the abandonment of any right-of-way in public use is vested in the Montgomery County Council.

On July 27, 1998, the Board reviewed the proposed road abandonments at a public meeting convened for that purpose and recommended approval of the abandonment petition to the County Council. On August 10, 1998, the Montgomery County Hearing Examiner conducted a public hearing on the abandonment petition. By its Report and Recommendation dated August 20, 1998, the Hearing Examiner recommended approval of the petition. The Chief Administrative Officer for Montgomery County and the Montgomery County Executive approved the Hearing Examiner's recommendation on August 25, 1998 and August 27, 1998, respectively. The Montgomery County Council was scheduled to consider the abandonment petition on September 22, 1998.

The Board finds the proposed road abandonments are necessary for the Project to move forward, were contemplated by the Amended Silver Spring Urban Renewal Plan, and will facilitate safe pedestrian and vehicular circulation in and around the Project site. The Board's approval of Preliminary Plan No. 1-98107 is conditioned upon the Montgomery County Council's approval of the abandonment petition prior to the recordation of subdivision plats involving the abandoned roadways.

The Applicants also requested authority to reduce the required dedication width of three streets (Fenton Street, Ellsworth Drive and Cedar Street) to less than the Master Plan recommended right-of-way width. Fenton Street has an existing right-of-way of 60 to 76 feet. The 1993 Silver Spring CBD Sector Plan ("Sector Plan") proposed an 80 foot right-of-way for that street. The Preliminary Plan proposes a 76 foot wide right-of-way. The second street is Ellsworth Drive east of Fenton Street. The existing right-of-way in this area is 60 feet. The Sector Plan proposes 75 feet. The Applicants' proposal is for 70 feet. The final street is Cedar Street. The existing right-of-way is 78 feet. The Sector Plan shows 78 feet, but a pending Sector Plan Amendment shows 80 feet. The Applicants' proposal is for 78 feet.

In all three instances, the Board believes that the requested reduction in right-of-way is appropriate. Based on the fact that in looking at the Sector Plan today with this Project the Board believes that the Sector Plan right-of-way will not have to be as wide as shown in a Sector Plan. Based on the analysis provided by Staff and contained in the Applicants' traffic impact study, the Board finds the roads are currently adequate to accommodate the planned traffic and the circulation of traffic through the area. The Board also finds that the

sidewalks and streetscape can be provided within the proposed rights-of-way to satisfy the intent of the Sector Plan. Therefore, in accordance with the provisions of Section 50-35(l) of the Subdivision Regulations, the Board finds that the Master Planned rights-of-way for those streets are no longer appropriate and that the street widths proposed by the Applicants are adequate to ensure safe and efficient vehicular and pedestrian traffic circulation.

The Applicants have also requested authority to permit an existing garage to cross a proposed new lot line and have requested a waiver of the Subdivision Regulation in this regard. The existing garage will be demolished as a part of the Project. The Board therefore finds that a waiver is not necessary for compliance with the Subdivision Regulations since the continued use and existence of this structure will be on a temporary basis. The Board shall require as part of the Site Plan Enforcement Agreement for this Project, that the Applicants specify that the garage be timely removed.

The Planning Board further finds the proposed storm drainage improvements and the stormwater management concept plan approved by the Montgomery County Department of Permitting Services on July 21, 1998 and September 14, 1998 will provide adequate control of stormwater runoff from the site. The approved stormwater management concept consists of on-site water quality control via various Best Management Practices (to include bioretention, CSF Stormwater Treatment System, surface and structural filters and enhanced street sweeping) and a waiver request for stormwater quantity control.

Therefore, having considered all the evidence presented and all the testimony taken, the Planning Board finds the Preliminary Plan to be in accordance with the Subdivision Regulations of the Montgomery County Code, the Amended Silver Spring Urban Renewal Plan, and the provisions of the Maryland Code Ann., Art. 28, and approves Preliminary Plan No. 1-98107 subject to the following conditions:

- (1) Prior to recording of plat(s), Applicant to enter into an Adequate Public Facilities (APF) agreement with the Planning Board to limit development as follows:
 - * 417,400 square feet of retail
 - * 148,765 square feet of movie theaters (including the Silver Theater)
 - * 64,930 square feet of entertainment and recreation space
 - * 210,000 square feet of office space

- * 32,000 square feet of civic center space
- * 200 room hotel
- * 160 residential dwelling units

Applicant to provide for the necessary roadway improvements as outlined in the April 9, 1998 Transportation Division memo and as required by MCDPW&T.

- (1) Prior to recording of any plat(s), Applicant to join the Silver Spring CBD Transportation Management District and enter into a trip mitigation program in accordance with the requirements of the FY99 Annual Growth Policy (AGP).
- (2) Applicant must provide dedication for the following streets as follows:
 - * Georgia Avenue: 120 feet as measured from the opposite property
 - * Colesville Road: 100 feet as measured from the opposite properties
 - * Wayne Avenue: 40 feet as measured from the center line of the existing pavement
 - * Fenton Street: 76 feet based on 38 feet on each side of the center line of the existing pavement
 - * Ellsworth Ave.: 70 feet based on 35 feet on each side of the center line of the existing pavement
 - * Cedar Street: 78 feet as measured from the opposite properties
 - * Pershing Drive: 40 feet as measured from the center line of the existing pavement

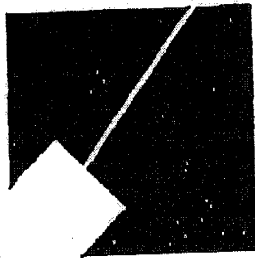
Dedication for the proposed new street connecting Ellsworth Drive and Pershing Drive, east of the proposed civic center, must be for 60 feet of right-of-way, as shown on the Preliminary Plan. The grade establishment for this proposed street must be approved by MCDPW&T prior to submission of the record plat which dedicates the right-of-way.

- (1) Prior to recording of record plats, access and improvements are to be stipulated in a Public Improvements Agreement (PIA) and/or permit and bond, as required by MCDPW&T and MDSHA, respectively.
- (2) Conditions of MCDPS stormwater management approvals dated 07-21-98 and 09-14-98.
- (3) Provide 24 moderately priced dwelling units (MPDU's) or enter into an agreement with Montgomery County to contribute to the Housing Initiative Fund (HIF) in accordance with Sec. 25A-5(e) of the MPDU Law and Executive Regulation 7-94. The agreement must specify that the contribution to the HIF is to be used for housing in the Silver Spring Planning area.
- (4) No clearing, grading or recording of lots prior to site plan approval.
- (5) A record plat may be recorded for new lots encompassing existing Montgomery County Garage #1 allowing the garage to temporarily cross a new lot line(s), provided that the Site Plan Enforcement Agreement (SPEA) provides for the timely removal of the garage, in accordance with the site development schedule contained in the site plan development program approved as part of the site plan signature set.
- (6) Prior to the recording of any record plat, Applicant must present certification or commitments from the appropriate utility companies or public agencies to the technical staff that all required utilities will be properly installed to serve the proposed Project, as required by Sec: 50-40(c) of the Subdivision Regulations.
- (7) Compliance with the conditions of the final forest conservation plan approved as part of the site plan. Applicant must meet all conditions prior to recording of plat(s).
- (8) The Montgomery County Council must approve the abandonment petitions for portions of Ellsworth Drive, Pershing Drive, Baltimore Road, Fenton Place and two unnamed alleys prior to recording of record plat(s) involving these streets.
- (9) Necessary easements.

- (10) In order to fully accommodate the "Silver Spring Green Trail," Applicant must provide a Public Improvements Easement (PIE) along the Wayne Avenue frontage of the Property. For the frontage along the north side of Wayne Avenue, west of Fenton Street, the PIE must be at least 16 feet wide. For the frontage along the north side of Wayne Avenue, east of Fenton Street, the PIE will vary in width ranging from 16 feet to 26 feet, as depicted on the site plan. The PIE must be delineated on the record plat(s).
- (11) Development consistent with the Preliminary Plan for Lots 1, 2, 3, 4, 5, 15 and 16, Roeder's First Addition, is subject to the acquisition of these lots by the County for construction of the Town Square Garage (Garage 61). Nothing herein shall preclude the owner of these lots from seeking its own alternative approval for development of the properties, or applying for permits to develop the property under existing plans until such time as the County has acquired them, nor impair the consideration by the Planning Board of any such alternative development.
- (12) This Preliminary Plan will remain valid until April 2, 2002 (37 months from date of mailing, which is March 2, 1999). Prior to the expiration of this validity period, a final record plat for all property delineated on the approved preliminary plan must be recorded or a request for an extension must be filed.

g:\opinions\1-98107.pbo

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING
THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

Date Mailed: September 1, 1999
Action: Approved Staff Recommendation
Motion of Comm. Bryant, seconded by
Comm. Perdue with a vote of 5-0; Comms.
Bryant, Perdue, Holmes, Hussmann and
Wellington voting in favor.

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-98107R
NAME OF PLAN: DOWNTOWN SILVER SPRING

On 06-10-98, PFA SILVER SPRING LC and MONTGOMERY COUNTY submitted an application for the approval of a preliminary plan of subdivision of property in the CBD-0.5, CBD-1, CBD-2 and CBD-R2 zones. The application proposed to create 12 lots on 22.5 acres of land. The application was designated Preliminary Plan 1-98107. On 09-17-98, Preliminary Plan 1-98107 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application. Based upon the testimony and evidence presented by staff and on the information on the Preliminary Subdivision Plan Application Form, attached hereto and made a part hereof, the Montgomery County Planning Board found Preliminary Plan 1-98107 to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) and approved Preliminary Plan 1-98107 with limitations on the type of use and amount of developable building area.

On 05-24-99, PFA SILVER SPRING LC and MONTGOMERY COUNTY submitted an application requesting the Planning Board amend Condition #1 of the previous opinion to adjust the uses and amount of square footage under the development limitations previously adopted. On 07-22-99, Preliminary Plan 1-98107R was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board found Preliminary Plan 1-98107R to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) and amends the previous conditions of approval, subject to the following:

- (1) Applicant to submit an amended Adequate Public Facilities (APF) agreement with the Planning Board to limit development to the following uses and not to exceed the identified floor areas :

- 507,340 square feet of Retail
- 297,408 square feet of Office
- 48,000 square feet of Civic Center
- 242 room Hotel
- 160 residential dwelling units

Applicant to provide the necessary roadway improvements as identified in the 09-11-98 Transportation Planning Division memo

Preliminary Plan 1-98107R
Page 2 of 2

- (2) Applicant is responsible for all related sidewalk construction along Georgia Avenue and Ellsworth Drive
- (3) All previous conditions associated with the Planning Board Opinion dated 03-02-99 remain in full force and effect

January 9, 2006

Barbara A. Sears
301.961.5157
bsears@linowes-law.com

The Honorable Derick P. Berlage
Chairman
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910-3760

Re: Downtown Silver Spring, Application for Amendment to Combined Urban Renewal Project Plan 9-98005, as amended (the "Project Plan"); Preliminary Plan 1-98107, as amended (the "Preliminary Plan"), and Site Plan 8-99002, as amended (the "Site Plan")

Dear Mr. Berlage:

On behalf of our client, PFA Silver Spring LC ("Applicant"), we are submitting applications to amend the Project Plan, Preliminary Plan and Site Plan for Downtown Silver Spring (the "Project"). By Opinions mailed March 2, 1999, the Montgomery County Planning Board ("Planning Board") approved the Preliminary Plan, Project Plan, and Site Plan for the Project. Copies of these Opinions are attached as Exhibits "A", "B" and "C", respectively. By Opinions mailed September 1, 1999, the Planning Board approved amendments to the Preliminary Plan (1-98107R), Project Plan (9-98005A), and Site Plan 8-99002A. Copies of these Opinions are attached as Exhibits "D", "E" and "F", respectively.

Pursuant to conditions of the Opinion for the Site Plan (Exhibit "C"), the Applicant is required to submit a site plan amendment for the housing portion of the Project, which was originally approved for 160 multi-family dwelling units, to provide certain additional details. The purpose of the enclosed Site Plan Amendment is to provide the required additional information and request certain modifications to the original Site Plan approval. In summary, these modifications increase the number of residential units from 160 to 222, including 31 on-site MPDUs, increase on-site residential parking spaces from 170 to 260, increase the residential square footage by 1,333 square feet, modify the residential building footprint and elevations, and reduce the approved office square footage by 68,477 square feet.

In view of these changes to the Project, amendments to the Preliminary Plan and Project Plan are necessary, as more fully discussed below. Additionally, the square footage and unit number changes require minor changes to the other elements of the approved data table as reflected in

The Honorable Derick P. Berlage

January 9, 2006

Page 2

the revised data tables for each amendment. A copy of the Revised Project Data Table dated December 9, 2005 is attached as Exhibit "G" for summary purposes. As this revised data table and above discussion indicates, in addition to the changes to the residential portion of the Project, the total gross floor area has been reduced by 67,144 square feet, which is comprised of a 68,477-square-foot reduction in office, and 1,333-square-foot increase in the residential building.

A. Amendment to the Preliminary Plan

The Applicant requests an amendment to Condition 1 of Preliminary Plan Opinion 1-98107R (Exhibit "E") to reflect the proposed increase in the residential units and reduction in the gross floor area for the office use. Specifically, the Applicant requests that Condition 1 be amended to read as follows:

“(1) Applicant limit development to the following uses and not to exceed the identified floor areas:

- 507,340 square feet of Retail
- 228,931 square feet of Office
- 48,000 square feet of Civic Center
- 242-room hotel
- 222 residential units

Applicant to provide the necessary roadway improvements as identified in the 09-11-98 Transportation Planning Division memo.”

As to traffic, the impact of the above modifications to the uses as listed above is a reduction in generated traffic trips for both the AM and PM peak-hour trips from the prior approved plans. The December 9, 2005 letter from Wells & Associates (Exhibit "H") sets forth how these development program adjustments affect the generated traffic trips for each use, and demonstrates that the Preliminary Plan and Project Plan Amendments generate fewer AM and PM peak-hour trips than were initially approved by the Planning Board.

B. Amendment to the Project Plan

The Applicant requests an amendment to the Project Plan to reflect the above revised mix of uses within the Project and increase the number of residential units and on-site residential parking spaces. Both the attached Project Plan Amendment Application and Exhibit "G"

The Honorable Derick P. Berlage

January 9, 2006

Page 3

reflect the changes to the current square footages for the office and residential uses, increase in residential units, increase in parking spaces, and modifications to the public use and amenity space. The Project Plan Amendment does not alter the Planning Board's previous determination that the Project meets (1) all the requirements of Section 59-D-5.42, "Findings Required for Approval" of a Combined Urban Renewal Project Plan, and (2) all the requirements of the applicable zone pursuant to Section 59-C-6.2352, "Combined Development in an Urban Renewal Area."

Section 59-C-6.2352 of the Zoning Ordinance establishes the conditions under which the Planning Board may approve a combined development in an urban renewal area under the optional method when the property lies in one or more CBD Zones. For the reasons set forth in Applicant's prior submissions dated June 3, 1998 and May 20, 1999 (collectively, the "Prior Submissions") and below, the Project as amended satisfies each of these requirements. In addition, with respect to the proposed Project Plan Amendment:

- a. *Density of the Development*, Section 59-C-6.2352(4) – The aggregate total amount of development density in the combined development does not exceed the amount of density that would be permitted if each CBD zone were developed separately. In fact, the proposed amendment reduces the total approved density from 1.27 FAR to 1.20 FAR. If each parcel were developed separately, the total permitted FAR would be 2.29.
- b. *Public Facilities and Amenities*, Section 59-C-6.2352(5) – The aggregate amount of public facilities and amenities as defined under Section 59-A-2.1 is not less than the amount that would be required if the component areas of the lot were developed separately. The total public use space provided in the amended plan is 269,653 square feet. As illustrated by Exhibit "G", this amount is greater than that which would be provided if the lots were developed separately.
- c. *Site Plan*, Section 59-C-6.2352(6) – A Site Plan has been approved and is proposed to be amended, as more fully discussed below.
- d. *Lot Size*, Section 59-C-6.2352(7) – All lots within the Project are greater than 22,000 square feet, and this Amendment does not affect the size of any lot.

Section 59-D-5.42 of the Zoning Ordinance sets forth all of the requirements that the Planning Board must make before approving a combined urban renewal project plan. The Amendment meets all the requirements of Section 59-D-5.42, as follows: