



MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 09-149
Project Plan No. 92005005B
Project Name: The Galaxy
Date of Hearing: December 3, 2009

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Division 59-D-2, the Montgomery County Planning Board ("Planning Board") is vested with the authority to review project plan applications; and

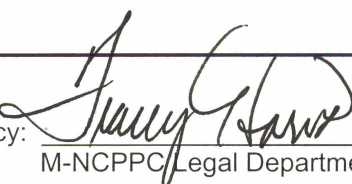
WHEREAS, on July 28, 2005, the Planning Board approved Project Plan No. 920050050 ("Project Plan"), subject to conditions, for 328 dwelling units including 41 MPDUS; and

WHEREAS, on January 24, 2008, the Planning Board approved amendment A, subject to conditions, to the Project Plan which consisted of a reduction of the number of multi-family dwelling units to 241 and added 3,663 square feet of retail space; and

WHEREAS, on September 14, 2009, RST Development ("Applicant"), filed an application for approval of a project plan amendment to reduce the size of the private parking garage by 66 spaces and to revise the phasing of the project, on 2.62 acres of CBD-1-zoned land and within the Ripley/South Silver Spring Overlay Zone, located on the southeast quadrant of the intersection of 13th Street and Eastern Avenue in south Silver Spring ("Property" or "Subject Property"); and

WHEREAS, Applicant's project plan application was designated Project Plan No. 92005005B, The Galaxy (the "Application"); and

Approved as to
Legal Sufficiency:


M-NCPPC Legal Department

WHEREAS, Planning Board Staff ("Staff") issued a memorandum to the Planning Board, dated November 19, 2009, setting forth its analysis of, and recommendation for approval of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the Staff of other governmental agencies, on December 3, 2009, the Planning Board held a public hearing on the Application (the "Hearing"); and

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

WHEREAS, on December 3, 2009, the Planning Board approved the Application subject to conditions, on motion of Commissioner Alfandre, seconded by Commissioner Wells-Harley, with a vote of 4-0, Commissioners Alfandre, Hanson, Presley, and Wells-Harley voting in favor and with one seat being vacant.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Montgomery County Planning Board APPROVES Project Plan No. 92005005B to reduce the size of the private parking garage by 66 spaces and to revise the phasing of the project, on 2.62 gross acres of CBD-1-zoned land and within the Ripley/South Silver Spring Overlay Zone, subject to the following conditions:

1. Project Plan Conformance

The development must comply with the conditions of approval for Project Plan Amendment No. 92005005A as listed in the Planning Board Resolution dated April 24, 2008, unless amended by this application.

2. Staging of Amenity Features, Recreation facilities and Public Use Space

The development will be completed in two phases. A detailed development program will be required prior to approval of the certified site plan.

BE IT FURTHER RESOLVED, that having given full consideration to the recommendations and findings of its Staff as set forth in the Staff Report, which the Planning Board hereby adopts and incorporates by reference (except as modified by herein), and upon consideration of the entire record and all applicable elements of § 59-D-2.43, the Montgomery County Planning Board, with the conditions of approval, FINDS:

- (a) The proposed development complies with all of the intents and requirements of the CBD-1 and Ripley/South Silver Spring Overlay Zone.**

Intents and Purposes of the CBD Zones

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

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

The amendment does not modify the density, height, or intensity approved with Project Plan Amendment No. 92005005A. The amendment continues to conform with the general and site-specific recommendations in the 2000 Approved and Adopted Silver Spring Central Business District Sector Plan.

- (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 amendment does not modify the land uses approved with Project Plan Amendment No. 92005005A. However, in response to market conditions, the amendment is reducing the size of the private parking garage by 66 spaces and revising the phasing for the project from one to two phases. Both of these modifications are discussed below in findings (d) and (c), respectively, in greater detail.

- (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 amendment does not modify the design of the individual buildings, the relationship between the buildings and the circulation system, and between the CBD and adjacent areas, as approved with Project Plan Amendment No. 92005005A.

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

The reduction in the number of private parking spaces combined with the proximity to the Silver Spring Metro Station could further encourage the use of transit facilities in the CBD and pedestrian access thereto. While the development is eliminating a portion of the underground parking garage on level G-3, which results in the loss of 66 parking spaces; it is maintaining all public amenities, artwork, and streetscape improvements, which enhances the pedestrian realm and encourages pedestrian circulation.

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

The amendment does not modify the pedestrian circulation system approved with Project Plan Amendment No. 92005005A. The vehicular circulation has not changed, except for minor adjustments within the private parking garage that resulted from the elimination of portion of Level G-3. The revised vehicular circulation does not alter the intent, objectives, or requirements expressed or imposed by the Planning Board for the originally approved project plan.

Access to the two below-grade stories of the garage remains unchanged at King Street. This garage will provide parking for the residential and retail tenants of the Galaxy, as well as for some residents of the Aurora condominiums (Site Plan No. 82004028A). The public garage, located in the two levels above grade of the parking structure in Building 1, will continue to have access from 13th Street and King Street.

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

The amendment continues to provide 31 MPDUs, which is 12.5 percent of the total number of units, in the same 1 and 2-bedroom mix as approved with Project Plan Amendment No. 92005005A. However, due to the approved phasing, all 31 MPDUs are now located in Building 1, which the Department of Housing and Community Affairs (DHCA) has approved because Building 1 will be built in the first phase of the project. Building 1 is a five-story building with a total of 195 residential units. Building 2, a four-story building with 46 residential units and no MPDUs, will be constructed as part of Phase II. The final location of the MPDUs within Building 1 will be decided by DHCA during the building permit application.

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

The amendment does not modify the land assembly resulting in the current lot that was approved by Preliminary Plan No. 120050890 and discussed in Project Plan Amendment No. 92005005A.

Requirements of the CBD-1 and Ripley/South Silver Spring Overlay Zone

The Staff Report contains a data table that lists the Zoning Ordinance required development standards and the development standards proposed for approval. The Board finds, based on the aforementioned data table, and other evidence and testimony of record, that the Application meets all of the applicable requirements of the CBD-1 and Ripley/South Silver Spring Overlay Zone. The following data table sets forth the development standards approved by the Planning Board and binding on the Applicant. Only the standards that are affected by the amendment are listed; a comprehensive modified data table is included on the certified site plan.

DATA TABLE

Development Standards	Approved by the Planning Board & Binding on the Applicant
Automobile Parking (spaces)	
Private	
- Residential subtotal	191
- Commercial subtotal	17
Public (County Parking Garage)	160
Total Automobile Parking	368*
Bicycle Parking (spaces)	
Bike lockers	16
Inverted-U bike racks	4
Total bicycle parking	20
Motorcycle parking (spaces)	
	10

* The development is located within the limits of the Silver Spring Parking Lot District and, therefore, is not required to provide any parking onsite; however, the project is subject to the Parking District Tax. The Applicant has an agreement to provide 160 spaces to the Parking Lot District as part of their General Development Agreement.

(b) The proposed development conforms to the 2000 Approved and Adopted Silver Spring Central Business District Sector Plan approved under Chapter 56.

The amendment continues to conform with the general and site-specific recommendations in the 2000 Approved and Adopted Silver Spring Central Business District Sector Plan. The Project Plan Amendment accomplishes important Sector Plan objectives by providing a residential component within Ripley/South Silver Spring, including MPDUs, new commercial space, promoting redevelopment, upgrading the physical environment and enhancing pedestrian circulation. The mixed-use development will contribute to a pedestrian-friendly downtown through the streetscape treatment and other amenities along 13th Street and King Street, the public spaces with artwork, and building entrances along the public streets.

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

The amendment does not modify the location, size, intensity, design, and operational characteristics of the development as approved with Project Plan Amendment No. 92005005A. The proposed phasing, consisting of two phases, is compatible with existing development in the general neighborhood. However, the Planning Board expressed concerns over the timely completion of Phase II, and the impacts that this might cause to the general neighborhood if Phase II were to be delayed for many years or not built at all. In response, the Applicant reassured the Board that the project has an APF validity period until 2013, which requires the project (Phase I and II) to be initiated by this time.

During Phase I, the larger building with 195 residential units, including all 31 MPDUs, retail space and all parking for the project, will be constructed as well as the main plaza and pedestrian connections from King Street to 13th Street.

Phase I includes the construction of the following:

- 1) The 201, 954 square foot building to be located along the eastern portion of the property ("Building 1"), including all 31 MPDUs and 3,663 square feet of retail space;
- 2) Recreation facilities related to Building 1 including an indoor fitness facility, indoor community space, seating areas, and tot lot (see Table 1 on the following page);

- 3) 17,899 square feet of on-site public use space improvements, including the project's main plaza and two pedestrian connections from King Street to 13th Street (see Table 2);
- 4) 11,784 square feet of off-site public amenity space improvements adjacent to Building 1, including streetscaping along 13th street and King Street (see Table 2);
- 5) 1,373 square feet of offsite public amenity space improvements located on the north side of 13th street in front of the Gramax buildings (see Table 2); and
- 6) All parking and loading areas for the project.

Phase II includes the construction of the following:

- 1) The 56,126 square foot building to be located at the corner of Eastern Avenue and 13th Street ("Building 2");
- 2) Recreation facilities related to Building 2 including an indoor fitness facility, and a pedestrian system (see Table 1).
- 3) 5,569 square feet of onsite public use space improvements located adjacent to Building 2 (see Table 2);
- 4) 4,134 square feet of offsite improvements to be located within the Eastern Avenue right-of-way (subject to the jurisdiction of the District of Columbia) (see Table 2).

Table 1 - Approved phasing of the Recreation Facilities

Recreation Facilities	Phase I	Phase II	Total approved w/ 82006013A*
Indoor fitness room	1	1	2
Community space	1	0	1
Seating areas	10	0	10
Tot lot	1	0	1
Pedestrian system	0.5	0.5	1

* Amendment B does not change the overall total of recreation facilities approved with Amendment A.

Table 2 - Approved phasing of the PUS and Off-site Amenities

Public Use Space (PUS) and Off-site Amenities (square feet)	Phase I	Phase II	Total approved w/ 82006013A*
On-site PUS	17,899	5,569	23,468
Off-site PUS adjacent to site	11,784	0	11,784
Eastern Ave PUS **	0	4,134	4,134
Off-site PUS (in front of Gramax Bldg)	1,373	0	1,373
Total **	31,056	5,569	36,625

* Amendment B does not change the overall total of PUS approved with Amendment A.

** The off-site improvements within the Eastern Avenue public right-of-way fall in the District of Columbia boundary, and therefore, the Applicant is not given credit toward off-site public use space due to lack of regulatory control within a public right-of-way in another jurisdiction.

- (d) The proposed development does 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 Amendment will not overburden existing public services or facilities. The site is located within the Silver Spring parking lot district which permits Applicants to minimize the number of parking spaces provided onsite and to take advantage of existing County facilities. The amendment will reduce the number of private parking spaces by 66. The new total of 368 parking spaces includes 208 in the private parking garage and 160 in the public parking garage. In accordance with the General Development Agreement between the Applicant and Montgomery County, the number of parking spaces available for public use - 160 spaces - remains unchanged from the prior approval.

At the time of the previous approval, the Applicant had an Option Agreement with 75 residents in the adjacent Aurora Building that gave them the option of purchasing a space in the Galaxy parking garage. This is a private agreement, and therefore, it is not part of Staff's purview. However, Staff understands that the Agreement is still in place and the existing options for the Aurora residents will be honored despite the current amendment to the private parking garage.

As part of the previous approvals, the Applicant has entered 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. As part of the TMA, the Applicant will construct three "super bus shelters," two of which will be equipped with real-time transit information signs. The project is still within the APF validity period.

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

The amendment does not modify the density, public use space, amenities, artwork, and offsite improvements, which were approved with Project Plan Amendment No. 92005005A and resulted from using the optional method of development.

- (f) The proposed development includes moderately priced dwelling units in accordance with Chapter 25A of this Code.**

The amendment continues to provide 31 MPDUs, which is 12.5 percent of the total number of units, as required by Chapter 25A. A final agreement between the Applicant and the Department of Housing and Community Affairs will be required prior to the release of the 1st building permit.

- (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 on 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:**

The development is located on one existing lot, as consolidated by Preliminary Plan No. 120050890, and does not propose any open space or density transfers.

- (h) The proposed development satisfies any applicable requirements for forest conservation under Chapter 22A.**

The project is exempt from the requirements of the forest conservation law.

- (i) The proposed development satisfies any applicable requirements for water quality resources protection under Chapter 19.**

The amendment does not change the stormwater management concept, approved on May 9, 2007, and reconfirmed on November 20, 2009, except for the phasing of when the structures will be installed. The stormwater management concept consists of partial on-site water quality control via two proprietary filters and possibly by using green roof technology. Onsite recharge is not required because this is a redevelopment site. Channel protection volume is waived due to the site's location in the CBD. A partial waiver of water quality requirements is also granted for a very small portion of the site.

BE IT FURTHER RESOLVED that all elements of the plans for Project Plan No. 92005005B, stamped received by M-NCPPC on September 14, 2009, and November 13, 2009, are required except as modified by the above conditions of approval; and

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

BE IT FURTHER RESOLVED, that this Project Plan shall remain valid as provided in Montgomery County Code § 59-D-2.7; and

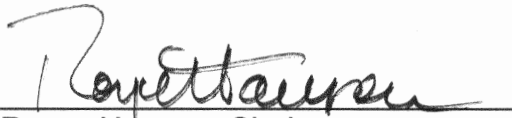
BE IT FURTHER RESOLVED, that the date of this Resolution is JAN 6 2010
(which is the date that this Resolution is mailed to all parties of record); and

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

* * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner Wells-Harley, seconded by Commissioner Alfandre, with Commissioners Hanson, Alfandre, and Wells-Harley voting in favor of the motion, and Commissioner Presley absent, with a four-member Board, at its regular meeting held on Thursday, December 17, 2009, in Silver Spring, Maryland.



Royce Hanson, Chairman
Montgomery County Planning Board