



JUL 26 2010

MCPB No. 10-84
Preliminary Plan No. 120100260
Fillmore Music Hall and LDG Office/Hotel Complex
Date of Hearing: June 10, 2010

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Chapter 50, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review preliminary plan applications; and

WHEREAS, on March 10, 2010, Lee Development Group ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create three lots on 90,143 square feet of land in the CBD-2 zone, located on the west side of Georgia Avenue (MD 97), 250 feet north of Colesville Road (US 29) ("Property" or "Subject Property"), in the Silver Spring CBD Sector Plan area ("Sector Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120100260, Fillmore Music Hall and LDG Office/Hotel Complex ("Preliminary Plan" or "Application"); and

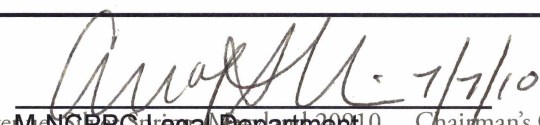
WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated May 28, 2010, setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the staff of other governmental agencies, on June 10, 2010, 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 June 10, 2010, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Dreyfuss; seconded by

Approved as to
Legal Sufficiency:



Commissioner Alfandre; with a vote of 5-0, Commissioners Alfandre, Dreyfuss, Hanson, Presley, and Wells-Harley voting in favor.

NOW, THEREFORE, BE IT RESOLVED, that, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Preliminary Plan No. 120100260 to create three lots on 90,143 square feet of land in the CBD-2 zone, located on the west side of Georgia Avenue (MD 97), 250 feet north of Colesville Road (US 29) ("Property" or "Subject Property"), in the Silver Spring CBD Sector Plan area ("Sector Plan"), subject to the following conditions:

- 1) Approval under this Preliminary Plan is limited to three lots for 219,700 square feet of office use, 135,300 square feet of hotel use with 189 rooms, 5,500 square feet of retail use, and a 34,252 square-foot performance hall with a total gross floor area of 22,882 square feet.
- 2) The Applicant must comply with the conditions of approval for the preliminary forest conservation plan. The Applicant must satisfy all conditions prior to recording of plat(s) or Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permits, as applicable.
- 3) The Applicant must dedicate and the record plat must show dedication of the following rights-of-way and public improvement easements along the Property frontage (consistent with the 2000 Approved and Adopted *Silver Spring CBD Sector Plan*):
 - a. Colesville Road (US 29) – 45 feet of dedication, as measured from the centerline of the right-of-way, plus 5 feet of public improvement easement;
 - b. Fenton Street – 40 feet of dedication, as measured from the centerline of the right-of-way; and,
 - c. Georgia Avenue (MD 97) – 63 feet of dedication, as measured from the centerline of the right-of-way.
- 4) Prior to release of the occupancy permit for the proposed office building, the Applicant must close the existing median opening, if approved by the Maryland State Highway Administration (MDSHA), along Georgia Avenue across from the public alley.
- 5) The Applicant, jointly or separately with the property owner of 8621 Georgia Avenue (Project Plan 920100010; 8621 Limited Partnership), and in coordination with the Maryland State Highway Administration (MDSHA), must redesign/reconstruct the Georgia Avenue median opening at Fidler Lane. Strategies that must be considered to discourage traffic entering/exiting the proposed shared northern driveway from using the Georgia Avenue median opening include:
 - Modifying the Georgia Avenue median opening to 30 feet,
 - Redesigning the median opening to restrict use of the opening to only left turn traffic from Fidler Lane, and

- Installing signage to prohibit turns from Georgia Avenue at the median opening.

- The median improvements, if approved by SHA, must be in place concurrent with the opening of the above shared driveway for public use.
- 6) The Applicant must enter into a Traffic Mitigation Agreement(s) ("Agreements") with the Planning Board and Montgomery County Department of Transportation (MCDOT) to participate in the Silver Spring Transportation Management District (TMD) for the office and hotel uses. The final Agreement covering the proposed office and hotel buildings must be executed prior to the release of any building permit for the building.
 - 7) Common ingress/egress easements must be provided over all shared driveways and loading areas. The record plat must note that all lots will be subject to a reciprocal easement agreement(s) to be recorded in the Land Records. The easement agreement must be recorded and a copy provided to MNCPPC Staff before issuance of the first use-and-occupancy permit for the first building. Prior to the issuance of the first use-and-occupancy permit for each of the subsequent buildings, the Applicant will confirm the continued effectiveness of the easement agreement or provide Staff with a copy of an amendment thereto, as applicable.
 - 8) The Applicant must comply with the conditions of the MCDPS stormwater management approval dated March 17, 2010. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
 - 9) The Applicant must comply with the conditions of the MCDOT letters dated May 10, 2010, and May 18, 2010. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
 - 10) The Applicant must comply with the conditions of the MDSHA letter dated April 9, 2010. These conditions may be amended by MDSHA, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
 - 11) The Applicant must satisfy provisions for access and improvements as required by MCDOT prior to recordation of plat(s) and MDSHA prior to issuance of access permits.
 - 12) Only clearing and grading necessary for construction of the music hall is allowed prior to recording of plats and approval of the certified site plan approval.
 - 13) Final approval of the number and location of buildings, on-site parking, site circulation, and sidewalks will be determined at site plan.
 - 14) Prior to certification of the Preliminary Plan, the proposed lot areas of the proposed lots must be indicated on the plan drawing.
 - 15) The certified Preliminary Plan must contain the following note: "Unless specifically noted on this plan drawing or in the Planning Board conditions of

approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined during the site plan process. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot. Other limitations for site development may also be included in the conditions of the Planning Board's approval."

- 16) The record plat must show necessary easements, or notation as set forth in Condition No. 7 above.
- 17) Per Section 50-35(h)(2)(D) of the Subdivision Regulations, recordation of a final record plat for all property in the phase containing the land or building space to be conveyed or dedicated to the County for the performance hall will validate the entire Preliminary Plan, if recordation occurs within 5 years after the final approval of the Preliminary Plan. After approval, an amendment or modification to the phasing plan or the Preliminary Plan will not affect the validation, if the requirements of the subsection have otherwise been met.
- 18) Per Section 50-20(c)(3A) of the Subdivision Regulations, the Adequate Public Facility (APF) review for the Preliminary Plan will become valid on the date of mailing of the Planning Board Resolution and will remain valid for ten (10) years from the date of the earlier of i) conveyance of land to the County, or ii) possession of building space by the County for the performance hall.

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, as revised during the Hearing the Board hereby adopts and incorporates by reference, and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

1. The Preliminary Plan substantially conforms to the Sector Plan.

The Subject Property is located within the core area of the Silver Spring central business district (CBD), as defined by the Silver Spring CBD Sector Plan. The Sector Plan intends for the core section of the CBD to be revitalized into a commercial, civic, and entertainment center for the Silver Spring area. The core is envisioned as an active center with a variety of public and private uses. The proposed land use map on page 30 of the Sector Plan and the urban design section on page 83 provide land use guidance specific to the Subject Property. The Sector Plan's land use map shows that the site is recommended for mixed use development. In the urban design section, the Sector Plan provides detailed recommendations for the Subject Property, which is known as the Lee block:

Develop the Lee Block with a mix of uses ...Buildings here should incorporate street-activating uses, be designed with

sensitivity to the historic Montgomery Arms Apartments along Fenton Street, and incorporate the J.C. Penney façade into new development. The remainder of the block should be included in the Silver Spring Historic District evaluation, and be configured to create through-block pedestrian paths.

The project is substantially in conformance with the Sector Plan. It sufficiently meets both the specific recommendations for the Lee block and the general recommendations for the core area. The mix of retail and office uses and the music venue will help attract people to the core and make the area an entertainment destination.

In accordance with Section 59-C-6.2356, the Applicant fulfills the public use space and public amenities requirements by giving the proposed arts and entertainment space – the performance hall – to the County. The APF will remain valid for ten (10) years from the date of the earlier of i) conveyance of land to the County, or ii) possession of building space by the County for the performance hall and as such is reflected in the conditions of approval. (See Section 50-20(c)(3A) of the Subdivision Regulations) Section 59-D-2.42 of the Zoning Ordinance also eliminated the requirement that the Applicant provide the Sector Plan's recommended pedestrian path because the Plan does not recommend the continuation of the mid-block pedestrian path on confronting private property.

As a high density transit-oriented mixed-use development, this project will bring more people to the core of the Silver Spring CBD. The project's proximity to transit and its streetscaping improvements will further improve the area's pedestrian accessibility. By attracting more people to the area, the project should benefit the surrounding businesses and attract further development to the area. The Sector Plan envisions the core becoming a commercial, civic, and entertainment center in Silver Spring and this project should help make this vision a reality. Therefore, the Planning Board finds that this project substantially conforms to the Silver Spring Central Business District Sector Plan.

- 2. Public facilities will be adequate to support and service the area of the proposed subdivision.*

Roads and Transportation Facilities

Vehicular access to the site will be provided by two existing private driveways and an existing public alley. A two-way, full-movement private driveway from Fenton Street will provide access to the internal, three-story, above-grade hotel parking structure, and to shared loading spaces for the hotel

and the performance hall. Adjacent to this driveway will be a one-way, clockwise driveway that will connect to the main hotel driveway to facilitate drop-offs/pick-ups in front of the hotel. The existing public alley will provide a right-in/right-out, shared entrance/exit to Georgia Avenue for the proposed office building's eight-level internal parking structure, and the structured parking entrance/exit to the existing Lee Plaza. The public alley will also serve as egress to Georgia Avenue for the shared hotel/performance hall loading spaces. Vehicular access to loading spaces for the proposed office building will be provided via a right-in/right-out, private driveway from Georgia Avenue that will be shared with the adjacent property to the north. The Planning Board finds that these facilities will provide safe and adequate vehicular access to the proposed and existing developments. The public alley and private driveways will have sufficient width and turning radius to permit circulation of cars, loading trucks and fire/rescue vehicles, as necessary.

Pedestrian access to the proposed buildings will be provided via existing sidewalks on Georgia Avenue, Colesville Road, and Fenton Street, which will be improved to meet Silver Spring Streetscape standards. These sidewalks will provide safe and adequate access to the proposed office and hotel uses.

Performances at the performance hall are scheduled to begin at 8:00 p.m. with doors opening between 6:00 p.m. and 7:00 p.m. The performance hall is proposed to accommodate a maximum of 2,000 patrons for a standing-room only event and will include a separate seating area for 40 patrons at a below-grade area. The number of attendees at the venue will vary depending on the event type. Additionally, depending on the type of show and the opening act, 10% to 60% of the patrons may arrive after the 8:00 p.m. start time.

Approximately 65% of the performance hall patrons are anticipated to arrive at the venue by auto (i.e., drivers and passengers) and the remaining 35% are anticipated to use public transit and other non-auto modes to arrive at the venue. Since public parking is not provided for the performance hall on the site, patrons who drive to Silver Spring for an event are anticipated to park at several of the existing public parking garages located within walking distance of the site, and walk to the site. All of the performance hall patrons will therefore be walking to the venue from some place in the vicinity of the site, such as area restaurants, office buildings, residences, Metrobus and Metrorail stations, and parking garages.

Arrivals to the performance hall are anticipated to occur over a period of two hours prior to the start of a performance. Approximately 90% of the patrons purchase tickets online and arrive at the venue ready to enter the venue.

In response to concerns regarding the management of pedestrian traffic to and from the performance hall before and after an event, the Applicant is proposing a pedestrian management approach that includes both design and operational elements. Since only minimal on-site box office ticket sales will occur at the venue, it is not anticipated that patrons waiting to purchase tickets will block pedestrians entering the venue. Prior to performances, pedestrian control barriers (such as movable bike racks or stanchions) will be erected between the curb and the center of the sidewalk to allow for queuing space along the front building façade. This will allow for continued access to adjacent businesses and a clear pedestrian path along Colesville Road, to the front of the performance hall. The event operator will have security personnel stationed at entrances and exits to ensure that all patrons are properly ticketed and to assist them during an emergency evacuation. Upon completion of an event, security personnel will open the doors and will move out to the Colesville Road sidewalk opposite the front doors to direct patrons along the street and away from the roadway, toward area transit stations, parking garages, restaurants/other businesses, and residences. Typically, 20% of the patrons will leave prior to the end of an event and 10% of the patrons will stay on-site after an event. Permanent design features that are proposed along Colesville Road to manage pedestrian traffic into and out of the Fillmore include street furniture such as benches, bike racks, street light stanchions, and trash receptacles along Colesville Road street frontage.

Proposed vehicle and pedestrian access for the subdivision will be safe and adequate with the proposed improvements.

Adequate Public Facilities Review

Because the development proposed on the site generates 30 or more total peak-hour trips during the typical weekday morning (6:30 a.m. – 9:30 a.m.) and evening (4:00 p.m. – 7:00 p.m.) peak periods, a traffic study is required. A study dated April 1, 2010, was submitted for the Preliminary Plan for adequate public facilities (APF) review purposes.

The site trip generation estimate for the proposed office, hotel, and retail complex in the traffic study was based on the Silver Spring CBD trip generation rates included in the Local Area Transportation Review (LATR) and Policy Area Mobility Review (PAMR) Guidelines. For the proposed performance hall, the traffic study developed special trip generation estimates that considered the capacity of the facility, typical attendee arrival patterns, estimated non-auto mode share for the Silver Spring CBD, and observed vehicle occupancy rates for typical entertainment venues. Based on this, the proposed development was

estimated to generate 347 weekday peak-hour trips during the morning peak period and 532 weekday peak-hour trips during the evening peak period.

For comparison purposes, the study also determined that if non-Silver Spring CBD trip generation rates/assumptions were applied to the proposed development, it would generate 491 weekday peak-hour trips during the morning peak period and 732 weekday peak-hour trips during the evening peak period. The development, therefore, generates fewer trips during the morning (by 144 peak-hour trips) and evening (by 200 peak-hour trips) peak periods as a result of being located within the Silver Spring CBD.

Local Area Transportation Review

Thirteen key intersections were analyzed as part of the LATR.

As shown in the traffic study, the analysis indicates that under total traffic conditions (i.e., existing plus background and proposed site development), CLV at the study intersections will be below the applicable congestion standard for the Silver Spring CBD Policy Area (1,800 CLV). The Preliminary Plan, therefore, satisfies the LATR requirements of the APF test.

Policy Area Mobility Review

To satisfy the PAMR requirements of the APF test, the Silver Spring CBD Policy Area requires mitigation of ten percent (10%) of "new" peak-hour trips generated by a development. The traffic study demonstrates that the proposed development, as a result of being located within the Silver Spring CBD, will generate approximately 29 percent fewer peak-hour trips during the weekday morning peak period and 27 percent fewer peak-hour trips during the weekday evening peak period, as compared to being located in a non-CBD area. Since these percentages are more than the required PAMR trip mitigation percentages for the Silver Spring CBD Policy Area, the Preliminary Plan satisfies the PAMR requirements of the APF test.

Other Public Facilities and Services

Public facilities and services are available and will be adequate to serve the proposed development. The Property will be served by public water and sewer. The Application has been reviewed by the Montgomery County Fire and Rescue Service who has determined that the Property has appropriate access for fire and rescue vehicles. Other public facilities and services, such as police stations, firehouses, schools, and health services, are operating according to the Growth Policy resolution currently in effect and will be adequate to serve the

Property. Electrical, gas, and telecommunications services are also available to serve the Property.

3. *The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision.*

This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Application meets all applicable sections. The proposed lot size, width, shape and orientation are appropriate for the location of the subdivision.

The lots were reviewed for compliance with the dimensional requirements for the CBD-2 zone as specified in the Zoning Ordinance. The lots as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. The Application has been reviewed by other applicable county agencies, all of whom have recommended approval of the plan.

4. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A.*

The site contains no environmentally sensitive areas, natural resources or forest, however, the Montgomery County Forest Conservation law applies to the Subject Property. The site's forest conservation requirement of 0.33 acres of forest planting is proposed to be entirely met by either, off-site mitigation, or in-lieu payment.

5. *The Application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by the Montgomery County Department of Permitting Services ("MCDPS") that the Stormwater Management Concept Plan meets MCDPS' standards.*

The MCDPS Stormwater Management Section approved the stormwater management concept on March 17, 2010. The stormwater management concept consists of on-site water quality control using green roofs. Chanel protection and recharge requirements were waived due to site restrictions.

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is JUL 26 2010 (which is the date that this Resolution is mailed to all parties of record); and

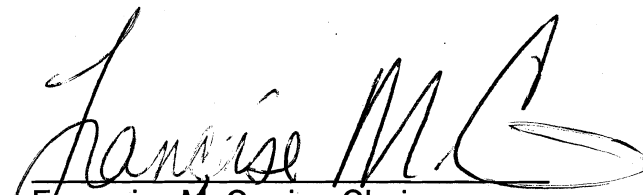
BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this

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 Dreyfuss, seconded by Commissioner Wells-Harley, with Commissioners Alfandre, Dreyfuss, and Wells-Harley voting in favor of the motion, and with Chair Carrier abstaining and Commissioner Presley absent, at its regular meeting held on Thursday, July 15, 2010, in Silver Spring, Maryland.


Françoise M. Carrier, Chair
Montgomery County Planning Board