



MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

JUL 26 2010

MCPB No. 10-102

Project Plan No. 920100040

Project Name: Fillmore Music Hall & LDG Office/Hotel Complex

Date of Hearing: June 10, 2010

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 March 10, 2010, Lee Development Group ("Applicant"), filed an application for approval of a project plan for 219,700 square feet of office use, 135,300 square feet of hotel use for up to 189 rooms, 5,500 square feet of retail use and a 22,882 square-foot performance hall ("Project Plan") on 2.07 gross acres of CBD-2-zoned land, located on Georgia Avenue approximately 250 feet north of Colesville Road, ("Property" or "Subject Property"); and

WHEREAS, Applicant's project plan application was designated Project Plan No. 920100040, Fillmore Music Hall & LDG Office Hotel Complex (the "Application"); and

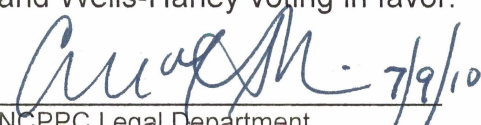
WHEREAS, Planning Board Staff ("Staff") issued a memorandum to the Planning Board, dated May 28, 2010, setting forth its analysis of, and recommendation for approval of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the staffs 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 conditions, on the motion of Commissioner Dreyfuss and seconded by Commissioner Wells-Harley with a vote of 5-0; Commissioners Alfandre, Dreyfuss, Hanson, Presley, and Wells-Harley voting in favor.

Approved as to
Legal Sufficiency:


M-NCPPC Legal Department

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. 920100040 for 219,700 square feet of office use, 135,300 square feet of hotel use for up to 189 rooms, 5,500 square feet of retail use and a 22,882 square-foot performance hall, on 2.07 gross acres in the CBD-2 zone, subject to the following conditions:

1. Development Ceiling

The proposed development is limited to a maximum of 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. Building Height and Mass

The proposed development is limited to the building footprint as delineated in the project plan drawings submitted to MNCPPC dated May 4, 2010 unless modified at site plan review and to 143 feet in height from the delineated building height measurement points.

3. Architecture

The final design of the building façade will generally conform to the illustrative architectural renderings presented in the project plan application unless modified at site plan review.

4. Environment

The Applicant must make a good-faith effort to achieve a LEED Silver (or county-approved equivalent) rating for the office and hotel buildings individually or as an entire complex, excluding the music hall. Before the issuance of a building permit for the office or hotel building, the Applicant must inform M-NCPPC Staff of the LEED rating for which they are applying. If this level is less than Silver, before the issuance of any building permit the Applicant must provide Staff with a written report from the Applicant's LEED-AP consultant analyzing the feasibility of achieving a Silver rating that includes an affidavit identifying the minimum additional improvements required to achieve a Silver rating, including their associated extra costs.

5. Public Use & Amenity Space

a. The Applicant must convey the proposed Lot C to Montgomery County for provision of an arts and entertainment use under the provisions of section 59-

C-6.2356 of the Zoning Ordinance and in accordance with a written agreement with Montgomery County under 59-C-6.2356(a)(iii).

- b. The Applicant must provide a minimum of 17% of the net lot area for on-site public use space including the area for the music hall and a minimum of 8% of the net lot area for off-site public amenity space. The final design and details will be determined during site plan review.

6. Staging of Amenity Features

- a. The proposed development will be completed in up to three phases. A detailed development program will be required prior to approval of the certified site plan.
- b. The Applicant must complete the on-site and off-site public use space improvements associated with each phase within 6 months of the issuance of use-and-occupancy permits for each phase unless modified by the site plan development program.
- c. The Applicant must install any required landscaping no later than the next growing season after completion of the building and site work for each phase.
- d. The Applicant must make a payment not to exceed \$13,000 to the Urban District to replace 11 existing Zelkova street trees with honeylocusts and add one additional tree as will be delineated on the site plan. The site plan must note this work as being done by others.

7. Maintenance

Prior to issuance of use-and-occupancy permits, the Applicant will create and implement a maintenance plan for all on-site streetscape area, exclusive of the music hall, unless an alternative arrangement is made with another entity.

8. Coordination for Additional Approvals Required Prior to Preliminary Plan and Site Plan Approval

The Applicant must obtain written approval from all applicable agencies for any improvements within the rights-of-way.

9. Historic Preservation

The plans submitted to M-NCPPC on May 18, 2010 provide a number of details regarding the J.C. Penney building façade and any construction must conform to the materials, dimensions, and specifications of those plans. Any changes to these plans may result in a requirement to apply for a Historic Area Work Permit.

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 proposal complies with all of the intents and requirements of the 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 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 project is in substantial 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.

The Sector Plan's recommendation vis-à-vis the type and intensity of development in the Core area is to develop the site as densely as appropriate given the adjacent uses and public use space requirements. This plan conforms to the Sector Plan objectives of providing jobs near transit, services, and entertainment uses.

(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 Sector Plan indicates that a mix of uses is appropriate for the site. The current application will provide office uses above retail, a hotel, and entertainment space; all of which are directly accessible to pedestrians. The intensity of development with this Application is comparable to the intensity and diversity of land uses within the core vicinity and conforms to the Sector Plan recommendations: both the general goals of the Sector Plan and the specific

objectives of the area advocate approval of optional method projects that provide employment and civic opportunities near both transit stations and other day-to-day necessities.

- (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 proposed development will enhance pedestrian, cyclist, and vehicular circulation by improving sidewalks, providing bicycle facilities, and increasing the mix of uses to serve visitors, residents, and employees. The layout of doors, sidewalks, and lobbies will adequately serve pedestrians in and around the site.

The relationship of the proposed buildings to existing buildings is typical and appropriate for a central business district. In most cases in the CBD, adjacent buildings with windows are required to be at least 15 feet setback from each other; this proposal meets that standard. In order to minimize the visual impacts on the J.C. Penney building the larger and taller buildings are set behind an alley to the north of Colesville Road.

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

The proposed development is two blocks from Metro and has several bus stops on the block where it is located. It is a local and regional imperative that infill development is provided at such sites as an alternative to suburban sprawl. As conditioned, the location and accessibility of the proposed development to the local transit system is an excellent realization of the Sector Plan transit and sustainability goals, and will provide jobs and services within walking distance of the Metro and shopping areas.

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

Vehicular and pedestrian circulation along the frontages of the site will be improved through the use of at-grade pedestrian sidewalks across driveways and the provision of benches and bicycle facilities.

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

The proposed development does not provide any housing.

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

The proposed development will re-subdivide the existing lots and parts of lots to meet the needs of three different tenants. Additional assemblage is not necessary to further the goals of the Sector Plan.

Further Intents of the CBD-2 Zone

Section 59-C-6.213(b) of the Zoning Ordinance states:

"In the CBD-R1, CBD-R2, CBD-2 and CBD-3 zones it is further the intent to foster and promote the orderly development of the Central Business Districts of the county so that these areas will enhance the economic status of the county as well as providing an expanding source of employment and living opportunities for its citizens in a desirable urban environment."

The fact that the project plan area is being reviewed for all three proposed lots allows analysis of the impacts and relationships between buildings and uses to ensure the orderly development of the CBD. The proposed development provides the employment, service, and urban environment amenities to foster further redevelopment in the Core area.

Section 59-C-6.213(c) of the Zoning Ordinance states:

"In the CBD-2 zone, it is further the purpose:

- (1) To provide a density and intensity of development which will permit an appropriate transition from the cores of central business districts to the less dense peripheral areas within and adjacent to the districts; and*
- (2) To provide an incentive for the development of residential uses to meet the needs of those employed within the central business districts and those who will be able to use the district transit facilities to travel to and from places of employment."*

The proposed development will provide employment, shopping, entertainment and hospitality opportunities for visitors, employees, and residents. The improved sidewalks, and more so, the diversity of uses will further enhance these opportunities for day-to-day interaction and enjoyment of the CBD.

The density is appropriate for the site - a transition to less dense peripheral areas is not necessary because both building heights and massing are similar to the north, west, and south. The narrow façade of brick along the eastern edge complements the lower buildings across Fenton Street and will have a minimal shade impact.

The project does not provide any residential uses.

Requirements of the CBD-2 Zone

The table below demonstrates the conformance of the project plan with the development standards under the optional method of development. Among other standards, the proposed development meets the area, public use space, building height, and density requirements of the zone.

Development Standard	Permitted/ Required	Proposed for Approval
Maximum Building Height (feet)	143	143 ¹
Minimum Setbacks (feet)		
Property Line	0	0
Minimum Site Area (square feet)		
Gross Tract Area	18,000	90,143
Net Site Area after dedications	n/a	70,632
Maximum Density		
Floor Area Ratio (FAR)	4.0	4.0 ²
Minimum Public Use Space (% of net lot)		
On-Site Public Use Space	20	n/a ³
Off-Site Amenity Space	n/a	11
Total Public Use & Amenity Space	20	n/a

¹ Individual building height measuring points to be indicated for each building on the site plan; there is no proposed increase in height for the music hall.

² Does not include 22,048 square feet of gross floor area (excluding cellar space) within the Music Hall under 59-C-6.234(b)(ii) footnote 23.

³ On-site public use space met by provision of 10,649 square feet of land for an arts and entertainment use with total interior floor area of 34,252 square feet (including cellar space) under 59-C-6.2356 and 1,816 square feet of on-site sidewalk improvements.

According to the Zoning Ordinance (59-C-6.215(b)) a further requirement of optional method projects is the provision of additional public amenities:

“Under the optional method greater densities may be permitted and there are fewer specific standards, but certain public facilities and amenities must be provided by the developer. The presence of these facilities and amenities is intended to make possible the creation of an environment capable of supporting the greater densities and intensities of development permitted.”

Because of the provisions of Section 59-C-6.2356 of the Zoning Ordinance, the on-site public use space and other public amenities and facilities typically required of optional method projects are satisfied through the conveyance of property to the County to accommodate the future arts and entertainment use, which conveyance is required as a condition of this approval.

Streetscape improvements along each frontage, however, must be improved per the standards. For three reasons: 1) because Fenton Street is being improved by another developer (Cameron House); 2) the Board has granted a waiver from the streetscape standard regarding trees and some details along Colesville Road; and 3) the trees on Georgia Avenue are existing and will not have to be replaced by the Applicant, the Applicant is conditioned to provide the following:

- (1) Payment to the Urban District for removal and replacement of 11 existing Zelkova trees along Colesville Road between Georgia Avenue and Fenton Street and installation of one additional tree at the eastern end of the block; and
- (2) Applicant will make a good-faith effort to construct the office/retail and hotel buildings – individually or as an entire complex, excluding the performance hall – to LEED Silver standards.

(b) The proposal conforms to the approved and adopted Master or Sector Plan or an Urban Renewal Plan approved under Chapter 56.

Zoning and Land Use

The subject property is zoned CBD-2, which is recommended by the Sector Plan. All proposed uses are allowed in the CBD-2 Zone and the proposed development is in keeping with the general guidelines to provide employment uses in the Sector Plan. Specifically, the Sector Plan recommends a mix of uses. The proposed office, commercial and entertainment uses are appropriate for the subject site and conform to the Sector Plan.

Sector Plan Conformance

There are six general themes of the Sector Plan: a Transit-Oriented Downtown; a Commercial Downtown; a Residential Downtown; a Civic Downtown; a Green Downtown; and a Pedestrian-Friendly Downtown. The proposed plan is consistent with four of the six themes.

The proposed project is served by local (Ride-on) and regional (WMATA) bus services with bus stops located nearby, and the Silver Spring Transit Center is approximately 1,880 feet away or an 8 – 10 minute walk, thereby serving – through proximity – the theme of a transit-oriented and pedestrian friendly downtown.

The plan is also consistent with the vision of a commercial downtown. It will include a 22,882 square feet performance hall, a 219,700 s.f. office building, 5,500 s.f. of retail space and a 135,300 s.f. hotel with 189 guest rooms.

The conditioned payment for replacement of the street trees and LEED construction standards will help meet the goals of a green downtown.

The vision of a pedestrian-friendly downtown is met by the anticipation that 35% of patrons will arrive on foot, bicycle or by mass transit.

- (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 location is optimal for as much intensity of use and density as are found to be compatible with the context, i.e., the proposed development must be designed so as not to adversely affect adjacent buildings and uses. To this end, the architecture “fills the building envelope” and is set back from buildings only as necessary for light access and to address building code requirements.

The operational characteristics will enhance the safety and efficiency of the site by minimizing vehicular access points and providing sidewalks and entrances on each frontage of the property.

- (d) The proposal 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.*

A traffic management agreement will be finalized prior to the release of any building permits. Further, requirements for all public facilities have been reviewed and

approved by the applicable public agencies during the concurrent review of the preliminary plan.

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

A standard method project would only allow a density of 2.0 FAR on this site. Further, the requirement for public use space, amenities and facilities would result in only 10 percent of the net lot area. Because infill development and density near transit hubs is a core value of smart growth, and given the agreements specifically worked out between the County and the Applicant for the performance hall as an arts and entertainment use, the optional method of development is more desirable and more efficient for this particular site.

- (f) *The proposal will include moderately priced dwelling units in accordance with Chapter 25A of this Code, if the requirements of that chapter apply.*

The proposed development does not require MPDUs because it does not provide any residential uses.

- (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 Planning Board may approve the project plan only if:*

- (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*
- (2) *The project will implement an urban renewal plan adopted pursuant to Chapter 56 of the Montgomery County Code; and/or*
- (3) *The project will result in an overall land use configuration that is significantly superior in meeting the goals of the applicable master or sector plan and the zone than what could be achieved without the proposed transfer.*

The project is not a historic resource but is within The Silver Spring Historic District and has been designed to complement and enhance the character of the District. The project will also re-subdivide several lots or parts of lots, and all gross floor area will be included and dispersed within the gross tract area under consideration. The application also meets the four special standards under Section 59-C-6.2351:

- The lots are adjacent to each other;
- No existing lots under consideration are less than 22,000 square feet;
- The density of development is equal to the total density otherwise permitted on the separate lots; and
- No additional public use space is required.

(h) As conditioned, the proposal satisfies any applicable requirements for forest conservation under Chapter 22A.

The project will satisfy the requirements of the forest conservation law through off-site afforestation or a payment-in-lieu.

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

The proposed development is subject to water quality resources protection requirements. The stormwater management concept consists of on-site water quality control using green roofs. Channel protection and recharge requirements were waived due to site restrictions.

BE IT FURTHER RESOLVED that all elements of the plans for Project Plan No. 920100040, Fillmore Music Hall & LDG Office/Hotel Complex stamped received by M-NCPPC on May 4, 2010 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 **JUL 26 2010**
(which is the date that this Resolution is mailed to all parties of record); and

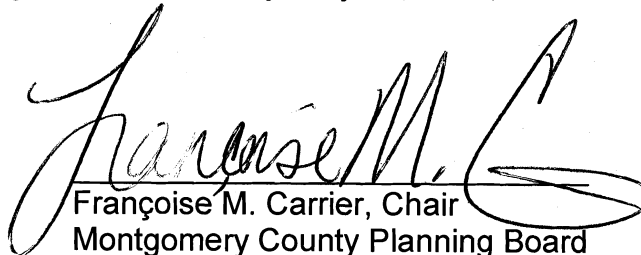
BE IT FURTHER RESOLVED that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this

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 Wells-Harley, Alfandre, and Dreyfuss voting in favor of the motion, with Chair Carrier abstaining, and with 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