



# MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**MCPB No. 10-151**  
**Preliminary Plan No. 120070420**  
**Silver Spring Park**  
**Date of Hearing: October 28, 2010**

**DEC 15 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 November 30, 2006, Fenton Group, LLC (“Applicant”), filed an application for approval of a preliminary plan of subdivision of property that would create one lot on 1.57 acres of land in the CBD-1, CBD-0.5, and Fenton village Overlay zones, located in the southeast corner of the intersection of Fenton Street and Silver Spring Avenue (“Property” or “Subject Property”), in the Silver Spring CBD Sector Plan area; and

WHEREAS, Applicant’s preliminary plan application was designated Preliminary Plan No. 120070420, Silver Spring Park (formerly Moda Vista Residences) (“Preliminary Plan” or “Application”); and

WHEREAS, Planning Board staff (“Staff”) issued a memorandum to the Planning Board, dated October 18, 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 October 28, 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

Approved as to  
Legal Sufficiency:

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WHEREAS, on October 28, 2010, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Dreyfuss; seconded by Commissioner Presley; with a vote of 5-0, Commissioners Alfandre, Carrier, Dreyfuss, 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. 120070420 to create one lot on 1.57 acres of land in the CBD-1, CBD-0.5, and Fenton Village Overlay zones, located in the southeast corner of the intersection of Fenton Street and Silver Spring Avenue, in the Silver Spring CBD Sector Plan area, subject to the following conditions:

1. Approval under this Preliminary Plan is limited to one lot for a maximum of 22,538 square feet of office use, 9,234 square feet of retail use, 60,459 square feet of residential use (consisting of no more than 58 multi-family dwelling units, including 12.5% moderately-priced dwelling units (MPDUs) and 10% workforce housing units (WFHUs)), and 59,870 square feet of hotel use (consisting of no more than 110 guest rooms).
2. Final approval of the number and location of buildings, dwelling units (including MPDUs and WFHUs), on-site parking, site circulation, and sidewalks will be determined at site plan.
3. 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 MCDPS issuance of sediment and erosion control permits, as applicable.
4. The Applicant must dedicate and the record plat must show dedication of 40 feet of right of way, as measured from the centerline, along the Property frontage for Fenton Street and 35 feet of right-of-way, as measured from the centerline, along the Property frontage for Silver Spring Avenue, with a 14-foot corner truncation at the intersection of these streets.
5. The Applicant must construct all road improvements within the rights-of-way shown on the approved Preliminary Plan to the full width mandated by the Sector Plan and to the design standards imposed by all applicable road codes. The required roadway improvements must be open to traffic prior to issuance of any new building occupancy permit for the development.
6. The Applicant must enter into a Traffic Mitigation Agreement (Agreement) with the Planning Board and Montgomery County Department of Transportation (MCDOT) to participate in the Silver Spring Transportation Management District

(TMD). The final Agreement must be executed prior to the certification of the site plan for the proposed development.

7. The Applicant must comply with the conditions of the Montgomery County Department of Permitting Services (MCDPS) stormwater management approval dated May 20, 2010. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
8. The Applicant must comply with the conditions of the MCDOT letter dated September 15, 2010, as amended by an e-mail dated September 27, 2010, from MCDOT. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
9. The Applicant must satisfy provisions for access and improvements as required by MCDOT prior to recordation of plat(s) and Maryland State Highway Administration (MDSA) prior to issuance of access permits.
10. No clearing, grading or recording of plats prior to certified site plan approval.
11. Site Plan #820100120 must be approved by the Board and certified by the Development Review Staff prior to the approval of the record plat.
12. The record plat must show necessary easements.
13. 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."
14. The Adequate Public Facility (APF) review for the Preliminary Plan will remain valid for eighty-five (85) months from the date of mailing of the Planning Board Resolution.

BE IT FURTHER RESOLVED, that having given full consideration to the recommendations and findings of its Staff as presented at the Hearing and as set forth in the Staff Report, which 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 Preliminary Plan is in substantial conformance with the 2000 Silver Spring CBD Sector Plan ("Sector Plan"). The Sector Plan encourages a mix of housing and neighborhood-scale commercial development in the Fenton Village area. To encourage land assemblage to improve the redevelopment potential of the area, the Sectional Map Amendment for the Sector Plan rezoned part of this Property, along with most of the other sites in the Fenton Village area, from CBD-0.5 to CBD-1. The Preliminary Plan meets this goal by assembling seven lots and by providing a mix of housing and commercial uses including the existing office uses.

The Sector Plan also recommends pedestrian improvements along Fenton Street and Silver Spring Avenue. Furthermore, the Sector Plan designated Silver Spring Avenue as a green street to emphasize the need for landscaping improvements along this road. The Preliminary Plan complies with this vision by proposing streetscaping improvements along both Fenton Street and Silver Spring Avenue.

Other recommendations in the Sector Plan with which the Preliminary Plan is in substantial conformance are facilitating new housing, strengthening the area's economic vitality, attracting additional retail uses to the area, and encouraging redevelopment through application of the Fenton Village Overlay zone.

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

Roads and Transportation Facilities

A traffic study is required for any preliminary plan that will generate 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. Because the subject Preliminary Plan was expected to exceed the 30 trip threshold, a traffic study was submitted in March 2010.

Using Silver Spring CBD trip generation rates for the proposed uses and after accounting for the existing office use on the Property, the study estimated that the proposed development will generate 44 net new peak-hour trips during the morning peak period and 57 net new peak-hour trips during the evening peak period.

For comparison purposes, the study also determined that if non-Silver Spring CBD trip generation rates were used, the development would generate 107 net new peak-hour trips during the morning peak period and 132 net new peak-hour trips during the evening peak period. The development, as a result of it being located within the Silver Spring CBD, therefore generates less peak-hour trips during the morning (63 trips) and evening (75 trips) peak periods.

#### Local Area Transportation Review (LATR)

As shown in the traffic study, the capacity analysis demonstrates that under total traffic conditions, CLV at intersections included in the traffic study would be below the applicable congestion standard for Silver Spring CBD Policy Area (1,800 CLV). The Preliminary Plan, therefore, satisfies the LATR requirements of the adequate public facilities (APF) test.

#### Policy Area Mobility Review (PAMR)

To satisfy the PAMR requirements of the APF test, the Silver Spring CBD Policy Area requires mitigation of ten percent of new peak-hour trips generated by a development.

The site trip comparison summary provided in the traffic study demonstrates that the proposed development, as a result of being located within the Silver Spring CBD, will generate approximately 59 percent fewer peak-hour trips during the morning peak period and 57 percent fewer peak-hour trips during the evening peak period. Since these percentages are higher than the required PAMR trip mitigation percentage for the Silver Spring CBD Policy Area, the Preliminary Plan satisfies the PAMR requirements of the APF test.

#### Truncation

Section 50-26(c)(3) of the Subdivision Regulations requires that the property lines of corner lots be truncated 25 feet from the intersection. This provides additional right-of-way area at intersections that ensures that adequate sight distance is available and creates space for traffic channelization. But the regulation also allows the Planning Board to specify a greater or lesser truncation depending on the specific sight distance and channelization needs at the intersections adjacent to the subject property.

In this case, the Applicant is proposing to provide an approximately 14-foot truncation at the intersection of Fenton Street and Silver Spring Avenue. Full truncation at this intersection is not necessary because adequate sight distance exists. The intersection is signalized, which further enhances its safety and

removes the concern that there is not sufficient space within the right-of-way to place traffic signal equipment. Providing full truncation would negatively impact the design of the proposed project and the relationship of the proposed building to the public street. The MDSHA and MCDOT have expressed no objection to approval of the Preliminary Plan without full truncation. For these reasons, the Planning Board finds that the proposed truncation in this location is appropriate at this intersection.

#### 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 systems. 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 schools, police stations, firehouses and health services are operating according to the Growth Policy resolution currently in effect and will be adequate to serve the Property. The Application is not within a school moratorium area, and a school facilities payment is not required. Electrical, gas, and telecommunications services are also available for 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. Access and public facilities will be adequate to support the proposed lot created by this Preliminary Plan and uses. The lot size, width, shape and orientation are appropriate for the location of the subdivision.

The Preliminary Plan was reviewed for compliance with the dimensional requirements for the CBD-0.5, CBD-1, and Fenton Village Overlay zones as specified in the Zoning Ordinance. The lot 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 Preliminary Plan.

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

The Property is subject to Section 22A of the County code. The Planning Board previously approved the preliminary forest conservation plan with the Project Plan on March 4, 2010. That plan generated a 0.17 acre planting requirement. The Applicant will meet the requirement by an in-lieu fee payment.

### Forest Conservation Variance

Section 1607(c) of the Natural Resources Article, MD Ann. Code identifies certain individual trees as high priority for retention and protection. Any impact to these trees, including removal or any disturbance within a tree's critical root zone (CRZ), requires a variance. In accordance with Section 22A-21(e), the Applicant has met all of the following criteria required for the Board to grant the variance, and the Planning Board approves the Forest Conservation variance.

When the Planning Board approved the preliminary forest conservation plan, it did not act on the associated tree variance. The Planning Board was unable to approve the variance with the preliminary forest conservation plan because the variance request was submitted late and the County Arborist review period extended beyond the Planning Board hearing date for the Project Plan.

According to Section 22A-21(e) of the County Code, in reaching its determination on the variance the Planning Board, must consider four factors. As the following findings demonstrate, the subject forest conservation plan and variance adequately addresses each of these factors:

- a. *Will not confer on the applicant a special privilege that would be denied to other applicants.*

Granting the variance will not confer a special privilege as the removal and/or disturbance of the specimen trees noted in the Staff Report are the minimum necessary in order to develop the Property. Furthermore, the need for the variance is necessary and unavoidable in order to develop Property according to the Sector Plan. The same criteria have been applied to other projects where the impacts and removals are unavoidable.

- b. *Is not based on conditions or circumstances which are the result of the actions by the applicant.*

The requested variance is not based on conditions or circumstances which are the result of actions of the Applicant. The Property is located in the Silver Spring Central Business District and is split zoned CBD 0.5 and CBD 1.0. The Sector Plan envisions this Property as a transition area from the CBD to the single family residential R-60 lots along Silver Spring

Avenue. The variance is necessary to achieve the planned densities and provide the required green space and stormwater management facilities associated with the development. Furthermore, the Applicant proposes to remove the specimen trees that are internal, or unavoidable, to achieve the Sector Plan objectives, and preserve the one specimen tree on the edge of the Property.

c. *Does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property.*

The requested variance is not the result of a condition, either permitted or non-conforming, on a neighboring property. The neighboring properties are developed residential or commercial properties, or public rights-of-way.

d. *Will not violate State water quality standards or cause measurable degradation in water quality.*

The requested variance will not violate State water quality standards or cause measurable degradation in water quality. The specimen trees being removed or disturbed are not within a stream buffer, wetland, or a special protection area. The development will actually improve the water quality generated from the site because the new development will introduce stormwater management onto a location that currently has none. The majority of the Property is covered by building, driveway, parking lots, and gravel surfaces, all of which generate considerable stormwater runoff. The proposed stormwater management system includes green roofs and underground stormwater management structures. The green roof will treat rainfall at the roof level limiting the amount of water that needs on-site surface treatment and the underground structures will increase the amount of the water that is recharged into groundwater. Both systems will reduce the quantity and increase the quality of the stormwater discharged into the County's public storm sewer system along Silver Spring Avenue and Fenton Street.

### **Mitigation**

The County Arborist recommended mitigation for the impact to the critical root zones of the specimen trees. However, the Planning Board finds that additional mitigation is not necessary to offset the impact of critical root zones for the following reasons:



- a. Removal and impact to the trees greater than 30 inches are internal to the site and unavoidable to achieve the sector Plan densities.
  - b. Two of the specimen trees to be removed are in the exact location of a proposed stormwater management facility. The location of this facility was approved by the MCDPS prior to the Planning Board's approval of the Project Plan.
  - c. The Applicant is committed to saving the 36 inch tulip tree that is on the eastern property line and has identified that the removal of this tree is not part of the variance. The final forest conservation plan includes a statement that the Applicant will seek an amended variance if more impact to the tree is necessary than currently shown on the plan.
  - d. The Applicant is planting 14 new canopy trees and 22 new mid-story trees either internal to the site or along Silver Spring Avenue as part of the landscape plan.
  - e. The forest conservation plan generates a 0.17 acre forest planting requirement for a property that currently has no forest.
  - f. The Applicant is preserving all street trees along Fenton Avenue.
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 MCDPS that the Stormwater Management Concept Plan meets MCDPS' standards.*

The MCDPS Stormwater Management Section approved the stormwater management concept for the project on May 20, 2010. The stormwater management concept includes on-site environmental site design to the maximum extent practicable by using green roofs and a micro-biofilter. The environmental site design is augmented with two underground proprietary filters. Due to site conditions and existing shallow storm drains, channel protection is waived. Recharge will also be waived due to site limitations and urban type soils.

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 60 months from its Initiation Date (as defined in Montgomery County Code Section 50-

35(h), as amended) and that prior to the expiration of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded among the Land Records of Montgomery County, Maryland or a request for an extension must be filed; and

BE IT FURTHER RESOLVED, that this Resolution constitutes ~~the~~ written opinion of the Board in this matter, and the date of this Resolution is DEC 15 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 Vice Chair Wells-Harley, seconded by Commissioner Presley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Dreyfuss and Presley voting in favor of the motion, and with Commissioner Alfandre absent, at its regular meeting held on Thursday, December 2, 2010, in Silver Spring, Maryland.

  
Françoise Carrier, Chair  
Montgomery County Planning Board