

FEB 14 2012

MCPB No. 11-106
Preliminary Plan No. 120110400
Fenwick Station
Date of Hearing: October 13, 2011

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 October 13, 2011, EPN-SSPO, LLC ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create one lot on 2.84 gross acres of land in the CBD-1 zone, located at the intersection of Second Avenue and Spring Street in the Silver Spring Central Business District ("Property" or "Subject Property"), in the Approved and Adopted 2000 Silver Spring Central Business District (CBD) Sector Plan ("Master Plan" or "Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120110400, Fenwick Station ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated October 3, 2011, 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 13, 2011, 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 October 13, 2011, the Planning Board approved the Application subject to certain conditions on motion of Commissioner Dreyfuss, seconded by Commissioner Anderson, with a vote of 5-0; Commissioners Anderson, Carrier, Dreyfuss, Presley, and Wells-Harley voting in favor.

Approved as to
 Legal Sufficiency:

Chris [Signature] 1/26/12

8787 Georgia Avenue, Silver Spring, Maryland 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

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NOW, THEREFORE, BE IT RESOLVED, that, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Preliminary Plan No. 120110400 to create 1 lot on the Property, subject to the following conditions:

1. Approval under this Preliminary Plan is limited to one lot for 310 dwelling units, including 12.5 percent moderately priced dwelling units (MPDUs).
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 the Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permits, as applicable.
3. At site plan, the following items must be submitted for review and approval:
 - a. Final forest conservation plan must include a transportation noise impact study. Specific noise mitigation measures for private, outdoor use areas to be determined at site plan.
4. Prior to issuance of building permits for affected units, the following must be provided to Staff:
 - a. Certification from an acoustical engineer that the building shell is designed to attenuate projected interior noise levels to a level at or below 45 dBA, Ldn using projected 2021 traffic noise levels.
 - b. The builder shall provide a signed, notarized commitment to construct the dwelling units in accord with the acoustical design specifications contained in the building shell analysis. Any changes to the building shell construction that may negatively affect acoustical performance shall be approved in writing by the acoustical engineer to provide acoustical attenuation for affected units to the same level as the specifications in the building shell analysis. A copy of the written approval must be provided to Staff.
5. To meet the forest conservation afforestation requirements, the Applicant will make a fee-in-lieu payment to meet the afforestation requirement of 0.46 acres.
6. The Applicant must finalize details on site frontage improvements along Second Avenue (including the Silver Spring Green Trail), site frontage improvements along Fenwick Lane, improvements along Spring Street's frontage, and the proposed interim trail connection to the future Capital Crescent Trail (CCT) from Spring Street/Second Avenue, at least 30 days prior to any Planning Board hearing on the site plan for the development.
7. The Applicant must enter into a Traffic Mitigation Agreement ("Agreement") with the Planning Board and the Montgomery County Department of Transportation (MCDOT) to participate in the Silver Spring Transportation Management District (TMD) and must execute the Agreement prior to the release of any building permit for the proposed development.
8. The Applicant must grant an easement on the property to MCDOT to install a future bike-share station at the location shown on the Preliminary Plan. The location and the easement agreement with MCDOT for the proposed bike-share

station must be approved by MCDOT at least 30 days prior to any Planning Board hearing on the site plan for the development.

9. 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 at the time of site plan review. 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."
10. The Applicant must comply with the conditions of the MCDPS stormwater management approval dated July 6, 2011. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
11. The Applicant must comply with the conditions of the MCDOT letter dated 9/30/2011. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
12. The Applicant must satisfy provisions for access and improvements as required by MCDOT prior to recordation of plat(s).
13. No clearing, grading or recording of plats prior to certified site plan approval.
14. Final approval of the number and location of buildings, dwelling units, on-site parking, site circulation, sidewalks, and bikepaths will be determined at site plan.
15. The record plat must show necessary easements.
16. 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 Master Plan.*

The Subject Property lies within the boundaries of the 2000 *Silver Spring CBD Sector Plan*. The site is located in an area of the CBD designated as "[o]ther [a]reas of the CBD". The Master Plan recommends reconfirming the existing CBD-1 zone. Since residential development is allowed in the CBD-1 zone, the Preliminary Plan conforms to the land use and zoning recommended by the Master Plan.

The Master Plan states certain themes that articulate the shared goals and vision for the CBD, including a transit-oriented downtown, a residential downtown, a green downtown, and a pedestrian-friendly downtown. The Preliminary Plan is consistent with the Master Plan's themes because the Application is within walking distance of the future multi-modal transit site and will provide future residents with excellent walking access to a variety of mass transit options. The connection to the Capital Crescent trail and Silver Spring Green Trail, along with bike-share options, further encourage the use of other modes of transportation. The Application is completely residential with 310 units. The Application provides tree-lined streets and a landscaped plaza with a future bike-share station at the corner of Second Avenue and Spring Street as part of the on-site public use space. Finally, the Applicant will provide the Silver Spring Streetscape (including brick paving, street furnishings, and street trees) along Second Avenue and extend the Silver Spring Green Trail along Second Avenue. The improved streetscape encourages pedestrian activation from neighboring residential communities to downtown Silver Spring.

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

Public facilities are adequate to accommodate the Application. Vehicular and pedestrian access will be safe and adequate with the proposed improvements. Sidewalks will be reconstructed along Second Avenue and Fenwick Lane to facilitate pedestrian mobility.

The Application satisfies the LATR and PAMR requirements. A summary of the capacity/critical lane volume (CLV) analysis for the weekday morning and evening peak-hours is presented in the Staff Report. Under total (build) traffic conditions, CLV values for intersections included in the study were estimated to be below the Silver Spring CBD congestion standards: 1,600 and 1,800 CLV, respectively. Based on the analysis presented in the traffic study, it is concluded that the Application will satisfy the LATR requirements of the APF test.

The Property is located within the Silver Spring/Takoma Park Policy Area. To satisfy the PAMR requirements of the APF test, a development located within the Silver Spring/Takoma Park Policy Area is required to mitigate ten percent of new peak-hour trips generated by the development. However, a similar development outside the CBD would generate 127 peak-hour trips during the morning peak-period (i.e., 34 additional peak-hour trips) and 147 peak-hour trips during the evening peak-period (i.e., 54 additional peak-hour trips). Thus, as a result of being located within the Silver Spring CBD, the Application will generate much fewer peak-hour trips during the morning and evening peak periods (reduction of

26 percent and 36 percent, respectively). Since the peak-hour site trip reduction as noted above is more than the PAMR trip mitigation requirement for the Silver Spring CBD Policy Area, the Preliminary Plan satisfies the PAMR requirements of the APF test.

The Subject 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 Subdivision Staging 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, telecommunications, and natural gas services are also available to serve the Subject Property.

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

The Application meets all applicable sections of the Montgomery County Code, Chapter 50, of the Subdivision Regulations. The proposed lot size, width, shape and orientation are appropriate for the location of the subdivision, because it accommodates a single multifamily residential building of appropriate scale in the CBD-1 Zone.

The Preliminary Plan does not show standard truncation at the intersection of Spring Street and Second Avenue. Pursuant to Section 50-26(c)(3) of the Subdivision Regulations, the corner lots at an intersection must be truncated by straight lines joining points 25 feet back from the theoretical property line intersection in each quadrant. The Planning Board, however, may specify a greater or lesser truncation than would otherwise be required.

The Applicant requested permission for a corner lot with ten feet of truncation rather than the standard 25 feet. The justification for this request is that the sight distance will be adequate; safety and compatibility of the area will not be compromised; and a standard truncation would detract from the pedestrian environment and architectural presence of the building.

The Board approved the non-standard truncation as shown on the Preliminary Plan. The traffic channelization of the area will not be affected by the non-standard truncation. By providing less than 25 feet of truncation at the intersection, the Application can provide the pedestrian plaza, which will contribute to meeting the Master Plan objectives of street activation. Therefore, the reduced truncation is appropriate.

The lot was reviewed for compliance with the dimensional requirements for the CBD-1 zone as specified in the Zoning Ordinance. The Application will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone.

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

Environmental Guidelines

The development is subject to the Montgomery County Forest Conservation Law. A Natural Resource Inventory Forest Stand Delineation (NRI/FSD) #420111330 for the site was approved on March 8, 2011. The NRI/FSD identifies any environmental constraints and forest resources on and near the Subject Property.

The approved NRI/FSD shows no streams or associated environmental buffers, wetlands, forests or floodplains on the Subject Property. As a result, the environmental guidelines are not applicable to this Application. There is one significant tree but no specimen trees on site. There are two significant trees and one specimen tree in the Spring Street right-of-way that is adjacent to the Subject Property and within the proposed limits of disturbance. There are five significant trees along the wooded swale on what is Third Avenue, a paper street.

Forest Conservation

A preliminary forest conservation plan was submitted with the Preliminary Plan. The preliminary forest conservation plan worksheet shows the limit-of-disturbance area to be 3.08 acres. This includes 1.33 acres of disturbance beyond the Subject Property boundaries where offsite improvements and utility connections will be made, most of which are in the public right-of-way.

The Application has an afforestation requirement of 0.46 acres. The Applicant will satisfy the afforestation requirement through a fee-in-lieu payment, which the Board finds acceptable and consistent with Section 22A-12(g) of the County Forest Conservation Law. The Subject Property has no priority forest planting areas, and there are no other appropriate on-site areas for forest planting.

The Property is adjacent to the Third Avenue right-of-way, a paper right-of-way separating the subject site from the adjacent metrorail tracks. Even though not considered a stream, the Third Avenue right-of-way consists of an open channel with tree cover, eroding banks and an existing small channel with some intermittent water flow. Above and below the Third Avenue right-of-way the

channel is enclosed in culverts. The channel banks include invasive species, debris, young deciduous trees, and five significant trees.

In the future, the eastern portion of Third Avenue will become part of the CCT. In an effort to prepare for that transition, the Applicant proposes to clean-up the channel by removing all invasive species, grade the site for a temporary five foot wide trail (until the CCT is constructed), and fill in the open channel with rip-rap. While the Board understands the new channel is temporary and addresses runoff and erosion, the Board requests that the Applicant continue coordinating with MCDOT on the final design of the channel to incorporate a softer channel that is more visually appealing.

Tree Variance

Section 5-1607(c) of the Natural Resources Article, MD Ann. Code identifies certain individual trees as high priority for retention and protection (Protected Trees). Any impact to these Protected Trees, including removal or any disturbance within a Protected Tree's critical root zone, requires a variance under Section 22-A-12(b)(3) of the County Code. Otherwise such resources must be left in an undisturbed condition.

This Application will require the removal of one black locust tree along Spring Street as identified on the NRI/FSD. In accordance with Section 22-A-21(a) of the County Code, the Applicant has requested a variance and alleged that it would suffer unwarranted hardship without a variance to remove the Protected Tree; that without a variance, Applicant would be denied reasonable and significant use of the Subject Property for which the variance is requested.

The Applicant has met all criteria required to grant the variance to remove the Protected Tree. It is within the Spring Street right-of-way, and the critical root zone will be impacted by the proposed construction activities as well as future work within the right of way proposed by MCDOT.

a) *The variance 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 disturbance of the Protected Tree is necessary in order to grade the site for the proposed bike share location. The tree is in poor condition and within the Spring Street right of way. Trees within the right of way are typically not protected from future street maintenance or reconstruction.

- b) The variance is not based on conditions or circumstances which are the result of action by the Applicant.*

The requested variance is based on the proposed bike sharing station consisting of bike racks and an ADA-accessible concrete or asphalt path approximately 82 feet in length. The proposed bike-share station and path connection is located at this intersection (Spring Street and Second Avenue) due to its close proximity with the Silver Spring metro station and the future CCT. The bike sharing station will likely increase bike usage by making bicycles more readily available, and thus supports alternative modes of transportation.

- c) The variance does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property.*

The requested variance is a result of the proposed site design and layout on the Subject Property and not as a result of land or building use on a neighboring property.

- d) The variance 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 Protected Tree is not within a stream buffer or wetland.

MCDPS has approved a stormwater management concept dated July 6, 2011. The approved concept will consist of Environmental Site Design in accordance with the latest revisions to the MDE Stormwater Design Manual. In addition, there are no impacts to environmental buffers. Therefore, the project will not violate State water quality standards or cause measurable degradation in water quality.

Noise

The Subject Property is adjacent to Spring Street, a moderately busy arterial road. Moreover, to the west of Third Avenue will be the future Purple Line. Due to the existing and proposed transportation facilities near the subject site, noise impacts may occur in dwelling units that have windows facing the transportation facilities or in common open space that will be used by the residents. The "Staff Guidelines for the Consideration of Transportation Noise Impacts in Land Use Planning and Development" (Environmental Planning Division, June 1983), also known as the "staff noise guidelines", establish criteria to define transportation noise impacts for sensitive uses and provide recommendations for mitigation of such impacts.

A noise and acoustic analysis of the impacts to the Subject Property should be submitted as part of the site plan application to determine the projected transportation noise levels requiring mitigation. Options for creating quieter areas within the exterior open space should be considered to enhance its value and usage, including any type of visually-pleasing, compatible, noise mitigation structure that would visually and audibly screen the public use areas.

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 MCDPS that the Stormwater Management Concept Plan meets MCDPS' standards.*

The MCDPS Stormwater Management Section approved the stormwater management concept on July 6, 2011. The stormwater management concept consists of environmental site design to the maximum extent possible through the use of a green roof and micro-bioretenion.

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 FEB 14 2012 (which is the date that this Resolution is mailed to all parties of record); and

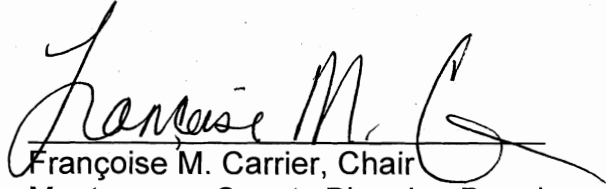
BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland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

Commissioner Dreyfuss, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley voting in favor of the motion, at its regular meeting held on Thursday, February 2, 2012, in Silver Spring, Maryland.



Françoise M. Carrier, Chair
Montgomery County Planning Board