



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

MCPB No. 13-109

Project Plan No. 920130050

The Blairs Master Plan

Date of Hearing: October 24, 2013

DEC 23 2013

RESOLUTION

WHEREAS, under Montgomery County Code Division 59-D-2, the Montgomery County Planning Board is authorized to review project plan applications; and

WHEREAS, on April 25, 2013; Blair Towers, LLC, Blair Office Building, LLC, Blair Shopping Center, LLC, Blair Stores, LLC ("Applicant") filed an application for approval of Project Plan No. 920130050 for a mixed-use development of 3,825,400 gross square feet, including 450,000 square feet of commercial uses and 3,375,400 square feet of residential uses, located in the Eastern quadrant of the intersection of Colesville Road (MD 384) and Eastern Avenue ("Subject Property") on 30.36 acres of land comprised of seven CBD-R2 zoned lots located in the 2000 Silver Spring ("CBD") Sector Plan ("Sector Plan") area; and

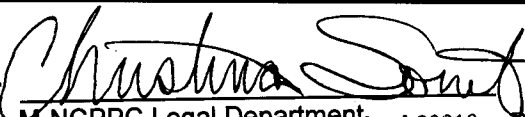
WHEREAS, Applicant's project plan application was designated Project Plan No. 920130050, The Blairs Master Plan ("Application" or "Project Plan"); and

WHEREAS, following review and analysis of the Application by Planning Board Staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated October 11, 2013, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on October 24, 2013, the Planning Board held a public hearing on the Application, and at the hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on October 24, 2013, the Planning Board voted to approve the Application subject to conditions on motion of Commissioner Anderson, seconded by Commissioner Wells-Harley, with a vote of 4-0; Commissioners Anderson, Carrier, Dreyfuss, and Wells-Harley voting in favor and Commissioner Presley abstaining.

Approved as to
Legal Sufficiency

 12/5/13

M-NCPPC Legal Department
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NOW, THEREFORE, BE IT RESOLVED that, pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Planning Board APPROVES Project Plan No. 920130050, The Blairs Master Plan, for a mixed-use development consisting of no more than 3,825,400 square feet of gross floor area, including 450,000 square feet of commercial uses and 3,375,400 square feet of residential uses with a maximum of 2,800 dwelling units, including 12.5% MPDU's, and a waiver of the gross floor area devoted to retail or personal service commercial uses pursuant to Section 59-C-6.234, subject to the following conditions:¹

1. Development Ceiling

The development is limited to a maximum 2.89 FAR, and a maximum 3,825,400 gross floor area consisting of a maximum 450,000 square feet of commercial uses and a maximum of 2,800 residential units (new and existing).

2. Housing

The Applicant must provide a minimum of 12.5% of the total number of newly constructed units as Moderately Priced Dwelling Units on-site, consistent with the requirements of Chapter 25A, in accordance with the Department of Housing and Community Affairs ("DHCA") letter dated August 13, 2013.

3. Architecture, Building Height, and Mass

- a) The buildings within the upper escarpment (Parcels A, E, and F) and lower escarpment, Parcel H, are limited to a maximum building height of 200 feet as determined by the Department of Permitting Services applicable building height measurement point.
- b) The buildings within the lower escarpment, Parcel G, are limited to a maximum building height of 180 feet as measured from their respective fronts as determined by the Department of Permitting Services applicable building height measurement point.
- c) Buildings in Block G of Parcel G must maintain a minimum setback from the current northerly right-of-way line of Blair Mill Road of 16 feet (townhouse building face; 0 feet to courtyards). The maximum height for

¹ For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

these buildings will be further reviewed at the site plan stage for compatibility. Maximum building height permitted will be based upon building step backs, materials, massing, and architecture.

- d) Buildings in blocks F1 and F2 of Parcel G must maintain a minimum setback from the current northerly right-of-way line of Eastern Avenue of 18 feet for townhouse building face (as to F-1), and 16 feet for townhouse building face (as to F-2). The maximum height for these buildings will be further reviewed at the site plan stage for compatibility. Maximum building height permitted will be based upon building step backs, materials, massing, and architecture.

4. Public Use Space, Facilities, and Amenities

- a) With the submittal of the final site plan for the development, the Applicant must demonstrate a minimum of 20% of the net lot area as public use space on-site. A variable amount of public use space is permitted with each phase and will be approved with each site plan.
- b) The Applicant must provide public art on-site, integrated into the overall site design. The public art components must be commensurate with the size of the public use space in which the art will be located.
 - i) The Applicant must present final public art concepts to the Art Review Panel for review and comment that will be available to the Planning Board prior to scheduling the Planning Board hearing for the site plan application which contains the public art associated with each building or public use space area to be completed in the same phase.
 - ii) Final detail and design of the public art must be determined by the applicable Certified Site Plan.
- c) As a public amenity, the Applicant must provide streetscape improvements per the Silver Spring CBD Streetscape Standards, or as amended (or as approved by Staff), including the undergrounding of public utilities along the property's frontage on Blair Mill Road, Colesville Road, and East-West Highway, with the phasing of the streetscape improvements determined at the time of the applicable site plan which adjoins the particular frontages.

- d) All record plats that include public use space must include a note that all public use spaces as illustrated on the Certified Site Plan(s) must be maintained in perpetuity by the property owners and access must be provided to the general public.

5. Parks and Recreation

- a) The site plans that include construction and completion of the public dog park must include details for signage, design, operations, and management that insure performance as a public dog park.
- b) The site plans that include construction and completion of the playgrounds must include details for design to insure the playgrounds (collectively) meet the needs of various age groups.
- c) At a minimum, a multi-use court for residents that accommodates a variety of uses, including half-court basketball, must be identified prior to the first site plan submission for the development and included as part of the public use space area for the relevant site plan.

6. Staging of Amenity Features

- a) The development must be completed in accordance with the preliminary phasing plan and development program dated September 17, 2013 unless modified at the time of each site plan.
- b) The Applicant must complete the on-site public use space improvements associated with each phase prior to issuance of the final use and occupancy permit for that phase.
- c) The Applicant must install the landscaping associated with each phase no later than the next growing season after completion of the building and site work.

7. Environment

The Applicant must achieve a LEED Certified rating certification at a minimum, or energy and environmental design standards that the Department of Permitting Services identifies as equivalent to a certified-level rating in the appropriate LEED rating system. The Applicant must make good faith efforts to achieve a LEED Silver rating, or energy and environmental design standards that the Department

of Permitting Services identifies as equivalent to a Silver-level rating in the appropriate LEED rating system. Before issuance of the final use and occupancy certificate, the Applicant must inform MNCPPC Staff of the LEED Certification Level that they are qualified for. If this level is less than a Silver rating, before the issuance of the final use and occupancy certificate the Applicant must provide to Staff a written report for the public record purposes only from the Applicant's LEED consultant, analyzing the feasibility of achieving a LEED-Silver rating (or equivalent), to include an affidavit from a LEED-Accredited Professional identifying the minimum additional improvements required to achieve the LEED Silver rating (or equivalent), including their associated extra cost. Submission of this report constitutes compliance with this condition.

8. The Applicant must obtain approval of a Final Forest Conservation Plan from the Planning Department prior to issuance of a Sediment Control Permit from the Department of Permitting Services for new construction. The Final Forest Conservation Plan must be consistent with the approved Preliminary Forest Conservation Plan.
9. The Applicant must plant twenty-four (24) three-inch caliper native canopy trees as mitigation for the removal of specimen trees. The species and location of plantings must be identified on the Final Forest Conservation Plan.
10. An International Society of Arboriculture certified arborist must certify tree protection measures on Final Forest Conservation Plan.

BE IT FURTHER RESOLVED that all elements of Project Plan No. 920130050, The Blairs Master Plan, received by The M-NCPPC on September 17, 2013, are required except as modified by the above conditions of approval; and

BE IT FURTHER RESOLVED that, having considered the recommendations and findings of its Staff as presented at the hearing and as set forth in the Staff Report, which the Planning Board hereby adopts and incorporates by reference (except as modified herein) and having considered the entire record, all applicable elements of Section 59-D-2.42, and the relevant provisions of Section 59-D-2.43, the Planning Board, with the conditions of approval, FINDS:

- (a) The development complies with all of the intents and requirements of the CBD-R2 zone as applied comprehensively to the Project.**

The Subject Property is zoned CBD-R2. Section 59-C-6.212 of the Montgomery County Zoning Ordinance establishes the CBD-R2 Zone and outlines the description,

intent and general requirements of the CBD zones. The CBD-R2 zone is intended for use in areas of a central business district designated to accommodate high density residential development. As described below, the Subject Property will meet the overall intents of the CBD zone and will, under Section 59-C-6.213(b), 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.

Overall Intent

The overall intent of the CBD zones is as follows:

- 1) *To encourage development in accordance with an adopted and approved master or sector plan by permitting an increase in density, height, and intensity where the increase conforms to the master or sector plan and the Site Plan is approved on review by the Planning Board.*

With regards to the overall density and intensity on the Site, the Sector Plan sets a cap of 2,800 dwelling units under the optional method. The Sector Plan also recommends limiting commercial square footage on the site to 450,000 square feet. The maximum approved by the Board for this Application is 2,800 residential dwelling units and 450,000 square feet for commercial uses. The Floor Area Ratio of the Project is 2.89, which is well within the 5.0 maximum allowed by the zone. The Sector Plan does not include a specific recommendation for height on this site, however, Section 59-C-6.235(b) of the Zoning Ordinance states that the height normally allowed in the CBD-R2 zone is 143 feet, but may be increased up to 200 feet if approved by the Planning Board in the process of site plan as not adversely affecting surrounding properties. The Planning Board finds that within the upper escarpment, a maximum building height of 200 feet is appropriate. Building heights of up to 200 feet in the upper escarpment are appropriate due to the heights of existing buildings across East-West Highway and along Blair Mill Road and Colesville Road. The heights within these adjacent and confronting properties range from 140 to 170 feet with varying setbacks from the street. An urban form is important in this portion of the site to emphasize the mixed use nature of the upper escarpment, where a lively pedestrian realm is essential to its success. The existing high rise residential buildings on the Subject Property which front East-West Highway and Blair Mill Road will also buffer confronting properties from the new buildings. These existing buildings on the site will provide

visual relief from the streets, as well as a sufficient step back to minimize shadow effects.

For the lower escarpment, the Planning Board finds a maximum building height of 200 feet is appropriate within Parcel H, and 180 feet is appropriate within Parcel G, which is located in close proximity to the adjacent residential neighborhoods in South Silver Spring and the District.

The close proximity of future buildings in Parcel G to existing garden apartment buildings and single family residential dwelling units requires compatibility to be closely examined as part of future site plan reviews. As conditioned, the maximum height for these buildings will be further reviewed at the site plan stage for compatibility, along with further evaluation of step backs, building materials, massing, and architecture. The Planning Board finds the two buildings in Blocks F1 and F2 of Parcel G, which will include townhome units in the fronts surrounding parking garages with much greater density of units on opposite sides, is an appropriate approach; however, the ultimate height of these buildings must be further evaluated at the site plan stage.

- 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 Project Plan includes the redevelopment of a large site within the Silver Spring Central Business District. The Planning Board recognized that redevelopment of the site will allow the area to continue to modernize and provide superior amenities. Within the site itself there will be a variety of land uses and activities including residential buildings of varying heights, office space, hotel space, and retail space. All of these land uses will be connected by a cohesive open space network. When these various elements combine, interesting passive and active activities for residents, workers, and shoppers will be readily available.

- 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 development will include a public green space area with visibility from East-West Highway as pedestrians walk south from the Silver Spring Metrorail station. Pedestrian-oriented walkways within the site will lead to retail storefronts surrounding the public green space area and will continue to the lower escarpment, which will enhance the circulation system and overall desirability of the area. Residents south of the site will also benefit from public use spaces that front Eastern Avenue and connect to the extended open space network on the site. These connections provide more direct access to the retail on the upper escarpment and the Metrorail station.

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

The site offers direct pedestrian linkages to the Metrorail station and Silver Spring Transit Center on a north-south axis that is the most direct route from the southern end of the site and points beyond. The Project Plan also includes bus stops on the periphery to directly link residents and visitors of the site to bus transit infrastructure within Montgomery County and the District of Columbia.

- 5) *To promote improved pedestrian and vehicular circulation.*

An attractive pedestrian environment will be provided through the system of private streets proposed, which adequately break up the upper and lower superblocks, given the challenging grade differential in the middle of the site. The construction of Private Street B will connect the development to surrounding multi-family properties while at the same time increasing the permeability of the site. Vehicular access points to the various garages within the site are located towards the periphery of the property to minimize conflicting pedestrian and vehicular movements.

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

The provision of 12.5% MPDUs in the development will increase the number of MPDUs available in this very desirable section of Silver Spring. This increase will allow for more MPDU residents to live within walking distance of a range of amenities, reducing the need for auto-oriented expenses.

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

For land assembly, the lotting diagram allows for the proposed private streets to provide maximum accessibility to, from, and within the site. The logical parcels that result after the creation of the roads establishes blocks that will allow for building orientations that support a pedestrian friendly, civic, green, commercial, residential, and transit oriented downtown as envisioned by the Sector Plan.

Requirements of the CBD-R2 Zone

General Requirements

The data table below lists the required development standards approved by the Planning Board and binding on the Applicant. The Planning Board finds, based on the aforementioned data table, and other evidence and testimony of record, that the Application meets all of the applicable requirements of the optional method of development in the CBD-R2 zone.

Project Data Table for the CBD-R2 Zone (Optional Method of Development)

Development Standard	Zoning Ordinance Permitted/ Required	Approved and Binding on the Applicant
Site Area (square feet)		
Gross Tract Area	18,000 sf	30.36 acres (1,322,792 sf)
Less Dedication for Public ROW	n/a	0.69 acres (30,366 sf)
Less Prior Dedication for Public ROW		3.09 acres (134,677 sf)
Net Lot Area	n/a	26.58 acres (1,157,749 sf)
Density		
Max. Total FAR	5.0	2.89
- residential	n/a	2.55
- commercial	1.0 or 450,000 sf ¹	0.34 (450,000 sf)
Retail & Personal Service Use	5% of GFA	3.27% ²
MPDUs [Chapter 25A] Units	12.5%	12.5%
Min. Public Use Space		
On-Site	20%	20%
Off-Site Amenity Space	n/a	4%
Min. Building Setbacks (ft) [59-C-10-3.8]		
Front	0 ft	0 ft

Rear	0 ft	0 ft
West Side	0 ft	0 ft
East Side	0 ft	0 ft
Max. Building Height (ft)		
Upper escarpment, Parcels A, E, F	143 ft	200 ft ³
Lower escarpment, Parcel H	143 ft	200 ft
Lower escarpment, Parcel G	143 ft	180 ft
Vehicle Parking (number of spaces)⁴		
Retail	1,055 spaces	322 spaces
Residential	3,160 spaces	2,953 spaces
Total spaces	4,215 spaces	3,275 spaces
Bicycle Parking		
Number of spaces	1 space for every 20 auto spaces, but not more than 20 in any 1 lot	To be determined at site plan
Motorcycle Parking		
Number of spaces	2% of auto spaces, but not more than 10 in any 1 lot	To be determined at site plan
Footnotes		
¹ On sites of 10 contiguous acres or more, the amount of non-residential development is limited to a maximum of 450,000 gross square feet. ² The Planning Board may waive a portion of this requirement upon during the course of project plan approval upon a finding that full compliance with this requirement is not practical, feasible, or would result in such uses being required on other than the ground or first floor. ³ Per Section 59-C-6.235(b), the Planning Board can approve a height that exceeds 143 feet, up to 200 feet, in the CBD-R2 zone for an optional method of development in the process of site plan. ⁴ Parking is required for the Subject Property, as it is located in the Silver Spring Parking Lot District. Total number of spaces will be determined at certified Site Plan.		

Retail & Personal Service Use Requirement

Under Section 59-C-6.234, footnote 3, of the Zoning Ordinance, the maximum density of development for the CBD-R2 zone requires at least 5% of the gross floor area consist of retail or personal service commercial uses. The Planning Board finds that full compliance with this requirement is not practical. The development includes 3.27% retail and personal service uses rather than the full 5%. The Sector Plan limits commercial development on the Subject Property to 450,000 square feet, and ground floor retail and personal service use opportunities on the Subject Property are viable only in certain areas. As a result, a total of 3.27% of the commercial development on the Subject Property will be retail and personal service uses, located within the upper escarpment along Private Street A, at the ground level. Visibility and pedestrian traffic will be greatest in this location, which is the closest area to the Metrorail station and is also in close proximity to the more intense commercial and residential

development in the core area of Silver Spring. Retail and personal service uses here will be highly visible and benefit by being in close proximity to complimentary uses in the area. The Board agreed with the Applicant that placing more retail on the second floor to meet the requirement is not practical.

Public Amenities Requirement

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.”

To this end, the Application is proffering the following package of amenities and public facilities:

- 20% of the net lot area as public use space on-site
- Public art on-site
- Streetscape improvements per the Silver Spring CBD Streetscape Standards

(b) The development conforms to the Sector Plan and the Master Plan.

The Application is in substantial conformance with the Sector Plan. The Subject Property lies within the “Other Areas of the CBD” section identified in the Sector Plan. The Sector Plan makes recommendations for the site on page 69, where it sets a cap of 2,800 dwelling units under the optional method of development. The Subject Property is also subject to a limitation in the Zoning Ordinance that caps the amount of non-residential development on 10 or more contiguous acres to 450,000 gross square feet in the CBD-R2 zone, under the optional method requirements. The Application includes a maximum of 2,800 dwelling units as well as a maximum of 450,000 gross square feet of commercial development at full build-out, in accordance with the Sector Plan and Zoning Ordinance limitations.

The Sector Plan provides general urban design recommendations for redevelopment projects in the Silver Spring CBD. The guidelines most applicable to the Application are as follows:

Create an attractive pedestrian environment by creating a system of short blocks, and defining streets with buildings, open spaces, and streetscaping at a human scale created by street-front retail, frequent doors and windows, architectural detail, and appropriately scaled building heights.

An attractive pedestrian environment will be provided through the system of private streets proposed, which adequately break up the upper and lower superblocks, given the challenging grade differential in the middle of the Subject Property. Buildings are located as close to these private streets as possible, leaving room only for streetscape treatment. New and existing buildings along the periphery of the Subject Property frame the thoroughfares, with the exception of Eastern Avenue, where the first townhome units are set back 18 feet from the right-of-way line to respect the less dense development in the District of Columbia. Architectural details such as doors and windows will be closely reviewed at the time of site plan.

Through urban design treatments, establish streetscapes that emphasize the hierarchy of the circulation system.

Although streetscape specifications will be finalized at the site plan stage, the Applicant has shown on the Project Plan appropriate streetscapes that correspond to the classification of each road. East-West Highway will include the standard Silver Spring streetscape design with a brick sidewalk, streetlights, and street trees. The off-road shared use path along Colesville Road will be extended to the northern boundary of the Subject Property's Colesville Road frontage. Blair Mill Road will also have an off-road shared use path for superior bicycle accessibility, and Eastern Avenue will conform to the streetscape standards within the District of Columbia.

Create formal and informal civic spaces—buildings and open spaces—that add to property values, provide amenity, and improve downtown's aesthetic appearance.

The development includes a network of informal civic spaces (the civic spaces will remain under private ownership) within a tract where civic areas are currently absent. The public use space design includes such spaces in a linear spine where public use space will not be directly associated with any one building but will instead convey a sense of openness and allow for varied public gathering locations.

The Sector Plan provides roadway recommendations which are applicable to the roads that bound the Subject Property. On page 76 of the Sector Plan, the circulation

objective for both Georgia Avenue and Colesville Road is outlined: "Georgia Avenue and Colesville Road are and will remain regional transportation corridors and primary transit routes, but in Silver Spring, they must also serve as urban boulevards.... These corridor roads must serve pedestrians as well as vehicular traffic." Other applicable Sector Plan recommendations for Colesville Road include continuity of design treatment along Colesville Road as remaining sites redevelop and cohesive streetscaping by filling in streetscape gaps in the context of an expanded Silver Spring Streetscape Plan to help create a pedestrian and mass transit-friendly corridor. The Project Plan includes a streetscape for Colesville Road that will continue the existing treatment via future construction of a shared use path, measuring eight to 10 feet in width, with a tree panel separating the path from the street. Flexibility in the ultimate width is necessary to appropriately tie in with the sidewalk in front of the gas station use located north of the Subject Property at the corner of East-West Highway and Colesville Road.

For Private Street B, the Board approved this road as a private street and found that private ownership is in the public interest. The Sector Plan allows the roadway to be improved as a private street upon this finding from the Board. This roadway will accommodate two-way vehicular access, on-street parking, and pedestrian and bicycle facilities within a 60 foot wide parcel and public access easement. Roadway construction must be in accordance with MCDOT roadway standards for a two lane business district street. The private roadway will allow the Applicant to install non-standard landscaping and traffic calming devices, including a "speed table," to improve the pedestrian experience. Designating the roadway as a private street is consistent with the Sector Plan and will provide a superior transportation facility for pedestrians, bicyclists, and motorists.

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

The location, size, intensity, design, and operational characteristics outlined in the Application are compatible with the existing and potential development in the general neighborhood. The orientation of the various new buildings responds to the surroundings. The majority of the ground floor retail spaces and residential units will contain entry and exit points from the roadways and public use areas of the Subject Property, where visibility and pedestrian activity will be greatest. The garage entry and loading dock entry points are located behind buildings, where possible, to limit

truck movement through the Subject Property. The layout of the proposed private roads is such that vehicles are directed quickly from main thoroughfares to parking garages and loading areas without having to wind through the Subject Property.

The block in which this project is located is one of the closest in the Silver Spring downtown area to the Silver Spring Metrorail station. The height of buildings in the upper escarpment ranges from 120 feet to 200 feet. Buildings across East West Highway are approximately 25 to 30 feet in height, on a similar topographical elevation as that of the proposed buildings. Buildings within the lower escarpment range in height from 50 feet for Blair Towns and up to 200 feet for the residential buildings in Block E. The new buildings along Eastern Avenue are proposed to be 140 to 180 feet in height and the new building that fronts Blair Mill Road is also proposed to be 140 to 180 feet in height. To improve compatibility with single family homes across Eastern Avenue within the District of Columbia and four story garden apartments across Blair Mill Road, these buildings will be lined with townhome units to further set back the upper floors of the building, thereby increasing the distance from the higher floors from less dense development across the street. This approach also makes the upper floors more difficult to see from the roads and sidewalks along Eastern Avenue and Blair Mill Road. The 18 foot drop in elevation from the upper escarpment to the lower escarpment creates a natural tenting effect within the Subject Property, despite buildings in the lower escarpment being of similar height to those in the upper escarpment. Further evaluation of the buildings in the lower escarpment is required at the time of site plan to ensure compatibility with the surrounding neighborhood.

Staging of construction will occur in such a way that the necessary private roads and parking spaces as well as supporting public use spaces adjacent to each building must be completed prior to use and occupancy of the different buildings.

(d) As conditioned, the development 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, is subject to a traffic mitigation agreement that meets all the applicable requirements.

The Application development program will not overburden existing public facilities and services nor those programmed for availability. The Subject Property is located within a transportation management district, therefore, the Applicant is required to

enter into a Traffic Mitigation Agreement (TMAg) with the Planning Board and Montgomery County Department of Transportation.

The Subject Property is located in the Montgomery Blair High School Cluster. The other schools that serve this location include Sligo Creek Elementary School and Silver Spring International Middle School. The 1,690 new multi-family housing units are estimated to generate approximately 71 elementary school students, 66 middle school students, and 56 high school students. The current Subdivision Staging Policy School Test for FY 2014 requires school facility payments for subdivision approval at the elementary, middle, and high school levels in the Blair Cluster.

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

Development of the Subject Property will occur under the optional method of development, which is more efficient and desirable than the standard method of development in this location. The optional method allows greater densities at key locations, such as proximity to mass transit, in exchange for greater public amenities and facilities. Construction of a standard method project would yield overall development constructed to a maximum 1.0 FAR with maximum building heights of 60 feet. For a site located in the Silver Spring CBD, buildings constructed under the standard method would not be required to have significant public amenities or substantial open space, and would be insufficient to reach the critical mass and density envisioned for the Subject Property within very close proximity to the Silver Spring Metrorail station. Additionally, the greater number of affordable housing units provided under the optional method far exceeds what could be achieved under the standard method. The 20% public use space provided on the Subject Property will contribute to the vision of the Silver Spring CBD Green Space Guidelines, whereas only 10% public use space would be required for a standard method project, making this achievement more difficult. Given the recommendations of the Master Plan and the Subject Property's proximity to transit, employment, and services, the Planning Board finds the optional method of development is much more desirable and efficient for this large site.

(f) The development will include moderately priced dwelling units in accordance with Chapter 25A of the Montgomery County Code.

The Applicant must provide a minimum of 12.5% of the total number of units as MPDUs. The Project Plan has been reviewed by DHCA. DHCA recommended approval with the condition that final MPDU locations, bedroom compositions and layouts be determined at certified site plan with review and approval by DHCA.

(g) The development satisfies applicable requirements for forest conservation under Chapter 22A of the Montgomery County Code.

Forest Conservation

The Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) for the Subject Property was approved on June 27, 2012. The NRI/FSD identifies environmental features, conditions, constraints and forest resources on the Subject Property and within 100-feet of its perimeter. The Subject Property contains no forest, streams, buffers, or rare, threatened, or endangered species. There are 13 specimen trees with a diameter at breast height (dbh) of 30 inches or greater onsite with an additional six within a 50 foot perimeter. Twenty-one onsite trees are significant with a dbh of 24-30 inches, and an additional 12 significant trees on its perimeter.

The net tract area of 27.28 acres is subject to the Montgomery County Forest Conservation Law (Chapter 22A of the County Code). A Preliminary Forest Conservation Plan was submitted on April 25, 2013 and revised on August 5 and August 12, 2013. With no existing forest onsite, meeting the Forest Conservation Law requires an afforestation threshold of 4.09 acres to be met through off-site mitigation.

Forest Conservation Variance

Section 22A-12(b)(3) of the Montgomery County Forest Conservation Law provides criteria to identify certain trees, shrubs, plants and specific areas as priority for retention and protection and further requires those features to be left in an undisturbed condition unless a variance is obtained in accordance with Chapter 22A-21 of the County code. The resources that have been identified on the Project Plan include trees with a DBH of 30 inches or greater.

The Applicant submitted a variance request on July 22, 2013 with revisions on August 9, 2013 for impacts to and removal of specimen trees. Stately specimen

trees line the Subject Property along East-West Highway, Blair Mill Road, and Eastern Avenue. The Applicant requested a variance to remove six specimen trees, five significant trees (24"-29" in diameter at breast height), and impact a significant portion of the critical root zones to an additional three specimen trees. Efforts to treat and protect the retained three specimen trees will be made; however, impacts to the critical root zones are above 30 percent, and the trees may not survive as a result. On the Subject Property, the total caliper inches of specimen trees proposed for removal will be 291 inches, requiring a minimum mitigation planting of 24 native canopy trees, each with a dbh of three inches or greater.

Under Section 22A-21, a variance may only be granted if the Planning Board finds that leaving the requested trees in an undisturbed state would result in unwarranted hardship. The existing specimen trees evaluated in this request are located throughout the lower escarpment within green areas surrounding the residential towers. Without a variance, the Applicant would not be able to redevelop the Subject Property in a way that would allow for the building elevations to align with streets, future building footprint modifications, as well as infrastructure and driveway connections to existing service areas. This site layout, features, and design elements are desirable and necessary in a CBD zone project and are consistent with the goals of the Sector Plan. The Planning Board found that requesting the trees to remain undisturbed would result in an unwarranted hardship.

The Board made the following findings necessary to grand the Variance:

1. *Granting 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 on the Applicant as this Application is proposing a development consistent with the CBD-R2 zone. The trees and/or their critical root zones lie within the developable area of the Subject Property. The re-development of the parcels, including the reconfiguration of the vehicular circulation on the future road network, grading requirements, utility access, and proposed below grade service along East-West Highway will impact the existing specimen trees and/or their critical root zones. Due to the layout of the site, granting the variance will not confer a special privilege to the applicant.

2. *The need for the variance is not based on conditions or circumstances which are the result of actions by the Applicant.*

The variance is based upon CBD optional method use of the site, access to the site, existing infrastructure, and a desire to build a modern, state of the art mixed use development, rather than on conditions or circumstances which are the result of actions by the Applicant.

3. *The need for the variance is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*

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

4. *Granting the variance will not violate State water quality standards or cause measurable degradation in water quality.*

The variance will not violate State water quality standards or cause measurable degradation in water quality. The specimen trees being removed are street and landscape trees. Although there will be an immediate loss from the stormwater filtration they provide, the overall Project Plan will improve water quality above existing levels through additional plantings, the use of green roofs, porous surfaces, and biofiltration systems.

(h) The development satisfies applicable requirements for water quality resources protection under Chapter 19 of the Montgomery County Code.

The stormwater management concept for the site was deemed acceptable by the Montgomery County Department of Permitting Services on August 12, 2013. The concept meets the required stormwater management goals by the use of Environmental Site Design (ESD) to the Maximum Extent Practicable (MEP) with the use of a green roof and micro-bioretenion/planter boxes. A waiver for the full quantity volume was granted since full treatment of ESD volume is not possible due to onsite constraints.

(i) Any public use space or public facility or amenity to be provided off-site is consistent with the goals of the applicable master or sector plan and serves the public interest better than providing the public use space or public facilities and amenities on-site.

The Application does not include public use space and amenities to be provided off-site, other than the improvements to the property frontages within the right-of-way for

East-West Highway, Blair Mill Road, Eastern Avenue, and Colesville Road. These improvements are consistent with the goals of the Sector Plan and serve the public interest by providing a consistent and aesthetically pleasing streetscape within the Silver Spring CBD.

BE IT FURTHER RESOLVED, that this Resolution 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

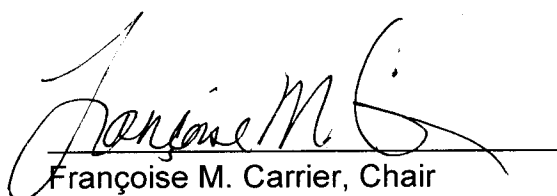
BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Planning Board, and that the date of this Resolution is DEC 23 2013 (which is the date that this Resolution is mailed to all parties of record); and

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 Dreyfuss, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley voting in favor at its regular meeting held on Thursday, December 12, 2013, in Silver Spring, Maryland.



Françoise M. Carrier, Chair
Montgomery County Planning Board