



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

SEP 23 2014

MCPB No. 14-53
Site Plan No. 820140110
United Therapeutics, Phase 3
Date of Hearing: September 18, 2014

RESOLUTION

WHEREAS, under Montgomery County Code Division 59-D-3, the Montgomery County Planning Board is authorized to review site plan applications; and

WHEREAS, on February 24, 2014, United Therapeutics Corporation ("Applicant") filed an application for approval of a site plan for 121,724 square feet of development, including 111,724 square feet of office/laboratory and 10,000 square feet of retail on 1.79 acres of CBD-1 zoned-land, located in the southwest quadrant of the intersection of Colesville Road and Spring Street ("Subject Property"), in the Silver Spring CBD Policy Area, Spring Silver CBD Sector plan ("Master Plan") area; and

WHEREAS, Applicant's site plan application was designated Site Plan No. 820140110, United Therapeutics, Phase 3 ("Site Plan" or "Application"); 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 July 3, 2014, setting forth its analysis of and recommendation for approval of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, on July 17, 2014, 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, at the Hearing, the Planning Board voted to approve the Application subject to certain conditions, by the vote certified below;

Approved as to
Legal Sufficiency:


8787 Georgia Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320
MNCPPC Legal Department
www.montgomeryplanningboard.org E-Mail: mcp-chair@mncppc-mc.org

NOW, THEREFORE, BE IT RESOLVED that the Planning Board approves Site Plan No. 820140110 for up to 121,724 square feet of development, to include 111,724 square feet of office/laboratory uses and 10,000 square feet of retail uses on 1.79 acres of the Subject Property, subject to the following conditions:¹

Conformance with Previous Approvals

1. The Applicant must comply with the conditions of approval for Project Plan No. 920130060 in Resolution No. 13-131, or as subsequently amended.
2. The Applicant must comply with the conditions of approval for Preliminary Plan No. 120130190 in Resolution No. 13-132, or as subsequently amended.

Environment

3. Forest Conservation

The fee-in-lieu payment for the forest conservation requirements must be submitted by the Applicant and approved by M-NCPPC staff prior to any clearing, grading or demolition on the site.

4. Stormwater Management

The Planning Board has accepted the recommendations of the Montgomery County Department of Permitting Service ("MCDPS") – Water Resources Section in its stormwater management concept letter dated March 19, 2014, and hereby incorporates them as conditions of the Site Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources Section provided that the amendments do not conflict with other conditions of the Site Plan approval.

Public Use Space, Amenities and Facilities

5. Public Use Space and Amenities

- a. The Applicant must provide a minimum of 11,421 square feet of on-site public use space (16.9% of percent of net lot area) for this project as shown on the Site Plan.
- b. The Applicant must provide a minimum of 13,294 square feet of off-site public use space consisting of special paving, landscaping, street lighting, bicycle racks, trash receptacles and relocated bus shelter as shown on the Site Plan.
- c. To address the shortfall in the on-site public use space (2,096 square feet or 3.1% of the net lot area), the Applicant will make a contribution in the amount of \$ \$231,636.70 to the Amenity Fund towards Gene Lynch Urban Park-scheduled for construction upon completion of the Silver Spring Transit

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.

Center or other future amenity as determined by the Planning Board per the requirements of 59-D-2.31 of the Zoning Ordinance.

- d. The Applicant must provide the Silver Spring streetscape standard improvements, including undergrounding of utilities, along the site's frontage on Spring Street and US 29.
- e. The public use space must be accessible and open to the public.

6. Maintenance of Publicly Accessible Amenities

The Applicant is responsible for maintaining all on-site publicly accessible amenities, including but not limited to, landscaping, walkways, lighting, benches and artwork.

Transportation and Circulation

7. Transportation

- a. The Applicant must provide, install, maintain, and operate securable gates at both ends of the proposed mid-block pedestrian "BioPath" connection, and may restrict access to the BioPath connection. Each gate must be equipped with an emergency access "knock box," or other device specified by Montgomery County Fire and Rescue Service (MCFRS).
- b. The Applicant must provide and install three short term public bicycle parking racks ("inverted U" rack or similar) along the retail frontage and near public use space.
- c. The Planning Board has accepted the recommendations of the Maryland State Highway Administration ("MDSHA") in its letter dated March 28, 2014, and hereby incorporates them as conditions of the Site Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MDSHA provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
- d. Prior to issuance of access permits, the Applicant must satisfy the provisions for access and improvements as required by MDSHA.
- e. The Applicant must enter into a Traffic Mitigation Agreement (TMAg) with the Planning Board and MCDOT to participate in the Silver Spring Transportation Management District and must execute the TMAg prior to issuance of the occupancy certificate for the office development. The TMAg must include trip mitigation measures negotiated with MCDOT.

Site Plan

8. Site Design

The exterior architectural character, proportions materials and articulation must be similar to the schematic elevations shown on the submitted Site Plans dated August 11, 2014.

9. Lighting

- a. The lighting distribution and photometric plan with summary report and tabulations must conform to the Illuminating Engineering Standards of North America ("IESNA") standards for commercial development.
- b. All onsite down-light fixtures must be full cut-off fixtures.
- c. Illumination levels generated from on-site lighting shall not exceed 0.5 footcandles (fc) at any property line abutting county roads and residential developed properties.
- d. Deflectors must be installed on all fixtures causing potential glare or excess illumination, specifically on the perimeter fixtures abutting the adjacent residential properties.

10. Surety

Prior to issuance of any building permit within each relevant phase of development, exclusive of sheeting and shoring, the Applicant must provide a performance bond(s) or other form of surety in accordance with Section 59-D-3.5(d) of the Montgomery County Zoning Ordinance with the following provisions:

- a. The Applicant must provide a cost estimate of the materials and facilities, which, upon Staff approval, will establish the initial surety amount.
- b. The amount of the bond or surety must include plant material, on-site lighting, site furniture, special paving, artwork, trash receptacles, stormwater management planters, bicycle racks, within the relevant phase of development.
- c. Prior to issuance of the first building permit, the Applicant must enter into a Site Plan Surety & Maintenance Agreement with the Planning Board in a form approved by the Office of General Counsel that outlines the responsibilities of the Applicant and incorporates the cost estimate.
- d. The bond/surety must be tied to the development program, and completion of plantings and installation of particular materials and facilities covered by the surety for each phase of development will be followed by inspection and reduction of the surety.

11. Development Program

The Applicant must construct the development in accordance with a development program that will be reviewed and approved by Staff prior to the approval of the Certified Site Plan. The development program must include the following items in its phasing schedule:

- a. Within 6 months of issuance of the final use and occupancy permits, on-site amenities including, but not limited to, sidewalks, benches, artwork, and trash receptacles must be installed. Clearing and grading must correspond to the construction phasing to minimize soil erosion and must not occur prior to approval of the Sediment Control Plan.
- b. The development program must provide phasing for installation of on-site landscaping and lighting.
- c. Within 6 months of issuance of the final use and occupancy permit, landscaping associated with the building must be completed.
- d. The development program must provide phasing of stormwater management and sediment and erosion control.
- e. Within 6 months of issuance of the final use and occupancy permit, the public use space must be completed.
- f. Prior to the release of the first above-grade building permit, the Applicant must make a payment to the M-NCPPC Amenity Fund for the construction of Gene Lynch Park or such other offsite amenity that the Planning Board deems appropriate in accordance with §59-D-2.31, as set forth in Condition 5.c.

12. Certified Site Plan

Prior to approval of the Certified Site Plan the following revised note must be added to the Site Plan, subject to Staff review and approval:

a. Cooling tower, Emergency Generators, and exhaust fans will be specified and designed to meet the sound standards of the County Code. Once installed, the sound output of the equipment will be tested by the Applicant's consultant after the building is occupied and subjected to full mechanical loads. If for any reason, equipment is found by the Department of Environmental Protection (DEP) not to comply with required County standards, a progression of possible measures must be taken as needed to bring the sound output of the equipment itself into compliance with the County standards. These measures may include mufflers, enclosures insulation material, restrictions on the schedule of delivery or trash pickup operations, or other appropriate measures recommended by the Applicant's consultant to address the particular sound problem.

b. Revise the data table to show the setback from US 29 as 0.0 ft

c. Provide revised final details and specifications of on-site lighting.

BE IT FURTHER RESOLVED that all site development elements shown on the site and landscape plans filed by the applicant to M-NCPPC's electronic filing system, are required except as modified by the following conditions; 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 Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

1. *The Planning Board finds that the Site Plan conforms to all non-illustrative elements of a development plan or diagrammatic plan, and all binding elements of a schematic development plan, certified by the Hearing Examiner under Section 59-D-1.64, or is consistent with an approved project plan for the optional method of development if required, unless the Planning Board expressly modifies any element of the project plan.*

The Application did not require a development plan, a diagrammatic plan, or a schematic development plan. As conditioned, the Site Plan is consistent with Project Plan No. 920130020 and with Preliminary Plan 120130190, with respect to square footage, public use space and amenities, massing and the provisions of the CBD-1 zone.

2. *The Site Plan meets all of the requirements of the CBD-1 zone in which it is located.*

The uses are allowed in the CBD-1 zones, and the Site Plan fulfills the specific purposes of the zone by providing a design that will produce a desirable relationship among the existing buildings in the CBD. Located at the southwest corner of the CBD, this building will serve as a gateway. Its form and prominent design will signal the entrance to the Silver Spring CBD for residents, workers, and visitors entering the area. The height of the building is comparable to the abutting and existing United Therapeutics buildings to the west. The zone permits heights up to 90 feet; the Application proposed a height of 90 feet. The building materials will be unique, but will coordinate with the surrounding buildings and fit within the urban context of a CBD.

The Property is located in the Silver Spring Parking Lot District (PLD). In accordance with Section 59-E-5 of the Zoning Ordinance, a new use that is located within a parking lot district is not required to provide the full complement of parking spaces on-site. Parking that is not provided on the site will be subject to an ad valorem tax. Additionally, public parking spaces are available to future retail and open space users and visitors to the site in the nearby public parking garage located two blocks away at the intersection of Ellsworth Drive and Fenton Street.

Requirements of the CBD-1 Zone

As the data table below indicates, the Site Plan meets all the development standards of the CBD-1 Zone, including building height, density and public use space. The Zoning Ordinance does not require any setbacks from the property line for the CBD-1 Zone. The approved Project Plan set the minimum building setback from US 29 as 16 feet, reflecting the distance between the US 29 right-of-way and the ground-level building face. However, Development Condition No. 2 of the Project Plan stated:

The development is limited to the building footprint as delineated in the Project Plan drawings submitted to the M-NCPPC dated August 5, 2013, unless modified at site plan review, and to 90 feet in height as measured from the datum point along Spring Street as shown on Project Plan drawings.

During site plan review the building design was refined to incorporate angled mesh panels onto the building façade along the “prow” at the corner of US 29 and Spring Street and the upper floors that front US 29. The angled mesh panels have been designed to aid in temperature control and ventilation of the building, and will project from the façade beyond the ground-level building face. To allow flexibility in the installation of these panels, staff recommends revising the minimum setback along US 29 to 0.0 feet, while recognizing that the ground level building footprint will be illustrated on the Certified Site Plan and will be binding on the applicant. The Project continues to meet the requirements of the CBD-1 Zone with the smaller setback and the building footprint remains consistent with the previous approvals.

Data Table

Project Data Table for the CBD-1 Zone, Optional Method of Development

Development Standard	Permitted/ Required	Approved Project Plan 920130060	Proposed Site Plan 820140110
Site Area			
Gross Tract Area	n/a	77,822 sf	77,822 sf
Dedication to Public Use	n/a	10,000 sf	10,239 sf
-Net Tact Area	22,000 sf	67, 583 sf	67,583 sf
Uses			
Office/ Laboratory	n/a	111,724 sf	111,724 sf
Retail	n/a	10,000 sf	10,000 sf
Total Square Feet	n/a	121,724 sf	121,724 sf
Density			
	2.0	1.56	1.56
Max. Building Height	90 ft	90 ft	90 ft
Min. Public Use Space (%)			
On-Site Public Use Space	20%	10,670 sf (15.8%)	11,421 sf (16.9%)
Amenity Fund Contribution	varies	2,847 sf (4.2%)	2,096sf. (3.1%)
Total On-site Public Use Space & Amenity Fund	20%	13,517 sf (20%)	13,517 sf (20%)
Off Site Public Use Space	20%	12,900 sf (19.1%)	13,294 sf (19.6%)
Total Public Use Space & Amenity Fund	20%	26,417 SF (34.9%)	26,811 sf (39.6%)
Min. Setbacks			
Spring Street	0	0 ft	0 ft
US 29	0	16 ft	0 ft
Adj property to south	0	10 ft	10 ft
Adj property to west	0	0 ft	0 ft
Parking			
Office/ Laboratory @2.4/1000 (117,724 sf)	269		152
Retail Parking @3.5/1000 (1,000 sf)	35		0
Total Vehicle Spaces	304	152 ¹	152 ¹
Bicycle			14 spaces
Motorcycle			3

¹The site is located in the Silver Spring parking lot district, and as such is not required to provide the full complement of parking spaces. Parking that is not provided on the site, consistent with Section 59-E, will be subject to an ad valorem tax.

1. *The locations of the buildings and structures, the open spaces, landscaping, recreation facilities, and pedestrian and vehicular circulation systems are adequate, safe, and efficient.*

- a. Buildings and Structures

The building location is adequate safe and efficient. The building entrance faces US 29, and signals the entrance to the Silver Spring CBD. Its location setback 12 feet from US 29 increases the pedestrian separation from the roadway. This location also provides ease of access into the building and from the adjoining sidewalks.

- b. Open Spaces

This Site Plan requires 20 percent (13,517 square feet) on site public use space under the Optional Method of Development for the CBD-1 Zone. This requirement has been met through a combination of on-site public use space and a payment to the amenity fund. The open space is located on US 29 is at the entrance to the Silver Spring CBD. The Site Plan proposes 11,421 square feet (-16.9% of the net lot area) of onsite public use space. With its elongated seating areas slightly below street grade, landscaping, and water features, this open space plaza creates an inviting area for informal performances and interactive educational opportunities for workers and visitors to the site as well as nearby residents. This open space will also include seating, specialty paving, landscaping, and interactive educational elements. The deficit of 2,096 square feet (or 3.1% of the net lot area) of public use space will be accomplished through a payment to the amenity fund for the Gene Lynch Park, located at the Silver Spring Transit Center, or another appropriate amenity. Overall, the amount of on-site open space has increased by approximately 750 square feet over the approved Project Plan thereby creating more open space in this northern edge of the Silver Spring CBD.

- c. Landscaping and Lighting

The landscaping will be adequate, safe and efficient. Presently, minimal landscaping exists on site. The streetscape improvements along Spring Street and US 29 will enhance the pedestrian environment and the undergrounding of utilities along both roadways further enhances the public realm. The new landscaping within the public open space creates a new inviting and useable green space in the CBD where one does not exist.

d. Recreation Facilities

The Application does not propose any residential units, thus recreational facilities are not required under this Site Plan.

e. Vehicular and Pedestrian Circulation

Pedestrian and vehicular circulation will be adequate safe and efficient. The development will enhance pedestrian and cyclist circulation by providing improved and wider sidewalks along US 29 and Spring Street. Pedestrian and vehicular circulation is improved through the separation of movements. Personal vehicles will be limited to the garage's sole entrance along Spring Street. Pedestrians will be protected from vehicular conflicts through wider sidewalks and specialty brick paving denoting pedestrian walkways and the onsite vehicular entrance. The inclusion of bicycle stands within the garage and adjacent to the proposed building promote another mode of circulation among the office workers and visitors in the CBD. The new mid-block connection on Cameron Street provides ease of access to the adjoining and surrounding buildings and sidewalks in the Silver Spring CBD and provides a needed connection where one presently does not exist. The upgraded bus shelter along US 29 will enhance the public transit user's experience by providing a safer location and a more defined shelter area. The building's location in close proximity to the Silver Spring/MARC transit station (within 15 to 20 minute walk) will encourage the use of transit facilities by future workers and visitors to the site.

4. *Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development.*

The building is an extension of the existing United Therapeutics world headquarters buildings located, at Spring and Cameron Streets, west of this site. The existing campus buildings have distinctive and colorful architectural forms. This building with its unique elliptical shape and "prow" expands on the campus concept by creating a statement building at the one of the most visible entrances to the Silver Spring CBD.

The 90 foot building height is compatible with the multi-family building to the north and the office and hotel buildings abutting and confronting the site on US 29. The scale, design and orientation of the building are appropriate relative to the adjacent properties and add architectural character to the area.

5. *The Site Plan meets all applicable requirements of Chapter 22A regarding forest conservation, Chapter 19 regarding water resource protection, and any other applicable law.*

On March 19, 2014, Montgomery County Department of Permitting Services (MCDPS) Water Resources Section approved a stormwater management concept plan (#252053) for this development. The approved concept plan meets all the applicable requirements of Chapter 19 regarding water resource protection, and any other applicable law.

The Planning Board approved a Preliminary Forest Conservation Plan and forest conservation variance request with the project and preliminary plan approvals, and both remain valid under this Site Plan approval. The Final Forest Conservation Plan showed minor changes and a modest increase in the Limits of Disturbance on the site. These changes increased the forest conservation requirement from 0.27 acres to 0.29 acres. The Applicant will be required to make a fee-in-lieu payment to meet the increased forest conservation requirement.

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 Site Plan shall remain valid as provided in Montgomery County Code § 59-D-3.8; 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 SEP 23 2014 (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 Presley, seconded by Vice Chair Wells-Harley, with Chair Anderson, Vice Chair Wells-Harley, and Commissioners Dreyfuss and Presley voting in favor at its regular meeting held on Thursday, September 18, 2014, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board