



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

MCPB No. 14-69
Site Plan No. 82010012A
Project Name: Silver Spring Park
Hearing Date (Consent Item): July 24, 2014

SEP 15 2014

RESOLUTION

WHEREAS, under Montgomery County Code Division 59-D-3, the Montgomery County Planning Board ("Planning Board") is required to review amendments to approved site plans; and

WHEREAS, on December 15, 2010, the Planning Board approved Preliminary Plan 120070420 (MCPB Resolution No. 10-151), which created one lot on approximately 1.57 acres of CBD-1, CBD-0.5, and Fenton Village Overlay zoned property located at the southeast corner of the intersection of Fenton Street and Silver Spring Avenue ("Property"), in the Silver Spring CBD Sector Plan ("Master Plan") area; and

WHEREAS, as part of the Preliminary Plan approval, the Planning Board approved the final forest conservation plan for the Property, which included a variance under Section 22A-21 of the Montgomery County Code ("Variance") that allowed removal of three trees and impact to, but retention of a 36" Tulip Poplar identified on the forest conservation plan ("Tree #5"); and

WHEREAS, on December 15, 2010, the Planning Board approved Site Plan 820100120, which incorporated the final forest conservation plan (MCPB Resolution No. 10-152), to allow construction of a multi-building, mixed-use development of 147,888 sf., to include a 110-room hotel with 3,602 sf. of ground-floor retail; a 28,170-sf. office building including 5,632 sf. of ground-floor retail; and a multi-family residential building with 58 dwelling units (including 7 moderately priced dwelling units and 5 workforce housing units) on the Property; and

WHEREAS, on July 8, 2014, Fenton Group, LLC, ("Applicant"), filed a site plan amendment application, which was designated Site Plan No. 82010012A ("Amendment") for approval to remove Tree #5, previously intended to be saved under the final forest conservation plan;

WHEREAS, following review and analysis of the Amendment by Planning Board staff ("Staff") and the staff of other applicable governmental agencies, Staff issued a

Approved as to
Legal Sufficiency:

[Signature] 9/2/14
MNCPPC Legal Department

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memorandum to the Planning Board dated July 18, 2014, setting forth its analysis and recommendation for approval of the Amendment (“Staff Report”); and

WHEREAS, on July 24, 2014, Staff presented the Amendment to the Planning Board as a consent item for its review and action, at which time the Planning Board voted to approve the Amendment, on the motion of Vice Chair Wells-Harley, seconded by Commissioner Presley, with a vote of 4-0; Chair Carrier, Commissioners Dreyfuss, Presley, and Wells-Harley voting in favor, with Commissioner Anderson being absent.

NOW, THEREFORE, BE IT RESOLVED THAT, the Planning Board hereby adopts the Staff’s recommendation and analysis set forth in the Staff Report¹ and hereby approves Site Plan No. 82010012A;

BE IT FURTHER RESOLVED, that unless amended, all other conditions of approval for Site Plan No. 820100120 remain valid and in full force and effect; and

BE IT FURTHER RESOLVED, that, having given full consideration to the recommendations and findings of its Staff as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference, the Montgomery County Planning Board FINDS, that

1. The Variance is appropriate for amendment to authorize removal of Tree #5.

Under prior approvals that incorporated the final forest conservation plan, Tree #5 was approved for impact, but not removal. In accordance with Section 22A-21(a), the Applicant has requested an amendment to the Variance and the Board agreed that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Property without the amended Variance.

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

a. Granting the Variance will not confer on the Applicant a special privilege that would be denied to other applicants.

Although the Applicant made efforts to retain Tree #5, its removal was necessary and unavoidable in order to develop the Property according to the Master Plan.

b. The need for the Variance is not based on conditions or circumstances which are the result of the actions by the Applicant.

¹ The Staff Report cited incorrect Project Plan, Preliminary Plan and Site Plan numbers in the description of previous approvals (page 9). The correct references are Project Plan No.920070030, Preliminary Plan No. 120070420, and Site Plan No. 821011120.

Although the Applicant made efforts to retain Tree #5, its removal was necessary to achieve the master planned densities and provide the required green space and stormwater management facilities associated with the development.

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

The neighboring properties are developed residential or commercial properties, or public rights-of-way.

- d. *Granting the Variance will not violate State water quality standards or cause measurable degradation in water quality.*

Tree #5 is not located in an environmental buffer or special protection area. This approval is conditioned on mitigation that approximates the form and function of the trees removed. Therefore, their removal will not violated State water quality standards or cause measurable degradation in water quality.

The Board approved removal of Tree #5 without additional mitigation because under the current formula for mitigation, the total caliper inches of trees required to be planted for removal of the three trees under the previous approval more than satisfies the additional removal of Tree #5.

2. *This Amendment does not alter the intent, objectives, or requirements in the originally approved site plan, and that all findings remain in effect; and*

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board and incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

BE IT FURTHER RESOLVED, that this Amendment shall remain valid as provided in Montgomery County Code § 59-D-3.8; and

BE IT FURTHER RESOLVED, that the date of this written resolution is SEP 15 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

written opinion, 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 Commissioner Presley voting in favor, and Commissioner Dreyfuss absent at its regular meeting held on Thursday, September 4, 2014, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board