



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

MCPB No. 15-119  
Site Plan No. 820140090  
819 Silver Spring Avenue  
Date of Hearing: September 17, 2015

NOV 10 2015

**RESOLUTION**

WHEREAS, under Montgomery County Code 59-7.1.2, the Montgomery County Planning Board is authorized to review site plan applications; and

WHEREAS, on April 28, 2014, Hopscotch Properties LLC ("Applicant"), filed an application for approval of a site plan for a total of up to 12,110 square feet of non-residential uses, including up to 12,110 square feet of general office and up to 5,110 square feet of restaurant/retail uses on 0.19 acres of CR-3.0 C-2.0 R-2.75 H-60T and Fenton Village Overlay zoned land, located at 819 Silver Spring Avenue, approximately 60 feet East of Fenton Street ("Subject Property"), in the Silver Spring CBD Sector Plan ("Sector Plan") area; and

WHEREAS, Applicant's site plan application was designated Site Plan No. 820140090, 819 Silver Spring Avenue ("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 September 4, 2015, setting forth its analysis of and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on September 17, 2015, 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 September 17, 2015 the Planning Board voted to approve the Application subject to certain binding elements and conditions, on the motion of Commissioner Fani-Gonzales, seconded by Commissioner Presley, with a vote of 5-0; Chair Anderson, Commissioners Dreyfus, Fani-Gonzales, Presley and Wells-Harley voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board approves Site Plan No. 820140090 for a total of up to 12,110 square feet of non-residential uses,

Approved as to  
Legal Sufficiency:

*Christina Smith* 10/29/15

including up to 12,110 square feet of general office and up to 5,110 square feet of restaurant/retail uses, on the Subject Property, subject to the following conditions:<sup>1</sup>

1. Sketch Plan Conformance

The development must comply with the binding elements and conditions of approval for Sketch Plan No. 320150080 and any amendments.

2. Public Amenities & Landscaping

- a. The Applicant must construct the streetscape improvements along the Property's frontage on the north side of Silver Spring Avenue consistent with the Silver Spring Streetscape Design Guidelines.
- b. Amenities including, but not limited to, lighting, bicycle racks and canopy, public artwork and streetscape improvements must be installed prior to release of any Use and Occupancy Certificate.
- c. The Applicant must install the landscaping associated with the project no later than the next growing season after completion of site work.

3. Maintenance of Public Amenities

The Applicant is responsible for maintaining all publicly accessible amenities on or fronting the Subject Property including, but not limited to pedestrian pathways, landscaping/hardscape, and art, unless contracted to a third party.

4. Public Benefits

The Applicant must provide the following public benefits and meet the applicable criteria and requirements of the Zoning Ordinance and the *CR Zone Incentive Density Implementation Guidelines* for each one.

a. *Transit Proximity*

The Subject Property is located between ¼ mile and ½ mile from the Silver Spring Metro Station which allows the development to be eligible for Level 1 transit as defined in the Zoning Ordinance. Furthermore the Property is also located between ¼ mile and ½ mile from a MARC Train station, and less than a ¼ mile from a planned Purple Line station.

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<sup>1</sup> 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.

*b. Connectivity and Mobility*

- i) **Minimum Parking:** The Applicant must provide a maximum of 12 parking spaces (included one handicap space), which is less than the maximum set by the zone.
- ii) **Way-finding:** The Applicant must design and implement a way-finding system for orienting pedestrians and cyclists to major open spaces, cultural facilities and transit opportunities. The Way-finding sign/system will be approved by M-NCPPC Staff and be shown on the Certified Site Plan.

*c. Diversity of Uses and Activities*

**Small Business Opportunities:** The Applicant must provide on-site space for small, neighborhood-oriented businesses as follows:

- i) Provide retail bays of no more than 5,000 square feet for all commercial spaces for a period of six years after the issuance of the initial use and occupancy permits.
- ii) The six-year time period is binding upon future owners and successors in title.
- iii) Before a building permit is submitted for approval, the Applicant must file a covenant in the County land records that reflects these restrictions.

*d. Quality Building and Site Design*

- i) **Architectural Elevations:** The Applicant is bound by substantial conformance with the design elements, including transparency, materials, entry design, and public art location, illustrated on the architectural façade drawings in the Certified Site Plan.
- ii) **Public Art:** The Applicant must provide a sculpture on the front of the building. The final design will be approved by the Art Review Panel prior to, and illustrated on, the Certified Site Plan approval.

*e. Protection and Enhancement of the Natural Environment*

- i) **Energy Conservation and Generation:** the building must be at least 2.5% more energy efficient than the standard building of this type, as determined by DPS at the time of building permit review.
- ii) **Vegetated Roof:** the Applicant must install a vegetated roof with a soil depth of a minimum of 4 inches covering a minimum of 33% of the building's roof, excluding space for mechanical equipment.

- iii) Cool Roof: the Applicant must construct any roof area not covered by a vegetated roof with material, finishes and colors that provide a minimum solar reflectance index (SRI) of 75.

5. Pedestrian & Bicycle Circulation

- a. The Applicant must provide 3 weather-protected private bicycle parking spaces.
- b. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services (MCDPS) in its memo dated June 26, 2015, and does hereby incorporate them as conditions of the Site Plan approval. The Applicant must comply with each of the recommendations as set forth in the memo, which may be amended by MCDPS, provided that the amendments do not conflict with other conditions of the Site Plan approval.

6. Fire and Rescue

The Planning Board accepts the recommendations of the Montgomery County Fire and Rescue Services (MCFRS) Fire Code Enforcement Section in its approval dated September 12, 2014.

7. Stormwater Management

The Planning Board accepts the recommendations of MCDPS – Water Resources Section in its stormwater management concept letter dated October 9, 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.

8. Building Height

The maximum height for the building is 45 feet as measured from the building height measuring point illustrated on the Certified Site Plan.

9. Architecture

The exterior architectural character, proportion, materials, and articulation must be substantially similar to the schematic elevations shown on the latest approved architectural drawings included in the Certified Site Plan, as determined by M-NCPPC Staff.

10. Lighting

- a. Prior to Certified Site Plan, the Applicant must provide certification from a qualified professional that the exterior lighting in this Site Plan conforms to the

latest Illuminating Engineering Society of North America (IESNA) recommendations (Model Lighting Ordinance-MLO: June 15, 2011, or as superseded) for a development of this type. All onsite exterior area lighting must be in accordance with the latest IESNA outdoor lighting recommendations (Model Lighting Ordinance-MLO: June 15, 2011, or as superseded).

- b. Deflectors must be installed on all up-lighting fixtures to prevent excess illumination and glare.
- c. Streetlights and other pole-mounted lights must not exceed the height illustrated on the Certified Site Plan.

#### 11. Site Plan Surety and Maintenance Agreement

Prior to issuance of any building permit, the Applicant must enter into a Site Plan Surety and Maintenance Agreement with the Planning Board in a form approved by the M-NCPPC Office of General Counsel that outlines the responsibilities of the Applicant. The Agreement must include a performance bond(s) or other form of surety in accordance with Section 59.7.3.4 K.4 of the Montgomery County Zoning Ordinance, with the following provisions:

- a. A cost estimate of the materials and facilities, which, upon M-NCPPC Staff approval, will establish the surety amount;
- b. The cost estimate must include applicable Site Plan elements, including, but not limited to, plant material, on-site lighting, and artwork.
- c. The bond or surety must be tied to the development program, and completion of plantings and installation of particular materials and facilities covered by the surety will be followed by inspection and release of the surety.

#### 12. Development Program

The Applicant must construct the development in accordance with a development program table that will be reviewed and approved prior to the approval of the Certified Site Plan.

#### 13. Certified Site Plan

Prior to approval of the Certified Site Plan, the following revisions must be made and/or information provided subject to Staff review and approval:

- a. Include the final forest conservation exemption approval letter, stormwater management concept approval letter, development program, Sketch Plan resolution, and Site Plan resolution on the approval or cover sheet(s).

- b. Add a note to the Site Plan stating that “M-NCPPC Staff must inspect all tree-save areas and protection devices before clearing and grading.”
- c. Add a note stating that “Minor modifications to the limits of disturbance shown on the Site Plan within the public right-of-way for utility connections may be done during the review of the right-of-way permit drawings by the Department of Permitting Services.”
- d. Modify data table to reflect development standards approved by the Planning Board.
- e. Ensure consistency of all details and layout between Site and Landscape plans.

BE IT FURTHER RESOLVED, that all site development elements as shown on the latest electronic version of the 819 Silver Spring Avenue drawings submitted via ePlans to the M-NCPPC as of the date of the Planning Board Hearing 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 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. *When reviewing an application, the approval findings apply only to the site covered by the application.*
2. *To approve a site plan, the Planning Board must find that the development:*
  - a. *satisfies any previous approval that applies to the site;*  
The Site Plan conforms to all binding elements of the Sketch Plan No. 320150080 regarding density, height, site design including building location and circulation, and the public benefit schedule.
  - b. *satisfies under Section 7.7.1.B.5 the binding elements of any development plan or schematic development plan in effect on October 29, 2014;*

This section is not applicable as there are no binding elements of an associated development plan or schematic development plan in effect on October 29, 2014.

- c. *satisfies under Section 7.7.1.B.5 any green area requirement in effect on October 29, 2014 for a property where the zoning classification on October 29, 2014 was the result of a Local Map Amendment;*

This section is not applicable as the Property's zoning classification on October 29, 2014, was not the result of a Local Map Amendment.

- d. *satisfies applicable use standards, development standards, and general requirements under this Chapter;*
- i. *Division 4.5. Commercial/Residential Zones as modified by 4.9.7.C. Fenton Village Overlay Zone*

Development Standards

The Property is approximately 0.19 acres zoned CR-3.0 C-2.0 R-2.75 H-60T and Fenton Village Overlay. The Application satisfies the development standards of both zones as shown in the below table.

Site Plan Data Table			
Section 59 - 4	Development Standard	Zoning Ordinance Required/ Permitted	Approved & Binding on Applicant
	<b>Gross Tract Area (sf)</b> Existing Lot 21: CR-3.0 C-2.0 R-2.75 H-60 T Prior Dedications <b>TOTAL</b>	n/a n/a	8,400 2,100 <b>10,500</b>
<b>4.5.4.B.2.b</b>	<b>Max. Density ( Existing Lot 21)</b> CR-3.0 C-2.0 R-2.75 H-60 T  Commercial FAR/GFA Residential FAR/GFA	2.0/21,000 2.75/28,875	1.15/12,110 0/0
<b>4.5.4.B.2.b</b>	<b>Max. Building Height (feet)</b> CR-3.0 C-2.0 R-2.75 H-60 T	60/45 <sup>2</sup>	45
<b>4.5.4.B.3</b>	<b>Min. Setback (feet)</b> Front Side Rear	0 0 0	0 0 0
<b>4.5.4.B.1</b>	<b>Open Space</b>	0	0
<b>6.2.4.B</b>	<b>Parking (spaces)</b> General office Office/restaurant (worst case)	Min./Max. 25/37 Min./Max. 32/59	12 <sup>3</sup>

ii. *Division 4.7 Optional Method Public Benefits*

The Application includes public benefits that address the general incentive and density considerations required by Section 59-4.7.1.B. The public benefits:

- a. Take into consideration “the recommendations of the applicable master plan” by enhancing the selection of commercial transit-oriented development at the edge of the CBD by providing a building designed to be compatible with the surrounding residential and commercial development;

<sup>2</sup> As limited by the Fenton Village Overlay Zone for non-residential uses on blocks containing single-family residential zoning (4.9.7.C.1.d.)

<sup>3</sup> Site is within the Silver Spring Parking Lot District and will be paying the ad valorem tax per 59.6.2 H.1.a.



- b. Meet the 2012 Commercial/Residential Zones Incentive Density Implementation Guidelines (CR Guidelines) by providing the proper calculations and criteria for each public benefit;
- c. Meet “any design guidelines adopted for the applicable master plan area” by installing the Silver Spring streetscape along the site frontage and public art on the facade;
- d. Are appropriate for “the size and configuration of the site” by improving the existing configuration of surface parking lot and aging existing building with a mixed-use project with office and restaurant/retail uses, and minimal parking close to transit;
- e. Adequately address “the relationship of the site to adjacent properties” by designing the building at an appropriate scale for the surroundings with height and massing that complements the existing character of the area;
- f. Consider “the presence or lack of similar public benefits nearby” through the provision of public art, small business opportunities, environmental benefits, and enhanced pedestrian connections, all of which are currently needed in this area; and
- g. Provide “enhancements beyond the elements listed in an individual public benefit that increase public access to, or enjoyment of, the benefit” which echo the interconnectivity of the Sector Plan themes by renewing commercial uses in the CBD in a manner compatible with the surrounding neighborhood and transit-supportive.

<b>Public Benefits Points</b>		
<b>Public Benefit</b>	<b>Incentive Density Points</b>	
	<b>Requested</b>	<b>Approved</b>
<b>59-4.7.3.B: Transit Proximity</b>	<b>30</b>	<b>30</b>
<b>59-4.7.3.C: Connectivity and Mobility</b>		
Minimum Parking	10	10
Way-finding	5	5
<b>59-4.7.3.D: Diversity of Uses and Activities</b>		
Small Business Opportunities	20	20
<b>59-4.7.3.E: Quality of Building and Site Design</b>		
Public Art	10	10
Architectural Elevations	20	20
<b>59-4.7.3.F: Protection and Enhancement of the Natural Environment</b>		
Energy Conservation and Generation	5	5
Vegetated Roof	12.5	12.5
Cool Roof	5	5
<b>TOTAL</b>	<b>117.5</b>	<b>117.5</b>

### Transit Proximity

The Property is located between ¼ mile and ½ mile from the Silver Spring Metro Station which allows the development to be eligible for Level 1 transit as defined in the Zoning Ordinance. The Property is also located between ¼ mile and ½ mile from a MARC Train station, and less than a ¼ mile from a planned Purple Line station. Therefore, the Planning Board approves the full 30 points as suggested in the *2012 Commercial/Residential Zones Incentive Density Implementation Guidelines* (CR Guidelines).

### Connectivity and Mobility

*Minimum Parking:* Section 59-4.7.3.C.2. allows up to 10 points for providing fewer than the maximum allowed number of parking spaces, where a maximum is applicable. The maximum is set by the CR zone, which for this project is 59 spaces. The Applicant proposes 12 parking spaces (included one handicap space), which is less than the maximum set by the zone. Therefore, the Planning Board approves the full 10 points.

*Way-finding:* Section 59-4.7.3.C.9. allows up to 10 points for design and implementation of a way-finding system orienting pedestrians and cyclists to major open spaces, cultural facilities and transit opportunities. The Applicant will implement a way-finding system, but given the small size of the site, the Planning Board approves the 5 points requested.

### Diversity of Uses and Activities

*Small Business Opportunities:* Section 59-4.7.3.D.7. of the Zoning Ordinance permits up to 20 public benefit points for providing on-site space for small, neighborhood oriented businesses. The Applicant must provide on-site space for small, neighborhood-oriented businesses as follows:

- Provide retail bays of no more than 5,000 square feet for all commercial spaces for a period of six years after the issuance of the initial use and occupancy permits.
- The six-year time period is binding upon future owners and successors in title.
- Before a building permit is submitted for approval, the Applicant must file a covenant in the County land records that reflects these restrictions.

The Planning Board approves the Applicant's request of 20 points.

### Quality of Building and Site Design

*Architectural elevations:* Section 59-4.7.3.E.1. of the Zoning Ordinance permits up to 20 public benefit points for providing elevations of architectural facades and agreeing to be bound by particular elements of design that affect

the perception of mass, pedestrian comfort, or enhance neighborhood compatibility. The building is designed for compatibility with the adjacent and confronting buildings on Silver Spring Avenue. The Applicant is bound to substantially conform to the design elements, including transparency, materials, entry design, and public art location, illustrated on the architectural façade drawings in the Certified Site Plan. The Applicant requests 20 points and the Planning Board approves the requested amount.

*Public art:* Section 59-4.7.3.E.5. of the Zoning Ordinance permits up to 15 public benefit points for installing public art reviewed for comment by the Public Arts trust Steering Committee (Art Review Panel). The Applicant requests 10 points for providing a lighted sculpture on the front of the building. The Applicant presented an initial artwork concept to the Art Review Panel, and will present a revised concept to the Panel before Certified Site Plan. The Planning Board approves the 10 points requested.

#### Protection and Enhancement of the Natural Environment

*Energy Conservation and Generation:* Section 59-4.7.3.F.3. of the Zoning Ordinance permits up to 15 public benefit points for constructing buildings that exceed energy-efficiency standards by 17.5% for new buildings. The *CR Guidelines* specify that 5 points may be granted for new building construction that exceeds the standard efficiency by 2.5 %. Under the modeled guidance of a LEED-accredited professional, the Applicant has committed to making the building at least 2.5% more energy efficient than the standard building of this type. The Planning Board approves the 5 points requested.

*Vegetated Roof:* Section 59-4.7.3.F.9. of the Zoning Ordinance permits up to 15 public benefit points for installing a vegetated roof with a soil depth of at least 4 inches and covering at least 33% of the total roof excluding space for mechanical equipment. The Applicant proposes a 4-inch thick vegetated roof covering at least 55% of the total roof. The Applicant requests 12.5 points and the Planning Board approves the requested amount.

*Cool Roof:* Section 59-4.7.3.F.2. of the Zoning Ordinance permits up to 10 public benefit points for constructing any roof area that is not covered by a vegetated roof with a minimum solar reflectance index (SRI) of 75 for roofs with a slope at or below a ratio of 2:12, (and a minimum SRI of 25 for slopes above 2:12). The Applicant commits to using appropriate material, finishes and colors to provide the cool roof benefits; therefore the Planning Board approves the full 5 points.

*iii. Division 6.1. Site Access*

The Application will utilize the existing access point off of Silver Spring Avenue.

*iv. Division 6.2. Parking, Queuing, and Loading*

Parking for the building will be provided at the rear surface lot. The Property is also within the Silver Spring Parking District. Vehicular and loading access is located at the rear via a private driveway. The site frontage also accommodates parking.

*v. Division 6.3. Open Space and Recreation*

The non-residential development is not subject to open space or recreation requirements.

*vi. Division 6.4. General Landscaping and Outdoor Lighting*

Landscaping and lighting will be provided to ensure that these facilities will be safe and in character with the surrounding community, primarily through implementation of the Silver Spring Streetscape Standard along the site frontage.

As shown in the Development Standards table, the Site Plan meets all of the general requirements and development standards of Section 4.5 of the Zoning Ordinance, the optional method public benefits provisions of Division 4.7 of the Zoning Ordinance, and the general development requirements of Article 59-6 of the Zoning Ordinance.

*e. satisfies the applicable requirements of:*

*i. Chapter 19, Erosion, Sediment Control, and Stormwater Management; and*

The existing site conditions are mostly impervious with no stormwater management. A Stormwater Concept Plan was approved by the Montgomery County Department of Permitting Services on October 9, 2014. The Site Plan proposes to meet stormwater management goals via ESD to the Maximum Extent Practicable (MEP) by use of a green roof.

*ii. Chapter 22A, Forest Conservation.*

There are no environmentally sensitive features associated with the site, such as streams, wetlands floodplains or associated buffers. The site is located within the Sligo Creek watershed, a Use I watershed.

This Application is subject to the Chapter 22A, Montgomery County Forest Conservation Law, but is exempt from the requirement to submit a Forest Conservation Plan under Section 22A-5(s)(1) because the activity occurs on a tract of land less than 1.5 acres with no existing forest, or existing specimen or champion tree, and the afforestation requirements would not exceed 10,000 square feet. The forest conservation exemption, application # 42015105E was confirmed on December 18, 2014.

*f. provides safe, well-integrated parking, circulation patterns, building massing and, where required, open spaces and site amenities;*

The Application provides adequate, safe, and efficient parking and circulation patterns. The private driveway appropriately functions for vehicular access and loading for the building. Loading, parking and driveway access are provided from the existing curb cut.

Along with streetscape enhancements the project includes reasonable access to an existing Metro station/MARC train as well as future access to Purple Line rail station. Private sheltered bike parking is also provided in addition to public art.

The Application provides a safe and well-integrated building that is compatible with existing and proposed development on the block, enhancing that relationship with site amenities including public art, wayfinding, and streetscape improvements.

*g. substantially conforms with the recommendations of the applicable master plan and any guidelines approved by the Planning Board that implement the applicable plan;*

The Site Plan is consistent with, and furthers, the recommendations of the 2000 *Silver Spring CBD Sector Plan*. The Sector Plans does not have site specific recommendations for this Property; however the project is consistent with the Sector Plan vision themes and the Fenton Village Overlay Zone: