



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

**MCPB
ITEM #
6/28/07**

MEMORANDUM

DATE: June 14, 2007

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief *RK*
Development Review Division

FROM: Catherine Conlon, Subdivision Supervisor (301) 495-4542 *CC*
Robert Kronenberg, Acting Site Plan Supervisor (301) 495-2187 *PAK*
Development Review Division

SUBJECT: Request for an extension to the validity period – Project Plan No. 920050020 and Preliminary Plan No. 120060420, 8711 Georgia Avenue

STAFF RECOMMENDATION: Grant an 18-month extension of the Project Plan validity period until October 13, 2009, and an 18-month extension of the Preliminary Plan validity period until October 17, 2010.

BACKGROUND

The Project and Preliminary Plans for 8711 Georgia Avenue (Plan Nos. 920050020 and 120060420) were approved concurrently by the Planning Board on January 19, 2006 for the development of a 152,740 square foot office building with ground floor retail, located on the east side of Georgia Avenue, north of its intersection with Cameron Street. Planning Board Opinions for these actions were mailed on March 13, 2006 for the Project Plan, and March 17, 2006 for the Preliminary Plan. Pursuant to Section 59-D-2.7(c) of the Montgomery County Zoning Ordinance, the Project Plan is valid until April 13, 2008 provided the Applicant files a complete site plan by October 13, 2007. Per the conditions included in the Planning Board's Opinion, the validity period for the Preliminary Plan was set at 37 months from the opinion mailing date, or March 17, 2009.

Shortly after these approvals were granted, the Applicant and this project became involved in the competitive procurement process for "Silver Place". That process recently culminated with the selection of an alternative development team and concept. Submittal of a site plan for the subject project was delayed pending this selection.

Attached, please find the applicant's timely request, dated March 23, 2007, for a two-year extension of the Project and Preliminary Plan validity periods. The extension is requested to give the Applicant adequate time to decide how to proceed with the development project and to submit a site plan.

DISCUSSION OF THE EXTENSIONS

Pursuant to Section 59-D-2.7(c) of the Zoning Ordinance, a written request to extend the validity period of an approved project plan must be submitted prior to the expiration date. The written submission must specify in detail all grounds and reasons proposed by the applicant to support the extension request and include a declaration that states the anticipated date for validating the plan. The applicant must warrant that the additional time is the minimum required.

Pursuant to Section 50-35(h)(3)(d) of the Subdivision Regulations, "the Planning Board may only grant a request to extend the validity period of a preliminary plan if the Board is persuaded that:

- i. delays, subsequent to the plan approval by the government or some other party, essential to the applicant's ability to perform terms of conditions of the plan approval, have materially prevented applicant from validating the plan, provided such delays are not created by the applicant; or
- ii. the occurrence of significant, unusual, and unanticipated events, beyond applicant's control and not facilitated or created by applicant, have substantially impaired applicant's ability to validate its plan and that exceptional or undue hardship (as evidenced, in part, by the efforts undertaken by applicant to implement the terms and conditions of the plan approval in order to validate its plan) would result to applicant if the plan were not extended."

The applicant's memorandum seeks the extension based on delays associated with the Applicant's participation in the competitive bid process for "Silver Place" which prevented them from taking the necessary steps toward submitting the site plan needed for validation of the Project Plan. The plat recordation that must occur to validate the Preliminary Plan cannot occur until such a site plan is approved.

Applicant's position

The Applicant's letter cites their participation in the competitive procurement process for "Silver Place" as an occurrence that prevented the Applicant from validating the plans. The Applicant's representative argues that this process represented a unique public-private process

that was largely out of the Applicant's control. Pending resolution of this process, the subject development was placed on hold, thereby reducing the time under the approved validity period, for the Applicant to consider other options heading into the site plan review process. The Applicant also believes that the Silver Spring office market has changed since Project Plan approval and that current market conditions may further delay start of the project. For these reasons, the Applicant is requesting extension of both the Project and Preliminary Plans for a period of two years. The Applicant's representative states that this is the minimum additional time required for the Applicant, or a potential purchaser of the project, to properly prepare and submit a site plan that will implement the approved Project Plan and, in turn, for the Board to review and approve the site plan in order to allow recordation of a final record plat and validation of the Preliminary Plan.

Staff Position

Staff supports an extension of the validity period for the subject plan based upon the delay experienced by the Applicant as a result of their participation in the competitive procurement process for "Silver Place", however, in our opinion two years is excessive. Instead, staff recommends eighteen months. In staff's opinion, eighteen months is a timeframe that is more commensurate with the actual time this Applicant was delayed. An eighteen-month extension will, therefore, restore the original timeframe that would have been available for completion of the approvals for the project, while keeping the project moving forward at a pace that will hopefully reduce the risk that its adequate public facilities validity will be in jeopardy of expiring¹.

CONCLUSION

It is staff's determination that the Applicant's participation as part of a development team involved in the competitive procurement process for the "Silver Place" public-private development project resulted in delays which prevented the Applicant from submitting a site plan for the subject approval. These delays are reasonable justification upon which the Planning Board can base the approval of a limited extension of the current validity periods for the Project Plan and Preliminary Plan pursuant to Section 59-D-2.7(c) of the Zoning Ordinance and Section 50-35(h)(3)(d) of the Subdivision Regulations. In staff's opinion, the length of the extension should be limited to eighteen months. Staff therefore recommends that the Project Plan be extended to October 13, 2009, with the Project Plan to be validated by the filing of a complete site plan by April 13, 2009; and the Preliminary Plan be extended to October 17, 2010 to allow adequate time for all issues to be addressed prior to plat recordation.

Attachments:

Preliminary and Project Plan Opinions
Extension request dated April 18, 2007

¹ Per the preliminary plan approval, the adequate public facilities review is valid for sixty-one (61) months from the date of mailing of the Planning Board opinion, or April 17, 2011.

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760
301-495-4500, www.mncppc.org

Public Hearing Date: January 19, 2006

Date Mailed: MAR 17 2006

Action: Approved Staff Recommendation
Motion of Commissioner Wellington,
seconded by Commissioner Robinson,
with a vote of 5-0;

Chairman Berlage and Commissioners
Perdue, Bryant, Wellington, and Robinson
voting in favor.

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 120060420 (formerly 1-06042)
NAME OF PLAN: 8711 Georgia Avenue Office

The date of this written opinion is MAR 17 2006 (which is the date that this opinion is mailed to all parties of record). 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 of Court – State).

I. INTRODUCTION

On October 7, 2005, 8711 Georgia Avenue Associates, L.L.P. ("Applicant") submitted an application for the approval of a preliminary plan of subdivision of property in the CBD-2 zone ("Application" or "Preliminary Plan"). The Application proposed to create 1 lot on 0.8767 acres of land (gross tract area) located on the east side of Georgia Avenue, between the intersection of Cameron Street and Planning Place, in the Silver Spring CBD master plan area ("Property" or "Subject Property"). The Application was designated Preliminary Plan No. 120060420 (formerly Plan No. 1-06042). On January 19, 2006, the Preliminary Plan was brought before the Montgomery County Planning Board for a public hearing ("Hearing"). At the Hearing, the Planning Board heard testimony and received evidence submitted in the record on the Application.

The record for this application ("Record") closed at the conclusion of the public hearing, upon the taking of an action by the Planning Board. The Record includes: the

information on the Preliminary Plan Application Form; the Planning Board staff-generated minutes of the Subdivision Review Committee meeting(s) on the Application; all correspondence and any other written or graphic information concerning the Application received by the Planning Board or its staff following submission of the Application and prior to the Board's action at the conclusion of the public hearing, from the Applicant, public agencies, and private individuals or entities; all correspondence and any other written or graphic information issued by Planning Board staff concerning the application, prior to the Board's action following the public hearing; all evidence, including written and oral testimony and any graphic exhibits, presented to the Planning Board at the public hearing.

II. SITE DESCRIPTION

The Subject Property is located on the east side of Georgia Avenue (MD 97), between the intersection of Cameron Street and Planning Place in downtown Silver Spring. The original lots were recorded in the land records on January 20, 1942 by plat for two parcels of property: Parcel N107 of the Silver Spring J.C. Wilson Estate (Plat Book 170, page 14) and Parcel N109. The Property is abutted to the north by a 13-story office building and to the south by a 9-story office building fronting Georgia Avenue and a 2-story building, currently under renovation with access to Cameron Street. Directly to the east of the site is the Planning Place Public Garage (Garage No. 2), separated by a driveway and sidewalk. The driveway to the parking lot extends from Cameron Street to the south of the entrance drive for the M-NCPPC headquarters building.

The Property is presently accessible by vehicles from Georgia Avenue, a 6-lane major divided highway. Development along Georgia Avenue consists of a mix of mid to high-rise commercial and residential buildings, many of which contain ground floor retail space. The zoning along the Georgia Avenue corridor is primarily CBD-2, with segments of CBD-3 property near the core and CBD-R2 zoned property to the south and west. The M-NCPPC property to the north is zoned CBD-1.

The Property serves presently as a surface parking lot for the tenants of the adjacent Zalco building to the south. The parking lot has separate ingress and egress from Georgia Avenue and is separated by a masonry wall from the Fenton Street public alley extension that provides access to the public garage. The Property drops in grade by approximately 9 feet from west to east, with the existing wall serving as a retaining wall for a portion of the site. The entrance to the site contains small shrubs and one shade tree. The remainder of the site is paved. An asphalt island with overhead lights separates the center of the parking lot. Wachovia Bank operates a two-lane drive-through with a canopy near the southwestern boundary.

III. PROJECT DESCRIPTION:

The Preliminary Plan proposes 152,740 square feet of mixed-use, non-residential development, including 148,278 gross square feet of office space and 4,462 square feet of retail space on the ground floor, on a lot totaling 31,116 square feet or 0.7143 acres (net tract area). The site is being developed using the optional method. The Zoning Ordinance permits a maximum height of 143 feet and a non-residential square footage equal to 4.0 Floor Area Ratio (FAR). This proposal requests full build out at 152,740 square feet, with a building height of 143 feet.

Access to the proposed building will be from Georgia Avenue via a right-in/right-out movement. (The center median in Georgia Avenue precludes left-in or left-out ingress and egress.) Parking will be provided by an integrated below and above grade parking structure of 326 spaces. Pedestrian access is proposed via a sidewalk connection to Georgia Avenue that will extend through the site, eastward to the Planning Place parking garage alley/driveway.

IV. SUMMARY OF TESTIMONY AND EVIDENCE IN RECORD

During the Hearing, the Planning Board's expert technical staff ("Staff") recommended approval of the proposed Preliminary Plan in accordance with the analysis and recommendation set forth in its staff report to the Planning Board dated January 6, 2006 ("Staff Report"). The Applicant appeared at the Hearing represented by legal counsel. Counsel for the Applicant stated that the Applicant accepted the Staff recommendation and conditions regarding the Preliminary Plan.¹ Applicant's Counsel informed the Board that Applicant had conferred with Transportation Planning Staff concerning the approximately 1,500 square foot increase in the amount of office space (from the area of office space factored in the traffic study) and that Transportation Planning Staff had confirmed that the increase in office space would not impact the results of the traffic study. No other speakers testified at the Hearing and the record contains no correspondence in opposition to the Application.

V. FINDINGS

Having given full consideration to the recommendations of its Staff, which the Board adopts; the recommendations of the applicable public agencies²; the Applicant's

¹ The Board heard testimony regarding additional issues relevant to the approval of the concurrently reviewed Project Plan, as discussed in the Opinion for Project Plan No. 920050020.

² The Application was referred to outside agencies for comment and review, including the Washington Suburban Sanitary Commission, the Department of Public Works and Transportation, the Department of Permitting Services and the various public utilities. All of

position; and other evidence contained in the Record, which is hereby incorporated in its entirety into this Opinion, the Montgomery County Planning Board finds, based on uncontested evidence of record, that:

- a) Preliminary Plan No. 120060420 substantially conforms to the Silver Spring CBD Sector Plan.

The Sector Plan outlines six themes, which articulate the shared goals and vision for a revitalized Silver Spring. Three of these six themes—*i.e.* a *Green Downtown*, a *Commercial Downtown* and a *Pedestrian-friendly Downtown*—directly apply to this development. The Sector Plan encourages commercial and retail uses as important components of the revitalization efforts in downtown Silver Spring. The project satisfies the above-noted themes through, among other things:

1. Providing a pocket park at the eastern edge of the Property;
2. Introducing 148,278 gross square feet of office space and 4,462 square feet of retail space on land that is presently underutilized as a surface parking lot; and
3. Creating a mid-block pedestrian connection from Georgia Avenue to Fenton Street extended (the public garage driveway). New public open spaces, including the pocket park, which will incorporate a sculptural element will further assist in achieving the goal of a pedestrian-friendly downtown. To further encourage the development of an active urban street, the Preliminary Plan proposes a street-facing building entrance that is easily accessible, with highly visible public spaces as activity generators. The proposal improves the quality of the pedestrian environment by providing the Silver Spring streetscape treatment required for optional method projects.

The development of the project will significantly further the Sector Plan objective of stabilizing the Silver Spring CBD Core's residential component, while expanding the commercial base and providing an appropriate transition between the mix of commercial uses north and east of the project at the Spring Street/Cameron Street intersection to the predominately residential neighborhoods to the north.

The Preliminary Plan proposes to use the optional method of development and is in conformance with the goals and objectives of the Sector Plan. Again, the proposed development maximizes its gross floor area of 152,740 square feet or 4.0 FAR, which is the maximum permitted on the site for non-residential projects. The site takes full advantage of the development potential for a currently underutilized site

these agencies recommended approval of the application.

The Sector Plan recommends a 126-foot right-of-way for Georgia Avenue. The Board's approval of the Preliminary Plan is conditioned upon, among other things, right-of-way dedication for Georgia Avenue of sixteen feet along the Property's frontage to achieve this width.

- b) Public facilities will be adequate to support and service the area of the proposed subdivision.

Staff advised the Board that it had reviewed and evaluated a traffic study submitted by the Applicant, which study analyzes the impact of this development on the area transportation system as part of the required Local Area Transportation Review ("LATR"). A total of three intersections were included in the study area. The site-generated trips were added to the existing and background traffic to form the total future traffic. All traffic was assigned to three intersections and Staff advised the Board that the results—which are included in the Staff Report—demonstrate that each of those intersections would operate within the congestion standard of 1,800 Critical Lane Volume (CLV) for the Silver Spring Central Business District (CBD) Policy Area. Therefore, the Board finds that the proposed development will pass the LATR test. The Applicant will enter into a Traffic Mitigation Agreement ("TMA") with the Planning Board and the County to help the Project achieve the non-driver commuting goal for development in the Silver Spring CBD. Staff informed the Board that the traffic study suggests that some signal timing may need to be adjusted on Georgia Avenue by the MCDPWT, which adjustments can be addressed at the time of site plan or as operational needs dictate following construction.

In addition to the adequacy of roadways, Staff advised the Board that other public facilities were adequate to handle the additional development, including water, sewer, pedestrian access, fire and rescue services, and stormwater management. Staff informed the Board that the WSSC has indicated that the local water and sewer service are adequate to accommodate the new structure. With regard to stormwater management, the MCDPS has reviewed the latest concept and recommended approval on December 15, 2005. The Department of Fire and Rescue Services has approved the layout as noted in its January 6 memorandum.

- c) The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision.
- d) The application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A. This finding is subject to the applicable condition(s) of approval.

- e) The application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by the Montgomery County Department of Permitting Services ("MCDPS") that the Stormwater Management Concept Plan meets MCDPS' standards.
- f) The Record of this application does not contain any contested issues; and, therefore, the Planning Board finds that any future objection, which may be raised concerning a substantive issue in this application, is waived.

VI. CONDITIONS OF APPROVAL

Finding Preliminary Plan No. 120060420 in accordance with the purposes and all applicable regulations of Montgomery County Code Chapter 50, the Planning Board approves Preliminary Plan No. 120060420 subject to the following conditions:

- 1) Approval under this preliminary plan is limited to 152,740 square feet of development, including 148,278 square feet of office space and 4,462 square feet of general retail.
- 2) Prior to issuance of building permits, applicant to enter into an agreement with the Planning Board to participate in the Silver Spring Transportation Management District
- 3) Compliance with the conditions of approval for the preliminary forest conservation plan. The applicant must satisfy all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permits.
- 4) The applicant shall dedicate all road rights-of-way shown on the approved preliminary plan to the full width (additional 16 ft. from existing right-of-way) mandated by the Master Plan unless otherwise designated on the preliminary plan.
- 5) Compliance with the conditions of approval of the MCDPS stormwater management approval dated May 6, 2005 and as revised December 15, 2005.
- 6) Compliance with conditions of MCDPWT letter dated December 2, 2005 unless otherwise amended.
- 7) Concurrent with site plan review, coordinate with DPWT on the design of the pedestrian access to the driveway/alley serving the County parking garage.
- 8) Show location of bike lockers or bike racks at the time of site plan as required by DPWT.
- 9) Concurrent with site plan review, submit a truck circulation plan for MNCPPC, MCDPS and SHA review and approval.
- 10) Access and improvements as required to be approved by MDSHA prior to issuance of access permits.

- 11) Final approval of the location of buildings, on-site parking, site circulation, sidewalks, and bikepaths will be determined at site plan.
- 12) A landscape and lighting plan must be submitted as part of the site plan application for review and approval by technical staff.
- 13) The Adequate Public Facility (APF) review for the preliminary plan will remain valid for sixty-one (61) months from the date of mailing of the Planning Board opinion.
- 14) Other necessary easements

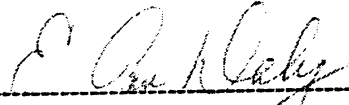
This Preliminary Plan will remain valid for 36 months from its Initiation Date (as defined in Montgomery County Code Section 50-35(h), as amended). Prior to the expiration of this validity period, a final record plat for all property delineated on the approved preliminary plan must be recorded among the Montgomery County Land Records or a request for an extension must be filed.

APPROVED AS TO LEGAL SUFFICIENCY
12/17
M-NOFPG LEGAL DEPARTMENT
DATE 2/14/16

[CERTIFICATION OF BOARD VOTE ADOPTING OPINION ON FOLLOWING PAGE]

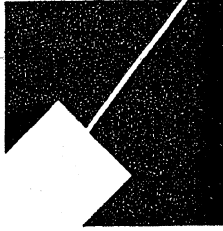
CERTIFICATION OF BOARD ADOPTION OF OPINION

At its regular meeting, held on **Thursday, March 9, 2006**, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, by unanimous consent **ADOPTED** the above Opinion which constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law for **Preliminary Plan No. 120060420, 8711 Georgia Avenue**. Vice Chair Perdue was absent.



Certification As To Vote of Adoption
E. Ann Daly, Technical Writer

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760
301-495-4500, www.mncppc.org

Date of Mailing: MAR 14 2006

**MONTGOMERY COUNTY PLANNING BOARD
OPINION**

Project Plan No.: 920050020
Project: 8711 Georgia Avenue
Date of Hearing: January 19, 2006

Action: *APPROVAL SUBJECT TO CONDITIONS.* (Motion to approve was made by Commissioner Robinson; duly seconded by Commissioner Wellington; with a vote of 5-0, Commissioners Berlage, Perdue, Bryant, Wellington, and Robinson voting in favor.)

The date of this written opinion is MAR 14 2006 (which is the date that this opinion is mailed to all parties of record). 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 of Court – State).

Consistent with Montgomery County Code § 59-D-2.7, Project Plan No. 9-04007 will remain valid for 24 months from the Initiation Date (30 days after the mailing of the written opinion or at the conclusion of an administrative appeal, including the running of any further applicable appeal periods) provided that a complete site plan application is filed within 18 months of the Initiation Date.

I. INTRODUCTION

On January 1, 2005, 8711 Georgia Avenue Associates, LLC ("Applicant") submitted an application for the approval of a project plan, which proposes 152,740 square feet of development, including 148,278 square feet of office space and 4,462 square feet of general retail under the optional method of development on one (1) lot consisting of 0.8766 gross acres of CBD-2-zoned land located in the Silver Spring Central Business District ("Project Plan" or "Application"). The Project Plan was designated Plan No. 9-05002 (920050020). The Applicant filed a concurrent Preliminary Plan application (No. 1-06042)

(120060420) ("Preliminary Plan"). On January 19, 2006, the Project Plan was brought before the Montgomery County Planning Board for a public hearing ("Hearing"). At the Hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application.

A. THE SUBJECT PROPERTY

The Subject Property is located directly on Georgia Avenue, approximately 130 feet north of the intersection with Cameron Street in downtown Silver Spring. The rectangular site abuts a thirteen-story office building to the north, a nine-story office building to the south fronting Georgia Avenue, and a two-story building with access from Cameron Street. Directly to the east of the site is the Planning Place Public Garage (Garage No. 2), separated from the Subject Property by a driveway and sidewalk. The driveway to the parking lot extends from Cameron Street to the south of the entrance drive for the M-NCPPC headquarters building.

Georgia Avenue is a six-lane major divided highway, which provides access to the District of Columbia to the south and regional highways in Montgomery County to the north. The section of roadway between Spring Street and Colesville Road contains metered parking on both sides. Georgia Avenue consists of a mix of mid to high-rise commercial and residential buildings, many of which contain ground floor retail space. The zoning along the Georgia Avenue corridor is primarily CBD-2, with segments of CBD-3 property near the core and CBD-R2 zoned property to the south and west. The M-NCPPC property to the north is zoned CBD-1.

The Subject Property is located at 8711 Georgia Avenue in the Silver Spring Central Business District and is zoned CBD-2. The Property contains two parcels: Parcel N107 of the Silver Spring J.C. Wilson Estate (Plat Book 170, page 14); and Parcel N109 (an unrecorded parcel). The Property presently serves as a surface parking lot for tenants of the adjacent Zalco building to the south. The parking lot has separate ingress and egress from Georgia Avenue and is physically separated by a masonry wall from the Fenton Street public alley extension, which provides access to the public garage. The Property drops in grade by approximately 9 feet from west to east, with the existing wall acting as a retaining wall for a portion of the site. The entrance to the site contains small shrubs and one shade tree. The remainder of the site is paved. The center of the parking lot is separated by an asphalt island with overhead lights. Wachovia Bank operates a two-lane drive thru with a canopy near the southwestern boundary.

B. BACKGROUND

1. Proposed Development

The Applicant proposes 152,740 gross square of mixed-use, non-residential development, including 148,278 gross square feet of office space and 4,462 square feet of retail space on the ground floor. The application is in the CBD-2 Zone and proposes to take advantage of the full development potential available for the optional method of development.

Building Design

The proposed building directly abuts the Crowne Plaza Building to the north and is approximately 90 feet wide by 185 feet deep. The structure is proposed for a maximum height of 143 feet, measured from the centerpoint of the building from the curb on Georgia Avenue. The front of the building facing Georgia Avenue contains ground floor retail as well as a service area and a lobby, both of which extend for two floors. The building contains seven proposed levels of parking, including two levels below grade and five above, with a portion of the parking at ground level. Floors 6-13 will contain the office space. Staff advised the Board that the building was placed as close to Georgia Avenue as possible in order to create an urban edge and provide visibility and accessibility to the ground floor retail space.

Public Use Space and Amenities

The Applicant is providing a total of 19,539 square feet or 62.8 percent of on and off-site public use space. The total public use space provided is based on the net lot area of the site. The on-site public use space consists of two separate areas linked by a covered pedestrian walkway, located on the south side of the proposed building. An at-grade urban pocket park is proposed on the eastern end of the Property between the driveway to the public parking garage and the proposed building. The park is comprised of specialty paving, accent planting, and lighting, seating and the public art component. The public art will incorporate a sculptural element located in the center of the urban park as a focal point for residents, pedestrians and nearby tenants.

Off-site improvements include streetscape improvements along the Georgia Avenue frontage to the intersection with Cameron Street; and from Cameron Street to the entrance of the parking garage driveway. Off-site improvements are comprised of pavers, street lights and street trees in conformance with the Silver Spring Streetscape Standards. The total off-site improvements equate to 11,264 square feet or 36.2 percent of the net lot area.

The Applicant has also proposed an optional off-site improvement to the sidewalk associated with the driveway to the public parking garage; however, the Applicant may provide such improvement only if the Applicant is granted permission by the Montgomery County Department of Public Works and Transportation and the Silver Spring Parking Lot District. The improvement to the sidewalk associated with the alley is a critical link for future pedestrian connection from Georgia Avenue through the site, from the public parking garage and for a north south connection from the M-NCPPC property to Cameron Street.

Pedestrian and vehicular access

The Project Plan proposes to close down the two vehicular access points that presently exist on the site from Georgia Avenue, and provide one 22-foot-wide drive aisle accessing at the southern end of the property. The driveway provides ingress and egress to the seven-level parking garage for tenants and visitors of the retail and office space. The ground level of parking includes a drive-through for the bank in the adjacent Zalco building that presently operates from the existing surface parking lot. The circulation provides for five stacking spaces and full operational movement around the bank teller area. The garage accommodates the total amount of required parking spaces for the office and retail uses, in accordance with the Montgomery County Zoning Ordinance. The parking requirements for office use are 2.1 per 1,000 square feet, for a project requirement of 312 spaces and the requirement for retail use is 3.5 per 1,000 square feet, for a requirement of 16 spaces. The Applicant is taking advantage of a 15 percent parking credit offered for retail development in proximity to the Metro Station, deleting two parking spaces from the base parking requirement. The total parking requirement, including the credit, totals 326 spaces, which are being provided on the site.

Pedestrian access is improved along the frontage of the property with the Silver Spring streetscape and expansion of the pedestrian experience in front of the ground floor retail space. An eight-foot-wide pedestrian walkway under the canopy of the proposed building connects the public use space on the eastern edge of the property, adjacent to the driveway for the public parking garage. The existing masonry wall will be removed by the Applicant to ensure pedestrian access to the parking garage and for a north and south connection along the driveway.

The project plan proposes an additional 16 feet of dedication along the Georgia Avenue frontage for a total right-of-way of 126 feet. The Applicant will need to enter into an

agreement with the Parking Lot District for the removal of the masonry wall at the eastern edge of the property.

II. SUMMARY OF TESTIMONY AND EVIDENCE IN RECORD

During the Hearing, the Planning Board's expert technical staff ("Staff") recommended approval of the proposed Project Plan, in accordance with the analysis and recommendation set forth in its staff report to the Planning Board dated January 6, 2006 ("Staff Report"). Using GIS maps, aerial photographs, and oblique angle aerial photography, along with rendered analytical plans, Staff described the proposed Project Plan, including a review of development data and zoning conformance, existing site conditions, surrounding development, and road alignments. Staff testified that the proposed Project Plan is consistent with the findings in the staff report.

The Applicant appeared at the Hearing represented by legal counsel. Counsel for the Applicant stated that the Applicant accepted the Staff recommendation and conditions regarding the Project Plan.¹ No other speakers testified at the Hearing and the record contains no correspondence in opposition to the Application.

III. FINDINGS

Section 59-D-2.42 of the Zoning Ordinance sets forth the findings that the Planning Board must make in its review of a project plan application. Having given full consideration to the recommendations and findings of its Staff (including those contained in the Staff Report dated September 27, 2005), which the Board hereby adopts and incorporates by reference, the testimony and evidence presented and contained in the record of the application, the Montgomery County Planning Board makes the following findings:

- (a) *As conditioned, the proposal complies with all of the intents and requirements of the zone.*

A. Intents of the Zone

Section 59-C-6.212 of the Montgomery County Zoning Ordinance states the

¹ The Board heard testimony regarding additional issues relevant to the approval of the concurrently reviewed Preliminary Plan, as discussed in the Opinion for Preliminary Plan No. #120060420 (formerly Plan No. 1-06042).

purposes that the CBD zones are designed to accomplish. The following statements analyze how the proposed Project Plan conforms to these purposes:

- (1) *"to encourage development in accordance with an adopted and approved master or sector plan, or an urban renewal plan approved under Chapter 56 by permitting an increase in density, height, and intensity where the increase conforms to the master or sector plan or urban renewal plan and the site plan or combined urban renewal project plan is approved on review by the Planning Board."*

The Project Plan proposes to use the optional method of development and is in conformance with the Silver Spring Central Business District and Vicinity Sector Plan. The proposed development is a high-rise office development with ground floor retail. High-density commercial retail uses are permitted in the CBD-2 Zone.

The building will be a maximum of 143 feet in height (13 floors), which is in conformance with the Montgomery County Zoning Ordinance under the Optional Method of development. The project is proposing 152,740 square feet of development, including 148,278 square feet of office space and 4,462 square feet of ground floor retail. The proposal reflects the maximum non-residential floor area ratio (FAR) of 4.0.

The Project Plan will accomplish important Sector Plan objectives by upgrading the physical environment and providing a pedestrian environment with local retail opportunities. The proposal improves the area by replacing an underutilized surface parking lot with a modern mixed-use non-residential high-rise building.

- (2) *"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 responds to the need for employment opportunities and retail services in Silver Spring and addresses the need for smart growth policies where infrastructure, community facilities and elements of an urban district already exist. The Sector Plan encourages commercial development and retail as an

important component to the revitalization efforts in Silver Spring, especially along a major corridor such as Georgia Avenue.

Under the optional method, this project encourages the development of active urban streets by providing public spaces along street edges and improves the quality of the pedestrian environment within the improved streetscapes. The improved streetscape, along with the amenities, addresses the need for public interaction and enhances the downtown Silver Spring area. The project supports the economic base in downtown Silver Spring and adds an economic infrastructure for commercial and retail businesses near the core area.

- (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 proposed project strengthens the northern boundary of the CBD by complementing the scale and mix of existing design elements along Cameron Street while respecting the height limitations and providing a compatible and desirable relationship with adjacent and surrounding uses. The proposed design provides a retail component along the Georgia Avenue frontage that will blend in with the existing and planned retail and office uses. This provides the pedestrian-friendly environment envisioned in the Sector Plan. The 143-foot building provides the urban context for the adjacent mix of higher density uses and buildings fronting Georgia Avenue.

The design creates an effective relationship with adjacent uses and amenities and allows for a more interactive pedestrian and vehicular pattern.

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

The proposed development is located approximately 2000 feet from the Silver Spring Metro Station. The proximity to transit facilities, as well as the downtown employment core, will reduce the dependency on vehicles for the retail and office patrons; however, the Applicant has chosen to provide the required number of parking spaces on the site. The streetscape improvements along Georgia Avenue and Cameron Street facilitate the desire for pedestrian

connectivity to the metro station and the areas of development within Silver Spring, and provide the vital connections to Colesville Road.

The Applicant also is required to enter into a traffic mitigation agreement (TMA) with the Planning Board to help Montgomery County achieve the non-driver commuting goal for development in the Silver Spring CBD.

(5) *"To improve pedestrian and vehicular circulation."*

This Project Plan encourages the development of active urban streets and improves the quality of the pedestrian environment by providing the enhancement to the streetscape as prescribed in the Silver Spring Streetscape Plan (April 1992) Technical Manual, as amended.

Vehicular circulation is enhanced with improved right-of-way along the east side of Georgia Avenue, directly along the frontage of the Subject Property. The Applicant is dedicating an additional sixteen feet along its Georgia Avenue frontage in order to expand the total right-of-way dedication to 63 feet from the centerline of Georgia Avenue. The full width dedication achieves a total right-of-way of 126 feet on Georgia Avenue and will ensure complete accommodation of the optional method streetscape treatment on the Applicant's side of each street.

The entrance to the parking garage is located at the southeastern end of the rectangular-shaped building in the middle of the site. The driveway is 30-feet-wide to accommodate two-way vehicular circulation to the structured parking facility and loading area at the end of the drive. The driveway also provides ingress and egress to the seven-level parking garage for tenants and visitors of the retail and office space. The circulation provides for five stacking spaces and full operational movement around the bank teller area. The garage accommodates the total amount of required parking spaces for the office and retail, in accordance with the Montgomery County Zoning Ordinance for parking. Signs indicating traffic circulation in and out of the garage will be provided to promote safety for pedestrian activity in the public use space.

An 8-foot-wide pedestrian walkway under the canopy of the proposed building, adjacent to the driveway for the public parking garage, connects to the public use space on the eastern edge of the property. The walkway will be at-grade, ensuring adequate pedestrian circulation from Georgia Avenue through the site

to the driveway to the adjacent parking garage. The existing masonry wall will be removed by the Applicant to ensure pedestrian access to the parking garage and for a north and south connection along the driveway.

The streetscape improvements along Georgia Avenue and Cameron Street facilitate the desire for pedestrian connectivity to the nearby businesses, the adjacent parking garage and metro station to the southwest. The streetscape improvements are being expanded along the north side of Cameron Street to Georgia Avenue and the east side of Georgia Avenue along the property frontage. The full streetscape improvements along the east side of Cameron Street will complete a portion of the block, opposite the subject site, in context with the streetscape improvements proposed for the United Therapeutics project (920040070) and the Cameron House project (920060020).

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

This section is not applicable; however, the proposed employment and retail component proposed with the project will complement the surrounding residential neighborhoods and communities.

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

The Project Plan, in conjunction with the concurrent preliminary plan, consolidates two parcels into one lot for a combined high-rise development to achieve full density potential in the CBD.

The Project Plan responds to the balance for employment and retail activities in downtown Silver Spring and addresses the need for smart growth policies where infrastructure, community facilities and elements of an urban district already exist. The Sector Plan encourages employment as an important component to the revitalization efforts for downtown Silver Spring and does recommend a zone where commercial uses are permitted.

B. Requirements of the CBD-2 Zone

The following table demonstrates the conformance of the Project Plan with the development standards under the Optional Method of Development.

PROJECT DATA TABLE FOR CBD-2 ZONE

	Zoning Ordinance Development Standard	Development Standard Approved by Planning Board and Binding on Applicant
Gross Tract Area (sf.):	22,000 sf	38,185 (0.87 ac.)
Prior Dedication on Georgia Avenue (sf):		5,151
Proposed Dedication with this Application (sf):		<u>1,918</u>
Net Site Area (after dedication)		31,116 (0.71 ac.)
Max. Density:		
Max. Non-Residential Density		
FAR:	4.0	
(SF)	(152,740)	
Office:		3.88 (148,278)
Retail:		0.02 <u>(4,462)</u>
Total Development		4.0 (152,740)
Max. Building Height (ft.):	143	143 (as measured From center of the Building on Georgia Avenue as shown on The Project Plan)
Number of Floors	Not specified	13
Min. Building Setbacks (ft.):		
Front Yard (Georgia Avenue)	Not specified	13
Rear yard	Not specified	32
Side Yard (north)	Not specified	0
Side Yard (south)	Not specified	30

	Zoning Ordinance Development Standard	Development Standard Approved by Planning Board and Binding on Applicant
Parking (number of spaces):		
Office Space: (148,278 gsf @ 2.1 sp/1,000)	312	
Retail Uses: (7,330 gsf @ 5 sp./1000)	16	
Subtotal:	328	
15% credit for retail in proximity to Metro Station	(2)	
Total Parking Required	326	326
Public Use Space (% of net lot area):		
On-Site	20% or 6,223 sf	26.6% or 8,275 sf
Off-Site		36.2% or 11,264 sf
Total On and Off-Site Public Use Space		62.8% or 19,539 sf

Amenities and Facilities Summary

On-Site Improvements

Georgia Avenue and Urban Pocket Park

- Brick paved public plaza along majority of site frontage to complement streetscape improvements.
- Expand the existing streetscape improvements along Georgia Avenue to include specialty pavers.
- Public Art to highlight public's interest in the revitalization efforts of downtown Silver Spring. A public art program shall be developed to include opportunities for sculptural elements in the design and seating areas.
- Specialty lighting in the plaza and up lighting of the art elements to softly accentuate and visually activate the plaza at night.
- The paving in the plaza will be designed to include patterns that complement the artwork and the benches.
- Landscape beds and planters with irrigation and plant material to add

seasonal accent and color. Plaza trees to be complementary to the existing Cameron Street streetscape as well as providing a canopy for shade within the seating areas.

- Existing overhead utilities to be installed underground consistent with the Silver Spring Master Plan.
- Make available a space for public outdoor interaction and activities.
- Make available a space for entertainment, as needed in conjunction with the Silver Spring Urban District (SSUD).

Off-Site Improvements

Georgia Avenue Right-of-Way

- Modified Streetscape (Type B) on the east side of Georgia Avenue along the entire property frontage to Cameron Street to include brick pavers, street trees and lighting consistent with Silver Spring Streetscape Plan Technical Manual.
- Existing overhead utilities to be installed underground consistent with the Silver Spring Master Plan.
- Existing trees in front of the existing Zalco Building to remain.

Cameron Street Right-of-Way

- Streetscape (Type B) on the north side of Cameron Street, from the Georgia Avenue intersection to the driveway entrance to the public garage, to include street trees (Honey Locust), brick pavers and street lights (Washington Globe) consistent with Silver Spring Streetscape Plan Technical Manual.
- Existing overhead utilities to be installed underground consistent with the Silver Spring Master Plan.

(b) As conditioned, the proposal conforms to the approved and adopted Sector Plan.

The Project Plan proposes to use the optional method of development and is in conformance with the Silver Spring Central Business District and Vicinity Sector Plan. High-density commercial retail uses are permitted in the CBD-2 Zone. The development will accomplish important Sector Plan objectives by providing employment opportunities within the CBD, upgrading the physical environment and providing a pedestrian environment with local retail opportunities.

Zoning and Land Use:

The approved CBD Sector Plan recommended CBD-2 (Central Business District, 2.0) zoning for this site. This zoning was enacted through the Sectional Map Amendment (SMA) adopted July 18, 2000, per County Council Resolution 14-600.

Sector Plan Conformance:

The Silver Spring Central Business District and Vicinity Sector Plan approved by the County Council on February 1, 2000, outlines six themes, which articulate the shared goals and vision for a revitalized Silver Spring. Three of these six themes (*i.e. a Green Downtown, a Commercial Downtown and a Pedestrian-friendly Downtown*) directly apply to this development. The Sector Plan encourages commercial retail as important components of the revitalization efforts in downtown Silver Spring.

The Project Plan will include new public open spaces and an art amenity. This project encourages the development of active urban streets by providing a street-facing building entrance and easily accessible and highly visible public spaces as activity generators. This proposal improves the quality of the pedestrian environment by providing the Silver Spring streetscape treatment required for optional method projects.

The development of the Project will significantly further the objective of stabilizing the core area of Silver Spring, while expanding the commercial base and providing an appropriate transition between the mix of commercial uses north and east of the project at the Spring Street/Cameron Street intersection to the predominately residential neighborhoods to the north.

- A. Sector Plan Street Rights-of-Way: The Sector Plan recommends a 126-foot right-of-way for Georgia Avenue. As a condition of approval of the Preliminary Plan, Applicant shall dedicate sixteen feet of Georgia Avenue right-of-way .
- B. Streetscape: The Applicant will improve the east side of Georgia Avenue along the Property frontage using the Type B treatment recommended in the *Silver Spring Streetscape* (April 1992) technical manual, as amended. In addition to improving Georgia Avenue right-of-way along its Property

frontage, the Applicant will provide streetscape improvements from the southern Property boundary to the intersection of Georgia Avenue and Cameron Street and, additionally, shall provide streetscape improvements along the north side of Cameron Street from Georgia Avenue to the driveway entrance to the public parking garage (Fenton Street extended), as illustrated in the Staff Report.

The Applicant has proposed additional off-site sidewalk improvements along the west side of the driveway (Fenton Street Extended) from the Subject Property boundary to the intersection with Cameron Street, if permitted by DPWT/Silver Spring Parking Lot District. The improvements would include new brick paving and lighting in accordance with *Silver Spring Streetscape* (April 1992) technical manual, or as amended. The Applicant proposes to remove the masonry wall that separates the existing sidewalk and the existing parking lot along the entire property frontage in order to facilitate better pedestrian circulation through the site and from the public garage, as well as provide improved visibility to the public use space. Staff recommended and the Board encourages the Applicant to continue its dialogue with the Silver Spring Parking Lot District and the Montgomery County Department of Public Works and Transportation to pursue approval for the improvements to the sidewalk associated with the alley.

- C. Sector Plan Bikeways: The Sector Plan recommends a Class II or III (on-street) bikeway for Cameron Street along the driveway to the public parking garage (Route 15-Fenton Street extended). The Applicant shall provide a Class III (signed, shared with motorized vehicles) bikeway for both Cameron Street and Fenton Street extended (to the extent DPS permits such a bikeway for Fenton Street extended).

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

The project is complementary to the range of commercial and residential characteristics of the surrounding neighborhood. The proposed development is compatible with the existing development occurring in downtown Silver Spring and encourages redevelopment of underutilized and vacant properties in the CBD. The building configuration, placement and architecture are in keeping with an urban

environment where structures abut each other to maximize the development potential on the site.

The surrounding and adjacent properties are a mix of different uses, from commercial to residential. The height and massing of the surrounding buildings range from two-stories to fifteen-stories with various building and architectural types that are integral to the vitality of an urban downtown area, including the Silver Spring Towers across Georgia Avenue and the adjacent office and Crowne Plaza hotel. In addition to the commercial buildings is the 4-6-story public parking structure that creates an edge on Fenton Street extended to the east of the site. The buildings range in size and mass and offer a varying scale along Georgia Avenue and Cameron Street.

The design and scale of the project, pedestrian and vehicular circulation and improvements to the streetscape provide an enhancing and interactive relationship with the northern boundary of the CBD and downtown Silver Spring.

- (d) *As conditioned, the proposal 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, article II, is subject to a traffic mitigation agreement that meets the requirements of that article.*

The project proposes office space and ground floor retail space amid a mix of nearby housing projects and commercial businesses within the downtown Silver Spring area. Parking for the proposed office and retail space will occur on-site within a 7-level parking garage, including two of the levels below-grade. The project will provide, onsite, all the 326 parking spaces required under Zoning Ordinance standards. As such, the Board finds that the proposed project will not overburden existing public parking garages that are a part of the Silver Spring Parking Lot District.

In addition, the improvements that are being made to the streetscape facilitate and encourage pedestrian accessibility to the metro and encourage the future residents and retail patrons to take advantage of existing vehicular traffic conditions.

In addition to parking, an Adequate Public Facilities Ordinance (APFO) analysis is included in the review of the concurrent Preliminary Plan. As a part of that review,

the Applicant submitted a traffic study to evaluate the impact of this development on the area transportation system, as part of the required Local Area Transportation Review. A total of three intersections were included in the study area. The site-generated trips were added to the existing and background traffic to form the total future traffic. All traffic was assigned to three intersections and the result shows that they are operating within the congestion standard of 1,800 Critical Lane Volume (CLV) for the Silver Spring Central Business District (CBD) Policy Area. Based on this information, Staff concluded that the proposed development will pass the LATR test; and, therefore, the Board finds that the proposed development will not overburden the transportation system.

The Applicant will enter into a Traffic Mitigation Agreement (TMA) with the Planning Board to help the Project achieve the non-driver commuting goal for development in the Silver Spring CBD.

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

The Optional Method of Development permits a more efficient and desirable product than by using the standard method of development. The Project Plan proposes to use the optional method of development and is in conformance with the goals and objectives of the Silver Spring Sector Plan. The proposed development maximizes its gross floor area of 152,740 square feet and a Floor Area Ratio (FAR) of 4.0, which is the maximum permitted on the site for non-residential projects. The permitted gross floor area for a standard method project is 114,555 square feet or an FAR of 3.0. Through the instant proposal, the Applicant takes full advantage of the development potential for a currently underutilized site.

The project will include two significant new public use spaces and an art amenity on the site. The primary public use space will be an interactive pedestrian plaza in the eastern perimeter of the site and adjacent to the driveway to garage no. 2. The project is providing over 62% of new on and off-site public use space, which would not have been possible through the standard method of development. Additionally, the streetscape improvements associated with this proposal greatly enhance the pedestrian connections along Georgia Avenue and complete a section of Cameron Street from the intersection of Fenton Street to Georgia Avenue.

- (f) *The proposal will include moderately priced dwelling units in accordance with Chapter 25A of this Code, if the requirements of that chapter apply.*

This section is not applicable; however, the site does provide amenities and employment opportunities that will attract residents from the nearby residential communities.

- (h) *As conditioned, the proposal satisfies any applicable requirements for forest conservation under Chapter 22A.*

The property is satisfying the forest conservation requirements through canopy coverage of shade trees on the site.

- (i) *As conditioned, the proposal satisfies any applicable requirements for water quality resources protection under Chapter 19.*

The applicant has been granted a revised conditional approval from the Montgomery County Department of Permitting Services (DPS) for Stormwater Management by letter dated November 22, 2005. The concept consists of a waiver of on-site channel protection measures and on-site water quality control via a storm filter. On-site recharge is not required since the project is classified as redevelopment.

IV. PLANNING BOARD ACTION AND CONDITIONS

The Montgomery County Planning Board APPROVES Project Plan Review No. 920050020 for 152,740 gross square feet of development, including 148,278 square feet of office space and 4,462 square feet of general retail on 0.8766 gross acres in the CBD-2 Zone. All site development elements shown on 8711 Georgia project plans stamped by the M-NCPPC on November 28, 2005 shall be required, except as modified by the following conditions:

1. Development Ceiling

The proposed development shall be limited to a maximum of 152,740 gross square feet of development, including 148,278 square feet of office and 4,462 square feet of retail space.

2. Building Height/Mass

The height of the proposed building shall not exceed the maximum height of 143 feet as measured from Georgia Avenue.

3. Transportation Improvements

- a. The proposed development shall dedicate an additional 16 feet of right-of-way for Georgia Avenue (63 feet from the centerline) to provide for a total of 126 feet of right-of-way.
- b. Provide Class III (signed, shared with motorized vehicles) bikeways for Cameron Street (Route 9) and to the extent the Department of Permitting Services permits, provide a designated bikeway for the Garage No. 2 alley (Route 15-Fenton Street Extended).
- c. Enter into an agreement to participate in the Silver Spring Transportation Management District. The agreement shall be signed and executed prior to issuance of the 1st building permit.
- d. The Applicant shall obtain the necessary approvals from the Montgomery County Department of Public Works and Transportation-Parking Operations Section to permit pedestrian movement from the on-site amenity plaza to the parking garage no. 2.

4. Public Use Space

- a. The proposed development shall provide a minimum of 26.6 percent (8,275 square feet) of on-site public use space and 36.2 percent (11,264 square feet) of off-site public use space.
- b. The proposed public use space shall be easily and readily accessible to the general public and used for public enjoyment.

5. Site Design

Enter into an agreement with the DPWT/Silver Spring Parking Lot District to receive permission/permits to remove all or a major part of the existing masonry wall that separates the subject site and the driveway to the public parking garage.

6. Streetscape

- a. The applicant shall provide the full streetscape improvements along the Georgia Avenue frontage using the *Silver Spring Streetscape Plan (April 1992) Technical Manual*, or as amended. The following elements are proposed: stone, precast concrete, brick pavers, street trees, lighting, and any other details that are necessary, including the undergrounding of utilities along the frontage of the property, to fulfill the Silver Spring streetscape standards.
- b. Off-site improvements shall be provided along the property frontage of Georgia Avenue; extended on the east side of Georgia Avenue to the intersection with Cameron Street; and on the north side of Cameron Street from Georgia Avenue to the driveway entrance to the public parking garage.

7. Public Art

A public art program shall be developed to include opportunities within the public use area, which will reinforce the architecture of the building, and provide a place for pedestrians and shoppers to congregate.

8. Staging of Amenity Features

- a. The proposed project shall be developed in one phase.
- b. Landscaping to be installed no later than the next growing season after completion of the proposed building and public plaza.
- c. Streetscape improvements and public art to be installed prior to occupancy of the building.

9. Maintenance and Management Organization

The applicant shall become a member of and enter into an agreement with the Silver Spring Urban District for the purpose of maintaining public open spaces and participating in community events.

10. Coordination for Additional Approvals Required Prior to Site Plan Approvals

The applicant shall secure the following additional approvals prior to Site Plan Review:

Project Plan No. 920050020
8711 Georgia Avenue
Page 20

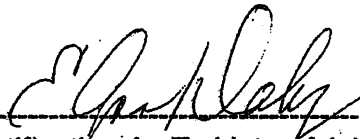
- a. Present the public art components to the Art Review Panel for review and comment that will be available to the Planning Board, prior to scheduling the Planning Board hearing for the site plan application;
- b. Enter into a maintenance agreement with the Silver Spring Urban District for maintenance of all or some of the streetscape improvements.

APPROVED AS TO LEGAL SUFFICIENCY
LAB
M-NCPPC LEGAL DEPARTMENT
DATE 3/2/06

[CERTIFICATION OF BOARD VOTE ADOPTING OPINION ON FOLLOWING PAGE]

CERTIFICATION OF BOARD ADOPTION OF OPINION

At its regular meeting, held on **Thursday, March 9, 2006**, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, by unanimous consent **ADOPTED** the above Opinion which constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law for **Project Plan No. 920050020, 8711 Georgia Avenue**. Vice Chair Perdue was absent.



Certification As To Vote of Adoption
E. Ann Daly, Technical Writer

LINOWES
AND | BLOCHER LLP
ATTORNEYS AT LAW

April 18, 2007

C. Robert Dalrymple
301.961.5208
bdalrymple@linowes-law.com

Joseph P. Lapan
301.961.5172
jlapan@linowes-law.com

Via Hand Delivery

The Honorable Royce Hanson, Chairman
and Members of the Montgomery County Planning Board
Maryland-National Capital Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: 8711 Georgia Avenue Office Building: Request for Project Plan Extension (Project Plan 920050020—the “Project Plan”) and Preliminary Plan Extension (Preliminary Plan 120060420—the “Preliminary Plan”)

Dear Dr. Hanson and Members of the Planning Board:

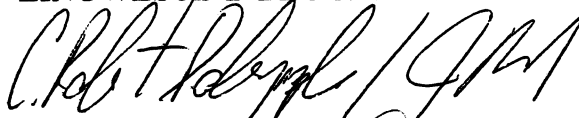
On behalf of 8711 Georgia Avenue Associates, LLC (the “Applicant”), we are hereby filing all required forms and materials to request an extension of the validity period for the Project Plan pursuant to Section 59-D-2.7(c) of the Montgomery County Zoning Ordinance (the “Zoning Ordinance”) and for the Preliminary Plan pursuant to Section 50-35(h)(3) of the Montgomery County Subdivision Regulations (the “Subdivision Regulations”). In addition, attached to this letter as Attachment “1”, we have also included our March 23, 2007 correspondence justifying this request and providing the details and background of the request and the Project Plan and Preliminary Plan approvals.

For all of the reasons stated in our March 23, 2007 letter, the Applicant is requesting that the Project Plan validity period be extended to **April 13, 2010** with the Project Plan to be validated by the filing of a complete site plan by **October 13, 2009** and that the Preliminary Plan validity period be extended to **April 16, 2011**, with the recordation of a final record plat to occur prior to that date. Please contact us to if you have any questions or would like to discuss this request in more detail.

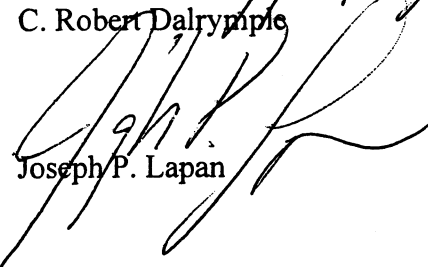
Royce Hanson, Chairman
April 18, 2007
Page 2

Sincerely yours,

LINOWES AND BLOCHER LLP



C. Robert Dalrymple



Joseph P. Lapan

:jpl

cc: Mr. John Carter
Mr. Robert Kronenberg
Ms. Catherine Conlon
Mr. Z. J. Chelec

March 23, 2007

C. Robert Dalrymple
301.961.5208
bdalrymple@linowes-law.com

Joseph P. Lapan
301.961.5172
jlapan@linowes-law.com

Via Hand Delivery

The Honorable Royce Hanson, Chairman
and Members of the Montgomery County Planning Board
Maryland-National Capital Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: 8711 Georgia Avenue Office Building: Request for Project Plan Extension (Project Plan 920050020—the “Project Plan”) and Preliminary Plan Extension (Preliminary Plan 120060420—the “Preliminary Plan”)

Dear Dr. Hanson and Members of the Planning Board:

We are writing on behalf of 8711 Georgia Avenue Associates, LLC (the “Applicant”) to request an extension of the validity period for the Project Plan pursuant to Section 59-D-2.7(c) of the Montgomery County Zoning Ordinance (the “Zoning Ordinance”) and for the Preliminary Plan pursuant to Section 50-35(h)(3) of the Montgomery County Subdivision Regulations (the “Subdivision Regulations”). Per Section 59-D-2.7(a) of the Zoning Ordinance, the Project Plan initiation date is April 13, 2006. Therefore, pursuant to Section 59-D-2.7(b) of the Zoning Ordinance, the Project Plan is valid until April 13, 2008 provided the Applicant files a complete site plan by October 13, 2007. Per Section 50-35(h)(1) of the Subdivision Regulations, the Preliminary Plan initiation date is April 16, 2006. Therefore, pursuant to Section 50-35(h)(2) of the Subdivision Regulations, the Preliminary Plan is valid until April 16, 2009, provided the Applicant record a final record plat for the property prior to the expiration of the validity period.

For a variety of reasons, discussed in more detail below, the Applicant will be unable to prepare and submit a complete site plan by October 13, 2007 and, therefore, requests that the Project Plan validity period be extended by two years to **April 13, 2010** with the Project Plan to be

Royce Hanson, Chairman

March 23, 2007

Page 2

validated by the filing of a complete site plan by **October 13, 2009**. Further, because Section 50-37(b) of the Subdivision Regulations requires a final record plat to comply with an approved site plan and allows the Planning Board to refuse final record plat approval until a site plan is approved, the Applicant also requests that the Preliminary Plan validity period be extended by two years to **April 16, 2011**. This request represents the minimum additional time required for the Applicant to properly prepare and submit a site plan that will successfully implement the approved Project Plan and, in turn, the minimum additional time that will be required for the Planning Board to review and approve the site plan so that a final record plat can be approved and the Preliminary Plan can be validated. Note that this request maintains the one-year time period between the Project Plan and Preliminary Plan validity expirations, as contemplated by the Zoning Ordinance and Subdivision Regulations to allow validation of plans to occur within the normal course of the Planning Board development review and approval process.

The Project Plan and the Preliminary Plan were approved concurrently by the Planning Board for the development of a 152,740 square foot office building with ground floor retail along Georgia Avenue pursuant to the CBD-2 Optional Method of Development (the "Project"). The Planning Board found that the Project Plan and the Preliminary Plan accomplished important Silver Spring CBD Sector Plan (the "Sector Plan") objectives by upgrading the physical environment from an underutilized surface parking lot to a mixed-use non-residential high-rise building and by providing a pedestrian environment with enhanced connectivity and local retail opportunities.

Shortly after Project Plan and Preliminary Plan approval, the Applicant and the Project became involved with a team participating in the competitive procurement process for "Silver Place", which includes the redevelopment and relocation of the current M-NCPPC Montgomery County headquarters. As you are aware, this process recently culminated with the selection of an alternative development team and concept. As a result of this competitive procurement process, which represented a unique public-private process that was largely out of the Applicant's control, development of the Project was put on hold pending the results of the process, thereby significantly reducing the period of time under the approved validity period for the Applicant to consider other options heading into the site plan review process. This unique competitive procurement process and its outcome materially impacted the Applicant's ability to take those actions necessary to validate the Project Plan and Preliminary Plan.

As a result of not being selected as part of the Silver Place redevelopment concept, the Applicant has just recently begun its consideration of next steps for the Project, which includes discussions with potential tenants and alternatively considering offers from potential development partners for development of the Project. As ultimate tenancy or a potential development venture with another developer will likely take some time and will impact the

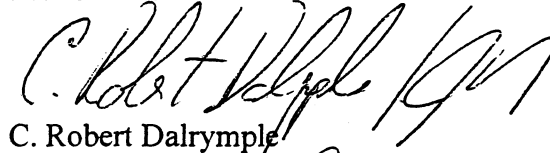
Royce Hanson, Chairman
March 23, 2007
Page 3

direction given to the design consulting team as it moves towards site plan application, additional time is necessary to properly evaluate all alternatives and resulting development implications. In addition, the Applicant believes based on its own market research and discussions with potential development partners that the Silver Spring office market has changed since Project Plan approval and that current market conditions may further delay the start of the Project. Nonetheless, the Applicant is in agreement with the Planning Board's findings that the Project Plan and the Preliminary Plan accomplish important Sector Plan objectives and believes that the Project Plan and Preliminary Plan approvals represent a substantial amount of work by the Planning Board, M-NCPPC staff, Montgomery County staff and the Applicant's consultant team. Allowing the Project Plan and Preliminary Plan to remain actively approved is critical to keep this important and strategically located Project credible to the commercial market, and this in turn is of strategic importance to the continuing redevelopment of Silver Spring and the overall economic development of Montgomery County.

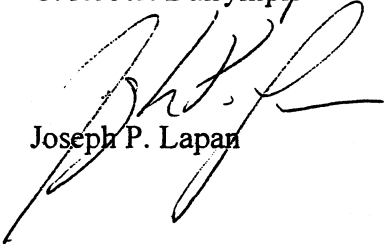
For all of the reasons stated above, the Applicant is requesting that the Project Plan validity period be extended to **April 13, 2010** with the Project Plan to be validated by the filing of a complete site plan by **October 13, 2009** and that the Preliminary Plan validity period be extended to **April 16, 2011**, with the recordation of a final record plat to occur prior to that date. Again, this request represents the minimum additional time required for the Applicant, or a potential purchaser of the Project, to properly prepare and submit a site plan that will successfully implement the approved Project Plan and, in turn, for the Planning Board to review and approve the site plan in order to allow for recordation of a final record plat and validation of the Preliminary Plan. Please contact us to if you have any questions or would like to discuss this request in more detail.

Sincerely yours,

LINOWES AND BLOCHER LLP



C. Robert Dalrymple



Joseph P. Lapan

:jpl

Royce Hanson, Chairman

March 23, 2007

Page 4

cc: Mr. John Carter
Mr. Robert Kronenberg
Ms. Catherine Conlon
Mr. Z. J. Chelec

L&B 756260v2/Author:JPL/10082.0001