



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

JUL 28 2015

MCPB No. 15-89
Preliminary Plan No. 120150030
Elizabeth Square
Date of Hearing: July 23, 2015

RESOLUTION

WHEREAS, under Montgomery County Code Chapter 50, the Montgomery County Planning Board is authorized to review preliminary plan applications; and

WHEREAS, on September 25, 2014, Lee Development Group, Inc., and the Housing Opportunities Commission of Montgomery County ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create one lot on 2.68 acres of land in the CBD-1 and CBD-2 zones, located in the northwest quadrant of the intersection of Second Avenue and Apple Avenue ("Subject Property"), in the Silver Spring CBD Policy Area, Silver Spring CBD Sector Plan ("Sector Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120150030, Elizabeth Square ("Preliminary Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated July 10, 2015, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 23, 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, at the hearing the Planning Board voted to approve the Application, subject to certain conditions, by the vote as certified below.

NOW, THEREFORE, BE IT RESOLVED THAT, the Planning Board approves Preliminary Plan No. 120150030 to create one lot on the Subject Property, subject to

Approved as to
Legal Sufficiency:

 7/21/15

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the following conditions:¹

1. Approval is limited to one lot with a maximum density of 772,078 square feet of total development, which includes i) up to 766,046 square feet of residential uses for up to 907 high rise residential dwelling units (a net increase of up to 436 residential units above the existing number), including 15% moderately priced dwelling units ("MPDUs") and 10% workforce housing units ("WFHUs"), or MCDHCA approved equivalent for either, and ii) up to 6,032 square feet of non-residential uses; with up to an additional 63,896 square feet for community recreational center use.
2. The Applicant must comply with the conditions of approval for Project Plan 920150010.
3. The Planning Board accepts the recommendations of the Montgomery County Department of Housing and Community Affairs ("MCDHCA") in its letter dated May 29, 2015, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDCHA, provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
4. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Service ("MCDPS") – Water Resources Section in its stormwater management concept letter dated July 2, 2015, and hereby incorporates them as conditions of the Preliminary 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 Preliminary Plan approval.
5. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated June 16, 2015, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT, provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
6. The Planning Board accepts the recommendations of the Montgomery County Department of Fire and Rescue ("MCFRS") in its letter dated July 1, 2015, and

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

hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCFRS, provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.

7. No release of any above grade building permit for new development on the site will be permitted prior to recordation of plat(s), except for any sheeting and shoring permit and permit for renovation of an existing building.
8. The Applicant must satisfy the provisions for access and improvements which are associated with each plat, as required by MCDOT.
9. The Applicant must dedicate and show on the applicable final record plat(s) the following right-of-way dedications consistent with the *Silver Spring CBD Sector Plan* and Montgomery County Code Chapter 50 Subdivision Regulation requirements:
 - a. A dedication of 10 feet along the portion of the Apple Avenue frontage that has not yet achieved full dedication to provide the Sector Plan recommended 30-foot wide right-of-way between the Subject Property line and right-of-way centerline.
 - b. A public use and access easement, for the full width and extent of the Metropolitan Branch Trail (future Capital Crescent Trail) (12-foot shared use path) on the Subject Property, granted to Montgomery County, in trust for the public, in a recordable form containing provisions to address the following:
 - i. Entitlement for open and unobstructed public use of the easement for all customary pedestrian, bicycle, general public, and emergency access. The easement granted to the public is a surface easement, intended to permit use of the area beneath the shared use path as structured parking;
 - ii. Obligation for the Applicant to design and construct the shared use path as shown on the Preliminary Plan pursuant to comparable MCDOT structural construction standards, at the Applicant's expense, unless such obligation has been assumed by another entity as part of the overall trail maintenance;
 - iii. Obligation for the Applicant to maintain and repair the shared use path, as shown on the Preliminary Plan, in a condition acceptable to MCDOT for all access, at the Applicant's expense, unless such obligation has been assumed by another entity as part of the overall trail maintenance;
 - iv. Obligation for the Applicant to keep the shared use path free of snow, litter and other obstructions and hazards at all reasonable

- times, at its expense, unless such obligation has been assumed by another entity as part of the overall trail maintenance;
- v. Entitlement for the Applicant or its designee to close the shared use path for normal maintenance and repair at reasonable times and upon reasonable prior notice to the public.
10. The Applicant must install short-term public bicycle parking along both the retail and community center frontages and near public use space, and secure long-term bicycle parking, internal to the residential buildings or garages, for use by staff and residents. The exact number and location of bicycle parking will be determined at the time of Site Plan(s).
11. The Applicant must enter into a Traffic Mitigation Agreement ("TMAg") with the Planning Board and MCDOT to participate in the Silver Spring Transportation Management District and must execute the TMAg prior to the release of any above grade building permit for new development on the site except for any sheeting and shoring permit and permit for renovation of an existing building. The TMAg must include trip mitigation measures recommended by MCDOT.
12. The certified Preliminary Plan must contain the following note:
Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of site plan approval. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot. Other limitations for site development may also be included in the conditions of the Planning Board's approval.
13. The record plat must show necessary easements.
14. The final number of MPDUs and WFHUs as per condition #1 above will be determined at the time of site plan approval.
15. The Subject Property is within the Einstein School cluster area. The Applicant must make a School Facilities Payment to MCDPS at the high school level at the high-rise unit rates for all units for which a building permit is issued and a School Facilities Payment is applicable. The timing and amount of the payment will be in accordance with Chapter 52 of the Montgomery County Code.
16. At the time of each site plan submittal, the Applicant must provide a noise analysis that includes exhibits of existing noise contours and 20-year projection.

17. No clearing, grading or recording of plats prior to certified site plan approval for the new development on the site.
18. Final approval of the number and location of buildings, dwelling units, on-site parking, site circulation, and sidewalks will be determined at site plan for the relevant phase.
19. The Adequate Public Facility ("APF") review for the Preliminary Plan will remain valid for eighty-five (85) months from the date of mailing of the Planning Board resolution.

BE IT FURTHER RESOLVED, that, having considered the recommendations and findings of its Staff as presented at the hearing and as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

1. *The Preliminary Plan substantially conforms to the Master (or Sector) Plan.*

Site-Specific Recommendations

The Subject Property is within the "Other Areas of the CBD" section identified in the Sector Plan. The Sector Plan reconfirmed the zoning applied to all parcels in the remaining areas of the central business district ("CBD") outside the Revitalization Areas defined in the Sector Plan and contained no other specific recommendation.

The Application for development in the "Other Areas" portion of the Sector Plan will expand the availability of diverse living opportunities in the CBD by providing market rate dwelling units, MPDUs, and WFHUs within easy walking distance to public transportation. The ground level interior public use space in phase I of the project (the pool, the wellness center, and the bistro kitchen) may provide some employment and economic opportunities for residents in the CBD, as well as provide needed services. Through the on-site partnerships, the Applicant may be able to create employment opportunities for its residents both on and off-site.

Urban Design Recommendations

The Sector Plan provides general urban design recommendations for redevelopment projects in the Silver Spring CBD. The guidelines most applicable to the Application are listed below with analysis immediately following.

- *Create an attractive pedestrian environment by creating a system of short blocks, and defining streets with buildings, open spaces, and*

streetscaping at a human scale created by street-front retail, frequent doors and windows, architectural detail, and appropriately scaled building heights

The Application will create an attractive pedestrian environment defined by well-designed buildings providing pedestrian residential, retail, and service entrances, open space connections, and other visual interest. A central landscaped plaza will be accessible from the three surrounding streets, and the Metropolitan Branch Trail (future CCT) will pass behind the building. The building heights are maximized along the train tracks and step down towards Fenwick Avenue. The Subject Property continues the transition from the single-family and mid-rise residential buildings to the north and the taller commercial and mixed-use buildings in the core.

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

Although streetscape specifications will be finalized at the site plan stage, the Applicant has provided the appropriate streetscape. On-site and off-site streetscape improvements, such as brick paving, seating, bicycle racks, trash receptacles, and lighting, will enhance the pedestrian experience, and are consistent with the Silver Spring Streetscape Guidelines.

The Application's streetscape plan reinforces the identity of the community by providing a unified streetscape around the Subject Property and well-located vehicular drop-off points at two locations at the Subject Property.

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

The public use spaces will be an opportunity to upgrade the indoor and outdoor areas of the Subject Property with a variety of public uses, and as a means for the Application to reach out to the broader community.

The Application includes several areas of public use space. The indoor public use space will be the government operated recreation and service facility, proposed to be managed and operated by the Montgomery County Department of Recreation and open to the public. The indoor public use space includes the pool, fitness center and lockers, meeting/class space, the wellness center, and the bistro kitchen. Part of the existing outdoor public use space from the Alexander House, located along the Second Avenue and Apple Avenue faces of the building, is also included as part of the public use space. This area is

currently landscaped and contains paving at the entry from Second Avenue and Apple Avenue. These areas will remain and will be incorporated into the project.

The outdoor public amenity space for the Application will have several components that include: a main central plaza area framed by existing residences and the Phase I building; the streetscape and entry court along the south side of Fenwick Lane between the Phase I and Phase II buildings; the entry court at the terminus of Apple Avenue; pedestrian connections to the Metropolitan Branch Trail; and the distance-measured walking circuits on the Subject Property and in the public right-of-way.

The Application will provide public use spaces, public amenity spaces, and other features that will enhance the community, enliven the area, and connect to other downtown area uses.

General Recommendations

For the general goals of the Sector Plan, the Sector Plan's vision for Silver Spring's future is "to create a development environment that invites revitalization" (page 28). The Sector Plan outlines six themes: transit-oriented downtown, residential downtown, commercial downtown, green downtown, civic downtown and pedestrian friendly downtown that guide the vision for the Silver Spring CBD, all which apply to the Application.

The Subject Property is within a short walking distance to the Silver Spring Transit Center, 2½ blocks away, that will include Metro, the MARC Line, Metrobus, Ride-on Bus, and the future Purple Line. The Application will provide 907 residential units, a net increase of 436 more than those existing on the Subject Property today, as well as 63,896 square feet of community recreational center use, and up to 6,032 square feet of non-residential uses. The Application will help to activate the streets of Second Avenue, Fenwick Lane, and Apple Avenue. A café will be provided in the ground floor retail space along Second Avenue, and will be accessible from the plaza and street level on Second Avenue. The public use space will be strategically located on the ground level of the Phase I building, accessible to residents and open to the public. The indoor public use space will be the government operated recreation and service facility, and includes the pool, fitness center and lockers, meeting/class space, the wellness center, and the bistro kitchen. The streetscape along Second Avenue, Fenwick Lane, and Apple Avenue will be upgraded as necessary with street trees, paving, and lighting to improve the pedestrian experience, to interact with their neighbors, and to frequent the retail establishments on the Subject Property and nearby. The public amenity spaces in the central plaza and along the streetscape will enhance the experience of residents and the public when

walking along the streets or enjoying the plaza space. The Application is consistent with the six themes as stated in the Sector Plan.

Circulation Systems Recommendations

The Sector Plan recommends creating a system of trails and bike routes, implementing streetscape to create a safe and pleasant pedestrian environment to assess, and where appropriate, reuse public parking facilities, and to make circulation improvements to local roads. (Page 93)

The Applicant will construct the portion of the Metropolitan Branch Trail (future Capital Crescent Trail) adjacent to the Subject Property; the final trail design and section will be determined at Site Plan. The Application will upgrade the physical environment and pedestrian access to and from the trail and other CBD facilities with upgraded sidewalks along all frontages, to be improved to the Silver Spring streetscape standard. The Application conforms to the Sector Plan recommendations for Circulation Systems.

Housing Recommendations

The housing objective of the Sector Plan is to develop new residential projects to provide housing and encourage maintenance of existing housing, creating Silver Spring as an even more desirable residential market. The recommendations include:

- provide housing choice and market-feasible development options, including apartments and townhouses;
- rezone CBD properties to encourage residential development; and
- convert selected public sector surface parking lots to housing.

The Sector Plan identified the Subject Property as an existing housing site and potential housing site. The Application provides a new mixed-use project with up to 907 residential units with 15% on-site MPDUs, with the existing Alexander House to remain with 300 residential units, that will offer housing opportunities proximate to the numerous transit options of downtown Silver Spring. The Application meets the Sector Plan's housing objective.

2. *Public facilities will be adequate to support and service the area of the approved subdivision.*

A traffic study (dated July 28, 2014 and revised March 30, 2015) was submitted for the Application per the Local Area Transportation Review ("LATR")/Transportation Policy Area Review ("TPAR") Guidelines since the development was estimated to generate more than 30 peak-hour trips during the typical weekday morning (6:30 a.m. – 9:30 a.m.) and evening (4:00 p.m. – 7:00 p.m.) peak periods.

Trip Generation

The Application will generate 406 peak-hour trips during the weekday morning peak period and 471 peak-hour trips during the weekday evening peak period. When compared to existing uses (less those identified for removal through this Application), the development will result in an increase of 265 peak-hour trips during the morning peak period and 330 peak-hour trips during the evening peak period.

Local Area Transportation Review

A capacity analysis/Critical Lane Volume ("CLV") analysis for the weekday morning and evening peak-hour periods shows that the total (Build) condition will remain within the policy area congestion standard of 1,800 CLV. Therefore, the Application satisfies the LATR requirements of the APF test.

Transportation Policy Area Review

Since the development is within the Silver Spring CBD Policy Area, the Application is exempt from both the roadway and transit tests set forth in the 2012-2016 Subdivision Staging Policy. As a result, the Applicant is not required to pay transportation impact tax to satisfy the TPAR requirement.

Other Public Facilities

Public facilities and services are available and will be adequate to serve the development. The Subject Property will be served by public water and sewer systems. The Application has been reviewed by MCFRS, and emergency vehicle access has been deemed adequate. Electrical and telecommunications services are also available to serve the Subject Property. Local health clinics, police stations and fire stations are all operating within acceptable levels as established by the Subdivision Staging Policy.

The Subject Property is located in the Albert Einstein High School Cluster. The 436 new multi-family housing units are subject to the Annual School Test effective for FY2016. The current Subdivision Staging Policy School Test for FY2016 requires school facility payments for subdivision approval at the high school level in the Albert Einstein High School Cluster. As conditioned, the Applicant will be required to make school facilities payments, if applicable.

3. *The size, width, shape, and orientation of the approved lots are appropriate for the location of the subdivision, taking into account the recommendations included in the applicable master plan, and for the type of development or use contemplated.*

The Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Application meets all applicable sections. The lot size, width, shape, and orientation are appropriate for the location of the subdivision taking into account the recommendations included in the Sector Plan, and for the type of development or use contemplated. The Application complies with the specific Sector Plan density recommendations for the Subject Property as well as the applicable urban design, roadway, and general recommendations outlined in the Sector Plan. As evidenced by the Preliminary Plan, the Subject Property is sufficiently large to efficiently accommodate the mix of uses.

The lot was reviewed for compliance with the dimensional requirements for the CBD-1 and CBD-2 zones as specified in the Zoning Ordinance.² The lot will meet all the dimensional requirements for area, frontage, width, and setbacks in those zones.

4. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A.*

A. Forest Conservation

The Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

The latest version of the Preliminary Forest Conservation Plan was submitted through Eplans on May 29, 2015. Although no forest exists on the Subject Property, the Application is subject to the Forest Conservation Law and there is an afforestation requirement of 0.5 acres. Given the relatively small size of the Subject Property, the lack of environmentally sensitive areas, and the modest amount of afforestation requirements, the afforestation will be satisfied offsite by either a fee-in-lieu payment or the use of a forest conservation bank. Due to the density of the development and the priority to provide onsite mitigation plantings under Section 22A-12(b)(3), the Subject Property is not an appropriate setting to also accommodate landscape plantings applied toward forest conservation requirements.

The Application will remove six trees that range in size from 24 to 44 inches DBH. Two of the proposed removals are subject to a Forest Conservation Variance discussed below. Details of protection measures

² In accordance with §7.7.1.B.1 of the Zoning Ordinance, this Application will be reviewed under the Zoning Ordinance in effect on October 29, 2014.

for trees to remain will be addressed with the Final Forest Conservation Plan ("FFCP"). The FFCP will also address any protection measures and/or removals associated with the construction impacts at the edge of the tree stand along the railway corridor.

B. Forest Conservation Variance

Section 22A-12(b)(3) of the Forest Conservation Law identifies certain individual trees as high priority for retention and protection ("Protected Trees"). Any impact to these Protected Trees, including removal or any disturbance within a Protected Tree's critical root zone ("CRZ"), requires a variance under Section 22A-12(b)(3) ("Variance"). Otherwise such resources must be left in an undisturbed condition.

This Application will require the removal of two Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant has requested a Variance and the Board agreed that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

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

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

Projects within CBDs generally have dense development programs that necessitate removals and impacts of subject trees. The planned construction and maintenance activities independent of the Project relating to the Capital Crescent Trail, existing utilities, and appropriate emergency access needed on Apple Avenue are within the critical root zones. These trees will need to be removed to provide the appropriate emergency access needed. Therefore, the variance request would be granted to any applicant in a similar situation.

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

The Variance is based upon CBD optional method use of the Subject Property, access to the Subject Property, existing infrastructure, and a desire to build a modern, state of the art mixed use development within the constraints of the existing zoning and

associated regulations, rather than on conditions or circumstances which are the result of actions by the Applicant.

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

The Variance is a result of the development on the Subject Property and not as a result of land or building use on a neighboring property.

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

MCDPS approved the storm water management concept for the Application on July 2, 2015. The stormwater management concept proposes to meet required storm water management goals by the use of green roof, micro-biofiltration/planter boxes, and Silva Cells. Additionally, the mitigation plantings will contribute to these goals. Therefore, the Variance will not violate State water quality standards or cause measurable degradation in water quality.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Board approved replacement of Protected Trees at a ratio of approximately 1-inch DBH for every four inches of DBH removed. Applicant will plant seven 3 inch caliper trees that exceeds the 77 diameter inches of Protected Trees to be removed.

5. *All storm water management requirements shall be met as provided in Chapter 19, article II, title "storm water management", Section 19-20 through 19-35.*

This finding is based in part upon the determination by MCDPS that the Stormwater Management Concept Plan meets applicable standards.

The MCDPS Stormwater Management Section approved the stormwater management concept on July 2, 2015. According to the approval letter, the stormwater management concept meets stormwater management requirements via environmental site design to the maximum extent possible through the use of green roof, micro-biofiltration/planter boxes, and Silva Cells.

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 60 months from its initiation date (as defined in Montgomery County Code Section 50-

35(h)), and that prior to the expiration of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded in the Montgomery County Land Records, or a request for an extension must be filed; and

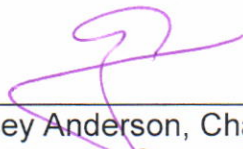
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is JUL 28 2015 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

* * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Commissioner Presley, seconded by Commissioner Fani-González, with Chair Anderson and Commissioners Dreyfuss, Presley, and Fani-González voting in favor of the motion, and Vice Chair Wells-Harley absent, at its regular meeting held on Thursday, July 23, 2015, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board