



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

MCPB
ITEM #
3/5/09



DATE: February 12, 2009

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief *RK*
Development Review Division
Catherine Conlon, Supervisor *CC*
Development Review Division

FROM: Richard A. Weaver, Coordinator *RAW*
Development Review Division

SUBJECT: Request for an extension to the preliminary plan validity period

PROJECT NAME: United Therapeutics
CASE #: 120040870 and 12004087A

ZONE: CBD-1
LOCATION: On the two southern quadrants of the intersection of Spring Street and Cameron Street in Silver Spring.
MASTER PLAN: Silver Spring

APPLICANT: United Therapeutics Corporation
ATTORNEY: Holland and Knight, LLP

FILING DATE: January 14, 2009

STAFF RECOMMENDATION: Grant a two-year extension of the Preliminary Plan validity period until February 28, 2011.

BACKGROUND

The subject Preliminary Plan 120040870, was approved by the Planning Board on November 18, 2004. That original plan contemplated a two-phased development on two separate lots (Lot 1 and Lot 11) consisting of a total of 213,032 square feet of development as follows:

Phase I on Lot 1:	48,434 gross square feet of Laboratory/Office
Phase II on Lot 1:	70,583 gross square feet General Office 6,479 gross square feet Retail
Phase II on Lot 11:	9,290 gross square feet General Office (existing building) 68,725 gross square feet General Office (new building) 9,521 gross square feet General Retail

Condition No. 13 for the original plan provided that the plan would remain valid for 37 months from the date of mailing of the Planning Board Opinion and Condition No. 14 provided that the Adequate Public Facilities findings would remain valid for 75 months, also from the date of mailing of the Opinion. Specific street dedications were also conditioned in recognition of the fact that the current headquarters building is situated in structures within the proposed master planned right-of-way for Spring Street. The record plat(s) for this original plan were never recorded.

The Planning Board's decision was appealed to the Circuit Court for Montgomery County; the Court eventually confirmed the decision of the Planning Board on November 18, 2005 followed by a 30 day appeal period (December 18, 2005). Section 50-35(h)(1)b establishes the "initiation date" for commencing the period during which time a preliminary plan must be validated in the event of an administrative appeal from a decision approving a preliminary plan as follows:

(h) Duration of Validity Period and Actions Required to Validate the Plan.

(1) *Initiation Date.* For preliminary plans the initiation date for commencing the period during which a plan must be validated, is the later of:

- a. ****
- b. In the event an administrative appeal is timely noted by any party authorized to take an appeal, the date upon which the court having final jurisdiction acts, including the running of any further applicable appeals periods.

Therefore, the original validity period of 37 months was adjusted to begin on December 18, 2005, and remained valid until January 18, 2009.

United Therapeutics filed an application to amend the previous approval in 2007 to allow additional laboratory space on Lot 1, to reduce the amount of office/retail space, and to significantly modify the existing building on Lot 11 which was to have been

retained under the original approval. The Planning Board approved the amendment by Resolution on November 20, 2007. The amendment approved a maximum total of 194,589 square feet of gross floor area. Because the old headquarters were to be removed, it required full dedication of Spring Street and moved densities around on the site as follows:

- Phase II on Lot 1: up to 70,486 gross square feet to include General Office, Laboratory and General Retail.
- Phase II on Lot 12: replace existing office building and residential structure with up to (former Lot 11) 75,669 gross square feet of General Office and General Retail.

All previous conditions of approval of the Planning Board Opinion dated November 30, 2004 remained in full force and effect, including the 37 month plan validity period. No plats have been recorded for Lot 12.

EXTENSION REQUEST

Attached, please find the applicant's timely request dated January 14, 2009, to extend the validity period of the Preliminary Plan for approximately 25 months, until February 28, 2011,. The extension is requested to afford the Applicant adequate time to resolve remaining issues and allow record plats to be recorded.

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 bases its request for extension on both unexpected delays subsequent to the plan approval that prevented validation of the plan, and the occurrence of significant, unusual, and unanticipated events. The delays included the appeal of the original Planning Board decision, and an extended period of negotiations with Montgomery County over a right-of-way abandonment request. The unanticipated events created an unexpected need for amendments to the original plan and unforeseen difficulties in commencing construction once the plan amendment was completed.

DISCUSSION

The applicant cites to a number of unusual circumstances that staff believes to be compelling for this request. Those circumstances were related to delays associated with procuring the abandonment of the right-of-way in the air space above Cameron Street to permit a walk way to be constructed connecting the two buildings associated with this project. Those negotiations delayed construction of a new building on Lot 1 for at least 10 months. This delay became critical after it was learned that the old headquarters building was structurally deficient and could not be salvaged as originally anticipated and that the building on Lot 1 would become the headquarters as allowed under amendment 12004087A. However, the plats for proposed Lot 12, on which the old headquarter buildings sits, could not be recorded until the old headquarters, with its structure in the master planned right-of-way, was razed. The old headquarters could not be razed, of course, until it was vacated and it could not be vacated until the new headquarters building was finished. A concurrent unusual circumstance that led to delays was the discovery of certain deficiencies in the caissons of the adjacent parking garage on Spring Street. The new building on Lot 1 adjoins this parking garage, and the situation had to be remedied.

The applicant is requesting an additional 25 month period to complete construction of the new headquarters and to tear down the old headquarter buildings so that record plats can be recorded as conditioned in the amendment.

The request for extension is based on a series of unusual circumstances that lead to delays not caused by the applicant and have prevented plat recordation. It is staff's determination that the circumstances outlined in the applicant's letter and summarized above provide reasonable justification upon which the Planning Board can base the approval of the requested extension pursuant to Section 50-35(h)(3)(d) of the Subdivision Regulations. The timeframe requested is the minimum necessary to validate the plan. Therefore, staff recommends that the preliminary plan be extended to February 28, 2011, to allow adequate time for the plat to be recorded.

ATTACHMENTS:

- A. January 14, 2009 letter

January 14, 2009

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Dr. Royce Hanson
Chairman
Montgomery County Planning Board
The Maryland-National Capital Park
and Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Request for Extension of Preliminary Plan No. 1-04087;
United Therapeutics Silver Spring Campus

Dear Dr. Hanson and Members of the Planning Board:

The purpose of this letter is to request an extension of Preliminary Plan No. 1-04087 on behalf of the owner, United Therapeutics Corporation (the "Applicant"). The property that is the subject of this request is known as Lot 11, Block A, J.C. Wilson Estate, Silver Spring, although the Preliminary Plan encompasses Lot 11 and also Lot 1, located across Cameron Street. Lot 11 is located at the southwest corner of the intersection of Spring Street and Cameron Street in Silver Spring (the "Property").

For the reasons set forth below, the Applicant requests that the Preliminary Plan No. 1-04087 be extended until February 28, 2011, an extension of approximately 25 months.

I. **BACKGROUND**

Due to the complexity of both the Project and the approvals received for the Project, a brief review is provided below for the convenience of the Planning Board.

The Property is a portion of the United Therapeutics Silver Spring Campus that will house the world headquarters for United Therapeutics Corporation. When

completed, the Campus will be a mixed use development containing a total of 194,589 square feet of laboratory, office, and retail uses (the "Project") and will span the two southern quadrants of the intersection of Spring and Cameron Streets. The Planning Board has approved a Project Plan (No. 9-04007) and Project Plan Amendment (No. 92004007A), a Preliminary Plan (No. 1-04087) and a Preliminary Plan Amendment (No. 12004087A), and a Site Plan (No. 820070200) for the Project (collectively, the "Approvals").

The Campus includes two lots: Lot 1, located in the southeast quadrant of Spring and Cameron Streets, and Lot 11, located in the southwest quadrant of Spring and Cameron Streets.

The record plat for Lot 1 was recorded on May 26, 2004, as Plat No. 22877, and the development of the laboratory building on Lot 1 has been completed. The office, laboratory, and retail building on the balance of Lot 1 is currently under construction and is expected to be completed by the end of this year. A building connector constructed in the air space above Cameron Street will eventually connect the Project and the two lots across Cameron Street.

Lot 11 is a record lot, recorded on January 19, 2003, as Plat No. 22601. Lot 11 was recorded to assemble the then-existing five (5) small lots into a single lot at the time United Therapeutics completed its acquisition. As set forth below, Lot 11 will be recorded as a new lot pursuant to the conditions of the Preliminary Plan. The development approved for Lot 11 has not yet begun construction and cannot begin construction until the existing construction on Lot 1 is completed and occupied.

II. PRELIMINARY PLAN APPROVALS

The Planning Board approved the preliminary plan for the Project (Preliminary Plan No. 9-04007) on November 18, 2004 (the "Original Plan").¹ The Original Plan contemplated a two-phased development on the two separate lots (Lot 1 and Lot 11), consisting of a total of 213,032 gross square feet on two phases as follows:

¹ A copy of the Opinion approving the Original Plan is attached as Exhibit "1".

- Phase I – Lot 1
 - Laboratory/office 48,434 gross square feet
(including 12,020 of usable cellar space)
- Phase II – Lot 1
 - General office 70,583 gross square feet
 - Retail (including underground parking 6,479 gross square feet
- Phase II - Lot 11
 - General office (existing building at 1110 Spring Street to remain) 9,290 gross square feet (including 2,600 gross square feet of usable cellar space)
 - General office (replace remaining buildings with new building) 68,725 gross square feet (including 6,776 gross square feet of usable cellar space)
 - General retail 9,521 gross square feet

The Original Plan also required the following conditions for Lot 11:

3. Provide an easement for future dedication of five feet of right-of-way along Spring Street where the existing steps serving United Therapeutics existing headquarters on Lot 11 are now within the master-planned right-of-way. Elsewhere along Lot 11's frontage, dedicate five feet of right-of-way to provide 40 feet from the centerline of Spring Street. Show dedication and easement on record plat.
4. At record plat, dedicate a standard 25-foot truncation at the corner of the intersection of Spring Street and Cameron Street of Lot 11. Dedication for truncation is not recommended along Cameron Street fronting Lot 1.

Condition No. 13 of the Original Plan provided that the Plan would remain valid for 37 months from the date of mailing. Condition No. 14 provided that the APF review would remain valid for 75 months.

The Planning Board's approval was appealed to the Circuit Court for Montgomery County. The Court eventually affirmed the decision of the Planning Board (see discussion in Section III below).

United Therapeutics filed an application for an Amendment to the Preliminary Plan (No. 12004087A) in 2007 (the "Amendment")² to, inter alia, allow additional laboratory space on Lot 1, to reduce the amount of office/retail space, and to significantly modify the building on Lot 11, including replacement of the existing headquarters building that was to have been retained under the Original Plan. The Planning Board approved the Amendment by Resolution dated November 20, 2007.

The Amendment approved a maximum total of 194,589 square feet of gross floor area, including 12,947 square feet of retail; 108,218 square feet of office; and 73,424 square feet of laboratory (including 12,020 square feet of cellar space). The Amendment imposed the following conditions that are relevant to this Extension Request:

- 1) a) Record plat must reflect 5 feet of right-of-way dedication to provide 40 feet from the centerline of Spring Street along the frontage of proposed Lot 12.³

- c) Phase II: On Lots 1 and proposed Lot 12, the proposed land uses are as follows:
 - i. On Lot 1 (Phase IIA): up to 70,486 gross square feet (including general office use, laboratory, and general ground floor retail uses) and including underground parking.
 - ii. On proposed Lot 12 (originally Lot 11 and not shown in Phase IIB), replace the existing three-story headquarters building, three-story medical building, two-story medical building and dental

² A copy of the Resolution approving the Amendment is attached as Exhibit "2".

³ "Lot 11" would become "Lot 12" when the new record plat was recorded.

office in the detached residential structure with up to 75,669 gross square feet (including general office use and general ground floor retail uses) and including underground parking.

- 2) All previous conditions of approval of Planning Board Opinion dated November 30, 2004, remain in full force and effect.

III. APPLICABLE SUBDIVISION REGULATIONS

Section 50-35(h)(1)b. establishes the "initiation date" for commencing the period during which time a preliminary plan must be validated in the event of an administrative appeal from a decision approving a preliminary plan:

(h) *Duration of Validity Period and Actions Required to Validate the Plan.*

- (1) *Initiation Date.* For preliminary plans the initiation date for commencing the period during which a plan must be validated, is the later of:
 - a. ***
 - b. in the event an administrative appeal is timely noted by any party authorized to take an appeal, the date upon which the court having final jurisdiction acts, including the running of any further applicable appeal periods.

Section 50-35(h)(3)a of the Subdivision Regulation provides that the validity period for a preliminary plan may be extended as follows:

(3) *Extension of Validity Period.*

- (A) A request to extend the validity period of an approved preliminary plan that does not contain a phasing schedule must be submitted in writing and received by the Planning Board prior to the previously established validity period expiration. The written submission must specify in detail all grounds and reasons purported by the applicant to support the extension request and must include a declaration that states the anticipated date for validating the plan. The applicant will

certify that the requested extension is the minimum additional time required for validation.

The grounds for extension of the validity period are:

(D) *Grounds for Extension of the Validity Period of a Preliminary Plan.* 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 or conditions of the plan approval, have materially prevented applicant from validating the plan, provided such delays are not created or facilitated 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.

As noted above, the Planning Board's Opinion granting the Original Preliminary Plan was appealed to the Circuit Court for Montgomery County. The Court, after the consideration of the memoranda on appeal and the oral arguments by counsel, affirmed the Planning Board's decision by final Order, dated November 15, 2005, judgment entered November 18, 2005.⁴ A thirty-day appeal period follows the date of final judgment.

⁴ Rule 2-601 of the Maryland Rules provides that the date of judgment is the date the judgment is entered by the Clerk of the Court. A copy of the final Order is attached as Exhibit "3".

IV. REASONS IN SUPPORT OF REQUEST

United Therapeutics requests an extension of the Original Plan in accordance with the provisions of Sections 50-35 (h) (3) above. The reasons for this request include: (1) the unanticipated appeal of the Original Plan and the implications the delay from the appeal had on the construction schedule; (2) governmental delays, including the protracted negotiation of agreements associated with the abandonment of the right-of-way in the air space above Cameron Street that permits the building connector; (3) the unexpected structural deficiencies discovered in the headquarters building located at 1110 Spring Street that rendered it economically infeasible to renovate and incorporate the building into the overall Project as anticipated in the Original Plan, and the related practical difficulties associated with relocating the employees from that building to the new building proposed for Lot 1; (4) the unanticipated need for additional laboratory space that required amendments to the approved project and preliminary plans; (5) the unforeseen difficulties with the timing of commencement of construction on the new office building on Lot 1 because of the unanticipated, pre-existing deterioration of one of the caissons supporting Montgomery County Parking Garage No. 21 that is immediately adjacent to Lot 1 and because of the unexpected delays in undergrounding certain utilities in Spring Street along Lot 1.

(1) Appeal from 2004 approval of the Original Plan

The appeal, described in Section III above, delayed the commencement of construction of the Project by approximately one year.

(2) Governmental delays in approving the abandonment of the right-of-way in the air space above Cameron Street

As noted above, a building connector will span Cameron Street and connect the office buildings located on the southeast and southwest corners of Cameron Street. In order for the buildings approved for Lot 1 and 11 to be connected (at the upper levels), the right-of-way across Cameron Street had to be abandoned.⁵ An application for abandonment was filed with Montgomery County in June, 2004. Lengthy negotiations with Montgomery County in connection with agreements relating to the abandonment followed. As a result, completion of the abandonment took approximately two and one-half years. The Resolution granting the abandonment was not issued on October 31, 2006 and the construction on Lot 1 could not begin until the abandonment was formally

⁵ The Planning Board granted United Therapeutics request for a waiver of subdivision (No. SRW-04004) to allow the construction of the portion of the Project that will cross lot lines (i.e., the building connector).

granted and the certainty provided that the Project could be constructed as approved by the Planning Board.

(3) Unexpected physical deficiencies in the existing headquarters building located at 1110 Spring Street

At the time the original Preliminary Plan was filed, United Therapeutics expected to retain the existing building located at 1110 Spring Street that currently serves as the Company's headquarters (the "headquarters building") and to incorporate that building into the new Project (as shown in the Original Plan). After conducting a detailed analysis of the structure, the Company concluded that retaining the headquarters building would not be economically feasible. As a result of this determination, and the fact that additional laboratory space was now needed on Lot 1 (see discussion below), portions of the Project on Lot 1 and Lot 11 were redesigned. The redesign included design changes to the proposed office building on Lot 1 to accommodate new laboratory space, the elimination of the headquarters building on Lot 11, and design changes to the office building proposed for Lot 11 to accommodate the office space displaced by the laboratory use in the new building on Lot 1. In addition, the need for the "easement for future dedication" that was a condition of approval in the Original Plan (Condition No. 3) was eliminated, because the steps from the headquarters building that encroached into the master planned right-of-way could now be removed once the building was removed. The steps could not be removed, however, until the headquarters building could be demolished. The headquarters building could not be demolished until the office building on Lot 1 was completed and occupancy permits were issued, because the employees housed at the headquarters building needed to be relocated to the office building on Lot 1 before the existing building was demolished.

(4) Unanticipated need for more laboratory space

In 2007, United Therapeutics determined that additional laboratory space was needed in the office building on Lot 1 (adjacent to the existing laboratory building on Lot 1). Due to the specialized nature of the laboratory space and the greater ceiling heights required, three floors of potential office space in the office building proposed for Lot 1 were redesigned into two floors of laboratory space. The office space displaced from the Lot 1 office building was "relocated" to the office building proposed for Lot 11 -- as a part of the significantly revised design. As noted above, in order to retain the existing office use of the headquarters building while the office building on Lot 1 was constructed, the Lot 1 building had to be completed and the employees relocated into that building before the existing headquarters building could be demolished. Thus, the

dedication required to be made to satisfy Condition No. 1(a) of the Amendment could not be satisfied until the headquarters building is vacated and ready to be torn down.

(5) Unforeseen difficulties in the commencement of construction of the office building on Lot 1

In connection with the construction of the laboratory building on Lot 1, United Therapeutics discovered serious issues with two of the caissons supporting County Garage No. 21 (adjacent to the laboratory building). As a result of these issues, and in anticipation that further similar problems would be discovered adjacent to the new office building, County officials would not release the foundation permit for the proposed office building on Lot 1 until an agreement was reached that established a means of resolving any future problems that might be discovered relating to the County parking garage and its structural support elements. Resolution of the caisson issue required extensive negotiations among representatives from Montgomery County DOT, Montgomery County DPS, and United Therapeutics and its development team. This issue further delayed the commencement of construction of the office building on Lot 1.

United Therapeutics also experienced delays in the commencement of construction on Lot 1 because of unforeseen complications in the undergrounding of a high voltage electric line that had to be relocated before a construction crane could swing over Lot 1. Further delays resulted from various requests from Montgomery County regarding the list of fiber optic items that the County required to be placed underground (911, fire control signals, etc.). The County has only one approved vendor for the relocation of the fiber optic items and all work is subject to the availability and time constraints of that vendor. The delays resulting from the caisson issue and the undergrounding issue added several months to the construction schedule and to the commencement of construction of the office building on Lot 1.

IV. CONCLUSION

The following is submitted in support of this request: a completed Extension Request form and checklist; a completed fee schedule and worksheet; three (3) copies of the approved Preliminary Plan and Amendment to the Preliminary Plan; a list of current adjacent and confronting property owners and labels; a copy of the Planning Board Opinion on the Preliminary Plan; a copy of the Planning Board Resolution on the Amendment to the Preliminary Plan; a copy of the Circuit Court Order affirming the decision of the Planning Board; and a check in the amount of \$2,390.00.

Dr. Royce Hanson
January 14, 2009
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Thank you for your consideration of this request.

Very truly yours,

HOLLAND & KNIGHT LLP

A handwritten signature in black ink, appearing to read "William Kominers".

William Kominers

A handwritten signature in black ink, appearing to read "Susan M. Reutershan".

Susan M. Reutershan

Enclosures

cc: Ms. Cathy Conlon
Ms. Rose Krasnow
Paul Mahon, Esquire
Mr. Avi Halpert

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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

MAILING DATE: NOVEMBER 30, 2004

MONTGOMERY COUNTY PLANNING BOARD

REVISED OPINION

Project Plan Review No. 9-04007

Preliminary Plan Review No. 1-04087

Project: United Therapeutics Silver Spring Campus

Date of Hearing: July 15, 2004

Action: **PROJECT PLAN: APPROVAL, SUBJECT TO CONDITIONS.** Motion was made by Commissioner Bryant, seconded by Commissioner Wellington, with a vote of 4-0, Commissioners Berlage, Robinson, Bryant, and Wellington voting in favor. Commissioner Perdue was necessarily absent.

Action: **PRELIMINARY PLAN: APPROVAL, SUBJECT TO CONDITIONS.** Motion was made by Commissioner Bryant, seconded by Commissioner Wellington, with a vote of 4-0, Commissioners Berlage, Robinson, Bryant, and Wellington voting in favor. Commissioner Perdue was necessarily absent.

The date of this written opinion is November 30, 2004 (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).

Preliminary Plan No. 1-04087 will remain valid for 36 months from its Initiation Date (as defined in Montgomery County Code § 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.

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

Exhibit "1"

any further applicable appeal periods) provided that a complete site plan application is filed within 18 months of the Initiation Date.

The Adequate Public Facility (APF) Review for Preliminary Plan No. 1-04087 will remain valid for seventy-five (75) months from the date of mailing of this Planning Board Opinion.

I. INTRODUCTION

On May 7, 2004, United Therapeutics Corporation ("Applicant") submitted applications for approval of: (1) a project plan under the optional method of development; and (2) a preliminary plan of subdivision (collectively referred to as the "Applications"). The Applications were respectively designated as Project Plan No. 9-04007 ("Project Plan") and Preliminary Plan No. 1-04087 ("Preliminary Plan"). The Applicant requested approval for its Silver Spring Campus, a mixed-use retail, office, and laboratory project conceived and designed to accommodate its new world headquarters in the Silver Spring Central Business District. The property encompassed by the Applications is comprised of two parcels located on the two southern quadrants of the intersection of Spring Street with Cameron Street (collectively, the two parcels are hereinafter referred to as the "Property") and includes (i) the remainder of the 1100 Block of Spring Street in the southwest quadrant of the intersection of Spring and Cameron Streets, adjacent to the existing United Therapeutics headquarters building (proposed Lot 11); and (ii) the large lot on the southeast quadrant of Spring and Cameron Streets, which has been used as a public surface parking lot (proposed Lot 1).

On July 15, 2004, following due notice, the Montgomery County Planning Board ("Planning Board" or "Board") held a public hearing ("Hearing") to consider the Applications and a related application for a Subdivision Regulations Waiver¹, in accordance with the requirements of the Md. Code Ann., Art. 28 ("Regional District Act"), Montgomery County Code, Chapter 50 ("Subdivision Regulations"), Montgomery County Code, Chapter 59 ("Zoning Ordinance"), and the Planning Board's Rules of Procedure. In accordance with Section 59-D-2.12 of the Zoning Ordinance and Section 50-34 of the Subdivision Regulations, the Applications included all of the information required for the Planning Board's consideration of the Project Plan and the Preliminary Plan.

At the Hearing, the Planning Board considered the Applications concurrently. The Board listened to testimony and received evidence into the record from its expert

¹ Applicant sought a waiver of the requirement of Montgomery County Code § 50-20(b) that a building permit may not be approved for the construction of a structure that crosses a lot line. The decision of the Board to grant the waiver request is memorialized in Resolution 04-17, adopted by the Planning Board on November 18, 2004.

technical staff ("Staff"); William Kominers, Esquire, representing the Applicant, Paul Mahon, Esquire, Executive Vice President of United Therapeutics, Howard Goldstein, architect with Schick Goldstein Architects, Sheila Brady, landscape architect from Oehme, von Sweden and Associates, and David Edgerley, Director of the Department of Economic Development of Montgomery County, in support of the Applications; C. Robert Dalrymple, Esquire, neither in support of nor in opposition to the Applications; and Will Kaina, Property Manager, St. Charles Apartments and David Hillman, Chairman and Chief Executive Officer, Southern Management Corporation, owner of the St. Charles Apartments, in opposition to the Project Plan application. In presenting the Applications to the Planning Board, Staff prepared packets of information, including a Memorandum and related attachments, dated July 15, 2004 ("Staff Report"). The Applicant and others submitted documents and plans and other evidence into the record, in advance of and at the Hearing. The Board hereby incorporates all of the information by reference and makes them a part of the record.

Based upon testimony and evidence presented, which includes, without limitation, testimony heard and evidence taken at the Hearing; the Staff Report; recommendations from County Agencies, including the Montgomery County Department of Public Works and Transportation ("MCDPWT") and the Montgomery County Department of Permitting Services ("MCDPS"); and all other documents and correspondence received into the record, the Planning Board finds Project Plan No. 9-04007 to be in accordance with the purposes and requirements of the Zoning Ordinance and Preliminary Plan No. 1-04087 to be in accordance with the purposes and requirements of the Subdivision Regulations. Therefore, the Planning Board approves Project Plan No. 9-04007 and Preliminary Plan No. 1-04087 based on the findings detailed below and subject to the conditions respectively listed at the end of the Project Plan and Preliminary Plan sections of this Opinion.

II. THE SUBJECT PROPERTY AND SURROUNDING AREA

The Property contains approximately 2.19 acres in the CBD-1 Zone (Central Business District 1.0 FAR). The Property is located within the boundaries of the approved and adopted Silver Spring CBD Sector Plan ("Sector Plan"). The Property is located on the two southern quadrants of the intersection of Spring Street with Cameron Street within the Silver Spring Central Business District ("CBD") at the northern boundary of the CBD. The Property consists of two parcels (proposed Lots 1 and 11) that are separated by Cameron Street, each parcel having frontage on both Spring and Cameron Streets. Proposed Lot 11 is in the southwestern quadrant of the intersection of Cameron and Spring Streets and is bounded by CBD-2 property to the west and south. (Proposed Lot 11 hereinafter referred to as "Lot 11.") Proposed Lot 1 is located in the southeastern quadrant of the same intersection and adjoins CBD-1 property to the south and east (Proposed Lot 1 hereinafter referred to as "Lot 1").

The properties directly across Spring Street from Lot 11 are zoned C-O (Commercial Office) and consist of two and three-story residential houses that have been converted into medical and commercial offices and an eight-story building with commercial and retail offices. Directly across Spring Street from Lot 1 is a three-story brick medical center. A larger mid-rise building is directly east of the medical center. Property directly south of lot 11 is zoned CBD-2 and consists of the three-story St. Charles apartment complex. Bounding the apartment complex to the west and south is Public Parking Garage No. 2 ("Planning Place Garage"), with access points on Cameron and Spring Streets.

Lot 1 is an existing public surface parking lot associated with the public parking garage No. 21 (Spring-Colesville Garage) with access from Spring and Cameron Streets. Lot 11 contains a two-story brick house at the intersection of Cameron and Spring Streets, two three-story medical office buildings located to the west and separated by a small parking lot, and a three-story office building at the western boundary, owned and occupied by the Applicant, which is adjacent to the entrance to Planning Place Garage. The topography of Lot 1 slopes from north to south approximately nine feet; Lot 11 slopes approximately four feet. There is no significant vegetation on the Property with the exception of some shade trees at the southern boundary of both lots.

There are no existing on-site streams, swales, wetlands or other hydrologic features on the Property. There are no historic or culturally significant sites or buildings on or within 100 feet of the Property. There also are no rare, threatened or endangered species known to exist on the Property.

III. PROPOSED DEVELOPMENT

The Applicant is a biotechnology company focused on developing therapies for life-threatening conditions. The Applicant's corporate headquarters has been located on Lot 11 at 1110 Spring Street, in Silver Spring, Maryland since the company was founded in 1996. The proposed project (the "Project") involves an expansion of the existing United Therapeutics headquarters in order to both consolidate a large component of the company at this location as well as to provide for the company's future growth. In addition, the Project will provide laboratories associated with both existing and new drug therapies. The project consists of two eight-story office buildings rising from street level plazas and other landscaped public spaces. A comprehensive laboratory facility comprised of laboratories, offices, and ancillary uses, which support the company's drug products, is proposed adjacent and connected to the proposed eastern office building. The first floors of both proposed office buildings feature space for independent retail uses that are complemented by a covered pedestrian arcade

along Spring Street turning into Cameron Street on each parcel. The project will contain 213,032 square feet: 16,000 square feet of retail, 148,598 square feet of office, and 48,434 square feet of laboratory.

There will be four public use spaces in the Project. The primary public use space, located on the east side of Cameron Street, consists of an attractive and intimate environment with a number of unusual and innovative features. There are three smaller public use spaces throughout the Project that complement and are thematically consistent with the primary public use space.

The largest public plaza will be located on Lot 1 and includes a large water feature with a calm flat-water surface, which unifies the café terrace with the lower plaza. An informal seating area is located near the BioWall, a media sculpture integrated into the glass skin and concrete structure of the laboratory building. The BioWall operates as both public art and a community resource and will feature completely non-commercial life science-oriented programming and will be available for public use on a pre-arranged and pre-approved basis. This plaza also features sculptural glass seating elements that will be softly illuminated and are expected to be computer-controlled to glow or pulse at different times and in different patterns and syncopations. The sculptural glass elements are expected to be interactive with plaza users, perhaps lighting when more than one person approaches or sits. There will be ample opportunities for informal seating in this plaza, whether in the plaza, or on the stairs along the faces of the building or on seat walls.

The second public plaza will be located on Lot 11, adjacent to the curving covered arcade walkway on the northwest corner of the intersection of Spring Street and Cameron Street. The circular arrangement of the sculptural glass elements links together the streetscape and the café terrace, with the glass elements interacting and illuminating with retail and plaza users and with the glass elements located in the other public use areas of the Project. Interspersed with the glass blocks is a series of syncopated water jets, which splash and interact with the sculptural elements.

The third public plaza will be located on Lot 1 on the corner where the office building similarly curves back from the corner, and is directly across from the second public plaza. The materials are similar, but the function has been changed to be more informational in nature. The illuminated sculptural glass elements and recessed illuminated glass panels of the same size mark the start of the BioWalk of Fame that will honor those Marylanders who have made important contributions to the life sciences. The BioWalk is comprised of the same illuminated glass sculptural seating elements along with lighted glass paving elements of the same size but set flush with the grade. Each inductee into the BioWalk will be honored with a glass block or glass paving element etched to identify the inductee and the reason for his or her induction. Elements flush with the surface will be a non-skid design.

The illuminated sculptural glass seating elements on both sides of Cameron Street, and at the corners and in the central plaza, will further frame the buildings, the seventh-floor connecting corridor, the gateway view toward the CBD, and the overall vibrancy of the Project.

The fourth public plaza is the 1,300 square foot existing Zen Garden that is located on Lot 11 on the west side of the present headquarters building. This building and garden are a significant point of relief in the existing street character, as well as an identifiable feature of the area, and will remain as a part of the Project. The garden is improved with an ornamental tree and land forms to create a Zen-like character for the garden, and also features a tranquil fountain.

Off-site public amenities include streetscape improvements, such as brick paving in the public right-of-way along Spring Street and Cameron Street adjacent to the Property. The addition of benches, bicycle racks, and trash receptacles will visually and functionally enhance the streetscape at the pedestrian level. Street trees will strengthen the urban pattern and provide a green canopy for pedestrians going from and to the CBD, the Metro Station/ Transit Center, and nearby neighborhoods. The streetscape components comply generally with the Silver Spring Streetscape Technical Manual (the "Streetscape Guidelines"). The use of upgraded streetscape elements such as special pavers, lighting, trees, tightly spaced trees, benches, and other features will enhance the pedestrian pathways; and, furthermore, will serve to visually define and improve the overall attractiveness of the CBD. The use of Streetscape Guidelines will unify the Property with the surrounding CBD, reinforcing the boundary and identification of the CBD district.

Both office buildings curve from Spring Street into Cameron Street, simultaneously opening the street corners and inviting passersby onto Cameron Street, thereby serving as a new gateway into Silver Spring's Central Business District. This gateway experience is enhanced by a private connecting corridor spanning Cameron Street at the seventh floor, between the two proposed office buildings ("Connector"). The Connector enables the two office buildings and the adjacent laboratory facility to function as an integrated whole, effectively transforming two small urban parcels divided by a street into a viable urban campus for a single owner/ user.

Minimal below-grade parking is provided within the Project. Employees and others arriving at the Project will be encouraged to use public transportation or to park in the adjoining County parking garages. Travel by employees and other pedestrians to these areas will be enhanced by the arcades along the frontage of both office buildings, as well as by retail uses on the first floor of each office building. There will be no internal access between the office buildings and the first-floor retail spaces, thereby encouraging occupants of the buildings who desire to patronize the retail uses to exit

the buildings and enliven the public spaces. The Connector will not be accessible to the public.

The Project will be built in two phases. Phase I of the Project will be the laboratory facility, which will be built under the standard method of development for the CBD-1 Zone. The laboratory will be constructed in advance of the optional method of development portion of the Project. Phase II will be the two eight-story office buildings and the building connector.

IV. THE PROJECT PLAN

A. ANALYSIS

Pursuant to Section 59-D-2.4 (Action by the Planning Board) of the Montgomery County Zoning Ordinance, the Board must make certain determinations and findings in reaching its decision. At the public hearing, the Board considered evidence and heard testimony from Staff, the Applicant, Montgomery County, and a neighboring property owner. Staff recommended approval of the Project Plan subject to certain conditions.

Based on the testimony and evidence presented, the Staff Report, and other materials in the record of the Applications, all of which are made a part hereof, and pursuant to Section 59-D-2.42 of the Zoning Ordinance, the Board expressly finds with respect to the Project Plan component of the Applications as follows:

a) The Application, As Conditioned, Would Comply With All Of The Intents And Requirements Of The Zone.

i. The Intent of the CBD Zones (Section 59-C-6.212 of the Zoning Ordinance)

- (a) *"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 proposed development is designed under the optional method of development, which permits an increase in density and building height. By employing this development option, the Applicant has ensured that the proposed development will satisfy many of the relevant community goals of the Sector Plan, including the major themes of a commercial downtown, a green downtown,

and a pedestrian-friendly downtown. Based upon all the evidence and testimony in the record, and, in particular, the Staff Memoranda analyses, the Board finds that the Project will expand the employment base within the CBD; revitalize a fringe area of the CBD; provide new retail opportunities; provide streetscape improvements, arcades, and other amenities in the public rights-of-way and on-site, which will collectively improve the quality of the pedestrian environment and encourage pedestrian activity around the Property, to other destinations in the CBD, and to the Transit Center; and develop active urban streets, by providing public use spaces and other features that will enliven the streets and connect to other downtown area uses. Retail uses will be located on the ground level and be accessible from the exterior of the proposed buildings. The BioWall, the BioWalk of Fame, and the organized seating elements in the public use spaces will be available for public uses. Landscaping will be provided along Cameron and Spring Streets, in the public spaces, and on the private terrace and roof-top gardens. The Board finds that the proposed development is in accordance with the Sector Plan.

(b) "To 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 will allow the expansion of an existing biotechnology company in the Silver Spring CBD. The Board finds that the Project responds to the need for employment in downtown Silver Spring. The Board further finds that the Project addresses the need for smart growth policies where infrastructure, community facilities, and elements of an urban district already exist. The Board finds that this Project encourages the development of active urban streets by providing public spaces and retail opportunities along Cameron and Spring Street and that it improves the quality of pedestrian environment within the improved streetscapes. The proposed streetscape and the proposed public amenities, work together to address the need for public interaction in the downtown Silver Spring area. The Project supports the economic base in the downtown area by making it more convenient for employees in Silver Spring to have their places of employment near their homes. The Board finds that the project will increase the vitality of downtown Silver Spring, adding an economic infrastructure for commercial and retail businesses; and further finds that it will meet the needs and requirements of workers, shoppers, and residents.

(c) "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."

By virtue of its location, the Project serves as a gateway into the core area of downtown Silver Spring. The design acknowledges this role and provides for an appropriate, desirable and sensitive gateway. The design is respectful of the physical location of the Property at the fringe of the CBD. The streetscape improvements, public use spaces, and public amenities blend well with the existing framework of downtown Silver Spring. The improved streetscape enhances the gateway into Silver Spring and improves the pedestrian link on the south side of Spring Street and the frontage along the east and west sides of Cameron Street. The proposed eight-story and three-story buildings complement the mix of building sizes, including the mid-rise buildings and high-rise buildings, which exist along the north side of Spring Street. The height of the buildings, stepping down from their greatest height at the intersection of Cameron and Spring Streets to their lowest height near lower neighboring structures, demonstrates that the design of the Project is sensitive to adjoining areas. The compatibility of the Project with existing development and zoning is discussed more fully in Section IV.c), below.

The Board finds that the design establishes a desirable relationship between the Project and surrounding buildings and the central business district and adjacent areas. The Board further finds that the Project will allow for a more interactive pedestrian and vehicular pattern than that which currently exists.

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

The proposed development is located less than one-half mile from the Silver Spring Metro Station. The Board finds that the proximity to transit facilities and the downtown employment core will reduce the dependency on automobiles for residents of the development. The Board also finds that the streetscape improvements along Cameron Street and Spring Street will promote pedestrian access to the bus and Metro station at Colesville Road and 2nd Avenue. In addition, the Board finds that the arcade, the proximity of the parking garages and the minimal parking in the Project will encourage employees of the Project to use public transportation. The design of the buildings incorporates a pedestrian covered arcade along the façade on Spring Street from the parking garages to encourage use of the parking garages and to promote pedestrian interaction on the street.

(e) "To promote improved pedestrian and vehicular circulation."

This Project Plan promotes active urban streets and will improve the quality of the pedestrian environment by providing streetscape improvements

that generally conform to the Streetscape Guidelines. The streetscape will include street trees, benches, streetlights, and specialty paving to integrate the site and site amenities with the pedestrian movement on the streets.

Vehicular circulation is enhanced with improved right-of-way along portions of the Property's frontage. On-site parking is limited to encourage the use of nearby public parking garages. Bicycle racks will be provided. The Project's vehicular and pedestrian plans add to the visibility of the retail uses and also the Parking Lot District by directing vehicular travelers to the nearby public garages and bringing them to their destinations through an inviting pedestrian environment. Two loading areas are provided for the Project, one for each Lot. Loading space for Lot 11 is accessed directly from Spring Street, immediately adjacent to the existing headquarters building. Loading for Lot 1 is located in the laboratory facility and is accessed from the drive entrance to the public parking garage. Signs indicating traffic circulation in and out of the garage will promote safety for pedestrian activity in the public use space. For the foregoing reasons, the Board finds that the Project promotes improved pedestrian and vehicular circulation. The Board further finds that the loading areas are safe and efficient and that the loading area on Lot 1 will not interfere with vehicular traffic in the parking garage.

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

There is no housing component in this Project; therefore, this section does not apply.

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

This Project is an excellent example of how land assembly can result in an efficient use of land in accordance with a sector plan. The Project conforms to the Silver Spring Sector Plan's recognition that the assemblage of properties is an effective method of redeveloping and revitalizing the Silver Spring CBD. As a result of the Applicant's success in assembling property on both sides of the intersection of Spring and Cameron Streets, and a creative design, two individual parcels, which are separated by a public road, will be redesigned and developed as a unified headquarters expansion for an existing biotechnology company in the Silver Spring CBD. The Project encourages active urban streets by providing street-facing retail and easily accessible and highly visible public spaces. The Planning Board finds that the Project conforms to the Sector Plan's vision for land-use in the Central Business District.

ii. Additional Intent of the CBD-1 Zone (Section 59-C-6.213 (a) of the Zoning Ordinance)

- (1) *"To foster and promote the orderly development of the fringes of the Central Business Districts of the County so that these areas will provide land uses at a density and intensity which will encourage small business enterprises and diverse living accommodations, while contemplating the uses in the interior portions of these districts."*

The Property is on the northeast fringe of the Silver Spring CBD. Many existing properties in and near the area are underdeveloped and the existing structures are a combination of older office buildings (six to nine stories) and converted single-family homes used for small and professional offices. The Board finds that the proposed development of office and retail uses will complement other office and retail uses in the CBD. The influx of workers associated with this development will support and encourage small business enterprises. The Board finds that the proposed development provides a unique mixed-use development, which will foster and promote the orderly development of this fringe of the Silver Spring CBD, satisfying this intent of the CBD-1 Zone.

- (2) *"To provide a density and intensity of development which will be compatible with adjacent land uses outside the Central Business Districts."*

The proposed development honors the transitional nature of the location and promotes interaction with both the nearby business district and the nearby residential neighborhoods by including such elements as street-facing retail space at ground level surrounded by human-scale covered arcade walkways, sidewalk and streetscape improvements, and inviting public use spaces.

The properties immediately to the north (on the opposite side of Spring Street) are outside the CBD and are zoned for commercial use at a lower scale to ease the transition from higher density CBD uses to the single family uses in the Woodside Park neighborhood. The Sector Plan contains no specified recommendations for height in this area of the CBD, thus supporting full use of height in the optional method in order to provide land at the street level for public space. The Board finds that the project plan provides a density and intensity of development that will be compatible with adjacent uses outside the CBD.

iii. Development Standards of the CBD-1 Zone

The Board expressly finds that the Project, subject to the conditions below, conforms to development standards for the optional method of development as set forth

in Section 59-D-6.23 of the Zoning Ordinance within the CBD-1 Zone. The Board hereby adopts the Project Data Table as set forth below and as contained in the Staff Report.

PROJECT DATA TABLE FOR CBD-1 ZONE

Site Data

Subject Property: Lot 1 (United Therapeutics)
 Lot 11 (Block A, J.C. Wilson Estate-Silver Spring)
 Existing Zoning: CBD-1

<u>Development Standard</u>	<u>Permitted/ Required</u>	<u>Proposed</u>
Gross Tract Area:	22,000 sf	
Lot 11		39,080 sf
Lot 1		56,738 sf
Total		95,818 sf
Net Site Area (after dedication) N/A		
Lot 11 (39,080 sf – 14,125 sf [prior dedication])=		24,955 sf
Lot 1 (56,738 sf – 19,203 sf [prior dedication])=		37,535 sf
Lot 11 [proposed dedication]		1,366 sf
Total		61,124 sf
Permitted Building Area:	191,636 sf	
Retail		16,000 sf
Office		148,598 sf*
Laboratory		48,434 sf*
Total		213,032 sf*
Floor Area Ratio (FAR):		
Optional Method	2.0	2.0
Building Height (ft.):	90	90
Parking:		
Retail (16,000 sf @ 5/1000)	80	
Office (148,598 sf @ 2.4/1000)	357	
Laboratory (36,414 sf @ 1.5/1000)	55	
Total	492	23**

Public Use Space (% of net lot area):

On-Site

20% or 12,498 sf 24.4% or 14,904 sf

Off-Site

19.8% or 12,112 sf

Total on and Off-Site Public Use Space

44.2% or 27,016 sf

* *Laboratory and new and existing office space includes 21,396 s.f. of cellar space which is not included in the total FAR of the proposed development*

** *The proposed development is within the Silver Spring Parking District and is not required to provide any parking on site if they are subject to the Parking District Tax.*

The application proposes structures with a height of up to 90 feet. Although the standard maximum building height in the CBD-1 Zone is 60 feet, the maximum permissible height may be increased to 90 feet, if the Planning Board determines that the plan does not adversely affect surrounding properties. As set forth in great detail in Section IV.c) of this opinion, the Board was presented with a great deal of testimony on the question of whether the proposed development, as designed, would have an adverse impact on neighboring properties, in particular, the St. Charles Apartment site, which abuts Lot 11 to the south. Based upon the testimony at the Hearing, exhibits submitted, and other evidence of record, the Board finds, for reasons stated in Section IV.c. of this opinion, that the Project, as designed, will not adversely affect surrounding properties. As such, the Board approves an increase to ninety (90) feet of the maximum building height for the proposed development. The Board finds that the proposed increase in height to 90 feet is in conformance with the CBD-1 Zone.

b) The Proposal Conforms To The Approved And Adopted Master Or Sector Plan Or An Urban Renewal Plan Approved Under Chapter 56.

The approved Silver Spring CBD Sector Plan recommends CBD-1 zoning for the Property. The Project utilizes the optional method of development in the CBD-1 Zone.

The Board finds that the Project incorporates or supports the recommendations of the Sector Plan and that it is consistent with several themes of the Plan that establish the vision for a revitalized Silver Spring. Three of the themes (i.e., a commercial downtown, a green downtown and a pedestrian-friendly downtown) directly apply to this proposed development, as discussed in more detail in Section a.1.a above. This Project will expand the employment base within the CBD by allowing an existing biotechnology company to expand in the CBD, as

well as by providing new retail opportunities. In addition, this Project will provide new public open spaces and an engaging streetscape design. Active urban streets will be possible because of street-facing retail and easily accessible and highly visible and attractive public spaces. This proposal improves the quality of the public pedestrian environment by providing high-quality streetscape and by the presence of adjoining public use areas on private property. For these reasons, and for all the reasons set forth in the recommendation of approval contained in the Memoranda, dated June 28, 2004 from the Community-Based Planning Division to the Development Review Division ("CBPD Memo") the Board finds that the Project conforms to the Sector Plan.

- 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.

Through correspondence submitted in advance of the Hearing and through testimony at the Hearing, Mr. Hillman raised concerns regarding the compatibility of the Project with existing and potential future development of the St. Charles Apartments property. Staff and the witnesses for the Applicant testified that the Project was compatible with existing and potential development and would not be detrimental to such development. The Board finds that the testimony and other evidence in the record supports the Staff's and Applicant's opinions regarding compatibility.

Development Review Staff testified that the Project is compatible with the neighboring three-story St. Charles Apartments buildings, pointing out that the proposed building steps up from three stories, the height of the St. Charles Apartments, to five stories to eight stories. He noted that the design took advantage of shapes and curves on the south side of the proposed building on Lot 11 ("West Building") so that the residents of St. Charles Apartments would not have to look at a "monolithic slab." Staff also informed the Planning Board that the property on which the St. Charles Apartment complex is located is zoned CBD-2 and that the CBD-2 Zone allows a height of up to 143 feet under the optional method of development—suggesting that if the St. Charles site, which is located on the south side of the Lot 11, is developed to its maximum potential, that development would impact the photovoltaics on the roof of the proposed building on Lot 11. Staff also testified that the Applicant had met with numerous civic associations and groups regarding the Project and that the groups generally or specifically supported the Project. The record contains letters in support of the Project from various associations and groups.

Staff also characterized the neighborhood as being part of an "urban environment." Staff informed the Board that when properties are zoned CBD,

there is an expectation that such properties will seek to develop to their maximum potential, which would include high-rise development. As such, when two adjoining properties are zoned CBD, the solution to compatibility issues lies, in great part, in the architectural design of a development. Staff provided an example involving the strategic placement on a development site of the required 20% on-site open space requirement in order to minimize the impact of a proposed development on its neighbor or the impact of the existing neighboring building on the proposed development. The Board believes that Staff's comments in this regard are consistent with the statutory criteria that the Board must consider in reviewing an application. Specifically, the Zoning Ordinance requires that the Board consider, among other things, "the proposed size, shape, height, arrangement and design of structures."² Taking into account the importance of the aforementioned factors, the Board finds the testimony of Applicant's architect to be highly instructive on the compatibility issue.

Applicant's architect described the painstaking process involved in designing the Project to satisfy both the Applicant's needs and the Zoning Ordinance and Sector Plan mandates. He testified that the existing and potential development of the St. Charles Apartments property were considered in the design of the Project. Testimony by Staff and Applicant's architect, and the exhibits and materials in the record (including renderings, models, cross-sections, and elevations), illustrate the manner in which the West Building steps in two directions to protect the views from the St. Charles site. First, the West Building steps up from west to east: from the existing three-story headquarters to a three-story element, to a six-story element, and finally to eight stories at the intersection of Spring Street and Cameron Street. Further, the West Building is designed with a three-story base, purposefully designed to reflect and be sensitive to the neighboring St. Charles apartments, and then is set back 20 feet at the fourth floor. From there, the West Building gradually cants southward as it ascends, so that at those locations that the West Building is closest to the St. Charles apartments in the horizontal plane, it is further away in the vertical plane. Additionally, the West Building is set back from the joint property line by the distances mandated by the building code in order to permit windows on the southern façade of the West Building. Any future development on the St. Charles site would similarly be required to set back from the property line if windows were incorporated into the design of the north side of such a building.

Applicant's representative produced an exhibit at the Hearing, which compares the maximum possible building envelope of the West Building to both the proposed building envelope of the West Building and to the maximum possible building envelope for the St. Charles property, should it be redeveloped in

² Montgomery County Code § 59-D-2.43(a).

accordance with the optional method of development standards of the CBD-2 Zone. Applicant's architect described the manner in which the West Building steps back from the St. Charles property and demonstrated to the Board that where the St. Charles building is closest to the Project it will be "open to the sky." As a result of the "step-backs" in the design of the building, only a portion of the building reaches the 90 feet maximum permitted height. The remaining areas of the potential 90-foot envelope are "open." Applicant's architect testified that the Project would not utilize 26% of its potential development envelope, i.e., that it would remain "open" adjacent to the St. Charles property.

In response to questioning from the Planning Board and concerns expressed by Mr. Hillman that the Project would shade the St. Charles site, the Applicant entered into the record shadow studies prepared by its architects, which analyze the shade patterns for the date of the Hearing, July 15, at set intervals during the day (8:00 a.m., 10:00 a.m., 12:00 noon, 2:00 p.m. and 5:00 p.m.). The shadow studies demonstrated that, at 8:00 a.m., only the portion of the St. Charles Apartments that is closest to the West Building would be in its shadow. At every other interval studied, none of the St. Charles Apartment buildings would be in the shadow cast by the West Building. In response to Board questions, Applicant's architect testified that the shadow studies would remain the same even if the St. Charles property were redeveloped.

In response to questions from the Board, Community-Based Planning Staff testified that the proposed Project would not dramatically limit the ability to redevelop the St. Charles site. Staff stated that under the CBD-2 Zone, redevelopment of the St. Charles Apartments property would not be required to include residential uses and that it could consist of only commercial uses. Thus, analysis must consider all possible uses. The Board notes that there is no pending application for redevelopment of the St. Charles property and that any consideration of the specific impact of the Project on any possible future redevelopment of the St. Charles property is speculative.

Mr. David Hillman testified in opposition to the Project Plan. Mr. Hillman objected in general terms to the adverse effect he believed the proposed development would have on both the existing and potential development of the St. Charles site. He noted that the St. Charles Apartments were bounded to the west and south by an existing five-story public parking garage and expressed concern that the addition of the eight-story West Building, would effectively "box in" the St. Charles property, blocking all residential views and light. Mr. Hillman stated that, combined with other development regulations, successful redevelopment of his site would be marginal, at best. Operating under the assumption that Lot 1 was being developed under the standard method of development, Mr. Hillman suggested that the United Therapeutics project be redesigned so that the less

intense development would be located on Lot 11, which abuts his site. Mr. Hillman produced a model and drawings of a high-rise residential structure that he stated his organization has developed over the last two years and, which design he contended would be adversely impacted if the proposed development was approved.

The record includes a letter from Gus Bauman, Esquire, representing the interests of the entity that owns the St. Charles Apartments ("Bauman Letter"). The Bauman Letter raises the same concerns voiced by Mr. Hillman at the Hearing: the "boxing in" of the St. Charles site would require any future development on that site to be set back from the boundaries shared with the parking garage and United Therapeutics to such an extent that, given the maximum permissible height in the CBD-2 Zone, the permitted density could not be achieved; the existing residents of the St. Charles Apartments and any future residents of a redeveloped site would be adversely impacted in as much as the light, air, and views would be restricted, in part by the West Building. The Bauman Letter also suggests that the Applicant's project be redesigned to locate a less dense and presumably shorter structure on Lot 11—as is the case with Mr. Hillman, the Bauman Letter assumes that Lot 1 is being underdeveloped. The Bauman Letter indicates that architects representing Applicant and his client had met in an attempt to fashion a solution that would be acceptable to the owners of the St. Charles Apartments; however, Mr. Bauman advised the Board that these meetings had not yielded a solution that is acceptable to his clients.

In its rebuttal, Applicant's representatives responded to issues raised by Mr. Hillman and the Bauman Letter and also responded to comments and questions posed by Board members. Applicant's attorney informed the Board that Applicant has communicated with the owners of the St. Charles Apartments: both before and several times after the application was filed with the Board. Applicant's attorney reiterated that the building was designed to be sensitive to the St. Charles Apartments and any potential development on that site. Applicant's attorney and architect provided a detailed rebuttal on the issue of compatibility, much of which is set forth above. Applicant's attorney also advised the Board that Mr. Hillman and Mr. Bauman were incorrect in their respective averments that Lot 11 is not being developed to its full potential. He reiterated that Lot 11 and Lot 1 have both been designed to their maximum potential intensity for development under the optional method. Applicant's attorney noted that it is merely the first phase of the project that is being developed under the standard method on a portion of Lot 1; however, when the eight-story building is constructed on Lot 1 in a later phase, Lot 11 will have been developed to its maximum potential under the optional method in the CBD-1 Zone. The Board finds that the overwhelming evidence of record supports the position stated by Applicant's counsel and that neither Lot 1 nor Lot 11, as designed, are under-

utilizing density; and, therefore, the suggestion by Mr. Bauman and Hillman to relocate the less intense portion development to Lot 11 does not comport with the facts of the case and the suggestion is not feasible.

The Planning Board notes that there is no proposed redevelopment plan for the St. Charles property on file with the Planning Board. Additionally, the CBD-2 Zone does not require that only residential uses be developed on the St. Charles property if it is redeveloped under the optional method of development. One Board member commented during the Hearing that it is not the responsibility of the Board to protect businessmen against all uncertainty and all risk or from the consequence of the timing of different projects.

The Board has considered the Technical Staff's position on compatibility, the Applicant's materials, exhibits and testimony on compatibility, and the opponent's materials, exhibits and testimony on the question of compatibility and detrimental impact. The Board is persuaded that the proposed development would be compatible with and not detrimental to existing or potential development in the general neighborhood, exclusive of the St. Charles Apartments site; the record does not contain any testimony or evidence to contest the latter finding. The Board further finds that the proposed development is compatible with and not detrimental to existing or potential development, with specific respect to the adjoining St. Charles Apartments site. Based upon the testimony and evidence of record, and having considered the size, shape, height, arrangement, and design of all of the structures in the proposed development, including the West Building, the Board finds that the proposed development is compatible with the existing and potential neighborhood, including the St. Charles property, in several ways: (1) by locating the highest densities and building heights on Spring Street and closest to the Spring/Cameron Street intersection, where uses of similar size are concentrated; (2) by reducing the impact on the adjacent St. Charles apartment complex by establishing a plinth for the West Building at the same height (three stories) as the neighboring apartment buildings and setting those office levels that are above three stories farther back from the apartments the closer they are to the apartments (i.e., greater setbacks for the lower office levels and lesser setbacks as the West Building rises); (3) by providing appropriate height and density to ensure compatibility with existing and future development on adjacent properties to the east, west, and south of the Property that are zoned CBD-2 and recommended in the Sector Plan for higher density commercial and/or residential development; (4) by proposing street level retail space designed to attract community-serving vendors such as markets, cafés, and small shops. For all the above reasons, the Board finds that the proposed development is compatible with the existing and potential development in the general neighborhood and downtown Silver Spring and that it encourages redevelopment of adjacent properties in the CBD. As stated above, in Section

IV.A.a)iii., the Planning Board—having determined in this subsection of the Opinion that the Project, as designed, will not adversely affect surrounding properties—approved an increase in the maximum permitted building height in the CBD-1 Zone to ninety (90) feet for the proposed development.

- d) The Project Will 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.

Based upon uncontested evidence in the record, the Board finds that the Project will not overburden existing public services or those programmed for availability. The Project proposes 213,032 square feet of office, retail and laboratory space within the CBD. Only twenty-three parking spaces are proposed for the employees on-site, within a sub-surface parking garage. Additionally, the Applicant is required to enter into a Transportation Management Agreement with the Planning Board and Montgomery County to participate in the Silver Spring Transportation Management District in achieving and maintaining its traffic mitigation goal for new development of auto drivers being no more than 50% of all employees arriving and departing during peak hours. The Board finds that this will encourage the use of the nearby County parking facilities and provide incentives for employees to utilize public transportation such as Metro Bus, Ride-On and Metrorail.

- e) The Proposal Will Be More Efficient And Desirable Than Could Be Accomplished By The Use Of The Standard Method Of Development.

The Board finds that the Project, which is proposed under the optional method of development, would be more efficient and desirable than could be accomplished under the standard method of development. The Optional Method of Development permits a development at a higher density than could be achieved under the standard method. Use of the Optional Method also maximizes utilization of County resources in the CBD, where public infrastructure exists to support more intense development, thereby preventing under utilization. The higher density also allows an investment return that justifies the provision of public amenities. The Applicant has taken advantage of the higher density and, in return, has proposed four on-site public use spaces replete with many interesting elements and much lush landscaping. In addition, the Project will provide off-site public amenities such as streetscape improvements along Spring Street and Cameron Street.

- 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 does not apply to the Project Plan application.

- g) When A Project Plan Includes More Than One Lot Under Common Ownership, Or Is A Single Lot Containing Two Or More CBD Zones, And Is Shown To Transfer Public Open Space Or Development Density From One Lot To Another Or Transfer Densities, Within A Lot With Two Or More CBD Zones, Pursuant To The Special Standards Of Either Section 59-C-6.2351 Or 59-C-6.2352 (Whichever Is Applicable), The Project Plan May Be Approved By The Planning Board Based On The Following Findings: 1) The Project Will Preserve A Historic Site, Building, Structure Or Area As Shown On The Locational Atlas And Index Of Historical Sites Of The Master Plan For Historic Preservation; And/Or; 2) The Project Will Implement An Urban Renewal Plan Adopted Pursuant To Chapter 56 Of The Montgomery County Code; And/Or; 3) The Project Will Result In An Overall Land Use Configuration That Is Significantly Superior To That Which Could Otherwise Be Achieved.

This section does not apply to the Project Plan application.

- h) The Proposal Satisfies The Applicable Requirements For Forest Conservation Under Chapter 22A.

The Board finds, based on uncontested evidence in the record, that the Property is exempt from the forest conservation requirements.

- i) The Proposal Satisfies The Applicable Requirements For Water Quality Resources Protection Under Chapter 19.

Conditional approval is pending from DPS for Stormwater Management. Approval of final Stormwater Management is required prior to submittal of the site plan application. Based upon the uncontested evidence of record, the Board finds that the proposed Project satisfied the applicable requirements of Chapter 19.

B. CONDITIONS

Having considered all of the evidence presented, including the comments of the outside reviewing agencies, and all of the testimony taken, including that contained in the companion Preliminary Plan and Waiver Request proceedings, the Planning Board finds Project Plan No. 9-04007 to be in accordance with the provisions of the Zoning Ordinance and the provisions of Article 28 of the

Maryland Code Annotated; and, the Board further finds that Project Plan No. 9-04007 is in substantial conformance with the applicable recommendations of the Sector Plan.

THEREFORE, the Planning Board Approves Project Plan No. 9-04007 for 213,032 gross square feet of development on 2.19 acres, including 16,000 square feet of retail, 148,598 square feet of office and 48,434 square feet of laboratory (of which 21,396 square feet of the laboratory and office space is cellar space) with the following conditions:

1. Development Ceiling
The proposed development shall be limited to 213,032 square feet of gross floor area (Floor Area Ratio "FAR" 2.0), including retail, office and laboratory uses, of which 21,396 square feet is cellar space. The total square footage for FAR is 191,636 square feet.
2. Building Height/Mass
The height of the proposed buildings shall not exceed 90 feet.
3. Transportation Improvements
 - a. Enter into a Transportation Management Agreement with the Planning Board and the Montgomery County Department of Public Works and Transportation (DPWT) to participate in the Silver Spring Transportation Management District in achieving and maintaining its traffic mitigation goal for new development of auto drivers being no more than 50% of all employees arriving and departing during the three hours of the weekday morning and evening peak periods.
 - b. Record an easement for future dedication of five feet of right-of-way along Spring Street where the existing steps serving the United Therapeutics existing headquarters on Lot 11 are now within the master-planned right-of-way. Elsewhere along Lot 11's frontage, dedicate five feet of right-of-way to provide 40 feet from the centerline of Spring Street.
 - c. Dedicate 25-foot right-of-way for truncation at the corner of intersection of Spring Street and Cameron Street on Lot 11 in accordance with DPWT requirements.
 - d. Provide Class III (signed, shared with motorized vehicles) bikeways for both Spring Street and Cameron Street.
4. Public Use Space
 - a. The proposed public use space must be easily and readily accessible to the general public and used for public enjoyment. A minimum of 24.4% (14,904 square feet) on-site and 19.8% (12,112 square feet) off-site public use space shall be provided with this application.

- b. The on-site public use space consists of plaza areas incorporating a variety of public art and amenity elements. The plaza will be interactive for pedestrians and employees of the building, as well as the patrons of the retail space. The proposed plaza will consist of specialty paving, water elements, lighting, landscaping and other design elements such as sculptural glass seating elements to invite the public into the space and blend architectural features relating to the building design. The public space will also include seating areas, blended with landscaping and specialty lighting, for pedestrians and patrons of the retail space.
- c. Off-site improvements will include streetscape improvements along the south side of Spring Street and on both sides of Cameron Street, directly along the frontage of the property.

5. Staging of Amenity Features

- a. The proposed project shall be developed in two phases.
- b. Landscaping to be installed no later than the next growing season after completion of buildings and public plaza areas for each phase.
- c. Art work to be installed prior to occupancy of the buildings for Phase II.

6. Management and Maintenance of Public Use Space

The applicant shall become a member of the Silver Spring Urban District for maintenance and liability of the public open spaces and for the purpose of participating in community events. Prior to the occupancy of the buildings for Phase II, the applicant shall enter into an agreement with the Silver Spring Urban District for the on-going maintenance and liability of public open spaces associated with this project.

7. Streetscape

- a. The applicant shall provide the full streetscape improvements along the Spring Street and Cameron Street frontage using the *Silver Spring Streetscape (April 1992)* Technical Manual, or as waived by Montgomery County Department of Public Works and Transportation (DPWT) with M-NCPPC staff input. The following non-standard elements are proposed: stone, precast concrete, brick pavers, street trees, lighting and any other elements that are necessary.
- b. The proposed development shall provide the undergrounding of utilities along the frontage of the property, to fulfill the optional method of development streetscape standards.

8. Coordination for Additional Approvals

The applicant shall secure the following additional approvals in conjunction with Site Plan Review:

- a. Coordinate with the Silver Spring Regional Service Center on the placement of the proposed Type D2 way finding sign (sign #299) located on Spring Street east of Cameron Street;
- b. Request a waiver for all of the non-standard streetscape improvements as well as the maintenance and liability agreement from the Montgomery County Department of Public Works and Transportation;
- c. Provide all necessary agreements with the Montgomery County Attorney's Office, Department of Public Works and Transportation Real Estate Office and Department of Permitting Services for construction, maintenance, and liability of the connector crossing Cameron Street.

9. Public Art

- a. A public art program shall be developed by an artist and presently are planned to include sculptural glass seating elements, the Bio Walk of Fame, the Bio Wall, water jets and a water feature. The public art shall enrich the pedestrian experience and be integrated with the design of the proposed buildings and public use space. Details of the art components shall be further identified and designed by an artist(s) prior to the site plan submittal. The context of the elements may change to allow flexibility of design for the artist(s) in conjunction with the design concept of the buildings and public space.
- b. The art proposal for the project shall be fully developed and reviewed by the Planning Board's Art Review Panel prior to the site plan submittal.

V. THE PRELIMINARY PLAN

A. ANALYSIS

1. The Subdivision Criteria

An application for subdivision requires the Planning Board to undertake its legislatively delegated authority under the Regional District Act and the Subdivision Regulations. The application should also meet the requirements of the Zoning Ordinance applicable to the subject preliminary plan.

The general provisions for lot design for a subdivision are set forth in Section 50-29 of the Subdivision Regulations. In order to be approved by the Planning Board, lot size, width, shape, and orientation must be appropriate for the location of the subdivision and for the type of use contemplated. Lots also should abut a dedicated street or public road.

Section 50-35 of the Subdivision Regulations sets forth the approval procedure for preliminary plans of subdivision. After presentation of the plan to the Planning Board, the Board must act to approve or disapprove the plan, or to approve the plan subject to conditions and/or modifications necessary to bring the plan into conformance with the Montgomery County Code and all other applicable regulations. The Planning Board's approval procedure for preliminary plans includes review pursuant to Section 50-35(k) of the Subdivision Regulations ("Adequate Public Facilities Ordinance" or "APFO"), which directs the Planning Board to approve preliminary plans of subdivision only after finding that public facilities, including the transportation system, will be adequate to serve the proposed subdivision; Section 50-35(l), which requires a finding that the preliminary plan substantially conforms to the Sector Plan, unless events have occurred to render the relevant master plan recommendation no longer appropriate; and Section 50-35(o), which mandates that the Board ensure that all requirements of the forest conservation law are satisfied before approving a plan.

2. Discussion Of Issues

i. Lot Size, Shape, Width, and Depth

The record for the Application includes uncontested evidence that the lot size, width, shape, depth and orientation of the subdivision are appropriate for the location of the subdivision and for the proposed uses; and, furthermore, that the proposed lot(s) front on a public road or right of way. The record also contains uncontested evidence that the depth and width of the subject lot(s) are adequate for the off-street service and parking requirements needed by the proposed development. The record also contains information regarding the Preliminary Plan's conformance with the development standards for the CBD-1 zone.

ii. Adequate Public Facilities

County Code Section 50-35(k) (the Adequate Public Facilities Ordinance) directs the Planning Board to approve preliminary plans of subdivision only after finding that the public facilities, including the transportation system, will be adequate to serve the subdivision. The record includes uncontested evidence that the proposed development does satisfy all the requirements of the Adequate Public Facilities Ordinance.

a. Water and Sewerage

The record includes uncontested evidence that the proposed development has adequate sewerage and water service to accommodate the Project.

b. Policy Area Review

The record reflects that Property is located within the Silver Spring CBD Policy Area and that adequate staging ceiling capacity exists to approve the Preliminary Plan. There is ample ceiling capacity of 2,860 jobs available. The proposed development will result in 925 jobs, which is well within the available capacity. There was no testimony to the contrary regarding this issue. Thus, the Board concludes that, based upon uncontested evidence of record, Policy Area Review is satisfied.

c. Local Area Transportation Review ("LATR")

The Applicant submitted a detailed Traffic Study, dated May 2004, which was reviewed by M-NCPPC Transportation Planning Staff. The Traffic Study demonstrates that the area intersections will all operate at acceptable conditions and within the acceptable congestion standard with the Project in place. As a result, based on uncontested evidence of record, the LATR requirements of the Adequate Public Facilities Ordinance are satisfied.

iii. Street Access

Vehicular access points to the Project are located on Spring Street and Cameron Street for Lot 1 and from Spring Street to Lot 11. The Board notes that the shared access with the garage has been designed to ensure that traffic will flow in a safe and efficient manner. The Planning Board finds, based on uncontested testimony and evidence in the record, that the proposed street access to the Project is safe and adequate and that the shared driveway is safe and adequate.

iv. Stormwater Management

The record includes uncontested evidence that the stormwater management concept and other related matters for the Property is acceptable as conceptually approved by the DPS.

v. Forest Conservation

The Application is exempt from the requirements of the Forest Conservation Law.

vi. Relation to Master Plan (Sector Plan)

Based upon uncontested evidence of record, and for all the reasons set forth in Section IV.A.b. of the Project Plan section of this Opinion, the Board finds that the Preliminary Plan substantially conforms to the Silver Spring CBD Sector Plan.

vii. General Items

The subdivision component of the Application (including the waiver request from Section 50-20(b) of the Subdivision Regulations) 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 these agencies recommended approval.

B. FINDINGS

After review and consideration of the evidence of record, including testimony given at the public hearing, the Planning Board finds that Preliminary Plan No. 1-04087 is in accordance with the Subdivision Regulations, the Zoning Ordinance and the Regional District Act. Based on the testimony and evidence contained in the record and on the Staff Report including the Transportation Planning Division Staff Report, the Planning Board further finds that, with the Conditions enumerated below: (1) the proposed lots are appropriate with regard to lot size, width, shape, and orientation for the location of the subdivision and the contemplated use; (2) the proposed lots abut public roads; (3) the Preliminary Plan meets the development standards of the CBD-1 Zone; (4) the Preliminary Plan substantially conforms to the Sector Plan; (5) the site is adequately served by public facilities; and (6) the application meets the requirements of the forest conservation law. In addition, the Planning Board finds that the proposed conditions will ensure the appropriate use of the Property and adequate parking, stormwater management and storm drainage, access and road improvements. Therefore, the Planning Board adopts Staff's recommendation and conditions.

C. CONDITIONS

Having considered all of the evidence presented, including the comments of the outside reviewing agencies, and all of the testimony taken, including that contained in the companion Project Plan and Waiver Request proceedings, the Planning Board finds Preliminary Plan No. 1-04087 to be in accordance with the provisions of the Subdivision Regulations and the provisions of Article 28 of the Maryland Code Annotated. Therefore, the Planning Board approves Preliminary Plan No. 1-04087, subject to the following conditions:

- 1) Limit the project plan and preliminary plan to up to 213,032 gross square feet consisting of 148,598 gross square feet of general office use, 48,434 gross square feet of office/laboratory use, and 16,000 gross square feet of general ground-floor retail uses (i.e., including 21,396 gross square feet of usable cellar space). The proposed non-residential development is divided into two phases on two different lots as follows:

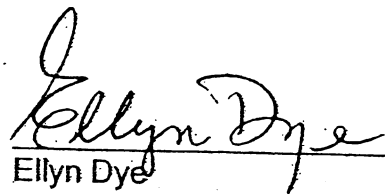
- a. Phase 1: On Lot 1, replace the existing public surface Parking Lot 21 with up to 48,434 gross square feet of Laboratory office use that includes 12,020 gross square feet of usable cellar space.
- b. Phase 2: On Lots 1 & 11, the proposed land uses are as follows:
 - 1) On Lot 1, up to 70,583 gross square feet of additional general office use and up to 6,479 gross square feet of general ground-floor retail uses and including underground parking.
 - 2) On Lot 11, retain the existing 9,290 gross square feet used as their existing headquarters space (i.e., at 1110 Spring Street) that includes 2,600 gross square feet of usable cellar space.
 - 3) On Lot 11, replace the existing three-story medical building, two-story medical building and dental office in the detached residential structure with a building consisting of the following:
 - a) 9,521 gross square feet of general ground-floor retail uses;
 - b) 68,725 gross square feet of general office use that includes 6,776 gross square feet of usable cellar space.
 - 2) Prior to the release of building permits for phase 2, enter into a Transportation Management Agreement with the Planning Board and the Montgomery County Department of Public Works and Transportation (DPWT) to participate in the Silver Spring Transportation Management District in achieving and maintaining its traffic mitigation goal for new development of auto drivers being no more than 50% of all employees arriving and departing during the weekday morning peak period (6:30 to 9:30 a.m.) and the weekday evening peak period (4:00 to 7:00 p.m.)
 - 3) Provide an easement for future dedication of five feet of right-of-way along Spring Street where the existing steps serving the United Therapeutics existing headquarters on Lot 11 are now within the master-planned right-of-way. Elsewhere along Lot 11's frontage, dedicate five feet of right-of-way to provide 40 feet from the centerline of Spring Street. Show dedication and easement on record plat.
 - 4) At record plat, dedicate a standard 25-foot truncation at the corner of intersection of Spring Street and Cameron Street of Lot 11. Dedication for truncation is not recommended along Cameron Street fronting Lot 1.

- 5) The applicant to seek from DPWT, a waiver for all non-standard streetscape improvements and enter into a maintenance and liability agreement, as required by DPWT, at Site Plan.
- 6) Applicant shall enter into an agreement with the Silver Spring Urban District for maintenance of all or some of the streetscape improvements as appropriate.
- 7) Coordinate with DPWT to relocate vehicular access and pedestrian accommodations to Parking Garage No. 21 along the southern property line of Lot 1.
- 8) Coordinate with DWPT regarding improvements at the intersection of Spring Street and Cameron Street and other nearby intersections associated with their Silver Spring Pedestrian Study.
- 9) Compliance with the conditions of approval of the MCDPS stormwater management pursuant to letter dated May 12, 2004.
- 10) Compliance with conditions of MCDPWT letter dated, June 30, 2004 unless otherwise amended.
- 11) Coordinate with the Silver Spring Regional Center on the placement of the proposed Type D2 wayfinding sign (Sign #299) located on Spring Street east of Cameron Street prior to Site Plan Review.
- 12) Provide Class III (signed, shared with motorized vehicles) bikeways for both Spring Street and Cameron Street.
- 13) This preliminary plan will remain valid for thirty-seven (37) months from the date of mailing of the Planning Board opinion. Prior to this date, a final record plat must be recorded for all property delineated on the approved preliminary plan, or a request for an extension must be filed.
- 14) The Adequate Public Facility (APF) review for the preliminary plan will remain valid for seventy-five (75) months from the date of mailing of the Planning Board opinion.
- 15) Other necessary easements

CERTIFICATION

At its regular meeting, held on Thursday, November 18, 2004, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital

Park and Planning Commission, on the motion of Commissioner Bryant, seconded by Commissioner Robinson, with Commissioners Berlage, Bryant, Wellington, and Robinson voting in favor of the motion (Commissioner Perdue being necessarily absent), 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 in Project Plan No. 9-04007 and Preliminary Plan No. 1-04087.


Ellyn Dye
Technical Writer

11-30-04
Date

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APPROVED AS TO LEGAL SUFFICIENCY

TAB

M-NCPPC LEGAL DEPARTMENT

DATE 11/23/04

NOV 20 2007



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

MCPB No. 07-139
Preliminary Plan No. 12004087A
United Therapeutics
Date of Hearing: July 19, 2007

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION¹

WHEREAS, pursuant to Montgomery County Code Chapter 50, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review preliminary plan applications; and

WHEREAS, on April 4, 2007, United Therapeutic Corp ("Applicant"), filed an application for approval of a preliminary plan amendment that would revise the previous conditions of approval on 2 lots on 1.44 acres of land located in the southwest and southeast quadrants of the intersection of Spring Street and Cameron Street ("Property" or "Subject Property"), in the Silver Spring CBD master plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 12004087A, United Therapeutics ("Preliminary Plan" or "Application"); and

WHEREAS, Staff issued a memorandum to the Planning Board, dated July 5, 2007, setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and the staffs of other governmental agencies, on July 19, 2007, the Planning Board held a public hearing on the Application (the "Hearing"); and

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

D4D by SHG 11-16-07
Approved for legal sufficiency
M-NCPPC Office of General Counsel

¹ This Resolution constitutes the written opinion of the Board in this matter and satisfies any requirement under the Montgomery County Code for a written opinion.

WHEREAS, on July 19, 2007, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Bryant; seconded by Commissioner Robinson; with a vote of 4-0, Commissioners Bryant, Cryor, Hanson, and Robinson voting in favor; Commissioner Lynch absent.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved a maximum of 194,589 square feet of gross floor area, including 12,947 square feet of retail, 108,218 square feet of office and 73,424 square feet of laboratory space, of which 12,020 square feet is cellar space, on approximately 1.44 acres of land located in the northwest and southwest quadrants of the intersection of Spring Street and Cameron Street ("Property" or "Subject Property"), in the Silver Spring CBD master plan area ("Master Plan"), subject to the following conditions:

- 1)
 - a) Record plat must reflect 5 feet of right-of-way dedication to provide 40 feet from the centerline of Spring Street along the frontage of proposed Lot 12.
 - b) Phase I: On Lot 1, replace the existing public surface Parking Lot 21 with up to 48,434 square feet of laboratory use that includes 12,020 gross square feet of usable cellar space.
 - c) Phase II: On Lots 1 and proposed Lot 12, the proposed land uses are as follows:
 - i) On Lot 1 (Phase IIA): up to 70,486 gross square feet (including general office use, laboratory, and general ground floor retail uses) and including underground parking
 - ii) On proposed Lot 12 (originally Lot 11 and not shown in Phase IIB), replace the existing three-story headquarters building, three-story medical building, two-story medial building and dental office in the detached residential structure with up to 75,669 gross square feet (including general office use and general ground floor retail uses) and including underground parking.
- 2) All previous conditions of approval of Planning Board Opinion dated November 30, 2004, remain in full force and effect.

BE IT FURTHER RESOLVED, that, having given full consideration to the recommendations and findings of its Staff, which the Board hereby adopts and incorporates by reference, and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

1. The Preliminary Plan substantially conforms to the master plan.

The Preliminary Plan provides office and laboratory space, as well as retail and other business opportunities all of which are supported by the Silver Spring Central Business District and Vicinity Master Plan. The Planning Board finds that the previously approved preliminary plan and this amendment continue to conform to the recommendations in the Master Plan.

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

The Preliminary Plan amendment was reviewed by the participatory agencies comprising the Development Review Committee. All appropriate agencies have recommended approval of the Preliminary Plan amendment including the Montgomery County Department of Public Works and Transportation, the Montgomery County Department of Permitting Services, the Montgomery County Public Schools and the Montgomery County Department of Fire and Rescue Services. The Planning Board finds that with the approvals from these agencies, the plan will be adequately served by public facilities.

3. The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision.

Based on a review of Section 50-29(a) and having taken into account the location of the lots with respect to adjacent lots, the Planning Board finds that the size, shape, width and orientation of the lots are appropriate for their location in the neighborhood.

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

The subject amendment to the Preliminary Plan does not require a revision to the Forest Conservation plan as previously approved by the Planning Board. Therefore, the Planning Board finds that the plan complies with Chapter 22A, the Montgomery County Forest Conservation law.

5. The Application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site.

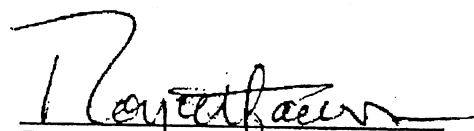
This finding is based on the determination by the Montgomery County Department of Permitting Services that the Stormwater Management Concept Plan meets MCDPS' standards. The Montgomery County Department of Permitting reconfirmed the previously approved stormwater management concept on April 5, 2007.

BE IT FURTHER RESOLVED, that the date of this Resolution is NOV 20 2007 (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).

* * * * *

At its regular meeting held on Thursday October 25, 2007, in Silver Spring, Maryland, the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission ADOPTED the above Resolution, on motion of Commissioner Bryant, seconded by Commissioner Cryor, with Chairman Hanson, and Commissioners Bryant and Cryor present and voting in favor. Vice Chair Robinson was absent. This Resolution constitutes the final decision of the Planning Board, and memorializes the Board's findings of fact and conclusions of law for Preliminary Plan No. 12004087A, United Therapeutics.


Royce Hanson, Chairman
Montgomery County Planning Board

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

SOUTHERN MANAGEMENT CORPORATION

Appellant

v.

Case No. 257691-V

MONTGOMERY COUNTY PLANNING BOARD and
UNITED THERAPEUTICS CORPORATION

Appellee

ORDER

It having been brought to the attention of the Court that this Court's Order dated November 2, 2005, at Docket Entry No. 19, contains an error in the caption, it is, this 15th day of November, 2005,

ORDERED, that this Court's Order dated November 2, 2005, be and the same hereby is corrected to read as follows:

SOUTHERN MANAGEMENT CORPORATION

Appellant

v.

MONTGOMERY COUNTY PLANNING BOARD and
UNITED THERAPEUTICS CORPORATION

Appellee

And it is further,

ORDERED, that other than as stated above, this Court's Order dated November 2, 2005 shall remain the same.

ENTERED

NOV 18 2005

Clerk of the Circuit Court
Montgomery County, Md.

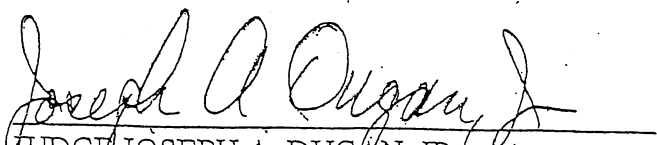

JUDGE JOSEPH A. DUGAN, JR.
Circuit Court for Montgomery County, Maryland

Exhibit "3"

CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

SOUTHERN MANAGEMENT CORPORATION,

Plaintiff-Appellee

v.

Case Number: 257690 / 257691

MONTGOMERY COUNTY PLANNING
BOARD, UNITED THERAPUTICS
CORPORATION,

Defendant-Appellant

ORDER

This matter having come before this Court for an appeal on the record on October 20, 2005, and the Court having reviewed the entire record and considered the memoranda and oral argument of both parties, it is this 2nd day of November, 2005, by the Circuit Court for Montgomery County, Maryland,

ORDERED, that the attached transcript be and the same hereby is incorporated into this Order and made the Opinion and Order of the Circuit Court for Montgomery County, Maryland, and it is further,

ORDERED, that the judgment of the Montgomery County Planning Board approving the proposed project of United Therapeutics Corporation, be and the same hereby is AFFIRMED.

ENTERED

NOV 04 2005

Clerk of the Circuit Court
Montgomery County, Md.

Joseph A. Dugan, Jr.
JUDGE JOSEPH A. DUGAN, JR.
CIRCUIT COURT FOR
MONTGOMERY COUNTY, MARYLAND

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

-----X
SOUTHERN MANAGEMENT
CORPORATION,
Plaintiff,

v.

Civil Nos. 257690 / 257691

MONTGOMERY COUNTY PLANNING
BOARD,
UNITED THERAPEUTICS
CORPORATION,

Defendants.
-----X

JUDGE'S RULING

Rockville, Maryland

October 20, 2005



ORIGINAL

DEPOSITION SERVICES, INC.
6245 Executive Boulevard
Rockville, MD 20852
(301) 881-3344

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

-----X
SOUTHERN MANAGEMENT :
CORPORATION, :
Plaintiff, :

v. :

MONTGOMERY COUNTY PLANNING :
BOARD, :
UNITED THERAPEUTICS :
CORPORATION, :

Defendants. :
:-----X

Civil Nos. 257690 / 257691

Rockville, Maryland

October 20, 2005

WHEREUPON, the proceedings in the above-entitled
matter commenced

BEFORE: THE HONORABLE JOSEPH A. DUGAN, JR., JUDGE

APPEARANCES:

FOR THE PLAINTIFF:

GUS BAUMAN, Esq.
JAMES R. GREENE
Beveridge & Diamond PC
1350 I Street, NW, Suite 700
Washington, D.C. 20005

APPEARANCES (Continued):

FOR THE DEFENDANTS:

TARIQ A. EL-BABA, Esq.
Maryland-National Capital Park
8787 Georgia Avenue, Number 205
Silver Spring, MD 20910

WILLIAM KOMINERS, Esq.
Holland & Knight LLP
3 Bethesda Metro Center, Number 800
Bethesda, MD 20814

P R O C E E D I N G S

1
2 THE COURT: As I understand it, the Court, under Rule
3 7209, may dismiss the action for judicial review, may affirm,
4 reverse, or modify the agency's order or action, remand the
5 action to the agency for further proceedings, or an appropriate
6 combination of the above.

7 The standard of review, as I understand it, is
8 whether a reasoning mind could have reached the conclusion
9 which the administrative agency reached, unless their decision
10 is premised solely upon an erroneous conclusion of law. I
11 don't see anything in this record or argument that would
12 indicate, although it's stated by the petitioners in this case,
13 that it was based upon an erroneous conclusion of law, that it
14 is based upon an erroneous conclusion of law.

15 I have reviewed the evidence in this case. I've
16 listened and certainly reviewed the pleadings. I've listened
17 carefully to the arguments of counsel. And as I understand it,
18 the petitioners are asking that I remand the matter for further
19 study. In essence, they want specifically something determined
20 as a compatibility study, specifically, as opposed to what the
21 Board has put in their order, which they say is lacking because
22 there was no true compatibility study done. I disagree with
23 counsel with respect to whether or not one is necessary,
24 whether a shadow study is necessary. Whether it's routinely
25 done or not routinely done, it's clear for me that the Board

1 considered the entire body of evidence that was put forward in
2 the hearing. And that's evidenced in their opinion from page
3 14 all the way through, I think, it's page 19. And page 19
4 even talks about the proposal will be more efficient and
5 desirable than could be accomplished by the use of the standard
6 method of development.

7 And it seems to me when you're talking about whether
8 something's compatible, you have to be talking about whether
9 it's compatible with (1) the overall design and plan for that
10 community; (2) other residential areas, as well as other
11 buildings in the area, as well as what's being looked to for
12 the future.

13 In this case we have St. Charles Apartments. This is
14 a garden apartments that has been built over 50 years ago.
15 There is ample evidence in the record and the pleadings in this
16 case that at one point the owners of St. Charles had considered
17 and had been approved for a 14-story high-rise on the same
18 property on which there exists a number of three-story garden
19 apartments. Certainly, there may be something being proposed
20 now that will have some impact upon, or be impacted, I should
21 say, in some way by the building that the Board has approved
22 for United Therapeutics Corporation.

23 But I am taking a look at this opinion, see at page
24 14 where the Board takes a look at a number of ways this is
25 compatible and looks at how they believe it's going to impact

1 upon the St. Charles Apartment Buildings. I think the argument
2 is that more should have been done than was done, and that
3 because they didn't specifically testify with respect to
4 compatibility for an extensive period of time, that is the
5 report to the Board and the individuals that prepared it, that
6 somehow it's lacking.

7 Their opinion on page 14 starts off, because of its
8 location, size, intensity, design, operational characteristics
9 of the staging, it would be compatible with and not detrimental
10 to existing or potential development in the general
11 neighborhood. They're not just talking simply about
12 Mr. Hellman's complaints or concerns with the St. Charles
13 Apartments, but they're talking overall with the general
14 neighborhood.

15 And then they go on to say, through correspondence
16 submitted in advance of the hearing and through testimony at
17 the hearing, Mr. Hellman raised concerns regarding the
18 compatibility of the project with existing and potential future
19 development of the St. Charles Apartments property. Staff and
20 the witnesses for the applicant testified that the project was
21 compatible with existing and potential development, would not
22 be detrimental to such development. The Board finds that the
23 testimony and other evidence in the record supports the staff's
24 and applicant's opinions regarding compatibility.

25 So we're not confined to what was testified to in the

1 last few minutes of this hearing that the petitioners alleged
2 were insufficient. Development review staff testified the
3 project is compatible with the neighboring three-story St.
4 Charles Apartment buildings, pointing out that the proposed
5 buildings steps up from three stories, the height of the St.
6 Charles Apartments, to five stories to eight stories.

7 He noted that the design took advantage of shapes and
8 curves on the south side of the proposed building on Lot 11,
9 west building, so that the residents of St. Charles Apartments
10 would not have to look at a monolithic slab. Now, there's a
11 comparison with respect to what could be put up to what is put
12 up. And that certainly talks about whether this is more
13 compatible than what could be built there.

14 Maybe nothing's compatible. I mean, ideally, in
15 terms of blocking out the sky or giving you enough light, it
16 certainly, I don't know that if I were living right next door
17 to this property line in a garden apartment that I wouldn't
18 move no matter what they put up because you'd be looking right
19 into whatever building's built there. I don't know that
20 somebody might choose not to live there based on what's already
21 there and hasn't been increased in size. And I recognize that
22 that's not the test. But I do think that they appropriately
23 considered the advantages of the shapes and curves on the south
24 side of the proposed building on Lot 11, west building, so that
25 the residents of St. Charles Apartments would not have to look

1 at a monolithic slab. That design is certainly preferable.
2 That has something to do with compatible or making it more
3 compatible.

4 Staff also informed the Planning Board that the
5 property on which the St. Charles Apartment complex is located
6 is zoned CBD-2 and that the CBD-2 zone allows a height of up to
7 143 feet, under the optional method of development, suggesting
8 that if the St. Charles site, which is located on the south
9 side, is developed to its maximum potential, that development
10 would impact the photo voltegs on the roof of the proposed
11 building on Lot 11.

12 Staff also testified that the applicant had met with
13 numerous civic associations and groups regarding the project,
14 and that the groups generally or specifically supported the
15 project. The record contains letters in support of the project
16 from various associations and groups.

17 Staff also characterized the neighborhood as being
18 part of an urban environment.

19 Staff informed the Board that when properties are
20 zoned CBD, so on and so forth, the Planning Board, there is an
21 expectation that such properties will seek to develop their
22 maximum potential, which would include high-rise development.
23 As such, when two adjoining properties are zoned CBD, the
24 solution to compatibility issues lies in great part in the
25 architectural design of the development. Staff provided an

1 example involving the strategic placement on a development site
2 of the required 20 per cent on-site open space requirement in
3 order to minimize the impact of a proposed development on its
4 neighbor or the impact of the existing neighboring building on
5 the proposed development. The Board believes that staff's
6 comments in this regard are consistent with the statutory
7 criteria that the Board must consider in reviewing an
8 application. Specifically, the zoning ordinance requires that
9 the Board consider, among other things, the proposed size,
10 shape, height, arrangement, and design of structures. There
11 was tons and tons of evidence, and there is evidence in this
12 case of all of that.

13 Taking into account the importance of the
14 aforementioned factors, the Board finds the testimony of
15 applicant's architect to be highly instructive on the
16 compatibility issue. They're talking about the architect.
17 They're not talking about the report to them from their people.
18 Now they can take that as evidence, and they can consider that
19 evidence. And they can find it far more probative or helpful
20 than what the actual study is that's submitted by their folks.

21 And then they talk about the architect's testimony.
22 Testimony by staff and applicant's architect and the exhibits
23 and materials in the record including renderings, modeling,
24 cross-sections and elevation, illustrate the manner in which
25 the west building steps in two directions to protect the view

1 from the St. Charles site.

2 First, the west building steps up from west to east.
3 from the existing three-story headquarters to a three-story
4 element, to a six-story element, and finally to eight stories
5 at the intersection of Spring Street and Cameron Street.

6 Further, the west building is designed with a three-story base
7 purposely designed to reflect and be sensitive to the
8 neighboring St. Charles Apartments. And then it's set back 20
9 feet at the fourth floor. From there, the west building
10 gradually cants southward as it ascends so that at those
11 locations that the west building is closest to the St. Charles
12 Apartments in the horizontal plane. It is further away in the
13 vertical plane. Additionally, the west building is set back
14 from the joint property line by the distances mandated by the
15 building code in order to permit windows on the southern facade
16 of the west building. Any future development on the St.
17 Charles site would similarly be required to set back from the
18 property line if windows were incorporated into the design on
19 the north side of such a building.

20 They go on and, as a result, on page 16, as a result
21 of the step backs in the design of the building, only a portion
22 of the building reaches the 90 foot maximum permitted height.
23 The remaining areas of the potential 90-foot envelope are open.
24 Appellant's architect testified that the project would not
25 utilize 26 per cent of its potential development envelope,

1 i.e., that would remain open, adjacent to the St. Charles
2 property. Here, again, it says the design and they're talking
3 about how the design would impact, be compatible, consider the
4 St. Charles property. The next paragraph they talk about Mr.
5 Hellman's testimony and his concerns that the project would
6 shade the St. Charles site.

7 The applicant entered into the record shadow studies
8 prepared by its architects which analyze the shade patterns of
9 the date of the hearing, July 15th. It said intervals shadow
10 studies demonstrated that at 8:00 a.m. only the portion of the
11 St. Charles Apartment that's closest to the west building would
12 be in its shadow. At every other interval study, none of the
13 St. Charles Apartment buildings would be in its shadow, cast by
14 the west building.

15 In response to Board's questions, applicant's
16 architect testified that the shadow studies would remain the
17 same even if the St. Charles property were redeveloped. Now,
18 you're saying it's a study that's done in July, and they can
19 project it, and it should have been done. But it was done.
20 They considered that. They considered the shadow study. You
21 may say it wasn't perfect. It wasn't as good as it could have
22 been. But they considered it. They considered whether it was
23 compatible or not.

24 Staff stated that under the CBD-2 zone, in response
25 to questions from the Board, community-based planning staff

1 testified the proposed project would not dramatically limit the
2 ability to redevelop the St. Charles site. Staff stated that
3 under the CBD-2 zone, redevelopment of the St. Charles
4 Apartments property would not be required to include
5 residential uses, and that it could consist of only commercial
6 uses. Thus, analysis must consider all possible uses.

7 The Board notes there is no pending application for
8 redevelopment of the St. Charles property and that any
9 consideration of the specific impact of the project on any
10 possible future redevelopment of the St. Charles property is
11 speculative. I guess that's somewhat true. I don't know that
12 it's totally speculative because there was testimony as to what
13 they might do in the future or what they had hoped to do in the
14 future, as well as a project that was approved and not put into
15 operation, for whatever reasons.

16 Then they talk specifically about Mr. Hellman's
17 testimony in opposition to the project plan. He objected in
18 general terms to the adverse effect he believed the proposed
19 development would have on both the existing and potential
20 development on the St. Charles site. Now, they're the ones
21 that have to. That's their job, to evaluate the testimony.
22 And they don't have to accept everything that Mr. Hellman
23 testifies with respect to incompatibility. They don't have to
24 accept all that. They don't have to necessarily find it
25 credible.

1 He noted that the St. Charles Apartments were bounded
2 to the west and south by an existing five-story public parking
3 garage and expressed concern that the addition of the eight-
4 story west building would effectively "box in" the St. Charles
5 property, blocking all residential views and light. Well, here
6 again, everything, anything, they're already boxed in to a
7 certain extent by the building that's there or any building
8 that would be put there.

9 Mr. Hellman stated that, combined with other
10 development regulations, successful redevelopment of his site
11 would be marginal at best. Operating under the assumption that
12 Lot 1 was being developed under the standard method of
13 development, Mr. Hellman suggests that the United Therapeutics
14 property project be redesigned so that the less intense
15 development would be located on Lot 11, which abuts his site.
16 Mr. Hellman produced a model and drawings of a high-rise
17 residential structure that he stated his organization has
18 developed over the last two years and which design he contended
19 would be adversely impacted if the proposed development was
20 approved. Then they talk about Mr. Bauman's letter.

21 In its rebuttal, applicant's representative responded
22 to issues raised by Mr. Hellman and the Bauman letter and also
23 responded to comments and questions posed by Board members.
24 Applicant's attorney informed the Board that applicant has
25 communicated with the owners of the St. Charles Apartments both

1 before and several times after the application was filed with
2 the Board.

3 Applicant's attorney reiterated that the building was
4 designed to be sensitive to the St. Charles Apartments and any
5 potential development on that site. Applicant's attorney and
6 architect provided a detailed rebuttal on the issue of
7 compatibility, much of which is set forth above. And on and on
8 and on.

9 Then the Board says, the Board has considered the
10 technical staff's position on compatibility, the applicant's
11 materials, exhibits, and testimony on compatibility, and the
12 opponent's materials, exhibits, and testimony on the question
13 of compatibility and detrimental impact. The Board is
14 persuaded that the proposed development would be compatible
15 with and not detrimental to existing or potential development
16 in the general neighborhood, exclusive of the St. Charles
17 Apartments site. The record does not contain any testimony or
18 evidence to contest the later finding.

19 The Board further finds that the proposed development
20 is compatible with and not detrimental to existing or potential
21 development with specific respect to the adjoining St. Charles
22 Apartment site. And it goes on with what they base that
23 decision on, which is essentially much of what I indicated
24 before.

25 And they further found that it would be more

1 efficient and desirable and could be accomplished by the use of
2 the standard method of development. Counsel indicates that
3 there's no evidence to support that finding. The Court
4 disagrees with counsel with respect to that.

5 The Court finds that there is ample evidence, if not
6 overwhelming evidence, but certainly at least sufficient to
7 show that a reasoning mind could have reached the same
8 conclusion that the Administrative Agency reached in this case.
9 The Court finds no error of law with respect to the Board's
10 decision and the Board's opinion and order. And therefore, the
11 Court is going to dismiss the administrative appeal in both
12 case 257690 and 257691.

13 The opinion of the Court as stated here on the record
14 today will in fact be transcribed and will constitute the
15 Court's opinion in connection with this appeal.

16 Thank you, gentlemen.

17 (End of requested portion of the proceedings.)
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√ Digitally signed by Terri Roney

DIGITALLY SIGNED CERTIFICATE

DEPOSITION SERVICES, INC. hereby certifies that the foregoing pages represent an accurate transcript of the duplicated electronic sound recording of the proceedings in the Circuit Court for Montgomery County in the matter of:

Civil Nos. 257690 / 257691

SOUTHERN MANAGEMENT CORPORATION

v.

MONTGOMERY COUNTY PLANNING BOARD AND

UNITED THERAPEUTICS CORPORATION

By:

Terri Roney

Terri Roney
Transcriber

