



## Silver Spring Park, Site Plan Amendment & Final Forest Conservation Plan Amendment No. 82010012A

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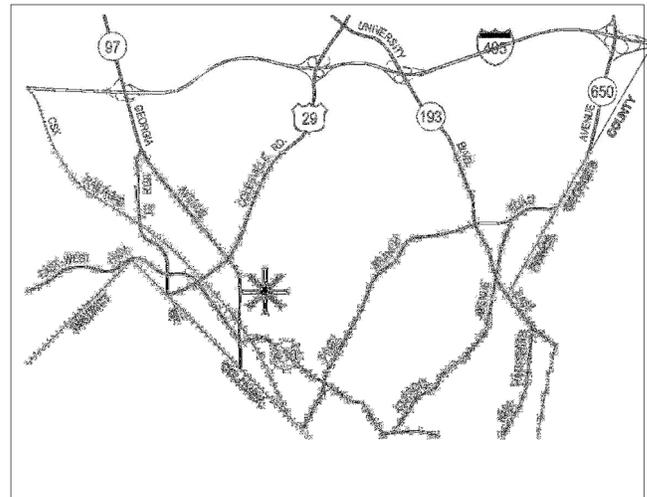
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Completed: July 18, 2014

### Description

- Request to remove an existing on-site tree previously intended to be saved;
- Located at the southeast corner of the intersection of Fenton Street and Silver Spring Avenue;
- 1.57 acres gross tract area in the CBD-1, CBD-0.5, and Fenton Village Overlay zones in the *Silver Spring CBD Sector Plan*;
- Applicant: Fenton Group, LLC;
- Filing Date: July 8, 2014



### Summary

- Staff recommends approval of the Site Plan Amendment.
- The Planning Board previously approved Project Plan No. 920100030 by Resolution No. 10-24; Preliminary Plan No. 120070420 by Resolution No. 10-151; and Site Plan No. 820100120 by Resolution No. 10-152.
- Staff has received no correspondence from parties of record.

## RECOMMENDATION

Staff recommends approval of Site Plan Amendment No. 82010012A, Silver Spring Park. All site development elements shown on the latest electronic version as of the date of this Staff Report submitted via ePlans to the M-NCPPC are required. No prior conditions need to be modified by this amendment and all previous approvals remain binding on the Applicant, except as modified by this amendment.

## SITE DESCRIPTION

### Vicinity



*Aerial Photo Looking North*

The subject property is located in the Fenton Village section of the Silver Spring CBD, on the southeast quadrant of the intersection of Fenton Street and Silver Spring Avenue. The uses along Fenton Street are primarily commercial, and include a supermarket, convenience retail, small office buildings, restaurants, and a gas station in the CBD-1, CBD-0.5, and Fenton Village Overlay zones. Although there is one

existing multi-family building located directly on Fenton Street two blocks north, the bulk of the housing is found immediately east of Fenton and consists mostly of one-family detached housing in the R-60 zone with a handful of multi-family towers. Development planned for Fenton Village includes mixed-use multi-family residential buildings, office buildings, and the future Silver Spring Public Library and Purple Line station.

The proposed development is within walking distance of the Silver Spring Transit Center, the Downtown Silver Spring retail center, and existing and proposed neighborhood parks and trails.

## **Site Analysis**

The subject property consists of one lot covering 54,500 square feet. The western portion of the subject property is within the CBD-1 and Fenton Village Overlay zones and the eastern portion of the property is within the CBD-0.5 zone. The property is developed with an existing three-story, 28,170 square-foot office building, which is proposed to remain – but 5,632 square feet of the building are proposed to be converted to retail use. The site also contains two, one-family detached dwellings and a surface parking lot, which will be removed to accommodate the proposed development.

The site is located within the Sligo Creek watershed. The site is entirely developed and contains no forest, streams, wetlands, or other environmental features.

The site slopes downward towards Silver Spring Avenue, with approximately 15 feet of grade separating the alley elevation on the south and Silver Spring Avenue to the north. There are several large trees on-site, including tulip trees, cherries, and locusts ranging from 20-42" DBH. The original plan submission would have cleared the entire site except for a 36" tulip tree which the applicant had intended to save. Since the original approval, the Applicant determined that the particular tree could not be retained and the current amendment proposes the removal of the additional tree.

## **PROJECT DESCRIPTION**

### **Previous Approvals**

#### Project Plan

The Planning Board approved Project Plan No.920100030 by resolution dated April 5, 2010, for a multi-building, mixed-use development of 147,888 sf., to include a 110-room hotel with 3,602 sf. of ground-floor retail; a 28,170-sf. office building including 5,632 sf. of ground-floor retail; and a multi-family residential building with 58 dwelling units (including 7 MPDUs and 5 WFHUs). (Attachment A)

#### Preliminary Plan

The Planning Board approved Preliminary Plan No. 120070420 by resolution dated December 15, 2010, for one lot, with a maximum of 22,538 sf. of office use, 9,234 sf. of retail use, 60,459 sf. of residential use (consisting of no more than 58 multi-family dwelling units, including 12.5% moderately priced dwelling units (MPDUs) and 10% workforce housing units (WFHUs)), and 59,870 sf. of hotel use (consisting of no more than 110 guest rooms). The associated forest conservation plan approval included the removal of three trees subject to forest conservation variance and impacts to, but retention of an additional subject tree. (Attachment B)

### Site Plan

The Planning Board approved Site Plan No. 820100120 by resolution dated December 15, 2010, for a multi-building, mixed-use development of 147,888 sf., to include a 110-room hotel with 3,602 sf. of ground-floor retail; a 28,170-sf. office building including 5,632 sf. of ground-floor retail; and a multi-family residential building with 58 dwelling units (including 7 MPDUs and 5 WFHUs). (Attachment C)

### **Proposal**

The Applicant proposes to remove one additional existing on-site tree (tree #5) that is subject to a forest conservation variance.

### **ANALYSIS AND FINDINGS**

#### **Master Plan**

The proposed amendment maintains conformance with the *Silver Spring CBD Sector Plan* recommendations for the Subject Property.

#### **Transportation and Circulation**

The proposed amendment does not affect vehicular circulation or pedestrian and bicyclist access.

#### **Environment**

The Final Forest Conservation Plan (FFCP) was originally stamped as submitted to the Planning Board on October 1, 2010. The FFCP and the associated variance request identified the removal of three subject trees (but did not include the *removal* of tree #5).

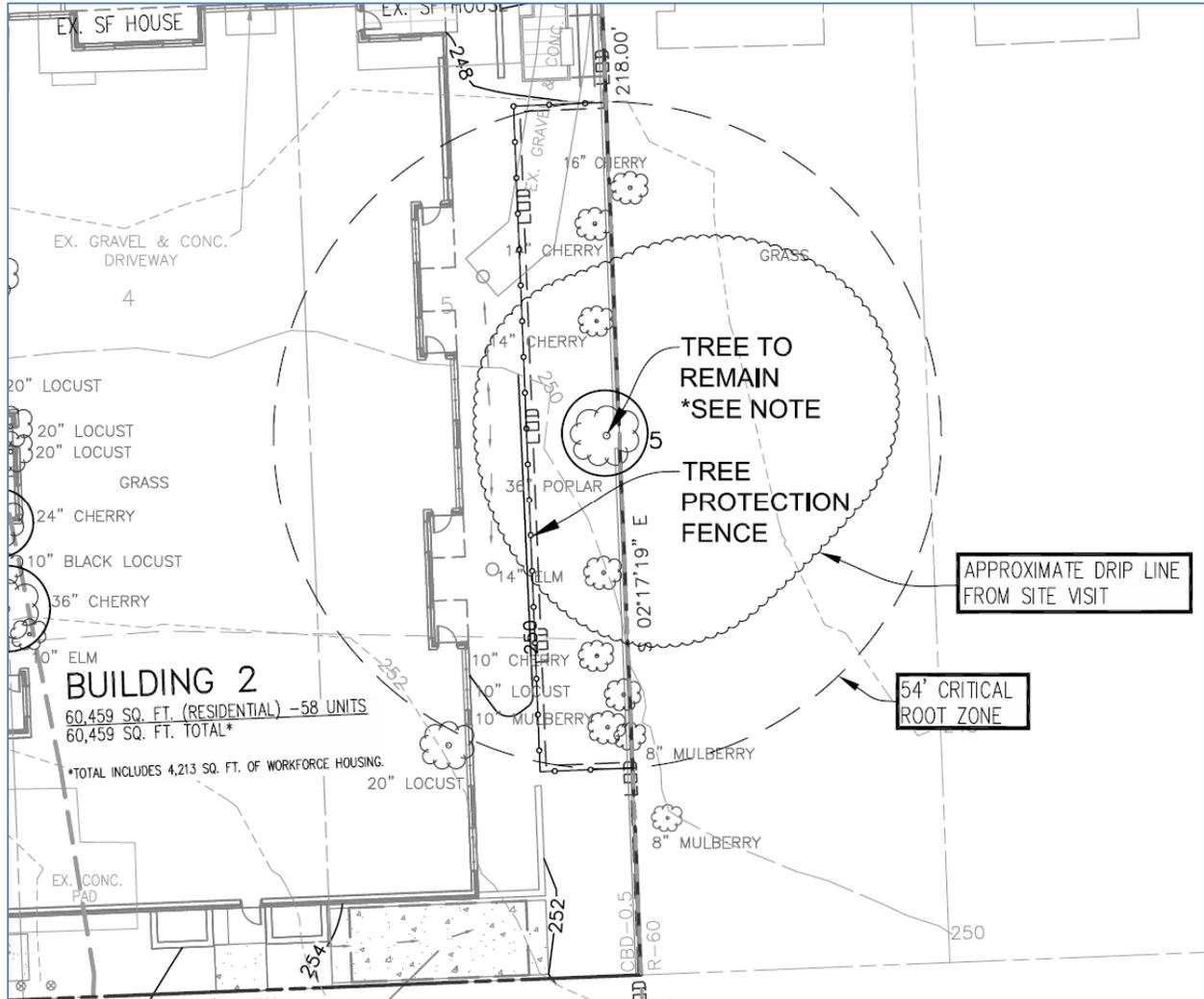
The FFCP and variance were approved by Planning Board with a number of conditions that are enumerated in the Planning Board Resolution. Both the Preliminary Plan findings (finding 4) and the original FFCP include language regarding the originally approved variance:

*Specimen tree #5, the existing 36" Tulip Poplar is proposed for preservation. At time of site plan, an arborist shall review the health and development impacts to determine if the tree preservation is both possible and safe. If specimen tree #5 must be removed during or at post development, the applicant shall submit a revised variance for review by the Planning Board in an amendment to the Final Forest Conservation Plan*

Ultimately the applicant could not devise a plan to appropriately retain tree #5. The FFCP amendment now shows tree #5 as proposed for removal rather than retention. Mitigation plantings for the proposed removal are also addressed.

Changes to Forest Conservation and Tree Save

Tree #5 is the only additional removal (or impact) requested under the revised variance request. The tree is located onsite along the eastern boundary line. The tree was previously granted a variance for impacts but not removal.



*Tree #5 as shown on original FFCP approved by the Planning Board*

This project was among the very first variance requests for which the County arborist provided a recommendation. The County Arborist recommended approval of the variance for impacts to the critical root zones of the trees, with mitigation, on April 20, 2010. The current variance request is detailed below.

Tree No.	Common Name	Botanical Name	D.B.H.	C.R.Z. Radius	C.R.Z. Area	% C.R.Z. Area Disturbed	Condition
1	Tulip Poplar	<i>Liriodendron tulipifera</i>	44 In.	66 feet	13,685 s.f.	100 %	Poor/Remove
2	Tulip Poplar	<i>Liriodendron tulipifera</i>	40 In.	60 feet	11,310 s.f.	100 %	Good/Remove
3	Black Cherry	<i>Prunus Serotina</i>	36 In.	54 feet	9,160 s.f.	100 %	Good/Remove
5	Tulip Poplar	<i>Liriodendron tulipifera</i>	36 In.	54 feet	9,160 s.f.	100 %	Fair/remove

Grey text reflects the previously approved variance trees.

**Forest Conservation Variance**

Section 22A-12(b)(3) of Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection. Any impact to these trees, including removal of the subject tree or disturbance within the tree’s critical root zone (CRZ), requires a variance. An Applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. Unless the variance is granted, the law requires no impact to trees that measure 30 inches DBH or greater; are part of a historic site or designated with a historic structure; are designated as national, state, or county champion trees; are at least 75 percent of the diameter of the current State champion tree of that species; or to trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species.

Since the revised LOD and onsite plan changes affects an additional tree that is  $\geq 30''$  DBH, a variance is required. The Applicant submitted a variance request on July 3, 2014 for the removal of a tree as a result of the proposed project (see Appendix D). Therefore in total, one tree (tree #5) that is considered high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law is proposed to be affected (beyond the previously approved variance).

Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made by the Planning Board or Planning Director, as appropriate, in order for a variance to be granted. In addition to the required findings outlined numerically below, staff has determined that the Applicant has demonstrated that enforcement of the variance provision would result in an unwarranted hardship for the following reasons:

*The Property is currently developed with an office building, two single family homes and a paved parking area. The Property is located within the Silver Spring Central Business District, and is within the Silver Spring CBD Metro Policy Area. The number of existing small lots to be combined into one, in an urban setting, renders it nearly impossible to re-develop while safely retaining the subject tree. The Silver Spring CBD Sector Plan encourages land assembly, along with higher and better uses of the land available by incorporating residential with commercial uses. The variance is necessary to achieve the master planned densities and provide the required green space and meet stormwater management requirements. This project proposes the type of well-designed mixed-use development the Sector Plan envisioned.*

Staff has reviewed this application and based on the existing circumstances and conditions on the property, staff agrees that there is an unwarranted hardship.

### Variance Findings

Staff recommends that the Planning Board make the following determination based on the required findings that granting of the requested variance. According to Section 22A-21(e) of the County Code, in reaching its determination on the variance, the Planning Board must consider 4 factors. As the following findings demonstrate, in staff's opinion, the subject forest conservation plan and variance adequately addresses each of these factors:

1. *Will it confer on the applicant a special privilege that would be denied to other applicants?*

Granting the variance will not confer a special privilege as the removal and/or disturbance of the specimen trees noted above are the minimum necessary in order to develop the property. Furthermore, the need for the variance is necessary and unavoidable in order to develop property according to the master plan. The same criteria have been applied to other projects where the impacts and removals are unavoidable.

2. *Is it based on conditions or circumstances which are the result of the actions by the applicant?*

The requested variance is not based on conditions or circumstances which are the result of actions of the applicant. The property is located in the Silver Spring Central Business District and is split zoned CBD 0.5 and CBD 1.0. The Master Plan envisions this property as a transition area from the CBD to the single family residential R-60 lots along Silver Spring Avenue. The variance is necessary to achieve the master planned densities and provide the required green space and stormwater management facilities associated with the development. Furthermore, the property owner proposes to remove the specimen trees that are internal, or unavoidable, to achieve the master plan objectives.

3. *Is it based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property?*

The requested variance is not the result of a condition, either permitted or non-conforming, on a neighboring property. The neighboring properties are developed residential or commercial properties, or public rights-of-way.

4. *Will it violate State water quality standards or cause measurable degradation in water quality?*

The requested variance will not violate State water quality standards or cause measurable degradation in water quality. The specimen trees being removed or disturbed are not within a stream buffer, wetland, or a special protection area. The development will actually improve the water quality generated from the site because the new development will introduce stormwater management onto a location that currently has none. The majority of the site is covered by building, driveway, parking lots, and gravel surfaces, all of which generate considerable stormwater runoff. The proposed stormwater management system includes green roofs and underground stormwater management structures. The green roof will treat rainfall at the roof

level limiting the amount of water that needs on-site surface treatment and the underground structures will increase the amount of the water that is recharged into groundwater. Both systems will reduce the quantity and increase the quality of the stormwater discharged into the County's public storm sewer system along Silver Spring Avenue and Fenton Street. The considerable onsite (and adjacent) plantings installed under this project will provide shading and water uptake that will further benefit water quality.

#### Mitigation for Trees Subject to the Variance

The mitigation requested by staff and approved by the Board at the time of the original submission was based on the caliper of tree inches lost and the availability to replant on site. In the case of Silver Spring Park, staff and the Board did not believe any additional mitigation was necessary to offset the impact of critical root zones for the following reasons:

1. *Removal and impact to the trees greater than 30 inches are internal to the site and unavoidable to achieve the master plan densities.*
2. *Two of the specimen trees to be removed are in the exact location of a proposed stormwater management facility. The location of this facility was approved by the Montgomery County Department of Permitting Services prior to the Planning Board's approval of the project plan.*
3. *The applicant is committed to saving the 36 inch tulip tree that is on the eastern property line and has identified that the removal of this tree is not part of the variance. The final forest conservation plan includes a statement that the applicant will seek an amended variance if more impact to the tree is necessary than currently shown on the plan.*
4. *The applicant is planting 14 new canopy trees and 22 new mid-story trees either internal to the site or along Silver Spring Avenue as part of the landscape plan.*
5. *The forest conservation plan generates a 0.17 acre forest planting requirement for a property that currently has no forest.*
6. *The applicant is preserving all street trees along Fenton Avenue.*

NOTE: Since the time of the original application, a standard "formula" of replacement plantings for variance purposes has been established at a ratio of approximately 1" DBH for every 4" DBH removed, using onsite tree plantings that are a minimum of 3" caliper. The total caliper inches of subject tree removals for the project as now proposed equals 156 diameter inches. Under the current formula, 13 three inch caliper trees would be needed to mitigate the subject removals ( $156"/4"$  equals 39" and  $39"/3"$  equals 13 trees). The originally established number of 14 canopy trees more than satisfies the 156" of caliper replacement under the current formula<sup>1</sup>.

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<sup>1</sup> Note some of the canopy trees are planted in the ROW which are generally no longer accepted for variance mitigation. However the project also provides over 22 onsite midstory trees which were also approved as part of the original variance mitigation. Staff does not believe it would be appropriate at this stage to entirely redesign the landscape and layout to provide a standard of 13 *onsite* canopy trees as would be required under a new application.

### Count Arborist Recommendation

In accordance with Montgomery County Code Section 22A-21(c), the Planning Department is required to refer a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a recommendation prior to acting on the request. The Applicants' revised request was forwarded to the County Arborist on July 3, 2014. The County Arborist issued a response to the variance request on July 17, 2014, and recommended the variance be approved with the condition that mitigation is provided (Appendix D). Additionally, the County Arborist provided general recommendations on calculating mitigation plantings and providing tree preservation measures.

### Staff Recommendation on Variance

As a result of the above findings, staff recommends the Board approve the Applicant's new request for a variance from Forest Conservation Law to remove one additional subject tree. The previously approved variance stands except as amended herein. The variance approval is assumed into the Planning Board's approval of the Forest Conservation Plan.

The proposed amendment maintains compliance with Chapter 22A regarding forest conservation, and Chapter 19 regarding water resource protection of the Montgomery County Code.

### **Development Standards**

The proposed amendment does not alter the development standards approved with the original site plan.

### **Previous Conditions of Approval**

The proposed amendment maintains conformance with the conditions of approval of the Project Plan No. 920130010, Preliminary Plan No. 120130200, and Site Plan No. 820130230.

### **COMMUNITY OUTREACH**

The Applicant sent a notice regarding the subject Site Plan Amendment to all parties of record on July 9, 2014. The notice gave the interested parties 15 days to review and comment on the Site Plan Amendment. To date, staff has not received any correspondence on the proposed amendment.

### **CONCLUSION**

The proposed Site Plan Amendment does not alter the overall design of the development in relationship to the original approval. The modification does not impact the compatibility or efficiency, adequacy, and safety of the site with respect to structures and uses, vehicular and pedestrian circulation, open space, landscaping, or lighting. All previous approvals remain in full force and effect, as modified by this Amendment.

**APPENDIX**

- A. Project Plan Resolution No. 10-24
- B. Preliminary Plan Resolution No. 10-151
- C. Site Plan Resolution No. 10-152
- D. Variance request



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

Appendix A

**MCPB No. 10-24**  
**Project Plan No. 920100030**  
**Project Name: Silver Spring Park**  
**Date of Hearing: March 4, 2010**

**MONTGOMERY COUNTY PLANNING BOARD**

**RESOLUTION**

WHEREAS, pursuant to Montgomery County Code Division 59-D-2, the Montgomery County Planning Board ("Planning Board") is vested with the authority to review project plan applications; and

WHEREAS, on December 7, 2009, Fenton Group, LLC, ("Applicant") filed an application for approval of a project plan for a multi-building, mixed-use development of 147,888 sf. (exclusive of the area devoted to Workforce Housing, to a maximum of 10 percent), to include a 110-room hotel with 3,602 sf. of ground-floor retail; a 28,170-sf. office building with 5,632 sf. of ground-floor retail; and a multi-family residential building with 58 dwelling units (including 7 MPDUs and 5 WFHUs) ("Project Plan"), on 1.57 acres of CBD-1, CBD-0.5, and Fenton Village Overlay-zoned land in the southeast corner of the intersection of Fenton Street and Silver Spring Avenue in the Silver Spring CBD ("Property" or "Subject Property"); and

WHEREAS, Applicant's project plan application was designated Project Plan No. 920100030, Silver Spring Park (the "Application"); and

WHEREAS, Planning Board Staff ("Staff") issued a memorandum to the Planning Board, dated February 22, 2010, setting forth its analysis and recommendation for approval of the Application subject to certain conditions ("Staff Report"); and

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Approved as to  
Legal Sufficiency:

  
M-NCPPC Legal Department

WHEREAS, following review and analysis of the Application by Staff and the staffs of other governmental agencies, on March 4, 2010, 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

WHEREAS, on March 4, 2010, the Planning Board approved the Application subject to conditions, on motion of Commissioner Alfandre; seconded by Commissioner Dreyfuss; with a vote of 4-0; Commissioners Alfandre, Dreyfuss, Hanson, and Wells-Harley voting in favor, and Commissioner Presley being absent.

NOW, THEREFORE, BE IT RESOLVED that, pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Montgomery County Planning Board APPROVES Project Plan No. 920100030 for a multi-building, mixed-use development of 147,888 sf. (exclusive of the area devoted to Workforce Housing, to a maximum of 10 percent), to include a 110-room hotel with 3,602 sf. of ground-floor retail; a 28,170-sf. office building with 5,632 sf. of ground-floor retail; and a multi-family residential building with 58 dwelling units (including 7 MPDUs and 5 WFHUs), on 1.57 gross acres in the CBD-1, CBD-0.5, and Fenton Village Overlay zones, subject to the following conditions:

1. Development Ceiling

The proposed development is limited to 147,888 square feet of gross floor area (exclusive of area devoted to Workforce Housing, up to a maximum of 10 percent), to include a 110-room hotel with 3,602 sf. of ground-floor retail; a 28,170-sf. office building with 5,632 sf. of ground-floor retail; and a multi-family residential building with 58 dwelling units (including 7 MPDUs and 5 WFHUs).

2. Building Height and Mass

The proposed development is limited to the building footprint as delineated in the Project Plan drawings submitted to MNCPPC dated February 2, 2010, unless modified at Site Plan review.

3. LEED (Leadership in Energy and Environmental Design) Certification

For the proposed new buildings, the Applicant must achieve a LEED-NC Silver Rating Certification. By the time of Site Plan, the Applicant must determine the applicability of the Montgomery County Green Building Regulation to the proposed renovation of the existing commercial buildings.

4. Public Use Space and Amenities

a. The Applicant must provide on-site a minimum of 2,933 sf. of public use space (5.8% of net lot area).

- b. In lieu of providing the remaining 7,116 sf. on-site public use space (14.2% of the required 20% of the net lot area), the Applicant must contribute to M-NCPPC \$722,644 for the implementation of, or acquisition of land for, Fenton Street Urban Park, in the Silver Spring CBD.
- c. At the time of Site Plan, if the area shown on the Project Plan as public use space changes, the Applicant may adjust the amount of the Amenity Fund contribution proportionally without amending the Project Plan.
- d. At the time of Site Plan the Board may approve an alternative amenity site, as recommended by M-NCPPC staff, to satisfy the Applicant's public use space requirement. The alternative site must be in the public interest and consistent with the amenity fund guidelines. Board approval of this alternative would not require an amendment to the Project Plan.
- e. If, by the time of Site Plan review, there are approved Amenity Fund implementation guidelines that yield a different payment amount, the Planning Board may elect to replace the payment amount in Condition 4(b) above, with the new amount.
- f. Final details regarding the Amenity Fund contribution shall be determined at Site Plan, in coordination with the appropriate Parks Department staff.
- g. As a public amenity, the Applicant must provide streetscape improvements per the Silver Spring Streetscape Standard, including the undergrounding of utilities, along the property's frontages on Fenton Street and Silver Spring Avenue, as illustrated in the Certified Site Plan, for a total of approximately 8,796 sf., or 17.5% of the net lot area.

5. Design issues to address at site plan

During Site Plan review, the Applicant must resolve the following design issues:

- a. Design the on-site public use space to distinguish it spatially from the "front yard" of the multi-family building.
- b. Revise the site design as necessary to minimize the width of the parking garage entry driveway.
- c. Further refine the quality of the proposed building facades.
- d. Coordinate with Development Review, Urban Design, Fire and Rescue, DOT, and DPS Stormwater to address outstanding design issues satisfactorily.

6. Forest Conservation

- a. The proposed development shall comply with the conditions of the preliminary Forest Conservation Plan as stated in the Environmental Planning approval letter to the Applicant. The Applicant must satisfy all conditions prior to Montgomery County Department of Permitting Services' issuance of sediment and erosion control permits.
- b. Action on the requested tree removal variance shall be taken as part of the pending review of the Preliminary Plan of Subdivision.

BE IT FURTHER RESOLVED that, having given full consideration to the recommendations and findings of its Staff, which the Planning Board hereby adopts and incorporates by reference, and upon consideration of the entire record and all applicable elements of § 59-D-2.43, the Montgomery County Planning Board, with the conditions of approval, FINDS:

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

Intents and Purposes of The CBD Zones

The Montgomery County Zoning Ordinance states the purposes which the CBD zones are designed to accomplish. The following statements analyze how the proposed Project Plan conforms to these purposes:

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

The Silver Spring CBD Sector Plan, as codified in the Fenton Village Overlay Zone, recommends an intensity of development that allows a successful transition between CBD core and edge. The proposed development combines commercial, hotel, residential, and retail uses within walking distance of transit and the commercial center of the Silver Spring CBD, but limits both the height and overall density to encourage compatibility with and transition into the lower density residential uses at the CBD edge.

- (2) *"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 hotel use central to this proposal will provide a much-needed economic engine for the southern end of Fenton Village, providing customers for surrounding purveyors of food, goods, and services. The additional upgraded office space, multi-family dwelling units, and retail uses will greatly expand the diversity of options for workers, shoppers, and residents, providing MPDUs, WFHUs, and smaller scale neighborhood-oriented retail.

- (3) *"To encourage designs which produce a desirable relationship between the individual buildings in the central business district, between the buildings and the circulation system and between the central business district and adjacent areas."*

The proposed design fosters a variety of desirable relationships between the project, the CBD, and the surrounding residential neighborhood, based on massing, height, and use. The building massing is arranged generally to define public space, both in terms of the adjoining streets and in the pocket park at the edge of the site. The building height continues the step-down from the taller buildings of the CBD core to the two-and-one-half-story one-family homes next door. Finally, the variety of proposed uses - hotel, office, retail, and residential - provides opportunities for increased pedestrian, social, and economic activity for Fenton Village.

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

The proposed development is ten minutes' walk from the Silver Spring Transit Center, directly on several bus lines, one block from a regional bus terminal, and a few blocks away from existing and planned bikeways.

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

The project will improve pedestrian circulation by expanding the implementation of the Silver Spring streetscape standard, and by providing additional destinations for people to circulate to the south end of Fenton Village.

Vehicular circulation is improved by utilizing the public alley on the south side of the site for service access and by bringing residential and hotel parking access onto the secondary residential street, reducing queuing on Fenton Street.

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

The proposed development provides the minimum of both MPDUs and WFHUs distributed among the unit types, increasing the amount of affordable housing in the Silver Spring CBD.

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

The proposed development combines eight parcels currently serving as surface parking lots, tow yards, and office buildings into a single lot providing a strong diversity of land uses.

#### Further Intents of the CBD-1 and CBD-0.5 Zones

Section 59-C-6.213(a) states that it is further the intent in the CBD-1 and CBD-0.5 Zones:

- (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 complementing the uses in the interior portions of these districts; and*

The proposed development will provide both rental apartments, including affordable housing, as well as hotel rooms, all of which promote the development of neighborhood-scale restaurant and convenience and service retail, both within the ground-floor space proposed and in the surrounding Fenton Village.

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

The height, setbacks, and landscaping for the project are designed specifically to be compatible with the adjacent residential uses. The proposed multi-family building works to match the setback of the adjacent existing one-family houses, creating the opportunity for a public space to transition between the more urban retail street and the rest of the neighborhood. Further, the architecture of that building is modulated to visually break up the mass the building, improving compatibility.

#### Purpose of the Fenton Village Overlay Zone

Section 59-C-18.191 states that it is the purpose of the in the Fenton Village Overlay Zone to:

- (1) *"facilitate the implementation of an organized and cohesive development patterns that is appropriate for an urban environment;*
- (2) *encourage attractive design and ensure compatibility with existing buildings and uses within and adjacent to the overlay zone;*

- (3) *provide flexibility of development standards to encourage innovative design solutions;*
- (4) *allow for the transfer of the public use space requirement to other properties within the Overlay District; and*
- (5) *allow new uses.”*

While the proposed development does not include the new uses allowed by the overlay zone or transfer its public use space to other properties it controls in the Overlay District, the development fulfills the purpose of the overlay zone by providing a mixed-use project with the potential to further revitalize the southern end of Fenton Village in a manner compatible with, and supported by, the surrounding community.

**Requirements of the CBD-1, CBD-0.5, and Fenton Village Overlay zones**

The Staff Report contains a data table that lists the Zoning Ordinance required development standards and the development standards proposed for approval. The Board finds, based on the aforementioned data table, and other evidence and testimony of record, that the Application meets all of the applicable requirements of the CBD-1, CBD-0.5, and Fenton Village Overlay zones. The following data table sets forth the development standards approved by the Planning Board and binding on the Applicant.

**DATA TABLE**

Development Standards  
 Approved by the Board  
 and Binding on the  
 Applicant

Lot Area, Minimum (sf.)	68,321
Previously dedicated area	13,821
Proposed dedicated area	4,258
Net lot area	50,242
Density, Total Maximum (sf.)	147,888
Density, Non-Residential Maximum (sf.)	91,642
MPDUs, Minimum (percentage of DUs, exclusive of WFHUs)	12.5
MPDUs	7
WFHUs, Minimum (percentage of market-rate DUs)	10
WFHUs	5
Total Dwelling Units	58

Building Height, Maximum (ft.)	60
Building Setbacks, Minimum (ft.)	
Fenton Street	0
Silver Spring Ave.	0
East Side	0
Alley	0
Parking Spaces, Max. (site is located in a Parking Lot District and Applicant will pay tax for parking not provided)	123
Min. Public Use Space, (% of Net Lot Area)	20
On-Site Public Use Space, (sf.)	2,933
On-Site Public Use Space (% of Net Lot Area)	5.8
On-Site Public Use Space provided off-site via Amenity Fund (sf.)	7,116
Min. On-Site Public Use Space provided off-site via Amenity Fund (% of Net Lot Area)	14.2
Contribution to Amenity Fund for implementation of Fenton Street Urban Park	\$722,644
• 14.2% of assessed land value; AND	
• 7,116 sf. @ \$35/sf.	
Min. Off-Site Public Amenity Space (sf.)	8,796
Min. Off-Site Public Amenity Space (% of Net Lot Area)	17.5
Min. Total On- & Off-Site Public Use & Amenity Space (sf.)	18,845
Min. Total On- & Off-Site Public Use & Amenity Space (% of Net Lot Area)	37.5

(b) *The proposal conforms to the approved and adopted Master or Sector Plan or an Urban Renewal Plan approved under Chapter 56.*

The proposed Project Plan is in substantial conformance with the 2000 Silver Spring CBD Sector Plan. The Plan encourages a mix of housing and neighborhood-scale commercial development in the Fenton Village area. To encourage land assemblage to improve the redevelopment potential for the area, the Sectional Map Amendment for the 2000 Silver Spring CBD plan rezoned part of this site, along with most of the other sites in the Fenton Village area, from CBD-0.5 to CBD-1. The proposed project has met this goal by assembling eight distinct parcels and by providing a mix of housing and commercial uses including the existing office use on the site.

The Silver Spring CBD Plan also recommends pedestrian improvements along Fenton Street and Silver Spring Avenue. Furthermore, the Plan designated Silver

Spring Avenue as a green street to emphasize the need for landscaping improvements along this road. The project complies with this vision by proposing streetscape improvements along both Fenton Street and Silver Spring Avenue.

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

The scale of the proposed development is compatible with existing and proposed surrounding uses. The proposed mix of uses, including hotel, multi-family residential, office, and retail, has the potential to increase economic and social activity in Fenton Village by providing customers for existing and proposed businesses, restaurants, and shops during the week as well as evenings and weekends.

- (d) *As conditioned, the proposal would not overburden existing public services nor those programmed for availability concurrently with each stage of construction and, if located within a transportation management district designated under Chapter 42A, article II, is subject to a traffic mitigation agreement that meets the requirements of that article.*

A traffic management agreement will be finalized during the Preliminary Plan review process. Other public facilities exist on or near the site and no expansion or renovation of these services will be required to be completed by the County. Further, requirements for public safety and fire will be minimally impacted due to the nature of the land use and must be approved by the respective agencies prior to Preliminary Plan approval.

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

A standard method project would only allow a density of 1 FAR for the CBD-0.5 portion (v. 1.5 FAR optional method) and 2 FAR for the CBD-1 portion (v. 3 FAR optional method) on this site, providing insufficient density for the proposed mix of uses. Further, the requirement for public amenities would be removed and the public use space requirement would be reduced by one-half. Because infill development and density near transit hubs is a core value of smart growth and given the number and quality of public amenities being proffered, the optional method of development is much more desirable and more efficient for this particular site.

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

The proposed development will provide 12.5% MPDUs as required by Chapter 25A. A final agreement between the Applicant and the Department of Housing and Community Affairs will be required at the time of site plan review.

- (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 only if the project will result in an overall land use configuration that is significantly superior in meeting the goals of the applicable master or sector plan and the zone than would be achieved without the proposed transfer.*

The Project Plan will combine eight separate lots, variously zoned CBD-0.5 or CBD-1, in a single development. The density appropriate to each of these zones will be consolidated and distributed within the overall development in accordance with 59-C-6.2352. As previously discussed, the overall development provides an urban infill project with a density and mix of uses which is significantly superior in meeting the goals of the sector plan.

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

The site is subject to Section 22A of the County code. There is no forest on-site. Therefore the subject site has an afforestation requirement. Based on the forest conservation law there is a 0.17-acre planting requirement. The Applicant will meet the requirement by an in-lieu fee payment.

Additionally, on the site there are four trees greater than 30 inches in diameter (DBH). The Applicant is proposing to remove three of the trees and preserve the remaining one. Maryland law now requires that local forest conservation laws identify certain individual trees as high priority for protection: all trees 30" DBH and greater; trees that are 75% the diameter of the county champion for that species; and rare, threatened, and endangered species. Since this project did not obtain approval of a Preliminary Forest Conservation Plan prior to October 1, 2009, and the Applicant is proposing to remove specimen trees greater than 30 inches DBH, a variance is required.

Staff notified the Applicant of this variance requirement at the regularly scheduled Development Review Committee (DRC) meeting on January 19, 2010, but did not receive the Applicant's variance request until February 3, 2010, which staff in turn forwarded to Montgomery County Department of Environmental Protection (DEP) on

February 5, 2010. County code requires the Planning Board to refer a copy of each variance request to the County Arborist in DEP for a written recommendation prior to action on the request. The County Arborist has 30 days to comment. In this case, given the date of the Applicant's submittal of the variance request, the 30 days will lapse on March 6, 2010, after the conclusion of the required 90-day Project Plan review period. Therefore, the Planning Board's action on the Project Plan does not include the variance. In order to allow for the full 30-day review period by the County Arborist, the variance review will be part of the future Preliminary Plan of Subdivision.

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

The Applicant has submitted plans to DPS to satisfy applicable requirements of Chapter 19. The review remains ongoing and will be completed at Preliminary and/or Site Plan review.

- (j) *Any public use space or public facility or amenity to be provided off-site is consistent with the goals of the applicable Master or Sector Plan and serves the public interest better than providing the public use space or public facilities and amenities on-site.*

The proposed financial contribution toward the implementation of public use space off-site, specifically the realization of Fenton Street Urban Park, is consistent with, and specifically identified as a public benefit in, the Silver Spring CBD Sector Plan. Given the constraints of the subject site, providing the full complement of public use space required by the zone would necessitate pushing the buildings away from the street and would create an undesirable condition at the street level, with unclear delineation between public and private space. Typically, such places have the residual character of the un-owned space and are uninviting and under-utilized. In contrast, Fenton Street Urban Park is an ideal gateway location into the Fenton Village section of Silver Spring, with residential, commercial, service, educational/civic, retail, and restaurant uses all within walking distance. When realized, this park will provide a valuable community amenity that is scarce in the CBD. The implementation of Fenton Street Urban Park serves the public interest far better than providing the space on the subject site.

BE IT FURTHER RESOLVED that all elements of the plans for Project Plan No. 920100030, Silver Spring Park, stamped received by M-NCPPC on February 2, 2010, are required except as modified by the above conditions of approval; and

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

BE IT FURTHER RESOLVED that this Project Plan shall remain valid as provided in Montgomery County Code § 59-D-2.7; and

BE IT FURTHER RESOLVED that the date of this Resolution is APR 5 2010  
(which is the date that this Resolution is mailed to all parties of record); and

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

\* \* \* \* \*

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner Presley, seconded by Commissioner Wells-Harley, with Commissioners Hanson, Wells-Harley, Alfandre, and Presley voting in favor of the motion, and with Commissioner Dreyfuss absent, at its regular meeting held on Thursday, March 18, 2010, in Silver Spring, Maryland.

  
\_\_\_\_\_  
Royce Hanson, Chairman  
Montgomery County Planning Board



**MONTGOMERY COUNTY PLANNING BOARD**

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**MCPB No. 10-151  
Preliminary Plan No. 120070420  
Silver Spring Park  
Date of Hearing: October 28, 2010**

**DEC 15 2010**

**MONTGOMERY COUNTY PLANNING BOARD**

**RESOLUTION**

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 November 30, 2006, Fenton Group, LLC ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create one lot on 1.57 acres of land in the CBD-1, CBD-0.5, and Fenton village Overlay zones, located in the southeast corner of the intersection of Fenton Street and Silver Spring Avenue ("Property" or "Subject Property"), in the Silver Spring CBD Sector Plan area; and

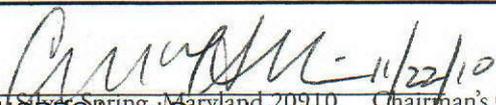
WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120070420, Silver Spring Park (formerly Moda Vista Residences) ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated October 18, 2010, 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 Staff and the staff of other governmental agencies, on October 28, 2010, 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

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Approved as to  
Legal Sufficiency:  11/22/10  
8787 Georgia Avenue, Silver Spring, Maryland 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320  
www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

WHEREAS, on October 28, 2010, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Dreyfuss; seconded by Commissioner Presley; with a vote of 5-0, Commissioners Alfandre, Carrier, Dreyfuss, Presley, and Wells-Harley voting in favor.

NOW, THEREFORE, BE IT RESOLVED, that, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Preliminary Plan No. 120070420 to create one lot on 1.57 acres of land in the CBD-1, CBD-0.5, and Fenton Village Overlay zones, located in the southeast corner of the intersection of Fenton Street and Silver Spring Avenue, in the Silver Spring CBD Sector Plan area, subject to the following conditions:

1. Approval under this Preliminary Plan is limited to one lot for a maximum of 22,538 square feet of office use, 9,234 square feet of retail use, 60,459 square feet of residential use (consisting of no more than 58 multi-family dwelling units, including 12.5% moderately-priced dwelling units (MPDUs) and 10% workforce housing units (WFHUs)), and 59,870 square feet of hotel use (consisting of no more than 110 guest rooms).
2. Final approval of the number and location of buildings, dwelling units (including MPDUs and WFHUs), on-site parking, site circulation, and sidewalks will be determined at site plan.
3. The Applicant must comply with the conditions of approval for the preliminary forest conservation plan. The Applicant must satisfy all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permits, as applicable.
4. The Applicant must dedicate and the record plat must show dedication of 40 feet of right of way, as measured from the centerline, along the Property frontage for Fenton Street and 35 feet of right-of-way, as measured from the centerline, along the Property frontage for Silver Spring Avenue, with a 14-foot corner truncation at the intersection of these streets.
5. The Applicant must construct all road improvements within the rights-of-way shown on the approved Preliminary Plan to the full width mandated by the Sector Plan and to the design standards imposed by all applicable road codes. The required roadway improvements must be open to traffic prior to issuance of any new building occupancy permit for the development.
6. The Applicant must enter into a Traffic Mitigation Agreement (Agreement) with the Planning Board and Montgomery County Department of Transportation (MCDOT) to participate in the Silver Spring Transportation Management District

(TMD). The final Agreement must be executed prior to the certification of the site plan for the proposed development.

7. The Applicant must comply with the conditions of the Montgomery County Department of Permitting Services (MCDPS) stormwater management approval dated May 20, 2010. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
8. The Applicant must comply with the conditions of the MCDOT letter dated September 15, 2010, as amended by an e-mail dated September 27, 2010, from MCDOT. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
9. The Applicant must satisfy provisions for access and improvements as required by MCDOT prior to recordation of plat(s) and Maryland State Highway Administration (MDSHA) prior to issuance of access permits.
10. No clearing, grading or recording of plats prior to certified site plan approval.
11. Site Plan #820100120 must be approved by the Board and certified by the Development Review Staff prior to the approval of the record plat.
12. The record plat must show necessary easements.
13. The certified Preliminary Plan must contain the following note: "Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined during the site plan process. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot. Other limitations for site development may also be included in the conditions of the Planning Board's approval."
14. The Adequate Public Facility (APF) review for the Preliminary Plan will remain valid for eighty-five (85) months from the date of mailing of the Planning Board Resolution.

BE IT FURTHER RESOLVED, that having given full consideration to the recommendations and findings of its Staff as presented at the Hearing and as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference, 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 Sector Plan.*

The Preliminary Plan is in substantial conformance with the 2000 Silver Spring CBD Sector Plan ("Sector Plan"). The Sector Plan encourages a mix of housing and neighborhood-scale commercial development in the Fenton Village area. To encourage land assemblage to improve the redevelopment potential of the area, the Sectional Map Amendment for the Sector Plan rezoned part of this Property, along with most of the other sites in the Fenton Village area, from CBD-0.5 to CBD-1. The Preliminary Plan meets this goal by assembling seven lots and by providing a mix of housing and commercial uses including the existing office uses.

The Sector Plan also recommends pedestrian improvements along Fenton Street and Silver Spring Avenue. Furthermore, the Sector Plan designated Silver Spring Avenue as a green street to emphasize the need for landscaping improvements along this road. The Preliminary Plan complies with this vision by proposing streetscaping improvements along both Fenton Street and Silver Spring Avenue.

Other recommendations in the Sector Plan with which the Preliminary Plan is in substantial conformance are facilitating new housing, strengthening the area's economic vitality, attracting additional retail uses to the area, and encouraging redevelopment through application of the Fenton Village Overlay zone.

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

Roads and Transportation Facilities

A traffic study is required for any preliminary plan that will generate 30 or more total peak-hour trips during the typical weekday morning (6:30 a.m.-9:30 a.m.) and evening (4:00 p.m.-7:00 p.m.) peak periods. Because the subject Preliminary Plan was expected to exceed the 30 trip threshold, a traffic study was submitted in March 2010.

Using Silver Spring CBD trip generation rates for the proposed uses and after accounting for the existing office use on the Property, the study estimated that the proposed development will generate 44 net new peak-hour trips during the morning peak period and 57 net new peak-hour trips during the evening peak period.

For comparison purposes, the study also determined that if non-Silver Spring CBD trip generation rates were used, the development would generate 107 net new peak-hour trips during the morning peak period and 132 net new peak-hour trips during the evening peak period. The development, as a result of it being located within the Silver Spring CBD, therefore generates less peak-hour trips during the morning (63 trips) and evening (75 trips) peak periods.

#### Local Area Transportation Review (LATR)

As shown in the traffic study, the capacity analysis demonstrates that under total traffic conditions, CLV at intersections included in the traffic study would be below the applicable congestion standard for Silver Spring CBD Policy Area (1,800 CLV). The Preliminary Plan, therefore, satisfies the LATR requirements of the adequate public facilities (APF) test.

#### Policy Area Mobility Review (PAMR)

To satisfy the PAMR requirements of the APF test, the Silver Spring CBD Policy Area requires mitigation of ten percent of new peak-hour trips generated by a development.

The site trip comparison summary provided in the traffic study demonstrates that the proposed development, as a result of being located within the Silver Spring CBD, will generate approximately 59 percent fewer peak-hour trips during the morning peak period and 57 percent fewer peak-hour trips during the evening peak period. Since these percentages are higher than the required PAMR trip mitigation percentage for the Silver Spring CBD Policy Area, the Preliminary Plan satisfies the PAMR requirements of the APF test.

#### Truncation

Section 50-26(c)(3) of the Subdivision Regulations requires that the property lines of corner lots be truncated 25 feet from the intersection. This provides additional right-of-way area at intersections that ensures that adequate sight distance is available and creates space for traffic channelization. But the regulation also allows the Planning Board to specify a greater or lesser truncation depending on the specific sight distance and channelization needs at the intersections adjacent to the subject property.

In this case, the Applicant is proposing to provide an approximately 14-foot truncation at the intersection of Fenton Street and Silver Spring Avenue. Full truncation at this intersection is not necessary because adequate sight distance exists. The intersection is signalized, which further enhances its safety and

removes the concern that there is not sufficient space within the right-of-way to place traffic signal equipment. Providing full truncation would negatively impact the design of the proposed project and the relationship of the proposed building to the public street. The MDSHA and MCDOT have expressed no objection to approval of the Preliminary Plan without full truncation. For these reasons, the Planning Board finds that the proposed truncation in this location is appropriate at this intersection.

#### Other Public Facilities and Services

Public facilities and services are available and will be adequate to serve the proposed development. The Property will be served by public water and sewer systems. The Application has been reviewed by the Montgomery County Fire and Rescue Service who has determined that the Property has appropriate access for fire and rescue vehicles. Other public facilities and services, such as schools, police stations, firehouses and health services are operating according to the Growth Policy resolution currently in effect and will be adequate to serve the Property. The Application is not within a school moratorium area, and a school facilities payment is not required. Electrical, gas, and telecommunications services are also available for the Property.

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

This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Application meets all applicable sections. Access and public facilities will be adequate to support the proposed lot created by this Preliminary Plan and uses. The lot size, width, shape and orientation are appropriate for the location of the subdivision.

The Preliminary Plan was reviewed for compliance with the dimensional requirements for the CBD-0.5, CBD-1, and Fenton Village Overlay zones as specified in the Zoning Ordinance. The lot as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. The Application has been reviewed by other applicable county agencies, all of whom have recommended approval of the Preliminary Plan.

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

The Property is subject to Section 22A of the County code. The Planning Board previously approved the preliminary forest conservation plan with the Project Plan on March 4, 2010. That plan generated a 0.17 acre planting requirement. The Applicant will meet the requirement by an in-lieu fee payment.

### Forest Conservation Variance

Section 1607(c) of the Natural Resources Article, MD Ann. Code identifies certain individual trees as high priority for retention and protection. Any impact to these trees, including removal or any disturbance within a tree's critical root zone (CRZ), requires a variance. In accordance with Section 22A-21(e), the Applicant has met all of the following criteria required for the Board to grant the variance, and the Planning Board approves the Forest Conservation variance.

When the Planning Board approved the preliminary forest conservation plan, it did not act on the associated tree variance. The Planning Board was unable to approve the variance with the preliminary forest conservation plan because the variance request was submitted late and the County Arborist review period extended beyond the Planning Board hearing date for the Project Plan.

According to Section 22A-21(e) of the County Code, in reaching its determination on the variance the Planning Board, must consider four factors. As the following findings demonstrate, the subject forest conservation plan and variance adequately addresses each of these factors:

- a. *Will not confer on the applicant a special privilege that would be denied to other applicants.*

Granting the variance will not confer a special privilege as the removal and/or disturbance of the specimen trees noted in the Staff Report are the minimum necessary in order to develop the Property. Furthermore, the need for the variance is necessary and unavoidable in order to develop Property according to the Sector Plan. The same criteria have been applied to other projects where the impacts and removals are unavoidable.

- b. *Is not based on conditions or circumstances which are the result of the actions by the applicant.*

The requested variance is not based on conditions or circumstances which are the result of actions of the Applicant. The Property is located in the Silver Spring Central Business District and is split zoned CBD 0.5 and CBD 1.0. The Sector Plan envisions this Property as a transition area from the CBD to the single family residential R-60 lots along Silver Spring

Avenue. The variance is necessary to achieve the planned densities and provide the required green space and stormwater management facilities associated with the development. Furthermore, the Applicant proposes to remove the specimen trees that are internal, or unavoidable, to achieve the Sector Plan objectives, and preserve the one specimen tree on the edge of the Property.

c. *Does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property.*

The requested variance is not the result of a condition, either permitted or non-conforming, on a neighboring property. The neighboring properties are developed residential or commercial properties, or public rights-of-way.

d. *Will not violate State water quality standards or cause measurable degradation in water quality.*

The requested variance will not violate State water quality standards or cause measurable degradation in water quality. The specimen trees being removed or disturbed are not within a stream buffer, wetland, or a special protection area. The development will actually improve the water quality generated from the site because the new development will introduce stormwater management onto a location that currently has none. The majority of the Property is covered by building, driveway, parking lots, and gravel surfaces, all of which generate considerable stormwater runoff. The proposed stormwater management system includes green roofs and underground stormwater management structures. The green roof will treat rainfall at the roof level limiting the amount of water that needs on-site surface treatment and the underground structures will increase the amount of the water that is recharged into groundwater. Both systems will reduce the quantity and increase the quality of the stormwater discharged into the County's public storm sewer system along Silver Spring Avenue and Fenton Street.

### **Mitigation**

The County Arborist recommended mitigation for the impact to the critical root zones of the specimen trees. However, the Planning Board finds that additional mitigation is not necessary to offset the impact of critical root zones for the following reasons:

- a. Removal and impact to the trees greater than 30 inches are internal to the site and unavoidable to achieve the sector Plan densities.
- b. Two of the specimen trees to be removed are in the exact location of a proposed stormwater management facility. The location of this facility was approved by the MCDPS prior to the Planning Board's approval of the Project Plan.
- c. The Applicant is committed to saving the 36 inch tulip tree that is on the eastern property line and has identified that the removal of this tree is not part of the variance. The final forest conservation plan includes a statement that the Applicant will seek an amended variance if more impact to the tree is necessary than currently shown on the plan.
- d. The Applicant is planting 14 new canopy trees and 22 new mid-story trees either internal to the site or along Silver Spring Avenue as part of the landscape plan.
- e. The forest conservation plan generates a 0.17 acre forest planting requirement for a property that currently has no forest.
- f. The Applicant is preserving all street trees along Fenton Avenue.

*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 MCDPS that the Stormwater Management Concept Plan meets MCDPS' standards.*

The MCDPS Stormwater Management Section approved the stormwater management concept for the project on May 20, 2010. The stormwater management concept includes on-site environmental site design to the maximum extent practicable by using green roofs and a micro-biofilter. The environmental site design is augmented with two underground proprietary filters. Due to site conditions and existing shallow storm drains, channel protection is waived. Recharge will also be waived due to site limitations and urban type soils.

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

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

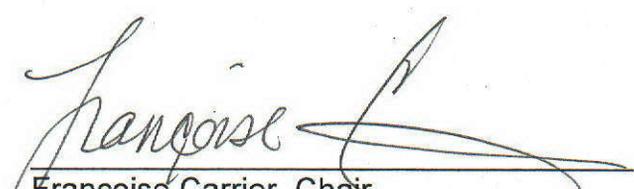
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is DEC 15 2010 (which is the date that this Resolution is mailed to all parties of record); and

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

\* \* \* \* \*

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Vice Chair Wells-Harley, seconded by Commissioner Presley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Dreyfuss and Presley voting in favor of the motion, and with Commissioner Alfandre absent, at its regular meeting held on Thursday, December 2, 2010, in Silver Spring, Maryland.

  
Françoise Carrier, Chair  
Montgomery County Planning Board



DEC 15 2010

Appendix C

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

MCPB No. 10-152  
Site Plan No. 820100120  
Project Name: Silver Spring Park  
Date of Hearing: October 28, 2010

**MONTGOMERY COUNTY PLANNING BOARD**

**RESOLUTION**

WHEREAS, pursuant to Montgomery County Code Division 59-D-3, the Montgomery County Planning Board ("Planning Board") is vested with the authority to review site plan applications; and

WHEREAS, on July 19, 2010, Fenton Group, LLC, ("Applicant") filed an application for approval of a Site Plan for a multi-building, mixed-use development of 147,888 sf., to include a 110-room hotel with 3,602 sf. of ground-floor retail; a 28,170-sf. office building including 5,632 sf. of ground-floor retail; and a multi-family residential building with 58 dwelling units (including 7 MPDUs and 5 WFHUs) ("Site Plan" or "Plan") on 1.57 acres of CBD-1, CBD-0.5, and Fenton Village Overlay-zoned land, located in the southeast corner of the intersection of Fenton Street and Silver Spring Avenue in the Silver Spring Central Business District ("Property" or "Subject Property"); and

WHEREAS, Applicant's Site Plan application was designated Site Plan No. 820100120, Silver Spring Park (the "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated October 18, 2010, setting forth its analysis of, and recommendation for approval of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the staff of other governmental agencies, on October 28, 2010, 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

WHEREAS, on October 28, 2010, the Planning Board approved the Application subject to conditions on the motion of Commissioner Dreyfuss; seconded by Commissioner Presley; with a vote of 5-0, Commissioners Alfandre, Carrier, Dreyfuss, Presley, and Wells-Harley voting in favor.

Approved as to  
Legal Sufficiency:

*[Signature]* 11/19/10

8787 Georgia Avenue, Silver Spring, Maryland 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

M-NCPPC Legal Department  
www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

NOW, THEREFORE, BE IT RESOLVED, that pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Montgomery County Planning Board APPROVES Site Plan No. 820100120 for a multi-building, mixed-use development of 147,888 sf., to include a 110-room hotel with 3,602 sf. of ground-floor retail; a 28,170-sf. office building including 5,632 sf. of ground-floor retail; and a multi-family residential building with 58 dwelling units (including 7 MPDUs and 5 WFHUs) on 1.57 gross acres in the CBD-1, CBD-0.5, and Fenton Village Overlay zones, subject to the following conditions:

1. Project Plan Conformance

The proposed development must comply with the conditions of approval for Project Plan 920100030 as listed in the Planning Board resolution dated April 5, 2010 (MCPB 10-24).

2. Preliminary Plan Conformance

The proposed development must comply with the conditions of approval for Preliminary Plan 120070420 (MCPB 10-151).

3. LEED Certification

Beyond the requirements of Project Plan 920100030 Condition 3, for the modification of the existing office building the Applicant must comply with the Montgomery County Green Building Law.

4. Maintenance of Public Amenities

The Applicant is responsible for maintaining all publicly accessible on-site amenities unless a maintenance agreement is entered into with the Silver Spring Urban District.

5. Public Use Space and Amenities

- a. The Applicant must provide on-site a minimum of 8,543 sf. of public use space (17% of net lot area).
- b. In lieu of providing the remaining 1,505 sf. on-site public use space (3% of the required 20% of the net lot area), the Applicant must contribute \$152,728 to M-NCPPC in accordance with Section 59-D-2.31 for development of schematic design architectural drawings for a Bike Station in Gene Lynch Urban Park (the "Designated Amenity"), in the Silver Spring CBD, to be coordinated by the Parks Department, or other appropriate agency as approved by and in cooperation with M-NCPPC;
- c. Within one year of the resolution date, M-NCPPC or other appropriate agency must place the Designated Amenity in the Capital Improvement Program (CIP), and within two years of the contribution, the Designated Amenity must be completed to the satisfaction of M-NCPPC staff. If these funds are not

used for the Designated Amenity within two years of the contribution date, the Planning Board may extend the timeline or approve an alternative amenity site, as recommended by M-NCPPC staff.

- d. As a public amenity, the Applicant must provide streetscape improvements consistent with the Silver Spring Streetscape Standard, including the undergrounding of utilities, along the property's frontages on Fenton Street and Silver Spring Avenue, as illustrated in the Certified Site Plan, for a total of approximately 8,681 sf., or 17.2% of net lot area.
6. Moderately Priced Dwelling Units (MPDUs) and Workforce Housing Units (WFHUs)
    - a. The proposed development must provide 12.5 percent MPDUs on-site. The MPDU agreement to build shall be executed prior to the release of any building permits.
    - b. The Applicant must provide 10 percent WFHUs on-site.
  7. Architecture

The exterior architectural character, proportion, materials, and articulation must be substantially similar to the schematic elevations shown on the Certified Site Plan, as determined by M-NCPPC Development Review and Urban Design staff.
  8. Landscaping
    - a. Provide additional landscaping in the on-site park to reduce the proportion of hardscape. Final design to be approved by Development Review and Urban Design staff, in coordination with MCDPS stormwater staff, by Certified Site Plan.
    - b. Before issuance of any building permit, if the planting within the stormwater management easement area approved by MCDPS as a part of the erosion and sediment control plan differs significantly from the planting shown on the landscape plan included with the Certified Site Plan, as determined by M-NCPPC staff, the Applicant must amend the Site Plan to reflect the changes.
  9. Lighting
    - a. The lighting distribution and photometric plan with summary report and tabulations must conform to IESNA standards for residential and commercial development.
    - b. All onsite down-light fixtures must be full cut-off fixtures.
    - c. Deflectors shall be installed on all fixtures causing potential glare or excess illumination, specifically on the perimeter fixtures abutting the adjacent residential properties.
    - d. The height of any light poles, including the mounting base, shall not exceed the height specified on the Certified Site Plan.

10. Landscape Surety

The Applicant shall provide a performance bond in accordance with Section 59-D-3.5(d) of the Montgomery County Zoning Ordinance with the following provisions:

- a. The amount of the surety shall include plant material, on-site lighting, recreational facilities, and site furniture within the relevant block of development. Surety to be posted prior to issuance of first building permit within each relevant phase of development and shall be tied to the development program.
- b. Provide a cost estimate of the materials and facilities, which, upon staff approval, will establish the initial bond amount.
- c. Completion of plantings by phase, to be followed by inspection and bond reduction. Inspection approval starts the 1 year maintenance period and bond release occurs at the expiration of the one year maintenance period.
- d. Provide a screening/landscape amenities agreement that outlines the responsibilities of the Applicant and incorporates the cost estimate. Agreement to be executed prior to issuance of the first building permit.

11. Development Program

The Applicant must construct the proposed development in accordance with a development program that will be reviewed and approved prior to the approval of the Certified Site Plan. The development program must include the following items in its phasing schedule:

- a. Streetscape improvements, including brick paving, street lights, and the undergrounding of utilities must be completed before any use and occupancy permit. Street tree planting may wait until the next growing season.
- b. All on-site amenities including, but not limited to, non-landscape elements of the public use space, site lighting, benches, trash receptacles, and bicycle facilities associated with each building must be installed prior to release of the building occupancy permit for each building. Landscaping may wait until the next growing season.
- c. Clearing and grading must correspond to the construction phasing to minimize soil erosion and must not occur prior to approval of the Final Forest Conservation Plan, Sediment Control Plan, and M-NCPPC inspection and approval of all tree-save areas and protection devices.
- d. The development program must provide phasing of dedications, stormwater management, sediment and erosion control, afforestation, trip mitigation, and other features.

12. Certified Site Plan

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

- a. Include the final forest conservation approval, stormwater management concept approval, development program, inspection schedule, and site plan resolution on the approval or cover sheet.
- b. Add a note to the site plan stating that "M-NCPPC staff must inspect all tree-save areas and protection devices prior to clearing and grading".
- c. Modify data table to reflect development standards enumerated in the staff report.
- d. Ensure consistency off all details and layout between site plan and landscape plan.

BE IT FURTHER RESOLVED, that all site development elements as shown on Silver Spring Park drawings stamped by the M-NCPPC on September 24, 2010, shall be required, except as modified by the above conditions of approval; and

BE IT FURTHER RESOLVED, that having given full consideration to the recommendations and findings of its Staff as presented at the Hearing an in the Staff Report, which the Planning 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 Site Plan conforms to all non-illustrative elements of a development plan or diagrammatic plan, and all binding elements of a schematic development plan, certified by the Hearing Examiner under Section 59-D-1.64, or is consistent with an approved project plan for the optional method of development if required, unless the Planning Board expressly modifies any element of the project plan.*

The site plan conforms to the approval conditions of Project Plan 920100030.

2. *The Site Plan meets all of the requirements of the CBD-1, CBD-0.5, and Fenton Village Overlay zones, and where applicable conforms to an urban renewal plan approved under Chapter 56.*

The Site Plan fulfills the purposes of the zones by providing an appropriate density and mix of uses near transit in an urban edge area.

The Site Plan meets all of the development standards of the zone. With respect to building height, setbacks, and density the proposed development meets all the maximum standards allowed. The Applicant is satisfying the on-site public use space requirement through a contribution to the amenity fund, specifically

directed to the preparation of schematic design architectural drawings for a Bike Station at Gene Lynch Urban Park in the Silver Spring CBD.

**Requirements of the CBD-1, CBD-0.5, and Fenton Village Overlay zones**

The Staff Report contains a data table that lists the Zoning Ordinance required development standards and the developments standards proposed for approval. The Board finds, based on the aforementioned data table, and other evidence and testimony of record, that the Application meets all of the applicable requirements of the CBD-1, CBD-0.5, and Fenton Village Overlay Zones. The following data table sets forth the development standards approved by the Planning Board and binding on the Applicant.

**Data Table**

Development Standards Approved by  
 the Board and Binding on the  
 Applicant

	<b>CBD-0.5</b>	<b>CBD-1</b>	<b>Total</b>
Lot Area, Minimum (sf.)	37,950	30,373	
Aggregate Site Area Allowed by 59-C-6.2352(3)			68,323
Previous dedication	5,250	8,573	13,823
Proposed dedication	1,497	2,765	4,262
Net lot area	31,203	19,035	50,238
Density, Combined Maximum(FAR)	1.5	3	
Density, Total Maximum (sf.)			147,888*
* exclusive of 4,213 sf. of Workforce Housing			
Density, Non-Residential Maximum (sf.)			91,642
MPDUs, Minimum (percentage)			12.5
MPDUs (of pre-WFHU du)			7
WFHUs			5
Total Dwelling Units			58

Building Height, Maximum (ft.)	60
Building Setbacks, Minimum (ft.)	
Fenton Street	0
Silver Spring Avenue	0
East Alley	0
Parking, Maximum (w/ PLD Tax for balance)	117
On-Site Public Use Space (sf.)	8,543
On-Site Public Use Space (% of Net Lot Area)	17
On-Site Public Use Space provided off-site via the Amenity Fund (sf.)	1,505
On-Site Public Use Space provided off-site via the Amenity Fund (% of Net Lot Area)	3
Contribution to Amenity Fund for implementation of a Bike Station for Gene Lynch Urban Park	\$152,728
Off-Site Amenity Space, Min. (sf.)	8,681
Off-Site Amenity Space, Min. (% of Net Lot Area)	17.2
Total On- & Off-Site Public Use & Amenity Space (sf.), Min.	17,224
Total On- & Off-Site Public Use & Amenity Space (% of Net Lot Area), Min.	37.2

3. *The locations of the buildings and structures, the open spaces, landscaping, recreation facilities, and pedestrian and vehicular circulation systems are adequate, safe, and efficient.*

The buildings and structures of the development are located along street edges, except to define public use space, which is appropriate for the character envisioned by the Master Plan. These locations provide easy access to the building from adjoining sidewalks and parking. The locations of the buildings and structures are adequate and efficient, and do not pose any safety concerns on the site.

The open space and on-site public use space will provide an attractive community amenity and allow for future expansion of neighborhood interconnectivity with future adjacent development. The landscaping and

hardscape elements will provide a diversity of sensorial interest. Street trees and lighting are provided along the adjoining streets to enhance the pedestrian environment. The recreation facilities take advantage not only of the on-site park and seating areas, but nearby neighborhood parks and an extensive pedestrian system as well. The open spaces, landscaping, and site details adequately and efficiently address the needs of the proposed use and the recommendations of the Master Plan, while providing a safe and comfortable environment.

Pedestrian access from adjacent sidewalks adequately and efficiently integrates this site into the surrounding area. The vehicular circulation design efficiently directs traffic into the site with minimal impacts to pedestrian circulation. This balance of design with the site, the recommendations of the Master Plan, and the needs of the use is an efficient and adequate means to provide a safe atmosphere for pedestrians, cyclists, and vehicles.

4. *Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development.*

The structures and uses transition well between the more commercial character of Fenton Street and the one-family residences of East Silver Spring. The hotel use will attract new visitors to the southern end of Fenton Village, providing growth opportunities for neighborhood businesses and restaurants. The addition of ground-floor retail uses in the existing office building will further help to activate Fenton Street. Finally, the building height of the multi-family apartment building steps down as it approaches the adjacent one-family residences and provides a generous setback, further promoting compatibility.

5. *The Site Plan meets all applicable requirements of Chapter 22A regarding forest conservation, Chapter 19 regarding water resource protection, and any other applicable law.*

The site is subject to Section 22A of the County code. The Planning Board previously approved the preliminary forest conservation plan with the Project Plan on March 4, 2010. The applicant will meet the requirement by an in-lieu fee payment. The approved stormwater concept includes a buried stormwater management system and green roofs.

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

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

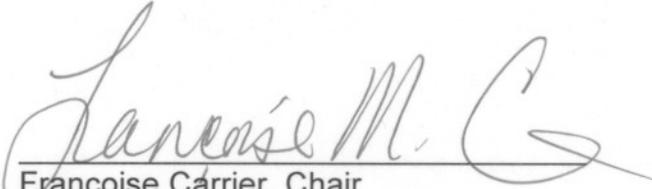
BE IT FURTHER RESOLVED, that the date of this Resolution is DEC 15 2010 (which is the date that this Resolution is mailed to all parties of record); and DEC 15 2010

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

\* \* \* \* \*

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Vice Chair Wells-Harley, seconded by Commissioner Presley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Dreyfuss and Presley voting in favor of the motion, and with Commissioner Alfandre absent, at its regular meeting held on Thursday, December 2, 2010, in Silver Spring, Maryland.

  
\_\_\_\_\_  
Françoise Carrier, Chair  
Montgomery County Planning Board



June 30, 2014

Marco Fuster  
MNCPPC  
8787 Georgia Avenue  
Silver Spring, MD 20910

Re: Silver Spring Park  
Final Forest Conservation Plan-Variance Request, Site Plan No.: 82010012A  
Kim No. 1042

Dear Mr. Fuster:

On behalf of The Fenton Group, LLC, Kim Engineering, Inc. is requesting a variance for the removal of a 36 inch Polar, (Subject Tree) as required under Section 22A-21(b) of the Montgomery County Code. The removal and/or impact of this trees is necessary in association with the development of the above referred property, which is located in Silver Spring, MD.

As background, this project has involved a Project Plan (Plan No.: 9201000030), a Site Plan (Plan No.: 820100120), and a Preliminary Plan (Plan No.: 120070420). As part of those approvals, a variance Request dated February 2, 2010 was submitted to allow the removal of three(3) trees over 30 inches in diameter. This variance was approved by the Planning Board with the Preliminary Plan.

The applicant has filed, along with this correspondence, the above referenced Forest Conservation Plan Amendment. In response to the Maryland Forest Conservation Act effective October 1, 2009, the Applicant requests a waiver of the provision, which limit the removal of certain trees exceeding a specific diameter. This is separate and in addition to the previous variance referred to above.

1. *Describe the special conditions peculiar to the property which would cause the unwarranted hardship.*

The subject property consists of seven small lots or parts of lots with a gross lot area of 68,321 square feet, rectangular in shape, and is located in the southeast quadrant of the intersection of Fenton Street and Silver Spring Avenue. The Property is currently improved with an office building, two single family homes and a paved parking area. The Property is located within the Silver Spring Central Business District, and is within the Silver Spring CBD Metro Policy Area. The number of existing small lots to be combined into one, in an urban setting, renders it nearly impossible to re-develop without disturbing the subject tree. The Silver Spring CBD Sector Plan encourages land assembly, along with higher and better uses of the land available by incorporating residential with commercial uses. The variance is necessary to achieve the master planned densities and provide the required green space and meet stormwater management requirements. This project proposes the type of well-designed mixed-use development the Sector Plan envisioned.

2. *Describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas.*



As described above, the Property is a compilation of 7 lots or parts of lots in an urban neighborhood. The Property is currently developed in existing conditions. The inability to remove the tree would cause the property to be un-developable as recommended in the master plan. The same criteria has been applied to other projects where the removal of a tree is unavoidable. Therefore, the potential inability to remove the subject tree creates a significant disadvantage for the Applicant that deprives the Applicant of the opportunities of the neighboring or similar properties that have not experienced this unique review and approval process.

3. *Verify that State water quality standards will not be violated or that measurable degradation in water quality will not occur as a result of the granting of the variance.*

The specimen tree, proposed to be removed, is not within a stream buffer, wetland or a special protection area. In fact, the development will improve water quality because the new development will introduce stormwater management onto a site that currently has none. As stated above, the majority of the site is covered by building, driveway, and parking lot, all of which generate considerable stormwater runoff. The Applicant has received approval from the Montgomery Department of Permitting Services for a Stormwater Management Concept (Concept Plan No.:236832). That Concept proposes to provide Environmental Site Design to the Maximum Extent Practicable by utilizing green roofs and micro-biofilters, thereby meeting State water quality standards. The proposed stormwater management systems will reduce the quantity and increase the quality of the stormwater discharged into the County's public storm drain systems. Furthermore the Forest Conservation and Landscape Plans propose the addition of three 3-3 ½ inch caliper trees to mitigate the removal of the 36 inch Poplar.

4. *Provide any other information appropriate to support the request.*

Please note that M-NCPPC staff have suggested that this tree be removed. In their memorandum dated June 19, 2013, their Senior Planner had expressed serious concerns for saving the tree. They consider saving the tree "unrealistic". We have also included on sheet 2 of the Forest Conservation Plan, a memo from Lew Blocher, a registered consulting arborist recommending that the tree be removed.

Please let us know if any other information from the Applicant is necessary to support the removal of the Subject Tree.

Sincerely,

A handwritten signature in blue ink that reads "Karen V. Carpenter". The signature is written in a cursive style.

Karen V. Carpenter  
MD RLA 527  
Kim Engineering, Inc.

cc: Kristine Adey – The Fenton Group, LLC.



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett  
*County Executive*

Robert G. Hoyt  
*Director*

July 17, 2014

Françoise Carrier, Chair  
Montgomery County Planning Board  
Maryland National Capital Park & Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

RE: Silver Spring Park, ePlan 120070420A, application for amendment accepted on 7/8/2014

Dear Ms. Carrier:

All applications for a variance from the requirements of Chapter 22A of the County Code submitted after October 1, 2009 are subject to Section 22A-12(b)(3). Accordingly, given that the application for the above referenced request was submitted after that date and must comply with Chapter 22A, and the Montgomery County Planning Department ("Planning Department") has completed all review required under applicable law, I am providing the following recommendation pertaining to this request for a variance.

Section 22A-21(d) of the Forest Conservation Law states that a variance must not be granted if granting the request:

1. Will confer on the applicant a special privilege that would be denied to other applicants;
2. Is based on conditions or circumstances which are the result of the actions by the applicant;
3. Arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; or
4. Will violate State water quality standards or cause measurable degradation in water quality.

Applying the above conditions to the plan submitted by the applicant, I make the following findings as the result of my review:

1. The granting of a variance in this case would not confer a special privilege on this applicant that would be denied other applicants as long as the same criteria are applied in each case. Therefore, the variance can be granted under this criterion.
2. Based on a discussion on March 19, 2010 between representatives of the County, the Planning Department, and the Maryland Department of Natural Resources Forest Service, the disturbance of trees, or other vegetation, as a result of development activity is not, in and of itself, interpreted as a condition or circumstance that is the result of the actions by the applicant. Therefore, the

**Division of Environmental Policy & Compliance**

variance can be granted under this criterion, as long as appropriate mitigation is provided for the resources disturbed.

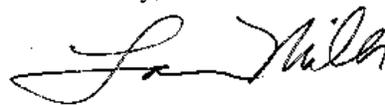
3. The disturbance of trees, or other vegetation, by the applicant does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property. Therefore, the variance can be granted under this criterion.
4. The disturbance of trees, or other vegetation, by the applicant will not result in a violation of State water quality standards or cause measurable degradation in water quality. Therefore, the variance can be granted under this criterion.

Therefore, I recommend a finding by the Planning Board that this applicant qualifies for a variance conditioned upon the applicant mitigating for the loss of resources due to removal or disturbance to trees, and other vegetation, subject to the law based on the limits of disturbance (LOD) recommended during the review by the Planning Department. In the case of removal, the entire area of the critical root zone (CRZ) should be included in mitigation calculations regardless of the location of the CRZ (i.e., even that portion of the CRZ located on an adjacent property). When trees are disturbed, any area within the CRZ where the roots are severed, compacted, etc., such that the roots are not functioning as they were before the disturbance must be mitigated. Exceptions should not be allowed for trees in poor or hazardous condition because the loss of CRZ eliminates the future potential of the area to support a tree or provide stormwater management. Tree protection techniques implemented according to industry standards, such as trimming branches or installing temporary mulch mats to limit soil compaction during construction without permanently reducing the critical root zone, are acceptable mitigation to limit disturbance. Techniques such as root pruning should be used to improve survival rates of impacted trees but they should not be considered mitigation for the permanent loss of critical root zone. I recommend requiring mitigation based on the number of square feet of the critical root zone lost or disturbed. The mitigation can be met using any currently acceptable method under Chapter 22A of the Montgomery County Code.

In the event that minor revisions to the impacts to trees subject to variance provisions are approved by the Planning Department, the mitigation requirements outlined above should apply to the removal or disturbance to the CRZ of all trees subject to the law as a result of the revised LOD.

If you have any questions, please do not hesitate to contact me directly.

Sincerely,



Laura Miller  
County Arborist

cc: Marco Fuster, Senior Planner